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**Asymmetrical Federalism: A Stabilizing or Destabilizing
Factor in the Multinational Federation? A Comparative
Study of Asymmetrical Federalism in Canada and Spain**

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INTRODUCTION

Federalism is not a new concept, but it is a complex one. It was not born out of theory, but rather out of necessity; it was a pragmatic approach utilized by states for primarily military and economic reasons.¹ Over time, states have adopted the federal model for other reasons, a primary one being the need to accommodate multiple cultural or lingual identities. As federalism provides a way for autonomy within political union, a combination of self-rule and shared-rule, it “holds out the possibility that these different communities can share states in which members have multiple identities and affiliations and look to different orders of government to assure the flourishing of their identities and to facilitate peaceful relations between groups.”²

With its pragmatic beginnings and its application to such diverse societies, its complexity is no surprise. The purpose of federalism is not to bring uniformity, but to bring unity while simultaneously preserving diversity.³ It has been stated that “[f]ederalism enshrines difference....Federal political systems are consciously and purposively designed to facilitate flexible accommodation for the many diversities which acquire political salience.”⁴ This idea of federalism leads to the concept of asymmetry. All federations manifest some sort of asymmetry, which the federal model is trying to accommodate. In one of the first significant articles on asymmetry, author Charles D. Tarlton addresses the question of asymmetry and its accommodation within the federal model.⁵ Tarlton is of the opinion that the more symmetrical a federation is, the more harmonious and unified it will be, and vice versa. He suggests that recognizing diversity within an

¹ Dimitrios Karmis and Wayne Norman, “The Revival of Federalism in Normative Political Theory,” in *Theories of Federalism: A Reader* (New York: Palgrave Macmillan, 2005), 8; Frédéric Lépine, “Federalism and Governance,” Class Material from IEHEI Master Program 2009-2010.

² Karmis and Norman, “The Revival of Federalism,” 8; See also Ronald L. Watts, *Comparing Federal Systems* 3rd Ed. (Montreal & Kingston: McGill-Queen’s University Press, 2008), 8.

³ Denis de Rougement, “L’attitude fédéraliste,” in *Rapporteur du premier congrès annuel de l’Union euroéenne des Fédéralistes à Montreux* (Genève, August 1947), 13.

⁴ Michael Burgess and Franz Gress “Symmetry and Asymmetry Revisited,” in *Accommodating Diversity: Asymmetry in Federal States*, ed. Robert Agranoff (Baden-Baden: Nomos Verlagsgesellschaft, 1999), 43.

⁵ Charles D. Tarlton, “Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation,” *The Journal of Politics* 27, no.4 (November 1965); available from <http://www.jstor.org/stable/2128123>; Internet; accessed April 2, 2010.

asymmetrical system is not the best way to eliminate tensions, but rather, increased centralization is necessary.⁶ At this point in time, federalism was seen to be incompatible with asymmetry as it would not be able to bring stability to the polity.

The subject of asymmetrical federalism was left largely untouched until about thirty years after Tarlton's article, at which time renewed interest was shown amongst federalist scholars, largely due to the fact that several federal systems that were highly asymmetric in their cultural, economic, social and political composition were dealing at that time with a great deal of "tension between the pressures for symmetrical and asymmetrical [constitutional] relationships."⁷ In consequence, a wealth of literature concerning the question of asymmetrical federalism has appeared, with studies focusing on a variety of aspects including the types and degrees of asymmetrical federalism, the reasons for its implementation, its effects on the unity of a federal polity, and its ability to accommodate minority populations.⁸

Over time, the term "asymmetry" has come to be viewed in a more positive light in than its original portrayal in Tarlton's evaluation.⁹ Nevertheless, asymmetrical federalism continues to be a cause of debate in many federations today. While many laud its capacity to accommodate diversity within a polity, others tend to grimace at the sound of the word "asymmetry." Asymmetry evokes terms like difference, imbalance and inequality, and this association does not ring well in the ear of our modern Western world in which the protection of human rights and the equality of every individual are seen to be of utmost importance. It is also argued that asymmetrical federalism only serves to entrench difference, solidifying division and encouraging secession.¹⁰ On the other hand, this

⁶ Tarlton, "Symmetry and Asymmetry as Elements of Federalism," 871-874.

⁷ Watts, "The Theoretical and Practical Implications of Asymmetrical Federalism," in *Accommodating Diversity*, 24-25; Examples of such federal systems include Canada, Malaysia, India, Belgium and Spain.

⁸ See, for example, Robert Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States*, (Baden-Baden: Nomos Verlagsgesellschaft, 1999); Michael Burgess, *Comparative Federalism: Theory and Practice* (London: Routledge, 2006); Watts, *Comparing Federal Systems*.

⁹ Burgess, *Comparative Federalism*, 225.

¹⁰ Will Kymlicka, "Federalism, Nationalism, and Multiculturalism," in *Theories of Federalism*, 286.

mechanism is seen as a tool to effectively recognize and accommodate difference in order to increase the stability of a federation.¹¹ Michael Burgess, a contemporary federal scholar, describes asymmetrical federalism as having become “‘Janus-faced’ . . . being perceived by some as a positive instrument designed to buttress and sustain federal values and structures while simultaneously inducing fears and anxieties in others who construe it very much as a dangerous threat to the stability and integrity of the state.”¹²

The purpose of this paper is to find out which one of these visions is the correct one. Is asymmetrical federalism a stabilizing or destabilizing mechanism in the federal state? This paper will attempt to answer this question in the context of the multinational state, where the presence of asymmetry is particularly high. In order to do this, a comparative case study of two multinational federal (or federal-like) states, Canada and Spain, will be conducted. Judging by the inherent complexity of federalism and by the fact that every federal system is unique, I do not expect to find a clear-cut answer. What I do hope, however, is to determine via the practical examples of Canada and Spain whether asymmetrical federalism is more stabilizing than destabilizing, or vice versa, within the multinational federal state.

The first section of this paper will be primarily theoretical, its purpose being to define the key terms, outline the basic ideas of asymmetry, and provide a framework for classifying different types of asymmetry. This section will conclude with a presentation of the arguments both for and against asymmetrical federalism.

In the second section I will apply the theory of the first section to two practical cases, Canada and Spain. For these studies, I have employed a fairly wide interpretation of what constitutes asymmetry, some scholars being more

¹¹ Burgess and Gress, “Symmetry and Asymmetry Revisited,” 54.

¹² Michael Burgess, *Comparative Federalism*, 209.

prudent in their classification.¹³ In the case of Canada, I will pay particular attention to asymmetry concerning the province of Québec, and in the study on Spain, focus will be placed primarily on the historical identities, namely Catalonia and the Basque Country. Each study will close with some general conclusions on the stabilizing or destabilizing role that asymmetrical federalism plays in that particular case. These case studies will not be exhaustive in the sense that certain examples of asymmetry, although important, will be left untouched, as it is impossible to address every issue in a paper of this length.¹⁴ Nonetheless, I will strive to be as thorough as possible in order to arrive at a conclusion that properly reflects the reality of these polities.

The third and final section will attempt to provide an accurate synthesis of the two case studies. After making a few brief comparisons of the general make-up of the countries, I will proceed to compare the main asymmetries and their subsequent effects on each federal system, in order to draw some concrete conclusions on the question of stability. This will be followed up with a conclusion in which I will give a brief overview of what has been presented accompanied by a few additional reflections on the role of asymmetrical federalism in the multinational federal state.

1. THEORETICAL FOUNDATIONS

The key question to be examined in this study is whether asymmetrical federalism plays a stabilizing or destabilizing role in the life of a multinational federal state. One cannot consider this question, however, without explaining some basic concepts.

¹³ I have included several examples under the heading of de facto asymmetry that authors, namely Fossas, would not consider as such. Fossas makes a particular distinction between autonomy and asymmetry in Spain, the potential heterogeneity resulting from autonomy not constituting proper asymmetry. For more information please see Enric Fossas, "Asymmetry and Plurinationality in Spain," Working Paper no.167, Barcelona, 1999, Institut de Ciències Polítiques i Socials, www.recercat.net/bitstream/2072/1297/1/ICPS167.pdf (accessed November 30, 2009), 8.

¹⁴ For example, I will not expound on the question of asymmetry in regards to the Aboriginal peoples of Canada. This is certainly an important topic, but there is not enough space in this study to give it the attention it deserves.

1.1. Federalism and the Federal State

Federalism is a concept that can be applied to a great many contexts, but for the purpose of this study, we will define federalism as it is embodied in the federal state. In accordance with the ideas of several scholars of federalism, a federal state can be defined as a polity where at least two levels of government exist and through which are joined elements of both shared-rule and self-rule.¹⁵ Shared rule refers to the ‘common’ or ‘central’ level of government that acts on behalf of the whole federation, while regional levels of government possess a certain amount of self-rule or autonomy over their respective constituent units. As one author explains, ““federations” represent a particular species in which neither the federal nor the constituent units of government are constitutionally subordinate to the other, i.e., each has sovereign powers derived from the constitution rather than from another level of government”.¹⁶ The following explanation provided by Papillon succinctly confirms this idea of federation:

[W]hat distinguishes federations, among the various possible configurations of the federal principle, is a constitutionally defined division of powers between a central government and the subunits (states, provinces), such that authority and legitimacy are effectively divided between the different orders of government. Neither the central government nor the subunits can overrule the other, and the consent of both is needed to modify the division of powers.¹⁷

This implies that a federal state has a written constitution that presides over both levels of government and requires at least majority consent from both these levels in order to make constitutional amendments. It is also important to mention that each level of government has certain areas of autonomy, but provisions exist to insure that regional views are represented at the federal government level. A federal state, therefore, is very much a system of “combining unity and diversity”

¹⁵ Wilfried Swenden, *Federalism and Regionalism in Western Europe: A Comparative and Thematic Analysis* (Hampshire: Palgrave Macmillan, 2006), 6-7, 48; Watts, *Comparing Federal Systems*, 8-9; Both authors refer to Daniel Elazar; See for instance, Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa, AL: University of Alabama Press, 1987).

¹⁶ Watts, *Comparing Federal Systems*, 9.

¹⁷ Martin Papillon, “Is the Secret to Have a Good Dentist? Canadian Contributions to the Study of Federalism in Divided Societies,” in *The Comparative Turn in Canadian Political Science*, eds. Linda A. White, Richard Simeon, Robert Vipond and Jennifer Wallner (Vancouver: UBC Press, 2008), 126.

or of “perpetuating both union and non-centralization at the same time.”¹⁸ For this reason, federalism is viewed as an ideal model for a multinational or divided society where minority groups are geographically aggregated, as diverse groups are able to enjoy a certain amount of autonomy within a single polity.¹⁹

1.2. Asymmetry

With the federal state defined, we can now explore the idea of asymmetry within such a system. Asymmetry can be defined in relation to its opposite, symmetry; according to Tarlton, symmetry is “the level of conformity and commonality in the relations of each separate political unit of the system to both the system as a whole and to the other component units.”²⁰ Symmetry refers to the uniformity of the system. Conversely, asymmetry denotes the diversity among member states, that which is articulated politically through component units possessing “varying degrees of autonomy and power.”²¹ In other words, it is the “extent to which component states do not share in the conditions and concerns common to the federal system as a whole.”²² While some sort of asymmetry exists in most federal states, the type and extent of asymmetries vary, as well as the conditions that lead to asymmetry.

1.2.1 Preconditions of Asymmetry

Asymmetry does not simply occur. As Watts points out, “cultural, economic, social and political factors in combination have in all federations produced asymmetrical variations in the power and influence of different constituent units.”²³ Both Watts and Burgess refer to these factors as preconditions of asymmetry, which are a set of objective empirical criteria that serve to classify the various features that may lead to asymmetry. Burgess lists two general categories of preconditions, socio-economic and cultural-

¹⁸ Watts, *Comparing Federal Systems*, 8.

¹⁹ Arend Lijphart, “Constitutional Design for Divided Societies,” *Journal of Democracy* 15, no.2 (April 2004) [journal on-line]; available from <http://muse.jhu.edu>; Internet; accessed May 12, 2010, 104.

²⁰ Tarlton, “Symmetry and Asymmetry as Elements of Federalism” 867.

²¹ *Ibid.*, 869.

²² Burgess, *Comparative Federalism*, 213.

²³ Watts, “A Comparative Perspective on Asymmetry in Federations,” *Asymmetry Series* 2005 (4): Institute of Intergovernmental Relations, School of Policy Studies, Queen’s University, <http://www.queensu.ca/iigr/working/asymmetricfederalism.html> (accessed February 27, 2010).

ideological.²⁴ Under these two headings can be found more specific preconditions organized in the following manner:²⁵

1. Political Cultures and Traditions: These are the habits or customs that reflect a culture and its traditions, and which affect the way a polity functions philosophically, politically, and legally. For example, certain federations have a culture of citizen welfare for every individual regardless of region, and therefore have constitutional provisions that work to equalize regional disparities and set a minimal living standard for everyone.

2. Social Cleavages: Social cleavages can be understood as cultural factors such as religious, linguistic and ethnic-nationalistic pluralism.

3. Territoriality: Territoriality is a spatial concept and refers to the way politics is affected by space and by relationships between different areas.

4. Socio-economic Factors: This precondition alludes to economic disparities between regions within a federation, and the needs or expectations that arise from these disparities.

5. Demographic Patterns: This factor is largely an objective one, as a population is where it is, but demographic patterns also affect and are affected by national and constituent economies. There are many factors that play a role in demographic patterns, such as fertility rates, immigration patterns and labour market structures. Closely related to this precondition is the issue of representation and the fact that demographic patterns may contribute to unequal representation of citizens throughout the federation.

1.2.2. Asymmetrical Outcomes

The simple fact that these preconditions exist does not presuppose that they will be present in every federation or that they will be reflected to the same extent in all cases. There are different relations and different degrees of asymmetry. The principle distinction to be made between asymmetrical outcomes is its type: asymmetry can be either *de facto* or *de jure*. *De facto* or political asymmetry is the result of preconditions; it “arises from the impact of cultural,

²⁴ Burgess, *Comparative Federalism*, 215; Burgess and Gress, “Symmetry and Asymmetry Revisited,” 48.

²⁵ This classification system can be found in both Burgess, *Comparative Federalism*, 215-17 and Burgess and Gress, “Symmetry and Asymmetry Revisited,” 48-50.

economic, social and political conditions affecting the relative power, influence and relations of different regional units with each other and with the federal government.”²⁶ In other words, regions or constituent units may function differently or have varying degrees of power within a federation due to factors such as population and territorial size, economic character and cultural or social differences. De jure, or constitutional asymmetry, refers to asymmetry that is constitutionally entrenched; it is the extent to which the constitution grants non-identical powers to regions.²⁷ In order to gain a better understanding of these two types of asymmetry, let us examine how they are manifested in a federation.

1.2.2.1. De facto Asymmetry

It goes without saying that every federation has some sort of de facto asymmetry; it is virtually impossible that each unit within a federation could be the same in all its aspects. As Ivo Duchacek noted in 1970, “there is no federal system in the world in which all the component units are even approximately equal in size, population, political power, administrative skills, wealth, economic development, climatic conditions, predominance of either urban or rural interests, social structure, traditions, or relative geographic location.”²⁸ Starting with the first characteristic mentioned, the varying size of a constituent unit is one type of de facto asymmetry. Larger units tend to be more prosperous than smaller ones, and in many federations there are one or two dominant units that make up the majority of the population. When this kind of dominance occurs, the wealthier unit may resent being part of a federation, as it may feel that its contribution to the federation is larger than the benefits it experiences. At the same time, weaker units may feel powerless and dissatisfied with the federal system. Just as important as the reality of such asymmetry is how the units perceive the situation. Regardless of whether their perceptions are correct, they can greatly affect a federation and the relationship between its constituent units.²⁹

²⁶ Watts, *Comparing Federal Systems*, 121.

