

FEDERALISM, NATIONALISM AND REGIONALISM IN CANADA

Richard Simeon

Professor of Political Science and Law
University of Toronto

Luc Turgeon

Researcher of Political Science
University of Toronto

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1. Introduction

Canada and Spain both face the challenge of reconciling the potentially mutually exclusive interests and values of distinct linguistic communities, diverse regional entities and increasingly mobilized immigrant communities. In both countries, federalism has been a key instrument used to reconcile unity with diversity. Canada's federal system was established in 1867, and the controversial issues that have marked its history, especially since the 1960s, will be familiar to Catalans and Spaniards: a powerful nationalist and linguistic movement in Quebec demanding 'equality' and 'recognition' or independence; contentious debates about asymmetry in the distribution of powers between the different regions; resentment over the perceived fiscal imbalance between the provinces and the federal government; debates about language policy, and the ways to recognize 'minorities within minorities'.

The main linguistic minority in Canada, the French-speaking Québécois who represent slightly more than 20% of the Canadian population, plays a similar role in the Canadian federation that the

Catalan people play within Spain. With a relatively brief exception in the late 1960's, culminating in the 'October crisis' of 1970, when a radical movement, the Front de la Libération du Québec, kidnapped a British diplomat, and killed a Quebec cabinet minister, the nationalist movement has been completely peaceful and democratic. It has embraced the democratic rules of the game both in Quebec and in national politics. Like Catalonia, although unsuccessfully, the Quebec government has demanded that Quebec be recognized as a nation or 'distinct society' within Canada. The debate is between a 'dualist' idea of Canada as a bi-national entity, and other visions that see Canada as a collection of provincial communities, as a 'multicultural society,' and as a society that blends three sets of nations – Canada, Quebec, and 'first nations,' or Aboriginal peoples.

Another of Quebec's main demands has been that greater asymmetry be introduced into the federal distribution of powers in order to reflect Quebec's unique challenge as a predominantly French-speaking society in an overwhelmingly English-speaking continent. Like Catalonia, Quebec has used the federal system to implement legislation to ensure the protection and promotion of the French language in the province, to develop unique public policies responsive to the values and concerns of Québécois, and to position itself in the minds of Québécois as their 'national government'.

In recent years, the capacity of Canadian federalism to continue to provide a framework for the accommodation of its linguistic duality and regional differences has been questioned. In 1995, Québécois nationalists came within a few thousand votes of winning a referendum calling for the secession of Quebec, though with a continuing economic and political "partnership" with the rest of Canada. Thus, Canada appears to illustrate the Janus-faced quality of federalism with respect to the recognition and accommodation of ethnic, linguistic and cultural differences. Federalism is at once a vehicle for accommodation; a way of reconciling the minority nations and groups to the larger whole; and a device for perpetuating and institutionalizing the very cleavages it is designed to manage, one which may provide the institutional resources from which to launch a successful secession movement. Canada adopted federalism in large measure as a means to accommodate its linguistic duality and regional differences; but the capacity of federalism to continue to provide a framework for accommodation remains in question.

This article tries to explore the capacity of Canadian federalism to accommodate the dualist and regionalist character of Canada. Canadians debate several answers to this question. For Quebec sovereignists, federalism is a strait-jacket that limits the ability of the nation of Quebec to fully express itself on the domestic and international stage: for them the Quebec 'nation' requires a Quebec 'state.' For Quebec federalists, many of whom also see Quebec as a sociological and political nation, its future lies in a continued membership in the Canadian federation, but one which recognizes that Quebec is a 'distinct society' within Canada, that should be empowered with the ability to develop and promote the interests of the nation. For yet others, the decentralist character of Canadian federalism, and the extensive provisions for asymmetry built into the system, mean that Quebec is already perhaps the most powerful sub-national government in the world, such that it already has the powers necessary to fulfill its national destiny, within the federation. Opinion outside Quebec ranges from those who accept this view, and embrace asymmetry, to those who argue that Quebec is just one of ten existing provinces, each of which is distinct, and which should be treated as equals within the constitutional and political framework.

We begin by outlining the main political cleavages that have run through Canada's political system. We then explore some of the key challenges that Canada's federal system currently faces.

2. Federalism and Political Cleavages in Canada¹

Language and region have historically been the dominant political divisions in Canadian political life. The ways in which these identities have been articulated and mobilized have been shaped by the federal institutional structure in which they exist, just as the territorial character of these divisions has helped to shape the character of Canadian federalism. The causal arrows run both ways. Language and region ensured that the Canadian system would be federal; but the design and operation of the federal system have had profound effects on how language and region have played out in national politics.

1. This section draws on material first published in Simeon (2004).

2.1. Language

When Britain sent its commissioner, Lord Durham, to investigate conditions in the British North American colonies in 1838, he discovered “two nations warring in the bosom of a single state.” His solution to this state of affairs was to propose that English and French-speaking Canada, then concentrated in the separate colonies of Upper and Lower Canada, be merged into a single political entity, the United Province of Canada. This would ensure, he believed, that over time the Catholic, conservative French-speaking community would eventually be assimilated into a British identity and British political institutions, with “English laws and language . . . and a decidedly English legislature” (McNaught, 1982: 94, 95).² In 1849, the new United Province of Canada was established. Consistent with Durham’s assimilationist goals, English was to be the language of the legislature, and each region was to have equal representation, despite the fact that Lower Canada’s population was larger.

The result, however, was neither the assimilation nor the subordination of the French-speaking community. Instead the two communities rapidly established a regime remarkably akin to Lijphart’s consociational democracy (Lijphart, 1984). Key to this development was an alliance between leaders of a reform movement in both linguistic communities who sought ‘responsible government,’ which would require the appointed Governor to take instruction from elected Canadian ministers, rather than from the British Colonial Office. The alliance strengthened the idea that not only could Canada not be governed without the cooperation of French Canadians, but also that it could be governed with them (McNaught, 1969: 99). There was equal representation of Upper and Lower Canada in the legislature.³ Parties were divided by language, but the governing coalitions were headed by leaders of both language groups. French was restored as an official language in 1848. Parallel ministries led by French and English-speaking Ministers were established with largely separate administrations, often

2. The error, he argued, would be the “vain endeavor to preserve a French-Canadian nationality in the midst of Anglo-American colonies and states”.

