

*The nature of federalism is a form of government designed to get the best of two worlds: the advantages of a unified state and the benefits of the diversity which is inherent in the peoples and the regions which make up the state.*  
(Johnson, 98)

Is it suffice to say that federalism is one way to solve the problem of enlarging government? (Riker) Or, that it is the division of jurisdiction and authority between at least two levels of government? (Jackson and Jackson, Wheare) Or, as Elazar and Watts point out, federalism is the combination of self-rule and shared rule? We need to acknowledge that federalism, as a theory, goes beyond the simple division of legislative powers or arrangement of institutions.<sup>1</sup> That is, in our understanding of federalism, we need to take into consideration the ideas of other theorists, who incorporate the socio-political element into their conceptualization of federalism.

Denis de Rougement argues that federalism is ‘essentially an attitude, which comprises four basic principles: diversity, interdependence, responsibility and efficiency’.<sup>2</sup> Burgess and Gagnon point out that federalism is the accommodation of human associations in which unity and diversity are balanced and maintained. For Stevenson, federalism protects minorities. LaForest, argues that federalism is a form of partnership and friendship. Tully, also contributing to the discussion, points out that federalism is an expression of democratic practices, which encourages autonomy within regions. According to Robinson and Simeon, ‘federalism is about the co-existence of multiple loyalties and identities and about shared and divided authority’.<sup>3</sup> Finally, Covell points out that federalism manages and deals with conflict. Others, however, would argue that it produces conflict, as it enables the growth and empowerment of regional identities. Upon this quick rendition of these definitions of federalism, the question that begs to be asked is, do these definitions capture the true essence of federalism?

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<sup>1</sup> Lalande, 1978, 132

<sup>2</sup> de Rougement quoted in Lalande, 1978, 33

<sup>3</sup> Robinson and Simeon, 1995, 368

The simple answer is no. It would be obvious to any student of federalism that these definitions are too simplistic and vague in form, to offer any concise or concrete understanding of federalism, either as a theory, an ideology, or a form of government. As such, a deeper look at federalism, as a value concept, is needed.

In a federation, a particular theory, or theories of federalism underpin its constitutional politics. Ostensibly, one's conceptualization of federalism almost always informs his/her constitutional position. Similarly, one's constitutional position is a strong indication of his/her conception of federalism. That is, the way in which one, an individual, a government, or an institution, conceptualizes federalism and subsequently federation, has an impact on constitutional politics in that one's position on federalism translates into a constitutional position. For this reason, understanding the various conceptualization and types of federalism and federation becomes important in understanding constitutionalism.

Despite this seemingly simple task, federalism, what it is and how it ought to operate vis-à-vis constitutional politics, is a highly contested and convoluted concept. For years theorists have tried in vain to come to grips with an all-encompassing meaning of federalism. Though this endeavour has proven fruitless, there is a consensus amongst academics that federalism is a political system in which there are at least two levels of government, where responsibilities, powers and jurisdiction are outlined, divided, and entrenched in a constitution. Furthermore, there is a 'set of ideas' and prioritization of federal principles underpinning federal institutions; however, these sets of ideas and accentuation of principles vary from academic to academic. Scholars differ on how power ought to be shared, the degree of autonomy to be allocated to the regional/constituent units, the degree of centralization and decentralization and finally, why a country chooses a federal form of governance over other forms.

Within the contemporary literature, several influential academics have posited various conceptions of what federalism in theory and how it should function in practice; some, however, are too broad or simplistic to be theoretically or normatively functional. These different

conceptions, however, can be better understood if we think of them in terms of mononational federalism versus multinational federalism; that is, different ideas of what federalism is in theory and how it ought to operate in practice can be reduced to the idea that there are at least two broad approaches to the understanding of federalism, mononational and multinational<sup>4</sup>.

This categorization of the two approaches to the understanding of federalism emerged from the juxtaposition of Gagnon's thoughts of two types of federations and the purposes of each, and Lalande's analysis of how four methods can be used to understand different conceptions of federalism. By combining and expanding upon the thoughts of both academics, we are able to explore how various theorists understand not only the purposes of federalism and federation, but also, the associated obligations. Furthermore, such expansion and combining enables us to analyze and view how such concepts as diversity, justice, stability and order, informing the different conceptions of federalism, are understood and prioritized differently within the two categories. The purpose of this paper, therefore, is to provide a literature review of the various conceptions of federalism put forth by prominent theorists, in order to develop these two broad categories, which will, in turn, aid in the better understanding of the concept, principles, and underlying assumptions of the general definitions of federalism. This will then be used, in subsequent chapters<sup>5</sup>, as an analytical tool in looking at how the Supreme Court of Canada (SCC) conceptualizes Canadian federalism, and how this conceptualization is used as a variable in its judicial decision-making process.

Juxtaposing the two frameworks essentially offers us a different way of looking at the understanding of federalism as a theoretical concept, one that enables us to broaden the centralized versus decentralized federalism axis to embrace ideas of federalism that reach beyond

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<sup>4</sup> the concepts of nation and nationhood is core to the categories. I recognize that further elaboration on the concepts as well as the reasoning for choosing this distinction over other ones, e.g. communities, is needed. As such, I am in the process of researching and expanding upon the concepts which I intend to include in the final draft of this chapter.

<sup>5</sup> This is the first chapter of my thesis project where I look at how the SCC understands Canadian federalism and how this understanding is used by the Court in understanding the constitutional

the constitutional and institutional division of powers. In simple terms, centralization is understood as ‘power concentrated within the central government’.<sup>6</sup> Decentralization, on the other hand, ‘suggests the shift of powers towards the provinces’.<sup>7</sup> The centralization – decentralization continuum forces the student of federalism to see federalism in terms of who has more power and where power resides. So the analysis is restricted to a discussion of a strong central government versus weak regional governments, or vice versa, in a legal and constitutional sense, whatever strong and weak may mean for any particular theorist<sup>8</sup>. In narrowing our focus as such, we fail to take into account other aspects, those in practice which affect the degree of power or importance of each level or order of government.

For Robinson and Simeon, ‘what makes Canada distinct is the highly decentralized character of its federal system’.<sup>9</sup> This statement merits some scrutiny in light of the definitions of centralization and decentralization offered above. It is often argued that the way in which the Canadian federation has evolved over the years, Canada, originally a centralized state, is a decentralized state. This ‘shift’ in the Canadian federation initiated with the provincial rights’ movement; beginning in the late 19<sup>th</sup> century, the political leaders of the provinces began to demand constitutional equality. The main objective became to ‘resist and overcome a hierarchical version of Canadian federalism’.<sup>10</sup> “The idea that the provinces are not subordinate but coordinate with the federal government [soon became] the dominant conception of Canadian federalism’.<sup>11</sup> Centralism began to lose its appeal.

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obligations and powers of both levels of government.

<sup>6</sup> Robinson and Simeon, 1995, 368

<sup>7</sup> Ibid., 368

<sup>8</sup> it is not necessarily clear what is meant by a strong central government and weak provincial government or vice versa; the terms are not clearly defined, nor are they universally applicable. As a result, the reader is confined to take and understand the terms at face value.

<sup>9</sup> Ibid., 366

<sup>10</sup> Russell, Peter H. Constitutional Odyssey: Can Canadians become a Sovereign People? 2<sup>nd</sup> edition. Toronto: University of Toronto Press, 1993; 37.

<sup>11</sup> Ibid., 39.

In addition to this political conscious action of the provincial leaders, the politically unconscious developments of the two levels of government contributed, Russell argues, to the decentralization of Canada. In *Constitutional Odyssey*, he discusses the inability of the Canadian governments to agree upon an amending formula; rendering them unable to patriate the Constitution until 1982. During this time, the provinces continued to gain power within its jurisdiction, thus strengthening its position at the constitutional bargaining table<sup>12</sup> and potentially with the public.