²⁷ Watts, *Comparing Federal Systems*, 127; Watts, “A Comparative Perspective,” 2; Burgess, *Comparative Federalism*, 217.

²⁸ Ivo D. Duchacek, *Comparative Federalism: The Territorial Dimension of Politics*, 53-71, in Burgess and Gress, “Symmetry and Asymmetry Revisited,” 50.

²⁹ Burgess, *Comparative Federalism*, 218.

Fiscal or taxing power and autonomy is another type of de facto asymmetry closely linked to the population size of a constituent unit. A larger wealthier unit has the resources and political pull to be able to maintain a certain relative autonomy in the federation.³⁰ With more resources, their capacity to exercise constitutionally assigned powers is increased and they depend little upon federal transfers.³¹ One might deduce conversely that all poorer units are dependent on fiscal federal transfer payments, and are therefore more politically passive. However, there is little evidence to support this assumption³²; there are many other variables in play, for example, the variety of political cultures that exist within a federation and the influence this has on the way a constituent unit shapes its policies and exerts its power.³³

A further dimension of de facto asymmetry is representation of constituent units in a federation, or in other terms, the participation of units in the decision-making process of the compound unit.³⁴ In a federal system, there are typically two chambers in the federal legislature. The lower chamber represents the citizens, with seats distributed according to population. This creates an asymmetry in terms of representation of each constituent unit and its capacity to influence legislation and policy-making, as larger units will have a stronger voice than smaller ones. However, the upper chamber, which represents constituent units, may moderate the asymmetry depending on how it is formed.³⁵ An upper chamber can be formed symmetrically, meaning that each constituent unit has exactly the same number of representatives (i.e. The Senate of the United States), while the majority of upper chambers are asymmetrical, with representation being weighted in the favour of the smaller units. In both cases, a smaller constituent unit would have at least an equal voice compared to a larger unit and in theory, this would make up for the disproportionate make-up of the lower chamber. In reality, however, most upper chambers in parliamentary systems do not enjoy as much power as their counterparts. The issue of representation is complicated

³⁰ Burgess, *Comparative Federalism*, 218.

³¹ Watts, "Theoretical and Practical Implications," 33.

³² Burgess, *Comparative Federalism*, 219.

³³ Watts, "Theoretical and Practical Implications," 33.

³⁴ Lépine, "Federalism and Governance," Class Material.

³⁵ Watts, "Theoretical and Practical Implications," 34.

further when national minorities are considered. In Canada, for example, Québec feels that it lacks sufficient parliamentary representation to properly represent its majority francophone population in a predominantly Anglophone parliament, and this province must seek additional ways to protect its minority identity.³⁶ As one can see, representation is an intricate aspect of de facto asymmetry.

Political parties constitute yet another type of de facto asymmetry within federations. Political parties can be described as “vehicles of diversity.”³⁷ A party represents particular interests, and regional parties will act in a way that is specific to their region, therefore creating an asymmetrical party system. This type of asymmetry is extremely variable, as it depends on which political parties are dominant in a constituent unit and how they compare with those in other units. In some federations, party systems may be quite harmonious while others may differ so much from one constituent unit to the next that the possibility of conflict is high.

One final circumstance in which de facto asymmetry may take place is related to the principle of autonomy and the amount of power constituent units have in regards to their own constitutions and bills of rights. Depending on how much de jure symmetry is imposed by the federal constitution on constituent unit constitutions, units have a certain amount of leeway to structure their constitutions to their own liking. For example, if the federal constitution does not specify, a constituent unit may have the opportunity to choose its own executive structure, electoral system, or whether it wants to use mechanisms such as referendums; when this is the case, de facto asymmetry is likely to occur. In the same way, when a federal constitution has no bill of fundamental rights, certain constituent units may choose to set up their own bill of rights. This means that fundamental rights will be recognized and protected to a different extent from one unit to the next. Some constituent units may even add to the rights enumerated in a federal bill of rights, while other federal bills of rights include mechanisms that

³⁶ Burgess, *Comparative Federalism*, 220; Burgess and Gress, “Symmetry and Asymmetry Revisited,” 52.

³⁷ Burgess, *Comparative Federalism*, 220.

allow constituent states to legally override certain rights.³⁸ All of the above scenarios result in some sort of de facto asymmetry.

1.2.2.2. *De jure Asymmetry*

De jure asymmetry is less common than de facto asymmetry, but it is still present in many federations, particularly in those where deep historical factors or considerable de facto asymmetries are present.³⁹ De jure asymmetry officially recognizes the differences among constituent units that have led to de facto asymmetries: geographic size, population, social and cultural make-up and economic situation. Although de facto and de jure asymmetry do not necessarily go hand in hand, they are often linked; as Swenden points out, “de facto asymmetry frequently leads to the entrenchment of some formal asymmetric institutional devices.”⁴⁰ A formal institutional device can be either a federation’s constitution or its legal processes. This means that not every constituent unit in a federation may have the same powers or level of autonomy, these differences being established by the federal constitution or law.⁴¹

In terms of constitutional entrenchment, asymmetry can be accommodated in more than one way. Normally it is present in the way legislative and executive jurisdiction is allotted; however, asymmetry may be formally established in a Bill of Rights, in the amendment procedures of the constitution, or in the way that the constitution evolves.⁴²

One type of de jure asymmetry is the way a federation’s constitution delineates constituent units. This happens more frequently in federations that have devolved from unitary states. Asymmetry occurs when constituent unit boundaries are made along linguistic or cultural lines, creating units of varying size and distinct populations.⁴³ De jure asymmetry can also occur when more than one institution is constitutionally empowered to rule over a constituent unit. The way in which the constitution divides competences may allow for these

³⁸ The majority of this paragraph is taken from the ideas of Watts, “Theoretical and Practical Implications,” 34-35. The Canadian Charter of Rights includes a notwithstanding clause that allows the Parliament or provincial legislatures to override the charter in three areas.

³⁹ Agranoff, “Power Shifts, Diversity and Asymmetry,” in *Accommodating Diversity*, 16.

⁴⁰ Swenden, *Federalism and Regionalism*, 63.

⁴¹ *Ibid.*, 48.

⁴² Burgess and Gress, “Symmetry and Asymmetry Revisited,” 53.

⁴³ Watts, “Theoretical and Practical Implications,” 34.

institutions to function differently from one unit to the next. The case of Belgium, which is divided both territorially and linguistically into Regions and Communities, serves as an example.⁴⁴

An additional form of de jure asymmetry is found in legal processes, as asymmetry is sometimes found between federal and constituent state law. By way of illustration, Canada functions under common law at the federal level as well as in most provinces, but Québec has its own body of civil law and is represented by three judges in the Supreme Court.⁴⁵

Other forms of de jure asymmetry can bring more symmetry to a federation. This can be seen in the fiscal capacities of constituent units. Since units vary greatly in size and wealth, a de jure symmetrical system for allocating financial resources to constituent units leads to extremely unequal results in terms of each unit's wealth and fiscal capacities. For this reason, many federations practice asymmetric financial transfers in order to redistribute and equalize wealth among its constituent units.⁴⁶

De jure asymmetry can also be used in the representation of constituent units in central institutions. As mentioned earlier, there is often de facto asymmetry when a federal parliamentary chamber is made up according to representation of the population and larger constituent units end up with more political influence regarding central decision-making.⁴⁷ This de jure symmetrical make-up is the norm for most federations, but there are exceptions. For example, Canada has constitutionally introduced de jure asymmetry, whereby the smallest provinces are guaranteed a minimum representation that is higher than what their population would technically allow. De jure asymmetry is more common in the make-up of the federal second chamber; the methods vary, but the main idea is to constitutionally provide the smaller constituent units with adequate representation. This, like fiscal asymmetry, is another example where de jure asymmetry acts to counteract de facto asymmetry. It recognizes the fact that since

⁴⁴ Wouter Pas and Jeroen Van Nieuwenhove, "La estructura asimétrica del federalismo belga," in *Asimetría federal y Estado plurinacional*, Enric Fossas and Ferran Requejo, eds. (Madrid: Editorial Trotta, 1999), 263-4.

⁴⁵ Burgess, *Comparative Federalism*, 221.

⁴⁶ *Ibid.*, 130.

⁴⁷ Watts, "Theoretical and Practical Implications," 38.

constituent units vary so greatly from each other, strict symmetry does not always create a situation that is equal in terms of giving all constituent units the same capacities.

1.2.3. Methods of Establishing Asymmetry

Not only are there several ways for de jure asymmetry to be constitutionally entrenched, but there are also varying approaches to establishing asymmetry. Watts lists three different methods. First, there is the option of decreasing regional autonomy by increasing from the norm the federal authority in certain constituent units for specific tasks. Next, there is the contrasting approach that increases regional autonomy through increasing from the norm the jurisdiction of certain constituent units. Finally, the constitution of a federation may give to all constituent units the same jurisdiction while providing constituent units the choice to ‘opt in’ or ‘opt out’. This approach is formally symmetrical, but it leads to inevitable de facto asymmetry as constituent units choose to make use of their autonomy at varying speeds.”⁴⁸

1.2.4. Asymmetry as a Normative and Empirical Concept

In terms of political theory, asymmetrical federalism is both normative and empirical. It is a normative concept in the way that it is used by diverse societies for a wide variety of reasons and thus reflects specific “values, beliefs and interests.”⁴⁹ While we will not discuss these values that lead a federation toward asymmetry, Gagnon and Gibbs indicate three principles that stand behind asymmetric federalism: a communitarian principle (preserving political communities within a country), a functional principle (managing a large and diverse territory efficiently) and a democratic principle (insuring liberty, equality and political participation of all citizens and nationalities within a country).⁵⁰ Each of these principles, based on normative judgements, may lead to some form of asymmetry.

⁴⁸ Watts, *Comparing Federal Systems*, 127-128.

⁴⁹ Burgess and Gress, “Symmetry and Asymmetry Revisited,” 56.

⁵⁰ Alain-G. Gagnon and Charles Gibbs, “The Normative Basis of Asymmetrical Federalism,” in *Accommodating Diversity*, 78-92.

At the same time, asymmetrical federalism can be placed in the category of empirical political theory, whereby it is viewed “as an analytical tool for the purpose of problem-solving in pursuit of federal political stability.”⁵¹ In this sense, asymmetry is an instrumental device used to govern a federation.⁵²

1.3. Asymmetrical Federalism as a Stabilizer or De-stabilizer: Theoretical Arguments

Having explored in some detail the characteristics of asymmetrical federalism, we can now start to answer the question of whether such asymmetry brings stability or instability to a federation. Depending on how and for what it is used, asymmetrical federalism can have a significant impact on a federation. What is that impact? One seemingly logical assumption is that asymmetry generates disunity while symmetry achieves unity. This is the general idea promoted by Tarlton, who suggests that “the degree of harmony or conflict within a federal system can be thought of as a function of the symmetrical or asymmetrical pattern prevailing within the system.”⁵³ Tarlton’s study was focused on de facto asymmetry, and the extent to which diversity in terms of a constituent unit’s size, economy, culture, etc., affected the successfulness of a federal system. Based on his observations of the United States he notes that “[p]eriods of greatest harmony in the relations between states and the federal authorities and among states themselves have paralleled periods in which the differences among the states have been overshadowed by the factors compelling to symmetry.”⁵⁴ For Tarlton, a unitary system with a coercive central authority was the most appropriate response for achieving unity in the presence of highly diverse components, whereas too much asymmetry without centralization would create a great “secession-potential.”⁵⁵

This particular view of asymmetry as a destabilizing factor is not to be ignored; it offers important insight into the difficulties of achieving a stable and unified federation composed of highly diverse constituent units. However, it is

⁵¹ Burgess and Gress, “Symmetry and Asymmetry Revisited,” 56.

⁵² Agranoff, “Power Shifts,” 19.

⁵³ Tarlton, “Symmetry and Asymmetry as Elements of Federalism,” 871.

⁵⁴ *Ibid.*, 873.

⁵⁵ *Ibid.*, 874.

also important to keep in mind that Tarlton was writing from one specific perspective over forty years ago. The world in terms of federal states is significantly different today, not to mention that federal states vary greatly from one to the other. While Tarlton's observations were based on the United States, an example of a territorial federation, the focus of this study is to be placed on the multinational federation. A territorial federation is one that is divided geographically as opposed to the ethnocultural or linguistic divisions of a multinational one.⁵⁶ Some define a multinational federation simply by its sociological character that is manifested in the federal institutions, but most scholars would agree that there must be institutional recognition of this character, that more than one national community is present within the federation. To be considered a multinational federation, at least one constituent unit should be comprised of a majority of a national minority in order that they are better able to obtain a certain amount of constitutionally entrenched autonomy. In addition, the central institutions of such a federation should be a reflection of its multinational character.⁵⁷

Multinational federations, due to their very nature, are highly asymmetric *de facto*. They typically contain regional-based units whose inhabitants represent the national majority, while one or more constituent unit will be national-based, the majority of its population being comprised of a national minority. This creates cultural and linguistic asymmetry between the constituent units. In order to protect its culture, language, and other traditions in a federation dominated by the national majority, a national minority may seek constitutional recognition of its unique identity or may demand an increase in autonomy. To the extent that the federal government decides to meet these demands, a certain amount of *de jure* asymmetry results. In this case, a national-based constituent unit may end up having different competences than the other regional-based units.⁵⁸ The question is whether introducing *de jure* asymmetry that gives special status to the national minority is something that strengthens the federation or adds to its fragility.

⁵⁶ Papillon, "Is the Secret to Have a Good Dentist?", 128.

⁵⁷ *Ibid.* This reference also applies to the sentences that precede it.

⁵⁸ This explanation of national and regional-based units is based on the ideas of Kymlicka in "Federalism, Nationalism, and Multiculturalism," 277-79.

Some view this type of asymmetry as a negative factor. One Canadian author sees it “as yet another element reinforcing the minority’s identity to the detriment of the principle of shared citizenship, thus weakening the ties between the majority and the minority groups....[Such asymmetry can be] considered as a “slippery slope” toward an eventual fragmentation of the polity.”⁵⁹ From this point of view, asymmetry acts to accentuate and propagate the already existing divisions, leading to an ultimate break-up of the federal state. While giving more autonomy to national minorities may create peace, it does not necessarily bring stability; rather it may just give the minority the will to secede. As Kymlicka describes, “[t]he very success of federalism in accommodating self-government may simply encourage national minorities to seek secessions....Where national minorities become politically mobilized..., secession becomes more feasible, even with the best-designed federal institutions.”⁶⁰

We find here a strong argument against asymmetrical federalism as a stabilizing tool within the federal state. The more asymmetry there is, the stronger the national minority becomes and the more autonomy it seeks, to the point where the federation unravels. This is a valid argument, but it is important to take a look at the other side of the coin. For Burgess and Gress, asymmetrical federalism is not a secession creating mechanism, but rather an instrument for “accommodating difference in a way which adds to the overall political stability of federations.”⁶¹ Asymmetry can be used to find consensus and unity between different groups. It could even be argued that asymmetry is essential for the survival of a federation in the case where deep diversity is present. If symmetry is forced upon such a federation, national minorities whose demands for recognition or autonomy are being ignored may feel the need to secede.⁶² This is of particular concern to those federations with national-based constituent units. One might ask why symmetry among constituent units could possibly be destabilizing, but this can be explained by the way national minorities view the federation. Fossas explains that “for the minorities, federalism is above all a federation between

⁵⁹ Papillon, “Is the Secret to Have a Good Dentist?”, 131.

⁶⁰ Kymlicka, “Federalism, Nationalism, and Multiculturalism,” 286.

⁶¹ Burgess and Gress, “Symmetry and Asymmetry Revisited,” 54.

