

# FIGHTING WORDS: CATALONIA AT THE LANGUAGE INSTRUCTION CROSSROADS

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*The schism between Spain and Catalonia obscures a struggle over the teaching language for non-linguistic subjects in Catalonia’s public schools. The recent two decades decanted into Catalan society two Spanish Constitutional Court rulings mandating a Castilian-Catalan conjunctive instruction model—with Catalan as the “center of gravity”—and tasking the Catalan legislature with configuring that “center.” Pleasing none and spurned by all, the Constitutional Court duology emboldened activist lower courts to bypass the Catalan legislature, while schools in Catalonia continued to teach almost exclusively in Catalan. With the Castilians alienated and the Catalans defiant, language instruction in Catalonia turned into a festering wound for which a radical rethinking must be prescribed.*

*Across the Atlantic, Quebec offers an instruction scheme where two languages co-exist in concord. Drawing from the two regions’ legal and social similarities, this Note contends that Catalonia should emulate Quebec, where public schools are split into two tracks—French-medium as the default, English-medium by election.*

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## INTRODUCTION

When Quim Monzó lamented that Catalan was becoming a dialect of Castilian Spanish,<sup>1</sup> many dismissed the writer's prognosis as one of his cynical bouts. Nonetheless, even as Catalan emerges triumphant from centuries of repression, Monzó's admonition contains a kernel of truth. In Catalonia, a tug-of-war for language rights rages on between speakers of Catalan and Castilian, embroiling police officers,<sup>2</sup> governments,<sup>3</sup> TV stations,<sup>4</sup> and many others in its wake. In this melee, schools deserve a special mention. Education, long a battleground for competing ideologies, lies at the heart of Spain's deepening rift.<sup>5</sup>

Understanding Catalonia's language education conundrum necessitates a detour into its public education system. From primary schools to the pre-university Baccalaureate, all students learn Catalan as a language subject, but their exposure does not stop there. As the instruction medium, or teaching vehicle, for almost all non-language subjects,<sup>6</sup> Catalan permeates students' lives as they delve into advanced algebra, classical philosophy, or molecular biology. The purpose of Catalan immersion is twofold: first, it propagates Catalan, a language that previous regimes tried to erase; second, it encourages cohesion, uniting students under one roof no matter what

1. Xavier Rius, *Quim Monzó: "El país s'enfonsa"* [Quim Monzó: "The Country is Collapsing"], E-NOTÍCIES (Jan. 22, 2009, 12:20 PM), <https://politica.e-noticies.cat/quim-monzo-el-pais-senfonsa-25046.html>.

2. *Catalan Police Suspends Officer Without Pay for Writing in Spanish*, LOCAL (Mar. 14, 2018, 4:06 PM), <https://www.thelocal.es/20180314/catalan-police-force-strips-officer-of-wages-for-writing-in-spanish>.

3. *Spanish Treasury Orders Staff Not to Provide Telephone Service in Catalan*, PLATAFORMA PER LA LLENGUA [LANGUAGE PLATFORM] (Apr. 18, 2019), [https://www.plataforma-llengua.cat/que-fem/en\\_noticies/47](https://www.plataforma-llengua.cat/que-fem/en_noticies/47).

4. Marc González, *Ofensiva de la Plataforma per la Llengua per aturar la "castellanització" de TV3* [Plataforma per la Llengua's Attack on the "Castilization" of TV3], EL NACIONAL [THE NAT'L] (July 15, 2020, 1:49 PM), [https://www.elnacional.cat/ca/politica/plataforma-llengua-aturar-castellanitzacio-tv3\\_522747\\_102.html](https://www.elnacional.cat/ca/politica/plataforma-llengua-aturar-castellanitzacio-tv3_522747_102.html).

5. See, e.g., José Antich, *Claims of Indoctrination in Catalan Schools, Rebuffed by Ombudsman*, EL NACIONAL [THE NAT'L] (July 3, 2018, 5:31 PM), [https://www.elnacional.cat/en/editorial/jose-antich-indoctrination-rebuffed-ombudsman\\_284346\\_102.html](https://www.elnacional.cat/en/editorial/jose-antich-indoctrination-rebuffed-ombudsman_284346_102.html) (reporting that Catalan schools faced charges of indoctrination).

6. Teachers can informally elect to instruct in Castilian. Enrique Benítez, *Catalonia's Language Immersion Education*, MEDIUM (July 11, 2017), <https://link.medium.com/ByuYKrnHab>.

language they speak at home.<sup>7</sup>

Despite Catalonia's intent to foster unity,<sup>8</sup> relegating Castilian—the “national language”<sup>9</sup>—to a language subject invited only backlash. Castilian-oriented commentators point out that “Catalonia has the dubious honour of being the only place in the Western world where the majority [of the nation does] not even have the option of enrolling their children in schools that teach in their native language.”<sup>10</sup> A thorn in the flesh for Castilian speakers, Catalonia's language instruction policy drew fire from both the legislature<sup>11</sup> and the bench.<sup>12</sup>

As the supreme interpreter of the Spanish Constitution,<sup>13</sup> the Constitutional Court was twice invited to be the arbiter of this dispute. In 1994, it declared that Catalan as the “gravitational center” of a bilingual instruction model is “perfectly legitimate,” but did not specify the perimeter of that center.<sup>14</sup> It revisited the issue in 2010, establishing “non-exclusion of Castilian” as the minimum *quantum* in a Catalan-centric instruction scheme, yet again keeping its cards close to its chest on the extent teachers could instruct in Catalan.<sup>15</sup> From today's vantage, the Constitutional Court dyad hardly marked the beginning of a thaw. The 2010s birthed a defiant Catalan Parliament forestalling changes to Catalan immersion and activist lower courts stretching the Constitutional Court's words to the limit.<sup>16</sup> The schools in Catalonia are caught in the middle and left in the dark. It is a darkness fraught with resentment and enmity that have profound implications for the

7. PLATAFORMA PER LA LLENGUA [LANGUAGE PLATFORM], LANGUAGE IMMERSION IN CATALONIA: AN EFFECTIVE AND SUCCESSFUL MODEL 8 (2017).

8. See GOV'T OF CATALONIA, 30 YEARS OF LANGUAGE POLICY 7 (2014) [hereinafter 30 YEARS REPORT] (“[T]he population of Catalonia would become one sole people, free of dynamics differentiated by language.”).

9. Benítez, *supra* note 6.

10. Alia Wong, *Is Catalonia Using Schools as a Political Weapon?*, ATLANTIC (Nov. 3, 2017), <https://www.theatlantic.com/international/archive/2017/11/is-catalonia-using-schools-as-a-political-weapon/544898/>.

11. See discussion *infra* Section I(a).

12. See discussion *infra* Section I(a)(3).

13. Olga Cabrero, *Features – A Guide to the Spanish Legal System*, LLRX (Jan. 15, 2002), <https://www.llrx.com/2002/01/features-a-guide-to-the-spanish-legal-system/>.

14. Eva Pons Parera, *The Effects of Constitutional Court Ruling 31/2010 Dated 28 June 2010 on the Linguistic Regime of the Statute of Catalonia*, 3 CATALAN SOC. SCI. REV. 67, 85 (Mary Black trans., 2013) (2011) [hereinafter Parera, *Ruling 31/2010*].

15. Antoni Milian i Massana, *El régimen de las lenguas oficiales. Comentario a la Sentencia del Tribunal Constitucional 31/2010, de 28 de junio* [*The Official Languages Regime. Commentary on the Judgment of the Constitutional Court 31/2010, from June 28*], 2010 REVISTA CATALANA DE DRET PÚBLIC [CATALAN J. OF PUB. L.] 131, 136–37 (2010).

16. See discussion *infra* Section II.

rest of Spain.<sup>17</sup>

Catalonia's present quandary echoes a past dispute across the pond. Quebec, home to many French and English speakers who crossed the linguistic border to attend school in the other language,<sup>18</sup> was once a hotbed of similar confrontations. An avalanche of legislation and lawsuits molded Quebec's public schools into their present form:<sup>19</sup> schools are divided into two tracks, with French as the default and English available by election if students can demonstrate connections with the English language.<sup>20</sup> Although those with French monolingual backgrounds have less choice, Quebec's language planning is a two-way street. Students in French-medium schools learn English as a subject,<sup>21</sup> students in English-medium schools acquire French as a subject and a subject matter vehicle, depending on school offerings.<sup>22</sup> Students who excel have the opportunity to engage in more intensive classes.<sup>23</sup> Although short of producing native speakers, this flexible arrangement has attained strong outcomes in helping students reach the desired "level[s] of proficiency and communicative confidence that . . . allow them to pursue further learning opportunities."<sup>24</sup>

Drawing from these developments, this Note argues that Quebec sets an imitable example for Catalonia. Part I describes the legal regimes governing public school instruction in the two regions. Following this survey, Part II contributes to the scholarship identifying the flaws of the Catalan-Castilian conjunctive model proposed by the Spanish Constitutional

17. See Krishnadev Calamur, *The Spanish Court Decision that Sparked the Modern Catalan Independence Movement*, ATLANTIC (Oct. 1, 2017), <https://www.theatlantic.com/international/archive/2017/10/catalonia-referendum/541611/> ("In 2010 Spain's Constitutional Court issued a landmark ruling that inadvertently laid the ground for Sunday's independence referendum in Catalonia.")

18. Marie McAndrew & Paul Eid, *La traversée des frontières scolaires par les francophones et les anglophones au Québec: 2000-2002* [*Linguistic Crossovers by Francophones and Anglophones in Québec Schools: 2000-2002*], 32 CAHIERS QUEBECOIS DE DEMOGRAPHIE [QUEBECOIS DEMOGRAPHY NOTEBOOKS] 223, 227 (2003).

19. Valérie Streicher-Arseneault, *La planification linguistique en Québec y en Cataluña* [*Language Planning in Quebec and Catalonia*], 15 TINKUY 82, 86 (2011).

20. Patsy M. Lightbown, *Intensive L2 Instruction in Canada: Why Not Immersion?*, in INTENSIVE EXPOSURE EXPERIENCES IN SECOND LANGUAGE LEARNING 25, 41 n.1 (Carmen Muñoz ed., 2012).

21. See *id.* at 34 ("[N]othing could be taught in a language other than French – except a . . . language itself.")

22. Paule Desgroseilliers, *French Second Language Programs in Québec*, in THE STATE OF FRENCH SECOND LANGUAGE EDUCATION IN CANADA 2019 11, 11 (Canadian Parents for French ed., 2019).

23. See *id.* ("Examples of delivery models include a Bilingual program (50% English and 50% French), a Français + program (15% English, 85% French) and a Français, langue maternelle [mother tongue] program, an advanced FSL program . . .").

