

Let's Talk: A Conversation about Canada and Quebec



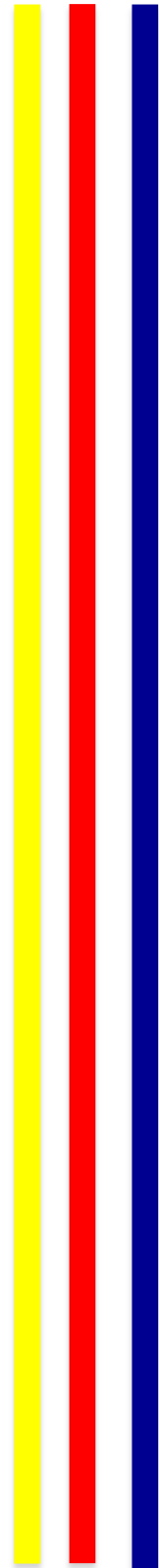
Harmony through a Dialogue on Diversity in the Federation

Kathy L. Brock, Ph.D.

School of Policy Studies and Department of Political Studies (cross appointed)
Queen's University

**Institute of Intergovernmental Relations
School of Policy Studies, Queen's University**

Quebec 2017 Paper - 2



Québec has initiated a dialogue with the other governments and civil society organizations in Canada with the release of its Policy on Québec Affirmation and Canadian Relations. This discussion would see Québec's place in the federation recognized in a mutually satisfactory way, ending the stalemate that arose out of the constitutional talks in the 1980s and 1990s. The dialogue is overdue but perhaps only possible now that the emotions of those past constitutional struggles have subsided. While the Affirmation Policy provides a good starting point, there are some important points of caution to note, particularly with respect to Indigenous relations, the territories, and asymmetry in the treatment of provinces. Before discussing these issues, however, the Affirmation Policy should be located within Canada's founding federal principles.

Reconciling Unity and Diversity

The Quebec affirmation policy builds on the principles of unity and diversity secured in Canada's original federal bargain. It asks the other provinces to engage in a respectful dialogue that embraces plurality and diversity among and within units and that will ultimately provide a basis for mutual understanding, constitutional change, and recognition of Quebec's unique identity. In turn, the Policy states that:

Québec will continue to participate in building the Canadian political project, while resolutely making its own specific contribution. With a strong national identity that is deeply felt, and wishing to have this identity duly recognized, Quebecers choose to build their future with other Canadians. We are Quebecers and this is our way of being Canadian (Québec, 2017: 2).

In the process, Québec proposes to "make Québec better known to Canadian civil society and to increase its outreach throughout Canada" (Ibid: 2). In a reflection of the principles of deep federalism, the Affirmation project embraces the governmental partners as well as civil society and, more generally, diversity within Canada. By entering the dialogue and respecting the diverse identities among the provinces and within civil society, a stronger, more unified Canada will result. Three aspects of this formidable task deserve particular attention.

Indigenous peoples

Indigenous relations are an important aspect of the Affirmation project. The Affirmation Policy begins by acknowledging the absence of Aboriginal Peoples in the Canadian founding partnership and the subsequent history of neglect, disrespect, and devastation by successive federal and provincial governments. Prior to this policy, Québec established a nation-to-nation relationship with Aboriginal people and introduced an integrated action plan for Aboriginal social, cultural, and economic development enabling them to assume more responsibility "on its territory" (Ibid: 140). The Québec plan is consonant with the federal government's aim to renew its relationship with Aboriginal peoples based on rights, respect, and partnership (Ibid: 140). To this extent, the Québec project reflects the spirit of Indigenous reconciliation.

Upon closer examination, two potential sticking points emerge. First, the policy identifies northern lands as "the territory of Québec" (Ibid: 117); a contentious claim as demonstrated during the 1995 referendum on Quebec's future.¹ While the policy acknowledges the Cree and Inuit as essential stakeholders in the future development of these lands, it also quotes André Burelle who wrote: "Gère les chevauchements de rôles et de responsabilités de leurs deux ordres de gouvernement, dans le respect des principes fédéraux de subsidiarité et de non-subordination, représentent un défi pour tous les pays fédéraux"

¹ During that referendum, the Cree, Naskapi and Inuit voted in the 90% range against Quebec sovereignty and argued they would retain their homelands if Quebec seceded from Canada.

