

ASYMMETRY IN CANADA, PAST AND PRESENT

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Foreword

The federal Liberal Party's 2004 general election platform heavily emphasized issues that are mainly subject to provincial competence under the constitution (e.g. health care, child care, cities). Since the federal government lacks the authority to implement detailed regulatory schemes in these areas, acting on these election commitments frequently requires federal-provincial-territorial (FPT) agreements.

A controversial question that arises when considering all intergovernmental

Let us begin this series by recognizing that nature and history as a matter of course confer *differences* or *asymmetry* upon the units of every federation around the world. While the substance and scale of differences may vary from one federation to another, Canada is scarcely unique in showing differences among its units or provinces – whether in size, wealth, population, economy, geography, culture, or history. Table 1 reveals, for example, some profound disparities in population, wealth, and size among the provinces that in turn both reflect and lead to an inescapable inequality of power among provinces. Here disclosed is a Canada with a dominant centre question in Canada and in many other federations is the extent to which formal differences can or do exist among the provinces or units, and the extent to which these can be justified. The differences can touch upon asymmetry in law or practice with respect to any of the following:

- £ provincial jurisdictional powers, entitlements and duties;
- £ provincial representation in central institutions;
- £ or to the application of national laws and programs by province.

Table 1
 Provincial Comparisons (2003-04)
 Size, Population, Wealth, Dependency

	<i>Area</i> (000 km ²)	<i>Population</i> (000s)	<i>Nominal GDP per</i> <i>capita (\$000s)</i>	<i>Federal*</i> <i>Dependency Ratio</i>
Newfoundland and Labrador	405.2	518.8	35.2	36.79%
Prince Edward Island	5.7	137.1	28.1	37.72%
Nova Scotia	55.3	935.3	30.9	32.19%
New Brunswick	72.9	750.7	29.9	32.86%
Quebec	1542.1	7466.3	34.0	15.01%
Ontario	1076.4	12167.4	40.6	12.09%
Manitoba	647.8	1157.8	32.8	27.00%
Saskatchewan	651.0	994.7	36.7	19.74%
Alberta	661.8	3136.6	54.5	9.69%
British Columbia	944.7	4130.8	35.2	13.70%
Yukon	482.4	30.3	43.8	72.22%
Northwest Territories	1346.1	41.8	86.8	64.46%
Nunavut	2093.2	28.9	32.9	90.20%

*Federal Transfers as a Percentage of Total Provincial/Territorial Revenues

Sources: (most recent accessible data used in each case)

Geographic Area: *Canada Yearbook*, 2001, Table 1.1

Population: CANSIM II matrix 510005, data for first quarter 2003, accessed February 8, 2004.

Nominal GDP; CANSIM II matrix 3840001, data for 1 January 2003, accessed February 8, 2004.

Provincial Government Revenues & Transfers Received from Federal Government: CANSIM II matrix 3840004, data for 2002, accessed February 8, 2004.

The following tables illustrate some of the considerable formal asymmetry that exists in our federation. It is important at the outset to recognize that asymmetry was present from the very foundation of the Canadian Confederation.

Table 2
Constitutional Asymmetry in Law: Selected Examples

<i>Subject of Provision</i>	<i>Section</i>	<i>Notes</i>
<i>Constitution Act, 1867</i>		
denominational education	93(2)	extends minority education rights in Ontario to Quebec
language and civil law	133	bilingual legislative regime and civil law system only in province of Quebec
	129	
uniformity of laws in certain provinces (opting-in)	94	Ontario, New Brunswi

Table 3
Constitutional Asymmetry in Practice: Selected Examples

<i>Subject of Provision</i>	<i>Section (Act)</i>	<i>Form of Asymmetry</i>
pensions	94A (1964)	concurrency with provincial paramourncy permits QPP and CPP asymmetry
amending procedure	38 (3), 40 (1982)	opting-out of constitutional amendments increases asymmetry
notwithstanding clause	33 Charter (1982)	provincial overrides permit unequal applications of the Charter
mobility	6(4) Charter (1982)	limit to mobility rights of Canadians in provinces with high unemployment