24. Lightbown, *supra* note 20, at 41.

Court.<sup>25</sup> Finally, Parts III and IV advance a novel proposal to promote reconciliation in Catalan classrooms: Catalonia should emulate Quebec’s two-track model and qualitatively assess which track students pursue—Catalan-medium as the default, or Castilian-medium subject to proof of connections.

## I. THE TWO LEGAL FRAMEWORKS

### A. Catalonia: Division in Unity

The question of which language to use in Catalonia classrooms has medieval roots, but it is the late 1970s that set the legal scene. This Subpart outlines the constitutional and statutory backdrop preceding the 1994 Constitutional Court ruling. In 1978, the enactment of a new Constitution transformed Spain into a decentralized democracy, where semi-federal Autonomous Communities (“the Communities”) enjoy varying degrees of devolved power.<sup>26</sup> Notably, federal and regional authorities both have the power to regulate language instruction.<sup>27</sup> At the federal level, Article 3.1 of the Constitution stipulates that citizens “have the duty to know [Castilian Spanish] and the right to use it.”<sup>28</sup> The national government is the arbiter of the “standardisation of academic degrees.”<sup>29</sup> At the regional level, Article 3.2 affords the Communities the power to make other languages official “in the respective Autonomous Communities in accordance with their

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25. The tensions within and the negative consequences of the Constitutional Court rulings on language instruction are perennial subjects of scholarly discussion. *See, e.g.*, Massana, *supra* note 15, at 136 (noting a “grave error” in the 2010 decision regarding teachers’ qualifications); Xavier Muro Bas, *Valoración de aspectos relativos a la lengua en la sentencia del Tribunal Constitucional 31/2010 de 28 de junio, sobre el Estatuto de Autonomía de Cataluña* [Assessment of the Aspects Related to Language in the Constitutional Court Ruling 31/2010 of June 28, on the Statute of Autonomy of Catalonia], 2010 REVISTA CATALANA DE DRET PÚBLIC [CATALAN J. OF PUB. L.] (EXTRA 1) 139, 142 (2010) (questioning the vagueness of “center of gravity”); Mercè Corretja Torrens, *De nou, sobre els tribunals i l’ús de les llengües vehiculars a l’escola* [Again, on the Courts and the Use of Vehicular Languages in School], 59 REVISTA DE LLENGUA I DRET [J. LANGUAGE & L.] 75, 87 (2013) (examining the contradictions between the Court’s jurisprudence and the lower courts’ establishment of percentages to determine the instructional use of languages). This Note consolidates and adds to this expanding body of critiques by drawing from more recent developments and court rulings. To the extent scholars compared the instruction regimes of Quebec and Catalonia, they focused on the facial similarities and did not advocate for one to emulate the other. *E.g.*, Streicher-Arseneault, *supra* note 19, at 26. This Note aims to plug that gap and set forth a roadmap for Catalonia to initiate change, taking into account the proposal’s feasibility and justifications.

26. Ferran Ferrer, *Languages, Minorities and Education in Spain: The Case of Catalonia*, 36 COMPAR. EDUC. 187, 187 (2000).

27. *Id.* at 188–89.

28. C.E., B.O.E. n. 311, Dec. 29, 1978, art. 3.1 (Spain).

29. *Id.* art. 149.1.30.

Statutes”<sup>30</sup> and Article 148.1 grants the Communities competences over “the teaching of the language of the Autonomous Community.”<sup>31</sup> Read in conjunction, these articles invite two observations: first, minority languages are co-official with and co-equal to Castilian in certain regions; second, the Constitution neither requires citizens to learn nor guarantees the right to use minority languages.<sup>32</sup>

Desiring to “achiev[e] a mainly Catalan-speaking region,”<sup>33</sup> the Catalan Parliament—the Generalitat—adopted two laws that formed the backbone of its present-day instruction policy. The 1979 Statute of Autonomy established Catalan as Catalonia’s official language, along with Castilian.<sup>34</sup> To consolidate Catalan’s new status, the Generalitat passed the Language Normalization Act in 1983 to provide students a “right to receive primary education in their first language, be it Catalan or Castilian.”<sup>35</sup> Within a year, a Castilian-speaking lawyer launched a decade-long offense against the Act, culminating in the Supreme Court referring the question to the Constitutional Court.<sup>36</sup> Against this setting commenced an era where Castilian and Catalan establishments wrangled for control over the language of instruction, with the Constitutional Court as the main arena. Three aspects emerged as the cornerstones of the Court’s language instruction jurisprudence: parents have no right to choose the language of instruction;<sup>37</sup> the teaching *of* and the teaching *in* Catalan—as long as reasonable and proportional—fall within the Generalitat’s discretion, whereas the teaching *of* Castilian remains the national government’s prerogative;<sup>38</sup> Catalan can be the gravitational center

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30. *Id.* art. 3.2.

31. *Id.* art. 148.1.17.

32. Ferrer, *supra* note 26, at 189.

33. Charlotte Hoffman, *Balancing Language Planning and Language Rights: Catalonia’s Uneasy Juggling Act*, 21 J. MULTILINGUAL & MULTICULTURAL DEV. 425, 429 (2000).

34. Estatuto de Autonomía de Cataluña [EAC] [Statute of Autonomy of Catalonia] art. 3.2 (B.O.E. 1979, 306) (Spain).

35. Ley 7/1983, de 18 de abril, de normalización lingüística en Catalunya [Law 7/1983 of April 18 of Linguistic Normalization] art. 14.2 (B.O.E. 1983, 112) (Spain).

36. “[O]nly the Constitutional Court can declare laws of Parliament or the Autonomous Communities to be unconstitutional. For other issues, the Supreme Court is the highest court in Spain.” Jeremy R. Kasha, *Education Under Catalonia’s Law of Linguistic Normalization: Spanish Constitutionalism and International Human Rights Law*, 34 COLUM. J. TRANSNAT’L L. 657, 662 n.23 (1996).

37. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, p. 28) (Spain).

38. *Id.* at 31, 56 (emphasis added). The Court hinted that the national government can also regulate the teaching *in* Castilian, but it should abstain because such an exercise of authority would conflict with the Generalitat’s competence. *Id.* at 38. The Judgement of June 28, 2010 confirms this inference; it reiterated that the competences of the Generalitat and the national government are concurrent, but the latter can “regulate the basic conditions that guarantee the equality of all Spanish people in the exercise of [the constitutional right and duty] to know the language of the [nation]” either by learning it as a subject or as the medium. S.T.C., Dec. 16, 2010 (B.J.C. No. 137/2010, pp. 107–08).

of instruction, but Castilian must also be used as a vehicle.<sup>39</sup>

### 1. Judgement of December 23, 1994

The 1990s marked a progressive era for the Court, characterized by deference to the Autonomous Communities after the harsh years of Francisco Franco's rule.<sup>40</sup> As the paradigm case of this trend, the Judgement of December 23, 1994 paved the way for a conjunctive instruction model, and it focused on three questions: the rights of parents and students, the roles of the national and regional governments, and the assignment of the vehicular uses of Catalan and Castilian as the teaching medium for a non-linguistic subject.

As a threshold matter, the Court reasoned that an express right to receive primary education in one's first language could only mean that students do not have the same right in higher studies, as any other reading renders the whole precept surplusage.<sup>41</sup> In contrast with the Quebec approach, the Court stated that students or parents have no right to choose the medium of instruction.<sup>42</sup> It advanced two justifications. First, freedom of choice is antithetical to social integration, as accommodating preferences "inevitably create[s] a two-track system divided by language," segregating communities and undercutting equality among languages.<sup>43</sup> Second, the language of instruction is part of a regulated activity that falls within the concurrent competencies of the national government and the Generalitat.<sup>44</sup> Students accessing the service of education must "submit to the ordering of the system established by the public powers."<sup>45</sup>

Crossing students off the list of decision-makers led the Court to the division of power between Madrid and Barcelona. A 1989 Constitutional Court decision made clear that the national government "cannot become an obstacle blocking or emptying the competence that the Autonomous Community has over language normalization."<sup>46</sup> Going one step beyond in 1994, the Court generally entrusted the Generalitat with allocating the vehicular use of Catalan, as long as the Generalitat complies with some

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39. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, p. 55) (Spain).

40. Eva Pons Parera, *Balanç de la jurisprudència del Tribunal Constitucional 1979-2019* [*Balance of the Jurisprudence of the Constitutional Court 1979-2019*], 72 REVISTA DE LLENGUA I DRET [J. LANGUAGE & L.] 292, 292–93 (2019).

41. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, p. 56) (Spain).

42. *Id.* at 28.

43. *Id.* at 41.

44. *Id.* at 31.

45. *Id.*

46. S.T.C., Apr. 24, 1989 (B.J.C., No. 74/1989, p. 784) (Spain).

“criteria of reasonableness and proportionality.”<sup>47</sup> Their meaning never clarified by the Court, these criteria have become a pronounced source of disputes.<sup>48</sup> A part of these criteria seems to include the non-exclusion of Castilian as a vehicle, originating from an implicit constitutional constraint “on the public powers, both state and regional, to promote knowledge and to guarantee a mutual respect and protection of both official languages of the Community.”<sup>49</sup> In particular, the public powers must guarantee an anti-discrimination right to use both languages,<sup>50</sup> although there is no duty for citizens to know the regional language<sup>51</sup> and the public powers cannot impose such a duty.<sup>52</sup> In view of the “purpose of integration and social cohesion” and “the objective of linguistic normalization,” the Court concluded that Catalan as the gravitational center of instruction complies with these criteria, provided that Castilian maintains a vehicular presence.<sup>53</sup>

## 2. Judgement of June 28, 2010

The interregnum between the two seminal cases saw the Generalitat introduce a wave of “second-generation statutes,”<sup>54</sup> since the increased public knowledge of Catalan warranted more decisive measures to “consolidate . . . the established linguistic regime framed in [the 1979 Statute of Autonomy and the Linguistic Normalization Act].”<sup>55</sup> The 2006 Statute of Autonomy spearheaded this initiative in the new millennium. Three clauses in the 2006 Statute touch on instruction. First, Article 6 upgrades Catalan to “Catalonia’s own language,” or *lengua propia*, and “the language of normal use for teaching and learning in the education system.”<sup>56</sup> Second, Article 35(1) grants all individuals “the right to receive an education in Catalan” and proclaims that “Catalan shall normally be used as the teaching and learning language for . . . non-university education.”<sup>57</sup> Third, Article 35(2) gives students a “right to receive an education in Catalan at the non-university

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47. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, p. 32) (Spain).

48. See discussion *infra* Section II.

49. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, p. 48) (Spain).

