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Asymmetrical Decentralization: Functional or Dysfunctional

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Abstract

In the past decade increasing international attention has been given to asymmetrical forms of decentralization in unitary, federal and confederal political systems. In considering whether asymmetrical decentralization contributes to good governance, distinctions must be drawn between whether asymmetry is politically or capacity driven, between *de facto* and *de jure* (constitutional) asymmetry, between asymmetry among full-fledged constituent units and relating to peripheral constituent units, and between transitional asymmetry (at 'variable speeds') and permanent asymmetry (as 'variable geometry'). Thus, an examination of the reasons for asymmetry, the form and scope of the asymmetry, the type of constituent units involved, and the duration of asymmetry need to be examined. A fundamental issue is whether asymmetry in decentralized political systems is functional or dysfunctional. Asymmetrical constitutional decentralization with its increased complexity and tendency to provoke countering pressures for equal and symmetrical treatment has often been counter-productive, suggesting that there may be limits to the efficacy of asymmetrical constitutional solutions. Nevertheless, in some cases asymmetrical constitutional decentralization may provide the only way of accommodating major political and capacity differences among constituent units.

A. Introduction

(1) *Contemporary significance of the issue*

While federal and decentralized political systems combining shared common governmental institutions with self-government for constituent units have often been adopted to reduce internal conflict or gain efficiencies from decentralization, one important aspect that requires attention is when the constituent units involved may for political or capacity reasons require differing degrees of decentralization in the jurisdiction allocated to them. Because in three of the classical federations, the United States (1789), Switzerland (1848) and Australia (1901) their basic constituent territorial units were assigned symmetrical constitutional status and authority, the literature on federal systems traditionally assumed such symmetry to be the norm within federal systems. But in practice there has been a considerable number of federal systems within which fundamental variations among the constituent units in their relative desires for noncentralization have led to pressures for asymmetrical arrangements relating to the status and authority of these units. Significant examples among federations today are Canada (1867), India (1950), Malaysia (1963), Spain (1978), Belgium (1993) and Russia (1993). Nor has asymmetry among constituent units been confined to federations. The European Union, fundamentally a confederation but with some features more typical of federations, has incorporated elements of “variable geometry” and of integration at “variable speeds”. Arrangements for devolution and decentralization within a number of unitary systems have also exhibited asymmetry. The most notable recent example is the establishment within the United Kingdom of parliaments with differing powers in Scotland, Wales and Northern Ireland. The issue, therefore, of whether asymmetrical decentralization is functional or dysfunctional and whether such arrangements contribute to or undermine internal harmony and effectiveness within a political system therefore has a contemporary significance.¹

(1) *The academic literature on asymmetrical decentralization.*

Some thirty-five years ago, Charles D. Tarlton wrote an insightful essay entitled "Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation," but until recently scholars had not focussed much attention upon instances of asymmetry within federal political systems nor upon the implication of asymmetry for the operation of such systems.² In his article, Tarlton pointed to the distorting effect of the then prevailing theoretical treatments of

the concept of federalism that tended to define federalism implicitly in terms of political and legal units each sharing a symmetrical relationship with the federal government. He suggested that we should turn our attention away from formal constitution-legal relationships, arguments about where sovereignty ultimately resides, or the relationship of institutional instrumentalities. Instead, he argued we should examine social diversity in a general sense and the diverse ways in which each member state in a federal system is able to relate to the system as a whole, to the federal authority and to each other member state.³ He suggested that if we did so we would find that cultural, economic, social and political factors combine to produce asymmetrical variations in the symbiotic connection between member states and a federal system.⁴ Furthermore, he went on to suggest that the extent of symmetry or asymmetry among component states in their relationship to the federal authority, to the federation as a whole, and to other states may affect the degree of harmony or disunity within a federal system, and that where elements of asymmetry are particularly predominant increased, coordination and even coercion from the centralizing authorities in the system may be required to maintain unity.⁵

Interesting as Tarlton's speculations of thirty-five years ago were, his article was for some time followed in the scholarly literature by only a few fragmentary references to asymmetrical relationships within federations.⁶ Within the past decade, however, the issue of asymmetrical relationships has come to attract considerable attention from scholars, and there is a burgeoning literature on this subject..⁷ Indeed, considerable attention was devoted to these at the Joint International Association of Centres for Federal Studies (IACFS) and IPSA Research Committee on Comparative Federalism and Federation conference at Kwa Maritane in South Africa in 1993 and at the IPSA-Research Committee on Comparative Federalism and Federation sessions at the IPSA Berlin Congress in 1994.⁸

To what can we attribute this intensified interest in asymmetrical relationships within federal systems? It arises from a realization, not only of Tarlton's point that variations in the cultural, economic, social and political factors operating in different member states within a federal political system lead to *de facto* asymmetry among them, but to the recognition that in the design and evolution of a significant number of federal systems there has been a tension between

the pressures for symmetrical and for asymmetrical *de jure* relationships. As noted above, significant examples involving the incorporation of some degree of *constitutional* asymmetry in the relationships of different member units to the federal system include not only Canada, but India, Malaysia, Spain, Belgium and Russia. Indeed, in the Canadian case it has been a major issue in the constitutional deliberations of the past two decades. Asymmetry is also exemplified to some extent in the *de facto* situation of the newly added eastern Länder at the time of German reunification. It has also been an issue in the European Union as a result of the special arrangements under the Maastricht Treaty relating to Britain and Denmark.⁹ The recent devolutionary developments within the United Kingdom are also clearly asymmetrical with different arrangements envisaged for Scotland, Wales, and Ireland.¹⁰ Even in the United States where the status of the fifty states in relation to the federation is constitutionally symmetrical, Elazar has identified some peripheral units—2 federacies, 3 associated states, 3 home-rule territories, 3 unincorporated territories, and some 130 Native American nations (*de facto* federacies)—which exist in an asymmetrical relationship to the federation.¹¹ Perhaps the most complex current example of both *de facto* and *de jure* asymmetry within a contemporary federal system occurs in the almost bewildering variety of powers the 89 constituent units -- republics, oblasts, okrugs, etc., -- that currently constitute the Russian Federation have been able to negotiate. Within a formally symmetrical constitutional framework many of the constituent units in Russia have been able to conclude bilateral treaties providing for extensive asymmetrical treatment.

Thus, it has been the realization among political scientists both of Tarlton's point that *de facto* asymmetry is typical of relations in most federal political systems, and of the existence of a number of contemporary federal and decentralized systems that have incorporated some degree of *de jure* asymmetry that has increasingly attracted the attention of scholars. Interest has been aroused in the different forms that asymmetrical arrangements may take, in their effect on cohesion, effectiveness, the operation of democratic processes and the protection of minorities, and in the limits beyond which such arrangements may be dysfunctional within a federal system.

(2) *The scope of this paper*

As a background paper for the special session roundtable on “Asymmetrical Decentralization: A Variable-Speed Approach to Improving Governance?” at the IPSA World Congress, 2000, in Quebec City, the purpose of this paper is to map out in a general way some of the theoretical and practical issues arising from asymmetrical governance arrangements. The paper has three parts. First, there is a discussion of some conceptual issues. Second, there is a comparative survey of various kinds of asymmetry. Third, there is a discussion of the degree to which asymmetrical governance has in practice been functional or dysfunctional.

B. Conceptual Issues

(1) *Distinguishing decentralizing, integrating and federal asymmetrical governance*

The title of the round table refers to “asymmetrical decentralization” but also to “improving governance”. At the outset, to contribute to clear thinking on the subject, we need to distinguish from each other the concepts of decentralization, integration and federation. These are not synonymous terms, but each of them may exhibit elements of asymmetry. In this respect, *decentralization* refers to the process and resulting outcome where jurisdiction is transferred from a central government to sub-units of government. An example of asymmetrical decentralization is the recent differential devolution of authority to the parliaments of Scotland, Wales, and Northern Ireland in the United Kingdom. This transfer may apply uniformly, i.e., symmetrically, to all sub-units within the system, or as in the United Kingdom may apply differentially, i.e., asymmetrically to the different sub-units within the system. By contrast, *integration* or centralization may refer to a process of transfer from the sub-units and concentration of authority in the central authorities within a political system. This centralization process or transfer of authority from sub-units may be uniform, i.e., symmetrical, or differentiated, i.e. asymmetrical. An example of the latter is the closer integration of some members of the European Union into the European Monetary Union. Also to be distinguished from ‘decentralization’ is ‘*noncentralization*’ which is the defining characteristic of federations and may also be symmetrical or asymmetrical in its application to constituent units within the federation. A number of authors have emphasized the distinction between ‘noncentralization’ and ‘decentralization’ on the grounds that the latter implies a hierarchy of power from the top or

the centre whereas the former implies a constitutionally structured dispersion of power and therefore represents better the essential character of a federation.¹² Thus, decentralization may describe the relation within unitary political systems, but noncentralization describes better the constitutional relationship within federations. Either, however, may be symmetrical or asymmetrical.

While much of the academic literature on asymmetrical relationships has focussed upon federal political systems, we must note that in broader terms asymmetrical governance may also apply to some decentralized unitary systems and to some confederal systems.