Garth Stevenson, in his contribution, argues that the decentralization and centralization of Canada was and is contingent upon economic interests. That is, where the economic interest rested determined the degree of centrality of the Canadian federation. According to Stevenson, ‘the political economy in Canada produced both conflicts between different classes and class fractions and at the same time caused these contending forces to identify their interests with different levels of government and vice versa’.<sup>13</sup> The level of government that has had the most support from the different interests has proven to be the stronger level of government. Though conceivable, it remains questionable whether economic factors *caused* the decentralization of the Canadian federation. Indeed, we must ask, did economic interests render the provinces stronger vis-à-vis the central government, thus rendering Canada a ‘highly decentralized state’ or simply more important in the lives of the citizen? And does the degree of importance necessarily mean strength over the central government as the definition of decentralization implies?

In addition, it is noted by various academics including Cairns, Russell and Stevenson, that the quasi federal powers of disallowance and reservation belonging to the federal government, fell into disuse; as well, the need for a strong central government to fulfill the National Policy of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, diminished once the mandate was

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<sup>12</sup> Ibid.

<sup>13</sup> Stevenson, Garth, “Federalism and Intergovernmental Relations,” in Canadian Politics in the 21<sup>st</sup> century, 5<sup>th</sup> edition, edited by Michael Whittington and Glen Williams, 2000, Scarborough: Nelson Canada, pp. 79-104; 73.

fulfilled. This, coupled with the reality that the social agenda, including health and education, both provincial powers, increased in importance, may also have contributed to the decentralization of Canada. This argument is valid in that it recognizes how the importance of provincial governments vis-à-vis the people increased over time. But, we can hardly say that it rendered Canada a decentralized federation, if it is one, when we consider that no powers were taken from the federal government and given to the provincial governments.

Moreover, regarding health specifically, can we argue that Canada is decentralized because of the importance of the provincial government in the lives of citizens when it is the federal government controlling the financial purse and setting the standards through the Canada Health Act? If the federal government is pulling the strings and indirectly controlling that which renders the provinces the stronger level or order of government, is Canada not a centralized federation?

The purpose of raising these issues is not to achieve definite conclusions or to determine, without ambiguity, whether the Canadian federation is centralized or decentralized. Rather, the purpose is to raise awareness of the limitations of this decentralized – centralized discourse. In focussing strictly on the division of powers and the institutional make up of a country, we fail to factor in the issue of diversity and the ability of expressing this diversity. If federalism is, as we shall see, finding a balance between unity and diversity, should we not focus on that and not necessarily the degree of power of one level of government compared to the other?

According to Elazar, because federalism is essentially a precarious balance between diversity and unity, its understanding should not 'be located on the centralization – decentralization continuum [... but on] one that is predicated on non-centralization, or the effective combination of unity and diversity'.<sup>14</sup> In essence then, we should concern ourselves with the degree of weight placed on diversity versus homogeneity and the effects this has on unity

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<sup>14</sup> Elazar, Daniel. Exploring Federalism. Tuscaloosa, Alabama: The University of Alabama Press, 1987, 64.

and diversity. In other words, does a particular understanding of federalism and the manifestation of this understanding in a federation encourage diversity and in turn the expression and flourishing of it? Or does it promote homogeneity and in turn, the encouragement of one dominant political identity located in the national government?

The centralization – decentralization continuum does not encourage such analysis. The mononational – multinational axis, I believe, does enable us to evaluate federalism not only along the continuum presented through the centralization – decentralization analysis, but also along the diversity factor. That is, within this framework we are able to question whether diversity is encouraged or if it is de-politicized so as to ‘carefully limit [its] political effects’.<sup>15</sup>

The goal is not to eliminate the centralized versus decentralized analysis when addressing issues of how different understandings of federalism are or should be classified. Instead, the point is to elaborate on it so as to recognize that in understanding a particular type of federalism, we must consider factors beyond how, in a legal or constitutional positivist sense, power is divided. Instead we should observe how such factors including the role each level of government ought to and does play in a citizen’s everyday life and the reasons why federalism was adopted as a form of government, have the potential of shaping the conceptualization of federalism, the understanding of where power ought to rest and the exercise of this power.

Essentially this mononational / multinational divide enables us to break free from the confines of the former categorization to consider the idea of obligation, not in the sense that one level of government is obliged to the other, but that both levels of government are obliged to the spirit of federalism, and in turn the people of the country. Michael Burgess states that the federal spirit ‘requires the recognition of a respect for many different identities<sup>16</sup> and diversities that together constitute what it means to be a political community’.<sup>17</sup>

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<sup>15</sup> Ibid., 66

<sup>16</sup> by identities, Burgess is implying national ones and not necessarily others including, gender, sexual orientation, etc.

<sup>17</sup> Burgess, 2000, 4

To sit here and try to give substance to Burgess' understanding and, in turn, conclusively define the spirit of federalism would be a sisyphian task; conceptions of federalism differ from country to country; but most importantly, conceptions vary amongst people and political actors alike, within any one country, Canada in particular. The understanding of the spirit of federalism depends on how the people of the country or nation see themselves; that is, are they one nation which includes diverse groups, or are they nations within a nation, which encompasses Kymlicka's idea of non-immigrant national minorities.<sup>18</sup> This inevitably begs the question of who is charged with, and to what degree, the responsibility of maintaining and flourishing the acknowledged diversity. Again, answers vary as many factors, including the will and desires of the people as well as fluctuating interpretations of constitutional and political powers, affect the response.

We need to note that this idea of two broad approaches to the understanding of federalism does not negate the other inquiries or studies of federalism. Quite the contrary; it compliments the other approaches by simply representing another, albeit different, level of analysis. Furthermore, the two approaches, mononational and multinational, do not contradict each other, nor are they mutually exclusive; they too are complimentary as they represent different levels of understanding federalism.

Lastly, this idea of a mononational versus a multinational approach to the understanding of federalism, for this particular project, is limited to the relationship between the federal and regional governments of Canada. This, by no means, is an assertion that the understanding of federalism begins and ends with the dynamics between the two levels of government. In

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<sup>18</sup> Kymlicka, Will. "Multinational Federalism in Canada: Rethinking the Partnership," in Roger Gibbins and Guy LaForest, Beyond the Impasse: Toward Reconciliation. Montreal: Institute for Research on Public Policy (IRPP), 1998, pp. 15-50; 15. Kymlicka understands the Quebec and Aboriginal Peoples as non-immigrant national minorities 'because they have fought to form themselves (or rather to maintain themselves) as separate and self governing societies and have adopted the language of "nationhood" to both express and justify this struggle for self-government. [...] These groups have defined themselves as "nations" and, as such, they claim the same inherent rights of self determination as other colonized or



actuality, multiple variables, including globalization<sup>19</sup> and identity politics<sup>20</sup>, to name a few, play a role in shaping the understanding.

Despite these very real variables, affecting the practice and understanding of federalism, they will not be considered beyond this point<sup>21</sup>. I have found it necessary, in order to keep my search for a better understanding of federalism manageable and useful for this particular project, to narrow the variables to include only the relationship between the national and sub-national

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conquered nations around the world.'

<sup>19</sup> Robinson and Simeon, for example, point out that in the age of globalization, governments and citizens are faced with the effectiveness of federalism as a tool to deal with new and difficult economic policies (Robinson and Simeon, 1995, 384). It is quite obvious that such multilateral agreements as the Free Trade Agreement and the North America Free Trade Agreement have implications for the role and powers of government on the constitutional and social front.