50. *Id.*

51. *Id.* at 53.

52. S.T.C., June 26, 1986 (B.J.C., No. 82/1986, p. 817) (Spain) (discussing the Article 3 duty to know that Castilian has long been interpreted as the floor and ceiling; the non-existence of a duty to know other languages amounts to a prohibition on the Communities to instate such a duty).

53. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, p. 56) (Spain).

54. Parera, *supra* note 40, at 293.

55. 30 YEARS REPORT, *supra* note 8, at 18–19.

56. Ley Orgánica 6/2006, de 19 de julio, de reforma del Estatuto de Autonomía de Cataluña [Organic Law 6/2006 of July 19 on the Reform of the Statute of Autonomy of Catalonia] art. 6.1 (B.O.E. 2006, 172) (Spain).

57. *Id.* art. 35.1.



level.”<sup>58</sup> Taken together, these three clauses expand Catalan instruction normalcy from primary education—as set out by the 1979 Language Normalization Act—to the entire educational span.

These declarations of Catalan’s autochthonous prestige raised some eyebrows in Madrid. In 2006, the People’s Party filed an appeal alleging their unconstitutionality.<sup>59</sup> The Constitutional Court responded fourteen years later. For the most part, the 2010 decision champions the three tenets of its 1994 precursor: both languages must be used as vehicles, but a stronger presence of Catalan is constitutional;<sup>60</sup> the Generalitat continues to take charge of calibrating the reasonable and proportional use of Catalan vehicle;<sup>61</sup> students have no right to choose.<sup>62</sup> While the Court upheld all three contested clauses of the 2006 Statute, it also introduced new concepts with unspecified meanings, besetting its doctrine with internal tension.

Starting with Article 6, the Court reminded the reader that the Generalitat’s competence must remain unquestioned, but the national government must oversee a positive “right to receive teaching in the official language of the [nation].”<sup>63</sup> The Court did not define what constitutes “normal use” in the education context, but held that Catalan “normality” for public administrations is constitutional only if interpreted as “accredit[ing] a reality that, characterized by the normal and customary use of Catalan at all levels of social life . . . justifies [Catalan] as the official language in Catalonia.”<sup>64</sup> At the least, normal use does not imply Catalan primacy vis-à-vis Castilian, as the Court voided another article providing for Catalan’s “preferential use” in public media.<sup>65</sup>

Noting that Article 35—providing rights to receive education *in* Catalan—does not allude to Castilian, the Court upheld both impugned clauses provided that the omission does not “prohibit—as [the Statute] cannot—the equal use of [Castilian] Spanish.”<sup>66</sup> Nowhere in the Court’s previous jurisprudence has “equal use” been articulated as a standard. Rather than using equal use to mean identical day-to-day time allotment, the Court seems to only require Castilian instruction to be offered at the same

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58. *Id.* art. 35.2.

59. S.T.C., June 28, 2010 (B.J.C., No. 31/2010, p. 64) (Spain).

60. *Id.* at 248.

61. *See id.* (emphasizing that the teaching of Catalan is a valid exercise of powers derived from the Statute of Autonomy).

62. *Id.*

63. *Id.* at 247.

64. *Id.* at 240.

65. *Id.* at 240–41.

66. *Id.* at 248.

educational stages as Catalan instruction.<sup>67</sup> In other words, if there is a right to Catalan instruction spanning the entirety of one's education, there must also exist a right to Castilian instruction for the equivalent timeframe. In sum, as long as Article 35 does not impede "the free and effective exercise of the right to receive *the* education in [Castilian] Spanish as the vehicular and learning language"<sup>68</sup> that runs parallel to the right to receive an education in Catalan, Article 35 is compatible with the Constitution.

### 3. Post-2010 Developments

A positive right to Castilian instruction never bodes well in Catalonia, as the subsequent legal battles attest. Twelve years after the 2010 decision, the three basic principles of language instruction enunciated by the 1994 Court remain untouched. New federal directives found to be in violation were struck down, but their aftershocks only ratified the fault lines between the speakers of Castilian and Catalan. Furthermore, in 2019, two recent additions to the Constitutional Court saga threw more uncertainty into the mix.

Sandbagging against rising Catalan nationalism, the national government mobilized to pass the Organization Law for the Improvement of Educational Quality ("LOMCE") in 2013, the latest in a line of federal statutes seeking to recentralize language education.<sup>69</sup> In fact, when called on

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67. *See id.* (underscoring that "[n]othing prohibits . . . the right to be taught in Catalan . . . at all levels of education" and "an identical right" with Castilian).

68. *Id.* (emphasis added). The 2010 decision's consistent use of a definite article—"la" ["the"]—before "education" caused significant debate regarding the article's significance. In the 1994 decision, the majority and the individual opinion by José Gabaldón López used both constructions interchangeably (i.e., "*derecho a recibir enseñanza en lengua castellana*" [right to receive education in Castilian]; "*derecho a recibir la enseñanza en castellano*" [right to receive the education in Castilian]). S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, pp. 28, 52–53, 62–64) (Spain). To date, the Court has not clarified its intention. Scholars argue that the definite article creates a new right *ex novo*. Some parents and political parties have been pointing to the Court's diction to urge the authorities to impose a percentage use for Castilian. GOV'T OF CATALONIA, FIFTH PERIODICAL REPORT ON COMPLIANCE WITH THE COUNCIL OF EUROPE'S CHARTER FOR REGIONAL OR MINORITY LANGUAGES IN CATALONIA 2013-2016, at 55 (2016).

69. In Spain, the Ministry of Education maintains an iron grip over the broader education policy landscape, at the heart of which is a series of statutes starting with the 1970 General Act of Education. LOMCE's immediate predecessor, the 2006 Organization Education Act ("LOE"), took a more *laissez-faire* approach to minority language instruction and preferred open-endedness. *See* Ley Orgánica 2/2006, de 3 de mayo, de Educación [Organic Law 2/2006, of May 3, on Education] (B.O.E. 2006, 106) (Spain) ("The educational administrations will adopt the appropriate measures so that the use in teaching the Spanish language or the co-official languages is not a source of discrimination . . ."). Because of the competences of the Communities, language instruction remains one of the special areas in education that resists federal intervention. *See* Eva Pons Parera, *La regulació lingüística de la LOMCE: i ara, la via legislativa* [The Linguistic Regulation of the LOMCE: And Now, the Legislative Route], R.L.D. BLOG (Mar. 13, 2014), <https://eapc-rld.blog.gencat.cat/2014/03/13/la-regulacio-linguistica-de-la-lomce-i-ara-la-via-legislativa-eva-pons/> (stressing that the national government rarely directly regulated instruction, because such competence is "of regional ownership").

to explain LOMCE's rationale, the former Minister of Education stressed the "need to turn Catalan students Spanish"<sup>70</sup>—and to be Spanish is to speak the nation's dominant tongue.<sup>71</sup> Regarding the teaching of languages, LOMCE generally respected the Constitutional Court's doctrines. Articles 13 and 27 designate Castilian as a "core subject," its content and evaluation controlled by the State, and the minority languages as "free autonomous configuration," placed under the purview of the Communities.<sup>72</sup> Regarding the teaching in languages—a competence that the Court delegated to the Communities—LOMCE had no direct provision. However, because the Court never imparted judgment on the indirect avenues to regulate instruction, LOMCE managed to extend Madrid's grip by offering students a scholarship to attend private Castilian-medium primary schools at the Generalitat's expense.<sup>73</sup> Holding that the national government exceeded its direct control powers and invaded an executive competence assumed by the Generalitat, the Constitutional Court voided this provision.<sup>74</sup> Notwithstanding the verdict in favor of the Generalitat, LOMCE, in an attempt to coerce the illusion of unity at best, only espoused more division.<sup>75</sup>

The Generalitat was also actively at work. Attempting to "expand[] on the exclusive and shared powers granted to the Generalitat of Catalonia by the [2006] Statute of Autonomy,"<sup>76</sup> the Generalitat passed the Law on Education ("LEC") in 2009. Compared to previous legislation, Article 11.1 elucidated Catalan's role as "the language normally used as the vehicular language."<sup>77</sup> On April 11, 2019, the Court rendered a judgment on LEC but evaded discussing Article 11, as Article 11 was not appealed.<sup>78</sup> On October 1, 2019, when considering the broader context of co-officiality, the Court

70. J. A. Aunión, *Wert quiere "españolizar" Cataluña [Wert Wants to "Hispanicize" Catalonia]*, EL PAÍS [THE COUNTRY] (Oct. 10, 2012, 3:35 PM), [https://elpais.com/sociedad/2012/10/10/actualidad/1349859896\\_604912.html](https://elpais.com/sociedad/2012/10/10/actualidad/1349859896_604912.html).

71. Readers familiar with Spanish cultural history may find the Minister's rhetoric reminiscent of the Francoist-era street signs saying, "If you are Spanish, speak [Castilian] Spanish." Jose M. Esteve, *Multicultural Education in Spain: The Autonomous Communities Face the Challenge of European Unity*, 44 EDUC. REV. 255, 257 (1992).

72. Ley Orgánica 8/2013, de 9 de diciembre, para la mejora de la calidad educativa [Organic Law 8/2013, of December 9, for the Improvement of Education Quality] arts. 6(2)(a)–(c) (B.O.E. 2013, 295) (Spain).

73. *Id.* art. 38(4).

74. S.T.C., Feb. 20, 2018 (B.O.E., No. 14/2018, p. 32671) (Spain).

75. Ivanna Vallespín, *Cataluña considera "inaplicable" la Lomce [Catalonia Considers the LOMCE "Inapplicable"]*, EL PAÍS [THE COUNTRY] (May 21, 2013, 3:00 PM), [https://elpais.com/ccaa/2013/05/21/catalunya/1369141468\\_352085.html](https://elpais.com/ccaa/2013/05/21/catalunya/1369141468_352085.html).

76. Ley 12/2009, del 10 de julio, de educación [Law 12/2009, of July 10, on Education] pmb. (B.O.E. 2009, 189) (Spain).

77. *Id.* art. 11(1).

78. S.T.C., Apr. 11, 2019 (B.O.E., No. 51/2019, p. 52118) (Spain).

remarked that Castilian and Catalan “must be subject to a pattern of balance or equality between languages, so that in no case should one prevail or predominate the other.”<sup>79</sup> Since one can argue Catalan as the gravitational center implies prevalence or preponderance, Catalan’s current vehicular status hangs in the balance.