(2) *Defining symmetry and asymmetry*

If we take Tarlton's 1965 article about asymmetry within federal systems as a starting point for defining symmetry and asymmetry, we must first note that the terms symmetry and asymmetry are applied to *relationships* within a federal system.¹³ The relationships to which he applies the terms are the ways in which a member state within a federal political system relates to the system as a whole, to the federal authority, and to each other member state.

In these relationships he defined *symmetry* as "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."¹⁴ In other words, it relates to the uniformity among member states in the pattern of these relationships within a federal system. He went on to suggest that in an ideal symmetrical federal system each state would maintain essentially the same relationship to the federal authority, the division of powers between the federal and state governments would be virtually the same in every case, representation in the federal government would be on the same basis for each component polity, and support of the activities of the federal government would be equally distributed.¹⁵

Asymmetry in a federal system, on the other hand, refers to a situation where the diversities within the larger society find political expression through component governments "possessed of varying degrees of autonomy and power."¹⁶ A component unit would have about

it "a unique feature or set of features" which distinguishes its relationship to the system as a whole, to the federal authority, and to each other state.¹⁷

Tarlton, in his own analysis, was primarily concerned with the significance of the underlying cultural, economic, social and political *conditions* that led to pressures for asymmetry and with the extent to which a system that is highly asymmetrical in its components may have difficulty in generating harmony and unity.¹⁸ His article did not attempt, therefore, to analyze or to identify empirically the different forms of structural asymmetrical relationships that might exist within different federal and decentralized systems, a task to which this paper is directed.

(3) *Pre-conditions of asymmetry and asymmetrical outcomes*

An important distinction is that between the *pre-conditions of asymmetry* and *asymmetrical outcomes*.¹⁹ Pre-conditions correspond with Livingston's focus upon the federal qualities of society which are then articulated through federal institutions.²⁰ Among the pre-conditions which Burgess and Gress have identified as tending to lead to asymmetrical federal or decentralized arrangements are variations in political cultures and traditions, social cleavages, territorial concentrations, socio-economic factors and demographic patterns.²¹

There are two broad categories or rationales for asymmetry within a polity: those that are *politically driven* and those that are *capacity driven*.²² Political rationales for asymmetry relate to situations where a territorially defined group for reasons such as those categorized by Burgess and Gress, press for a differential political relationship with central government. Such regional demands for increased autonomy are sometimes based on a claim to self-determination.²³ While often based on ethnic differences, politically driven asymmetry may have other motivations such as those that led Hong Kong to press for special autonomy arrangements in relation to China in order to maintain features of its particular economic system.

By contrast to politically driven pre-conditions for asymmetry are capacity driven pre-conditions. Diverging capacities to maintain effective subnational governments may make differentiated decentralization or noncentralization desirable. Thus, differences among

subnational governments in terms of financial and trained human resources may be a major motive for the adoption of asymmetrical arrangements for subnational governments and lead to differing degrees of decentralization or noncentralization among them. Typical examples of such factors at work are the differentiation between provinces or states and territories in a number of federations, (e.g. Canada, Australia and India) and the debate in a number of African countries about the inappropriateness of a “one size fits all” decentralization in a number of African states where regions are at different stages of development.

(4) *Asymmetrical Outcomes: aspects of structural asymmetry within polities*

Asymmetrical outcomes refer to the relations of different member states to the federal or central authority, to other member states and to the system as a whole. Issues of symmetry and asymmetry are applicable not only to "federations" but to the wider genus of "federal political systems" including confederations and constitutionally decentralized unions.²⁴ The analysis of asymmetrical outcomes should not therefore be confined solely to federations.

There are a number of aspects of structural symmetry and asymmetry which will need to be considered. *First*, since the relative population, territory and wealth of each component unit affects its power and influence, attention needs to be given to variations in these features of the constituent units. *Second*, the degree of autonomy and powers, assigned to or exercised in practice by each unit is an important aspect. *Third*, the fiscal powers, relative financial resources and financial autonomy available to each member state provide an important indicator of their relative autonomy in relation to other member states. *Fourth*, since representation in the federal institutions is a major channel for influencing federal or national policy-making, the degree to which representation is on the same basis for each member state or varied is another measure of significant symmetry or asymmetry. *Fifth*, where there are arrangements for special institutions or processes for the conduct of intergovernmental relations, the relative representation, weight and influence of each component unit in these mechanisms and processes is an important element in assessing the degree of symmetry or asymmetry. *Sixth*, is the differential role and nature of regional political parties within the political system. *Seventh*, is the degree of uniformity that exists in the application of a constitutional Bill of Rights (if there is one) to each

of the member states. *Sixth* is whether there is uniformity or variation in the relative weight or role of the member states in the constitutional amendment processes. *Finally*, there is the degree of uniformity imposed upon the member states in the provisions relating to their own constitutions.

In the analysis of symmetry and asymmetry as *relationships* within federal and decentralized systems a number of distinctions need to be made. These include the distinction between *de facto* and *de jure* structural symmetry or asymmetry, between symmetrical or asymmetrical relations involving *full-fledged* member states and those involving *peripheral* political entities, and those between asymmetrical arrangements that are *permanent* and those that are *transitional*.

(5) *'De facto' and 'De Jure' Asymmetrical Outcomes*

Although he did not explicitly say so, Tarlton seems to have assumed that typically within federations the constitutional or *de jure* relationship of the member states is normally a symmetrical one. Asymmetry in relationships arises, he suggested, from the impact of cultural, economic, social and political conditions affecting the relative power, influence and the relations of different member states within a federal system.²⁵ His interest, therefore, was concentrated on the degree and impact upon federal cohesion of the *de facto* asymmetry resulting from the underlying conditions affecting the relevant autonomy, power and influence of the component units in a federal system.

But while *de jure*, as Tarlton assumed, symmetry may be a characteristic of some federations, it is not universally so. Indeed, Canada, Malaysia, India, Spain, Belgium, Russia, and most recently the European Union and the United Kingdom all provide examples of *de jure* asymmetry in the relative constitutional powers of different major constituent units. It is important, therefore, to consider the impact of *de jure* asymmetry within federal and decentralized systems as well as *de facto* asymmetry.

The distinction between *de facto* and *de jure* asymmetry is an important one.²⁶ While for political scientists the impact of *de facto* asymmetry upon the operation of federal and decentralized systems is a significant area for analysis, for those involved in constitution-making or adjustment, the basic issue may be whether the constitution itself should *de jure* treat the various constituent units differently, and, therefore, what the likely effects of such arrangements upon the subsequent operation of the political system might be. The existence of a number of federal systems with *de jure* asymmetry makes it clear that such arrangements are clearly possible. But while the existence of examples indicates that such arrangements are possible, there remain questions about their desirability and whether there are limits beyond which such *de jure* asymmetrical arrangements might be destabilizing or dysfunctional.

(6) *Asymmetric Outcomes: Asymmetry of Full-fledged and Peripheral Constituent Units*

Asymmetry, whether *de facto* or *de jure*, may relate within a federal or decentralized system to one or more of the basic *full-fledged* member states constituting the system or to some *peripheral* units. Among peripheral units may be centrally administered Territories with a lesser degree of self-government, or units with a looser connection to the polity such as *associated states* and *federacies*.²⁷ The essential point about these examples of peripheral units is that normally they involve relatively small units in terms of population and that these relationships are quite distinct from those of the main constituent units within the major political entity.

While asymmetry in the relations governing peripheral units within a political system is unlikely to have a major effect on the way in which that system as a whole operates, asymmetry in the relationship of the full-fledged constituent units almost invariably has significant impact upon the processes and power relationships within a federal system. It is important, therefore, to examine these effects.

(7) *Asymmetric Outcomes: Permanent or Transitional Asymmetry*

Where there are sharply varying political desires for centralization and decentralization in different constituent units within the political system, agreement upon *de jure* asymmetry may be seen as necessary in order to obtain agreement at all on establishing or maintaining a federal

system. In some instances such as Canada, Malaysia and Belgium asymmetrical arrangements have been envisaged as relatively permanent whereas in others such as Spain they have been regarded more as transitional arrangements necessary only until all the constituent units have reached the same level of political development and stronger bonds of cohesion and acceptance have been achieved. The debate within Europe about whether a Europe of "two speeds" or of "variable geometry" might be a transitional or a permanent arrangement illustrates the alternative outlooks. Where the rationale for asymmetry is capacity driven, asymmetrical arrangements have usually been regarded as transitional and applying only until such time as the shortcoming in capacity can be remedied.