3. Which initially weakened the more numerous residents of (largely French speaking) Lower Canada.

passing laws that applied only to one of the sections. Voting on key legislation was by double majorities (Careless, 1967).

By the early 1860s, this consociational accommodation had broken down. The rapid growth of English and Protestant Canada West led to demands for "Representation by Population" fuelling Francophone fear of dominance by an English-speaking majority. A series of divisions over issues such as sectarian education led to deadlock and paralysis (McNaught, 1969: 121). Both the strategy of integration through assimilation advocated by Durham, and the consociational arrangements worked out by the Canadian politicians had failed.

Federalism became an increasingly attractive way out of the impasse. It would do so in two ways: by 'disengagement,' allowing each group to pursue its basic goals, without fear of veto by the other; and by reducing the dangers of deadlock in a two-unit system, by bringing into the federation the other British North American colonies - Nova Scotia, New Brunswick, Prince Edward island and Newfoundland to the East, and British Columbia on the West Coast.⁴ Thus conflict over language was one of the major (but by no means the only) forces leading to the adoption of federalism in Canada. Its chief architects were one leader from each group, Sir John A. Macdonald and Georges-Etienne Cartier, working in close partnership. There is a remarkable similarity between the Canadian experience between 1840 and the establishment of the federal regime in 1867 and the experience of Belgium in more recent times. In both cases linguistic accommodation within a single government failed as the aspirations of the constituent groups increasingly diverged, and in both the solution was to move to a more territorial division of power.

Language was also a major reason why the federalism that developed was a relatively decentralized one. Macdonald's vision for federalism, reflected in the British North America Act, 1867,⁵ hoped to establish a dominant central government, with the provinces eventually withering to little more than municipal status. Federal control of the then most important policy areas, its fiscal superiority, and a variety of other levers (Wheare, 1946: 19-20) placed the provinces in

4. Although only Nova Scotia and New Brunswick joined in 1867.

5. Now renamed the Constitution Act, 1867.

an almost colonial position vis à vis the central government. But if Canada was federal largely because of the presence of Quebec, that same force was a major reason why the federation moved in a decentralizing direction. By the 1880s, Quebec, along with Ontario, was pushing successfully for limits on federal power and increased autonomy for the provinces. For Quebec, the primary issue was the power to preserve its own language and culture in the face of an English-speaking majority at the national level. For Ontario at this time, the issue was not language, but a combination of partisan differences and a struggle among rival economic elites over free trade versus protectionism in relations with the United States. Together they elaborated the more confederal "compact theory" of Canadian federalism, seeing the national government as the creature of the provinces. But even if Canada were to be seen in this way, the question has persisted: is it to be a compact between two language groups, or ten provinces?

Confederation was also a nation-building exercise aimed at creating a Canada 'from sea to sea,' and gradually the federation was extended westward to the Pacific. This creation of new provinces had an important effect on the development of French Canadian and Quebec identity. First, it reduced the overall weight of Quebec in the federation: from one of four provinces at the outset, it eventually became one province in ten. Second, the new western provincial governments proved hostile to French-Canadian interests. The legislation establishing the provinces of Manitoba, Alberta and Saskatchewan included protections for their French-speaking minorities, including minority language education rights, the translation of provincial statutes and the right to use either official language in the courts. These provisions were systematically ignored by the new legislatures.⁶ Ontario as well placed limits on French-language schools in the province. These developments had the effect of keeping French Canadians within the confines of Quebec (see table 1 on provincial language groups).

This in turn helped reshape Francophone identities, from the original canadiens, the first white settlers of what is now Canada, to *French-Canadians*, defined primarily by language and religion, and eventually to the contemporary Québécois, a national identity cen-

6. Not until 1985 did the Supreme Court of Canada declare that Manitoba must fulfill the obligations of the Manitoba Act by translating all its statutes into French.

tered on the Quebec state. With the exception of parts of Ontario near the Quebec border, and a large part of New Brunswick, French speakers were concentrated in Quebec, where today they make up just over 80 per cent of the population. French-speaking Canadians constitute small, and rapidly assimilating, proportions of the population in most other provinces. Thus, despite constitutional protections of minority language rights, the autonomy conferred by federalism not only had the effect of opening an institutional space from which Francophones could pursue self-government within the province of Quebec, but also provided the space for other provinces to limit the use of the French language. Hence the French English cleavage is in Canada today expressed almost entirely as a Canada-Quebec conflict, a conflict between two 'nations' (Richards, 1999: 84-143). That it came to take this form is a powerful institutional consequence of federalism.

Table 1: Language Groups, Canada, provinces, territories, 2001

	Anglophone	Francophone	Allophone
Newfoundland and Labrador	98.4	0.5	1.1
Prince Edward Island	94.0	4.4	1.6
Nova Scotia	93.0	3.9	3.1
New Brunswick	65.0	33.2	1.7
Quebec	8.3	81.4	10.3
Ontario	71.3	4.5	24.2
Manitoba	75.4	4.2	20.5
Saskatchewan	85.4	1.9	12.7
Alberta	81.5	2.1	16.4
British Columbia	73.6	1.5	24.8
Yukon Territory	86.8	3.3	9.9
Northwest Territories	77.8	2.7	19.5
Nunavut	26.9	1.5	71.6
Canada	59.1	22.9	18.0

Source: Statistics Canada, 2001 census. Allophone refers to the population with a non-official language as mother tongue. It is mainly composed of immigrants and the aboriginal population.