## B. Quebec: Unity in Division

Catalonia’s quest for conjunction sets it apart from Quebec. The latter champions an ethos of separation, allowing schools to promote inclusion by preserving the differences among students. At the same time, pushbacks and readjustments dominate the Quebec precedent as much as the Catalonia sequel. Far from a beeline for consensus, the Quebec two-track model was a product of incremental changes that left a mosaic of legislation and case law as their legacy. Beginning with a summary of the events preceding Quebec’s Bill 101 and the Canadian Charter of Freedom and Rights, this Subpart reviews three Canadian Supreme Court cases that examine the following questions: how to justify the limited enrollment choice faced by students with French monolingual backgrounds; what determines a student’s eligibility for a certain track; and what happens when ineligible students try to bypass these guidelines?

Bill 22, also known as the Official Language Act, lay the first tile of that mosaic. Foremost among the issues Bill 22 addressed was the freedom of choosing the language of instruction.<sup>80</sup> In 1977, concluding Bill 22 could not halt the decline of French, Quebec passed the Charter of the French Language (“Bill 101,” “CFL”) to make French “the normal and everyday language of . . . instruction.”<sup>81</sup> Bill 101’s original form contained a two-pronged strategy to normalize French use in schools. Section 72 presents the first prong: in French-medium schools, all instruction will be in French with few exceptions.<sup>82</sup> Section 73 lays out the more controversial prong: to send a child to English-medium schools, one of the parents must have received English primary instruction in Quebec.<sup>83</sup> This stringent requirement left most parents with no choice. Non-traditional demographics immediately flowed into French-medium schools. In Montreal, within a decade of Bill 101’s passage, non-Francophone students attending French-medium schools grew

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79. S.T.C., Oct. 1, 2019 (B.O.E., No. 109/2019, p. 121118) (Spain).

80. MARC CHEVRIER, LAWS AND LANGUAGE IN QUÉBEC: THE PRINCIPLES AND MEANS OF QUÉBEC’S LANGUAGE POLICY 9 (1997).

81. Charter of the French Language, R.S.Q., c C-11, pmb1. (Can.).

82. Lightbown, *supra* note 20, at 34.

83. *Id.*, at 41 n.1.

by over a quarter.<sup>84</sup> Section 73 was a recipe for fissure, but it incidentally channeled speakers of different languages into a quasi-consociational fellowship. For the first generation of Quebeckers growing up under Bill 101, “the French language is first and foremost a language of sharing for an intergroup and not the language of a specific group closely associated with a particular culture.”<sup>85</sup>

Over the years, the constitutional challenges Bill 101 endured left indelible marks on its text. Before 1982, with no federal laws on language instruction, provinces were free to legislate. The Constitution that underlay the creation of Canada in 1867 only bound Quebec to a few legislative or judicial activities.<sup>86</sup> In 1982, Section 23 of the Canadian Charter turned the solo dance into a *pas de deux*.<sup>87</sup> It states:

23. (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.<sup>88</sup>

Embedded within this list are two calculations. First, Section 23 of the

84. MARC V. LEVINE, *THE RECONQUEST OF MONTRÉAL: LANGUAGE POLICY AND SOCIAL CHANGE IN A BILINGUAL CITY* 142 (1990).

85. Marie McAndrew, *La loi 101 en milieu scolaire: impacts et résultats* [Law 101 in Schools: Impacts and Results], 2002 *REVUE D'AMÉNAGEMENT LINGUISTIQUE* [LANGUAGAE DEV. REV.] 69, 73 (2002).

86. See Constitution Act 1867, 30 & 31 Vict., c. 3, § 133 (U.K.), reprinted in R.S.C. 1985, app II, no 5 (Can.).

87. One should note that Quebec never ratified the Charter and resisted subsequent constitutional amendment discussions designed to obtain its approval. David R. Cameron & D. Krikorian Jacqueline, *Recognizing Quebec in the Constitution of Canada: Using the Bilateral Constitutional Amendment Process*, 58 U. TORONTO L.J. 389, 393–95 (2008). However, the Charter binds all provinces with equal force, independent of their endorsement. Richard Foot, *Canadian Charter of Rights and Freedoms*, CANADIAN ENCYCLOPEDIA (Mar. 2, 2020), <https://www.thecanadianencyclopedia.ca/en/article/canadian-charter-of-rights-and-freedoms>.

88. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, c. 11, § 23(1)–(2) (U.K.).

Canadian Charter expands Section 73 of the Quebec Charter, honoring the preference of “an entire class of individuals” previously deprived of access to English-medium schools.<sup>89</sup> Second, by allowing more English speakers to opt for English instruction and preserve their language—which remains the minority in Quebec—it prevents French-medium schools from becoming centers of assimilation.<sup>90</sup> In the words of the Supreme Court, “[t]he general purpose of Section 23 of the Charter is clear: it is to preserve and promote the two official languages of Canada”<sup>91</sup> by ensuring “that the English community in Quebec and the French communities of the other provinces can flourish.”<sup>92</sup>

### 1. *Gosselin* and Equality

After Quebec revamped Section 73(1) to implement Section 23, students whose parents received English primary instruction in *Canada* became eligible for English-medium schools.<sup>93</sup> They could waive their entitlement and attend French-medium schools instead, while students without this qualification could only enroll in French-medium schools. This asymmetry prompts the question: how does students’ differential access to English-medium schools square with the promotion of both French and English? *Gosselin v. Quebec* provides an answer: the provinces are free to provide resources for everyone to learn the minority language; the Charter only aims at protecting the rights of the minority to speak and use their own language.<sup>94</sup>

In *Gosselin*, frustrated by denials of admission from English-medium schools, several families who did not qualify as rights holders claimed that Section 73(1) is discriminatory.<sup>95</sup> Responding to the challenge, the Court declared that Section 73(1) is not aimed at providing identical access for all students to the instruction of one’s choice.<sup>96</sup> Instead, the equality that Section 73(1) strives for is “in substance,”<sup>97</sup> to be achieved by giving “special rights to a select group of individuals”<sup>98</sup> to equalize the distribution of resources between the majority and the minority. In the same vein as the Canadian Charter, Section 73(1) aspires to provide those raised by English-speaking

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89. *Quebec v. Quebec Ass’n of Protestant Sch. Boards*, [1984] 2 S.C.R. 66, 87 (Can.).

90. *Gosselin (Tutor of) v. Quebec (Att’y Gen.)*, [2005] 1 S.C.R. 238, 252 (Can.).

91. *Mahe v. Alberta*, [1990] 1 S.C.R. 342, 344 (Can.).

92. *Gosselin*, [2005] 1 S.C.R. at 151.

93. *See id.* at 239.

94. *Id.* at 252.

95. *Id.*

96. *Id.* at 241–42.

97. *Id.* at 245.

98. *Id.* at 253.

parents with English-medium education, equal in quality to that enjoyed by the French-speaking majority.<sup>99</sup> Thus, the majority cannot take advantage of a right reserved for the minority.

## 2. *Solski* and the “Major Part” Test

Since the Charter only guarantees a right for the minority, who qualifies as a “minority” besides the children of minority language speakers? *Solski v. Quebec* articulated a qualitative test that examines both the child’s intent to adopt the minority language as the language of instruction, and the child’s experiences supporting that inference.<sup>100</sup> The challenge in *Solski* was brought by three non-rights-holder families who sought English-medium education for their children but were rebuffed “on the ground that the children had not completed the ‘major part’ of their instruction in English as required by s. 73(2).”<sup>101</sup> As Section 23 contains no “major part” threshold, the families argued that Section 73(2) is unconstitutional.<sup>102</sup>

The Court held Section 73(2) can be read as engaging the same purpose as Section 23—protecting minority students against disruptions in their learning experience.<sup>103</sup> According to the Court, determining whether students have primarily been educated in a particular language involves more than deciding where numbers warrant. Several factors, each “considered in concert with the other,” guide this analysis: the time spent in English-medium education programs, at what stage of education the choice of language of instruction was made, the availability of minority language programs, and whether learning disabilities or other difficulties exist.<sup>104</sup> Although this fact-intensive inquiry subjects Quebec to an administrative burden, it is the only test that accommodates the nuances of each potentially eligible student’s individual situation.<sup>105</sup> Above all, Section 23’s *raison d’être* rests on its guarantee that minority language speakers are not denied an education critical to the preservation of their language skills.<sup>106</sup>

## 3. *Nguyen, Bindra*, and the UPSes

Years after the Court reiterated that English-medium schools in Quebec are not a widely available service but a special right for the minority, their appeal remains undiminished in Quebec. Bidding for eligibility, non-rights-

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99. *Id.* at 245.

100. *Solski (Tutor of) v. Quebec (Att’y Gen.)*, [2005] 1 S.C.R. 201, 203, 227 (Can.).

101. *Id.* at 202.

102. *Id.* at 214–15.

103. *Id.* at 230.

104. *Id.* at 226–30.

105. *Id.* at 230.

106. *Id.* at 225–26.

holder families turned to unsubsidized private schools (“UPSs”) that provide English instruction without being held to Quebec’s rules regarding the language of instruction.<sup>107</sup> Before Quebec amended Sections 73(2) and 73(3) to invalidate all UPS attendance for the assessment of eligibility, a few weeks in a UPS could qualify a child for English-medium schools.<sup>108</sup> Confronting the *Nguyen* and *Bindra* Court was a novel question: can non-rights-holders pay their way into English-medium schools?<sup>109</sup> The Court thought not. But the Court cautioned that the authorities must undertake a holistic review to ascertain whether the student is taking undue advantage.

Before delving into the Court’s reasoning, the respondents’ identities merit examination. The Nguyens did not receive English primary education in Canada and saw the UPSs as springboards for their children.<sup>110</sup> The Bindra children studied at a UPS for a few years before one secured a spot in an English-medium school; the other was unable to do the same.<sup>111</sup> These diverse circumstances highlight the need for individualized reviews. Embracing that need as a core value, the Court nullified Sections 73(2) and 73(3). It is uncontested that a student cannot purchase an educational pathway to acquire a right reserved for others. It is also true that UPSs could compromise the protection of the French language. However, treating UPS education as if it never existed is too “total,” “absolute,” and “excessive.”<sup>112</sup> For the Court, an adequate review must probe into “the duration of the relevant pathway, the nature and history of the institution and the type of instruction given there.”<sup>113</sup> Sections 73(2) and 73(3) made no effort to examine the nature of each UPS and its clientele.<sup>114</sup> In light of these criteria, the Court returned the Nguyen files to Quebec education authorities for a new review and held that the younger Bindra child was eligible to attend the same school as his sibling.<sup>115</sup>

## II. PITFALLS OF THE CONJUNCTIVE MODEL

Let us pivot back to Catalonia. Following the 2010 decision, disillusionment soared, lower courts ran amok, parents, students, and

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107. Quebec (Educ., Rec. and Sports) v. Nguyen, [2009] 3 S.C.R. 208, 218 (Can.).