(8) Asymmetry and political cohesion

In considering symmetry and asymmetry as elements of federal and decentralized systems, it is not simply a matter of identifying the degree and kinds of symmetry or asymmetry in each political system and of the underlying conditions within that system that have induced these. Also important is a consideration of the extent to which in some polities the tension between clashing pressures for symmetry and asymmetry has itself become a major element of contention in their political dynamics and evolution. Indeed, in Spain and certainly Canada pressures in each of these political systems *both* for more symmetry and for more asymmetry have become a significant feature of their political evolution.²⁸

One question for consideration is whether asymmetry within federal and decentralized political systems is functional or dysfunctional. In a roundtable on the degree to which federal systems can contribute to effective governance this issue is the ultimate one. Given that *de facto* all federations and most decentralized systems have some degree of asymmetry the question actually needs to be rephrased in terms of the *degree* and *kinds* of asymmetry. Are there certain limits beyond which asymmetry may be destabilizing or dysfunctional and are there particular kinds of asymmetry that may be more significant than others in this respect? Tarlton in his speculative essay on symmetrical and asymmetrical elements in federal systems focussed particularly on the impact of asymmetry upon federal cohesion in terms of the resulting "secession-potential" within the federal system.²⁹ Other criteria which also need to be taken into

account are the impact of degrees and kinds of asymmetry upon effective decision-making, upon democratic processes, and upon the protection of minorities. Answers to such questions cannot be arrived at solely by *priori* reasoning. They will require empirical research into the actual impact of different kinds of *de facto* and *de jure* asymmetry within federal and decentralized systems.

C. Comparing Forms of Asymmetry

(1) The bases for comparison

Keeping in mind the preceding conceptual issues we may proceed to identify in a preliminary way for comparative purposes the extent and kinds of horizontal asymmetry existing within representative contemporary federal and decentralized systems. Identifying a range of examples is, of course, only the beginning, but it does provide a first step. This should lay the basis for further empirical studies and analysis in depth of each example in future studies in order to explain the factors that have produced the particular kinds and degrees of asymmetry and how that asymmetry has affected the operation and evolution of that particular federal or decentralized system.

In reviewing examples of asymmetrical political structures, a primary distinction in subsections 2 and 3 that follow will be that between *defacto* and *dejure* asymmetry among full-fledged constituent units in federal and decentralized systems. Aspects of asymmetry reviewed in these subsections include variations in (1) size of constituent units affecting their relative power and influence; (2) relative autonomy, jurisdiction and powers of units; (3) relative fiscal powers, financial resources and autonomy of the constituent units; (4) basis of representation of member states in federal institutions; (5) representation of member states in processes of intergovernmental relations; (6) the differential nature and impact of regional political parties within the political system; (7) application of a constitutional bill of rights; (8) relative power in formal constitutional amendment processes; (9) form and structure of the constitutions of the member states. Following that subsection 4 will identify examples of *dejure* asymmetry of

peripheral constituent units, and subsection 5 will consider examples of both permanent and transitional *de jure* asymmetry.

2. *De Facto Asymmetry of Basic Member States*

This section is devoted to the consideration of different kinds of *de facto* asymmetry among full-fledged member states within federal systems. As Tarlton and Burgess and Gress have noted, in virtually every federation and decentralized state the impact of cultural, social, geographic, economic and demographic pre-conditions has produced *de facto* asymmetries which are reflected in central-state relations and general political practice. What needs to be identified is the different forms and different degrees of *de facto* asymmetrical outcomes that have occurred.

(1) Variations in size wealth of constituent units

Some variation in population and territorial size of constituent units exists in all federal systems and this is a fundamental source of *de facto* asymmetry within each.³⁰ In some political systems this variation is, however, much greater than in others. The *de facto* asymmetry represented by differences in the size and population of constituent units is significant both in terms of relative political influence within the federation and in terms of capacity to exercise jurisdictional and administrative responsibilities.

Two aspects may be particularly significant. One is the existence of one or two dominant member states or regional units; the other is the relative powerlessness of particularly small member states or regional units. In relation to the former, notable examples of single constituent units containing over half the total population of a federation or decentralized polity have been Prussia within the German Confederation and subsequent Federation up to the 1930s, the Flemish Region within the current Belgian Federation, Jamaica within the abortive West Indies Federation (1958-62), East Bengal within Pakistan prior to its secession in 1971, Punjab Province within Pakistan today, Russia within the former USSR, the Czech Republic within the former Czechoslovakia, and England within the United Kingdom. Significantly, most of these examples have been marked by resulting tensions and instability arising from resentment at the

hegemony of one regional unit. Examples where two member provinces or states have had a preponderant influence within a federal system have been the combined population of Ontario and Quebec representing 62 percent of the total population of the ten provinces and three territories in Canada, and New South Wales and Victoria which constitute together 60 percent of the total population in the Australian federation composed of six states and two territories, and this too has been a source of resentment within each of these federations. Elsewhere, there are instances of large and influential constituent units: California and New York in the U.S.A.; Uttar Pradesh, Bihar and Maharashtra in India; Zurich and Bern in Switzerland; North Rhine-Westphalia, Bavaria and Baden-Wurttemberg in Germany; Perak, Johore and Selangor in Malaysia; Andalusia, Catalonia and Madrid in Spain. However, while most of these examples constitute over 10 percent of their federal population, only North Rhine-Westphalia at 21.8 percent constitutes over one-fifth of the total population of its federation, thus the problems are less serious than in polities dominated by one or two constituent units.

By contrast with these instances of large constituent units, most federations and decentralized systems have contained among their full-fledged member states some very small ones. For example the smallest province in Canada, Prince Edward Island, contains only .05 percent of the federal population, and in Australia the smallest of the six states, Tasmania, is only 2.7 percent of the federal population. Elsewhere, there are a number of instances of full-fledged member units with a minuscule proportion of the total federal population: in the United States, Wyoming, Alaska and Vermont (each with 0.2 percent); in India, Sikkim (0.05 percent), Mizoram (0.07 percent), Arunachal Pradesh (0.09 percent) and Nagaland (0.11 percent); in Switzerland Appenzell-Outer Rhodes (0.2 percent); Obwalden (0.4 percent), Nidwalden (0.5 percent) and Uri (0.5 percent); in Germany, Bremen (0.8 percent), Saarland (1.3 percent) and Hamburg (2.0 percent); in Malaysia, Perlis (1.1 percent) and Malacca (3.3 percent); in Spain, La Rioja (0.7 percent), Cantabria (1.3 percent) and Navarra (1.3 percent). The fears and anxieties of these constituent units about their relative powerlessness within the polity and the difficulties such units have in matching the benefits of scale in providing services experienced by larger constituent units within the polity have frequently been a source of tension.

Clearly, as Table 1 illustrates there is sharp asymmetry in the population of the full-fledged constituent units in most federations, the ratio of largest to smallest ranging in the examples listed from 342.6 in India to 1.2 in Pakistan prior to the secession of Bangladesh. The extent of such *defacto* asymmetry in the population and resources of constituent units in most federations is significant both because of the political effects on relations between units and on the relative political influence of different units within these federations, and the effects on capacity to perform functions allocated to the constituent units. At least in terms of relative size of constituent units significant *defacto* asymmetry would appear to be the norm within federations, rather than the exception, as a factor affecting internal political dynamics.

Table 1: Asymmetry of Population of Full-Fledged Constituent Units in Federal Systems

| Federal System | No. of Units | Total Population | Largest Unit | Pop. of Largest unit | Pop. % of Fed. | Smallest Unit | Pop of Smallest Unit | Pop % federation | Ratio Largest/smallest |
|----------------|--------------|------------------|---------------|----------------------|----------------|---------------|----------------------|------------------|------------------------|
| India | 25 | 846.303 m. | Uttar Pradesh | 139.112 m. | 0.164 | Sikkim | 0.406 m. | 0.0005 | 342.6 |
| European Union | 15 | 368.067 m. | Germany | 81.338 m. | 0.221 | Luxembourg | 0.378 m. | 0.001 | 215.2 |
| Switzerland | 26 | 6.873 m. | Zurich | 1.179 m. | 0.172 | Apenzell-IR | 0.014 m. | 0.002 | 84.2 |
| Canada | 10 | 29.108 m. | Ontario | 11.004 m. | 0.378 | P.E.I. | 0.135 m. | 0.0046 | 81.5 |
| United States | 50 | 265.172 m. | California | 31.589 m. | 0.119 | Wyoming | 0.48 m. | 0.0018 | 65.8 |
| Spain | 17 | 38.872 m. | Andalucia | 6.941 m. | 0.179 | La Rioja | 0.263 m. | 0.0068 | 26.4 |
| Germany | 16 | 81.338 m. | N.Rhine-W | 17.759 m. | 0.218 | Bremen | 0.683 m. | 0.0084 | 26 |
| Australia | 6 | 17.657 m. | N.S.W. | 5.959 m. | 0.337 | Tasmania | 0.472 m. | 0.0267 | 12.6 |
| Malaysia | 13 | 16.527 m. | Perak | 2.108 m. | 0.128 | Perlis | 0.176 m. | 0.0106 | 12 |
| Belgium | 3 | 10.022 m. | Flemish Reg | 5.769 m. | 0.576 | Brussels | 0.954 m. | 0.0952 | 6 |

| | | | | | | | | | |
|-------------------|---|----------|---------------|-----------|-------|---------------|-----------|--------|-----|
| Austria | 9 | 7.812 m. | Vienna | 1.533 m. | 0.196 | Burgenland | 0.274 m. | 0.0351 | 5.6 |
| Czechoslovakia | 2 | 15.6 m. | Czech. Rep. | 10.36 m. | 0.664 | Slovak Rep. | 5.264 m. | 0.3374 | 2 |
| Pakistan (1957-8) | 2 | 95.6 m. | East Pakistan | 51.597 m. | 0.54 | West Pakistan | 42.215 m. | 0.4416 | 1.2 |

(2) Relative autonomy, jurisdiction and powers of units

The *de facto* asymmetry in the relative autonomy and powers exercised by each unit within a federal system is more difficult to measure precisely. The relative size referred to in the previous sub-section is obviously an important factor here. The economies of scale and the services that can be sustained by the government of a member state the size of Uttar Pradesh in India with a population of over 139 million or California in the USA with a population approaching 32 million, is likely to be substantially greater than that of the smallest member states in those federations since these small units each constitute half a million or less in population.

