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The Politics of Asymmetrical Federalism: Reconsidering the Role and Responsibilities of Ottawa

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Dans cet article, je soutiens que, s'il est souhaitable et même nécessaire que les diverses composantes de toute fédération concluent des arrangements asymétriques, au Canada, depuis plusieurs années, les empâtements du gouvernement fédéral sur les compétences des provinces ont graduellement suscité un réflexe protecteur dans les provinces, et que cela a entraîné une multiplication des ententes reconnaissant les différences provinciales. Or, la nature et la diversité de ces ententes est en train de saper les notions de courtoisie, de bonne volonté et d’intercompréhension si essentielles à l’unité nationale. Pour éviter de poursuivre dans cette direction et de fragiliser ainsi les liens qui maintiennent la fédération, le gouvernement fédéral devrait revoir le rôle qu’il y joue. Le fédéralisme d’ouverture de l’actuel gouvernement conservateur constitue un début dans ce processus de redéfinition des rôles et des responsabilités des gouvernements fédéral et provinciaux ; toutefois, pour assurer l’avenir de la fédération, il faudra la mise en œuvre de plus de mesures constructives et fondées sur des principes.

Mots clés : fédéralisme asymétrique, fédéralisme d’ouverture, relations intergouvernementales, partage des pouvoirs, responsabilités du gouvernement fédéral, compétences provinciales, pouvoir de dépenser

This article argues that while asymmetrical arrangements among the units of any federation are necessary and even desirable, federal encroachments on provincial jurisdiction in Canada over the past few decades have triggered a protective impulse in the provinces that has resulted in a multiplication of deals recognizing provincial differences. The nature and variety of such arrangements are undermining the sense of federal comity, goodwill, and understanding so critical to national unity. To avoid heading further down this trajectory and attenuating the bonds that hold the nation together, the federal government should reconsider its role in the federation. While the current Conservative government policy of open federalism begins this reconceptualization of federal and provincial roles and responsibilities, more constructive and principled action is required.

Keywords: asymmetrical federalism, open federalism, intergovernmental relations, division of powers, federal responsibilities, provincial jurisdiction, spending power
Accommodating differences among the provinces to ensure the survival of the Canadian federation has been a longstanding feature of the nation’s history. Although the country has reached points of political crisis when its very existence was in doubt, the Canadian nation has muddled through and survived. However, since the 1970s, the clashes among our governments have become more acute, frequent, and bitter. On the constitutional front, tensions escalated from the 1971 Victoria Charter to the 1982 patriation of the constitution and entrenchment of the Canadian Charter of Rights and Freedoms, culminating in the constitutional wars fought in the late 1980s and early 1990s and, finally, in the 1995 Quebec Referendum that brought the country to the brink of national disunity. On the intergovernmental side, relatively harmonious relations during the expansion of the welfare state began to sour in the 1970s as the federal government became more conscious of its perilous budget situation, and grew vitriolic when the federal government introduced unilateral cuts to transfers to the provinces in the 1990s. Currently, even as our governments negotiate or sign national deals like the 2004 Health Accord, the Kyoto Agreement on the environment, or the 2004 and 2007 agreements on equalization, tensions abound with provinces left offside or vehemently objecting. Why are intergovernmental relations so tense at the summit level? Are we less able to accommodate provincial differences within the nation in recent decades than in the first half of its existence? Or are the means we have chosen to accommodate differences actually exacerbating the tensions caused by those provincial differences instead of building bridges among the provinces and nationally?

This article argues that while asymmetrical arrangements within the Canadian federation have been a critical factor in maintaining national unity since Confederation, two conceptions of how provincial differences should be accommodated in nationwide deals are colliding and causing more tension among the units and between the federal government and the provinces than is necessary or healthy. The remedy to this situation lies in understanding how the changing role of the federal government since the 1950s has contributed to this dissension and then rethinking the role of the federal government within the federation in light of those reflections. Thus, the article begins by identifying the two conceptions of the means of implementing asymmetrical federalism that are in conflict and noting the dangers inherent in the current situation where they vie for dominance. The article then takes a brief and necessarily episodic excursion into history to offer examples of how the evolving role of the federal government led to this period of aggravated intergovernmental tensions and caused the provinces to react to protect their jurisdiction and to attempt to limit and direct federal intrusions into their policy areas. The article concludes by speculating on the way out of this dilemma. While asymmetrical treatment of one or more of the provinces might appear as a convenient political tool for national unity when a national commitment is forged, the current application of asymmetry is undermining the very sense of comity and reciprocal goodwill needed to sustain the union in the longer term. The healthy future of the nation does not rest on multiplying the degrees of asymmetry within the nation but instead on a modernized version of principled federalism.

Asymmetrical Federalism: Two Views Collide

Federal systems in their most basic form tend to be asymmetrical. Differences within a federation among the units may arise from geography, history, demographics, economic and fiscal realities, population characteristics, culture, or other key characteristics specific to particular units (Milne 2005). As a result, a certain degree of asymmetry in policy is natural in any federation despite national goals or objectives, since implementation and interpretation will depend on the differences in each province or region and on their special needs. Where asymmetry among the units is extreme, it may
engender tensions particularly as it affects the ability of each unit to exercise its constitutional responsibilities (Watts 1999, 65). However, for the most part both asymmetry and asymmetrical treatment of the various units of a federation are the lubricant of the machinery that keeps the nation rolling along.

Now, as Ron Watts has helpfully provided, two kinds of asymmetry may affect the operation of any federation. Political asymmetry "arises from the impact of cultural, economic, social and political conditions affecting the relative power, influence and relations of different regional units with each other and with the federal government (1999, 63)." So, for example, agreements abound between Ottawa and the provinces that correspond to the different needs, assets, and abilities of the provinces to pursue public goods. At the level of government operations, these agreements are often not contested, and different agreements often prove to be useful models for other jurisdictions (Bakvis and Skogstad 2002, 14). The Quebec pension plan or income tax collection scheme are both examples of asymmetrical treatment of that province within national agreements. Asymmetry may arise even within the same allocation of jurisdiction. For example, the allocation of provincial jurisdiction over education in the Constitution Act, 1867 is symmetrical, applying to all provinces equally. Despite this similar constitutional treatment, Ontario, Quebec, and Newfoundland have had different school systems resulting from their pre-Confederation histories reflected in their original terms of entry into Confederation and common law. Their powers to act in this area are circumscribed by these political and constitutional differences. However, it has generally been viewed as within their purview to order their school systems as they deem necessary, and even when Newfoundland altered its constitution in the 1990s to allow for changes in its education system, the federal government acceded to its request. Another example would be provincial jurisdiction over local government—same power, different configurations in each province and different arrangements with Ottawa in many cases (Leo 2006; Sanction 2007, 314-6). Differences like these tend to be accepted; comparisons among the provinces do not tend to generate conflict or resentment unless they are manifest in sharp contrasts in provincial abilities to provide for their citizens' well-being.