108. *Id.* at 219.

109. *Id.* at 219–20.

110. *Id.*

111. *Id.* at 220.

112. *Id.* at 211.

113. *Id.* at 239.

114. *Id.*

115. *Id.* at 240–41.



teachers took to the streets,<sup>116</sup> trust in national authorities took a nosedive,<sup>117</sup> all while Madrid was poised to invoke the constitutional nuclear option in Article 155 of the Constitution to assert direct rule over Catalonia's classrooms.<sup>118</sup> In a way, the Spanish Constitutional Court landed itself on its present dilemma: it mandated teaching *in* Castilian, yet it failed to charm the speakers of Castilian; it allowed Catalan to claim the lion's share of vehicular use and the Generalitat broad leeway in configuring that use, but it only managed to antagonize the speakers of Catalan. In a falling row of dominos, the Court was the middle tile. It did not set off this state of tumult, but it threw gasoline on the fire. This Part suggests that two flaws in the Court's jurisprudence undermined its effectiveness. First, insisting on the Catalan gravitational center aroused Castilian ire, whereas prohibiting the Generalitat from imposing a duty to know Catalan wounded Catalan dignity; second, the center of gravity and the requirements of reasonableness and proportionality are hard to implement, especially when there is a dearth of dialogues between the regional legislature and the Constitutional Court.

From the perspective of Castilian speakers, Castilian's limited role in the classroom epitomizes Catalan nationalists' "all-out war" on the official language of the nation.<sup>119</sup> Extrapolating this line of argument, the Court's modest requirement of Castilian non-exclusion and failure to clarify the boundaries of the Catalan gravitational center permitted the schools to defy its edicts so long as the Generalitat does not expressly ban Castilian instruction.<sup>120</sup> The Court's penchant for the conservative and the vague

116. Alba Solé, *Catalonia's School Community Rallies to Defend Language Immersion System*, EL NACIONAL [THE NAT'L] (Mar. 17, 2018, 7:48 PM), [https://www.elnacional.cat/en/politics/catalonia-school-defend-language-immersion\\_249087\\_102.html](https://www.elnacional.cat/en/politics/catalonia-school-defend-language-immersion_249087_102.html).

117. Dorothy Manevich, *Dissatisfaction Was Widespread in Spain Even Before Catalan Secession Vote*, PEW RSCH. CTR. (Nov. 6, 2017), <http://pewrsr.ch/2izFISN>.

118. Hannah Strange, *Madrid's Plan to Push Spanish Language in Catalan Schools Prompts Independence Anger*, TELEGRAPH (Feb. 16, 2018, 9:14 PM), <https://www.telegraph.co.uk/news/2018/02/16/madrids-plan-push-spanish-language-catalan-schools-prompts-independence/>.

119. Esther Armora et al., *Cuarenta años de acoso y derribo a la «segunda lengua»* [Forty Years of Harassment and Demolition of the "Second Language"], ABC (Apr. 11, 2020, 12:25 AM), [https://www.abc.es/sociedad/abci-cuarenta-anos-acoso-y-derribo-segunda-lengua-202011040025\\_noticia.html](https://www.abc.es/sociedad/abci-cuarenta-anos-acoso-y-derribo-segunda-lengua-202011040025_noticia.html).

120. Schools in Catalonia are quite successful in escaping accountability for resisting the Court's rulings. A 2019 report found that "no public educational center in Catalonia complies with the law" when not subject to lawsuits. Even those being sued by parents only respect the linguistic conjunction system with the 25/75 Castilian/Catalan division set by the Supreme Court in select class groups. ASAMBLEA POR UNA ESCUELA BILINGÜE DE CATALUÑA [ASSEMBLY FOR A BILINGUAL CATALONIA], LOS PROYECTOS LINGÜÍSTICOS DE LA ESCUELA PÚBLICA CATALANA: LA MARGINACIÓN DEL CASTELLANO [THE LINGUISTIC PROJECTS OF THE CATALAN PUBLIC SCHOOL: THE MARGINALIZATION OF CASTILIAN] 23 (2019).

ensured that “nobody read [its] judgment,” let alone acted upon it.<sup>121</sup>

The Castilian indignation is partially justified. In light of the Franco dictatorship’s repression of Catalan, the Court formulated a persuasive case for the Catalan gravitational center.<sup>122</sup> Yet, none of the three rationales the Court advanced for Castilian non-exclusion are convincing. The Court’s first rationale points to the absence of a constitutional duty to know Catalan. Explaining its choice to impose Castilian non-exclusion on the Catalan public administration, the Court maintained that “the [Catalan] Administration has no right to address citizens exclusively in Catalan, nor can it presume that they are familiar with Catalan.”<sup>123</sup> Extending the Court’s reasoning to education, one may argue that teachers have no right to instruct solely in Catalan because students have no duty to know Catalan. Still, this argument does not withstand scrutiny. Public administration and schools differ in nature. An instrument of literacy, schools are tasked with re-establishing Catalan use. Administrative bodies play no such role. Moreover, if students are not expected to know Catalan, why is it constitutional to require Catalan proficiency at the end of the basic education, as suggested by the Court in 1994?<sup>124</sup> In its review of Article 14.4 of the Linguistic Normalization Act, the Court interpreted the proficiency requirement as a goal for education authorities, instead of a duty of students, and upheld the provision.<sup>125</sup> This deferential interpretation suggests an expectation that students acquire a uniform level of Catalan, despite the Court’s refusal to formalize it into an “individualized and enforceable” duty.<sup>126</sup>

The Court’s second rationale is that the duty to know Castilian must be fulfilled through learning non-linguistic subjects taught *in* Castilian, but it avoided discussing why it could not be fulfilled by learning solely from Castilian language classes—exactly what Catalonia’s present immersion system accomplishes. Based on the exams administered by the Ministry of Education, students in Catalonia are more proficient in Castilian than the national average.<sup>127</sup> Besides, the Constitution does not provide a right to

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121. Francesc de Carreras, *La sentencia que nadie leyó* [*The Judgement that Nobody Read*], EL PAÍS [THE COUNTRY] (July 6, 2020, 3:00 PM), <https://elpais.com/espana/catalunya/2020-07-06/la-sentencia-que-nadie-leyo.html>.

122. See S.T.C., June 26, 1986 (B.J.C., No. 82/1986, p. 817) (Spain). See generally PLATAFORMA PER LA LLENGUA [LANGUAGE PLATFORM], *supra* note 7 (providing arguments in favor of language immersion in Catalan).

123. S.T.C., June 28, 2010 (B.J.C., No. 31/2010, p. 241) (Spain).

124. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, pp. 57–58) (Spain).

125. *Id.*

126. S.T.C., June 28, 2010 (B.J.C., No. 31/2010, p. 241) (Spain).

127. *El castellano en las aulas catalanas* [*Castilian in Catalan Classrooms*], EL PAÍS [THE COUNTRY] (Feb. 20, 2018, 1:59 PM), [https://elpais.com/elpais/2018/02/20/media/1519152873\\_467987.html](https://elpais.com/elpais/2018/02/20/media/1519152873_467987.html).

Castilian instruction.

The Court's third rationale stresses that excluding either language as a vehicle would imperil the equality and balance between the two co-official languages<sup>128</sup> and strip speakers of respect and protection.<sup>129</sup> From the perspective of Catalan speakers, that rhetoric remains a veneer, concealing the stigma inflicted by the Court's rejection of a parallel duty to know Catalan.<sup>130</sup> Equality in the Court's view stops short of equal honor, for only Castilian knowledge has a place in the legal order as a duty. Therefore, not only does non-exclusion allow recalcitrant schools to avoid teaching in Castilian with no more than a trip to the courthouse and a slap on the wrist, vindicating non-exclusion on the grounds of equality and protection demeans the dignitary interests of Catalan speakers.

Aside from the emotional injury on both groups of speakers, the Court was not clear about how to operationalize two key doctrines. To start off, it never expounded how the gravitational center differs from the unconstitutional "preferential use," defined as the "primacy of one language over another in the territory of the Autonomous Community, ultimately imposing the prescription of a priority use of one of them . . . to the inexcusable detriment of the balance between the two languages, equally official, and which in no instance can receive preferential treatment."<sup>131</sup> In a conjunctive model, instruction is a zero-sum game. Catalan having pride of place comes at the price of Castilian being allotted less time. For reasons unknown, Catalan-centrality in public media is prohibited,<sup>132</sup> but that in instruction is encouraged. Admittedly, educational uses of language are uniquely suited "to correct historic situations, if any, of an imbalance of one of the official languages over the other."<sup>133</sup> But mass media is just as effective a remedy due to its ability to promulgate languages in authentic contexts. Preferential or not, without a duty of knowledge or a more explicit definition, the gravitational center endures as a palliative for Catalans' pride.<sup>134</sup>

By the same token, what is "reasonable and proportional" remains enigmatic. The Court's silence was soon followed by a cacophony of arbitrary interpretations. Judges across Spain tasked with parsing the Constitutional Court opus turned to their instincts and improvised. Wading

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128. S.T.C., Oct. 1, 2019 (B.O.E., No. 109/2019, p. 121118) (Spain).

129. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, pp. 40–41) (Spain).

130. Parera, *supra* note 40, at 293.

131. S.T.C., June 28, 2010 (B.J.C., No. 31/2010, p. 240) (Spain).

132. *Id.*

133. *Id.*

134. Muro Bas, *supra* note 25, at 142.

through unchartered waters, they perverted proportionality into an exercise of fabricating ratios. For instance, the Supreme Court in 2015 affirmed an appeal from the Chamber of Instance that twenty-five percent of all classes in a school to be taught in Castilian.<sup>135</sup> The Supreme Court agreed that “Catalan should be given differentiated treatment in a reasonable proportion,” since linguistic normalization has not been achieved and a fifty-fifty division would not cure Catalan’s deficit.<sup>136</sup> At the same time, a ratio so large as to turn Castilian vehicular use into “an artifice of mere appearance” would be unreasonable.<sup>137</sup> Twenty-five percent, the Court explained, enables students to “understand not only the linguistic subject corresponding to their learning, but ‘at least another non-linguistic curricular area.’”<sup>138</sup> In the same year, the High Court of Catalonia received a request for fifty percent Castilian vehicular use.<sup>139</sup> Making no further attempt to justify the ratio set forth by its Madrid superior, the High Court also set its seal on twenty-five percent.<sup>140</sup>

The proportionality controversy contains a second and related problem. Even when the Constitutional Court did not rely on the formula of total reticence, the Supreme Court rode roughshod over its counsel. The Constitutional Court repeatedly corroborated the Generalitat’s competence over regulating Catalan instruction. Although the Supreme Court quoted the Constitutional Court at length, it flew in the face of the competence framework the latter laid out: by affirming twenty-five percent, the Supreme Court emboldened the Chamber of Instance to act as a super-legislator and supplant the Generalitat. The Supreme Court’s reasoning was slender reed: the Chamber did “nothing more than to place itself in the shoes of the Generalitat and set the corresponding proportion in response to repeated non-compliance by the [Catalonia] Administration in enforcing the judgment. And it has . . . established an adjusted and reasonable proportion . . . .”<sup>141</sup> Recently, the Supreme Court managed more appearance of care, establishing that the Generalitat only had to adopt the twenty-five percent scheme in the schools being sued, a departure from the prior scope of the entire education system in Catalonia.<sup>142</sup> No matter the façade, assigning percentages still

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135. S.T.S., Apr. 14, 2015 (J.T.S., No. 1670/2015, pp. 2–3, 9) (Spain).