These multilateral agreements also affect trade in any given country, which in turn affects the dynamics and relationship between the sub-units. In Canada for instance, trade is no longer east and west, but north and south. One grave implication of this new trade arrangement is that the country is less linked to each other, not only socially, but also economically. As Robinson and Simeon argue, 'it is clear that globalization means that federalism no longer stops at the border: international forces reach deep into Canadian life to affect provinces and municipalities; and Canadian federal tension are projected into the international arena.' (Robinson and Simeon 385)

<sup>20</sup> Rocher, Francois and Smith, Miriam, "Four Dimensions of the Canadian Constitutional Debate," in *New Trends in Canadian federalism, 2<sup>nd</sup> edition*. Toronto: Broadview Press, 1995, 45-66.

Francois Rocher and Miriam Smith, in "Four Dimensions of the Canadian Constitutional Debate," have looked at how different political identities underpin different conceptualizations of Canadian federalism and consequently different and competing views of the Constitution. (Rocher and Smith) That is, the way in which an individual or group perceives their membership in the community has an impact on their vision of federalism and how it should be reflected in the nation's Constitution. The first three visions, the compact theory, the dualist vision, and nationalizing federalism, are informed by a territorial identity, understood as province v nation. The last vision, unlike the previous three, is based on rights, finding its roots in the 1982 Charter. Rocher and Smith, in this article present the reader with an alternative manner of analyzing different conceptions of federalism. Instead of focusing on the traditional interstate v intrastate federalism dichotomy of the historical aspect of federalism, they have introduced political identity as yet another variable impacting different conceptualizations of federalism.

<sup>21</sup> I do intend, in future research, to explore these variables in a more substantial measure to include such factors as identity, other than those of the Quebecois identity and the Canadian and/or provincial identities, leading to nations with the right to self determination; this will facilitate an inquiry into how, and the degree, these factors have affected and continue to affect the many understandings of federalism by both the political society and the judiciary. Such broadening of the mononational and multinational model will enable me to explore how the political and social actions and agenda of First Nations have affected and continue to affect the understanding of federalism and the use of these understandings in court proceedings in Canada and other countries. As well, exploring the affects of identity will enable me also to analyze the conceptualizations of federalism of other countries, both on their own and in a comparative manner, including, Belgium, Spain, India, the United States and Italy (who is in the process of contemplating the adoption of federalism to deal with the North/South struggle).

governments vis-à-vis the Constitution, the identity associated with this relationship, and the obligations of both levels of government to the spirit of federalism. Subsequently, the second category, multinational is limited to bi-national<sup>22</sup> as two of the four cases, the Quebec Veto Reference and the Secession Reference, deal with the French Canadian nation manifested in the Quebec National Assembly and Quebec government and speak specifically of the English Canadian nation versus the Quebec nation<sup>23</sup>.

In narrowing the scope of these mononational and multinational categories, I am, to a certain degree reducing the discussion to the compact theory of Confederation debate. Essentially, there are three theories or interpretations of Confederation which all aim to establish the true *agreement* or *compact* at the time of Confederation and subsequently, the obligations which emerge from the pact: first, the provincial compact theory<sup>24</sup>, asserts the equality of the provinces and the equality between the two levels of government; second, the compact of cultures theory<sup>25</sup> holds that since Canada was founded by two peoples, the French and the English,

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<sup>22</sup> There is quite the vibrant debate over whether or not an English Canadian nation exists ... expand

<sup>23</sup> Interveners of the Secession Reference, submitted arguments concerning the rights of First Nations and the obligations the federal government has vis-à-vis the Aboriginal peoples of Canada, including those within the provincial boundaries of Quebec. The Supreme Court, however did not fully explore these issues in their written decision. This point will be elaborated upon in the sixth chapter of this dissertation.

<sup>24</sup> Subscribers of the provincial compact theory hold the 'view that Confederation was a contractual agreement among the provincial governments' (Stevenson, 1989, 40). Individual and autonomous governments came together to form a union; federalism was adopted as a form of governance in order to endure that the provinces were able to maintain their autonomy. In fact, this theory asserts the primacy of the provinces, rather than the federal government as the building blocks of the Canadian community. In contemporary Canadian politics, this theory is understood as the promotion and respect of the principle of provincial equality signaling that, not only are provinces equal to each other, but to the federal government as well. If we accept this as a premise, then 'the logical conclusion is that no changes can be made to the original agreement without the unanimous consent of all the parties to that agreement' (Kwavnick, px). Underpinning this assertion is the idea that both levels of government have an obligation to each other and to the Constitution to respect the division of powers.

<sup>25</sup> Cook, Ramsey. Provincial Autonomy, Minority Rights and the Compact Theory, 1867-1921. Ottawa: Studies of the Royal Commission on Bilingualism and Biculturalism, 1969.

The compact of cultures theory asserts the argument that the British North America Act, 1867, was entered into and established by two founding nations. Affirming Canada's dualistic nature, this theory is based on the contention that the francophones and the anglophones agreed 'that Canada should be a country inhabited by two nationalities and that the new nation, Canada, should recognize its bicultural nature (Cook, 1969, 51). As such, there is an implied obligation

Canadian federalism ought to reflect this bi-national component; and third, the no compact theory<sup>26</sup> maintains that at the time of Confederation, there was no pact, thus the federal government is not obliged to observe the assertions of the previous two theories of Confederation: unanimity of the provinces or Quebec approval, respectively, when amending the Constitution.

The mononation and multination categories, however, do not simply reduce to the decentralization versus centralization debate or to the obligation or non-obligation of the federal government to the provincial governments. Instead these two categories embrace the implications of the compact theories, which include identity along the federal – provincial axis, and expand upon it by exploring the obligations to the spirit of federalism (as it is defined at a particular time). As well, the mononational / multinational model explore other elements including the prioritization of federal principles, the notions of stability, order and justice, which the previous theories touch upon, but fail to develop fully.

Let us now proceed with a closer look at the concepts and principles of federalism and federation, as well as how the two are distinct.

In doing so, we will need to look at how the various theorists prioritize the principles of federalism in order to properly classify them in the mononational and multinational categories. It

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that governments ought to promote and preserve Canada as a bi-cultural (today it is often referred to as a bi-national state by, mainly, Quebecois nationalists) state. As well, this theory implies that the consent of the Quebec government, as Quebec is viewed as the homeland of French Canada, is needed in amending the Canadian Constitution.

<sup>26</sup> Morton, Desmond. A Short History of Canada. Toronto: McClelland and Stewart Limited, 1994, 93.

Beginning in the 1930s, centralists began to denounce the existence of a compact, and subsequently, any obligations and implications associated with this compact. For instance, Desmond Morton has argued, in A Short History of Canada, that 'as an historical interpretation of what happened in the 1860s, the compact theory is absurd'

Forsey, Eugene. Freedom and Order. Toronto: McClelland and Stewart Limited, 1974, 253.

Also, Eugene Forsey argues that Canada, with regards to its political aspects, is one nation; the proof is in the 'clear' intentions of the Fathers and the plain terms of the British North America Act. (Whether the intentions of the Fathers are clear is quite questionable, as at the time of Confederation, it is often argued, there was no one clear and unanimous consensus amongst the Fathers.) This interpretation, premised on the existence of no compact, then implies, constitutionally, that the federal government need not obtain provincial consent to amend the Constitution. This essentially, implies a hierarchy of levels between the two orders of government, with the provincial governments subordinate to the central government.

is the way in which theorists understand and prioritize these federal principles that determine the way in which they understand federalism and federation in either mononational or multinational terms.