In contrast to political asymmetry, constitutional asymmetry refers to "the degree to which powers assigned to regional units by the constitution of the federation are not uniform (Watts 1999, 63)." In many cases, the forms of asymmetry and associated powers or policies are not contested. For example, the constitutional promise by Ottawa to Prince Edward Island (PEI) to provide a link with the mainland resulting first in a ferry and then in the Confederation Bridge was generally accepted by the other provinces and even trumpeted as an example of national unity by the premier of New Brunswick, notwithstanding the controversy it caused in PEI (Vance 2006, 18-27). In other areas, different powers accorded the provinces under the constitution have generated bitter comparisons. For example, the denial of control over natural resources to the western provinces was a root cause of western alienation and resulted in the 1930s Natural Resources Transfer Act rendering the powers of those provinces symmetrical to the original four (Gibbins and Arrison 1995, 10-12). Current restrictions on the control of the northern territories over natural resources are generating similar resentments. Still, other forms of constitutional asymmetry are accepted either wholeheartedly or begrudgingly as essential to the operation of the provinces and nation.

In its most recent (and reincarnated) usage in Canada, asymmetrical federalism refers to the different treatment of particular provinces within the Canadian federation whether constitutional or political to offset their disabling differences (needs) or to enhance their natural assets. Where this differential treatment has potentially become more destructive to the federation involves the signing of national agreements in critical policy areas.
Asymmetry is being realized in two ways that embody fundamentally different visions of the nation and its future operation. These two approaches are captured in the 2004 Health Accord and the 2004–2007 succession of agreements on equalization. The September 2004 health care accord was heralded as a significant achievement that would set the parameters of better health care for the next decade. Surprisingly, all of the provincial premiers signed onto this deal that signalled increased intergovernmental cooperation in an area of primarily provincial jurisdiction. In contrast, the October 2004 Equalization Agreement was controversial even at signing, with one provincial premier (Newfoundland and Labrador) storming out of the meetings and refusing to sign, and other premiers questioning the fairness of the deal for the “have not” provinces. Different in content as well as in temper of the process, the two deals were similar in symbolizing a new period of asymmetrical federalism: the first (health) as part of its terms and the second (equalization) as a part of its aftermath.

How do the two deals serve as contrasts in the implementation of asymmetrical federalism? The 2004 Health Accord was announced in the form of “a 10-year plan to strengthen health care” (PMO 2004a). In the agreement, which contained a substantial rise in federal funding, the governments committed to a set of general principles and objectives as well as to specific guidelines that would lead to timely access to quality health care (PMO 2004a). However, two separate communiqués were attached to the agreement. The second communiqué committed the governments to working together to improve Aboriginal health, recognizing the specificity and special requirements of Aboriginal peoples in Canada. The first communiqué stated that “recognizing that an asymmetrical federalism allows for the existence of specific agreements for any province,” the first ministers agreed to a separate deal between the Quebec and federal governments that would allow that province some flexibility in interpreting and implementing the agreement, including different reporting arrangements (PMO 2004a). While Quebec committed to the overall objectives and general principles of the Health Accord, especially to the principles of a public health system and to cooperation with the other governments on developing indicators of progress and sharing best practices and information, it maintained control over planning, organizing, and managing its health care services. The communiqué also contained an explicit non-derogation clause protecting Quebec’s jurisdiction (PMO 2004b). According to Tom Courchene (2004, 27), the federal government agreed orally to extending the same arrangements to Alberta and British Columbia and thus to any other province during the final negotiations on the Health Accord. The understanding is that the other provinces could qualify for the same deal as Quebec should they desire it—Quebec is not singled out for special treatment but has merely taken advantage of an arrangement open to any province. Further, the approach embraced in the Health Accord allowed Quebec latitude in implementing the agreement but within parameters agreed upon by all governments. Thus, the deal embraced provincial equality, national commitments to common goals and standards, and flexibility for provinces.

By contrast, the 2004 agreement on equalization and territorial funding did not contain any special conditions for particular provinces or peoples at the time of signing. The Prime Minister and all but one premier established the main features of a new equalization and territorial funding framework for the next five years including increased federal monies in the 2004–2005 year, more stable future funding, and the creation of an independent panel to review the equalization program. The payments were designed to offset revenue differences in the provinces and territories and to help them provide essential public services to Canadians on a roughly comparable basis. Although the resulting treatment is different according to provincial or territorial status and to level of fiscal disparity (some provinces are recipients, some are not), the formula applies to all equally and is, in that way, symmetrical. Thus, like the Health Accord, it embraces provincial equality but also flexibility to meet specific provincial needs.
Unlike the Health Accord where asymmetrical treatment of the provinces (Quebec among others) is built into its terms, the asymmetry that has resulted from the Equalization Agreement occurred subsequent to the signing of the agreement and is found in a succession of separate but related deals (PMO 2004c, 2005b, 2005c). Unlike in the health care deal where consensus was reached with accommodation of one province’s strongly felt difference albeit in a way that was open to all, in the equalization deal no consensus or accommodation was reached among all provinces, and one province was left offside, excluded. The previous move of the federal government away from a principal approach to equalization had removed the basis for consensus (Boadway 2006). Asymmetry arose almost three months to the day after the Equalization Agreement was signed when the Prime Minister announced an agreement in principle with the government of Newfoundland and Labrador on offshore resource revenues. The deal was intended to address the province’s concerns, raised by the October 2004 agreement, “about offshore resource revenues triggering reductions in equalization payments” (PMO 2005a). In a demonstration effect, the federal government signed parallel deals with Nova Scotia and a further deal with Saskatchewan. It also increased its financial support to Ontario over five years by $5.75 billion to counter that province’s argument that it contributes $23 billion more to confederation than it receives (McGuity 2005; PMO 2005c). Once one deal was signed, more were demanded. Asymmetry came in the aftermath of the original agreement with special deals between the federal government and specific provinces to buy peace in the nation. No binding set of commitments undergirded the separate arrangements, unlike the Health Accord.