Another factor which may induce *de facto* asymmetry in the exercise of powers by different member states within the same federal system is the existence of variations in political culture. The political culture prevailing in a member state may help to shape the policy preferences and degree of governmental activism within different member states. For instance, social disparities and differences in political culture between the new and older Länder after the reunification of Germany have been a contributing factor to asymmetry in the exercise of powers by Länder within Germany.

While relative size and number of states point to factors leading to the exercise of greater autonomy and power by different individual member states in a federal or decentralized system, they do not by themselves actually measure the exercise of that autonomy. To assess the degree of *de facto* variation in the exercise of autonomy by member states requires an empirical analysis of the ways in which different units in each federal system have used their constitutionally

assigned powers in practice.³¹ This is an area where much research remains to be done before conclusive comparative observations can be ventured.

(3) Fiscal power and autonomy

Particularly significant may be variations in available taxing capacity and financial resources of different constituent units in a federal or decentralized system. Regional units with higher per capita resources and wealth are likely to be able to display more autonomy in the exercise of their constitutionally assigned jurisdiction and to be less dependent upon transfers from the federal government. There is already a considerable research literature that sheds light on financial disparities and efforts to remedy these in different federations.³²

Among examples of large and wealthy component units that have been able to assert their relative autonomy in federations have been California in the United States, Ontario and Alberta in Canada, Victoria and New South Wales in Australia and Zurich in Switzerland. Generally, smaller constituent units have had to rely more heavily on financial transfers from the central government, as illustrated by the Atlantic provinces in Canada, although Milne has questioned the widely held view that this has led to high degree of relative dependency in these provinces.³³ A fairly common feature in many federations and decentralized systems has been to establish differential financial transfers or equalization schemes to reduce the fiscal asymmetry among constituent units.³⁴ These have been motivated by the view that all citizens within a polity should be entitled to comparable services without having to be subject to excessively different tax rates. Thus, they have represented efforts to reduce asymmetries in financial capacity. Such arrangements have also been politically driven by the recognition that disparities in wealth among regions are likely to have a corrosive affect on cohesion within a polity. Indeed, it is for this reason that in most European federations equalization transfers to reduce asymmetries in fiscal capacity have been labelled ‘solidarity transfers’.

(4) Representation of member states in central institutions

In most federal and decentralized systems, in the interests of democratic representation, at least one chamber of the federal legislature is based on the distribution of seats according to population. Given the variations in size of member states in each federation already noted above and in Table 1, the inevitable effect has been a considerable *de facto* asymmetry in the power and influence exerted in federal legislation and policy-making by representatives of the larger member states when compared with representatives of the smaller states. Examples are the predominance of Central Canada - Ontario and Quebec - within the House of Commons (so resented by the other eight provinces), the strong influence of New South Wales and Victoria in the House of Representatives in Australia, and also, although to a lesser degree, the relative influence of California and New York in the United States Congress, of Zurich and Bern in the Swiss Parliament and Federal Council, and of North Rhine-Westphalia, Bavaria, Baden-Wurttemberg and Lower Saxony in the Bundestag in Germany.

This variation in influences upon federal policy-making applies not only to representation within central institutions but also to influence within federal political parties. The asymmetrical influence of different constituent units in federal politics may sometimes be moderated, however, by the particular regional bases of the informal coalitions represented within the governing political parties. Furthermore, in some instances the influence of larger units may also be countered somewhat by the development of conventions ensuring adequate representation of smaller member units or of particular minorities in federal committees or cabinets as occurs, for instance, in Switzerland and Canada.

The *de facto* asymmetry in the influence of large versus smaller member states has often also been moderated by the *de jure* arrangements for a federal or central second chamber. The degree to which this has been the case has depended, however, on the relative power of the second chamber (usually somewhat weaker where parliamentary institutions have been adopted) and the degree of symmetry in the representation of member states within the federal second chamber. The United States and Australia by giving equal representation to the member states in their senates have emphasized symmetrical representation in the second chamber, but most other

federal systems, while weighting favourably the representation of smaller member states in their federal second chambers, have not adopted full symmetry of member state representation there.³⁵

(5) Representation in intergovernmental institutions or processes

In some federations special institutions and processes for the conduct of intergovernmental relations have been created. These have usually been established by intergovernmental agreement and convention rather than by constitutional provision.³⁶ The *de facto* "executive federalism" characteristic of Australia and Canada has led to numerous examples of such intergovernmental councils, committees and agencies in those two countries. Significantly in both federations the usual pattern for intergovernmental councils or bodies has been one of symmetrical, i.e. equal, representation of the participating governments, thus moderating asymmetry in other aspects of these federations. On the other hand, in the Canadian case, the recent "Social Union Framework Agreement" which Quebec refused to join but the other 9 provinces did, provides an example of *de facto* asymmetry in federal-provincial intergovernmental cooperative arrangements.

(6) The differential nature of regional political parties

One area where there may be considerable *de facto* asymmetry among member states within federal and decentralized systems, however, is in the political parties predominating in the different constituent units and the degree to which these do or do not parallel those operating in other constituent units or at the central level. Examples are the predominance of the Christian Social Union (CSU) in Bavaria and the Parti Québécois (PQ) in Quebec, both of which confine their electoral activities to their own regional unit and both of which express deep-seated territorial and cultural differences. Variations in the number of parties, which parties dominate, and the predominance of national or distinctive state parties may affect the different policy emphases and the potential for conflict or harmony with other member states within the federal system.

(7) Application of Bills of Rights

The establishment of symmetrical rights for all citizens within a polity by means of a bill of fundamental rights belongs in the category of *de jure* arrangements. But where no bill of fundamental rights has been incorporated in the federal constitution to ensure the uniform application of such rights throughout the polity, individual constituent state or regional governments may establish their own bills of rights, thus leading to some *de facto* asymmetry within the federal system in the fundamental rights of citizens that are recognized and protected within different constituent units. Indeed, that was the case in Canada for some time when several provinces enacted their own Charters of Rights prior to the incorporation of the Charter of Rights in the Canadian Constitution in 1982. Even in those cases where there is a bill of rights incorporated in the federal constitution, some member states may pass their own bills of rights supplementing or adding to the basic rights recognized in the federal constitution, thus introducing a *de facto* asymmetry in relation to these supplementary fundamental rights.

(8) Relative power in processes of constitutional amendment

Since the procedure for constitutional amendment is almost always formally set out in the Constitution, the relative influence of member states in these processes is normally established *de jure*. Nevertheless, in those constitutions where special majorities are stipulated for passage of constitutional amendments through the federal legislature, as in the United States, Germany, India and Malaysia, or in a referendum, as in Australia and Switzerland, this may enhance the incentives to seek the support of the larger member states, thus increasing their *de facto* influence in the constitutional amendment process. This effect may be moderated, however, where special majorities are also required in the second chamber in which the member states are equally represented, as in the United States.

(9) The Constitutions of the Member States

Most federal constitutions impose some degree of *de jure* symmetry in the constitutions of their member states in order to ensure their compatibility with the federal system as a whole. But the extent of the symmetry required in the constitutions of the member states varies considerably from federal system to federal system. Where only a few essential requirements are stipulated *de jure* in the federal constitution, as in the United States, Switzerland and Australia,

there may be considerable scope for *de facto* variation and hence asymmetry in the structure and powers of the executives, the use of referendums and initiatives, and electoral systems within different member units. On the other hand where the federal document has contained complete provincial constitutions as in India, and unilateral amendment by the states is not possible, the scope for *de facto* variation among member states' constitutions is more limited. Most federal constitutions range between the extremes of specifying only a few "essential" requirements and imposing complete uniformity upon member states' constitutions.

3. *De Jure Asymmetry of Basic Member States*

This section is devoted to the consideration of different kinds of *de jure* asymmetry within federal and decentralized systems. These represent cases where the constituent units are treated differently under the constitution and law.

(1) Delineating the constituent units

In most federations, especially those created by the aggregation of previously existing political units, the historical bases and traditions of the member states are so deeply rooted that the resulting asymmetry in population, territory and wealth is simply taken as a given not susceptible to adjustment by constitutional alteration of their boundaries. Nevertheless, in some federations, usually those created by a devolutionary process, and in decentralized unitary systems where the constituent units have derived their authority from the central government, there have been efforts to adjust the number and size and the boundaries of existing units in order to moderate the degree of asymmetry among the constituent units.