136. *Id.* at 7.

137. *Id.*

138. *Id.* at 8.

139. S.T.S.J. Cataluña, May 15, 2015 (J.T.S. No. 8043/2015, p. 6) (Spain).

140. *Id.* at 8.

141. S.T.S., Apr. 23, 2015 (J.T.S., No. 1668/2015, p. 6) (Spain).

142. Compare S.T.S., Dec. 13, 2010 (J.T.S., No. 6629/2010, p. 14) (Spain) (emphasis added) (“[T]he Generalitat must adopt whatever measures are necessary to adapt *its teaching system* to the new situation created by the Constitutional Court Judgment 31/2010 . . .”), with S.T.S., Feb. 19, 2013 (J.T.S., No.

constituted an unauthorized intrusion on the Generalitat's competence.

Courts assigning ratios on a whim and authorities squabbling over their power—this Part outlines only two symptoms of the bone-deep ills in the Constitutional Court's jurisprudence. Observers from countries where courts and legislators engage in conversations about the constitution may argue that the Court's reservation is desirable and necessary for such conversations. In fact, in 2014, the Court signaled its readiness to talk by acknowledging that “the public powers . . . that make up our Autonomous Communities are the ones called upon to resolve problems . . . through dialogue.”<sup>143</sup> Nonetheless, when the Court presided over the independence vote three years later, it abandoned all visions of comity.<sup>144</sup> In words with resounding severity, the Court lambasted the Generalitat's “naked will” to embark on an “unacceptable path,” putting its citizens' rights at “maximum risk.”<sup>145</sup> In the Generalitat's view, “[t]he people of Catalonia are a sovereign political subject” and the referendum was an Athenian-style expression of power to the people.<sup>146</sup> In the Court's view, the referendum amounted to a “constitutional crime,” a “total repudiation” of “constitutional loyalty,” and “an attack on the regard of the Spanish state” as a democratic entity.<sup>147</sup> These clashing perspectives roused the Constitutional Court to reality: whatever “constitutional pact”<sup>148</sup> existed between Catalonia and Spain drew its last breath long ago. It is telling when not a single one of 2,325 public schools voluntarily followed the directives the Court belabored for 25 years.<sup>149</sup> If anything, the territorial crisis drove another nail into the total collapse of concord needed for any communication.

### III. JUSTIFICATIONS FOR THE TWO-TRACK MODEL

It is not easy to rein in the Spanish Supreme Court when there is a limited check on its power. It is equally hard to incentivize the Constitutional Court to be precise when it has the final word on the meaning of the

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547/2013, p. 2) (Spain) (emphasis added) (holding that the Generalitat has an obligation to “adopt the measures mentioned . . . in relation to *the teaching given to the appellant's children*”).

143. S.T.C., Mar. 25, 2014 (B.J.C., No. 42/2014, p. 72).

144. Josu de Miguel Bárcena, *EL PROCESO SOBERANISTA ANTE EL TRIBUNAL CONSTITUCIONAL* [*The Catalan Process Before the Spanish Constitutional Court*], 113 *REVISTA ESPAÑOLA DE DERECHO CONSTITUCIONAL* [SPANISH J. CONST. L.] 133, 155 (2018).

145. *Id.*

146. Ley 19/2017, de 6 de septiembre, del referéndum de autodeterminación [Law 19/2017 of September 6 on the Self-Determination Referendum] art. 2 (B.O.E. 2017, p. 19) (suspended 2017) (Spain).

147. S.T.C., Oct. 17, 2017 (B.J.C., No. 114/2017, p. 60) (Spain).

148. de Carreras, *supra* note 121.

149. See ASSEMBLY FOR A BILINGUAL CATALONIA, *supra* note 120, at 4, 25 (reporting that some schools only implemented the Court's decisions when they were subject to suit).

Constitution. What Catalonia needs is an overhaul. Before discussing the feasibility of the Quebec regime in Catalonia, this Part explains why the two-track model offers a more viable solution than mending the conjunctive model. Then, this Part adopts two justifications from the Quebec experience in support of separating Catalonia schools into two tracks.

The legal experiment of conjunction failed in Catalonia. Many Castilians, frustrated by the Generalitat's resistance,<sup>150</sup> and Catalans, wary of the erosion of their language,<sup>151</sup> share the same view. In fact, Catalonia's history is peppered with periodic introductions of such experiments. King Phillip V once directed the mayor to "take the utmost care in introducing the [Castilian] Spanish language, using the most discreet and temperate measures, so that only the effects are felt."<sup>152</sup> In reality, the Bourbon monarch's legacy was less than subtle, as he "deployed an unprecedented repressive machinery with the aim of [sic] carbonising the burnt Catalan land."<sup>153</sup> Catalonia's reaction to conjunction confirms that no matter what form these experiments take, they will be met with heightened alarm and staunch opposition. Conjunction was nothing but a quixotic effort to squeeze into a crowded room, unaware that the invasion of space contravenes everything the original occupants hold dear. When the congestion is complete, any attempt to avoid stepping on toes—such as assigning ratios to improve the model—only leads to jostles, shoves, and stampedes. In lieu of improving a system where one group's gain is another's loss, turning to the open fields that lie ahead is the healing that Catalonia needs.

Two reasons compel the leap to the two-track model. First, only separate institutions can repair the dignitary harm felt by both groups of speakers. For Catalan speakers, legalizing Catalan-medium schools spares the Generalitat the constant need to defend Catalan immersion. Absent a duty to know Catalan, the Generalitat would also be more confident about the survival of Catalan—the majority language in Catalonia but still a minority in the country—since the two-track model guarantees the teaching *in* Catalan. In Canada, since the days of Bill 101, protecting minority languages

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150. Iva Anguera de Sojo, *La presión de las madres que piden educación en castellano en Cataluña: "El desgaste es brutal"* [The Pressure of Mothers Asking for Education in Castilian in Catalonia: "The Attrition is Brutal"], EL INDEPENDIENTE [THE INDEP.] (Aug. 11, 2020, 12:11 AM), <https://www.elindependiente.com/espana/2020/11/08/la-presion-de-las-madres-que-piden-educacion-en-castellano-en-cataluna-el-desgaste-es-brutal/>.

151. Quim Monzó, *The Catalan Language Is Still in Danger, Despite Its Resurgence*, GUARDIAN (Nov. 23, 2012, 9:30 AM), <https://www.theguardian.com/commentisfree/2012/nov/23/catalan-language-in-danger>.

152. *Id.*

153. Marc Pons, *Why Did Philip V Hate the Catalans?*, EL NACIONAL [THE NAT'L] (Mar. 5, 2018, 11:23 PM), [https://www.elnacional.cat/en/culture/marc-pons-history-why-philip-v-hate-catalans\\_245427\\_102.html](https://www.elnacional.cat/en/culture/marc-pons-history-why-philip-v-hate-catalans_245427_102.html).

from assimilation has been on the justices' minds.<sup>154</sup> The Canadian penchant for keeping apart may be at odds with the conventional belief in learning together, but the history of Canada demonstrates, time again, integration bespeaks assimilation;<sup>155</sup> forcing French-speakers outside of Quebec into majoritarian institutions like English public schools only would have sounded the death knell for their communities.<sup>156</sup> Similarly, the Catalans prize nothing more than the integrity of their language, and nothing short of schools instructing *in* Catalan satisfies that demand.

For Castilians, the two-track model reverses the badges of subordination. Passions are bound to simmer when the majority of a nation cannot dictate the language their children are taught in. When all students go to the same schools, the Castilian minority in Catalonia cannot count on the Catalan majority to secede class time for Castilian. Only separate Castilian-medium schools would pass the baton back to the Castilians. The reasoning is deceptively simple: only you have your best interests at heart. Not necessarily driven by a primal egoism in the Hobbesian sense, advocates external to one's linguistic group are mediocre because they lack the means to situate themselves in others' reality. In *Mahe v. Alberta*, the Canadian Supreme Court reflected that:

[M]inority language groups cannot always rely upon the majority to take account of all of their linguistic and cultural concerns. Such neglect is not necessarily intentional: the majority cannot be expected to understand and appreciate all of the diverse ways in which educational practices may influence the language and culture of the minority.<sup>157</sup>

Indeed, the Court observed the same phenomenon in *Arsenault-Cameron v. Prince Edward Island*. Refusing to build a French-medium school for Section 23 rights holders, the Minister of Education offered to bus them to the nearest one 57 minutes away. Obtuse to not only the families' logistical needs, the Minister also "failed to recognize that the s. 23 children were faced with a choice between a locally accessible school in the majority language and a less accessible school in the minority language, a choice which would have an impact on the assimilation. . . ."<sup>158</sup> To prevent similar occurrences, the Court declared that "[e]mpowerment is essential to . . . guarantee that the specific needs of the minority language community are the

154. Gosselin (Tutor of) v. Quebec (Att'y Gen.), [2005] 1 S.C.R. 238, 252 (Can.).

155. Colleen Sheppard, *Equality in Context: Judicial Approaches in Canada and the United States*, 39 U. NEW BRUNSWICK L.J. 111, 111 (1990).

156. Colleen Sheppard, *Equality Through the Prism of Legal Pluralism*, in *DIALOGUES ON HUMAN RIGHTS AND LEGAL PLURALISM* 129, 137 (René Provost & Colleen Sheppard eds., 2013).

157. *Mahe v. Alberta*, [1990] 1 S.C.R. 342, 372 (Can.).

158. *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, 6 (Can.).

first consideration. . . .”<sup>159</sup> Thus, in place of authorities with no in-group experience, leaders from one’s own community make for the best spokespersons. These representatives must have “a measure of management and control”<sup>160</sup> over “those aspects of education which pertain to or have an effect upon their language,”<sup>161</sup> achievable only through separate educational spaces. Then, and only then, will instruction policies reflect minority needs.