⁶² Watts, “A Comparative Perspective,” 6.

founding peoples based on equality, which would demand asymmetry between national and regional units.”⁶³ This same line of thought is echoed by another scholar, who highlights the fact that these “founding ‘nations’ of the state...claim a form of special recognition...that sets them apart from other regions.”⁶⁴ In other words, a national minority does not want to be treated like any other unit; it sees its equal as the national majority and therefore believes that its language and culture should have the same status. In order to make this happen, different competences must be given to the national-based unit as compared with the regional-based ones.

In the case of multinational federations, it has been pointed out that all of them, with the exception of Switzerland, are constitutionally asymmetrical, and that allocating varying linguistic, cultural, and even legal capabilities to different constituent units is necessary for keeping the polity unified.⁶⁵ If a national minority does not have special access to education, media, or legal services in its own language, it may not be on equal footing with those who have all of the above as members of the national majority.⁶⁶ If asymmetrical federalism is so prevalent among multinational States, we could infer that it is working to keep these highly diverse entities together.

From this brief look at asymmetrical federalism, it is obvious that this subject is not black and white. There are convincing arguments both for and against the use of asymmetry as a stabilizing tool within a federation, and it appears that the use of this tool can have both successful and perilous consequences. What is important to keep in mind is the context. What factors or preconditions have led to asymmetry? What kind of asymmetry is present and to what extent? Using the theory and classification system we have laid out, as well as the arguments presented, let us examine two practical cases of asymmetrical federalism: Canada and Spain.

⁶³ Fossas, “Asymmetry and Plurinationality in Spain,” 10.

⁶⁴ Swenden, *Federalism and Regionalism*, 245.

⁶⁵ Alfred Stepan, “Federalism and Democracy: Beyond the U.S. Model,” in *Theories of Federalism*, 264, 266.

⁶⁶ *Ibid*, 266.

2. CASE STUDIES OF ASYMMETRICAL FEDERALISM

2.1. Canada

2.1.1. Asymmetrical Beginnings

Asymmetrical federalism has been present, albeit not labeled as such, from Canada's very beginnings.⁶⁷ In 1867, the British North American Act (better known as The Constitution Act) was established, giving birth to the nation of Canada, which was comprised of four provinces: Nova Scotia, New Brunswick, Québec and Ontario, the latter two having been one colony divided into two sections and named Lower Canada and Upper Canada respectively. The founders of the constitution had varying opinions about what type of political system would be the most favorable, but it was recognized that a unitary state or even a strictly symmetrical federal state based on Anglo-Saxon common law would not be accepted by French speaking Lower Canada.⁶⁸ John A. Macdonald, one of the founding fathers and the first Prime Minister of Canada, envisioned a strong central government, while George-Etienne Cartier, another founding father, advocated a federal formula in order to accommodate the two diverse populations. During the Québec Conference leading to Confederation, Macdonald made the following statement:

...[W]e found that such a [unitary state] system was impracticable....[I]t would not meet the assent of the people of Lower Canada because they felt that in their peculiar position-being a minority, with a different language, nationality, and religion from the majority- in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada...would not be received with favour by her people.⁶⁹

For this reason, the newly re-established province of Québec was given special status within the original Constitution Act regarding the French language, the status of the Catholic Church, and civil law. This is of course a simplistic

⁶⁷ David Milne, "Asymmetry in Canada, Past and Present," *Asymmetry Series* 2005 (1), 2.

⁶⁸ Stepan, "Multi-nationalism, Democracy and "Asymmetrical Federalism,"" CIFE Documentation Center, Accessed November 30, 2009, 3-4

⁶⁹ See Guy Laforest, "The Historical and Legal Origins of Asymmetrical Federalism in Canada's Founding Debates: A Brief Interpretive Note," *Asymmetry Series* 2005 (8), 2.

explanation of how things began, but the point here is to demonstrate the inherent asymmetry present in this federation, an asymmetry that has continued to play a role in Canada's evolution. With this idea in mind, let us take a step back and address the subject from a more theoretical approach beginning with an assessment of the preconditions of asymmetry.

2.1.2. Preconditions of Asymmetry

If we look at the preconditions of asymmetry as outlined by Burgess and apply them to Canada, it is not hard to see why asymmetrical federalism is prevalent to the extent that it is. The first precondition refers to political cultures and traditions. In Canada we find, as Burgess describes, "an underlying culture and tradition of citizen welfare...beyond territoriality to the individual person."⁷⁰ This tradition is embodied constitutionally in Section 36 of the Canadian Charter of Rights and Freedoms, where the federal government commits itself to "promoting equal opportunities for the well-being of Canadians, furthering economic development to reduce disparity in opportunities, and providing essential public services of reasonable quality to all Canadians."⁷¹ This is carried out through equalization payments made to provincial governments, in order to ensure that all citizens have access to a comparable level of services. Such a political culture paves the way for asymmetry, in the way that not all provinces may receive the same treatment from the federal government.

A second and important precondition is social cleavages, such as religious, linguistic, or ethnic-nationalistic pluralism. Canada certainly fulfills this precondition, being birthed from the union of two very different peoples, the predominantly protestant British and the predominantly Catholic French. Add to that the aboriginal population and the growing number of immigrants from around the world, and you have an extremely pluralistic society.

Territoriality is another precondition that is present in Canada. In such a large country, geographically speaking, there are many contrasting regions and the way in which they relate to one another also differs. In addition, there are

⁷⁰ Burgess, *Comparative Federalism*, 215.

⁷¹ Constitution Act; 1982, s.36; The Canadian Constitution Acts, 1867-1982 are available from <http://laws.justice.gc.ca/en/const/1.html> (accessed May 4, 2010).

socio-economic factors that can influence asymmetrical outcomes. Within a federation there can be large regional disparities, closely connected to the principle of territoriality. It is clear that in Canada, where different regions play varying roles in the economy and are engaged in diverse industries that are largely influenced by the geography of the region, economic disparities are present. Certain needs and expectations arise from these disparities, which may be handled asymmetrically.

The final precondition of asymmetry is demographic patterns, and refers to the representation of constituent units in terms of their population vis à vis other units. In Canada, where provinces vary greatly in population size, asymmetrical representation is pretty much inevitable.

2.1.3. Asymmetrical Outcomes

2.1.3.1. Basic De facto Asymmetry

The preconditions above have set the stage for a significant amount of asymmetry within Canada. First, there are the evident de facto asymmetries resulting from size, population, wealth, and federal dependency of the provinces and territories. Québec and Ontario, the two most populated provinces, make up 62% of the entire population,⁷² whereas the smallest province, Prince Edward Island, has an area of just 57 000 km² (in a country which covers 9 984 670 km²) and represents a mere 0.44% of the Canadian population.⁷³ Almost 40% of their provincial revenue is dependent on federal transfers, whereas Alberta's revenue is less than 10% dependent. While there is no escaping such asymmetries caused by geography, history, and political economy, they produce an inequality of power between provinces. If we were to visualize the effect of these asymmetries, we could say that Canada is made up of a dominant center (Québec and Ontario) and peripheries (all other provinces and territories).⁷⁴ This image is further strengthened by de facto asymmetrical participation of constituent units within the House of Commons, the lower chamber of the federal parliament. Members

⁷² Burgess, *Comparative Federalism*, 218.

⁷³ Milne, "Asymmetry in Canada, Past and Present," 2; For most recent information on Canada's size and population, see "The Atlas of Canada," Natural Resources Canada, <http://atlas.nrcan.gc.ca/site/francais/maps/peopleandsociety/population> (accessed May 4, 2010).

⁷⁴ *Ibid.*, 1.

of this chamber are elected by and represent the citizens of Canada. The number of seats given to each province is determined according to population size; as Ontario and Québec account for such a significant percentage of the population, they end up with 174 seats out of the available 295, leaving 121 seats to be divided up between everyone else.⁷⁵

Another form of de facto asymmetry that arises due to the preconditions of social cleavages, territoriality, and other socio-economic factors is political parties and party systems. Canada has a strong provincial party system, and given the fact that provinces vary so greatly from one to the next, the parties that represent them represent diverging interests. This is particularly visible in Québec, which stands apart from the other provinces in terms of its cultural and linguistic differences. The Parti Québécois is a regional party that reflects and promotes these differences; however, they do not extend past provincial borders, creating a noticeable asymmetry.⁷⁶

These de facto asymmetries have led to demands for constitutional amendments or political agreements. On one hand there is a call for more symmetry to bring about equality between provinces, but at the same time, others are demanding more official asymmetry to constitutionally recognize and protect the differences that exist. To a considerable extent, de jure asymmetry has been introduced.

2.1.3.2. De jure Asymmetry Regarding Québec

Much of the asymmetrical federalism that exists in Canada today is related in some way to Québec, the only province with a majority francophone population. As we already saw, some de jure asymmetry was already present in the Constitution Act of 1867 in order to recognize the unique character of Québec. Section 129 recognizes and permits the continuation of the civil law system unique to Québec. In order to accommodate this system, which contrasts the common law system that prevails throughout the rest of the country, Section 6 of the Supreme Court Act states that at least three of the nine judges must be

⁷⁵ Burgess and Gress, "Symmetry and Asymmetry Revisited," 52.

⁷⁶ Ibid., 52-53.

from the province of Québec.⁷⁷ Asymmetry is further entrenched in Section 133 of the Constitution, which establishes a bilingual legislative regime applicable only to the Canadian Parliament and the Legislature of Québec, and Section 94, where all provinces (at the time of the Union in 1867), except Québec, are invited to make property and civil rights uniform through choosing to accept federal control in these areas.⁷⁸ In regards to education, the Constitution Act also extends the minority education rights available in Ontario to Québec as well (Section 93(2)). This asymmetrical situation, however, was further amended in 1997 by yet another *de jure* asymmetry under Section 93A, which exempts Québec from the whole of Section 93.⁷⁹ Although none of these sections specifically label Québec as a ‘distinct society’, the recognition of the founding fathers regarding this province’s uniqueness is evident. We will return to the question of Québec and its ongoing quest for asymmetry, but first let us consider *de jure* asymmetries that pertain to other regions of Canada.

2.1.3.3. *General de jure Asymmetry*

One of the most noticeable and highly debated forms of constitutional asymmetry is representation in the Senate. According to Section 22 of the Constitution Act, the Senate is divided into four regional divisions: Québec, Ontario, the Maritime provinces, and the Western provinces. These divisions are to be “equally” represented with each one having twenty-four senators. In reality, however, Québec and Ontario each have twenty-four senators, while twenty-four senators are divided amongst Prince Edward Island (4), New Brunswick (10) and Nova Scotia (10), and the final twenty-four are to be divided between British Columbia, Alberta, Saskatchewan and Manitoba, each of these provinces being given six senators. Six more senators were added to represent Newfoundland when it joined the Canadian federation in 1949, and each of the Territories are

⁷⁷ Gerald Baier and Herman Bakvis, “Federalism and the Reform of Central Institutions: Dealing with Asymmetry and the Democratic Deficit,” in *Constructing Tomorrow’s Federalism: New Perspectives on Canadian Governance*, ed. Ian Peach (Winnipeg: University of Manitoba Press, 2007), 95; Supreme Court Act 1985, s.6, Full text available from Department of Justice Canada, <http://laws.justice.gc.ca/eng/S-26/index.html> (accessed May 7, 2010).

⁷⁸ Milne, “Asymmetry in Canada,” 3; Watts, “The Canadian Experience,” 120.

⁷⁹ See Constitution Act, 1867, ss. 93, 93A, 94, 129, 133.

also entitled to one senator.⁸⁰ The way the Senate is organized, almost half of its representation is from Ontario and Québec. The Western provinces are largely underrepresented, and the Atlantic region is highly overrepresented in terms of population.⁸¹ In addition to this representational asymmetry, Section 23, which sets out the qualifications for a senator, mentions qualifications for senators from Québec that differ from other provinces.⁸² Despite the fact that this legislative chamber allows for regional representation, the participation of each constituent unit is highly asymmetrical.

De jure asymmetry can be found not only in the Constitution Act of 1867, but also in Provincial constitutions. Asymmetries include Section 23 of the Manitoba Act, where Manitoba joined Québec in its bilingual regime, and Sections 118 and 119, which outline differential direct grants to the provinces.⁸³ There are also various sections in provincial constitutions that delineate different denominational rights regarding education.⁸⁴ One of the most highly contested forms of asymmetry that has existed was in relation to the allocation of competences and the federal control of natural resources in the Western provinces. Under Section 109, provincial control of resources was withheld from Manitoba, Saskatchewan, and Alberta until 1930.⁸⁵ While this particular asymmetry no longer exists, it has contributed to a tendency of the West to combat against asymmetry and demand provincial equality.

2.1.3.4. “De jure” Asymmetry in Practice

The de jure asymmetries we have looked at so far are constitutionally entrenched asymmetries that produce asymmetrical results. There are, however, other sections of the Canadian Constitution that are not asymmetrical in law, yet allow for asymmetry in practice. These laws simply allow for provinces to opt-out of the legislation and are not asymmetrical in and of themselves. One example would be the subject of old age pensions, introduced in 1964 under Section 94A of the Constitution Act, and which permits the federal government

⁸⁰ Constitution Act, 1867, s.22.

⁸¹ Milne, “Asymmetry in Canada,” 3-4; Watts, “The Canadian Experience,” 121-122.

⁸² Constitution Act, 1867, s.23(6)

⁸³ Ibid., see note 67 of s.133; ss.118, 199.

⁸⁴ For example see Constitution Act, 1867, s.93.

⁸⁵ Ibid., 1867 s. 109, note 57; Milne, “Asymmetry in Canada,” 4.

to legislate in the area of old age pensions while allowing for provincial legislatures to retain or make their own laws in this area.⁸⁶ As a result, all of the provinces apart from Québec became part of the federal government's Canada Pension Plan (CPP) in 1965, while Québec launched its own Québec Pension Plan (QPP).

Further possibilities for asymmetry were created in 1982 with the repatriation of the Constitution and the addition of the Canadian Charter of Rights and Freedoms. Sections 38-49 of the Charter introduce new procedures for amending the Constitution. There are five different procedures for making amendments, but the general procedure requires the approval of Parliament and of two-thirds of the provincial legislatures accounting for at least fifty percent of the Canadian population. Senate approval is also required if an amendment would reduce provincial powers, and if such an amendment is passed, it is not applicable to a province where the legislature has not given its assent. In addition, if the said amendment involves education or culture, any province that does not pass the legislation will receive compensation from the federal government in order to carry out its own programming in that area.⁸⁷ The nature of this procedure allows for asymmetry to occur.

The constitutional amendment formula is not the sole mechanism of asymmetry of the 1982 Constitution Act; the notwithstanding clause in the Canadian Charter of Rights and Freedoms provides yet another means for asymmetrical outcomes. As Watts explains, the process of introducing a bill of fundamental rights into a federal constitution is usually carried out in a uniform manner, so as to apply symmetrically to all constituent units.⁸⁸ However, the Canadian Charter includes what one author calls a “wonderfully flexible provision,” the notwithstanding clause.⁸⁹ It declares that either Parliament or a

⁸⁶ Constitution Act, 1867, s.94A.

⁸⁷ Constitution Act, 1982, ss. 38, 40; Thomas O. Hueglin, “Working around the American Model: Canadian Federalism and the European Union,” in *The Comparative Turn*, 144.

⁸⁸ Watts, “Asymmetrical Decentralization: Functional or Dysfunctional,” August 2000, International Political Science Association, Forum of Federations, www.forumfed.org (accessed February 27, 2010), 29.