In two federations, India and Nigeria this has been done on a major scale. In India the landmarks of this process were the integration and consolidation of the princely states at the time of their accession in 1947-50, the reorganization of most of the state boundaries along linguistic lines and the reduction in the categories of states and territories from four to two in 1956, and beginning with Nagaland in 1962 the subsequent creation of a number of small full-fledged states representing distinct populations. While the reorganization of states in 1956 represented a reduction *de jure* in the asymmetry of the member states, the subsequent creation of a number of

smaller states since then has in fact increased the degree of *de jure* asymmetry. In Nigeria, the unbalanced three region structure which existed until the early 1960s was the source of considerable political tensions. Since then the original three regions have been progressively sub-divided: into four regions in 1967, 12 states in 1968, 19 states in 1976, 21 states in 1987, and 30 states in 1991, and currently 36 states and one federal capital territory. The motivation has been to represent more precisely ethnic concentrations and to create a greater symmetry in size among the constituent units. Among other federal systems where the constituent units have been reshaped are Germany during the early years of the West German Republic and in East Germany at the time of reunification. In Belgium, the federalization process of the past three decades has included the delineation of the Flemish, Walloon and Brussels Regions and of the Flemish, French and German speaking Communities. Most recently, South Africa has reconstituted its regional structure into nine provinces. In all these cases the relative degree of symmetry among the constituent units that has been achieved (and in most cases some continued asymmetry has been unavoidable because of historical, geographic and ethnic factors) has been the *de jure* product of constitutional revision.

(2) Relative autonomy, jurisdiction and powers of units

In most federations the formal constitutional distribution of legislative and executive jurisdiction applies symmetrically to all the full-fledged member states. This also applies to most decentralized unitary systems although less rigidly, the United Kingdom being an example of considerable asymmetry. Nevertheless, there have been some instances where the constitution has explicitly provided for *de jure* asymmetry in the jurisdiction assigned to full-fledged regional units. Where this has occurred there have been either capacity-driven or politically motivated considerations. These have aimed to recognize significant variations among constituent units relating to geographic size and population or to their particular social and cultural composition and economic situation.

There have been basically three approaches for establishing *de jure* asymmetry in the distribution of powers within federal systems. One has been to increase from the norm the federal authority in particular member states for certain specified functions. Such arrangements

have existed in India. They also existed in the short-lived Federation of Rhodesia and Nyasaland.

The second approach has been to increase from the norm the jurisdiction of particular member states. The most sustained example of this approach has been the concessions made to the Borneo states when they joined the Malaysian federation in 1963. Certain matters which come under federal government jurisdiction elsewhere in the Malaysian federation, such as native laws, communications, shipping and fisheries, became matters of exclusive state or concurrent jurisdiction in Sabah and Sarawak, while other matters such as immigration that remained under exclusive federal authority elsewhere in Malaysia required in the Borneo states state approval when they were applied within those states. In India there have been similar adjustments in *de jure* jurisdiction applied to some of the newer small states that have contained distinct ethnic groups. Canada from the beginning has had a measure of *de jure* asymmetry in the assignment of jurisdiction related especially to the distinctive character of Quebec.³⁷

There is a third constitutional approach for permitting asymmetry in the jurisdiction and powers exercised by certain member states. That is one in which the constitution is formally symmetrical in giving all the member states the same jurisdiction, but includes provisions permitting any member state in certain cases to 'opt in' or 'opt out' of these assignments. This enables governments to delegate their powers to another government, or member governments to take up the full exercise of their autonomy at different speeds. Such arrangements thus retain a formal *de jure* symmetrical application of the constitutional distribution of powers to all member states, but provide specific means for accommodating within that framework a *de facto* asymmetry among member states in the exercise of these powers. There have been such constitutional provisions and during the past three decades proposals for more of them in Canada.³⁸ The Spanish approach has been to recognize variations in the pressures for autonomy in different regions by granting to each Autonomous Community its own statute of autonomy tailored to its particular set of compromises negotiated between Madrid and the regional leadership, but this has been set within a framework providing for different Autonomous Communities to arrive at different speeds at an eventual position where the degree of asymmetry among them will be less.³⁹

Among the examples of confederal and federal systems not yet mentioned which have exhibited some degree of *de jure* asymmetry in the application of jurisdiction are the European Union, Russia and Belgium. The European Union provides an example of asymmetrical integration. The EU in negotiating the accession of each new member, has often had to make some particular concessions. In addition, in order to get agreement upon the adoption of the Maastricht Treaty, the European Union found it necessary to accept a measure of asymmetry in the full application of that treaty, most notably in the cases of Britain and Denmark. Furthermore, the establishment of the European Monetary Union has not included all the members of the EU. Perhaps the most complex current example of *de jure* asymmetry within a federal political system occurs in the variety of powers of the 89 component units such as republics, oblasts, okrugs, etc., currently constituting the Russian Federation have been able to negotiate. Within a formally symmetrical constitutional framework many of the constituent units within Russia have concluded bilateral treaties providing for asymmetrical treatment. By 1997 there were already over 45 such treaties. Within the Belgian Federation *de jure* asymmetry exists not only in the differences in jurisdiction of the three territorial constituent Regions and the three non-territorial constituent Communities, but also in the interrelation between Regional Councils and Community Councils (which have been combined in Flanders) and in the special position of Brussels as a Region. In addition to these examples the recent devolutionary process in the United Kingdom has involved significantly different legislative responsibilities for the parliaments of Scotland, Wales and Northern Ireland.

Another aspect of *de jure* asymmetry occurs where there is provision for different systems of law within the constituent units. A classic example is Quebec's distinct civil law whereas the other nine Canadian provinces have legal systems based on common law. Similar situations arise in some Asian and African countries where there are provisions to recognize different religious, customary or traditional law in different constituent units, an issue currently causing considerable tensions within Nigeria.

(3) Fiscal power and autonomy

An important factor influencing the powers and autonomy that member states in a federal or decentralized system are able to exercise is the *de jure* constitutional allocation of financial resources. As the extensive literature on fiscal federalism has invariably emphasized, where there is initial *de jure* symmetry in the constitutional allocation of taxing powers and financial resources, in most federal and decentralized systems this has often produced sharp variations in the wealth and fiscal capacities of their member states.⁴⁰ Consequently, in most federal systems there have been efforts to reduce the corrosive effect on unity of such disparities and to enhance federal cohesion by formal schemes for the redistribution and equalization of resources among the member states. These efforts have also been directed at reducing disparities among constituent units in financial capacity. The arrangements for redistribution and equalization in federal and decentralized unitary systems have normally been undertaken by the federal government through programs of differential transfers, although in the case of Germany the constitution also provides for a significant measure of horizontal redistribution among Länder. Thus, *de jure* systems of asymmetrical transfers have been employed to make the *de facto* fiscal capacities of the member states more symmetrical. Examples of such formal overall equalization schemes exist in Australia, Canada, Germany, India, Malaysia and Switzerland. Although the United States has not adopted a general scheme of equalization transfers, the same objectives have been embodied in many of the separate grant-in-aid programs.

Where there is an asymmetry in the *de jure* allocation of jurisdiction among the constituent units, the question may arise whether there should be a corresponding asymmetry in the *de jure* allocation of taxing powers and revenue sources to match the differences in responsibilities. One example is the asymmetrical arrangements relating to collection of personal income tax in Quebec, corporation taxes in Quebec, Ontario and Alberta, and the GST sales tax collection in different provinces within Canada. A particularly striking example is that of Spain where since 1986 the 17 Autonomous Communities have fallen into four categories in terms of their fiscal relations with the national government.⁴¹ In the first category are Basque and Navarra which represent exceptional cases and have a “special regime” of financing. The next category relates to Autonomous Communities with a high level of autonomy (i.e. including

responsibility for health and education). In this category are Andalusia, the Canary Islands, Catalonia, Galicia, and Valencia. In this group transfers in 1987 represented 76.9 percent of their revenue of which 25.3 percent was in the form of conditional transfers and 49.7 percent in the form of unconditional transfers. The third category consists of four multi-provincial Autonomous Communities with substantially lower levels of responsibility. In this category transfers represented 71.7 percent of their revenue, and by contrast with the second group conditional transfers constituted a much higher proportion, 36.5 percent, and unconditional transfers much less at 35.2 percent. Finally, in the fourth category are six uni-provincial Autonomous Communities with low levels of responsibility. For these as a group transfers represented a similar portion of their revenue (72.8 percent) but the proportion in the form of unconditional transfers was somewhat higher at 45.7 percent. Clearly the asymmetry in the jurisdiction of the Spanish Autonomous Communities has been reflected in the different patterns of financial arrangements and the proportions of their transfers from the national government that have taken the form of conditional or unconditional transfers.

(3) Representation of member states in central institutions

The federal legislature in most federal systems is bicameral with one chamber based on representation by population and the other based on the representation of the governments, legislatures or populations of the constituent units. This is less often the case in decentralized unitary systems, but, nevertheless, does occur in many of them.

