

Under Pressure — Atypical Asymmetry in Canadian Immigration Policy

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Asymmetry is a hotly debated topic in the federalism literature. Seen as a tool for accommodating a variety of differences, the allotting of different sets of powers to different federal units — or to local governments in unitary states in some cases¹ — has been successful in many cases, and failed in others.² While most commonly justified on the grounds of accommodating sub-state national groups, asymmetry has been applied, in a variety of different forms, to address such issues as regional autonomy, language accommodation, geographic diversity or isolation, economic development, and demographic differences. Much of the confusion around what asymmetry is used for comes from a fair degree of terminological slippage in the literature around what asymmetry means — something I will attempt to address in this paper by creating a taxonomy of different forms of asymmetry. This taxonomy will be useful for examining a peculiar case of asymmetry in Canada.

Immigration policy in Canada has made an odd journey through different forms of asymmetry. For decades, immigration policy in Canada was an area of co-held jurisdiction where the federal government had traditionally dominated, but soon saw slowly increasing provincial involvement. Starting in 1971, Quebec used bilateral agreements to move, incrementally, towards greater control of immigrant selection and settlement policy, culminating in the Canada-Quebec Immigration Agreement in 1991, which saw a near-complete transfer of authority to Quebec City. Soon after this the federal government began to negotiate individual bilateral agreements with the other provinces, essentially allowing them to take on as much authority in this area as they desired. Manitoba and British Columbia both negotiated systems that gave them significant control over both immigrant selection and settlement, while other provinces continued to work as advisor or collaborator with the federal government. Thus, the system first saw power given solely to Quebec but then moved to a system in which any province — given an interest and capacity to do so — could opt-in to. Both of these systems were normatively fair, and acceptable to the governments and citizens of Canadian federalism.

However, the Ontario government made it clear in their 2010 budget that, as their existing immigration agreement with the federal government expires, they would seek a new agreement that was similar to those held by B.C. and Manitoba. However, the federal government has rejected this move and, at the same time, moved to cap the number of immigrants provinces can select, thus trapping those who have not taken full advantage of the program at a lower level than other provinces. Resistance to giving Ontario the same agreement as Manitoba and B.C., and capping provincial immigrant selection is troubling strategy both from the perspective of intergovernmental relations, public opinion, and normative conceptions of federalism, as the resistance seems to come with no explanation based on the principals of federalism.

This paper will investigate this interesting case of asymmetry. I shall begin by cataloguing the different forms of asymmetry that exist, and trying to clear up some of the terminological slippage and uncertainty in the literature on asymmetry. Second, I shall turn

¹ Ronald L. Watts, "A Comparative Perspective on Asymmetry in Federations," in *Asymmetry Series* (Kingston: Queen's University Institute of Intergovernmental Relations, 2005).

² Ronald L. Watts, "Asymmetrical Decentralization: Functional or Dysfunctional," in *International Political Science Association* (Québec City, Québec, Canada 2000).

to examples of the different forms of asymmetry, both within Canada and internationally, to demonstrate the types of factors that are typically used to justify asymmetry. Third, I shall discuss the process of asymmetrical decentralization that has characterized the immigrant selection and settlement policy area in Canada, with hopes of demonstrating how it has moved between the different forms of asymmetry. Finally, I shall discuss the more recent developments concerning the ambitions of Ontario, the changes to the provincial selection of immigrants, the different tact of the current Conservative government, and why this represents an abnormality in the use of asymmetry. I shall ultimately argue that this current arrangement is unsustainable, that recentralization is an incredibly unlikely outcome and, thus, that further decentralization in this area is inevitable.

The Forms of Asymmetry

The literature on asymmetry is marked by an overwhelming number of categories and distinctions, a great many of which do not overlap comfortably. In addition, there is a tendency to use the term to refer to very different things without explanation, complicating analysis. Depending on the author, asymmetry can refer to the variation in geography and demography between units, different treatment through law or bilateral agreements, an instance where only certain units opt-in or out of a program, or, at its most extreme, constitutional entrenchment of differential treatment. There are important differences between all of these categories and their implications are also unique. Former Trudeau cabinet minister John Roberts argues that asymmetry is too vague and amorphous a term to be utilized effectively as a guide for Canada's federal arrangements.³ While I agree that the term has been used somewhat inconsistently, I want to argue here that with a bit more care and specificity the term is very useful indeed, both as a way of analyzing federal processes and, normatively, as a way of resolving differences in a federation. The purpose of this section is to lay out some of the different definitions of asymmetry, and then attempt to synthesize them into three main categories, several sub-categories, and then note a few other characteristics separately.