⁸⁹ Edelgard Mahant, “Reflections on Asymmetrical Federalism in Canada,” York University, Revised text from speech given at the Institut d’Etudes Politiques de Rennes, May 11, 2006, www.glendon.yorku.ca/.../asymfedm.pdf (accessed May 4, 2010).

provincial legislature may supersede the charter in the areas of fundamental freedoms, legal rights, and equality rights with a legislative act valid for five years, at which time, if not renewed, will end.⁹⁰ Québec is also the only province to have invoked the notwithstanding clause, doing so in 1988 and creating further asymmetry between Québec and the other provinces.⁹¹

2.1.3.5. *Additional de facto Asymmetry: Asymmetry by Design and Asymmetry in Practice*

Over the past decades, various demands made by the provinces, particularly Québec, have led to the establishment of several federal programs and policies resulting in an asymmetrical handling of the provinces. In an article on asymmetry in Canada, Professor David Milne creates two categories for such asymmetries: asymmetry by design, referring to programs and policies not available to all provinces, and asymmetry in practice, containing programs and policies that are available but not used by all provinces.⁹² Both of these categories can be placed under de facto asymmetry, as the agreements and policies are not constitutionally entrenched.

In terms of asymmetry by design, a few examples can be provided. The first is the area of regional development, where regionally specific programs exist for the benefit of particular provinces. One such program is the ACOA (Atlantic Canada Opportunities Agency), which works to develop stronger regional economies.⁹³ Secondly, asymmetry can be found in Canadian foreign policy. Québec is the only province to have direct relations with France (since 1965), and only Québec and New Brunswick participate in *la francophonie*.⁹⁴ A final program area is variable cost-sharing formulae, through which distribution of costs for shared-cost programs is uneven. For example, if you compare the shared costs in forestry, Newfoundland has a ratio of 90:10 (federal funding to provincial funding), while British Columbia's is 60:40.⁹⁵

⁹⁰ Constitution Act, 1982, s.33; Hueglin, "Working around the American Model," 146-7.

⁹¹ Hueglin, "Working around the American Model," 143, 147.

⁹² Milne, "Asymmetry in Canada," 6.

⁹³ For more information, see Atlantic Canada Opportunities Agency at www.acoa-apeca.gc.ca (accessed May 6, 2010).

⁹⁴ Benoît Pelletier, "Asymmetrical Federalism: A Win-Win Formula," *Asymmetry Series* 2005 (15a), 3.

⁹⁵ Milne, "Asymmetry in Canada," 6.

There are also several examples of de facto asymmetry in practice. These pertain to laws that give each province the ability to ‘opt in’ or ‘opt out’.⁹⁶ Such laws are symmetrical, but allow for asymmetry if a provincial legislature so chooses. Asymmetry of this type can be identified in the field of immigration. Immigration is originally a federal competence, but the possibility exists for provincial governments to become concurrent in this area. Québec chose to do so and gained certain powers regarding immigrant selection through the Canada-Québec Accord in 1991.⁹⁷

Tax collection is another significant area of asymmetry in practice. Québec, Ontario, and Alberta collect corporate income tax, and in addition, Québec also collects individual income tax. Linked to this is the issue of tax abatement. Québec has chosen to opt out of several federal programs concerning hospital insurance, youth allowance, welfare and education. In return for opting out of these cost-shared programs that all other provinces are a part of, Québec receives tax abatements, made up of eighteen tax “points.”⁹⁸ For national programs that Québec opts out of, they receive comparable funding from the federal government and are able to run similar programs compared with those of other provinces.⁹⁹

A further development in asymmetry took place in 1999 with the establishment of the Social Union Framework Agreement (SUFA), set up between the provinces and Ottawa in an attempt to limit the spending power of the federal government in social policy. Remaining skeptical of the outcome, Québec chose not to sign the agreement.¹⁰⁰

A final and more recent example of asymmetry in practice is the 2004 health care accord, an agreement made between the federal and provincial governments to rescue the health care system. Although the Québec government took part in the entire process, the accord includes an appendix which exempts Québec from the collective monitoring of the objectives set out in the accord;

⁹⁶ Watts, “Theoretical and Practical Implications,” 37.

⁹⁷ Pelletier, “Asymmetrical Federalism: A Win-Win Formula,” 3; See also Citizenship and Immigration Canada at <http://www.cic.gc.ca/> (accessed May 6, 2010).

⁹⁸ Brown, “Who’s Afraid of Asymmetrical Federalism? A Summary Discussion,” *Asymmetry Series* 2005 (17), 3.

⁹⁹ *Ibid.*; Milne, “Asymmetry in Canada,” 6.

¹⁰⁰ Hueglin, “Working around the American Model,” 155.

they are committed to putting in place a comparable system which will support the same goals, but once again, they have chosen to do things on their own.¹⁰¹

There are scholars who would argue that ‘asymmetry in practice’ is not really asymmetry, as equality of opportunity exists.¹⁰² In the case of the health care accord for example, Québec received special treatment, but the federal government did not do so on an exclusive basis; it said it would be open to extending the same treatment to any other province.¹⁰³ Nevertheless, the reality that has resulted is asymmetrical, and for that reason, we can still refer to examples like this as such, although they are strictly de facto.

2.1.4. Québec, Canada, and the Tug of War between Asymmetry and Symmetry

In looking at the many instances of asymmetry within the Canadian federation, one province in particular stands out as being the champion of asymmetry: Québec. Asymmetrical de facto in its language, culture, and traditions, Québec has sought from the very beginning of Canada’s history to have these differences recognized and enshrined constitutionally. They have, as we have just seen, succeeded to a certain extent, although not as much as they would have liked. While Québec has pushed for more de jure asymmetry, the rest of Canada has countered with demands for more symmetry. Without going into too much detail, the mention of a few key events in the history of Canadian constitutional reform will help to illustrate the ongoing tug of war between these two opposing visions.

2.1.4.1. The Rise of Québec Nationalism and Constitutional Reform

The 1960s and 70s saw a growth of Québec nationalism arising from both the Quiet Revolution and the birth of the nationalist, separatist party, the Parti Québécois (PQ). In reaction to this growing trend, the federal government led by Pierre Elliott Trudeau drove forward a centralist vision of Canada with the purpose of creating a stronger national integration and unity that would go beyond provincial borders. Canada was to be multicultural and bilingual, with no

¹⁰¹ Baier and Bakvis, “Federalism and the Reform of Central Institutions,” 93.

¹⁰² Gordon Gibson, “Some Asymmetries are More Legitimate than Others – And Subsidiarity Solves Most Things Anyway,” *Asymmetry Series* 2005 (3), 2.

¹⁰³ *Ibid.*

one province officially representing a distinct cultural or lingual group.¹⁰⁴ Under Trudeau the Constitution was repatriated and the Charter of Rights and Freedoms was added, its purpose being to constitutionally guarantee the rights of every citizen, regardless of ethnic background, gender, culture, language, etc. The federal vision of Cartier back in 1867 was a pact made between two peoples, but Trudeau pursued a vision of federalism centered on the “primacy of individual rights, multiculturalism, and pan-Canadian bilingualism.”¹⁰⁵ This vision was not accepted by Québec and thus, it did not and has still not agreed to the repatriated constitution of 1982.

2.1.4.2. The Meech Lake and Charlottetown Accords: Two Failed Attempts at Constitutional Renewal

The period following the Constitution Act of 1982 continued to see demands for more asymmetry and greater provincial autonomy on behalf of Québec, countered by demands for symmetry and centralization from the rest of Canada. The challenge was to find a way to please both sides; Watts notes that “[o]ne logically obvious option frequently advanced...[was] for some sort of asymmetry in the jurisdiction and roles of the provinces that would enable *both* greater autonomy for Québec *and* a larger federal government role for the other nine provinces.”¹⁰⁶ Two attempts were made in the late 1980s and early 1990s to make constitutional amendments that would accomplish just that, and bring Québec “back into the constitutional fold.”¹⁰⁷ The first was the 1987 Meech Lake Accord which, if ratified, would have restricted the spending power of the federal government, made available provincial participation in senator and Supreme Court judge selection, and changed the constitutional amending formula in specific instances. Most significant to Québec, the accord would have included a clause that constitutionally recognized Québec as a “distinct society” within

¹⁰⁴ Raffaele Iacovino, “The Visions of Canadian Federalism: An Overview,” May 2004, Forum of Federations, www.forumfed.org (accessed November 29, 2009), 20.

¹⁰⁵ *Ibid.*, 21.

¹⁰⁶ Watts, “The Canadian Experience with Asymmetrical Federalism,” in *Accommodating Diversity*, 123.

¹⁰⁷ Hueglin, “Working around the American Model,” 143.

Canada.¹⁰⁸ This particular inclusion proved to be quite controversial and two provinces failed to ratify the accord by the June 1990 deadline.

A further attempt was made with the Charlottetown Accord in 1992. Many of the same provisions from Meech Lake were included and the “distinct society” provision was also kept, but its meaning was somewhat diluted within a larger ‘Canada Clause’ that outlined fundamental values and affirmed the identities of all people. Other provisions were added in order to offer something for everybody, such as provisions to give the Aboriginal people the “inherent right” to self-government, and increase provincial competences. One of the biggest issues was that of Senate reform, where changes would be made to ensure equal territorial representation. Accompanying this reform was a provision to guarantee 25% of the seats in the House of Commons to Québec, regardless of changes in their population. The majority of the population voted against the Charlottetown accord in a national referendum (six out of ten provinces rejected it). For Québec, it offered them less than Meech Lake, as the “distinct society” provision was weakened, and Senate reform would have meant less francophone representation. For the rest of Canada, several of the provisions, particularly the guaranteeing of Québec’s seats in the House of Commons, went against the principle of equality in terms of treating all provinces the same. For these reasons, this accord failed.¹⁰⁹

2.1.4.3. The 1995 Referendum and the Calgary Declaration

Since these two failures at constitutional reform, no further attempts have been made, and in 1995, the Québec separatist movement reached its apex. Many Québécois felt that the federal system had failed and a provincial referendum was held over the question of secession. Québec narrowly voted against separation, but the message sent to the federal government was clear; an effort at reconciliation was needed. In order to address both the pressures for asymmetry and symmetry, the provincial and territorial leaders signed the Calgary

¹⁰⁸ Robert C. Vipond, “Seeing Canada Through the Referendum: Still a House Divided,” *Publius: The Journal of Federalism* 23 (Summer 1993) [journal on-line]; available from <http://publius.oxfordjournals.org>; Internet; accessed April 1, 2010, 40.

¹⁰⁹ For further information and interpretations, see Mahant, “Reflections on Asymmetrical Federalism”; Vipond, “Seeing Canada Through the Referendum”; Watts, “The Canadian Experience.”

Declaration on September 14, 1997, which recognizes Québec's uniqueness while at the same time affirms the equality of each province.¹¹⁰ The declaration asymmetrically makes note of Québec's specificity, yet makes this privilege available to any province.¹¹¹

2.1.4.4. "9-1-1 Federalism": *The Quest for Asymmetry Continues*

The de facto asymmetries established in recent years, such as SUFA and the 2004 health care accord, can be seen as asymmetrical cooperation between the provinces and Ottawa. Scholars have made the following observation: "Québec's asymmetry has continued to evolve, and has done so in a manner that suggests that the gap between de facto and de jure asymmetry continues to widen.... Québec continues to assert its unique identity, which is in turn reflected in a variety of political arrangements, but not in formal constitutional terms."¹¹² They describe a phenomenon that has been labeled "9-1-1 federalism", a triangular relationship where Ottawa reaches an agreement with nine provinces and then makes a separate accord with Québec.¹¹³ This appears to be one way to ease the tension.

2.1.5. Asymmetry or Symmetry: The Question of Equality

The quest for asymmetrical federalism in Canada has been a source of tension between provinces and the federal government. There is both a pull for asymmetry and for symmetry, and the tension is found in the struggle between them. These two opposing forces can be located in two competing conceptions of the Canadian federation. Several scholars make note of the fact that the way Québec (and also much of the Aboriginal population) views the federation differs from the vision of most Canadians outside of the province.¹¹⁴ Papillon observes that "a number of Canadians outside Québec see the Canadian federation as a single nation territorially divided into ten equal provinces (and three territories),

¹¹⁰ Watts, "Asymmetrical Decentralization," 33; Text of the Calgary Declaration can be found at <http://www.exec.gov.nl.ca/currentevents/unity/unityr1.htm> (accessed May 5, 2010).

¹¹¹ Brown, "Who's Afraid of Asymmetrical Federalism," 4.

¹¹² Baier and Bakvis, "Federalism and the Reform of Central Institutions," 92.

¹¹³ Ibid.

¹¹⁴ See Gagnon and Gibbs, "The Normative Basis", 80; John McGarry, "Les régimes politiques fédéraux et l'intégration des minorités nationales," in *Guide des pays fédérés: 2002*, eds. Ann L. Griffiths and Karl Nerenberg (Montreal & Kingston: McGill-Queen's University Press, 2002), 458; Papillon, "Is the Secret to Have a Good Dentist?", 124, 128-29.

while many Québécois and Aboriginal peoples see the federation as a compact between two, or multiple, nations.”¹¹⁵ On one hand there are those who view Canada as a multinational federation, but at the same time there are others who have a more territorial perception in which Canada is a single nation comprised of autonomous constituent units; due to these competing visions, and the fact that there is little institutional recognition of its multinational character, Canada can be deemed a mixed federation.¹¹⁶

At the heart of this debate between asymmetry and symmetry, multinational and mononational, are opposing ideas of equality. One can talk about equality of citizens (Charter of Human Rights and Freedoms), equality of provinces, and equality of two linguistic peoples (as seen by Québec nationalists); the problem is, these conceptions of equality compete against more than compliment each other.¹¹⁷ What is considered to be equal for one is unequal for the other. Will Kymlicka explains the view of national minorities as such:

For national minorities like the Québécois, federalism implies... a federation of peoples, and decisions regarding the powers of federal subunits should recognize and affirm the equal status of the founding peoples. On this view, to grant equal powers to regional-based and nationality-based units is in fact to deny equality of the minority nation, by reducing its status to that of a regional division *within* the majority nation.¹¹⁸

This is not at all the case for those who follow the reasoning of provincial equality, who see special recognition or treatment of a province as a zero-sum game. If the federal government gives special status or more autonomy to one province, it is perceived to be at the expense of the other provinces. For this reason, asymmetrical federalism is considered unacceptable.¹¹⁹

Equality of the citizen adds another dimension to this debate. In general, asymmetry does not create inequality between citizens of different constituent units. It simply means that what is being done at the provincial level in one unit is being done at the federal level in the other units; all citizens, however, receive the

¹¹⁵ Papillon, “Is the Secret to Have a Good Dentist?”, 124.

¹¹⁶ Ibid., 129.

¹¹⁷ Watts, “The Canadian Experience,” 124.

¹¹⁸ Kymlicka in Papillon, “Is the Secret to Have a Good Dentist?”, 130.

¹¹⁹ Iacovino, “The Visions of Canadian Federalism,” 10.

same services. As Webber puts it, “Asymmetry...is more about *where* decisions are made than about *what* decisions are made. It is about which level of political community...makes which decision.”¹²⁰ This type of equality, however, does not necessarily ensure provincial equality, in that not every provincial legislature may have the same amount of autonomy. To complicate things further, introducing a “distinct society” clause into the constitution, an action considered to be equal by those who hold to the two founding nations view, would be seen as both provincial and citizen inequality, in spite of the fact that it is more symbolic than anything.¹²¹ From this analysis, it would appear that neither an asymmetrical nor a symmetrical model exists that pleases everyone, hence the tension described above. If this is the case, which model would be the least detrimental, or along a more positive line of thought, the most stabilizing?