2.2. Region

Regional differences constitute the second set of cleavages that have dominated Canadian politics since its inception. Here too, there

are important historical, cultural and economic differences that sustain regional identities and regional politics. The Canadian federation was formed from a number of pre-existing British North American colonies. Regional identities have remained strong, as have regional differences in wealth and the structure of regional economies. Indeed, there is some evidence that globalization and North American economic integration is weakening the economic linkages that tie the Canadian regions together (Courchene and Telmer, 1998). Here too, federalism is not only a response to regional difference, but also institutionalizes and perpetuates it. Regionalism in Canada, while often expressed in parties of regional protest in national politics, is most often expressed in Canada as provincialism. Regional interests are defined and articulated by provincial governments using the institutional resources provided by federalism. To some degree, these governments have a vested interest in the maintenance of the perception of regional difference. Federalism also means that regional conflicts tend to be played out in the arena of competitive intergovernmental relations. Moreover, the institutionalization of region through provincial governments creates an image of homogeneity within regions, while blurring both their internal heterogeneity (especially in large, diverse provinces like Ontario), and the growing convergence among regions in terms of social structures, attitudinal patterns, and the like.⁷

Indeed recent surveys suggest the on most important policy issues facing Canada, regional differences are small, and declining. This is also true for the attitudes of Québécois and non-Québécois. There is also considerable evidence that Canadians in all provinces, including Quebec, positively identify both with the national and provincial political communities. In a recent survey, 81 per cent of Canadians outside Quebec felt 'profoundly attached' to Canada; 59 per cent felt the same way about their province. Here, however, there are differences: Québécois tend to give primacy to their Quebec identification. Forty per cent of Québécois feel profoundly attached to Canada; 52 per cent to Quebec (CRIC 2000: 14-16). Among Francophones in Quebec, 29 per cent identify themselves as solely a Québécois; 29 per cent as a Quebecer first, then a Canadian; 24 per cent as equally Québécois

7. See Roger Gibbins (1982). The argument is that regionalism is no greater in Canada than the U.S.; the difference is that it is more institutionalized in Canada. See also David J. Elkins and Richard Simeon (1980).

and Canadian; 12 per cent as first a Canadian, then a Quebecer; and five per cent as simply Canadian (Mackie: 2001).

Residents of the largest province, Ontario, tend to give primacy to their identification with a national government in which they exercise such great political weight; westerners tend to value both identifications equally, but often perceive themselves as excluded from power at the center. Citizens in the poorer Atlantic Canada have similar views, tempered in their case by the recognition that their well-being continues to depend heavily on financial support from Ottawa (Beauchamp, Dugas, and Graves, 1999: 307-354). It is perhaps interesting to note that Canadians are more likely to state that their primary sense of belonging is to the country, rather than province or locality, than are Americans (Beauchamp, Dugas and Graves, 1999: 314). Again, it is the distinctive pattern of Canadian federalism that gives regionalism such prominence in national debates.

Nevertheless, strong regional grievances persist. For example, in a survey conducted in 2000, respondents were asked whether or not their province has its fair share in making important national decisions and whether their province is treated with the respect it deserves. In eight provinces (all but Quebec and Ontario), majorities ranging from 54 to 74 per cent said their province has less than its fair share of influence; and majorities from 50 per cent in Manitoba to 76 per cent in Newfoundland said they were not treated with sufficient respect. (CRIC 2002: 19). The salience of regional grievances varies over time and according to the dominant public issues of the day. In the post-war period, when the national 'project' was the federally led construction of the welfare state, regional concerns were muted. The issues surrounding the welfare state were more likely to divide Canadians along class than regional lines. In the 1970s, when the energy crisis sharply divided Canadians on regional lines, pitting producers against consumers, and Ottawa versus the producing provinces with respect to prices and revenues, regional identities took center stage. The ensuing battles paved the way for the emergence of the latest and strongest western regional party, the Reform party, which in 1999 renamed itself the Canadian Alliance, before merging in 2003 with the Progressive Conservative Party to create the Conservative Party, which is currently in power.

Federalism thus appears to accentuate regional differences, while

acting as a barrier to the emergence of political cleavages based on alternative dimensions of difference. It is one reason why class divisions have been less salient in Canada than in other advanced industrial countries. However, in recent years a number of newer divisions have emerged to challenge the dominance of territory in Canadian politics and its constitutional discourse.

These include Aboriginal peoples seeking self-government. Their call for a 'Third Order' of Aboriginal government is strongly informed by the logic of federalism, but their image of Canada is for obvious reasons deeply opposed to any conception of Canada as a partnership between 'two founding peoples,' English and French. Like Quebec, many aboriginal leaders seek to relate to Canada on a "nation" to "nation" basis (Cairns, 2000, Tully, 1999: 413-442, Abele, 1999: 443-462). Second is the increased ethnic diversity of Canada, leading to the embrace of 'multiculturalism' in legislation and in the Constitution. This too challenges the 'two founding peoples' image with the image of many constituent groups. It is sometimes seen as a threat by Francophones, who fear being relegated to the status of 'just another ethnic group.' Finally, the emergence of social movements, such as feminist groups and others, empowered by the Charter of Rights and Freedoms adopted in 1982, challenged the legitimacy of a constitutional agenda dominated by issues of territory and language. They also contested a constitutional process that was monopolized by the institutions of executive federalism.

Thus social change in the rest of Canada has led the rest of Canada to become less willing to view Canada as a binational or dualist system. Quebec increasingly has come to be seen as just one element of Canadian diversity; and increasingly it seemed to be fainter on the national radar screen than newer manifestations of diversity. Moreover, changes since the 1960s have significantly reduced the disparities in economic and political power between French and English-speaking Canadians that had been thoroughly documented as recently as the 1960s by a federal Royal Commission (Canada 1969). This improvement – the result of both provincial and federal policies – has undermined the perception of Québécois as a group with legitimate grievances that should be redressed.

These multiple cleavages, as they interact with federalism, are closely related to a set of competing images of the Canadian polity

that have dominated recent constitutional debates. Language leads to a sense of Canada as a dualist, bi-communal, or bi-national entity, and focuses attention on accommodations that will recognize a distinct status for Quebec in an asymmetrical federal system. That is in tension with a provincialist conception of Canada, seeing it as composed of ten equal provinces, each distinctive in its own way. This image focuses attention on constitutional symmetry, and on Canadian governance as a collaboration or partnership between federal and provincial governments. Both of these are in tension with the Aboriginal vision of Canada as a partnership between Europeans and the 'First nations,' leading to the idea of Aboriginal self-government as a third order of government alongside national and provincial governments. And all of these are in tension with the liberal vision of Canada as made up of 30 million equal citizens, a conception strongly reinforced by the adoption of the Charter of Rights and Freedoms in 1982. The central constitutional challenge for Canada in recent years has been to find a way to reconcile these "three equalities" – of nations, provinces, and citizens (Cairns, 1991). Or, put it slightly differently between an Ottawa-centered, a province-centered, and a Quebec centered vision of the federal system.