### Defining Federation

More often than not, theorists and students of federalism have the tendency of not distinguishing between federalism and federation. In fact, the two concepts are either used interchangeably, when in reality they are distinct, or the distinction between the two is simply implicit in the literature. As Burgess points out, it was not until the 1980s that political scientists, beginning with Preston King in his publication of Federalism and Federation, began to explicitly distinguish between the two concepts.<sup>27</sup> In today's literature however, we are able to locate, with such authors as Watts, King, Vile, Hueglin, Burgess, Gagnon, to name, but a few, different and distinct understandings of federalism and federation. In this section then, we will look at the various conceptions of federation offered by some of the authors mentioned above, in order to obtain a better understanding of the notion. This then will set the stage for the review of the various definitions of federalism with the of mononational and multinational categories.

Both federation and federalism are located within the federal idea, which broadly speaking, 'refers to specific forms of human association.'<sup>28</sup> More specifically, the federal idea embodies different conceptions of how to organize human relations 'in order to accommodate, preserve and promote distinct identities.'<sup>29</sup> It is the idea of balancing unity and maintaining diversity. Understood as such, both federalism and federation are value concepts.

For Ronald Watts federalism is the normative term whereas federation is the descriptive one. As a normative term, federalism basically embodies the idea of self rule and shared rule

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<sup>27</sup> Burgess, Michael. "Federalism and Federation: a Reappraisal", in Burgess and Gagnon, Comparative Federalism and Federation: Competing traditions and Future Directions. Toronto: University of Toronto Press, 1993: 3-14; 4.

<sup>28</sup> Ibid., 3

<sup>29</sup> Ibid., 3

between at least two tiers of government. “It accommodates, preserves and promotes distinct identities within a larger political union.”<sup>30</sup> In essence, ‘it is the perpetuation of both union and non-centralization at the same time.’<sup>31</sup>

Federation as a descriptive term, refers to the institutional make-up of the federal nation. It embodies such principles as the division of powers, a written constitution, regional representation at the center, equality of both central and regional governments, and regional autonomy. Federation, therefore is the employment of the principles of federalism in order to achieve a balance between unity and diversity.<sup>32</sup>

For Vile, Burgess, King, Hueglin, and Watts, the hallmark of a federation, thus distinguishing it from other forms of governance, is the constitutional entrenchment of the autonomy of the constituent units and regional representation at the center. As Burgess points out, the autonomy of the units becomes of the utmost importance, as it is the ‘guarantee of their very survival as states within a larger state.’<sup>33</sup> Watts also emphasizes the importance of the constitutional autonomy of the constituent units, in which each has ‘sovereign powers derived from the Constitution, rather than another level of government’.<sup>34</sup> One way to ensure the autonomy of the units and also to ‘prevent the abuse of political power’ is through separated spheres of jurisdiction.<sup>35</sup> The ultimate goal in this sense, is to find a happy medium so as to maintain balance between the central and regional governments.

Within a federation, the people are assumed to be sovereign. Furthermore, they are associated with a territory. As such, they are represented at two levels: one, as a whole at the national level (this secures unity) and two, at the regional level (this secures the recognition of

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<sup>30</sup> Watts, Ronald. Comparing federal systems in the 1990s. Kingston, Ontario: Institute of Intergovernmental Relations, Queen’s University, 1996, 6.

<sup>31</sup> Ibid., 6

<sup>32</sup> Ibid., 6

<sup>33</sup> Burgess, 1993, 6

<sup>34</sup> Watts, 1996, 7

<sup>35</sup> Hueglin, Thomas. “Federalism in Comparative Perspective”, in R.D. Oling and M.W. Westmacott, Perspectives on Canadian Federalism. Scarborough: Prentice Hall,

diversity). In order to ensure the entrenchment or retention of local identities, some form of intrastate (or interstate in the case of Canada) is needed. Regional representation at the center, so as to ensure that the units have a role in the decision-making process of the central government, thus becomes the embodiment of balancing unity and diversity. As Preston King argues, the ‘chief distinguishing feature of a federation is the territorial grouping of its citizens and the means by which these groups are represented.’<sup>36</sup>

Generally speaking, the federal principle, which in fact is the organizing principle and encompasses the principles of federalism, underpins both federalism and federation. Embodying the idea of balancing and maintaining unity and diversity, the federal principle is realized through the federal institutions and Constitution established in the federation. The federal principle thus informs how a federal society is organized.

It goes without saying then, that the way in which the idea of maintaining unity and balancing diversity is understood by a particular theorist, or in the case of this particular project, the SCC, determines whether their understanding of federalism belongs in the mononational or multination category. Such understanding is evident in the way a particular theorist emphasizes and prioritized certain principles over others.

### *Principles of federalism*

The principles of federalism emerging from the overarching theme of maintaining unity and balancing diversity can be understood as falling into one of three overarching heading: one, the pluralization of governance; two, the consent requirement; and three, the normative commitment to social solidarity.

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1998, pp. 16-34, 19.

<sup>36</sup> King, Preston. “Federation and Representation.” In M. Burgess and A.G. Gagnon, Comparative

Federalism and Federation: Competing Traditions and Future Directions. Toronto: University of Toronto Press, 1993, pp. 94-101; 95.

### *The Pluralization of Governance*

The pluralization of governance ‘implies a process of multilevel governance among a plurality of spatial and social collective actors.’<sup>37</sup> The key here is that the smaller units retain their autonomy, that is, their right of self-government; further, they are represented at the center.

Under this first heading, we can include the following principles:

- (1) the territorial representation of citizens;
- (2) security of this representation through at least two levels/orders of government;
- (3) separated spheres of jurisdiction, explicit in a written Constitution, guaranteeing the autonomy of both regional and central governments<sup>38</sup>.
- (4) processes and institutions to facilitate intergovernmental collaboration for those areas where governmental responsibilities are shared or inevitably overlap.
- (5) regional representation at the center, secured through a second Chamber or an Upper House. This fourth principle is important, as it is, in essence, the institutionalization of diversity.

### *The consent requirement*

The consent requirement ‘regulates the joint decision-making process among the plural collective actors.’<sup>39</sup> Underpinning this idea is the implication that no one level of government is more powerful, as the units retain their right of self government. Constitutionally, this may translate into requiring the unanimous consent of the sub units when amending the original contract. In other words, *what pertains to all, must be approved by all*<sup>40</sup>.

The following principles fall under this second heading:

- (1) the equality of regional and central governments;

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<sup>37</sup> Hueglin, 1998, 3

<sup>38</sup> Considering the size and complexity of modern day government governments, jurisdictions often overlap. Thus co-operation between the regional and federal governments becomes a necessity.

<sup>39</sup> Ibid., 3

<sup>40</sup> Althusius quoted in Hueglin, 1998.

- (2) regional representation can only be altered by extraordinary constitutional measures;
- (3) powers dealing with the separate spheres of jurisdiction can only be altered by extraordinary constitutional measures;
- (4) 'an umpire to rule on disputes between governments',<sup>41</sup>

These first two headings, essentially organizational principles, highlight the political structure of federalism as the focus of the principles is confined to the idea of 'two or three constitutionally guaranteed levels of government, and the co-operation between them, commonly confined to the framework of pluralistic society.'<sup>42</sup>

*The normative commitment to social solidarity*

Under the third category, the normative commitment and principle, Althusius stresses that 'consent can only be reached if the material results of policy making are acceptable to all as fair and equitable.'<sup>43</sup>

The principles include:

- (1) regional equalization, realized through fiscal federalism where grants and transfer payments are utilized.
- (2) Respect for diversity at a social level through the recognition of regional identities extending beyond economic differences.

