

## BEYOND RECOGNITION AND ASYMMETRY

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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 agreements is whether they should treat all provinces and territories similarly or whether the agreements should be expected to differ from one province/territory to another. This issue of symmetry or asymmetry arises at two levels. The first is whether all provinces should be and should be viewed as "equal" in legal and constitutional terms. The second relates to the political and administrative level and the intergovernmental agreements it generates. When should Canadians expect all provinces/territories to be treated similarly in these agreements and when should difference be the rule?

Given this political context, it is timely to reconsider the factors that are relevant to the issue of symmetry and asymmetry. We are doing this by publishing a series of short commentaries over the first half of 2005. These papers will explore the different dimensions of this issue- the historical, the philosophical, the practical, the comparative (how other federations deal with asymmetrical pressures), and the empirical. We do this in the hope that the series will help improve the quality of public deliberation on this issue.

Harvey Lazar  
Director

The language and practice of asymmetry is *one* tool for coping with Canada's deep diversity. It is not, however, the only one. And at this juncture of Canadian politics, I want to argue, it may not be the most appropriate one.

The language of asymmetrical federalism is commonly thought to imply that powers and jurisdictions are distributed in a differentiated, non identical way amongst the provinces. Although the September 2004 federal-Quebec health care side deal has prompted much of the recent discussions of asymmetrical federalism, the side deal itself cannot straightforwardly be seen as an illustration of asymmetrical federalism. As health is a provincial jurisdiction, no "special power" has been handed to Quebec. The side deal only entails that Quebec will, within the parameters of the *Canada Health Act* and of the September agreement on health care, decide on its own means for achieving common objectives and report to Quebecers directly. The

understanding of asymmetrical federalism (unless a similar veto was granted to other provinces or regions).

While there can be sound moral and pragmatic reasons for supporting asymmetrical federalism in Canada, the principled case against the differentiated distribution of sovereignty that underlies it is easily understandable. As Alexis de Tocqueville, amongst others, has shown, the modern citizen is, generally speaking, viscerally repulsed by *formal* inequality. The modern norm of democratic equality, that stemmed out of a struggle against pre-established and institutionalized social hierarchies, seems to command that all, regardless of their class, culture, gender and religion, are equal (i.e. identical) before the law. In Canada, the “trudeauist refoundation” of Canada (based on equal individual rights and provincial equality) reinforced this already deeply ingrained uniform notion of equality.<sup>1</sup> From such a vantage point, equality entails symmetry. As a consequence, talks about “asymmetrical federalism”, “differentiated citizenship”, “special rights”, and “distinct society” usually shipwreck against this uniform notion of equality (equality=symmetry). Now, given that background reluctance against a more differentiated conception of equality, is asymmetrical federalism (constitutional asymmetry) a necessary tool for accommodating Quebec’s demand for political autonomy? In present-day context, I see no reason why. To be sure, I think that trying to squeeze Quebec within the Trudeauist Canadian box is both morally unfair and politically unwise. But I would argue that the accommodation of Quebec’s current

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