As noted in the previous section on *de facto* asymmetry, basing one chamber on the principle of representation according to population may, because of the different size of population in different member states, lead to *de facto* asymmetry in the political influence of member states in federal decision-making. Nevertheless, the principle of representation according to population has normally been applied *de jure* symmetrically to all member states. There have been exceptions, however. Canada provides one example: the smallest provinces have been constitutionally guaranteed a minimum representation in the House of Commons that is somewhat more than their population would strictly justify.⁴²

It is normally the federal second chamber which constitutionally provides the *de jure* basis for enhanced representation of the smaller constituent units. In the United States and Australia representation of the member states is symmetrical since each is represented by an equal number of senators. In other federal systems, however, there is not the same complete symmetry provided in the federal second chamber for the representation for each member state. In Switzerland, of the 26 cantons, six are classified as half cantons and have only one, instead of two, representatives in the Council of States. In a number of federal systems there is a weighted system for representing member states in the second chamber which favours the smaller states but takes some account of differences in population. This is true of Germany with different Länder having 3,4, 5 or 6 members in the Bundesrat, and of India and Austria where the variation is even greater. In Malaysia, states are equally represented in the number of members elected by the state legislatures, but the large number of additional centrally appointed members which constitute 58 percent of the total membership has not been distributed equally among the states, thus leading in practice to considerable asymmetry in the representation of individual states in the federal second chamber. In Canada there is a broad symmetry in the representation in the Senate of four regions, composed in some cases of groupings of provinces. The four regions, equally represented by 24 senators each, are the Maritimes (Nova Scotia, New Brunswick and Prince Edward Island), Quebec, Ontario, and the West (Manitoba, Saskatchewan, Alberta and British Columbia). In addition there are 6 senators for Newfoundland and 1 each for the three territories. In summary, it would appear then that among federal systems there has been considerable variation in the degree of *de jure* symmetry in the representation of member units as units in the federal second chamber, but most have attempted to counteract, at least to some degree, the influence of the larger units within the other legislative house.⁴³

A further element of *de jure* asymmetry in the representation of constituent units in the federal second chamber occurs in Switzerland where the 1848 constitution of the federation left the method of election to the federal second chamber for each canton to decide for itself, leaving scope for variation. Over time, however, all the cantons eventually came *de facto* to opt for direct election to the federal second chamber.

An interesting feature of the Belgian federation as it has evolved is that because of the bipolar character of politics resulting from the tensions between the two main linguistic groups, there are a number of constitutional provisions to ensure *de jure* equality of the two major linguistic groups in the voting in the federal institutions including the federal cabinet.

The issues of *de jure* asymmetry of jurisdiction and *de jure* asymmetry of federal representation may in some circumstances be interrelated. The question is sometimes raised whether greater autonomy of jurisdiction for some member states should affect their representation in federal institutions. For example, should representatives from the more autonomous member states be restricted from voting within the federal institutions on those matters over which the federal government does not have jurisdiction in their particular member state. A rational argument can be made for such a *quid pro quo*, and the issue has recently been intensely debated in Canada as a consideration if Quebec's asymmetric autonomy were to be substantially increased. It has also been raised in the United Kingdom in what has come to be called 'The West Lothian question' concerning the appropriate role of Scottish MPs at Westminster on legislation not applying to Scotland following the devolution of some of Westminster's powers to the Scottish Parliament. There would, however, be serious complexities in those federations employing a system of responsible cabinet government if cabinets had to rely on different majorities according to the subject matter under consideration. In any case, to date Canada, Malaysia and Spain have avoided this issue by not making adjustments in federal representation or voting by state representatives in the federal institutions on the grounds of an asymmetrical distribution of jurisdiction.

(5) Representation in intergovernmental institutions or processes.

In most federal systems the establishment of institutions for intergovernmental relations is not set out in the constitution, but there are a few cases, where such bodies have been constitutionally established. An example is the Australia Loan Council, where representation is one from each of the member states and two from the Commonwealth government, thus establishing *de jure* symmetry among the participating state governments. In some of the newer federations where intergovernmental councils have been expressly provided for in the

constitution, a similar pattern of symmetrical representation of the member states has been the usual pattern, although such a requirement has not normally applied to advisory commissions.⁴⁴

(6) The differential nature of regional political parties

Differences in the nature of regional political parties, while often of considerable political impact within a polity, represent primarily examples of *de facto* asymmetry (as noted in the subsection on *de facto* asymmetry above). They often reflect deep-seated cultural, social, geographic and economic factors and cleavages. Nevertheless, their existence and importance may be influenced by the *de jure* constitutional arrangements governing regional electoral systems which in federal systems have usually been left for the constituent units to decide for themselves.

(7) Application of Bills of Rights

Where a bill of fundamental rights has been incorporated within a federal or central constitution, normally its application to the member states has been uniform and thus symmetrical. The "notwithstanding clause" in the Canadian Charter of Rights and Freedoms enabling governments under specific terms to exempt their legislation from the Charter for a limited period can, however, result in some temporary asymmetry. Furthermore, the existence of their own supplementary charters in some Canadian provinces also adds to asymmetry of citizens' rights.

(8) Relative power in constitutional amendments

The *de jure* requirements for participation of member states in the formal constitutional amendment procedure have normally been applied symmetrically. In some federations such as the United States and India, there is a requirement for ratification by a majority or special majority of state legislatures, all states being treated equally.⁴⁵ In others such as Switzerland and Australia ratification is by referendum requiring not only a majority of those voting but majorities in a majority of states, all cantons or states being treated equally.

In two instances, Germany and Canada, there are elements of asymmetry in the role of the constituent units in approving constitutional amendments, however. In Germany it is by a special majority in the Bundesrat that the approval of the Länder to constitutional amendments is signified, and in that body different Länder may have 3,4,5 or 6 votes according to their category. In Canada the normal amendment procedure requires ratification by the legislatures of seven of the ten provincial legislatures representing at least 50 percent of the federal population.⁴⁶ That means that any amendment must have the approval of the legislature of either Ontario or Quebec to pass, since refusal of both of those provincial legislatures would leave support short of the required 50 percent of the federal population even if all the other eight provincial legislatures were to endorse the amendment.

(9) The Constitutions of the Member States

As already noted, in the section on *de facto* asymmetry, most federal constitutions specify at least some minimum requirements for the constitutions of their member states, thus imposing some degree of *de jure* symmetry in the constitutions of the member states. The range of such *de jure* requirements concerning the constitutions of the member states varies considerably, however. Some such as the United States and Switzerland specify *de jure* only a few "essential" requirements, while India ensures a high degree of symmetry of state constitutions by setting out complete specifications for state constitutions which are not unilaterally amendable by the states. Most other federal systems range between these two extremes.

4. *De Jure Asymmetry of Peripheral Political Units*

The preceding sections have dealt with *de facto* and *de jure* asymmetry relating to full-fledged member states. Many political systems, both federal and unitary, have also embraced some peripheral political units which have a different relationship to the polity from that of the full-fledged regional units. Usually these peripheral units have a relatively small population, a large sparsely populated territory, or some geographical remoteness from the main body of the country. Such circumstances have usually required a different degree of self-government and of representation (if at all) in the central institutions, thus involving considerable asymmetry from the situation of the full-fledged member states.

Broadly the asymmetrical relationship of peripheral political units falls into two categories. The first of these are political units for which there is a lesser degree of self-government or even predominantly direct federal administration. These are usually either sparsely populated and underdeveloped territories or units which have a special status as a federal capital territory. Examples are the Yukon, Northwest and Nunavut Territories in Canada, the Northern Territory and the Australian Capital Territory in Australia, the District of Columbia in the United States, the seven Union Territories in India, and the Federally Administered Tribal Areas and the Federal Capital Territory in Pakistan.

The second category is that of peripheral units, usually relatively small and geographically remote from the main body of member states, which wish to share some of the benefits of association with the larger polity without being fully incorporated in it as a full-fledged member state. Daniel Elazar has identified two forms of this kind of association.⁴⁷ One is *associated statehood* in which either the federation or the associated state may unilaterally dissolve the relationship according to procedures established in the constituting document. The other he has labelled *federacy* in which any change in the relationship must be determined on a mutual basis by both parties.

Examples of associated states linked to a federal or unitary systems are: Liechtenstein associated with Switzerland; Bhutan associated with India; the Cook Islands and Nieu Island associated with New Zealand; Monaco associated with France, San Marino associated with Italy and the Netherlands Antilles associated with the Netherlands. Examples of federacies linked to federal systems are the Northern Marianas and Puerto Rico linked with the United States, the Aaland Islands linked to Finland, the Azores Islands and the Madeira Islands linked to Portugal, the Faroe Islands and Greenland linked to Denmark, Jersey, Gurnsey and the Isle of Man linked to the United Kingdom, and the state of Jammu and Kashmir linked to India. Puerto Rico provides a good illustration of a federacy relationship. It has virtually all the powers of internal self-government of an independent state and more autonomy than the member states of the United States. But while its citizens are also citizens of the United States they do not have the

right to vote in American national elections. From these examples it is clear that asymmetrical federal relations between a small state and a larger one may occur not only in relation to federations but in relation to unitary states. Elazar drew attention, for example, to seven associated states and eight federacies linked to larger unitary political systems.⁴⁸

5. *The Duration of De Jure Asymmetry*

De Jure asymmetry in relation to member states or to peripheral political units is intended in some cases to be basically transitional but in others is intended to be permanent. In either case *de jure* asymmetry has usually been accepted initially as an unavoidable step necessary to obtain agreement on participation within a larger political system. In this respect the initial acceptance of *de jure* asymmetry in Canada in 1867, Malaysia in 1963, India (in the early years after independence in relation to the princely states), Spain, and most recently the European Union provide examples.