3. Current Challenges

3.1. The Quebec Question

Few would dispute that historically federalism has been an important – though not the only – institutional device for managing linguistic and regional conflicts. Yet, over the last forty years, many Quebec nationalists have rejected federalism and struggled to achieve an independent, sovereign Quebec state. As mentioned in the introduction, in October 1995, they came within a few thousand votes of winning a referendum calling for the secession of Quebec, with a continuing economic and political "partnership" with the rest of Canada. In a closely disputed referendum, with a very high turnout (94%), 49.4% of the Quebec population supported the independence option, while 50.6% voted against it. Such close result (a difference of less than 50,000 votes) sent a shockwave throughout Canada.

The reaction of the federal government following the Quebec referendum fell into two categories, labeled Plan A or Plan B, or the

carrot and the stick. Plan A represents the continuing search for accommodation within the federal system. Its prospects have been limited both by the bitter experience of years of failed constitutional negotiations, and by the continued antipathy to 'constitutional' asymmetrical solutions with respect to Quebec. The search in recent years has therefore been for options that do not involve constitutional change. For example, in 1997, all the provincial governments agreed on "The Calgary Declaration," a broad statement of principles, including the statement that "In Canada's federal system, where respect for diversity and equality underlies unity, the unique character of Quebec society, including its French-speaking majority, its culture and its tradition of civil law, is fundamental to the well-being of Canada. Consequently the legislature and government of Quebec have a role to protect and develop the unique character of Quebec society in Canada." The Declaration was ratified as a resolution in most legislatures, but it was a much watered down expression of Quebec's distinctness from the (failed) constitutional proposals in the 1980s and early 1990s. It had little impact in Quebec. In addition, the federal parliament passed a resolution promising that it would not agree to any future amendments without the support of Quebec. It too had little impact, and was not binding on any future legislature. Most Québécois continue to place a high value on constitutional recognition of its unique character; few Canadians outside Quebec consider this a priority (CRIC 2001: 20).

The more substantial element of Plan A has been to demonstrate to Québécois and others that federalism 'works,' that it allows for considerable freedom for provinces to pursue their own priorities and to manage their interdependence through intergovernmental cooperation. For example, Quebec now plays a distinct role with respect to labour force training, while it is not bound like other provinces to a Health Accord signed in 2004 in order to increase provincial accountability. Such informal departures from symmetry seem to generate less hostility outside Quebec than more symbolic, institutionalized, or constitutionalized forms, which tend to be perceived as breaching the 'equality of provinces' dogma.

Plan B has attracted the most attention. It is a set of strategies designed to convince Québécois that secession would be messy, complex, costly, and very difficult to achieve, and that it is quite wrong for them to believe that life would go on as before. It is also design-

ed to demonstrate that Quebec has no unilateral right to secession, and that it can have no expectation that the Rest of Canada would be prepared to negotiate a 'partnership' in the aftermath of a secession. This would be a matter for the Rest of Canada to decide, in light of the question asked and the majority received. Finally, Plan B tells Québécois that among the many items on any negotiating table would be the very borders of Quebec itself. If plan A options are the carrot designed to win Québécois over to federalism, Plan B is the stick to make secession appear undesirable and infeasible (Cameron: 1999).

The first major step to implement B was a reference by the federal government to the Supreme Court of Canada in 1996. It asked whether Quebec has a right to unilateral secession either under existing Canadian law, or under international law; and if these differ which should prevail.

The court determined quickly that neither Canadian nor international law suggest such a right.⁸ The Canadian constitution, said the court, is silent on the matter; and Quebec does not fall under the category of oppressed or colonial peoples that would justify self-determination under international law. A secession in Canada, the court concluded, would be a constitutional change of profound importance; it could only be achieved in accordance with the Canadian constitution, and within the rule of law. The court also asserted a set of broad principles that underpin the Canadian constitution, and that would have to be respected in any secession exercise. These include: constitutionalism and the rule of law, federalism, democracy, and respect for minorities. But, having rejected the legality of unilateral secession, the court went on to level the playing field. It said that if Québécois were to vote for secession according to a 'clear question' and a 'clear majority,' then other Canadian political actors would have a constitutional obligation to negotiate the matter, taking into account the fundamental principles and the questions that would be on the table – including debts, borders, and the like. Canada was divisible. The judgment was initially embraced enthusiastically by both sides. But crucial questions remained. What constitutes a clear question, and who is to decide the matter? And what is a clear majority?

8. References re Secession of Quebec. (1998) 2 SCR.

In the fall of 1999, following a battle of press releases and letters, the federal government sought to answer such questions by tabling Bill C-20, 'An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.'

The Bill acknowledged in the preamble that any province is free to put any question to its people. But at the same time it asserted that "the House of Commons as the only political institution elected to represent all Canadians has an important role in identifying what constitutes a clear question and a clear majority sufficient for the Government of Canada to enter into negotiations in relation to the secession of a province from Canada." The Act then specified that within 30 days after its promulgation, the Canadian parliament will determine whether or not the question is clear (S. 1). S. 4 declares that any question that asked merely for a "mandate" to negotiate rather than a direct intention to separate is to be deemed unclear. So is any question that ties the idea of secession to continued economic or political arrangements with Canada. If the proposed question does not meet these tests then the government of Canada would not enter any negotiations on secession.

The Act also states that the government will only enter negotiations if it is satisfied that there has been "a clear expression of a will by a clear majority of the population," of the seceding province. Nonetheless, it does not set out how high the bar should be. Instead, the House should take into account the size of the majority achieved, the percentage of the electorate that had voted, and 'any other' relevant circumstances (S 2.2).

Finally, the Act states that no constitutional amendment bringing about secession can be considered unless it has addressed the terms of secession, including "the division of assets and liabilities, any changes in the borders of the province, the rights, interests and territorial claims of the Aboriginal peoples of Canada, and the protection of minority rights" (S. 3).