The fragility and potential danger of this arrangement was demonstrated in the 2007 discussions on equalization where the federal government was coerced into supplementing a reasonable deal on equalization based on a principled approach with recognition of these previous provincial entitlements. The asymmetrical arrangements introduced by the 2004 Equalization Agreement and subsequent accords were carried forward; as Alan Cairns has pointed out in his articles on “The Embedded State,” past policy entitlements are difficult to shake (1986, 1995). In this case, the equalization deals embody the philosophy that the provinces should engage in a united front unless they can cut a better deal for themselves—asymmetry becomes raw self-interest without serious concern for the effects on the nation as a whole. And while these deals are not dissimilar to special deals with Quebec on pensions and income tax collection, the philosophy underlying the multiplication of special deals with particular provinces bodes ill for national unity. Instead of national deals that accommodate provincial difference within a common and agreed upon framework that builds a sense of belonging among the units of the federation, there is only a semi-national deal that allows each province to serve its own good without reference to the other units. Provincial self-interest or province-building, in the worst of the Black-Cairns diagnostic, prevails (Cairns and Black 1966).

Therefore, two visions of asymmetry are realized in these deals. In the case of the Health Accord, provincial equality is embraced: Quebec was accorded special treatment that was understood as available to all provinces should they avail themselves of that treatment. In the case of the equalization agreements, provincial inequality was embraced: all provinces were equal until one could cut a special deal for itself. In the former vision, provinces are empowered and able to take advantage of agreed upon powers if they deem it necessary for the public good of their citizens. This understanding of asymmetry underlies the historic 1998 Calgary Declaration as one provincial reaction against federal involvement in provincial jurisdiction. In the case of the vision captured by the equalization agreements, the unified front of the provinces is subject to political opportunism with no common understanding or principles governing what arrangements may be negotiated, thus potentially creating a demonstration effect if one province signs a separate deal.
and at worst engendering provincial jealousies and competition while enacting checkboard policies where national agreement and principles are desirable. This vision is the animating spirit of the Council of the Federation created in 2003, a second response to federal intrusions into provincial areas of responsibility. The two visions are competing and colliding in a way that is potentially devastating for the national fabric.

A brief comparison of the spirits of the Calgary Declaration and the Council of the Federation further illuminates the two different approaches to asymmetry embedded in our intergovernmental relations. The 1998 Calgary Declaration was issued by the nine provinces outside of Quebec as an olive branch in the wake of the 1995 referendum on national unity and Quebec secession. In recognition of Quebec’s distinct culture, language, and legal system, the Calgary Declaration affirmed Quebec’s “unique place within Canada.” However, in a firm nod to the other provinces, it endorsed the principle that any special powers granted to one province must be available to the other provinces. Reminiscent of the original tax abatement deal between Ottawa and the provinces in the 1950s, this formal position of the provinces reflected the desire to accommodate Quebec’s desire to be recognized as distinct in the interests of national unity but within a framework that recognizes provincial equality in practice. This view resonated with a public conditioned by the Canadian Charter of Rights and Freedoms to think in terms of equal rights—in this case at the provincial level rather than at the individual level. Thus, the Calgary Declaration was more consistent with the spirit of the Constitution Act, 1982—especially the 7/50 amending formula and the embrace of equality rights in the Charter of Rights and Freedoms—and the inclusive Charlottetown Accord, than the Meech Lake Accord and its primary emphasis on accommodating Quebec before the other provinces.1

In contrast, the Council of the Federation (COF) was created at the initiative of Quebec in 2003. The COF, an interprovincial body of first ministers (thus excluding the Prime Minister of Canada), was designed to promote interprovincial dialogue and alliances on issues of interest including health care, internal trade, and the fiscal imbalance. Reminiscent of the Gang of Eight in the constitutional struggles leading to the patriation of the constitution in 1982, the COF is intended to encourage a united provincial front that pre-empts federal action and drives the federal-provincial agenda in a direction more favourable to the provinces. Of particular interest to the provinces in forming the COF was the need to stave off a federally imposed solution to the vertical fiscal imbalance, defined as the situation where one level of government has excess revenue to meet its defined expenditures (in this case Ottawa), while the other level has insufficient revenue capacity to meet its jurisdictional responsibilities (in this case the provinces). Presented as an empirically measurable concept by the provinces and especially by Alberta, Quebec, and Ontario, it is more a “political and policy concept” subject to change according to definitions of what is included (Lazar 2005, 1, 3; Pratt 2005). The COF alliance of provinces encouraged provinces to engage in a united front unless a province could obtain a better deal for itself, as happened in the equalization talks of 2004. Subsequently, the COF-commissioned task force on the fiscal imbalance provided the basis for the provinces to reject the federal government’s O’Brien commission report on the fiscal imbalance and for key provinces like Newfoundland and Labrador to argue for special accommodation in the 2007 discussions on equalization, the fiscal imbalance, and resource revenues.2

And here a danger is exposed when the Health Accord is compared to the equalization arrangements forged between 2004 and 2007 and when the Calgary Declaration is compared to the COF. The Health Accord and the Calgary Declaration envision standards that are national achieved through negotiations. If a province, like Quebec in the Health Accord arrangements, requires more autonomy or has specific needs, then it can forge a separate deal.
but operating within the parameters set by the original framework agreement. Under this arrangement, citizens can be assured that comparable standards will prevail throughout the country. Under the equalization arrangements and the philosophy embraced in the COF, no status quo is set as the standard that ultimately governs arrangements forged by all of the actors. Each province may negotiate its own arrangements that benefit its citizens without regard for the other provinces. No negotiated national framework with a promise of comparable standards is achieved. Therefore, one part of the federation may gain, the whole is diminished and a sense of national unity, with its companion value of mutual responsibility for the well-being of all Canadians, is lost.

Thus, there are important costs associated with asymmetrical federalism when it becomes a series of deals or the demonstration effect occurs. That is, once one jurisdiction has forged a deal giving itself more powers or benefits, it can be assumed that other provinces will clamour for similar deals. Special arrangements abound with no comparability and with the ills mentioned in the preceding paragraph. Further, in some cases, the result is illogical. So, for example, the Meech Lake Accord proposed entrenching the federal government’s agreement with Quebec on immigration and extending similar agreements to other jurisdictions. However, if the other provinces were to negotiate a similar share of immigrants, then the totals would well exceed 100 percent of the quota of new Canadians—a result just not possible or sustainable. Such arrangements become unworkable.