It is this final point, recognition of regional identities, including social diversities that separate a mononational understanding of federalism from a multinational one. Diversity in the mononational understanding of federalism is restricted to economic diversity. Thus in dealing with diversity, in an institutional sense, economic disparity, class conflict, center-periphery issues become the focal point. On the other hand, diversity under a multinational understanding of federalism is recognized to exist on many levels. Further to this, it is emphasized that federal institutions should be established to enable the expression of this diversity, in order to fully and

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<sup>41</sup> Watts, 1996, 6

<sup>42</sup> Hueglin, 1998, 17



truly embody the principle, respect for diversity. In other words, the federation ought to provide the necessary tools to enable different social and ethnic (beyond the national one) identities to be sustained and to flourish.

Schatlschneider points out that an important nature of politics is ‘that all political systems have a specific ‘bias in favor of exploitation of some kinds of conflict and the suppression of others.’’<sup>44</sup> There is a tendency, therefore, of channeling social conflicts through institutions of federalism, for instance, center-periphery conflict, passing the responsibility to another level of government, and policy making which focuses on economic efficiency. By suppressing conflict, it is believed that the federation will be stabilized. This is not necessarily the common practice in a multination, as they entertain social conflict and regional identities. As Hueglin argues, ‘it is safe to say that while the formation of federal systems is usually based on the pre-existence of strong regional identities, the retention of such identities is reinforced by the federal organization of politics.’<sup>45</sup> It is this which distinguishes a mononational federation from a multinational one, and subsequently, a mononational approach to the understanding of federalism from a multinational understanding. So, it is not whether or not distinct regional identities exist, but whether or not they are recognized in so far as having an avenue to be expressed within federal institutions.

In looking at whether a conceptualization of federalism is either mononational or multinational, we need to look at which principles are stressed and prioritized. Also, we must ask, whether unity of the whole, implicit in the promotion and the encouragement of homogeneity, or diversity of regional units, implicit in the promotion of heterogeneity is emphasized. All this may be located in the idea of how powers ought to be allocated and how the federal bargain is understood. The way in which the relationship amongst governments is understood also serves as an indicator; that is, are governments understood as levels, in which

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<sup>43</sup> Ibid., 3

<sup>44</sup> Schatlschneider quoted in Hueglin, 1998, 27

hierarchy is implied, or as orders in which equality, each autonomous and independent, is suggested?

#### Categorizing federalism: Mononational versus Multinational

In its simplest form, the understanding of federalism, regardless of which approach it is classified under, is reduced to a *federal bargain* between autonomous units. According to Elazar, federal means covenant. One way in which a polity comes together into existence is through a covenant, which is understood as choice. It ‘emphasizes the deliberate coming together of humans as equals to establish bodies politic in such a way that all re-affirm their fundamental equality and retain their basic rights.’<sup>46</sup> Federal is understood as a ‘matrix’; the constituent units are equals ‘who come together freely and retain their respective integrities even as they are bound in a common whole.’ (Elazar 4) Elazar equates covenant with federal; the two concepts are one in the same. Thus a federal arrangement constitutes a ‘partnership established and regulated by a covenant, whose internal relationships reflect the special kind of sharing that must prevail among the partners, based on a mutual recognition of the integrity of each partner and the attempt to foster a special unity among them.’ (Elazar 5)

Lalande, who adopts the work of Birch, offers four methods to the understanding of federalism: one, institutional or constitutional; two, sociological or functional; three, purely political or federalism as a bargain ; and four, developmental or federalism as a process<sup>47</sup>.

Theories classified under the institutional or constitutional method are concerned with the system of government; focus is upon the institutional make up of a country. These understandings of federalism concentrate upon the division of power between the central government and the sub-units and, the constitutional assurance that the two levels of government

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<sup>45</sup> Hueglin, 1998, 27

<sup>46</sup> Elazar, 1987, 4

<sup>47</sup> Lalande, Gilles. In Defence of Federalism: A View From Quebec. Toronto: McClelland and Stewart Limited, 1978.

are coordinate and independent. Federalism thus is understood as the combination of shared rule and self-rule, which is expressed in a written constitution.

Theories of federalism falling into the sociological or functional method stress the role of the social make-up of a country and the diversities within it when describing the degree of federalism in any one country. Federalism is understood as a tool or instrument for managing diversity and ensuring the self-expression or the autonomy of a unit.

Theories of the third approach, federalism as a process<sup>48</sup>, or as understood by Lalande, the developmental method, focus on the communication and transactions between the two levels of government in order to work out problems<sup>49</sup>. Problems are understood as the tensions, created by the diversity of society and/or of the sub-units, between the communities. These understandings ‘interpret federalism as a political society in which the internal communication system plays a key role.’<sup>50</sup> So, federalism is seen as a federalizing process with federal integration as the end goal.

Understanding federalism as a bargain is a purely political and legalistic methods to the study of federalism. Similar to the institutional approach, federalism, under this fourth approach, focuses upon the division of powers between, at least, two levels of government, where each level of government is guaranteed autonomy within its sphere of jurisdiction. The division of powers is explicit in a written constitution, the end product of the political bargain.

Alain Gagnon, adopting the work of Juan Linz, adds to the approaches offered by Lalande in his understanding of federations, and subsequently federalism; he looks at federations and the purposes of them along the mononational and multinational axis. Mononational federations include, Australia, Austria after 1918, Germany after 1821 and the United States; primarily countries that are unilingual, unicultural and citizens guided by basically the same set of

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<sup>48</sup> federalism as a process is the category used by Birch

<sup>49</sup> Lalande, 1978, 35

<sup>50</sup> Lalande, 1978, 36

values. Multinational federations include Belgium, Canada, and India<sup>51</sup>. These countries tend to be multilingual, multicultural and are defined as nations within a nation with competing values; in other words, a country that is sociologically diverse<sup>52</sup>.

The federal objective, understood in mononational terms, is to ‘bring together political units, that were apart, into a single body politics (essentially the territorial qua mononational definition).<sup>53</sup>’ Theorists that fall into this category usually define federalism in strictly territorial terms and focus on the stability of a federal system. The relationship between the governments is understood and spoken of as levels of government, with the implication of hierarchy between the two.

Theories of federalism classified as multinational stress that the main federal objective ‘is to hold together political units of different language groups, religious communities, cultural groups or national components.’<sup>54</sup> The relationship between governments is understood as orders, not levels, of governments, implying equality between them. Underpinning conceptualizations of federalism that fall into this second category is the notion of nation and internal self determination. That is, a country is made up of different nations and the various nations ought to be constitutionally recognized. The focus of theories/definitions in this category is justice; it is not restricted to the stability and order of a federal system.

The two, mononational and multinational federations, especially the latter, focus on a particular understanding of ‘the good life’; for mononational federations the ‘good life’ can be

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<sup>51</sup> These by no means are comprehensive lists, nor are they definite.

<sup>52</sup> A third category should also be incorporated that would recognize those countries which are sociologically diverse, but do not have or feel a sense of nationhood. A good example of a country that would fall into this third category is Switzerland. For this essay, however, I will focus on the first two categories, as it is theories of federalism and not federations that I concentrate on in this analysis. Examples of countries were used in order to render these categories some what more tangible for the reader.

<sup>53</sup> Gagnon, Alain- G. “The Moral Foundation of Asymmetrical Federalism: A normative Exploration of the case of Quebec and Canada,” in Gagnon and Tully, Multinational Democracies. New York: Cambridge University Press, 2001: 319-337; 323.

<sup>54</sup> *Ibid.*, 323

understood, broadly speaking, as stability and order; for multinational federations, the ‘good life’ can be understood, again broadly speaking, as justice for the diverse communities through the recognition and accommodation of the diversity.

Upon reviewing the work of these two authors, we quickly recognize that the two types of federations introduced by Gagnon correlate to the four methods to the understanding of federalism presented by Lalande. That is, the four methods can be used to better understand what Gagnon means by two different types of federations.