(Ibid: 118). Québec and Indigenous governments' roles and responsibilities for these lands would need to be clearly delineated into the future, a difficult task with both claiming primacy and tension between environmental and resource rent-seeking claims. Compounding this challenge is the comparative experience of Indigenous peoples within the other Canadian jurisdictions as well as the parameters set by the Supreme Court of Canada around consent and consultation established by the Supreme Court of Canada. Common ground may be elusive to obtain.

Second, opening the dialogue on Québec's place in the federation raises the question of recognizing the place of Indigenous peoples and nations as well as the status of Indigenous languages in Canada and in the provinces and territories. Such a debate would not fit easily with the Québec policy of interculturalism, which identifies the French language as a core component of the Québec identity and a source of unity for all people within its borders. The mobilization of Indigenous communities since the 1980s means they are likely to press for equal recognition in the context of an Affirmation dialogue.

The northern territories

The Québec dialogue is likely to incite similar sentiments in the three northern territories. Their desire to "want in" the federation as partners with a stronger voice in constitutional matters and a fairer allocation of resources is bound to resurface. The northern territories have fragile resource-dependent economies in fragile ecosystems. This fragility was dramatically demonstrated in the recent downturn in the mining and oil and gas sectors. Fears of the reassertion of federal government control arose in the Northwest Territories as well as Nunavut as revenues plummeted. The departure of reputable mining companies laid bare the vulnerability of these lands to environmental hazards. At minimum, northern governments will want the south and Canada as a whole to accept greater responsibility for the reclamation of lands and reparations for damage incurred under their historical watch, with many costs that are only just being realized. At a maximum, these governments may press for constitutional recognition as provinces with a revised Territorial Funding Formula to reflect higher social services costs, environmental remediation compensation, and more control over economic development, off-shore and other natural resources, revenues, and lands. In the pursuit of such aims, the territorial governments are likely to ally with each other, the western provinces, and Indigenous governments in the south including the Cree, Naskapi, and Inuit in Northern Québec. If this occurs, then the dialogue initiated by Québec may become increasingly complex with heightened expectations that Québec may find difficult to satisfy.

Asymmetry

At the center of the dialogue is the question of the asymmetrical treatment of provinces. As the Québec Affirmation Policy notes, asymmetry and asymmetrical treatment of subnational units are natural within any federation (Ibid: 111-112) and have been part of Canada's success. Asymmetry may be political, as exemplified by the Québec Pension Plan and tax collection agreements. Asymmetry may also be constitutional, as exemplified by clauses in provincial constitutions providing for a link with the mainland (PEI) or different public schools systems (Ontario, Newfoundland). The different treatment of particular provinces, whether political or constitutional, is an accepted means of offsetting disabling differences (needs) or enhancing natural assets in the provinces to meet citizen wants and needs more fully. The challenge of asymmetry is to ensure that different treatment is balanced with principles of fairness and equality, such that the union and its parts are strengthened. If this balance is not achieved, asymmetry may foster resentment and jealousy among the provinces and citizens by supporting conflicting checkerboard policies that favour or appear to favour certain units or citizen groups over others. Ironically, the positive results associated with asymmetry are more likely to be obtained and the negative results are more likely to be avoided when asymmetry is applied symmetrically to all units. Let me explain.

The differences between asymmetry symmetrically and asymmetrically applied are captured in Table 1. Asymmetry symmetrically applied involves the federal and provincial governments negotiating framework agreements in major or shared policy areas that establish general principles, objectives, and outcomes as well as broad implementation guidelines, including opting-out provisions with compensatory clauses available to any units. The advantage of these agreements is the delicate balance achieved between unity and diversity: they combine shared commitments to jointly-defined national goals and standards² and to provincial equality with accommodation of provincial differences through flexibility in the interpretation and implementation of these guidelines. Examples of these agreements are the 2004 Health Accord and 1997 Calgary Declaration. In contrast, asymmetry asymmetrically applied refers to deals worked out between the federal government and one or more provinces that do not conform to agreed-upon principles, objectives, guidelines, and opting-out conditions. These agreements allow provinces and territories to negotiate exclusively in their own interests and without reference to the interests of the federation or the other subunits. They privilege flexibility and provincial difference over unity. In this way, they are more consistent with a confederal than a federal arrangement. Examples of asymmetry asymmetrically applied are the 2004 Equalization Agreements where provinces negotiated side deals without reference to the other provinces, the 2007 Council of the Federation agreement on fiscal imbalance which outlined a common objective unless a province could negotiate a better agreement, and the 2017 Health Accord negotiations which unilaterally imposed federally defined terms on the provinces and encouraged provinces to negotiate side deals.