Circumstantial Asymmetry

The first form of asymmetry that many authors make reference to is a form that is inevitably present in every federation. This form of asymmetry refers to the differences between federal units in terms of fundamental characteristics, traits that are usually tied to original negotiations around the forming of the state or gradual, unintentional differences that have developed over history between units. Here we are thinking of differences in geographic size and features, natural resources, population, development, and economy. Inevitably, in every federation, there are units that have more or less people, greater or lesser levels of economic development, more or fewer resources, and diverse geographic characteristics. Also included here is the presence of cultures, linguistic groups, or nations that find themselves, due to being smaller in number or weaker in power, find themselves culturally disadvantaged within the state.

In the literature, this form of asymmetry has been given a variety of different labels. Ronald Watts refers to this as social/political asymmetry, and lumps into it political

³ Honourable John Roberts, "Asymmetrical Federalism: Magic Wants or "Bait and Switch"," in *Asymmetry Series* (Kingston: Queen's University Institute of Intergovernmental Relations, 2005).

differences that have developed between federal units.⁴ Both Milne⁵ and Pelletier⁶ remove the political elements from this category, and refer to it as “natural” asymmetry.

I feel that it is problematic to include intentional, but non-constitutional, asymmetry in this category as Watts does, but also take issue with reference to this form of asymmetry as ‘natural’. While differences in the factors listed above are complex, incremental, and contentious, they are not natural, and are based on past political choices that many units continue to seek redress and compensation for. I shall label this form of asymmetry circumstantial asymmetry.

Further, as Burgess notes, these purely practical conditions of diversity should not be confused with real asymmetry.⁷ Other forms of asymmetry that shall be investigated below are techniques aimed at addressing calls from federal units for special treatment. Indeed, it is often circumstantial asymmetry that leads to calls for such treatment. Thus, we can think of circumstantial asymmetry as a relationship between federal units and the central government, and between each other that will often lead to a call for formal asymmetrical treatment in hopes of achieving a symmetrical outcome.

Selection Asymmetry

The second category of asymmetry that I want to discuss arises from the decisions made by federal units in two specific areas, both of which represent areas where there is symmetry of rules, but asymmetry of outcome. First, asymmetry can arise from provinces selecting different paths and priorities within their own areas of jurisdiction. By crafting different programs, choosing divergent funding priorities, and adopting unique ideological approaches units can create different economic, political, and social environments for their citizens. Secondly, often central governments will make particular arrangements available to all provinces but will not *require* that all opt-in. Thus, since units may choose to opt-in/out of the programs, asymmetrical relations are created. While these are somewhat different ways of arriving at asymmetry of outcome, the key element that binds them together is that there are no rules prohibiting symmetry. Individual units could emulate programs created by others, or could follow the lead of others by opting-in/out of a new central government initiative.

Again, authors articulation of this form of asymmetry has been somewhat scattered. Depending on which author you read, this form of asymmetry has been pulled into one of three different categories, categories that represent one half of three different dualisms. The other half of the above-mentioned category of ‘natural’ asymmetry is legal asymmetry⁸⁹. However, this definition includes other formal elements that do not allow for formal symmetry that I shall discuss in my next category. Others refer to asymmetry in terms of a distinction between de jure (formal) asymmetry and de facto (practice) asymmetry¹⁰¹¹, placing

⁴ Ronald L. Watts and Queen's University (Kingston Ont.). Institute of Intergovernmental Relations., *Comparing Federal Systems*, 2nd edition ed. (Kingston, Ont.: Institute of Intergovernmental Relations, Queen's University, 1999).

⁵ David Milne, "Asymmetry in Canada, Past and Present," in *Asymmetry Series* (Kingston: Queen's University Institute of Intergovernmental Relations, 2005).

⁶ Benoit Pelletier, "2005," *ibid.* (Asymmetrical Federalism: A Win-Win Formula!).

⁷ Michael Burgess, “Competing National Visions: Canada-Quebec Relations in a Comparative Perspective,” in Alain Gagnon and James Tully, *Multinational Democracies* (New York: Cambridge University Press, 2001).

⁸ Milne, 1.

⁹ Pelletier, 2.

¹⁰ Peter Graefe, "The Scope and Limits of Asymmetry in Recent Social Policy Agreements," in *Asymmetry Series* (Kingston: Queen's University Institute of Intergovernmental Relations, 2005).

¹¹ Watts, *A Comparative Perspective on Asymmetry in Federations*, 2.

the forms I listed above in the latter category. Again, this distinction is not particularly useful, as these forms of asymmetry have formal elements to them, but are better distinguished by the fact that it is asymmetry that is created through choices by the federal units. Maclure's use of the term "policy asymmetry"¹² at least seems to have the category correct, but could lead to confusion with forms of policy asymmetry where the choice of symmetry does not exist. As such, I will utilize the term "selection asymmetry" for these forms of asymmetry, with different variants for choices made within the jurisdiction of federal units, and for variation in opting-in/out of new programs.