The Quebec reaction was to call the federal Bill an offence to the "democratic values all Québécois hold dearest." It denies the basic right of "Québécois and Québécois alone, to determine the choice between sovereignty or a reformed federalism that respects Quebec

identity. "We subscribe, of course, to the obligation of clarity, but we maintain it is a responsibility that only the (Quebec) National Assembly can and must assume" (Government of Quebec, 1999). The government retaliated with its own legislation, asserting the right of Québécois alone to decide their future, the sanctity of the 50 per cent plus one majority principle, the inviolability of Quebec's current boundaries, and Quebec's respect for diversity.

Thus positions about the basic rules that might determine Canada's future remains starkly polarized. The irony is that to avoid chaos and uncertainty in the event that there were a "yes" vote to sovereignty, both sides have an enormous interest in prior agreement on the rules, and the consequences that would flow from different outcomes. The politics of the situation, however, render such agreement impossible.

Finally, another element of the federal government strategy was to increase the visibility of the federal government in Quebec, partly through a "sponsorship" program that would display the Canadian flag and publicize the federal role at cultural and sporting events around the province. Yet, this program to 'market' Canada to Québécois would lead to one of the biggest political scandals of the history of the country when it was found that political operatives close to the ruling Liberal government had used these funds fraudulently. The public anger led to a significant increase in support for sovereignty in Quebec (led by the federalist Quebec's Liberal Party since 2003) and the defeat of the Federal Liberal Party in the recent 2006 election (which was won by the Conservative Party, although with a minority of seats) (see table 2 for the current standing of parties in the federal parliament). The idea that loyalty to Canada could be 'bought' was deeply offensive to most Québécois.

Meanwhile, since 1995, the Quebec government has developed new legislation and social programs that have reinforced Quebec's distinctiveness in Canada. Within Canada, Quebec has managed to develop a distinct citizenship regime (Papillon and Turgeon, 2003). The sovereignist Parti Québécois from 1994 to 2003, despite fiscal austerity, adopted a set of new social policies that turned out to be extremely popular, among them a universal childcare system unique in North America. The Parti Québécois was defeated in the 2003 election and replaced by the federalist and slightly more conservative

Table 2: Current standing of parties in the House of Commons

	Canada (including Quebec)	Quebec
Conservative Party	125	10
Liberal Party of Canada	102	13
Bloc Québécois*	51	51
New Democratic Party	29	0
Independent	1	1

*The Bloc Québécois is a party promoting the independence of Quebec

Parti Libéral which has maintained the innovative social policies adopted by the previous government. Québécois leaders continue to play an important role in federal politics. Quebec politicians (both at the federal and provincial level), Quebec’s civil society organizations, and more generally Quebec’s citizens have heavily lobbied the federal government to adopt some of its more progressive legislation, including the recognition of same-sex marriage and the ratification of the Kyoto Accord, while pressuring it to stay out of Iraq.

At the beginning of 2006, the prospect of a successful third referendum on Quebec sovereignty seemed more realistic than ever, considering the sponsorship scandal and the declining public support for the current (federalist) Quebec government. There is indeed a significant chance that the nationalist Parti Québécois will win the next provincial election and hold yet another referendum if it regains power.

But there are no simple predictions. The Conservative Party, now in power at the central level, embraces values that are often perceived as hostile to the dominant social-democratic ethos of Quebec and the socially liberal values of its population. But is also espousing an ‘open federalism’ more open to provincial diversity, a solution to a perceived ‘fiscal imbalance’ favourable to Quebec, and a plan to permit the representation of Quebec in international forums, such as

UNESCO. The 'perfect storm' for federalists in the federal and provincial elections expected in the next two years would be the election of a PQ government at the provincial level, combined with a sweep of Quebec seats by the Bloc Québécois. This could well produce what some Quebec leaders have called the 'winning conditions' for another referendum. The 'perfect storm' for sovereignists would be the re-election of the federalist Liberals in Quebec, and even more seats for the federal Conservatives in the Canadian election. This would reinforce the position of a group of Quebec nationalists, who have argued that the moment for a successful project for sovereignty in the current generation has passed. It is far too early to predict which outcome is more likely.

Yet, it is also doubtful that the country will be able to entrench into the Canadian constitution the sort of recognition of its national character that Catalonia was recently granted and which has been at the heart of Quebec's demands since the 1960s. The paradox remains the same: Canada's federal system has provided Quebec with some of the most extensive fiscal and legislative powers of any non-independent small nations. Yet, in contrast to Spain or the United Kingdom, Canada has been incapable of recognizing its own multinational character in the words and symbols of the constitution.

3.2. Re-Tooling Intergovernmental Relations

The 1990s was in Canada a period of significant fiscal austerity. There were major cuts in social spending as the federal government reduced its fiscal transfers to the provinces and withdrew from important sectors of public policy. (Provinces did much the same thing as they downloaded to their municipalities). These cuts generated much provincial criticism. But by the end of the decade the situation was reversed. Now the federal government was accumulating large surpluses (while provinces still struggled financially). In a series of agreements, many of the cuts in areas like health care were restored. But another source of conflict emerged: now Ottawa was strongly tempted to use its surplus to re-engage in social policy.⁹

9. The federal government in Canada is said to possess a "spending power" allowing him to intervene in provincial jurisdiction. Although such power has historically been denoun-

Such growing interventions in sectors such as postsecondary education, municipal infrastructures and childcare were perceived in Quebec as the return of a nation-building role for the federal government, despite Quebec's long-standing objections (Boismenu, Dufour, Saint-Martin, 2004: 147-56). Some analysts announced the arrival of a federal 'social investment' state (Jenson and Saint-Martin, 2003), whose objective would be to combine social justice, economic development and urban renewal, intervening massively in provincial jurisdictions (a project that could have considerable resonance in Canada outside Quebec). Indeed, in the late 1990s, the federal government introduced a series of new programs such research chairs for Canadian universities, housing supports for the homeless and "green infrastructure funds" for municipalities. On the other hand, the decrease in federal transfers and the major increase of health care costs due to an aging population have significantly limited provinces' capacity to fulfill their constitutionally assigned responsibilities and their flexibility to develop new programs to address emerging social and economic issues.