In some cases, the expectation appears to be that as acceptance of participation within the larger system is reinforced and greater cohesion and integration are achieved, it will be possible to develop a progressively greater symmetry among participating units. This appears to be the expectation both in Spain and within the European Union. In these cases asymmetry is envisaged as enabling ultimate symmetrical decentralization or integration but to be achieved at 'variable speeds'. Similarly, there may often be an expectation that peripheral Territories starting with lesser self-government may with economic and political development improve their capacities for self-government progress eventually to full member status within the federal system, or in the case of some associated states and federacies that they may over time become incorporated more fully as full-fledged member states. Examples of such developments are the way in which Alaska and Hawaii were eventually incorporated as full-fledged states in the United States and the way in which Saskatchewan and Alberta became full-fledged provinces in Canada.

In other cases, however, where asymmetrical outcomes have been the result of deep-rooted historical, cultural, social and economic differences rather than differences of capacity, *de jure* asymmetry has been viewed as requiring more permanence. This has been the case in the Borneo states of Malaysia, for example. Deep underlying social differences may even lead not simply to pressures to maintain but to increase asymmetry as in the case of Quebec within Canada in recent decades.

D. *Asymmetry and Political Cohesion*

(1) *The tension between pressures for asymmetry and symmetry*

In some cases pressures for constitutional asymmetry have induced counter-pressures for constitutional symmetry. In such instances the tension between the pressures for symmetry and asymmetry has itself become a major element in the political dynamics of the federal system. The most significant illustrations of such tensions have occurred in Canada, Spain and Russia.

A notable feature of the Canadian experience from the beginning, but especially during the past three decades and including the Calgary Declaration of 1997, has been the tension between the pressures for *both* greater *de jure* asymmetry and greater *de jure* symmetry. Repeatedly, the advocacy of constitutionalizing increased asymmetry for Quebec has been met by resistance from other provinces to any ‘special status’ or ‘special treatment’ of Quebec and to insistence upon the ‘equality’ of provinces. Indeed, the past thirty years of ‘mega-constitutional politics’ within Canada can be characterized largely as a struggle between the proponents of asymmetry and symmetry. Not surprisingly the most recent effort at reconciliation, the Calgary Declaration of 14 September 1997, includes as fundamental principles for future constitutional deliberations both the recognition of Quebec’s “uniqueness” and of the “equality” of the powers and status of the provinces.

In Spain, recognition of the variations in pressures for autonomy in different regions has led to the granting to each Autonomous Community of its own statute of autonomy tailored to the particular set of compromises negotiated between Madrid and its regional leadership. At the

same time, however, these agreements have been set within a framework in which it is anticipated that eventually there will be less asymmetry among them.⁴⁹ This illustrates the tension between pressures for both asymmetry and symmetry within Spain so that “until the present, the Spanish answer to the distinct society problem has emphasized the building of federal arrangements with respect to ethnic subnational differences without creating too great a level of asymmetry”.⁵⁰

The Russian Federation illustrates similar tensions between pressures for *de jure* symmetry and asymmetry. The 1993 constitution recognizes different categories among the 89 constituent units (arts. 65(1) and 66) - 21 republics, 6 territories, (krays), 49 regions (oblasts), 2 cities of federal importance, and 10 districts (okrugs). In the interest of symmetry, art. 72(2) stipulates, however, that the distribution of powers shall apply equally to them. Despite this apparent symmetry in the formal distribution of powers, art. 78(2) makes possible, however, the contractual negotiation of treaties between the federation and individual constituent units demarcating specific responsibilities and powers, and as noted earlier the negotiation of such individual treaties had reached 45 by the end of 1997, creating a complex pattern of asymmetry in practice. In the effort to cope with this complexity a parallel trend has been the effort to group the constituent entities into regional associations. This has been aimed at simplifying and coordinating the executive cooperation between the federal government and the units through the appointment of plenipotentiary representatives of the President to the regional associations. Nevertheless, the pressures for asymmetry among the constituent units appear in Russia to continue to be ascendant over those for symmetry.

(2) *Is asymmetry in federal systems functional or dysfunctional?*

Tarlton in considering asymmetry in federal systems seems to have assumed without empirical evidence that symmetry equals harmony and that asymmetry produces discord in federations.⁵¹ Consequently, he rejected the politics of recognition and concluded that only by increased central authority could the “secession-potential” of asymmetry within a federation be overcome.⁵² In practice, *de facto* and *de jure* asymmetry where it has occurred has been intended to recognize rather than submerge pre-conditions marked by significant diversity, and the various asymmetrical outcomes reviewed in this paper were developed to accommodate

political diversity and varying capacities among regional components in pursuit of overall political stability and legitimacy.

Nevertheless, the empirical question remains, have asymmetrical arrangements within federations, confederations and decentralized polities in practice contributed to or undermined political cohesion? There are examples of successes. Generally, despite some serious stresses and strains, asymmetry has been relatively successful in keeping Quebec within Canada in the 133 years of the federation's existence. In European federations such as Belgium, Germany (since reunification), and Spain (although nominally not a federation, in most practical respects it possesses the major characteristics of a federation), techniques of asymmetry have been put to good effort, although not always without some strains.⁵³ In India for all its problems arising from its size and complex diversity, the use of asymmetry has enabled it over five decades to accommodate internal diversities, especially of the smaller states composed of minorities, much better than most of the commentators forecasted during its first decade.⁵⁴ To this general pattern of relatively successful use of asymmetry, the particular cases of Jammu and Kashmir and Punjab do represent qualifications, however. In Malaysia, the constitutional asymmetry applied in 1963 to Sabah and Sarawak, the two Borneo states, appears to have been successful in reconciling the differences between them and the states on the Malayan peninsula. It is more difficult to reach a judgment on asymmetry within the Russian Federation, both because of its highly complex character and because of the difficulties it has had in achieving political and economic stability and maintaining territorial integrity, particularly in Chechnya. In the cases of the European Union and the United Kingdom we have relatively recent accentuations of internal asymmetry. While asymmetry was in each adopted as necessary in order to accommodate and reconcile sharp political differences, it is perhaps too early to judge the long-run efficacy of these arrangements within the European Union and the United Kingdom.

But against the examples of successes must be set other less encouraging examples. Here the pathology of federations and unions also sheds some light on the subject. In a number of cases such as the disintegration of federations in the West Indies (1962), Rhodesia and Nyasaland (1963), Yugoslavia (1991), and the USSR (1991); the splitting of Pakistan (1971) and

Czechoslovakia (1992); the expulsion of Singapore from Malaysia (1965); and the civil war in Nigeria (1967-70) followed by alternating civilian and military rule, the existence of significant asymmetries were major contributing factors.⁵⁵ Thus, the successes of asymmetrical decentralization, integration and federalism elsewhere have to be matched against these failures.

The examples referred to in the preceding subsection indicate 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. This suggests that asymmetrical decentralization is not a panacea and that there may be limits to *de jure* asymmetry beyond which extreme asymmetry may be dysfunctional within a federal or decentralized polity. Furthermore, constitutional asymmetry among regional units within a federal system may accentuate its complexity to the point of limiting its effectiveness, as appears to have happened in Russia.

Nevertheless, despite the examples of failures and problems associated with some examples of asymmetrical decentralization, some federations have found that in their particular circumstances, the only way to accommodate sharply differential pressures for regional autonomy and to maintain the federation or union has been to incorporate some permanent asymmetry in the relationship of the different constituent units to the polity. The most notable such cases have been Canada, India, Malaysia, and Belgium. Furthermore, in some cases constitutional asymmetry has proved useful as a transitional arrangement accommodating regions at different stages of political development until such time as greater symmetry may be possible. Examples are the arrangements within Spain for the various Autonomous Communities and the concept of a Europe with 'variable geometry' proceeding at 'varying speeds'. Thus, in spite of the increased complexity and the risk of provoking conflicting pressures for symmetry, it appears that in a number of political systems the recognition of constitutional asymmetry has in fact provided a way of accommodating major differences between constituent units that otherwise might not be possible.

E. Conclusions

This comparative survey has attempted to map out the great variety of *de facto* and *de jure* asymmetrical arrangements that have in fact been embodied in the structural arrangements within various federal, confederal and decentralized systems. Given the extensiveness and variety of these asymmetrical federal arrangements, there needs to be more empirical research and comparative analysis into the extent to which these asymmetrical structural federal relationships have been the product of particular cultural, social, economic and political conditions and factors, and the extent to which the resulting structural asymmetry has contributed to or undermined the achievement of political cohesion in the short-term and the long-term. The study of the potential for asymmetrical federal arrangements and the limits to their effectiveness is an important aspect in coming to a comparative understanding of federal, confederal and decentralized systems.