2.1.6. Asymmetrical Federalism: A Stabilizing or Destabilizing Tool in Canada?

Just as the conceptions of Canadian federalism vary, so do the opinions regarding the role of asymmetrical federalism within this federation. Several scholars view asymmetrical federalism as far from ideal. They argue that asymmetrical federalism is a cause of concern for Canadians, because they see asymmetrical arrangements as unfair; the use of such a mechanism causes potential problems including discontent, conflicting social and economic costs and political hostilities that may lead to eventual division.¹²² Instead of strengthening a federation, asymmetries, or at least the consequences of asymmetry, can reinforce disparities between majority and minority groups and therefore, destabilize the ties between them. This argument follows the “slippery slope” reasoning where increasing asymmetry ultimately leads to the

¹²⁰ Jeremy Webber, *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution* (Montreal & Kingston: McGill-Queen’s UP, 1994), <http://site.ebrary.com.proxy2.lib.umanitoba.ca> (accessed May 17, 2010), 230.

¹²¹ See José Woehrling, “El principio de igualdad, el sistema federal canadiense y el carácter diferencial de Québec,” in *Asimetría federal y Estado plurinacional*, 153-4; Woehrling explains that approving this clause would not have changed anything in regards to individual minority rights. It was simply a symbolic recognition.

¹²² Gibson, “Some Asymmetries are More Legitimate than Others,” 1.

disintegration of the federation.¹²³ In the spirit of this logic, asymmetrical federalism is precisely the opposite of a stabilizing tool.

Another argument against asymmetrical federalism is based on the trend in more recent years for provinces to demand more autonomy from the federal government through bilateral provincial-federal arrangements. This kind of de facto asymmetry is particularly prevalent in Québec, but also in other provinces that feel the federal government has involved itself too heavily in provincial affairs. The worry here is expressed through the words of the Honourable John Roberts, who “[fears] that the use of asymmetry to satisfy the demands of devolution will not satiate the pressures to weaken the federal power, but is likely, rather to stimulate the appetite for more demands.”¹²⁴ Instead of cooperating, each province, upon seeing the asymmetrical agreements made between other provinces and the federal government, resents not having the same for itself and proceeds to make its own deal with the center. Asymmetry gets added on top of asymmetry, and coherence is lost. One scholar notes: “[A]s the asymmetrical arrangements multiply, they collide and a sense of national comity is eroded.”¹²⁵ In this instance, asymmetrical federalism fails to unify the polity, but rather prevents the growth of a coherent and stable system for meeting the needs of each and every province. In other words, it produces excessive self-interest and individualism to the detriment of the federation.

For skeptics of asymmetrical federalism, the best it can achieve is an “uneasy *modus vivendi* for holding the federation together,”¹²⁶ a temporary accommodation between two opposing parties. It unifies, in the strictest sense, by keeping the federation in one piece, but it does not “establish a spirit of unity.”¹²⁷ Asymmetrical federalism seen from this point of view is not necessarily

¹²³ Papillon, “Is the Secret to Have a Good Dentist?”, 131.

¹²⁴ John Roberts, “Asymmetrical Federalism: Magic Wand or “Bait and Switch”,” *Asymmetry Series* 2005 (14), 3.

¹²⁵ Kathy L. Brock, “The Politics of Asymmetrical Federalism: Reconsidering the Role and Responsibilities of Ottawa,” *Canadian Public Policy* 34, no.2 (June 2008) [journal on-line]; available from <http://www.jstor.org/stable/25463605>; Internet; accessed May 4, 2010, 155.

¹²⁶ Hamish Telford, “Survivance Versus Ambivalence: The Federal Dilemma in Canada,” 5, *Asymmetry Series* 2005 (10), 5.

¹²⁷ *Ibid.*, 6.

destabilizing; nevertheless, it is not the preferred means of creating a truly unified and stable federation.

That being said, asymmetrical federalism in Canada has its share of proponents. Since Canada is a multinational (or mixed) federation, a significant amount of de facto asymmetry is already inherent. It would follow that further asymmetrical arrangements would to some extent be necessary in order to meet the different needs of the federation's citizens, such as recognition and protection of linguistic and cultural diversity.¹²⁸ In this way, asymmetrical federalism can serve as a flexible and adaptable tool, which is vital for successfully handling the highly diverse and ever-changing nation that Canada is.¹²⁹

One of the chief advocates of asymmetrical federalism in Canada is Benoît Pelletier, a former Minister for Canadian Intergovernmental Affairs in the National Assembly of Québec. Pelletier sees asymmetry as a tool that can be used by all provinces to evolve and progress in a way that corresponds to its unique character and specific needs.¹³⁰ He bases his arguments on Canada's long history of asymmetrical federation, present from its beginning in 1867, where it was fundamental in protecting the diversity of its founding members.¹³¹ Pelletier contends that "the adoption of asymmetrical policies allows the federated entities to coexist in harmony. It reduces unwarranted tensions and counter-productive confrontations, and even eliminates the demands for secession."¹³² It may be a little exaggerated to suggest that Québec and the rest of Canada have had a harmonious relationship, but it is true that the introduction of asymmetry in many areas has helped to diffuse tensions. It is more so the direct attempts at unity through symmetrical mechanisms, such as the Charter of Rights and Freedoms, which have been the source of tension and "polarization between territorial and multinational views."¹³³ Canada is still in one piece, so something must be working.

¹²⁸ Brown, "Who's Afraid Of Asymmetrical Federalism?", 5.

¹²⁹ Pelletier, "Asymmetrical Federalism: A Win-Win Formula!", 3.

¹³⁰ *Ibid.*, 4.

¹³¹ *Ibid.*, 3.

¹³² *Ibid.*, 4.

¹³³ Papillon, "Is the Secret to Have a Good Dentist?", 132.

Not everyone is quite as enthusiastic as Pelletier, and there are more temperate opinions of asymmetrical federalism. This ‘middle way’ sees asymmetry as a means to bring stability to an inherently unstable multinational federal system, yet it is careful to define its limits. There are different situations to which asymmetry can be applied, and once it becomes the tool of choice, it can be used to different extents. The ability of asymmetrical federalism to bring stability or to create instability depends very much on what issue it is addressing and what the consequences will be for the concerned constituent units.¹³⁴ This means that there is room for asymmetry, but probably more so de facto asymmetry. It is in this field of political arrangements that most asymmetry has taken place in the last years, and it has been observed that the acceptance of such asymmetry is increasing along with a growing realization that “one size does not fit all.”¹³⁵ Equality does not necessarily imply sameness or symmetry, and asymmetrical solutions can be found that answer to diverse needs while still maintaining a spirit of equality, thus creating stability in an otherwise unstable federation. On the other hand, further de jure asymmetry regarding differential recognition is less likely to be successful.¹³⁶ Past attempts at recognizing Québec’s “distinct society” have only brought discord within the federation, so while asymmetrical federalism can be used as a stabilizer, it still has its limits.

In consideration of Canada’s unique cultural and linguistic make-up, it would appear that asymmetrical federalism is more of a stabilizing than destabilizing mechanism, although it has created its share of controversy over the past decades. As stated earlier, asymmetrical federalism is a normative concept, and in the normative context of the Canadian federation, it has served the nation fairly well. In a multinational society where disagreements and conflicting views regarding its political make-up are an inherent part of its very being, we cannot expect asymmetrical federalism to solve each and every conflict.¹³⁷ There will be tension, asymmetrical federalism or not, but what this mechanism can do is to bring stability amidst the tension. One Canadian scholar notes that “an

¹³⁴ Milne, “Asymmetry in Canada,” 7.

¹³⁵ Brown, “Who’s Afraid Of Asymmetrical Federalism?”, 5.

¹³⁶ *Ibid.*, 6.

¹³⁷ Papillon, “Is the Secret to Have a Good Dentist?”, 137.

asymmetrical constitution may be the institution form most compatible with our asymmetrical political communities.”¹³⁸ This pragmatic approach does not make anything more or less of asymmetrical federalism than what it is: a flexible tool that suits Canada and that can, if used right, provide this highly culturally and geographically diverse nation with federal stability.

2.2. Spain

2.2.1. Historical Basis for Asymmetry

As a normative concept, the way asymmetrical federalism manifests itself depends greatly on the characteristics of the country making use of it. We have seen how this concept is both an inherent part and a preferred tool of the Canadian federation, and we will now assess the role of asymmetry in Spain. Asymmetrical federalism has a significant presence in Spain, and as in the case of Canada, asymmetry has played an important role in Spain’s constitution. Spanish history is substantially longer and more complex than that of a relatively young Canada, and several historical events contributed to the forming of modern day Spain; however, since the subject of this paper is not Spanish history, it will suffice to make mention of only the more recent and pertinent events. The character of the Spanish Constitution of 1978, which transformed Spain from a unitary state into one of a federal nature, is greatly influenced by the idea of multinationalism and the presence of several nationalist minorities in Spain. Minority nationalism is said to have emerged at the end of the 19th century along with the age of modernization; these nationalisms did not develop in response to a strong majority nationalism, but rather as a substitute for a relatively weak State.¹³⁹ The competing visions of the Spanish national identity and that of minority nationalities had center stage in the time directly following the Franco regime, a period that was favorable toward the promotion of national minority identities and regional autonomism. Under Franco, minority languages and cultures were repressed and a mono-cultural identity was imposed upon the people by military force. This oppression actually served to encourage

¹³⁸ Webber in Gagnon and Gibbs, “The Normative Basis,” 90.

¹³⁹ Mathieu Petithomme, “L’Etat espagnol et le financement autonome,” *Fédéralisme Régionalisme* 9, no.2 (2009) [journal on-line]; available from <http://popups.ulg.ac.be/federalisme/document.php?id=831>; Internet; accessed April 1, 2010, 4.

autonomist and minority nationalist movements, and put into question, for a time, the legitimacy of Spanish nationalism.¹⁴⁰ With the reemergence of multinationalism came the demand for constitutional recognition, and with it, asymmetry. As Agranoff states, “the question of asymmetry versus symmetry goes to the heart of the federal questions in Spain. The constitutional design in the post-Franco period (1975-1978) legally constructed shared rule by creating autonomy, largely to gain the support of the historic and ethnically nationalistic territories.”¹⁴¹ The question of multinationalism greatly influenced the constitution and triggered the use of asymmetry as a means of accommodating the national minorities. This asymmetry will be discussed in the section regarding asymmetrical outcomes, which will logically be preceded by preconditions of asymmetry present in Spain. However, one pertinent question must be addressed before speaking any further about Spain: Is Spain really a federal state?

2.2.2. Spain: A “Federation” or Not?

The words “federal” or “federation” are absent from the Spanish Constitution, yet despite this omission, several scholars place Spain under the federation heading due to its many federal features. Watts, for example, includes Spain as one of twenty-five contemporary functioning federations, classifying it as a “federation in practice” because of the fact that the constitution indicates competences exclusive to the regional governments.¹⁴² Along the same lines, some view the characteristics of the autonomous communities as consistent with the main features of federal systems, and therefore equate the Spanish model with that of a federal state.¹⁴³ Other scholars speak of “federalization” or of a “gradual building” of the Spanish federal state, a process that has occurred and is still occurring through the State of Autonomies.¹⁴⁴

¹⁴⁰ Luis Moreno, “Federalization and Ethnoterritorial Concurrence in Spain,” *Publius: The Journal of Federalism* 27, no.4 (Fall 1997) [journal on-line]; available from <http://publius.oxfordjournals.org>; Internet; accessed April 1, 2010, 67-68; Petithomme, “L’Etat espagnol et le financement autonome,” 5.

¹⁴¹ Agranoff, “Intergovernmental Relations,” 96.

¹⁴² Watts, *Comparing Federal Systems*, 9, 12-13, 41-42.

¹⁴³ Eliso Ajo in Robert Agranoff, “Federal Asymmetry and Intergovernmental Relations in Spain,” *Asymmetry Series* 2005 (17), 2.

¹⁴⁴ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 2; Moreno, “Federalization in Multinational Spain,” 2004, Unidad de Políticas Comparadas (CSIC) Working Paper, www.ipp.csic.es/doctrab2/dt-0704.pdf (accessed May 4, 2010), 2.

One final opinion is that the Spanish state lacks sufficient significant features of the classic federal model to be accurately labeled a federation. For example, Autonomous Communities do not have a role in reforming the constitution, do not possess judicial power, cannot create their own bill of rights and lack proper representation in general institutions, whether that be in the central government or in European institutions.¹⁴⁵

Despite neither being a federation in name, nor possessing all the characteristics associated with the classic definition of a federal state, the Spanish model does manifest many federal features and is progressively evolving in this direction. For these reasons, we are able to study Spain in the federal context.

2.2.3. Preconditions of Asymmetry

The construction of the Spanish State has developed erratically over time; Spain has gone through various periods of centralization and decentralization, and has been both a unitary and federal State more than once. The question we might ask is what preconditions of asymmetry contributed to the asymmetrically federal system of today's Spain, which was established with the Spanish Constitution of 1978. Firstly, there are political cultures and traditions that factor into the equation. In Spain there are competing views regarding equalization, but constitutionally speaking, there is a culture of citizen welfare. Article 2 of the constitution sets out the principle of solidarity between different territories and goes on to guarantee this principle in Article 138, where it proposes to “establish a fair and adequate economic balance between the different areas of the Spanish territory.” Articles 40 and 158 reinforce the idea of solidarity and of economic equalization.¹⁴⁶ This culture of citizen welfare and solidarity found in the constitution is also present in the Organic Law on the Financing of the Autonomous Communities (LOFCA); it is here that the obligations of equity and

¹⁴⁵ Fossas, “Asymmetry and Plurinationality in Spain,” 7-9; Petithomme, “L’Etat espagnol et le financement autonome,” 2-3; Ferran Requejo, “National pluralism and federalism. Four potential scenarios for Spanish plurinational democracy,” *Perspectives on European Politics and Society* 2, no.2 [journal on-line]; available from <http://dx.doi.org/10.1080/1570585018458764>; Internet; accessed May 4, 2010, 315.

¹⁴⁶ Moreno, “Asymmetry in Spain: Federalism in the Making?,” in *Accommodating Diversity*, 163-164; Spanish Constitution 1978, Preliminary Title, s.2; Part I, ch.3, s.40; Part VIII, ch.1, s.138; ch.3, s.158; Constitution is available from Senado de España, http://www.senado.es/constitu_i/index.html (accessed May 9, 2010).

solidarity between the Autonomous Communities are fleshed out.¹⁴⁷ While this “citizen vision” of society has been preponderant, a competing “community vision” that places priority on the interests of the community before that of the citizen also exists.¹⁴⁸ We will see in the following section how the interaction of these two political views influences the potential for varying degrees of asymmetry.

Social cleavages consisting of linguistic and ethnic-nationalist pluralism constitute the second precondition and have a significant presence in Spain. While Spain can be clearly recognized as a single historical unit, it is simultaneously home to an ethnically and culturally diverse population.¹⁴⁹ Both majority or state nationalism and minority nationalism have been present throughout Spanish history, and today there exists a strong Castilian majority alongside several minority nationalities, namely the historical nationalities of Catalonia, Galicia and the Basque Country, who have their own languages, cultures and histories.

The precondition of territoriality in Spain is closely linked to the social cleavages mentioned above. Spain is divided into seventeen Autonomous Communities, several of which are defined by a distinct language, culture and historical background. Autonomous Communities are diverse in population size, in their industrial/agricultural make-up and in the relationship they have with each other and the central government.

Also linked to both social cleavages and territoriality are socio-economic factors. One main factor in Spain is economic disparity between Autonomous Communities. The periphery regions of Catalonia and the Basque Country were the early industrial regions and strong economic powers, while other regions such as Andalusia, Extremadura, and the two Castilles were poorer agricultural areas. Paradoxically, it was these poorer regions that formed the political center, and there existed what Agranoff calls “an inverted center-periphery pyramid, in

¹⁴⁷ Siobhán Harty, “Espagne (Royaume d’Espagne),” in *Guide des pays fédérés: 2002*, 188; Petithomme, “L’Etat espagnol et le financement autonome,” 6.

¹⁴⁸ Petithomme, “L’Etat espagnol et le financement autonome,” 11.