There is an even greater danger when the two visions of asymmetrical federalism operate simultaneously in the nation, though. Three problems are readily identifiable. First and foremost, the two visions are likely to create and instill different modes of provincial behaviour that might have a seriously destabilizing effect on government relations. One embraces the fundamental equality of the provinces and their equal right to be accommodated; the other embraces inequality of treatment and the right to special treatment. When does equality prevail or not? If some provinces continue to strive for national standards, shared commitments, or equal treatment—and especially if they are contributors not recipients under equalization—they will resent the provinces that break with this pattern and negotiate special self-interested deals. So, for example, Ontario and Alberta, as key donors to the federation, are increasingly engaging in a form of beggar-thy-neighbour federalism, begrudging their contributions to the national coffers rather than realizing the flow back to them of the benefits of the union (Brock 2003). British Columbia, increasingly despondent with the federal government and its special arrangements with other provinces, is distancing itself (Gibson 2002). Or in the example of Meech Lake and immigration given above, if provinces were to be denied a similar share of the immigration quota, they would resent the special treatment accorded Quebec. On the other side of these deals, provinces accustomed to special treatment under one vision of asymmetry will resent future attempts to bind them to national standards or commitments under a vision of asymmetry that promotes diversity within unity. As discussed in this article, this has happened with Newfoundland, Saskatchewan, and Quebec. When expectations from the two deals collide, a sense of federal comity is ultimately lost.

Second, false national deals are forged. Where there are no national commitments or agreed upon parameters for the accommodation of differences, can a deal be held to be national? Or, if national agreements must become so vague as to be meaningless in order to win consensus among provinces used to going it alone if their demands are not met, then do those deals have any intrinsic merit in terms of national unity? The sense of common nationhood is diminished by these deals. The centrifugal force becomes attenuated. In the end, there is no common bond to hold the units together in times of economic or other crisis.

Third, both visions of asymmetry reduce the commitment of the provinces to the whole, increasing
Moreover, the centrifugal forces. If difference is privileged above reasonably equal and reasonably fair treatment, then the provincial governments are encouraged to define the public good in local terms rather than with reference to the national good. The federal government, as the lone champion of the national good, is likely to be drowned out in the cacophony of voices. Moreover, instead of genuinely seeking common ground and defining a future together, the units of the federation are increasingly encouraged to engage and define their relations in self-interested terms. Shared expectations and reciprocity in the nation are the sacrifice. Gradually the rationale for a common existence is eroded. When shared expectations, reciprocity, a sense of federal comity, and a commitment to the national good are attenuated, the national glue loses its ability to bind.

The question then becomes: If asymmetry widely applied has such negative consequences, then why not confine constitutional or political asymmetry to Quebec on the basis of its unique culture, legal tradition, language, and history? After all, opting out of national deals involving social policy is a common strategy of Quebec governments (see Bakvis 2002; Graefe 2005; Noel 2000, 44-5). The underlying reality is that without the ability to opt out of particular intergovernmental deals with sufficient compensation, Quebec might just opt out of the federation as almost happened in 1995. But unlike in the past, now the other provinces expect the opportunity for similar arrangements to be extended to them, thus undermining a sense of national purpose and common interest (Morton 2005, 6-9). Without this equal opportunity, a new degree of interprovincial resentment and passive hostility exists. To some degree this is a result of the current rejection of the view that federalism is a product of Quebec’s unique culture and heritage and a compact between two nations, in favour of asymmetry applied equally. Moreover, to deny the equal participation of the provinces in the creation of the federation and the federal system is to undermine the sense of a collective national project—one that commits all parts equally to making it work.

But there is a danger for Quebec more specifically if asymmetry is applied to it on the basis of its unique culture, language, legal tradition, and heritage. Instead of allowing for innovative arrangements that strike accommodations across common provincial interests (e.g., Quebec and New Brunswick on bilingualism, or Quebec, Manitoba, and Saskatchewan on the social economy), this logic of dualism (Quebec versus the rest of Canada) suggests that asymmetry should apply only in those areas of historically recognized specificity. The consequence may be that recognition of Quebec’s difference is tolerated in only narrowly defined areas that are historically justified, and in other areas the version of asymmetry with provincial equality embraced in the Calgary Declaration holds. In the first case, Quebec may find itself more constrained or frustrated within the federation, while the latter case results in the ills outlined above.

So why not do away with asymmetry and avoid the confusion and tensions? Impossible. Asymmetric federalism is a current reality. As stated at the outset of the paper, asymmetry is the oil that keeps the machinery of federalism operating. The problem is not with asymmetry itself but rather with the multiplication of asymmetrical arrangements in the current era. As different arrangements embodying two different and inconsistent views of federalism multiply, intergovernmental tensions and resentments heighten and the bonds that unite the various units are attenuated. Why are the governments clamouring for special deals with all the associated dangers? Why is this perceived need for asymmetrical treatment so acute at this stage in our history despite the dangers to a country that has recently rescued itself from the brink of dissolution? The simple answer is that the need for special arrangements is driven largely by the federal government’s encroachment on provincial jurisdiction in recent years as a means of reasserting its place within confederation. In the era of retrenchment and rights, it had sacrificed its ability to influence the direction of the nation, losing visibility and meaning for Canadians. As it has attempted to regain this lost ground, it has
chosen to fight the battle in provincial jurisdiction, thus prompting a backlash from the provinces—Quebec first but with the other provinces following closely—that manifests itself as a desire for more asymmetrical arrangements to protect provincial autonomy. To understand this provincial reaction and the means out of the current morass, we need to take a brief excursion into Canadian political history focusing on the second half of the last century when federal intrusion into provincial jurisdiction generated this strong protective response.

LOCATING THE NEED FOR ASYMMETRY IN THE FEDERAL GOVERNMENT’S IDENTITY SEARCH

The origins of the current trend toward asymmetrical federalism lie within successive attempts by the federal government to meet the shifts in society and in society’s expectations of government. Both by provincial invitation initially and by the federal government’s need to justify itself to citizens, the federal government set itself on a course of increasing intrusion into provincial jurisdiction. While federal assistance in expanding government services was at first welcomed and requested, the relationship between the two levels of government became increasingly strained particularly since an increase in federal dollars meant an increased federal desire to set standards and define programs. This desire did not abate when the dollars did, though. This section tracks this shift in relations that then prompted the provinces to react and press for special arrangements to accommodate their diverse needs and abilities.