These new federal programs in areas of provincial responsibility, combined with the precarious fiscal situation of most provinces save for the oil-rich province of Alberta, led first to growing attempts by the provinces to present a unified discourse vis-à-vis the federal government, and secondly to the growing importance of fiscal issues as an increasingly divisive dimension in Canadian intergovernmental relations (see next section).

It must be stressed that among federations, Canada has one of the least institutionalized system of intergovernmental relations. At the center are meetings and conferences of 'First Ministers,' (FMM's and FMC's). There are a number of 'Ministerial Councils,' focused on different areas of public policy in which both levels are engaged. Ministerial meetings are backed up by a myriad of meetings among officials. Increasingly, these discussions result in intergovernmental agreements and accords, setting out common principles, reporting relationships, and sometimes specific financial arrangements. But there is no regular schedule for first ministers meetings; there are no formal

decision-making mechanisms; there is no dedicated bureaucracy serving the intergovernmental process; and intergovernmental agreements have no legal or constitutional status, and hence few provisions for enforcement or dispute resolution. Nor are they binding on future governments.¹⁰

Three factors explained this lack of institutionalization. First, the principle of parliamentary sovereignty means that intergovernmental accords cannot be binding without the consent of the provincial and federal legislatures. Governments are responsible to their own legislatures and voters, not to each other. Second, the great diversity of provinces and their resulting differences in interests and priorities strongly inhibits their capacity for collective decision-making. Finally, the absence of a provincial voice within the federal apparatus, such as in the case of Lander representation in the German Bundesrat, together with a highly regionalized party system, means that the federal arena itself is ill-equipped to reconcile and accommodate the competing interests, throwing a heavy burden of negotiation on the executive processes of intergovernmental relations.

The willingness of the federalist government of Quebec to demonstrate the efficient working of the federation and the growing desire of provinces to present a united front in negotiation with the federal government led to the creation in 2003 of a new institutional setting for intergovernmental relations in Canada: the Council of the Federation. The Council is a body made up only of the Premiers of Canada's provinces; it does not include the federal Prime Minister. According to its Founding Agreement, the Council is to strengthen provincial-territorial cooperation, 'provide an integrated co-ordinated approach to federal-provincial relations,' assess federal actions with a major impact on the provinces, and 'develop a common vision of how intergovernmental relations should be conducted in keeping with the fundamental values and principles of federalism,' and work

10. Towards the end of its tenure the Liberal government, defeated in 2006, negotiated a complex and detailed series of agreements on child care with all the provinces. But following the election the new government cancelled them. Similarly, the out-going government had negotiated an historic agreement between Ottawa, the provinces and leaders of Canada's major Aboriginal organizations designed to 'close the gap' between the majority population and its Aboriginal peoples. Again, the new government did not feel itself bound by the agreement.

with 'the greatest respect for transparency and better communication with Canadians.' (Founding Agreement, 2-3.) Decisions are to be reached by 'consensus.'

Whether the Council will become a more central feature of the intergovernmental landscape is not yet known. Much will depend on the Council's ability to reconcile differences among its hugely diverse membership – large and small, rich and poor, east, west and north. Much will also depend on provinces avoiding the temptation to strike individual agreements with Ottawa when it is to their advantage, rather than acting as a group. So far, there is little evidence that provinces are willing to temper that individual interests in favour of inter-provincial consensus. In June, 2006 the limits of the Council were dramatically illustrated as provinces failed to agree on a common solution to the 'fiscal imbalance' (Simeon, 2006: 326).

The most expansive possible interpretation of the role of the Council is that it hints at a more 'confederal' Canada, one in which provinces and territories make collective national decisions, at least in those broad areas lying primarily in provincial jurisdiction. This is underlined by the absence of Ottawa from the Council. Alternatively, and more likely, it could be little more than a minor formalization of existing provincial-territorial institutions.

Another interesting development in Canada's intergovernmental affairs has been the growing assertiveness of Canadian municipalities (Turgeon, forthcoming 2006). Historically in Canada, cities have had very limited political powers, since they are, according to the Constitution, creatures of the provinces. They can unilaterally modify the charters, boundaries, resources and responsibilities of cities. Yet, over the past decade, Canadian cities, especially major cities such as Montreal, Toronto, Vancouver, Winnipeg and Calgary, have increasingly demanded a fair share of Canada's fiscal revenue so that they can ensure their competitiveness in relation to other world cities in an era of globalization, and equip themselves better to integrate immigrants, who are heavily concentrated in a few large metropolitan areas. Although their campaign has achieved some initial success, in the form of some modest fiscal transfers from the federal government, it quickly became overshadowed by increasingly bitter debates on the horizontal fiscal imbalance between provinces and the vertical fiscal imbalance between the provinces and the federal government.

3.3. Federalism and Fiscal Imbalance

After Switzerland, it is often said, Canada is the most decentralized federation in the world. This is especially the case with regard to fiscal matters. The federal share of total government spending is 37 per cent – compared with 61 per cent in the United States, 53 per cent in Australia, and 41 per cent in Germany. Each level of government has a high degree of autonomy in raising and spending revenues. Each is constitutionally entitled to occupy all major tax fields.¹¹ Each is free to borrow on domestic and international markets. There are considerable financial transfers between federal and provincial governments, but these are remarkable for their largely unconditional nature, especially when compared with other federations, such as the US, Germany and Australia.

The largest single transfer is 'equalization,' designed, as S. 36 of the Constitution Act, 1982 puts it, to ensure through unconditional federal payments that all provinces have the ability to provide 'comparable' levels of public service at 'comparable' levels of taxation.¹² Other transfers for health, post-secondary education and other matters have only very broad and general conditions attached. Transfers from Ottawa to the provinces represent only 13 per cent of provincial spending (though this varies considerably between richer and poorer provinces), compared with 31 per cent in the United States, and 41 per cent in Australia. (Simeon and Papillon, 2006: 103-6) Thus, since the high water mark of federal fiscal dominance in the 1950s, the trend – often led by Quebec – has been towards fiscal decentralization, both in terms of provincial revenues and spending, and in terms of fewer and weaker 'conditions' linked to the federal transfers that remain.