¹⁴⁹ Moreno, “Asymmetry in Spain,” 150.

which political and economic powers were found in different poles.”¹⁵⁰ Such disparities have obviously impacted both the relationships between Autonomous Communities and each of their relationships with the central government.

The final precondition of asymmetry is demographic patterns. In Spain demographic patterns are largely linked to economy and immigration. Financial reforms have been made based on demographics, with regions receiving financial resources in proportion to the size and dynamism of the region. Where differences in demographics occur, this would lead to asymmetry in the funds received by each region. Such variations do exist in Spain, the coastal regions, for example, witnessing a dynamic population growth, while other more rural regions are seeing decreases in population.¹⁵¹ We will look at this issue more closely in our discussion on asymmetrical outcomes in Spain to see how demographic patterns both create inherent asymmetry and also call for further asymmetrical accommodation.

2.2.4. Asymmetrical Outcomes

2.2.4.1. Basic de facto Asymmetry

It is apparent that with the great extent to which preconditions of asymmetry are visible in Spain, asymmetrical outcomes are inevitable. To begin with, there is asymmetry in regards to the population, size, wealth, and economy of the Autonomous Communities (ACs). The seventeen ACs were not formed as a means of dividing Spain up into equal parts; the creation of each AC was initiated by provincial and municipal councils of the respective regions and not by the central government, so the characteristics of the ACs differ from one to the next.¹⁵² Out of a population of over 46 million, the largest ACs (Andalusia, Catalonia, Madrid and Valencia) represent 58% of the total population. In comparison, the smallest AC of La Rioja represents just 0.7% of the total population. The geographical size of the ACs also varies considerably, as some ACs are comprised of multiple provinces, while others such as Cantabria or La

¹⁵⁰ Agranoff, “Federal Asymmetry and Intergovernmental Relations in Spain,” 2-3.

¹⁵¹ Petithomme, “L’Etat espagnol et le financement autonome,” 17.

¹⁵² Agranoff, “Intergovernmental Relations,” 103.

Rioja are single provinces. Four ACs remain very rural, while four others are more urbanized and densely populated.¹⁵³

Linked to population density and urban versus rural populations are economic asymmetries. There is a wide variation of income and employment rates, with seven ACs far above the national average income and four quite a bit below. Large clusters of immigrants can be found in four regions and affect the employment rates of these areas.¹⁵⁴ Changes in population are also affected by the economy, so they too occur asymmetrically. The industrial regions of Madrid and Catalonia, as well as those areas where tourism is important, have seen the largest increases.¹⁵⁵ Finally, the regions of Catalonia and the Basque Country have traditionally been two of the most industrialized and economically powerful in Spain. While there is a considerable amount of de facto asymmetry in regards to economic wealth, the perception of this asymmetry also factors into the way actual power relations play out. For example, many Catalans perceive “rich” Catalonia as the victim of financial discrimination, because they feel that they receive far less from the central government compared to what they contribute. This perception has greatly influenced their support of political Catalanism and it has also influenced their view of the State, which they perceive to be inefficient in its redistribution of funds and promotion of economic growth.¹⁵⁶

Adding to the asymmetrical make-up of the Autonomous Communities are cultural and lingual asymmetries. Whereas many regions relate to a common Spanish identity, other regions, namely Catalonia and the Basque Country who have more of a historical identity, see themselves as “nations” within Spain and take actions to be recognized as such. One example of how this has brought about de facto asymmetry is in the area of foreign affairs. Foreign policy is a competence exclusive to the central government, yet both the Basques and Catalans have acted on their perceived “nation” status and have sought to represent themselves on the international stage at the national level. Specific examples include the Basque’s request for direct representation in the EU and the

¹⁵³ Agranoff, “Intergovernmental Relations,” 104.

¹⁵⁴ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 5.

¹⁵⁵ Agranoff, “Intergovernmental Relations,” 104.

¹⁵⁶ Moreno, “Federalization and Ethnoterritorial Concurrence in Spain,” 78.

boycotting of a wreath-laying ceremony in Israel by a Catalan leader because the Catalan flag was not flying.¹⁵⁷ These examples show how minority nationalism has led to asymmetrical behavior amongst the regions.

Another very important de facto asymmetry exists in regards to the role of political parties in Spain. In several instances, the winning party of State elections has failed to gain the majority of seats and has had to depend on the support of non-state nationalist parties in order to establish a stable system. This was the case both in 1993 and 1996.¹⁵⁸ Nationalist parties, particularly the CiU (a Catalan nationalist party), have used this position as political leverage; in return for support of the ruling party, they demand concessions regarding such issues as tax reforms and additional competences leading to further asymmetry between regions and increased autonomy for all the ACs.¹⁵⁹

2.2.4.2. Origins of de jure Asymmetry: Construction of “el estado de las autonomías”

The considerable amount of de facto asymmetry, especially the asymmetry resulting from Spain’s multinational character, has allowed for the development of de jure asymmetry.¹⁶⁰ The starting point of any discussion of de jure asymmetry in Spain must begin with the Constitution of 1978 and the construction of “el estado de las autonomías”, the State of Autonomies. The basis of asymmetry can first be located in Article 2 of the constitution, with the recognition of multiple nationalities and their right to self-government.¹⁶¹ This idea is followed up in Article 137, which acknowledges the possibility of “Self-governing Communities that may be constituted,” laying the groundwork for regional autonomy.¹⁶² The constitution then proceeds to demarcate the ways to accede to autonomy, of which there are three. The first accession method, referred to as the “rapid route,” is found in the second transitional provision; it applies to territories that have historically approved Statutes of Autonomy and

¹⁵⁷ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 5.

¹⁵⁸ Fossas, “Asymmetry and Plurinationality in Spain,” 4,7; Petithomme, “L’Etat espagnol et le financement autonome,” 10, 12, 15.

¹⁵⁹ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 5; Moreno, “Federalization and Ethnoterritorial Concurrence in Spain,” 79.

¹⁶⁰ Fossas, “Asymmetry and Plurinationality in Spain,” 5.

¹⁶¹ Spanish Constitution 1978, Preliminary Title, s.1.

¹⁶² Ibid., Part VIII, ch.1, s.137.

already possess provisional regimes of self-government, and it authorizes them to proceed directly to autonomy once having drafted a Statute of Autonomy that is passed via a regional referendum and approved by the Constitutional Committee of the Congress.¹⁶³ The Basque Country, Catalonia and Galicia, considered to be nationalities with a historic past, became Autonomous Communities in this manner. This recognition of ethnic identity emphasizes the specific history, culture, language, origins and traditions of these three historic nationalities, and it has been deemed the “differential fact.”¹⁶⁴

Article 143 describes a second method known as the “slow route”, through which “bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may accede to self-government.”¹⁶⁵ This method entails several steps to ensure that the population of the region concerned is in accordance with this action. Even once a territory becomes an Autonomous Community, it must wait five years before being able to enlarge its competences within the structure outlined in Article 149.¹⁶⁶ This creates, at least initially, a large amount of asymmetry between these communities and the three rapid route Communities.

The final method, referred to as the “exceptional route,” can be found in Article 151, according to which regions without any recognized historical past can accede to full autonomy without the waiting period by following a process of several initiatives and a popular referendum. It is a very complex route, but Andalusia, managed to acquire autonomy via this process, therefore gaining the same status as the three historical ACs.¹⁶⁷

The establishment of Autonomous Communities has the potential to create further asymmetry. Article 143 indicates that “the right to initiate the process towards self-government lies with all the Provincial Councils

¹⁶³ Harty, “Espagne,” 185-6; Michael T. Newton and Peter J. Donaghy, *Institutions of Modern Spain: A Political and Economic Guide* (Cambridge: Cambridge University Press, 1997), 120.

¹⁶⁴ Moreno, “Asymmetry in Spain,” 159.

¹⁶⁵ Spanish Constitution 1978, Part VIII, ch.3, s.143(1).

¹⁶⁶ Spanish Constitution 1978, Part VIII, ch.3, ss.148, 149; Harty, “Espagne,” 186; Newton and Donaghy, *Institutions of Modern Spain*, 120.

¹⁶⁷ Harty, “Espagne,” 186; Newton and Donaghy, *Institutions of Modern Spain*, 120-21; Spanish Constitution 1978, Part VIII, ch.3, s.151.

concerned”, and Articles 146 and 147 demonstrate that it is the Community that drafts its own statute of autonomy.¹⁶⁸ While a statute must be in accordance with the Constitution, there is room for asymmetry to develop between each AC. Fossas refers to this process of provincial (rather than central) initiated construction of autonomy as the “principio dispositivo”, noting that it creates a high potential of heterogeneity.¹⁶⁹ Swenden also speaks of the fact that the constitution allows Communities to evolve differently with varying legislative competences. In his opinion, “the constitution at best provides a framework within which the regions can organize their competencies....By keeping the allocation of powers and responsibilities open to negotiation, the Spanish process of devolution contained a high degree of inbuilt flexibility...and constitutional asymmetry was almost made inevitable.”¹⁷⁰ In short, the constitution has created asymmetry both by recognizing different methods of acquiring autonomy and also by leaving it up to each Community to initiate the negotiation of competences it desires to attain.

2.2.4.3. *De jure Asymmetry Between Autonomous Communities*

As we can imagine, at the beginning of the autonomy building process, the level of power varied greatly from one AC to the next. Over time more powers were devolved to more and more of the Communities, but in certain instances, ACs did not receive some powers until over twenty years after the four rapid route ACs.¹⁷¹ Still, there are certain powers that have remained exclusive to the historical Communities, and even amongst them, there are certain competences that are not shared by all. Therefore, while the level of *de jure* asymmetry has declined to some extent, several asymmetries still exist.

Firstly, the historical ACs are the only ones to have regional police. Moreover, they have greater competences regarding their institutional organization and administration. While the other ACs must hold their legislative elections on the same day and conform to certain standards regarding cabinet

¹⁶⁸ Spanish Constitution 1978, Part VIII, ch.3, s.143(2).

¹⁶⁹ Fossas, “Asymmetry and Plurinationality in Spain,” 6, 8.

¹⁷⁰ Swenden, *Federalism and Regionalism*, 56.

¹⁷¹ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 4.

size, the historical Communities have more freedom in these areas.¹⁷² These four regions along with Valencia, the Canary Islands, and Navarre, initially had more autonomy in health, and the competences regarding education and social services were also quite uneven up until 2002, when the last of the ACs acquired autonomy in these areas.¹⁷³

Another asymmetry can be found in the distinctive status of certain minority languages. Article 3 of the Constitution declares Castilian as the official Spanish language, but it also recognizes that other Spanish languages exist and shall receive co-official status in their respective Communities.¹⁷⁴ Through the constitutionally recognized statutes of autonomy, six languages have official status: Castilian, Catalan, Euskara (Basque language), Galician, Valencian and Majorcan.¹⁷⁵ The way these languages are protected within their Communities is also asymmetrical. For example, the linguistic policy concerning education in Catalonia is one of linguistic “normalization”; a model of “integral bilingualism” is practiced, where students are not separated by language, but instead are taught together with Catalan being placed at the “center of gravity.”¹⁷⁶

Further asymmetries are created by competences held by only one or two ACs. The Autonomous Community of the Canary Islands, for example, keeps all harbor and petroleum taxes and as they are not located within the European Union customs territory, they are exempt from the EU Value Added Tax (VAT).¹⁷⁷ Both Catalonia and Galicia have different legal codes than those of the other ACs and in comparison with other ACs, Catalonia has kept much greater control over its financial institutions. These powers include collecting a fee for oversight and legislative controls regarding banking operations.¹⁷⁸

One final de jure asymmetry that has created a considerable amount of controversy involves a significant competence held by just two ACs, Navarre and

¹⁷² Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 4; Swenden, *Federalism and Regionalism*, 65.

¹⁷³ Ibid.

¹⁷⁴ Spanish Constitution 1978, Preliminary Title, S.3(1)(2).

¹⁷⁵ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 4.

¹⁷⁶ Fossas, “Asymmetry and Plurinationality in Spain,” 4.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid., 4; Agranoff, “Intergovernmental Relations,” 102; Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 4.

the Basque Country. These two ACs are recognized in the first additional provision of the Constitution as communities with “fueros” or historical rights. This translates into historically based financial concessions for these regions; they collect their own income tax as well as other taxes apart from Social Security taxes. Each community then pays the central government for the services it receives from the State.¹⁷⁹ However, these two communities benefit from national projects improving infrastructure without contributing to the financing of them. They continue to contribute less and less to the central government budget, but still enjoy the same services, putting them in a privileged position in comparison with the other ACs. The remaining communities follow a common tax regime, which originally consisted of tax collection mainly in the hands of the central State with redistribution amongst the ACs.¹⁸⁰ Catalonia has made continual demands to be given the same competence as these two communities, and changes have recently been made to the entire system. Needless to say, this is notably the most significant source of de jure asymmetry found amongst the Autonomous Communities.

2.2.5. The Move Toward Symmetry: Transitory Asymmetry

The initial framework of the Autonomous Communities allowed for a large amount of asymmetry to be established; the authors of the Constitution recognized the need to accommodate the varying demands of the regions and created a flexible system that allowed each AC to address its particular concerns through its own statute of autonomy. This framework, however, was structured in a way as to diminish asymmetry over time; the ACs, while acquiring autonomy at different speeds, would eventually end up more or less at the same place.¹⁸¹ Requejo describes this process as “transitory asymmetry,” in which “the final division of powers was of a potentially symmetrical design provided that the AC

¹⁷⁹ Ibid.; Petithomme, “L’Etat espagnol et le financement autonome,” 7; Ferran Requejo, “Revealing the dark side of traditional democracies in plurinational societies: the case of Catalonia and the Spanish ‘Estado de las Autonomías’,” *Nations and Nationalism* 16, no.1 (2010) [journal on-line]; available from <http://www3.interscience.wiley.com.proxy2.lib.umanitoba.ca/journal/123225903/abstract?CRETRY=1&SRETRY=0>; Internet; accessed May 4, 2010, 155; Spanish Constitution 1978, Additional Provisions, 1.

¹⁸⁰ Petithomme, “L’Etat espagnol et le financement autonome,” 7.

¹⁸¹ Watts, “Theoretical and Practical Implications,” 37.

which achieved political autonomy by the slower route expressed a wish...to have a greater degree of self-government.”¹⁸²

In order to aid in this process, the central government soon began attempting to universalize devolved powers so that each AC would have access to the same competences, or as it is said in Spain, there would be “café para todos,” coffee for everyone.¹⁸³ This can be seen as a shift from a “differentiating” understanding of the State of Autonomies to a “homogeneous interpretation,” initiated through two autonomous agreements carried out by the State with the aim of diminishing the extent of the “principio dispositivo.”¹⁸⁴ The first autonomous agreement signed in 1981 included the ratification of the “Ley Orgánica de Armonización del Proceso Autonómico (LOAPA - Law for the harmonization of the autonomous process), which tried to decrease a certain number of previously negotiated and ratified AC powers, as well as to insist on the approval of the central government for all laws made in AC parliaments. The law was enacted despite strong Basque and Catalan opposition; however, these communities were able to delay its coming into force by demanding that it undergo a test before the Constitutional Court. In 1983, the Court found fourteen of the law’s clauses to be unconstitutional; regardless of this ruling, the parts of the law that remained in force did serve to accelerate autonomy for all regions and bring more uniformity to the AC building process.”¹⁸⁵

The second autonomous agreement, known as the “Pacto Autonómico” was signed in 1992 and it conferred upon all ACs the same level of autonomy already possessed by the seven communities with the greatest autonomy. This was carried out via transfer laws and reforms of statutes of autonomy, through which major competences such as health, education and certain social services were transferred to all ACs.¹⁸⁶ In theory, each AC was responsible to negotiate its own competences through its statute of autonomy; the autonomous agreements, however, sought uniformity by accelerating the transfer of competences to the

¹⁸² Requejo, “Revealing the dark side of traditional democracies,” 155.