Following the Depression of the 1930s and the Second World War, the legitimacy of the federal government was at an apex and the centralist pull was strong in federal-provincial relations. The Depression of the 1930s had impressed upon Canadians the need for national programs to ensure economic stability and security. In the war, Canadians had fought for the country and, while conscription had proven contentious, by and large the federal government was seen to have served the interests of the nation well. Most citizens yearned for peace and prosperity and looked to the federal government for a new sense of security: witness the transfers of responsibility for unemployment insurance and pensions to the federal government, federal-provincial cooperation in designing economic policies that would spur the growth of corporate and border plant (but prosperous) Canada, federal-provincial agreements on a more progressive tax system and tax-sharing arrangements, the emphasis on federal defence and aeronautics spending, the attachment to federal policies establishing Canada as a police and then peace force in the world, and so on (Russell 1993, 62-70).

By the 1960s, cracks in this centralizing complacency were beginning to show. Canadians, like most citizens in Western democracies, were beginning to question the existence of elements of imperialism and illegitimate authority within their borders, and no longer just in the developing world. In Canada these interrogations into our country’s record were fuelled by reports of restrictions on citizenship rights of Aboriginal and Oriental Canadians, the internment of Japanese Canadians in the war, the restrictions on religious freedoms of the Jehovah’s Witnesses in Quebec, and other such perceived inequities (Berger 1981). Canadians were further prompted to question their political leadership by the civil rights movements in the United States and the fight of Indians there for justice, brought into people’s living rooms with the advent of television, and the worldwide struggles against totalitarianism (Knopff 1989, 36-8). Underlying this challenge to authority, though, was a certain innocence and faith in Western liberal democracies and structures. Hence, there was a reliance on human rights codes and pressure on lawmakers to make the necessary changes to protect citizen rights.7

And challenges to federal authority were beginning to emerge in the 1950s on the provincial front as well, even as centralization occurred. In 1952, Quebec had opted out of the tax rental agreements
signed by the other provinces with Ottawa. In turn, Ottawa reduced its taxes to avoid heavy "double taxation" of Quebec residents. However, when the next tax deal was signed in 1957, the tax abatement arrangement was formalized and applied to all provinces (Simeon and Robinson 1990, 146-7). This deal embraced the idea of provincial equality and autonomy later embraced in the Calgary Declaration. However, the harmony attendant in relations was signified by the negotiation of equalization payments intended to supplement the transfers to poorer provinces under the new taxation arrangements. The strength of the federal government and its ability to reach into provincial jurisdiction were furthered by the series of conditional payments to the provinces in the 1950s and 1960s intended to sponsor and expand programs within provincial jurisdiction. The provinces agreed to the federal spending power within their jurisdiction because the programs were desired, federal conditions were loosely worded, the intrusion was not coerced but agreed upon, and the programs strengthened the provincial governments as well as the federal government (Simeon and Robinson 1990, 149-50). Ottawa had the resources and the provinces wanted the benefits while still guarding their autonomy.

The 1960s was a period of both contestation and affluence at societal and intergovernmental levels. The Canadian government responded to doubts about its legitimacy and to the desire of Canadians to believe in their institutions with a series of measures. Specifically, Canadian policies corresponded to a new and growing sense of social justice fed first by the Camelot to the south and then, as Camelot disintegrated, by the image of a more violent and confrontational society marred by Vietnam, race riots, and state oppression: by 1968 the Canadian federal government slogan of "A Just Society" captured the themes of these programs. Including a commitment both to recognition of citizen rights and to an expansion of social programs, the policies responded to needs at both the citizen and provincial levels. The federal and provincial governments engaged in a still relatively harmonious endeavour to expand the welfare state and state activities for the betterment of Canadians. Citizens still looked to the federal government as a benevolent authority, proud of Canada's role and recognition as a peacekeeper internationally, especially as images of the US government's warlike actions abroad filled their screens at home. On the international front, the end of this trusting image was intimated by the domestic outcry attending Canadian inaction on the Biafran situation in 1968 (Nossal 1989, 211-2). But at home, Canadians were generally comforted by the federal government's measures for peace and order even as pockets of insurgence arose—no Kent State had occurred here (see Cook 2006, 104-18).

The 1970s witnessed the loss of this innocence and trust in government and between governments. Watergate in the United States, the rise of the FLQ in Quebec and promulgation of the War Measures Act in Canada, and growing awareness and rejection of discriminatory policies all contributed to a creeping sense of citizen disillusionment and distrust of political authority (Cook 2006). This distrust was only heightened as government resources became increasingly constrained, economic growth slowed and spurted, and federal-provincial bickering over responsibilities and money increased (Simeon and Robinson 1990, 213-4). Provinces, led by Quebec and Ontario, entered a period of expansion of programs and powers including venturing into the federal purview of foreign affairs. Indeed, the provinces won the battle to be consulted on international negotiations in this period (Smiley 1987, 85). Further, they pressed Ottawa to shift from conditional program funding to Established Programs Financing, moving from deals based on program costs to formulae based on population and gross national product and from the conditional Canada Assistance Plan to less constrained block funding. Even as Ottawa retreated from social programs, it attempted to impose national conditions but was often blocked by provincial outcries (Stevenson 1989, 169-70). Continuing to insert itself into areas of provincial jurisdiction with programs like wage and price controls and the National Energy Policy,
the federal government became more aggressive in its relations with the provinces.\textsuperscript{10}

As the two levels of government blamed each other for policy failures and the inability to assert control over the economy, citizens began to question the image of government as a vehicle of social justice and to assert their rights in opposition to the state: witness the growing militancy and numbers of social groups as well as the explosion of interest organizations by the end of the 1970s (Pross 1992, 65). Both to justify its role as a national government in the face of the nationalist challenge emanating from Quebec and as a legitimate representative of democratic values in the face of challenges from citizen groups, the federal government pressed for the adoption of the Canadian Charter of Rights and Freedoms, inadvertently entrenching both this new sense of entitlement and opposition to the state in the citizen psyche and this tension with Quebec, left offside in the 1982 constitutional deal, for the foreseeable future.\textsuperscript{11}

The consequent skepticism of citizens and this challenge to the legitimacy of the state contributed to attempts by the federal government in the 1980s and 1990s to justify its role within the federation, often at the expense of intergovernmental harmony. Faced with dwindling sources of new revenues, growing expectations for public services, and mounting public debts and deficits, the federal government shifted toward a more explicit rights agenda but one that was narrowly conceived. Rather than expanding programs and services as in the more affluent previous era, the federal government (as well as provincial governments) began to target social programs to entitled recipients, limit its expenditures, and cut back on provincial transfers even in the crucial and explosive areas of health, social services, and education starting in the 1986–87 budget year but most drastically in the mid-1990s.\textsuperscript{12} In return for accepting more responsibility with less funding, the provinces began to develop a stronger sense of ownership and independence in these policy areas.