Nonetheless, there is a growing debate in Canada about an alleged 'fiscal imbalance' in Canadian fiscal federalism. Again, the debate was initiated by Quebec, when the Séguin Commission appointed by

11. With the exception of 'indirect taxes' for the provinces.

12. Equalization payments, of which Quebec is the largest single recipient, primarily by virtue of its large population compared with other poorer provinces, have no conditions attached.

the Quebec government reported.¹³ The debate suggests a fundamental mismatch between the policy responsibilities assigned to provinces (which include most of the growing areas of public expenditure) and the resources that are available to them. The alleged mismatch has two dimensions. The 'vertical' imbalance suggests that the central government has revenues that exceed their needs, thus producing large surpluses, and providing an incentive to spend in areas of provincial jurisdiction, while the provinces collectively are running fiscal deficits. Ottawa has said this is illusory: there are no constitutional barriers to provinces' raising their taxes to meet their needs. Provinces, on the other hand, have pointed out their inability to sustain the increasing level of spending in health and education and to balance their budgets. Two sets of solutions have been proposed: to shift additional taxing powers to the provinces (as happened in the 1960s and 1970s), or to increase federal transfers to the provinces in areas such as post-secondary education.

The 'horizontal' fiscal imbalance refers to the large economic disparities among Canadian provinces. The Canadian solution to this has been 'equalization. The principle is clear, and fundamental to the idea of Canada as a 'sharing community.' The concept has deep support in all sections of Canada, seen as a central part of the 'federal bargain'. But it has recently come under considerable strain. Partly this is because one province, energy rich Alberta, has per capita revenues that greatly now exceed those of any other province. To 'equalize' provincial revenues to the level of Alberta (the 10-province standard) and to take full account of energy revenues would, as the program is designed, massively increase federal spending, much of it funded by Ontario taxpayers who do not themselves benefit from resource revenues.¹⁴ Ontario, joined by Alberta has vigorously resisted increasing the amounts devoted to equalization. This puts it in

13. Quebec. Commission sur le déséquilibre fiscal, Pour un nouveau partage des moyens financiers au Canada. Rapport final. At www.desequilibrefiscal.gouv.qc.ca. For the federal response, see Government of Canada, Department of Finance, "The Fiscal Balance in Canada," October, 2004. www.fin.ca/facts/fbcfacts9_e.html.

14. Two reports, reaching slightly different conclusions, make recommendations for reform of equalization. Finance Canada, Expert Panel on Equalization and Territorial Formula Financing, Achieving a National Purpose: Putting Equalization Back on Track, (Ottawa: 2006), www.eqttf-pfft.ca. Council of the Federation, Advisory Panel on Fiscal Imbalance, Reconciling the Irreconcilable: Addressing Canada's Fiscal Imbalance, Ottawa, 2006.

conflict with Quebec, which is the largest single recipient of equalization payments.¹⁵

While fiscal federalism is not a constitutional issue, it has become a central concern of the politics of Canadian federalism. Fundamental issues of public policy – childcare, health care, the environment, global warming – frequently become subordinated to wrangling over funding. In 2006, Quebec placed the fiscal imbalance at the centre of the Canadian debate. A newly elected Conservative minority government in Ottawa, anxious to build future support in the province, has embraced this concept. The result is that the fiscal debate is no longer just about economics and efficiency, but also about Quebec's perceptions of Canadian federalism and its flexibility towards its demands; and about the broader commitment to sharing and redistribution in an increasingly competitive economic environment.

4. Conclusion: Federal-Provincial Diplomacy All Over Again?

In 1972, one of the authors of this article published a book entitled *Federal-Provincial Diplomacy* (Simeon, 1972, 2006). The book examined intergovernmental relations in the 1960s, a decade marked by major new social and economic programs introduced by the federal government, and by assertive provinces eager to defend their interests and their jurisdictional turf. The author compared the round of intergovernmental relations in that period to international negotiations, in which provinces and Ottawa relentlessly pursue their self-interest during intergovernmental conferences.

This was also the period during which the modernizing 'Quiet Revolution' was occurring in Quebec. No longer did Quebec reject the secular, social-democratic state. Instead, Quebec embraced it. But now it was to be achieved largely through the Quebec state, rather than through federal imposition. As a result, in that decade, Quebec not only strongly resisted new federal 'intrusions,' but also asserted its own jurisdiction, its desire to be treated differently from other prov-

15. While other poorer provinces receive much higher per capita payments than does Quebec, its population means that the total is much greater.

vinces, and its need for fundamental change in fiscal federalism. Much of this agenda was achieved: the provincial share of major taxes dramatically increased; Quebec established its own pension plan, parallel to a national plan for the rest of the country; Quebec established agreements with Ottawa to give it a greater voice over immigration; and Quebec was able to 'opt-out' of a number of federal shared cost programs. In this period, as well, the constitutional issue emerged, and it was to dominate intergovernmental relations until the 1990s.

This period ended with the accession to power in Ottawa of Pierre Trudeau, who was deeply hostile to a 'two-nation' view of Canada, and who believed that further concessions to Quebec – especially formal recognition of its 'special' or 'distinct' status as the primary government of the people of Quebec – would set the stage for a slippery slope towards secession, in which Québécois' ties to Ottawa and the rest of the country would steadily diminish. His solution was equal treatment of the provinces; and the promotion of bilingualism across the country, and especially within the central government, though 'official bilingualism.' Trudeau was able to achieve some of his most important goals – notably a pan-Canadian Charter of Rights and Freedoms, enforced by a national institution, the Supreme Court. But Quebec's gains of the 1960s were retained, and in a few cases extended, and the decentralist trend initiated in the 1960s has generally continued.

Indeed, the dynamics of Canadian intergovernmental relations in the 21st century would find many more similarities than differences should they be compared with the 1960s. This is so, despite dramatic changes in Canadian society and culture, the growth of globalization, and decades of constitutional debate. It is a remarkable testimony to the inertia of institutional arrangements.

Many of the familiar issues remain: finding a stable and mutually acceptable place for Quebec in the federation; addressing the needs of the cities; clarifying the roles and responsibilities of governments and ensuring that fiscal arrangements are appropriately synchronized with the respective responsibilities of each level of government; finding a more productive pattern of intergovernmental relations that reduces the current emphasis on 'turf protection', status, power, credit-claiming and blame avoidance and permits more creative focus on substantive policy issues and more citizen involvement; finding ways

to incorporate cities and indigenous Aboriginal governments more fully into the multilevel intergovernmental system. Thus, over time, the issues change; but the mechanisms Canadians have to deal with them lag far behind.