¹⁸³ Agranoff, “Intergovernmental Relations,” 108.

¹⁸⁴ Fossas, “Asymmetry and Plurinationality in Spain,” 8.

¹⁸⁵ Agranoff, “Intergovernmental Relations,” 108; Requejo, “Revealing the dark side of traditional democracies,” 156.

¹⁸⁶ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 6; Requejo, “Revealing the dark side of traditional democracies,” 157.

slow route ACs while decelerating the granting of powers to Catalonia and the Basque Country.¹⁸⁷ In this way, constitutional asymmetry was largely diminished.

The central government has also used other mechanisms in its quest for symmetry. For one, the Constitutional Tribunal has been involved in regulating certain AC legislations that pertain to matters of fundamental rights or of national interest.¹⁸⁸ In addition, the central government has encouraged multilateral relations through the use of intergovernmental bodies such as “transfer commissions”, “convenios de colaboración” and “sectoral conferences.” These bodies were installed in the hopes of making the transfer of competences process more fluid, and bringing AC ministers together to cooperate on issues common to each AC.¹⁸⁹ These laws and mechanisms have all served in one way or another to reduce the initial level of formal constitutional asymmetry. For those communities that received more autonomy out of the deal and were able to acquire an equal footing with the historical communities, the process can be seen as a positive one. The changes were evidently less appealing for national minorities who saw the constitutional recognition of their specific identities being ambushed by the harmonizing laws.

2.2.6. Historical Communities in Pursuit of Asymmetry

2.2.6.1. Historical Communities and the Demand for Recognition

The historical ACs, unhappy with the move toward symmetry, have continued to pursue asymmetrical arrangements. The general argument of the historical Communities concerns Spain’s multinationality and the need for it to be constitutionally recognized in a less ambiguous sense than Article 2 of the Spanish Constitution. Prior to the twentieth anniversary of the Spanish Constitution, the nationalist parties of Catalonia, the Basque Country and Galicia put forth a proposal to ask for a new interpretation of the Constitution that would truly recognize the plurinational character of Spain and place these national minorities at the same level as the Spanish nation. They also requested to be

¹⁸⁷ Agranoff, “Intergovernmental Relations,” 108-9.

¹⁸⁸ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 6.

¹⁸⁹ Ibid.

given exclusive competences in tax collection, language and culture, judicial questions, local administration, natural resources and international representation. The Spanish government refused the proposal and the remaining ACs also responded with their own declaration in which they agreed to oppose any signed pact by the nationalist parties.¹⁹⁰

With a growing number of competences being transferred to all ACs and the promotion of a Spanish nationalist discourse by the central government, tension between the center and the historical ACs continued to grow. During the 1990s, the need for nationalist party support had acted as an “escape valve,” allowing for regional demands for asymmetry to be met in at least a minimal way. However, in 2000, with Prime Minister Aznar’s majority government, decentralization was deemed ended and dialogue with the nationalist parties and other opposition parties stopped. In consequence, both nationalist parties in the Basque Country and Catalonia increased their demands for autonomy and asymmetry.¹⁹¹ The way in which they reacted, however, varied.

2.2.6.2. *Basque Demands for Independence*

The Basque Country was without a doubt the most extreme in its actions. Above and beyond simple asymmetry and constitutional recognition, the Basque parliament proposed the Ibarretxe plan in 2004, in which the Basque government would start a process to become “a free state associated with Spain;” at least, it wanted Madrid to re-negotiate its statute of autonomy. The proposal was passed by the Basque parliament, but was rejected by the Spanish Congress, deemed as unconstitutional and secessionist.¹⁹² Even within the Basque Country, asymmetry is sought to different degrees. On one end are the extremists such as the ETA (nationalist and separatist terrorist group) and its political offshoot Batasuna who want total independence, plus the joining of all Basque regions including Navarre and the Basque provinces of France. Other Basques such as

¹⁹⁰ Harty, “Espagne,” 190-2.

¹⁹¹ César Colino, “Constitutional Change Without Constitutional Reform: Spanish Federalism and the Revision of Catalonia’s Statute of Autonomy,” *Publius: The Journal of Federalism* 39, no.2 (2009) [journal on-line]; available from <http://publius.oxfordjournals.org>; Internet; accessed April 1, 2010, 266.

¹⁹² Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 1; Requejo, “Revealing the dark side of traditional democracies,” 158.

members of the Basque Nationalist Party (PNV) seek independence or some sort of voluntary association with Spain. The majority of Basques, however, simply want more autonomy or even the current level of autonomy they possess, as they feel both Basque and Spanish.¹⁹³

2.2.6.3. *Catalan Demands for Statute Reform*

Catalonia has also expressed a demand for more asymmetry, perhaps not in such an extreme manner as the Basques, but with just as much insistence. For Catalan nationalists, what is most wanted is recognition as a “nation” and a statute of autonomy that accords the community more independence.¹⁹⁴ In the recent years the Catalonia parliament has been persistent in seeking statute reform. Their current statute of autonomy was reformed in 2006, after a long process of negotiations and proposal amendments in order to receive the approval of the central government.¹⁹⁵ The Catalan government felt that reform was needed due to a number of reasons: the lack of recognition of Catalonia’s specificity, the inadequacy of the community’s capacity to fully control its policies, the unrestricted interference of central government in the community’s executive functions, the need for total self-organizing competency, the necessity for a more important AC role in national institutions and policies and in EU decision-making, and the need for stable and secured funding.¹⁹⁶ The result of the reforms was a compromise between the Catalan and central governments, but several of Catalonia’s demands were accommodated. Among the reforms made were the coexistence of two tax authorities accompanied by an increase of the VAT transfer from 33% to 50%. In regards to the question of Catalonia’s identity as a nation, its definition as such was added symbolically to the statute’s preamble.¹⁹⁷ Although Catalonia’s requests were not fully met, they did succeed in increasing asymmetry regarding multinationality, if only symbolically, as well as in increasing their fiscal autonomy. Their example has also influenced other ACs to pursue the same course of action. What is more, these statute reforms

¹⁹³ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 7.

¹⁹⁴ *Ibid.*, 7.

¹⁹⁵ Colino, “Constitutional Change Without Constitutional Reform,” 268-72.

¹⁹⁶ *Ibid.*, 267.

¹⁹⁷ *Ibid.*, 272-73, 283; See also Catalonia’s Statute of Autonomy, available from <http://www.gencat.cat/generalitat/eng/estatut/index.htm> (accessed May 11, 2010).

have indirectly reformed the Spanish Constitution, and in doing so, asymmetry has been brought back into the Constitution.¹⁹⁸

2.2.6.4. *Catalan Demands for Financial Autonomy*

One of Catalonia's ongoing quests has been to acquire the same taxing powers as the Basque Country and Navarre. A series of financial reforms have taken place over the years pushed forward by Catalan nationalists. The most recent reform occurred in 2009, raising the amount that communities would directly collect from both the IRPF (income tax) and VAT to 50%, as well as 58% of special taxes. 75% of state resources are to be distributed between the ACs with the aim of enabling all ACs to obtain the same level of financing per citizen, benefiting most of those ACs with the highest populations (Catalonia and Andalusia). Another element of the reform allows an AC that is financially self-sufficient to stop redistributing the remaining money to the central government. Wealthier ACs that generate the most taxes profit most from this condition, Catalonia being one of them.¹⁹⁹ Over the years, Catalan nationalists have slowly gained more financial autonomy due to their persistence.

2.2.7. **Asymmetry Via Bilateralism**

The discussion about pressures for asymmetry is not complete without speaking about bilateralism, a trend that is popular amongst ACs, particularly, as we can surmise, the Basque and Catalan ones.²⁰⁰ Asymmetry is created as single ACs negotiate with the central government to receive special treatment. A large part of this phenomenon is linked to the principle of participation of constitutional units in central decision-making. In a classic federal state, the constituent units are represented in a second legislative chamber; this is not the case in Spain, where the Spanish Senate has very little AC representation. Since there is no proper place within parliament for the communities to represent their interests, they are in a way forced to deal one-on-one with the central

¹⁹⁸ Colino, "Constitutional Change Without Constitutional Reform," 263, 274.

¹⁹⁹ Petithomme, "L'Etat espagnol et le financement autonome," 16; See whole article for details regarding financial reforms from 1993-2009.

²⁰⁰ Agranoff, "Intergovernmental Relations," 105; Swenden, *Federalism and Regionalism*, 231.

government.²⁰¹ The fact that national minorities such as the Catalans prefer to work bilaterally with the national government can be connected to the perception they have of themselves as a distinct nation. One scholar explains that “the Catalan specificity...[and] the constitutional recognition of a differentiation between “nationalities” and simple “regions” constitute enough elements to justify the legitimacy of special treatment for Catalonia.”²⁰² Under the bilateral pressure of these nationalist identities, asymmetrical federalism continues to be reinforced.

2.2.8. Asymmetrical Federalism in Spain: Stabilizing or Destabilizing?

Asymmetry has had both positive and negative effects on Spain, depending on what kind of asymmetry is being talked about. On one hand there is the inherent or internal asymmetry, arising from the multinational make-up of Spain, that has been a source of political tension and even violence.²⁰³ On the other hand, this internal asymmetry has led to de jure asymmetry, its purpose being to recognize the inherent differences that exist. More than one scholar would agree that the accommodation of Spain’s multinational character is important and that some degree of asymmetrical federalism is essential in achieving this.²⁰⁴ Agranoff highlights the great amount of emotion involved in the question of national identity, and that for successful governance, it may be necessary to recognize asymmetries. He observes that “asymmetric federalism of its own design and evolution [in Spain] appears to have contributed to governance and order.”²⁰⁵ Following this logic, asymmetrical federalism is a means of addressing the asymmetry that already exists, and in doing so, serves to stabilize and unify the State.

²⁰¹ Moreno, “Federalization in multinational Spain,” 12; Petithomme, “L’Etat espagnole et le financement autonome,” 2-3.

²⁰² Petithomme, “L’Etat espagnole et le financement autonome,” 14.

Original citation in French: « La spécificité catalane, le « fait différencié », la reconnaissance constitutionnelle d’une différenciation entre « nationalités » et simples « régions » sont autant d’éléments mis en avant afin de justifier la légitimité d’un traitement spécial pour la Catalogne. »

²⁰³ Moreno, “Asymmetry in Spain: Federalism in the Making?,” 151.

²⁰⁴ Agranoff, “Federal Asymmetry and Intergovernmental Relations,” 8; “Intergovernmental Relations,” 113-4; Fossas, “Asymmetry and Plurinationality in Spain,” 9, 13.

²⁰⁵ Agranoff, “Intergovernmental Relations,” 114.

At the same time, some of the same scholars have identified problems regarding asymmetrical federalism, mainly the conflicts that occur between the regions that want more of it and the central government and other regions that want less. It is not so much asymmetry that is creating instability, but rather the ambiguous constitutional texts and statutes regarding the granting of autonomy that “have made the distribution of power between central and regional governments an area of permanent political negotiation.”²⁰⁶ The Constitution was written in a way that includes asymmetry in order to accommodate multinationalism, yet allows for a flexible interpretation of what this means, particularly in relation to how and if ACs should reflect this asymmetry. This has led to a perpetual negotiation process and in this way asymmetry has indirectly brought about instability.

Another problem, identified by Petithomme, is that asymmetrical federalism in Spain tends to overemphasize regional autonomy at the expense of national solidarity. He speaks in the context of financial reforms, the most recent of which has put into question the solidarity principle by allowing self-sufficient communities to cease their redistribution payments to the central government.²⁰⁷ These reforms have come to pass largely due to Catalonia’s demands for both greater asymmetry and an overall increase in autonomy. The danger is that the ACs desiring more asymmetry and more competences due to their distinct status may act strictly out of self-interest instead of national-interest.²⁰⁸ From this point of view, asymmetrical federalism is destabilizing, as it generates a spirit of individualism that may lead to a loss of political will to remain a unified polity.

What makes it especially hard to evaluate asymmetrical federalism in Spain is that the federalization process is just that, a process; the building of the State of Autonomies continues to evolve. As we have seen, an initial asymmetrical model transformed itself into something much more symmetrical, and then changed yet again into a rather asymmetrical system;²⁰⁹ it remains to be seen what will happen in the future. The one remark that can be made in looking

²⁰⁶ Agranoff, “Intergovernmental Relations,” 113.

²⁰⁷ Petithomme, “L’Etat espagnole et le financement autonome,” 16, 19.

²⁰⁸ *Ibid.*, 20.

²⁰⁹ Colino, “Constitutional Change Without Constitutional Reform,” 264.

at how asymmetrical federalism has been used up until now, is that some sort of balance is needed for it to bring stability. Given the importance placed by nationalist minorities on having their national identity recognized, great tension would be inevitable and violence would likely ensue if no asymmetrical mechanisms were in place to accommodate Spain's multinationality. However, if the overabundant use of asymmetrical federalism means that an Autonomous Community loses all sense of solidarity as a member of a larger whole, then it is only a matter of time before secession becomes a potential issue. There is clearly a stabilizing role for asymmetrical federalism to play in Spain, but it depends very much on how the various players choose to use it.

3. SYNTHESIS

3.1. Comparisons of Asymmetries

Canada and Spain present interesting examples of asymmetrical federalism, both inherent in their societies *de facto* and employed as a mechanism *de jure*. Without restating all that has been outlined above, we will now proceed to make a comparison between the asymmetrical federalism of these two federal (or federal-like) states in order to be able to draw some final conclusions regarding asymmetry's role as a stabilizer or de-stabilizer.

3.1.1. Basic *de facto* Asymmetry

As we have already noted, both Canada and Spain exhibit numerous *de facto* asymmetries, and in this respect, the two countries have a lot in common. They are both asymmetrically divided, with certain regions substantially larger or wealthier, and therefore more financially independent than others. Asymmetry regarding regional or nationalist political parties is also evident in both cases, although this phenomenon has been more pronounced in Spain. One of the most important asymmetries shared by both Canada and Spain is found in their cultural and lingual composition. Both have regions that are home to a national minority; Spain has several such regions, while Canada has only one, although the areas inhabited by Aboriginal populations could also be considered as such. This

particular asymmetry related to multinationalism is of particular significance, as it constitutes one of the main reasons for de jure asymmetry in both countries.

3.1.2. De jure Asymmetry

In spite of the many obvious differences between Canada and Spain, the multinational character that they share means that they face many of the same questions in regards to accommodating their national minorities. One possible way of approaching the de facto asymmetry that arises from the multinational make-up of both these countries is to formalize it through constitutional or de jure asymmetry.²¹⁰ As we have seen, both Canada and Spain have chosen to do this, but in different ways and to different extents. The Canadian Constitution accommodates Québec and the francophone population via articles that protect the French language and Québec's civil law system; French is also one of two official languages. The Spanish Constitution only recognizes Castilian as the Spanish official language, but it too protects minority languages by provisions that allow these languages to have co-official status with Castilian in the communities where they are spoken. In addition, legal codes of some of the historical ACs have also been recognized.

Each of these constitutions has its specificities as well. For example, the Canadian Constitution has nothing comparable to the recognition of "fueros", yet its potentially asymmetric amending procedure and notwithstanding clause are unique features not shared by the Spanish Constitution. One of the main differences between these two constitutions is the amount of asymmetry that they recognize symbolically. Simeon and Turgeon observe that "Canada's federal system has provided Québec with some of the most extensive fiscal and legislative powers of any non-independent small nations. Yet, in contrast to Spain...Canada has been incapable of recognizing its own multinational character in the words and symbols of the constitution."²¹¹ The Spanish Constitution along with AC statutes of autonomy do a better job of symbolically accommodating Spain's multinationalism than the Canadian Constitution does for Québec, whose

²¹⁰ Fossas, *Asymmetry and Plurinationality in Spain*, 5.