Granted, separation goes hand in hand with divergence. Assigning students to schools could ossify group-based identities. A comprehensive solution lies beyond the scope of this Note, but Catalonia does not have to look far for guidance. A laudable step towards deconstructing categories is the Canadian Supreme Court’s formulation of the three priorities underpinning its major power assessment: the continuity of education, mobility, and family unity.<sup>162</sup>

When considering a student’s application to Castilian-medium schools, Catalonia must avoid derailing students’ educational pathways, ability to move, and family connections.<sup>163</sup> Implicit in this delineation is the Supreme Court’s acknowledgment that the major part test neither defines membership nor pronounces the boundary of a group. It is an investigation into a student’s background for a credible interest in the minority language. In no way are students preemptively excluded on the basis of their linguistic working knowledge or cultural identity.<sup>164</sup> Be it previous schooling in the minority language, a sibling enrolled in minority language schools, a parent who was educated in the minority language—the major part test recognizes that each student has a vast array of experiences evincing a genuine connection. Far from turning schools into totalizing bubbles, the major part query encourages students from different races, ideologies, and religions from all parts of the country to interact. Other than the unifying label of Section 23 rights holders, students in the same track may hold manifold group memberships with little overlap.

A second reason justifies the shift to a two-track model: it is easy for everyone to implement. The lower courts are released from the Sisyphean labor of divining the meanings of “center of gravity,” “prevalence and preponderance,” and “reasonable and proportional.” The Spanish

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159. *Id.* at 35.

160. *Ass’n des parents de l’école Rose-des-vents v. British Columbia (Educ.)*, [2015] 2 S.C.R. 139, 156 (Can.).

161. *Mahe*, [1990] 1 S.C.R. at 375.

162. *Solski (Tutor of) v. Quebec (Att’y Gen.)*, [2005] 1 S.C.R. 201, 202 (Can.).

163. *See id.* at 224–26 (discussing the considerations that should be taken into account in educational environments of minority language group students).

164. *Id.* at 224.



Constitutional Court must only acknowledge a change in the statutory framework<sup>165</sup> and move on with its legitimacy unscathed. The Generalitat continues to exercise oversight over the Catalan immersion programs. The Castilian speakers, with the Ministry of Education as their proxy, can create schools serving their own linguistic needs. Should students display an interest in learning Catalan, Castilian speakers could create such programs at their election. The eligibility test for Castilian-medium schools may incur additional administrative expenses—the repercussions to be discussed in Part IV—but the complexities in students’ experiences call for individualized attention.

#### IV. APPLICABILITY AND COUNTERARGUMENTS

The *Gosselin* Court advised that instruction laws “must take into account the very real differences between the situation of the minority language community” in different regions since different situations warrant different responses.<sup>166</sup> While geographically far afield, Catalonia and Quebec, in effect, make for fitting comparative subjects. Both are anomalies in countries dominated by another language. Both became bastions of regional languages resisting hegemony. Both see their regional languages as the critical link connecting citizens to the public sphere, with schools as the nuts and bolts.<sup>167</sup> The list goes on, but their convergences do not only exist in theory. From the moment Catalonia used Bill 101 as a blueprint for its 1983 Language Normalization Act, the bids for linguistic affirmation on both sides of the Atlantic synced heartbeats.<sup>168</sup> Today, polls show that strong majorities in Catalonia call for a revamp of schools’ linguistic configurations.<sup>169</sup> However, before Catalonia takes the leap, important questions remain. Would a model of separation exacerbate social fracture? Would it frustrate Catalan normalization? What are the practical difficulties that could arise? This Part tackles these questions.

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165. See discussion *infra* Section IV(B).

166. *Gosselin (Tutor of) v. Quebec (Att’y Gen.)*, [2005] 1 S.C.R. 238, 253 (quoting *Casimir v. Quebec (Att’y Gen.)*, [2005] 1 S.C.R. 257, 277) (Can.).

167. Valérie Streicher-Arseneault, *Las políticas lingüísticas y la enseñanza de las lenguas nacionales en Quebec y Cataluña* [*The Language Policies and the Teaching of National Languages in Quebec and Catalonia*], 5 TINKUY 25, 26 (2007).

168. *Id.*

169. *Los catalanes rechazan la inmersión lingüística obligatoria en catalán* [*The Catalans Reject Mandatory Language Immersion in Catalan*], CRONICA GLOBAL (Sept. 18, 2015, 12:26 AM), [https://cronicaglobal.lespanol.com/politica/los-catalanes-rechazan-la-inmersion-lingueistica-obligatoria-en-catalan\\_25337\\_102.html](https://cronicaglobal.lespanol.com/politica/los-catalanes-rechazan-la-inmersion-lingueistica-obligatoria-en-catalan_25337_102.html).

### A. Applicability of the Two-Track Model

Quebec's two-track model has decades of precedents in Spain. Due to Spain's linguistic diversity, schools across the country host a range of instruction models. Present in Catalonia, Galicia, Valencia, and the Balearic Islands, conjunction is the most common.<sup>170</sup> The Basque-speaking Basque Country is the black sheep in the flock. Due to the marked differences between Basque and Castilian, the Basque Country built its instruction policy upon the principles of separation and freedom of choice, offering varied exposures to Castilian and Basque instruction on different tracks.<sup>171</sup> The Constitutional Court gave its stamp of approval in 1994, holding that "[a]ll these models can be legitimate and are not a priori constrained to a single possibility, as long as they respect . . . the right to education."<sup>172</sup> The national government also signaled its approval by passing the LOMCE.

It is the Communities that resisted separation: Catalonia's Statute of Autonomy announced that "[p]upils have the right not to be separated into centres or different class groups on the basis of their habitual language of use"<sup>173</sup>; Galicia echoed the same principle but provided for exceptions when "extraordinary pedagogical needs so advise."<sup>174</sup> Through a comparative lens, this Subpart dissects the two reasons behind the Communities' opposition and explores why validating linguistic heterogeneity through separate schools does not substantiate these fears.

First, the Communities contend that separate schools spur separatism—an anxiety shared by the Court despite its broader support of pluralism. The Court ultimately severed the bridge to a dual formula by taking away the students' right to choose the medium of instruction due to the need to repair Catalonia's social fabric. The success of bi- and multi-track education systems in other parts of the world suggests the Court and the Communities sounded a false alarm.<sup>175</sup> In Canada, a process of "a redefinition of Canada

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170. Eva Pons Parera & Jaume Vernet, *La llengua de l'ensenyament a les Comunitats Autònomes amb llengua pròpia* [*The Language of Teaching in the Autonomous Communities with Own Language*], 8 R.E.A.F. 144, 168–69 (2009).

171. *Id.* at 161.

172. S.T.C., Dec. 23, 1994 (B.J.C., No. 337/1994, p. 50) (Spain).

173. *Reforma del Estatuto de Autonomia de Catalunya* [Reform on the Statute of Autonomy of Catalonia] art. 35.3 (B.O.E. 2006, 172) (Spain).

174. Parera & Vernet, *supra* note 170, at 170.

175. It is important to note a caveat unique to the Spanish psyche. The centralizing dictatorships of Primo de Rivera and Franco enforced a diglossic relationship between Castilian and Catalan, where the languages became distinguished as "high" and "low" depending on the formality of the settings in which they are used. Henry Miller & Kate Miller, *Language Policy and Identity: The Case of Catalonia*, 6 INT'L STUD. SOCIO. EDUC. 113, 117–18 (1996). For a study on the attitudes associated with diglossia conducted in 1980, see KATHRYN A. WOOLARD, *DOUBLE TALK: BILINGUALISM AND THE POLITICS OF ETHNICITY IN CATALONIA* (1st ed. 1989) (finding that speakers of both languages more readily voiced solidarity with

as a multinational country” began after Bill 101.<sup>176</sup> Coinciding with a decline in secessionist activities, French-speaking Canadians living in Quebec came to define themselves “as part of the Quebec society.”<sup>177</sup> Contrary to what the Communities envisioned, dividing students along linguistic lines did not tear students asunder with no opportunities to socialize and interact. Evidence from Finland, home to three tracks of schools taught in Finnish, Swedish, and Sami, suggests the same.<sup>178</sup> Since the first Programme for International Student Assessment (PISA) in 2000, Finnish schools consistently achieved exceptional scores for social inclusion.<sup>179</sup> Myriad factors contributed to the “Finnish miracle,” but they mostly had to do with schools and teachers “hav[ing] plentiful autonomy in their decision-making process” and the tradition of trust among educational authorities, teachers, and parents.<sup>180</sup> In comparison, conjunctive instruction made education in Catalonia a raw struggle for power, pitting parents against teachers, schools against boards, and regional authorities against the national government. Honoring students’ choice of medium offers Catalonia a “break glass” escape.

But how should Catalonia avoid an influx of students to one track and “a delayed but deliberate death sentence” on the other?<sup>181</sup> The first step is subjecting those who wish to attend Castilian-medium schools to a burden of proving connections, which the next Subpart will address. In the long run, like many Section 23 rights holders that went to French-medium schools in Quebec, Castilian rights holders may choose to attend Catalan-medium schools to integrate into the Catalonia society, gain admission into university programs, and enhance their marketability in the local job market.<sup>182</sup> Castilian speakers who wish to stay close to their roots may continue to do so, thus guaranteeing both tracks a healthy replenishment of enrollment.

The Communities’ second concern is linguistic normalization. For students from Castilian families, attending Castilian-medium schools may

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a recorded speaker after detecting accents native to their mother tongue). Although recent research shows that youths in Catalonia express approval less parochially, and the typical diglossic distribution never became pronounced in Catalonia because of the Catalans’ advanced socioeconomic status, parents and grandparents may still believe that separate tracks exacerbate diglossia. Michael Newman et al., *Normalizing Bilingualism: The Effects of the Catalan Linguistic Normalization Policy One Generation After*, 12 J. SOCIOLINGUISTICS 306, 306–07 (2008).

176. Barry Ferguson et al., *Social Cohesion in Canada*, 30 TOCQUEVILLE REV. 69, 74 (2009).

177. *Id.* at 73.

178. Ulas Ustun & Ali Eryilmaz, *Analysis of Finnish Education System to Question the Reasons Behind Finnish Success in PISA*, 2 STUD. EDUC. RSCH. & DEV. 93, 97 (2018).

179. *Id.* at 93.

180. *Id.* at 106.