In Canada's case, the level of provincial asymmetry in representation in the Senate is very large and analysts have often acknowledged its long term negative consequences for Canadian governance. Western anger in particular has arisen over the guarantee of almost half of Senate representation to the two most populated provinces of Ontario and Quebec in sections 22 and 23, irrespective of the number of other provinces that might be created in the federation. Here, the Confederation deal over the Senate permitted only Ontario and Quebec to parade as both provinces and regions, while the other provinces were forced to merge their provincial identities into two dubious heterogeneous regional categories. Moreover, numbers of Senators per province under this regional arrangement have turned out to be downright arbitrary. Nova Scotia and New Brunswick, for example, enjoy ten senators each, while Newfoundland and the western provinces get six Senators only. The Atlantic region, with the lowest population figures, enjoys more seats than any other region, including the west. The Triple E Senate proposal, enshrining equality of representation by province in the Senate, has been the West's response to this dubious legacy of asymmetry from Confederation.

An even more serious example of asymmetry that has inflamed the West also came quite early in Canada's constitutional history.

This was the provision that withheld provincial control over natural resources under section 109 for Manitoba, Saskatchewan, and Alberta until 1930. This has been the most important and fundamental departure from symmetry in the division of powers among provinces, and it generated deep controversy and long-term bitterness in the region for generations. While in part defensible to build the railway and consolidate settlement of the West, the anger engendered by this asymmetry has made Westerners ever since intransigent champions of provincial equality.

The examples above illustrate the ways in which asymmetrical arrangements can sometimes become part and parcel of the politics of regionalism. Here asymmetrical arrangements seemed to point to Central Canadian colonization and domination of the country and particularly of the Western hinterland, a constant theme of complaint in Western regionalism.

Another preoccupation that arises in the historical politics of asymmetry in Canada – indeed the *central issue* – has been the question of accommodating adequately Quebec's specificity within the Canadian union. This has been at the heart of most of the asymmetry that we see in Canada's constitutional and political provisions and of the thinking and debates that flow from them. The evidence shows that Quebec

Table 4
Asymmetry in Federal Programs and Policies: Selected Examples

<i>Asymmetry by Design: Not Available to all Provinces</i>	
<i>Program Area</i>	<i>Notes</i>
regional development	regionally specific programs allow only certain provinces to benefit (ACOA, WDO)
foreign policy	only New Brunswick and Quebec are represented in <i>la</i>

historic claim of nationality for Catalonia in Spain, Quebec claims to be the homeland of a nation where in this case a distinct majority of French-speaking people happens to live. Hence, Quebec resists, as does Catalonia, arguments that seek to place their status upon the same footing as the other provinces or autonomous communities. Claims of asymmetry and 'deep diversity' then are built into the very nature and self-definition of these communities.

Of course, when asymmetry is advanced in

clause nonetheless lacked support in the court of public opinion outside Quebec. Meanwhile, since then the process and requirements for constitutional change, always exacting, have now become even more so with additional hurdles of referenda in many jurisdictions to approve change. In effect, this has brought the drive for Quebec-based constitutional recognition and change, to a halt after two generations of effort.

Though the country is stymied over how to respond to Quebec's aspirations and the constitutional amendment process has for this purpose become quite unworkable, the demand for deep asymmetry will still not go away either in Canada or elsewhere. Indeed, if there is a theatre anywhere in the world that also speaks to these issues, it is undoubtedly contemporary Europe. Here, in countries like Spain or even the United Kingdom, we encounter multinational states that have in recent years moved to recognize constituent nations within the state, and to respond to these 'distinct societies' with specific asymmetrical powers and arrangements. Whether these communities be Catalanian, Basque, or Scottish, they have all required formerly centralized states to restructure profoundly the nature of their constitutional arrangements. Of course, in every case, these changes have been approved much more easily by action of central governments alone, than could possibly be done in an existing federation like Canada's with complicated amendment rules.

Still the level of autonomy and asymmetry on offer may be seen as inadequate, as appears to be the case in the Basque region where a recent decision of the Basque legislature to put a referendum for enhanced autonomy to its people has been rejected by Madrid. In contrast, in cases such as Scotland and Wales, the current