The cumulative effect of the federal rollbacks and the emphasis on citizen rights as limited entitlements in the shift from the 1970s through to the 1990s was that Ottawa's role as a positive force in citizens' lives became obscured. For example, the federal government's role as a funder of health and education programs was diminished in the public eye (Stevenson 1989, 171–4). Offloading social programs and responsibilities to other governments and third sector agencies not only meant that the federal government was protected from criticisms for cutbacks in services but also that it lost visibility (Evans and Shields 2000, 17-20; Shields and Evans 1998, 88-115). Provincial criticisms of the federal government for cuts in transfers encouraged a more negative view of the federal government, reaching new heights with its unilateral change to the Canada Assistance Plan and introduction of the Canada Health and Social Transfer (CHST; combining monies for health, post-secondary education, and social programs) in 1996. The credibility of the federal government was further questioned as its ability to set and monitor national standards in these areas was challenged and limited (Boychuk 2003, 271-2; Maioni and Smith 2003, 305-9). Cutbacks in foreign aid and defence spending began to engender criticisms of Canada on the international front— Canadians could not even take solace any longer in the image of Canada as a benevolent actor in an increasingly hostile world (Cohen 2003; Nossal 1998–99). The sensational failure of the constitutional attempts at strengthening national unity and expanding citizen rights, and the near loss of the country in the 1995 Quebec referendum, further delegitimized the federal government in the eyes of Canadians.\textsuperscript{13} The effects of globalization on national states only fed perceptions of the Canadian government as impotent and possibly unnecessary (see, for example, Courchene 2001, 28-31).

By the end of the 1990s, Ottawa realized the need to repair the damage to its reputation with Canadians. Realizing the emphasis Canadians placed on the social safety net in a fair community as a key unifying national characteristic,\textsuperscript{14} the federal
government began to reassert itself in those policy areas. Cash-strapped provinces were caught in the bind of desiring federal assistance but resenting federal intrusion into policy areas under their jurisdiction and in which they had grown accustomed to acting with less interference. A rights-conscious and individualist-oriented citizenry welcomed the federal expansion of payments to individuals and institutions particularly in the area of education, despite provincial cries of intrusion and despite the attached federal conditions. More money to the CHST in 1999 meant a more active federal role and more rigid enforcement of national standards, such as federal policing of provincial contracting with private clinics to provide health services (Maioni 2007, 174). The same year, the federal government attempted to reassert its leadership in the area of social policy by pre-empting an interprovincial agreement and using financial incentives to induce the provinces to sign a Social Union Framework Agreement (SUFA). The Health Accord signed the following year ensured a federal presence in upholding national objectives at the cost of a more stable federal commitment to health care funding. And so it goes into the 2000s with further agreements on social spending, child care, health, and other salient programs as well as further federal direct action on health care research and post-secondary research and studies (Doern 2005, 3-19, esp. 8, 9-10). And although the federal government under Stephen Harper’s Conservatives has announced an end to the deal-making in the new regime of open federalism, it has ensured a federal presence in the public’s mind with its promise to end wait-times for certain health care services—another federal foray into provincial jurisdiction.

In its quest for identity, the federal government has shifted from promoting a just society to entrenching rights for citizens to circumscribing those rights especially in regard to program entitlements and, finally, to expanding its role in primarily provincial areas of jurisdiction such as health care, social programs, and education with strings attached. In so doing, the federal government has set itself on a collision course with the provinces. Particularly in the area of health care, the federal government has set itself at odds with provinces like Alberta, Quebec, and British Columbia that are experimenting with the contours of the system, by nixing movements toward a mixed public-private model of health care delivery (Banting and Boadway 2004, 15-18).

In sum, as the federal government attempted to redefine its place within the hearts and minds of Canadians and justify its role as a national government, it has exacerbated federal-provincial tensions and triggered a protective impulse in the provinces. Although the Harper government has begun to engineer a federal retreat from provincial jurisdiction, the damage has been done. Provincial distrust of Ottawa is a fact of Canadian intergovernmental relations. With Ottawa increasingly occupying or trying to exert control in their jurisdictions, is it any wonder that the provinces (led by Quebec, Ontario, Alberta and then the less affluent provinces) began to try to reassert their authority and call for special arrangements that meet their local needs at the expense of national standards or a national sense of shared norms?

The important point here is that the current demand for asymmetrical federalism stems largely from federal government encroachment on provincial jurisdiction in the last half of the twentieth century as a means of reasserting its place within the minds of citizens. As its authority as an international actor was diminished and as its legitimacy on the domestic front was lost in the era of retrenchment and restraint, it began to seek ways to reaffirm its importance to Canadian citizens. And so it began to fight this battle on provincial ground by attempting to increase its visibility in the more attractive and immediate areas of health, education, and social services with the negotiation and imposition of national standards. This federal intrusion has prompted a backlash among the provinces, which manifests in a desire for more asymmetrical arrangements to protect provincial autonomy and ultimately to strengthen provincial economies and
loyalties so that the provinces can prevent any further erosion of their powers and autonomy. But as the asymmetrical arrangements multiply, they collide and a sense of national comity is eroded. As explained in the previous section, fuzzy boundaries between the federal government and the provinces make for unnecessarily complex and contentious arrangements. What is the way out of this negative spiral? The answer lies in a reconceptualization of the role of Ottawa in the federation—a reconceptualization that honours the Confederation deal but suits modern times.