Endnotes

1. This paper is a further development of a paper originally delivered at the International Political Science Association Congress in Berlin, 1994, to the Research Committee on Comparative Federalism and Federation, (published in Robert Agranoff (ed.), *Accommodating Diversity: Asymmetry in Federal States*, Baden-Baden: Nomos Verlagsgesellschaft, 1999).
2. Tarlton, Charles D. "Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation," *Journal of Politics*, 27 (1965):861-874.
3. Tarlton had in mind expressly the writings of K.C. Wheare, F. Morley and W.S. Livingston to whom he refers, pp. 862-867.
4. *Ibid.*, pp. 861, 867.
5. *Ibid.*, pp. 869-874. For a recent implicitly similar view about the limits of fundamental diversity within federal systems see Elazar, D.J. "International and Comparative Federalism", *PS: Political Science and Politics*, 26, June, 1993, 1:190-195.
6. Frenkel, Marx. *Federal Theory*, (Canberra, 1986), pp. 79, 136-7, 138; Watts, R.L. *New Federations: Experiments in the Commonwealth* (Oxford: Clarendon Press, 1966), pp. 149-155, 176-177, 248-51; Watts, R.L., *Multicultural Societies and Federalism*, Studies of the Royal Commission on Bilingualism and Biculturalism, No. 8, (Ottawa, 1970), pp. 47-50.
7. See, for instance, Elazar, Daniel J. *Exploring Federalism*, (Tuscaloosa, AL: University of Alabama Press, 1957), pp. 54-59 and the chapters by Ronald Watts; Anne Mullins; Lloyd Brown-John, Joan Boase, Max Nemni, Alain-G Gagnon, and Robert Agranoff, in Bertus de Villiers, ed., *Evaluating Federal Systems*, Cape Town: Juta and Co., and Dordrecht: Martinus Nijhoff Publishers, 1994); Ramos, D.T., *Federalism Assimétrico* (Sao Paulo, Editora Plêirade, 1998); Agranoff, Robert, ed., *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos Verlagsgesellschaft, 1999); Fossas, Enric and Requejo Ferran, eds., *Asimetría Federal y Estado Plurilingua* (Madrid: Editorial Trotta, 1999); Watts, Ronald, *Comparing Federal Systems*, 2nd ed., (Montreal and Kingston: McGill-Queen's University Press, 1999), chapter 6.
8. The papers of the Joint Conference of the International Association of Centers for Federal Studies and the International Political Association Research Committee on Comparative Federalism and Federation in 1993 were published in de Villiers, ed., *Evaluating Federal Systems* (1994). The papers of the IPSA Research Committee on Comparative Federalism and Federation delivered at the Berlin Congress were published in Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos Verlagsgesellschaft, 1999).
9. Keating, Michael, "Asymmetrical Government: Multinational States in an Integrating Europe," *Publius: The Journal of Federalism*, 29(1), Winter 1999, pp. 71-86.
10. Bogdanor, Vernon, "Devolution: Decentralization or Disintegration or Disintegration," *Political Quarterly*, 70(2), April 1999: pp. 185-194; Laffin, Martin and Alys Thomas, "The United Kingdom: Federalism or Denial," *Publius: The Journal of Federalism*, 29(3), Summer 1999: pp. 89-107; Hazell, Robert, "The New Constitutional Settlement," in R. Hazell ed., *Constitutional Futures: A History of the Next Ten Years*, ed. R. Hazell (Oxford: Oxford University Press, 1999), pp. 230-247; Keating, Michael, *The New Regionalism in Western Europe* (Cheltenham: Edward Elgar Publishing Ltd. 1998; Horgan, Gerard, *The United Kingdom as a Quasi-Federal State*, Working Paper 1999 (3), (Kingston: Institute of Intergovernmental Relations, 1999).
11. Elazar, D.J., *Exploring Federalism*, pp. 54-7, and Elazar, D.J., ed., *Federal Systems of the World: A handbook of federal, confederal and autonomy arrangements*, 2nd ed. (Harlow, U.K.: Longman Current Affairs, 1994), pp. 275-296.

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12. Elazar, D.J., *Exploring Federalism*, pp. 34-36. See also Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States*, p.15.
 13. Tarlton, "Symmetry and Asymmetry as Elements of Federalism", see esp. pp. 861 and 867-9 for his definition of symmetry and asymmetry.
 14. *Ibid.*, p. 867,
 15. *Ibid.*, p. 868.
 16. *Ibid.*, p. 869.
 17. *Ibid.*
 18. *Ibid.*, pp. 869-874.
 19. M. Burgess and F. Gress, "Symmetry and Asymmetry Revised" in Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States*, pp. 43-56 at 48-54.
 20. Livingston, W.S., "A Note on the Nature of Federalism," *Political Science Quarterly*, 67 (March 1952), pp. 81-95.
 21. Burgess and Gress, pp. 48-50.
 22. Wehner, Joachim H.-G., "Asymmetrical Devolution," in *Development Southern Africa*, forthcoming.
 23. Lapidoth, R., *Autonomy: Flexible Solutions to Ethnic Conflicts* (Washington, D.C.: U.S. Institute of Peace Press, 1997).
 24. For a discussion distinguishing the concepts of "federation" and "federal political systems" see Watts, *Comparing Federal Systems*, 2nd ed., pp. 6-14; and also Watts, "Contemporary Views on Federalism", in de Villiers, ed., *Evaluating Federal Systems*, pp. 7-10. See also Elazar, *Federal Systems of the World* (2nd ed.), pp. xv-xviii.
 25. Tarlton, pp. 861, 867, 869-871.
 26. See de Villiers, *Evaluating Federal Systems* (1994), pp. xi-xii. This distinction also permeates most of the contributions in Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States* (1999).
 27. Elazar, *Exploring Federalism*, pp. 54-57.
 28. On Spain and Canada see de Villiers, ed., *Evaluating Federal Systems*, and Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal States*.
 29. Tarlton, p. 870-874.
 30. For purposes of illustration, the focus here is upon asymmetry in population which affects political influence. But size of territory and wealth are also important indicators that need to be taken into account in assessing factors that contribute to relative *de facto* asymmetry.
 31. See, for instance, the discussion of degrees of centralization and non-centralization in federations in Watts, *Comparing Federal Systems*, 2nd ed., ch. 8, pp. 71-81.
 32. See, for instance, Bird, Richard. *Federal Finance in Comparative Perspective*, (Toronto: Canadian Tax Foundation, 1986; Bird, Richard, "A Comparative Perspective on Federal Finance," in K.G. Banting, D.M. Brown and T.J. Courchene, eds., *The Future of Fiscal Federalism*, (Kingston: School of Policy Studies and Institute of Intergovernmental Relations, Queen's University, 1994), pp. 294-322; Watts, R.L., *The Spending Power in Federal Systems: A Comparative Analysis* (Kingston: Institute of Intergovernmental Relations, 1999); Watts, *Comparing Federal Systems*, 2nd ed., ch.4, pp. 46-7.
 33. Milne, David, "Challenging Constitutional Dependency: A Revisionist View of Atlantic Canada" in J.N. McCrorie and M.L. MacDonald, eds., *The Constitutional Future of the Prairie and Atlantic Regions in Canada* (Regina: Sask., 1992), pp. 308-317.
 34. Watts, *Comparing Federal Systems*, 2d. ed. 1999, pp. 50-3.
 35. This will be discussed further in the section dealing with *de jure* asymmetry below.

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36. Some, however, have a constitutional basis and these will be discussed in the section relating to *de jure* asymmetry.
 37. See Milne, David, "Equality or Symmetry? Why Choose", in R.L. Watts and D.M. Brown, eds., *Options for a New Canada* (Toronto: University of Toronto Press, 1991), pp. 285-291.
 38. *Ibid.*, pp. 287-307.
 39. Agranoff, R. "Asymmetrical and Symmetrical Federalism in Spain", in deVilliers, ed., *Evaluating Federal Systems*, pp. 61-89.
 40. See footnote 24 above.
 41. Vilanova, J. Solé, "Regional and Local Government Finance in Spain: Is Fiscal Responsibility the Missing Element?" in R.J. Bennett, ed., *Decentralization, Local Governments, and Markets: Towards a Post-Welfare Agenda* (Oxford: Clarendon Press, 1990), Table 20.1, p. 337.
 42. See *Constitution Act, 1867*, s. 51A; *Constitution Act, 1982*, s. 41b; Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report* (Ottawa, 1991), vol. 1, pp. 123-135; and Government of Canada, *Consensus Report on the Constitution, Charlottetown, August 28, 1992 Final Text* (Ottawa, 1992), p. 9.
 43. For more detail see Watts, *Comparing Federal Systems*, 2nd ed. ch. 9, pp. 83-97.
 44. Watts, *Multicultural Societies and Federalism*, pp. 51-58.
 45. In India there are different procedures for amending different parts of the Constitution, but the one referred to here relates to the normal amendment procedure for the federal aspects of the Constitution.
 46. *Constitution Act, 1982*, s. 38.
 47. Elazar, *Exploring Federalism*, pp. 54-57.
 48. *Ibid.*, pp. 55-7.
 49. Agranoff, "Asymmetrical and Symmetrical Federalism in Spain", pp. 61-89, esp. pp. 70-72, 84.
 50. *Ibid.*, p. 84.
 51. Tarlton (1965), p. 872.
 52. *Ibid.*, 874. See also Burgess and Gress (1999), pp. 46-7, 53-5.
 53. Burgess and Gress, p. 54.
 54. Watts, *Comparing Federal Systems*, 2d. ed, 1999, pp. 27-8.
 55. *Ibid.*, pp. 109-115.