From the perspective of Quebec nationalists (whether federalist or secessionist), the story of Canadian federalism remains ambiguous. From one point of view, it is a story of failure. There has been no formal recognition of Quebec's distinctiveness, or of asymmetry in the constitution. Quebec has had to continue to battle against perceived federal 'intrusions' into provincial jurisdiction. Two referenda on secession have been defeated, albeit very narrowly in 1995. While support for secession (at least so long as it is accompanied by a continued economic association with the rest of Canada) remains strong, some of the passion behind the movement has faded as some Québécois, much like Canadians outside of Quebec, have come to dread constitutional discussions.

But there is another, much more positive, story. In some fundamental ways the 'Quebec nation-building' project has succeeded within the Canadian federation. Quebec has developed a strong, vibrant, self-confident civil society, which exists remarkably independent from Canada more generally; Quebec has been able to develop a distinctive approach to social policy that is in some ways quite distinct from that of other provinces. Quebec retains great influence at the federal level (Québécois have occupied the post of Prime Minister with only very minor interruptions since the 1950s); the economic and political disadvantages that were thoroughly documented by a federal Royal Commission in the 1960s have been largely eliminated. At the institutional level, Quebec experiences considerable *de facto*, if not *de jure* asymmetry. And, perhaps most important, the Supreme Court of Canada has stated unequivocally that, under certain conditions, Quebec does have the right to secede.

Perhaps this is one of the reasons why Canada has been able to have a profound debate about the nature of the country and the role of Quebec it, and has been able to debate secession for 50 years, but to do it through almost entirely democratic and peaceful means. One thing that federalists and secessionists have in common is a prior commitment to democratic politics.

4.1. Catalonia/Quebec; Canada/Spain

There are of course massive differences between Canada and Spain, in history, culture, society, and institutions. But it is no accident that each country has great interest in the other. We are both multi-national federations. We both must combine our bi-nationalism with the existence of other regions and provinces that also have strong identities and interests. We both have to continue to work out these historic differences while also responding to larger forces of regional integration (NAFTA and the EU) and to our increasing multiculturalism.

Hence many of the issues we face in our federalism debates are the same. They include, among others: reconciling unitarian, state-centered conceptions of the country with regional autonomy; finding policies with respect to language that respect the rights of 'minorities within minorities' (Anglophones in Quebec and Francophones outside Quebec; non-Catalans in Catalonia and Catalans outside the region); finding the ways to empower the national aspirations of Quebec and Catalonia ('building out') and also ensuring their full representation in pan-Canadian and pan-Spanish institutions ('building in'); balancing symmetry and asymmetry; and so on.

In both cases, perhaps the most fundamental issue to find ways to continue to 'vouloir vivre ensemble.' Much of the debate in Canada has focused on the search for common values and symbols, and a common sense of identity and citizenship. Some minimal level of such unity is clearly essential. But it is not the only glue. Distinct societies can continue to live together even with differing loyalties and identities. They can do so because they share a common fate, because their economies and societies are deeply intertwined. Whether or not they love each other, they are in it together. This, we believe is a neglected dimension of the Canadian debate; and one that may have parallels in Spain.

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RESUM

En aquest article s'analitza la capacitat del federalisme canadenc d'articular el caràcter dual i regionalista que defineix el Canadà a través de diferents arguments i opinions a favor i en contra que s'han generat, tant al si de la Federació canadenc com des de l'exterior. Des de les perspectives dels sobiranistes quebequesos, el federalisme és una cotilla que estreny i limita el marge de la nació quebequesa per expressar-se per si mateixa tant en el context canadenc com en àmbits internacionals; per als sobiranistes quebequesos el terme "nació" quebequesa implica i requereix un "estat quebequès". Des de les perspectives dels federalistes quebequesos (bona part dels quals entén el Quebec com una nació sociològica i política), el futur del Quebec està relacionat amb la seva pertinença a la Federació canadenc, si bé a una federació que ha de reconèixer que el Quebec és una "societat diferencial" dins el Canadà, i que ha d'assegurar que el Quebec desenvoluparà i promourà els seus interessos com a nació. Des d'altres perspectives, el federalisme canadenc i el seu grau de descentralització, juntament amb la forta asimetria que permet el mateix sistema, fan que el Quebec segurament gaudeixi d'un dels nivells d'autogovern més amplis del món. Des de fora del Canadà, les opinions van des d'aquells que estan d'acord amb aquesta darrera perspectiva i, per tant, amb la asimetria, fins a aquells que entenen que el Quebec és una més de les deu províncies existents, totes i cadascuna de les quals amb trets propis, i que, en conseqüència, ha de ser tractat i considerat amb la mateixa regla d'igualtat que estableix el sistema constitucional i polític.

ABSTRACT

This article analyses the capacity of Canadian federalism to articulate and accommodate the dual and regionalist character defining Canada through a range of arguments and opinions both for and against that have been generated both within the Canadian Federation and abroad. From the standpoint of the Quebec sovereignists, federalism is highly restrictive of the Quebec nation's freedom to express itself, by itself, within the Canadian context as well as within international ambits; for Quebec nationalists, the term Quebec "nation" implies—indeed, requires—a "Quebec state". But, from the standpoint of the Quebec federalists (a good number of whom understand Quebec as a sociological and political nation), the future of Quebec lies with its membership of the Canadian Federation, however much this has to recognise Quebec as a "differential society" within Canada, and however much it has to ensure that Quebec will develop and promote its interests as a nation. For yet others, the decentralist character of Canadian federalism, and the extensive provisions for asymmetry built into the system, mean that

Quebec is already perhaps the most powerful sub-national government in the world, such that it already has the powers necessary to fulfil its national destiny, within the federation. Opinion outside Quebec ranges from those who accept this view, and embrace asymmetry, to those who argue that Quebec is simply one of ten existing provinces, each of which is distinct, and which should all be treated as equals in accordance with the constitutional and political framework.