Table 1: Two Versions of Asymmetry

Asymmetry Symmetrically Applied	Asymmetry Asymmetrically Applied
Framework agreements negotiated by central and other governments	May or may not have a general framework agreement
General principles, objectives, outcomes, implementation guidelines in framework	May or may not have agreed upon principles, objectives, outcomes, implementation guidelines
Opting-out provisions available to all units with agreed upon conditions, compensation formula	No agreement on opting-out provisions
Flexibility in interpretation and implementation to suit local needs within defined parameters	Flexibility in negotiations, standards, and implementation with no commonality
Provincial equality with accommodation	Provincial inequality/difference primary
Transparency, knowability	Opaqueness, special deals
Common commitment to common goals with principled differences; collective interests	No binding, shared commitments undergird separate arrangements; self-interests
2004 Health Accord, 1997 Calgary Declaration	2004 Equalization Deals, 2007 COF and Fiscal Imbalance deals, 2017 Health Negotiations

The two visions of asymmetry have consequences for the federation by promoting different modes of provincial behaviour and decision-making. Without a commitment to common framing ideals, decisions among the units become more random and can lead to beggar thy neighbour federalism (seeking self-interest at the expense of other units). This can result in perceptions of unfair treatment and further undermine feelings of mutual reciprocity and comity. Resentments and jealousies arise among the units and complicate intergovernmental relations with negotiations driven by suspicions of “Who gets what?” In the process, the centre is weakened and the sense of common nationhood attenuated. With a commitment to a shared responsibility for seeking common ground and defining a future together that respects the unique circumstances of each unit, the rationale for a common existence is strengthened. The

² Shared commitments to jointly-defined national goals and standards involves the federal and provincial orders of government negotiating national goals and standards and avoids unilateral imposition of goals and standards at the outset of negotiations.

terms of federation become “How can we all flourish together?” rather than “What’s in it for me?”. Asymmetry based on provincial equality and respect for difference is essential to a well-functioning federation that serves citizen interests. Thus, while asymmetrical asymmetry is required for particular situations, as a general approach to federal negotiations and arrangements, it is less than felicitous.

The Affirmation Policy is predicated upon Québec being Canadian in its way. This vision is not inconsistent with a healthy form of asymmetry. Caution must be exercised that provincial identities are accommodated and respected within a commitment to common values and a vibrant centre.

Moving forward

Québec has initiated a dialogue with governments and civil society in a spirit of goodwill and respect so vital to a federal democracy. As other jurisdictions begin to respond, it might be worth reflecting on three means of moving the dialogue forward in light of the cautions noted above. First, the Québec policy of interculturalism may provide a structural model for dialogue. This structure would, as its starting point, identify the core principles, beliefs, and interests underlying Canada’s identity. Respect and tolerance for difference among the provinces, territories, and Indigenous communities and within civil society would operate within those parameters. This creates a common space (unity) while respecting diversity. Second, the dominant approach to intergovernmental negotiations would be asymmetry symmetrically applied, which would also embrace both provincial equality and national unity. Under this approach, core national values would be respected and options open to one province would be open to all. This approach entails mutual respect between the federal and provincial orders of government. It can also accommodate differences among Indigenous communities and the territories. Asymmetry is the oil that keeps federalism running smoothly, but attention must be paid to the whole for all parts to work effectively. Third, a past proposal may provide a key to the future. The Canada Clause proposed during past constitutional talks may be worth revisiting. The strength of the Clause was its enumeration of Canada’s various parts – including the three founding peoples and other racial and ethnic communities – and its recognition of the equality of men and women. The weakness of the clause was its lack of unifying direction and purpose. A new Canada Charter that affirms the whole while recognizing the parts, including Québec’s distinctiveness, would extend ownership of the constitution and Canada to all jurisdictions and communities, provided that it reflects the principles of fairness, equality, and inclusion.

The Policy on Québec Affirmation initiates a new dialogue based on a vision of Canada as humane, benevolent, and fair – an ideal that all Canadians can strive to attain. So... Parlons. On doit parler. C’est le voie Québécois, c’est le voie Canadien.