### *Mononational Federalism*

A legalistic or constitutional understanding of federalism and federation can be viewed as a purely institutional approach to federalism. Therefore, we can view the first and fourth categories, of Lalande, as similar approaches to the study of federalism vis-à-vis a mononational federation. Theorists under this first approach focus on a territorial understanding of federalism and stress the institutional and constitutional design of a federal system. A federation is understood as one nation, the promotion and security of which rests with the National government. As a result, these two approaches, the legalistic or constitutional and federalism as a bargain, can be understood as a mononational approach to the understanding of federalism.

This strictly legal and constitutional understanding of federalism is best articulated by Stephen Brooks:

A federal system of government is one in which the constitutional authority to make laws and to tax is divided between an national government and some number of regional governments. Neither the national government acting alone nor the regional governments acting together have the authority to alter the powers of the other level of government. They are co-ordinate and independent in their separate constitutional spheres.<sup>55</sup>

Brooks acknowledges the sociological understanding of federalism, however, he prefers the constitutional understanding for two reasons: first, if one looks just at society, then hardly any

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<sup>55</sup> Brooks, Stephen. Canadian Democracy: An Introduction, 2<sup>nd</sup> edition. Toronto: Oxford University Press, 1996, 119

country would classify as federal.<sup>56</sup> Brooks, here assumes that the sociological approach to the understanding of federalism omits constitutional aspects, which is simply not true. Second, Brooks feels that the Constitution embeds the division of powers, thus elevating ‘the political significance of regional differences.’<sup>57</sup> Here he assumes, as do other adopting this approach, that political significance can only be achieved through a constitutional division of powers and not through sociological importance attached to a level of government. This idea is further emphasized in how the federal bargain is perceived.

An important and necessary condition of the federal bargain is the willingness of every party to engage in such an endeavour. The federal bargain, under the mononational approach is understood as *the coming together of autonomous political sub-units to form one larger unit*<sup>58</sup>. According to Wheare, the autonomy of units is favoured over the unity of the whole. Emphasis is placed on the division of powers so as to ensure the institutional independence of the sub-units; this would, in turn, maintain their autonomy.<sup>59</sup> In this light, the goal or purpose of federalism is to bring together independent units to form a single nation while maintaining a level of independence.<sup>60</sup> This idea of *independence*, however, is not understood as full sovereignty or full autonomy; instead, it is understood as a controlled independence so as to eliminate the possibility of a civil war or civil unrest.<sup>61</sup> This controlled independence also limits the level of autonomy *granted* to the sub-units.

The federal bargain under the mononational approach tends to be viewed in rational terms by the employment of cost/benefit analysis. As is so succinctly argued by Brooks, the federal bargain, ‘involves agreement among regional components of the federal state that has

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<sup>56</sup> Ibid., 120

<sup>57</sup> Ibid., 120

<sup>58</sup> Gagnon 2001

<sup>59</sup> Wheare

<sup>60</sup> Lalande, 1978, 34

<sup>61</sup> King, 1993, 22

benefits of being part of the union which exceed whatever costs membership may impose.’<sup>62</sup>

Federalism, therefore, is based on *a consensus of regions*.

Underpinning the idea of shared rule and self rule under the mononational approach to the understanding of federalism, is the notion of hierarchy amongst the levels of governments. Regional individuality is secured, however, it is a controlled individuality. Autonomy is maintained, but again, it is autonomy for certain purposes only. Unity, understood in terms of homogeneity, stability and order, is favoured over the recognition and management of socio-political diversity.

Publius understands federalism, more specifically the idea of independent sub-units coming together, as a *confederate republic*. Federalism, in other words, is an ‘assemblage of societies’ where these societies are sovereign in their own right, however, are subordinate to the union government, so as to ensure homogeneity of the nation and in turn a united federation based on stability and order.

The definition of a *confederate republic* seems simply to be “an assemblage of societies” or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds with the idea of a federal government.<sup>63</sup>

Emerging from such a conceptualization of the federal bargain is the idea of centralized federalism<sup>64</sup>.

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<sup>62</sup> Brooks, 1996, 121

<sup>63</sup> Publius 9

<sup>64</sup> This does not equate to the dismissal of decentralization by the theorist of this approach. If decentralization can provide for order and stability and ensure a successful and workable federation, then it is an option. However, the reasons decentralization is adopted under this approach are most likely different from those under the multinational approach. For the former, order and stability may be best suited under a decentralized form of federation. For the latter, decentralization is adopted in order to best manage and enable the flourishing of socio-political

The idea of centralized federalism and the assurance of stability and order was first stressed by Publius. According to Publius, government is necessary in order to safeguard and secure the interests and rights of citizens. Furthermore, it is in the best interest of the citizens to 'be one nation, under one federal government, than that they should divide themselves into separate confederacies and give to the head of each the same kind of powers which they are advised to place in one national government.'<sup>65</sup>

In order to ensure a successful federation, thus stability and order, it must be, according to Riker, centralized; if it is peripheralized, that is, if it entertains social diversity, it will fall apart and fall prey to the enemy. "A centralized federation in time will resemble a unitary or imperial government [which] enables it [the whole federation] to function more effectively in a hostile world."<sup>66</sup> This explains the success of modern federation, and the failure of medieval ones. Stability and order, therefore, is ensured with an effectively running political system, which is only possible, or best secured, with a centralized form of federalism. Essentially, federalism is viewed as the best tool to suppress and control potential violence. It is through the dealing of differences, understood as economic differences, that violence is suppressed; a strong central government ensures this stability and order. This underpinning idea is reinforced when one considers the purpose and circumstances of federalism.

Essentially, there are two circumstances why a country opts for federalism: the expansion condition and the military or safety condition. In order to satisfy the *expansion condition*, the desire of a country to expand, for whatever reason, without the use of force, the political units must make concessions. They must be willing to give up power so as to begin the journey for the successful execution of the overall purpose. This is the essence of the federal bargain.<sup>67</sup>

According to Publius, 'a cordial Union, under an effective national government,' best ensures

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differences.

<sup>65</sup> Publius 2

<sup>66</sup> Riker 7

<sup>67</sup> Riker 11



safety and security.<sup>68</sup> The existence of some external military threat invites the political units to accept the federal bargain. The *military or safety condition*, the ‘desire to participate in the potential aggression of the federation,’<sup>69</sup> as well as the desire for protection or participation essentially outweighs the desire for independence. Publius argue that a federal form of governance provides safety for the people in relation to ‘security for the preservation of peace and tranquility, as well as, against the dangers from foreign arms and influence as from dangers of the like kind arising from domestic causes.’<sup>70</sup>

Publius continue to argue that, ‘among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction.’<sup>71</sup> Faction can be understood as diversity. “By faction, I understood a number of citizens whether amounting to a majority or a minority of the whole who are united and actuated by some common impulse of passion or of interest, adverse to their rights or other citizens, or to the permanent and aggregate interests of community.”<sup>72</sup> Therefore, the purpose of federalism is further understood as controlling diversity so as to maintain order.

This understanding is important in that it recognizes diversity. However, where the multinational understanding of federalism recognizes cultural and social differences and where it is concerned with the maintenance and the flourishing of diversity, the loose understanding of diversity espoused by the mononational understanding, which is understood in strictly economic terms, is preoccupied with the containment or de-politicization of it. Understanding diversity as such, enables the handling of such diversity through simple policies, tax cuts or increases and social spending for example. Because diversity is simplified, the controlling of it becomes simple. Such a process of simplification ensures then that order is maintained which in turn secures the protection of civil rights.