**Toward Principled Federalism by Reconceptualizing Ottawa’s Role**

Asymmetry has been part of the federal deal in Canada since inception. While specific provisions were made in the constitution for the distinct nature of Quebec, so too were special provisions made for other provinces. Further attempts to constitutionalize asymmetry have brought and will only bring the dualistic vision of federalism into conflict with the competing vision of Canada as a federal state comprising ten equal provinces and three territories, as the failure of the Meech Lake Accord in 1990 drove home. However, much more flexibility is available to accommodate difference at both the policy and fiscal levels provided that equal opportunity of treatment is open to all the units. As this paper has shown, the real danger arises when jurisdiction is not respected and the federal government begins to encroach on provincial territory. Quebec reacts to protect its right to define and deliver its policies, programs, and services to its public. The wealthier provinces push back and begrudge their contributions to the well-being of the nation. And the smaller provinces call for extra protections. Tensions mount, governments argue, and citizens become more disillusioned. Federal comity threatens to dissolve.

The answer lies in a return to a more principled approach to federal-provincial relations and, in particular, to the role of the federal government. This answer has two components. First, the federal government needs to retreat from provincial jurisdiction in a responsible way, honouring previous commitments until they can be changed to correspond to the new relationship between Ottawa and the provinces. Respect the division of powers set down in 1867 but as understood in the twenty-first century. Instead of attempting to define national standards and objectives, and spending in provincial areas of jurisdiction, the federal government should withdraw where feasible.

This prescription is similar to the idea of “Open Federalism” endorsed by the Conservative government under Prime Minister Harper. Under this policy, the federal government intended to focus on its core responsibilities, to respect provincial jurisdiction, and to engage in incremental change in intergovernmental affairs proceeding only where consensus could be obtained (Macdonald 2006, 5–8). As part of its approach to restructuring federal-provincial relations, the federal government proposed to address Quebec’s “unique demands” but to avoid one-off ad hoc deals. As Harper had promised in a public letter in December 2005, a Conservative government would cooperate with the provinces to aid in the exercise of legitimate constitutional jurisdiction, clarify the role of both levels of government in a new relationship, and resolve the fiscal imbalance (Harper 2005). To date, the federal government’s record on Open Federalism has been questionable, starting with the continuation of the deals on equalization and the accusation that the federal government is attempting to impose its solution to the vertical fiscal imbalance on the provinces. Indeed, the Saskatchewan government even initiated legal action against Ottawa on this matter, (although its successor dropped the lawsuit). The record of the Conservative federal government begs the question of whether a return to principled federalism is possible. This paper argues that it is, if the origins of the source of tension between the two levels of government guide the solution.

Two stages are required to make this solution work. First, as the Prime Minister foresaw, the federal
government must find its justification as a government and link with citizens primarily within its own areas of jurisdiction and not on provincial territory of social programs, education, and health. However, this is only part of the answer. In forging these positions, the federal government must recapture the public goodwill that it lost from the 1970s into the 1990s. Two examples will suffice to illustrate the careful construction its future role as a player in constructive, principled federalism must assume if this action is to be successful in both restoring the legitimacy of the federal government with Canadians and reinforcing the sense of pride in belonging to Canada.

The first example concerns the current NATO commitment to Afghanistan. In response to public pressure, emanating from Quebec foremost but more recently from other parts of the nation, the federal government has pledged to withdraw its troops from Afghanistan in February 2009 unless NATO enhances its commitment and the other national parties agree to a continued role there. While this commitment is a response to public criticism sharpened during the fall 2007 by-elections in Quebec, it appears more opportunistic and engineered to garner the Conservatives votes in that province than a gesture based on a combination of principled federalism and national unity. However, the federal government's position could be strengthened by a careful redefinition of the country's role abroad. Over the past three decades, public opinion polls have indicated that support for foreign aid is consistently high (75–80 percent) and that this support is firmer if Canadians are made aware of the diminishing role they have played as peacekeepers and sources of aid, and if they believe that there is a benefit to Canada (Wolfe and Mendhelsohn 2005).17 Further, Canadians prefer assistance to aid (61 percent), particularly where aid is conceived as inducing dependence in the recipient country, and they desire their government to have an active role internationally (Noel, Therien, and Dallaire 2004; Wolfe and Mendhelsohn 2005). Finally, opinion in Quebec is more negative than in the rest of the nation toward a combat role and more supportive of aid and assistance (Noel, Therien, and Dallaire 2004). Thus, the federal government could bridge opinion in Quebec and the rest of the country by reducing the military commitment in Afghanistan in 2009 but simultaneously increasing its aid and assistance to that country and playing primarily a non-combat role after February 2009. If it were to expand its commitment in assistance to lower-income countries generally and to reinvigorate the peacekeeping role for our military, a Canadian desire for a more positive international presence could be secured. Thus, by acting within its jurisdiction and responding to the public desires, the federal government could both renew Canadian pride in our international image and its own legitimacy with citizens.

The second example pertains to culture, a primarily provincial responsibility. The federal presence in this area should correspond to a principled divide of responsibilities; that is, as envisioned in the Conservative concept of Open Federalism, the federal government should respect provincial jurisdiction but cooperate with the provinces to enable them to exercise their authority fully by providing financial support. This means that while the provinces would independently develop their priorities and support their cultural industries as they deem appropriate, Ottawa should designate unconditional funds to the provinces to offset provincial differences and ensure a vibrant cultural life across the nation. However, there is an additional complementary federal role carefully defined. The federal government should promote Canadian literature, culture, and film industries nationally and internationally by highlighting achievements within the provinces. On a national level, this would facilitate the sharing of culture across provincial boundaries and social groups. On an international level, it would mean promoting culture and the arts as engines of economic development.18 Further, the federal government could reinvigorate the Canadian Broadcasting Corporation (CBC) as an engine of national unity. Over the past two decades, reductions in funding to the CBC have resulted in closures of
provincial offices and a diminution of the role of the CBC in provinces and regions, while the separation between the French and English branches of the CBC has increased. This balkanization of news and culture increases the political and social divides among the provinces and regions rather than forging a common pool of knowledge, familiarity across borders, and pride in our collective achievements. Ottawa needs to consider restoring a truly national broadcasting system with a strong base in the provinces and regions of Canada to promote a national dialogue. Respect provincial jurisdiction, support provincial initiatives with federal funding transferred to the provincial governments, but promote a collective national awareness and pride exercised at home and abroad.