²¹¹ Richard Simeon and Luc Turgeon, "Federalism, Nationalism and Regionalism in Canada," CIFE Documentation Centre (accessed November 30, 2009), 27.

distinct society finds its sole explicit mention in the non-constitutional text of the Calgary Declaration.

This difference carries over to the debates surrounding asymmetry in these countries. Fossas refers to the debate in Canada as a debate “de constitutione ferenda,” one that has centered on constitutional reform; the debate has been about “mega-constitutional politics,” about issues that address the very being of the community on which the constitution is founded, like those of national identity.²¹² The debate in Spain has not been about reform, but is “de constitutione data” due to the “flexibility of the text [that] permits its asymmetric development.”²¹³ In contrast with the Canadian Constitution, the Spanish one officially recognizes different national identities, but its ambiguity has fueled a debate on what asymmetry should look like in practice.

3.1.3. De facto Asymmetry in Response to National Minority Demands

While constitutional asymmetry has created various tensions and has led to pressures for symmetry, national minorities in both Canada and Spain have found other ways to satisfy their demands, usually resulting in further de facto asymmetry. In Canada, Québec has been able to opt out of several federal programs, yet receive federal funding in order to run comparable programs at the provincial level. This type of arrangement does not create asymmetry between what programs are being run in each province or between what benefits citizens from different provinces receive, but rather at what level of government things are being controlled. What Québec does at the provincial level is being done by the central government in the other provinces, so the allocation of certain competences is asymmetrical.²¹⁴

In Spain, it is not an opting out mechanism that creates asymmetry, but rather the initiative of Autonomous Communities to enlarge their competences through statute reform. Asymmetry of autonomy is created as ACs seek different competences in varying measures according to their needs and interests. In both the case of Canada and of Spain, the resulting asymmetries are enabled by their

²¹² Fossas, “Asymmetry and Plurinationality in Spain,” 5.

²¹³ Ibid.

²¹⁴ Webber, *Reimagining Canada*, 230-33.

respective constitutions, but they are de facto asymmetries, as the concerned constitutional laws offer the same potential powers to all regions and are thus inherently symmetrical.

3.1.4. Asymmetrical Cooperation: Intergovernmental Relations and Bilateralism

A further comparison can be made between the asymmetrical cooperation of constituent units in these two countries. While efforts have been made to build intergovernmental bodies in both Canada and Spain, there has been a tendency for the national minority units to pursue bilateral negotiations with the central government rather than embracing multilateralism. In Canada this has been called 9-1-1 federalism and in Spain, it is the historical Communities, namely Catalonia, that have chosen to deal directly with Madrid. In both Canada and Spain, this trend can be linked to many of the same underlying causes: a lack of a highly institutionalized intergovernmental relations system, diversity of the regions equaling a difference of interests thus rendering collective decisions-making difficult, and the lack of provincial or community representation at the federal level.²¹⁵

3.2. Arguments Against Asymmetry

Canada and Spain differ in several ways, but the multinational character they share has resulted in many of the same results. They have both chosen federal-like structures to accommodate diversity, and for that same reason both contain many elements of asymmetrical federalism. Just as they resemble each other in their reasons for choosing to incorporate asymmetrical federalism, the arguments against asymmetry are also similar. One of the main arguments has revolved around the notion of equality, and a great reluctance to give any special or asymmetrical status to the Québécois or to the Basques and Catalans, for fear of creating “two classes of citizens.”²¹⁶ Other arguments include the “slippery slope” logic, that continuing to grant asymmetry and further decentralization will only encourage secession, or the argument against bilateralism, that it will

²¹⁵ Simeon and Turgeon, “Federalism, Nationalism and Regionalism,” 28-29; They refer specifically to the Canadian federal system, but the same can be said about Spain.

²¹⁶ Kymlicka, “Federalism, Nationalism, and Multiculturalism,” 279.

destroy solidarity between constituent units and lead to fragmentation of the polity.

3.3. Response to Arguments and Resulting Conclusions

These arguments all imply that asymmetrical federalism is destabilizing for a federation, but what is the reality? What do the cases of Canada and Spain tell us about asymmetry? Firstly, it is clear that asymmetry, especially *de jure* asymmetry, has been the source of tension in both countries. Watts explains that “in some cases *de jure* asymmetrical arrangements or pressures for such arrangements have themselves provoked counter-pressures for symmetry, and therefore become a source for greater rather than reduced inter-regional conflict within the federal system.”²¹⁷ Is this true for Canada or Spain? I would attempt to argue that it is not. If we look at the instances when most inter-regional conflict has occurred (Québec referendum in 1995 or ETA acts of terrorism), these are periods where the central government was either ignoring demands for asymmetry or implementing symmetry into the system. Therefore, these conflicts were not directly caused by asymmetrical federalism, but rather the refusal to accept it.

Secondly comes the question of equality. Has asymmetrical federalism through its recognition of national minorities created inequality between the citizens of Canada and Spain? Again, I would venture to say that it has not, at least in the majority of cases, the tax regime of the Basque Country and Navarre being a possible exception. Just because a region has more legislative power does not mean that its citizens enjoy more rights; it is simply a different level of government providing the same level of services.²¹⁸ In agreement with Webber, I would even go so far as to say that identical treatment of regions does not necessarily mean equality. No system of law is culturally neutral; it is based on certain cultural norms. If this law is imposed on everyone in the same way, even on nationality-based constituent units with a different cultural identity, these minorities are being unfairly treated. What an asymmetrical arrangement does is to allow nationality-based units to apply the same laws and programs at a

²¹⁷ Watts, “Asymmetrical Decentralization,” 36.

²¹⁸ Webber, *Reimagining Canada*, 232-234.

regional level, which allows citizens to receive the same services as they would anywhere else in the federation, but at the same time protects the cultural specificity of the national minority.²¹⁹ Kymlicka states the argument in this way: “[E]quality for individual citizens does not require equal powers for federal units....[S]pecial status for nationality-based units can be seen as promoting this underlying moral equality, since it ensures that the national identity of minorities receives the same concern and respect as the majority nation.”²²⁰ As citizens of Canada and Spain, the needs of Québécois, Basques, Catalans and others are being met equally, yet in a way that corresponds to their specific cultural identity. In this way, asymmetrical federalism is not incompatible with the notion of equality, but can actually help to accommodate diversity and bring stability to an otherwise unequal and unstable situation.

The third argument is that of asymmetrical federalism being a “slippery slope” toward secession. History says otherwise. Canada has been a federal state since 1867 and it is still one unified whole. Québec has seriously posed the secession question, but it acted in response to the failed attempts made to constitutionally recognize its distinct status, and not because of increased asymmetry. Similar arguments can be made for Spain. Until now, the use of asymmetrical federalism has not initiated any secession attempts.

Finally, we must address the argument made against asymmetrical federalism in terms of bilateralism, where internal asymmetries and asymmetrical representation of the regions leads to bilateral agreements between regions and the central government, resulting in further asymmetrical arrangements. As we have seen, the apprehension in Canada is that bilateral agreements made by one province will encourage other provinces to do the same causing coherence to be lost. In Spain, concern has been expressed for a loss of solidarity between ACs. In both cases, the overarching fear is that self-interest will supersede interest for the well being of the federation, leading to a breakdown of the system. Is this a legitimate concern? To some extent it seems reasonable for regions to deal directly with the center if their interests or needs vary greatly from the majority

²¹⁹ Webber, *Reimagining Canada*, 233-37.

²²⁰ Kymlicka, “Federalism, Nationalism, and Multiculturalism,” 279.

of other regions. The fact that a region chooses to act this way does not mean that it has no concern for the larger whole of which it is a part. As Webber argues, it is possible to have both local and national allegiances.²²¹ In receiving what it wants from the central government, it is even likely that a constituent unit will be all the more willing to stay a part of the federation, as there are many additional reasons, economic for example, for doing so.

Nevertheless, there are limits to asymmetry in terms of bilateralism, and I would argue that they lie within the boundaries set by federalism itself. Asymmetrical federalism can only bring stability in so far as it upholds the federal vision. Even Pelletier, the great enthusiast of asymmetry, states: “We cannot, without calling into question the federal model, cast aside basic federative responsibilities like solidarity, sharing of risks and economic and social opportunities or, more generally, participation in a common project.”²²² This brings us back to the notion of federalism. Through the study of both Canada and Spain, we have seen how the federal model is particularly appealing to multinational states, as it is a way to unite a diverse population through granting autonomy, while still prospering as a whole. This vision of federalism upholds the notion of asymmetrical federalism; in fact, it almost presupposes some kind of asymmetry. In the case of Canada, Webber expresses this view of federalism:

Federalism necessarily assumes that there are good reasons for laws to differ from one province to another. Indeed, provincial governments exist in order to permit that kind of variation. Federalism, therefore, recognizes, at least implicitly, that equality can be reconciled with the existence of different laws applicable to different people.²²³

Asymmetrical federalism can be used therefore, to reinforce the underlying purpose of the federal model in a multinational polity. To the extent that asymmetry upholds this model, it is a stabilizing mechanism. However, once it trespasses this model and creates such great differences between constituent units that they lose any sense of concern for one another, it becomes a detriment to the polity.

²²¹ Webber, *Reimagining Canada*, 254.

²²² Pelletier, “Asymmetrical Federalism: A Win-Win Formula!”, 5.

²²³ Webber, *Reimagining Canada*, 235.

CONCLUSION

This study began by asking the question: Is asymmetrical federalism a stabilizing or destabilizing mechanism within the multinational federal state? In order to answer that question, we started with a theoretical introduction of both the federal state and asymmetrical federalism. Through examining the variety of asymmetries that exist and their potential effects on a federation, it becomes clear that contrasting opinions exist. While some argue that asymmetrical federalism is a mechanism for accommodating difference and bringing stability, especially where deep diversity exists, others see it as the seeds of secession.²²⁴

In order to see which of these visions proves to be most true in reality, we have proceeded to conduct case studies focused on the role of asymmetrical federalism in two multinational federal (or federal-like) states: Canada and Spain. Through the application of the theoretical concepts set out in the preliminary section, we are able to identify a considerable amount of both *de facto* and *de jure* asymmetries in both cases.

In Canada, *de jure* asymmetry has been present from its constitutional beginnings in order to protect the language and culture of the Francophone minority, which constitutes a majority in Québec. The case of Canada presents many examples of asymmetrical federalism, but the main debate over the past decades has revolved around the symbolic recognition of Québec's "distinct society." While attempts at constitutional reform to achieve this recognition have failed, Québec has pursued other means of asymmetry to demonstrate their uniqueness.

In the case of Spain, *de jure* asymmetry has developed with the construction of the State of Autonomies and the varying methods of establishing an Autonomous Community. The Spanish Constitution also recognizes the multiple "nationalities" of Spain as well as the "fueros" or historical rights of Navarre and the Basque Country. The original asymmetry created by the

²²⁴ See Burgess and Gress, "Symmetry and Asymmetry Revisited," 54; Kymlicka, "Federalism, Nationalism and Multiculturalism," 286; Papillon, "Is the Secret to Have a Good Dentist?," 131.

Constitution has become more symmetrical over time with laws like LOAPA, but demands for increased asymmetry and autonomy on behalf of the historical ACs have led to further asymmetrical reforms, particularly via reforming several ACs' statutes of autonomy.

Both Canada and Spain have been witness to a great deal of tension between symmetry and asymmetry, and competing visions of equality have been at the source of many debates. In recent years, national minorities in both countries have had the tendency to pursue bilateral agreements with the central government in order to seek the asymmetry and recognition they desire. Nevertheless, both polities are relatively stable in consideration of the diversity they contain. Things continue to evolve, particularly in Spain where the federalization process is still underway, but our study has led us to the conclusion that asymmetrical federalism is a stabilizing mechanism within the limits of the federal model.

That being said, we cannot apply this as a blanket statement to all federations. The cases we have looked at are unique in the fact that they are multinational in composition and thus require some sort of asymmetric model to accommodate diversity. All federations are asymmetrical in one way or another, and therefore, can benefit from modest amounts of asymmetrical arrangements, but they may not be necessary or helpful in all situations. This brings us back to the idea of asymmetry as a normative concept. There is not a certain degree of asymmetrical federalism that brings stability to all federations; rather the degree is relative to the degree of inherent asymmetry within a federation. To cite Webber, "A political structure is most stable...when it bears some tolerable resemblance to the character of its society."²²⁵

I would suggest that asymmetrical federalism is a mechanism that reflects the complexity of society and of human beings in general. Each person has a specific way of perceiving the world and of judging what is of greatest value in it. Even within a cultural or linguistic group, perspectives differ, and multinational societies only further compound this diversity. If a multinational federation is highly asymmetric in its very nature, it seems only natural that asymmetrical

²²⁵ Webber, *Reimagining Canada*, 255.

federalism would be a valuable tool to manage such a society. The key word here is “manage”; a diverse federation, as we have just noted, is extremely complex, and a certain amount of conflict and tension is inevitable. Gagnon and Gibbs observe that like federalism, asymmetrical federalism can be used to accommodate difference and manage existing problems, but it cannot solve every political problem. “In [managing], however, it opens an avenue for a peaceful, humane political process that can avoid the conflict and turmoil that tends to characterize the political change in highly diverse federations.”²²⁶ In other words, asymmetrical federalism is not a panacea, but it can be a stabilizing force, and it may in fact be the only way to deal with the contrasting pressures of a multinational federation.²²⁷

Federalism has been described as a model based on the “validity of combining unity and diversity, i.e., of accommodating, preserving and promoting distinct identities within a larger political union.”²²⁸ This study has shown that asymmetrical federalism is an appropriate tool for accommodating this diversity. In labeling it a stabilizing mechanism, we imply that it is not only successful in recognizing diversity, but also in keeping the unity of the polity. It manages to bring unity by providing a framework in which specific constituent needs or demands are met while still preserving the federation as a whole. Nevertheless, I would argue that asymmetrical federalism only goes so far in its unifying powers; constituent units have to want to stick together and no amount of asymmetry or symmetry can keep a federation unified if the will is not there. It has been suggested that in both the case of Canada and Spain, “the most fundamental issue is to find ways to continue to ‘vouloir vivre ensemble,’” to want to live together.²²⁹ Diverse societies can live together, and they can have different allegiances, but there must be at least some common feeling of identity. The economies and societies of a federation are tightly connected and whether they like it or not, constituent units share a common fate.²³⁰ This leads me to believe that the trend of bilateralism, where constituent units negotiate special deals with

²²⁶ Gagnon and Gibbs, “The Normative Basis,” 93.

²²⁷ Watts, “Asymmetrical Decentralization,” 36.

²²⁸ Watts, *Comparing Federal Systems*, 8.

²²⁹ Simeon and Turgeon, “Federalism, Nationalism, and Regionalism,” 36.

²³⁰ Ibid.

the central government, is perhaps not the kind of asymmetry that strengthens a federation. I think there is still a place for bilateralism, particularly concerning matters that are of no relevance to the other constituent units, and that the results of which have no effect on the rest of the polity. However, there needs to be at least a minimal amount of solidarity amongst all units. It is my opinion, therefore, that more symmetrical cooperation in terms of increased intergovernmental relations, while still respecting the other elements of asymmetry, would further enhance the functioning and general stability of a multinational federation.

I recognize that my views may be seen as idealistic. As a Canadian, I know that the life of a federation is far from simple; tension is inherent and conflicts occur from time to time. The highly diverse nature of such a federation makes it all the more difficult to work together. Nevertheless, if there is no recognition or accommodation of diversity, the polity is bound to fall apart. For this reason, I see asymmetrical federalism as a mechanism that can take an inherently unstable relationship and make it work. Only time will tell whether this vision is correct, but the fact that Canada and Spain, two multinational states that provide numerous examples of asymmetrical federalism, are as united and strong as they are, already speaks volumes.

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