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<sup>68</sup> Publius 3

<sup>69</sup> Riker 12

<sup>70</sup> Publius 3

<sup>71</sup> Ibid., 10

Conceptions of federalism in the mononational fashion stress the political structure of federalism. In short, mononational federalism is defined, 'first in terms of constitutional law and then in terms of political relationships which had developed on the basis of the constitutional provisions.'<sup>73</sup> It is understood as the division of power between two levels of government, which guarantees independence and autonomy for the sub-units within its sphere of jurisdiction while maintaining a strong national government; this ensures stability and order. The sub-units are regarded as political units alone and not necessarily as communities. Furthermore, social diversity and subsequently, the management thereof, does not factor into the understanding of federalism. The essence of federalism is understood, under this first approach as the bringing together of autonomous political units to form one larger unit. A country is understood as forming one nation, the promotion and security of which rests with the national government. Securing stability and order are at the heart of federalism in this larger category.

Aside from the fact that this understanding of federalism is very historical and dated, it is also narrow in that it is only applicable and fitting in the political and legal sense; it does not take into account the sociological aspect of federalism. As a result, this approach excludes countries that are socially and politically diverse. Subsequently, the federal systems of Canada, Belgium, Spain and India, to name but a few, could not be understood in this strictly legalistic, institutional manner. In fact, it is questionable whether or not a strictly mononational, territorial definition of federalism could adequately describe any modern day federal system. It may be sufficient to rely on this approach for comparative purposes as it enables us to draw similarities in the institutions, structures and constitutions of the various countries under review. However, it fails to capture the complexities of any modern day federal system. This is mainly due to the neglect of socio-political factors that help to establish, shape and sustain a federal structure of government. More

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<sup>72</sup> Ibid., 10

<sup>73</sup> Birch, 1968, 3

importantly, these factors demand such a system. It is this very element that is stressed in the multinational approach to the study of federalism.

### *Multinational Federalism*

A sociological or functional and the developmental method of understanding federalism, the second and third methods presented by Lalande, can be understood as a socio-political approach to federalism and federation with emphasis on social diversities. These two approaches are understood as a multinational approach to the understanding of federalism; the onus of federalism is not on, first and foremost, stability and order, but justice for communities, recognized as nations; from justice follows stability and order. This is secured through the recognition and management of diversity. Conceptions of federalism falling under the multinational model, go beyond the discussion of the political structure of federalism to consider the social diversities that contribute to the adoption of federalism, and most importantly, the make-up of a federal system in any given country. These conceptions of federalism tend to pay attention to social diversity and stress the importance of maintaining and enabling the flourishing of this diversity so as to ensure true autonomy; federalism is also a political and legal tool used for the management of diversity in a society. This is not to say that diversity is not recognized in the mononational approach; on the contrary, diversity is recognized. However, the diversity recognized, as we saw mainly in the work of Publius, is purely economic and not necessarily social. The understanding of diversity, therefore, is broadened beyond the economic differences, to include socio-political differences. Federalism 'seeks to maintain the unity of the larger state, while giving recognition and empowerment to minorities.'<sup>74</sup> Federalism is one way of managing diversity in a multination state. Management of diversity means enabling the flourishing of differences and not the suppression of it. Focus, for the most part, is on justice in a federal system, within a country that is sociologically diverse, and not simply stability.

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<sup>74</sup> Simeon and Conway 338

The relationship between the central and regional governments is understood, not as levels, but as orders of government, in which true equality, where power is derived from the Constitution, not from another level of government, is implied. This, of course, is in contrast with the implicit idea of hierarchy located in the mononational understanding of federalism. The overarching goal for federalism, under this category, is justice for communities. Diverse groups identify themselves and are recognized as nations with the right to self determination manifested in a government, other than the central government, representing the nation. As Hueglin argues, the idea of the separation/division of powers is meaningless if we do not consider the socio-economic and socio-cultural factors, which this latter multinational understanding of federalism does.

Under the multinational approach to the understanding of federalism, the federal bargain is perceived as a compromise and a balance of interests. Livingston argues that federal systems are characterized by the reconciliation of two demands: autonomy and independence for the component units on the one hand, and centralization and the suppression of diversity on the other.<sup>75</sup> For Althusius, federalism is understood as ‘a plurality of partially autonomous communities tied together and interconnected in a common political architecture.’<sup>76</sup> He stresses two main points: one, the communities, also understood as sub-national units, need liberty and autonomy; and two, these communities deserve protection from national majorities. Althusius’ federalism is more a societal, not a governmental federalism; it is a process of organizing the plurality of interests in a co-operative and mutually agreeable way - on the basis of consent and solidarity.<sup>77</sup>

In fact, the essence of federalism as tool to recognize, respect and manage diversity is best captured by Althusius. It is upon the work of Althusius that the modern day conception of

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<sup>75</sup> Livingston, 1968, 26

<sup>76</sup> Hueglin, Thomas. Early Modern Concepts for a Late Modern World: Althusius on Community And Federalism. Waterloo: Wilfrid Laurier University Press, 1999, 11.

<sup>77</sup> Ibid.

asymmetrical federalism builds upon. As Hueglin states, Althusius is the first modern theorist of federalism: ‘he accepted the new system of territorialized politics in its external dimension, but sought to preserve the internal plurality of rule, constitutionally stabilizing it into an organized process of power sharing and conflict management (rather than resolution) based on consent and solidarity.’<sup>78</sup> Althusius ‘develops a kind of societal federalism, bottom-up;’<sup>79</sup> this is in contrast to the traditional top-down approach of the American Federalists, fathers of federalism defined in strictly territorial terms.

Burgess and Gagnon, contributing to this idea of federalism as a compromise and a balance of interests state that federalism, in the political sense, directly engages the endless public debate about political authority and power - how human relations are best organized in order to accommodate, preserve and promote distinct identities.<sup>80</sup> They view federalism as a value concept; it is located within the federal principle, which is the idea of balancing unity and maintaining diversity with the underlining goal of accommodating human association. In short, Burgess and Gagnon, acknowledge federalism as a tool used to manage diversity and accommodate, preserve and promote distinct identities at the sub-national level. According to Livingston, ‘ diversities are nothing less than tensions and as tensions, they demand and require means of self expression.’<sup>81</sup>

The basic point arising from the theories of federalism, falling under this approach, is that federalism is a reflection of society and its diversity; it is not only about constitutional and legalistic matters.<sup>82</sup> “The essence of federalism lies not in the institutional or constitutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected.”<sup>83</sup>

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<sup>78</sup> Ibid., 5

<sup>79</sup> Ibid., 5

<sup>80</sup> Burgess and Gagnon, 3

<sup>81</sup> Ibid.,25

<sup>82</sup> Birch, 1968, 4

<sup>83</sup> Livingston, 1968, 22

Livingston points out that every nation is unique with regard to its history, economy, culture and politics. These differences are grouped territorially. Therefore, society is plural or federal in nature and thus needs to adopt a federal form of governance. “Component states exist because of great significant diversities of such importance that it is felt that only a federal organization can offer it significant protection.”<sup>84</sup>

Burgess argues that humans have different identities from one another with different, and sometimes, conflicting goals. Thus different configurations of unity and collectivities are formed. They are structured and institutionalized in a way to ‘convert human purpose into human achievement.’<sup>85</sup> In essence, federalism is a movement calling for the respect of diversity. This, however, is a vague conceptualization of federalism as it incorporates a very broad category; all it focuses on is a respect for diversity. With this definition, almost any social movement can be classified as federalism.

Federalism is much more than the simple respect for diversity. As Gagnon points out, federalism is a political device for establishing viable institutions and flexible relationships capable of facilitating inner-state relation and inter community co-operation.<sup>86</sup> Federalism is basically an expression of practices which encourages autonomy within regions.<sup>87</sup> In fact, central to any view (or practice) of federalism is not only the respect for diversity, but also, and more importantly, the maintenance of territorially based communities with specific identities.