The second component of the re-engineered federal role in the federation would entail a rethinking of the federal-provincial machinery. The federal role in areas of primarily provincial jurisdiction like health, education, and social policy has been largely driven by the desire to set national standards while assisting the provinces. In these areas and others where national institutions and programs are desired to assist the provinces in serving their citizens, Ottawa and the provinces should seriously consider an alternative mechanism. This body might be a negotiated and reformed COF with a federal presence or a new body with a governance structure similar to Canada Health Infoway, which involves intergovernmental negotiation at the officials' level comprising rotating representatives from the provinces and federal government. A permanent structure, regardless of its form, is more likely to secure ongoing cooperation and policy evolution. A key consideration would be whether any national standards should be negotiated by the provinces and merely acceded to or vetoed by Ottawa. In addition, such a body would simultaneously encourage experimentation within the provinces—a foundational promise of federalism—and dissemination of results across borders. These new arrangements should not be construed as a reduced commitment to equalization or federal support for provincial programs defined by those governments. Equalization payments would continue under a negotiated, principle-based formula. Any general transfers for social, education, and health programs or other areas of provincial jurisdiction should be regularized and rendered more transparent. The federal government emerges as a facilitator of solutions to difficult policy problems within these jurisdictions but without encroaching on provincial autonomy and jurisdiction and provoking the public criticism by the provinces such actions inspire.

Why would the federal government agree to this redefined role rather than continue to attempt to buy citizen loyalty by implementing federal programs within provincial jurisdiction as it has done in recent years? As the Conservative policy of Open Federalism recognizes, Canadians want a political system that operates with less friction and confrontation and more transparency and accountability. The federal government would be recognized as a key actor in facilitating a new, more effective and responsive form of federalism. Further, the federal government would receive credit for facilitating more provincial independence and innovation in critical areas of policy that affect citizens directly. Finally, the federal government would have the room, the time, and the will to become a player internationally.

CONCLUSION

In sum, the federal government only needs to look to its areas of jurisdiction to find a means of reasserting a strong presence domestically and rescuing our image on the international stage. In an era of citizen disillusionment with government and skepticism surrounding political authority, this redefined role might be a more effective means of restoring democratic legitimacy than either tinkering with institutions with no promise of effective change or continuing to bicker with the provinces.

Asymmetry is natural to a federation, as Ron Watts (1999) has so thoroughly documented. In
Canada, history has taught us that formal constitutional recognition of distinctiveness is less popular than asymmetry in fiscal and policy arrangements. Canadians are pragmatists who understand the need for difference in practice. Arrangements designed to provide room for Quebec's distinctiveness are justifiable and acceptable to the broader Canadian public provided that an equal opportunity to take advantage of similar arrangements is extended to the other provinces, even if the option is not exercised. However, if the federal government continues along the trajectory of embedding itself further into provincial areas of jurisdiction, it is likely to only trigger more demands for special arrangements and more hostile reactions from the provinces that will undermine a sense of collective goodwill and federal comity.

Canadians have a residual desire to believe in their country as humane, benevolent, and fair. Restructuring federal-provincial relations and the role of the federal government to build on that image can only heighten the sense of national unity by encouraging all Canadians to want to be a part of that dream. A dream we have all but lost.

Notes

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1 For a summary of public opinion and the distinction between the Meech Lake and Charlottetown approaches to acknowledging Quebec as a distinct society, see Seidle and Bishop (2005, 6-9).

2 For a comparison of the federal government and provincial (COF) commissions on equalization and the fiscal imbalance, see Boadway (2006) and St. Hilaire (2006).

3 Ontario deliberately shifted away from its focus as a leader within Confederation to a more self-interested, parochial provincial approach under the Bob Rae NDP government during the Charlottetown negotiations. This approach has continued through the Harris Tories to the McGuinty Liberal government, some would say to the detriment of Canada as a whole.

4 See, for example, Courchene (2004, 21).

5 See justifications for asymmetrical federalism based on duality expressed by McRoberts (1997), Milne (2005), and Smith (2005). Smith, one among a number of scholars, also characterizes the founding fathers of Confederation as "parliamentarians" and "reluctant federalists" (2004, 41-54).

6 See Seidle and Bishop (2005, 8-11). This broader notion of asymmetry was captured in Sections 91 and 92 of the constitution. By extending the same opportunity to all the provinces to pursue different goals within their jurisdiction, the constitution provides for asymmetry in practice.

7 For example, although a Bill of Rights was enacted in Canada in 1960, applying to federal areas of jurisdiction, a constitutionally entrenched Charter of Rights was not to come until 1982. Despite attempts in 1964-65 and 1967-70 to entrench rights in the constitution, many Canadians still argued that the best protection of rights lay with parliament, not with the courts. See arguments by Premiers Lyon and Blakeney in Romanow, Whyte, and Leeson (1984), and in Cohen, Smith, and Warwick (1987, 72-3). However, by the 1970s and leading into the 1982 constitutional deal, most Canadians wanted protected rights according to Sheppard and Valpy (1982, ch. 7).

8 See, for example, the thinking underlying policies beginning in the 1960s in Axworthy and Trudeau (1990).

9 For a discussion of the Canadian attachment to the image of peacekeeping versus the reality, see Ichikawa (1979).

10 Smiley characterizes this period as one of "intense and bitter conflict" in federal-provincial relations as the two levels of government vied for dominance even as they worked together to expand the welfare state and as relations became more ideological (1987, 97-8). Key to this period are inflation, rising energy prices, and labour unrest. However, Stevenson expands the sources of tension to include organizational interests, party conflicts, and historical grievances (1989, 213, 177-234).

11 Cairns studies the shift to a rights-based culture and the effect of entrenching a Charter on the Canadian political psyche (Williams 1995).

12 For a discussion of the cuts in the 1980s, see Rice and Prince (1993, 381-416).
13 See, for example, Brock (2003, 77-80); compare McRoberts (1997, 191-276); and see Thomas (1997).

14 Successive polls have captured this view. The importance of a strong social fabric to Canadians is captured in Breton et al. (2004, 30-9).

15 See for example, Bakvis’s discussion of the reduction of provincial transfers and the increase in funding to Canada Research Chairs, Canada Foundation for Innovation, and granting councils (2007, esp. 208-9).

16 For a discussion of the federal proposal of Open Federalism, see Banting et al. (2006).

17 For a discussion of the hollowing out of our international presence by the cumulative impact of cuts to the armed forces, foreign service, and development assistance budgets, see Nossal (2005).

18 For an innovative way of thinking about culture, citizenship, and economic development, see Brault (2005).

19 For a brief description of this institution, see Brock and Ronson (2004).

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The Politics of Asymmetrical Federalism 159