181. TASK FORCE ON ENG. LANGUAGE EDUC., REPORT TO THE MINISTER OF EDUCATION OF QUEBEC 4 (1992).

182. McAndrew & Eid, *supra* note 18, at 250.

stunt their Catalan development because they have no opportunity to practice Catalan at home. To respond to this concern, English furnishes a useful point of reference. In Catalonia, teachers instruct in English only in English language classes, but this limited exposure has not compromised students' English literacy skills. A 2018 survey issued by the Catalan Institute of Statistics revealed that almost seventy-five percent of teenagers aged 15 to 19 have a solid grasp of understanding, speaking, reading, and writing English.<sup>183</sup> Moreover, unlike English, Castilian is spoken throughout Spain, furnishing students with plenty of opportunities to practice outside of their homes. For students who choose Catalan-medium schools, their experience will largely be a continuation of the current arrangement.

End-of-basic-studies proficiency requirements provide an extra safeguard. A staple in Generalitat's legislative arsenal, the requirement of "a full command of Catalan and [Castilian] upon completion of compulsory education"<sup>184</sup> is always present in Catalonia's education laws. It could be argued that such requirements disadvantage marginalized students, evidenced by higher dropout rates.<sup>185</sup> However, as these requirements have existed since the earliest days, they do not impose a new burden. At the root of the low retention rates among special-needs students and those from low-socioeconomic status households is inadequate support, as general-education methods "gloss[] over variations in abilities and skills that stem from differing . . . backgrounds."<sup>186</sup> In the instance of Roma migrant students—a sizable ethnic group in Catalonia facing well-documented barriers to education, financial considerations and hostile school environments also play a role. To prevent further talent loss, more tailored teaching, funding, and legislation against discrimination must be simultaneously pursued. This is not to say proficiency and other testing requirements should remain unchallenged; they must be constantly recalibrated to provide equal opportunities for all.

## B. Applicability of the Qualitative Assessment

A Section 23 qualitative assessment could provide not only the linchpin

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183. Catalan Institute of Statistics, *Població segons coneixement de l'anglès i edat quinquennial* [Population Sorted by Knowledge of English and Quinquennial Age], GENCAT (July 8, 2019), <https://www.idescat.cat/pub/?id=eulp&n=4656>.

184. Ley 7/1983, de 18 de abril, de normalización lingüística en Catalunya [Law 7/1983, of April 18, of Linguistic Normalization] art. 10 (1983) (Spain).

185. See GOV'T OF CATALONIA, INTEGRATED PLAN FOR THE ROMA IN CATALONIA 2017-2020 9 (2018) ("64% of Roma students (between 16 and 24 years old) do not complete compulsory education compared to 13% of the total number of students.")

186. UNICEF, The Right of Roma Children to Education: Position Paper, at 20 (June 1, 2012), <https://www.unicef.org/eca/media/1566/file/Roma%20education%20postition%20paper.pdf>.

of balance between the two tracks, but also a way to match diverse learners with targeted attention. To incorporate this assessment, Catalonia could invoke its exclusive competence over Catalan teaching to amend its Statute of Autonomy, pursuant to Article 148(2) of the Spanish Constitution.<sup>187</sup> When transliterating Section 23, one tweak could be made. In Canada, Section 23 rights are reserved for citizens; in Catalonia, extending eligibility to residents would help foster conducive learning environments for all. A popular site for cross-language transitions, Catalonia receives more than 1.2 million foreign inhabitants, many of whom are Castilian speakers with limited Catalan proficiency.<sup>188</sup> This way, immigrant children can continue their education in Castilian and gain a progressive command of Catalan. By guaranteeing the knowledge of Castilian and Catalan, the qualitative assessment also ensures that English, the most entrenched bridging language “across borders and cultures,”<sup>189</sup> does not erode either.

It must be conceded that governments cannot promote language diversity without regard for their purse. Affording students a range of programs so that they “can go as far as they want to in learning their second language” is ideal, but data from Canada and the Basque Country suggests that it is also expensive. Quebec accounts for more than twenty-five percent of national education capital spending<sup>190</sup> while the Basque Country invests €4000 more per student than the Spanish national average. Nonetheless, both are getting their money’s worth in the form of higher degree level qualification, lower youth unemployment, and an education profile rivaling that of the Nordic countries.<sup>191</sup>

In Catalonia, the Generalitat foots the bill for public education.<sup>192</sup> Spain’s decentralized administration model provides some wiggle room, as

187. Eduardo D. Faingold, *Language Rights and the Law in Catalonia*, in LANGUAGE RIGHTS AND THE LAW IN THE EUROPEAN UNION 55, 70 (Eduardo D. Faingold ed., 2020).

188. GOV’T OF CATALONIA, REPORT ON THE INTEGRATION OF IMMIGRANTS IN CATALONIA 51 (2013).

189. Al Tiyyb, et al., *Hegemony of the Empire to the Language Hegemony: A Correlational Case of English*, 6 INT’L J. ENG. LANGUAGE & TRANSLATION STUD. 150, 150–51 (2018).

190. ANGELA MCLEOD & JOEL EMES, FRASER INSTITUTE, EDUCATION SPENDING IN PUBLIC SCHOOLS IN CANADA 21 (2019).

191. Sean Coughlan, *How Canada Became an Education Superpower*, BBC NEWS (Aug. 2, 2017), <https://www.bbc.com/news/business-40708421>; Sean Coughlan, *Basques Reinvent Themselves as Education Power*, BBC NEWS (June 15, 2016), <https://www.bbc.com/news/business-36517928>; Basque Institute of Statistics, *In 2018 the Amount of Money Spent on Education in the Basque Country Increased by 2.4%, Exceeding 3,900 Million Euros*, EUSTAT (Nov. 13, 2019), [https://www.eustat.eus/elem/ele0016900/not0016914\\_i.pdf](https://www.eustat.eus/elem/ele0016900/not0016914_i.pdf).

192. Eurydice, *Funding in Education – Spain*, EUROPEAN COMM’N (Nov. 30, 2020), [https://eacea.ec.europa.eu/national-policies/eurydice/content/funding-education-79\\_en](https://eacea.ec.europa.eu/national-policies/eurydice/content/funding-education-79_en).

Communities can bargain for more funding from the national government.<sup>193</sup> The “sliding-scale” approach advocated by *Mahe v. Alberta* may help further lower the price tag of a two-track model. After assessing students’ eligibility and ascertaining the number of rights holders in an area, the Generalitat provides the level of service as the numbers warrant. At the lower end, rights holders are entitled to publicly funded Castilian-medium education. At the upper limit, rights holders are entitled to educational facilities equivalent to Catalan-medium schools.<sup>194</sup> Since a student can only enroll in one school, switching to the two-track requires only a redistribution of existing resources, sparing Catalonia’s coffer from the sorry fate of being depleted. At any rate, these costs are a small price to pay for improving educational outcomes and relieving the tensions that could devastate Catalonia without intervention.

## V. CONCLUSION

In his two-decade exile, the Barcelona-born writer Pere Calders penned a story about a merchant trapped in the Far East, only to encounter a parrot that spoke elegant Catalan.<sup>195</sup> “Many were the things that separated us,” he wrote in closing, “but there was a language that made us one.”<sup>196</sup> Calders’ restrained prose betrays only a hint of the nostalgia and indignation felt by many Catalans, Galicians, Occitans, Basques, and Valencians of his generation, whose mother tongues all endured bitter repression under the Franco dictatorship. This repression left a legacy lasting far beyond Franco’s death. In Catalonia, the furor surrounding instructions testifies to the conjunctive model’s faltering promise on paper and in reality. Outside Catalonia, the failings of conjunction are equally ubiquitous. In the Balearic Islands, primary schools teach at least half of classes in Catalan de jure, but increasingly adopt a de facto Catalan immersion system.<sup>197</sup> Firmly shackled to ratios, schools in Galicia are required to teach a third of the subjects in Castilian, a third in English, and a third in Galician, but both Galician and

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193. *Id.* It is difficult to foresee how Madrid would react to Barcelona’s proposal for more funds. While Catalonia’s present struggle is motivated by the politics of recognition, it is also fueled by Madrid’s rejection of Catalonia’s material interests. For a guide on parsing Catalonia’s manifold grievances, see Steven L. Burg, *Identity, Grievances, and Popular Mobilization for Independence in Catalonia*, 21 NATIONALISM & ETHNIC POL. 289, 290 (2015).

194. *Mahe v. Alberta*, [1990] 1 S.C.R. 342, 344 (Can.).

195. Pere Calders, *Els Catalans pel Món* [*Catalans Around the World*], in CRÒNIQUES DE LA VERITAT OCULTA [CHRONICLES OF THE HIDDEN TRUTH] 111, 111 (1955).

196. *Id.* at 112.

197. Josep M. Aguiló, *¿Catalán o Mallorquín, qué se Habla en Baleares?* [*Catalan or Mallorcan, What is Spoken in the Balearic Islands?*], ABC BALEARES (Oct. 7, 2013, 2:16 PM), <https://www.abc.es/local-baleares/20131004/abci-baleares-idioma-catalan-201310031210.html>.

Castilian speakers claim their languages are besieged.<sup>198</sup> Beneath these developments hid an unpleasant truth: they foreshadow what is coming to Catalonia, the last bulwark against mandatory percentage allotments in Spain.

The controversy surrounding instruction schemes in Spain has turned into a Gordian knot that only an aggressive rethinking could slice through. Spain should look to Quebec, where schools are divided into tracks and students could choose with credible proof of connections. Should Catalonia act as the bellwether in abandoning conjunction, its success will be a powerful call for other Communities. An examination of all the interregional synergy is outside the purview of this discussion. Future scholarships comparing regional laws and the Constitutional Court's instruction jurisprudence for different regions could help paint a fuller picture. One cannot predict how the comparative enterprise between Catalonia and Quebec would exactly unfurl in practice, but there is hope that more Communities joining the momentum would help Spain take a step forward in revitalizing regional languages and reconciling the differences between the national government and the Communities with autochthonous languages. After all, what holds communities together may not always be uneasy proximity, but respectful distance.

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198. F. Xavier Vila et al., *Bilingual Education in the Autonomous Region of Spain*, in *BILINGUAL AND MULTILINGUAL EDUCATION* 505, 505 (Ofelia Garcia et al. eds., 3d ed. 2016); Daniel Dombey, *Language Wars in Spain Stoked by Schools Bill*, *FINANCIAL TIMES* (Nov. 24, 2020), <https://www.ft.com/content/c49ca091-0f65-4dce-86bc-d0bebd257dd2>; *25000 Protest Galician Language Rights*, *AN SIONNACH FIONN [THE FAIR FOX]* (Feb. 11, 2015), <https://ansionnachfionn.com/2015/02/11/25000-protest-galician-language-rights/>.