Althusius takes this idea of respect for diversity one step further to stress consent and solidarity with an accent on consociation. In fact, for Althusius, federalism is about consociations. It is within a consociation where the ‘most general principles of organized social life are shared; [this] results from a pact or a social contract,’ where the pact is about community

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<sup>84</sup> Ibid., 23

<sup>85</sup> Burgess, 1993, 3

<sup>86</sup> Gagnon, 1993, 15

<sup>87</sup> Ibid., 16

building.<sup>88</sup> This pact, which shapes the political organization is based on the ‘mutual communication of things, services and common rights’;<sup>89</sup> however, it is applied differently, depending on the nature of the consociation. Consociations, in short, are understood as autonomous groups coming together as constituent members of a universal commonwealth. The way in which this universal consociation is organized is through mutual communication.<sup>90</sup>

It is this principle of mutual communication, naturally flowing from consent and solidarity, which informs the idea of respect for diversity. Understanding federalism as a political organization with mutual communication and consociations at its roots enables us to go beyond the political structures of federalism to embrace the socio-political diversity component of a federation. That is, a multinational understanding of federalism expands upon the at least two levels of government and shared rule and self rule conception of federalism to view the essence of federalism to be the maintenance of the balance between unity and diversity, autonomy and solidarity and freedom and interdependence. Maintaining this balance ensures justice to the consociations of a sociologically diverse nation.

An important political use of federalism, pointed out by both Gagnon and Covell, is conflict management. As Covell indicates, in both Belgium and Canada, federalism was adopted ‘as one device for the resolution of group conflict.’<sup>91</sup> We cannot expect federalism or a federal regime to eliminate social conflicts, but it ‘must regulate and manage such conflict; it must ease tensions and be sensitive to diversity.’<sup>92</sup>

Respecting diversity and encouraging them to blossom is fundamental to federalism.<sup>93</sup> Two implications flow from this view: one, self-government, and two, partnership. The two are not mutually exclusive. In fact, the latter implies and is contingent upon the former.

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<sup>88</sup> Hueglin, 1999, 86

<sup>89</sup> Ibid., 86

<sup>90</sup> Ibid., 128

<sup>91</sup> Covell, 1987, 57

<sup>92</sup> Gagnon, 1993, 25

<sup>93</sup> Ibid., 25

Furthermore, self-government, in its truest sense, leads to a partnership. Taylor, Kymlicka, LaForest and Gagnon, amongst others, building upon Althusius' idea of federalism as a consociation, argue that the notion of partnership is central to federalism. Located within this notion of consociation or partnership emerges the concept of full equality between the orders of government and not the subordination of one level over the other.

LaForest understands and describes federalism as *friendship*; he describes friendship as a form of partnership where neither individual relinquishes their identity. A true partnership, as with a true friendship, comes with a full understanding of the other.<sup>94</sup> Once we fully understand the other, we are better able to fully realize and respect their need for full autonomy.

Underlying this spirit of partnership are two principles: subsidiary and non-subordination. The former guarantees that only those matters that cannot be handled at the local level are given to the federal government. The latter assures that each level of government is equal to one another. Equal partnership is at the heart of federalism.<sup>95</sup>

According to Taylor, in order to have a successful partnership, we need internal cohesion so members are ensured that they have a voice and that it counts. This can be achieved in two ways: citizens are brought together either by shared principles, human rights for example or, people are united around specific elements, for example language and culture. Such a framework is necessary for a sociologically diverse nation, also understood as a multination, to ensure full equality between the orders of government.<sup>96</sup> Kymlicka argues that symmetrical federalism, while it may work for a mononation, is unacceptable for a multination. For Kymlicka, the answer, similar to Gagnon, is asymmetrical federalism, where some federal units have greater self-governing powers than others.<sup>97</sup> For LaForest, the answer rests in a trilateral union of

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<sup>94</sup> LaForest, 1998, 52

<sup>95</sup> *Ibid.*, 54

<sup>96</sup> Taylor quoted in LaForest, 1998 54

<sup>97</sup> Kymlicka, 1998, 15-16



partnership<sup>98</sup>, where the union is understood as a partnership of partnerships. This union brings together ‘individual and collective interlocutors having complex identities who wish to remain themselves, yet live together.’<sup>99</sup> Finally, Taylor argues that federalism, and the shape its institutions take on should reflect the *deep diversity* of a nation, where ‘a plurality of ways of belonging would also be acknowledged and accepted.’<sup>100</sup>

In Elazar’s idea of partnership, and partnership in general under the mononational approach, the constituent units are regarded as equal vis-à-vis the other units and the central government. For some theorists, however, the sub-units ought to remain subordinate to the central government. The partnership described by the authors adopting the multinational approach, goes beyond this idea of classical federalism to accentuate the notion of dualism, or trilateral union<sup>101</sup>.

Birch questions the applicability of this understanding of federalism when applied in comparative analysis: using this approach, it is difficult to make firm generalizations.<sup>102</sup> Birch points out that Livingston, for instance, seems to resort to a Wheare-type definition of federalism when he applies his theory, in that he ‘deals with political systems which have a set of institution in common and their analysis show the limited range of ways in which the similar problems resulting from these institutions have been met.’<sup>103</sup>

Birch may be correct in his critique of Livingston. Nevertheless, the point that remains important, for the purposes of this analysis, is that this approach to the understanding of federalism, recognizes that federalism deals with more than the political or the legalistic aspects of a country. It also deals with the diversity existent in a society; federal institutions are basically a reflection of social diversities.

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<sup>98</sup> Laforest suggests such solution for Canada

<sup>99</sup> LaForest, 1998, 70

<sup>100</sup> Taylor, 1993, 94

<sup>101</sup> depending on the number of recognized national communities within the one nation

<sup>102</sup> Birch, 1968, 5

<sup>103</sup> Ibid., 5

## Conclusion

Recognizing the shortcoming of both these approaches does not necessarily mean the futility of the two. Through the full understanding of the two, we recognize that the constitutional and political purposes of federalism go beyond the military and expansion principle to include the notion of diversity; that is, federalism also serves as a tool for managing diversity and potential political conflict within a country. Further, we need to recognize that federalism, unlike Riker's stated fallacy, can be a social response; federalism can and does reflect the socio-political diversity existent in a federal country. Within this country, there are national communities whose interests and demands are best met with a federal form of governance. Federalism, and subsequently federations, is much more than the bringing or joining together of political units; it is holding these diverse units together, ensuring their independence and autonomy, and securing their ability to flourish and maintain their cultural, religious and linguistic differences that need to be stressed in any definition of federalism.

In a similar vein, we cannot discount or disregard the theoretical validity and importance of the mononational approach to the understanding of federalism. That is, we must take note of the institutional and constitutional design of a federation and not get lost in the idea that federalism is a tool for the management of diversity alone. This seems to be a shortcoming of the multinational approach, as its main focus remains justice for the sociologically diverse communities/nations within the federation. Though this is vital, it is, but one aspect of federalism and a federation. Further, this consideration alone cannot ensure the stability and justice of a federation. Therefore, it is important to value the mononational approach for its pragmatic contributions to the understanding of federalism.

Reducing theories of federalism to either, stability and order versus justice, which the two approaches seem to do, does not translate into the concepts being mutually exclusive. In fact, ensuring and stressing stability/order and justice can be and are present in almost all the theories of federalism. The difference, and thus the distinction between a mononational or a multinational

understanding, rests with which, stability/order or justice, is stressed above the other. To reiterate, theories of federalism falling into the first category place onus on stability and order, secured through the affirmation of a *one nation* concept, where socio-political diversity is compromised for the advancement of one political identity; those falling in the second category place onus on justice for communities or nations, where socio-political diversity is encouraged and entertained by facilitating the expression of this diversity.