Formal Asymmetry

The third category of asymmetry I want to delineate is, arguably, the form that is referred to most commonly as asymmetry in the literature. This category refers to formal measures that entrench asymmetry in a federal system. These measures can come in the form of constitutional sections, bi or multilateral agreements, statutes, or regulations. The key distinction between these forms of asymmetry and the ones above is that there is no option, within the existing legal order, for federal units to pursue symmetrical relations. These measures are explicitly asymmetrical in their rules, often in hopes of creating symmetrical outcomes.

As noted above, some conflate these forms of asymmetry with forms of selection asymmetry in the category of legal/formal asymmetry. I also noted that such forms of asymmetry are often lumped into a category of de jure or design asymmetry. For the most part, this category maps closely with my own, but it's dualistic pairing with de jure asymmetry, which is less helpful, limits usefulness. Also, Watts' categories of constitutional and social/political asymmetry separate out constitutional measures into one category, place all other forms of asymmetry in another category.¹³ While it should be obvious why I find the latter category problematic, given all the important distinctions that exist between these forms of asymmetry, I want to elaborate more on the former category. While it is clear that constitutional recognition of asymmetry has a greater gravitas and permanence to it than statutes or bilateral agreements, what is important is that all of these forms of asymmetry represent a formal recognition of asymmetrical relations that do not automatically allow federal units to seek symmetry. They do the same thing, just with different levels of authority. This makes them a more obvious pairing than placing statutes and bilateral agreements that enshrine asymmetry with agreements or statutes where symmetry is chosen. I will label this form of asymmetry "formal asymmetry."

Other Considerations

On top of these three categories and several sub-categories there are a couple of other considerations that are of importance. First, not all asymmetry is permanent in nature. Indeed, some asymmetry is designed to be temporary in hopes that the factors necessitating asymmetry can be resolved or that future negotiation can lead to a more symmetrical arrangement. As such, when analyzing the different forms of asymmetry, the temporal element can be essential to understanding their purpose and effectiveness. Secondly, public perception of asymmetry clearly has an impact on the forms of asymmetry that are utilized. For instance, resistance in Canada to formal constitutional asymmetry was largely responsible for the failure of the mega-constitutional amendments of the 80s/90s, and Canadians remain resistant to asymmetry on constitutional grounds, but more open to it on

¹² Jocelyn Maclure, "Beyond Recognition and Asymmetry," in *Asymmetry Series* (Kingston: Queen's University Institute of Intergovernmental Relations, 205).

¹³ Watts, Comparing Federal Systems, 65-66.

other grounds.¹⁴ This is important to note as it is clear that, often, the form of asymmetry chosen is not chosen because it is institutionally the best fit for a particular system, judged from some expert position, but a compromise between institutional concerns and political realities.

Examples of the Different Forms of Asymmetry

In order to further elucidate the categories of asymmetry I have outlined above, and to help serve the arguments that are to come below, I will now provide examples of the different forms of asymmetry. The purpose will be to not only be to more clearly demonstrate the divisions between the categories I have outlined, but also to demonstrate the different goals and justifications of the different forms of asymmetry in the various federations of the world.

Circumstantial Asymmetry

As noted above, every federation contains a fairly significant amount of circumstantial asymmetry. Such asymmetries between federal units include:

- Geographic differences: units are of a different size and contain different physical features, some of which carry advantages.
- Demographic differences: some units contain more people, or have other demographic variation, for instance, different urban/rural splits.
- Economic differences: units have uneven levels of economic development, natural resources, and infrastructure.
- Ethnocultural and linguistic differences: units are made up of varying levels of members from the ethnocultural and/or linguistic majority of the state and of other groups.

What is interesting for my purposes here is not so much the exact forms of circumstantial asymmetry, but rather how they are often translated into demands for other forms of asymmetry. Differences between units in terms of their ethnocultural or linguistic composition are often at the core of federalism. Indeed, it is very often these very social conditions — the existence of more than one ethnocultural or national group within a single potential state — that lead to the adoption of a federal system in the first place.¹⁵¹⁶ It should come as no surprise that a great many states — including Spain, Malaysia, Belgium, Russia, India, and Canada — justify various forms of asymmetry based on the existence of minority national groups within their borders. It has been argued that these measures are often able to create stability and ward off secession.¹⁷ What is more interesting is that there are many examples of states utilizing asymmetry even when no such groups exist. Indeed, there are also examples of asymmetry justified on other grounds within states that contain national minorities.

Many forms of circumstantial asymmetry fall under the other categories listed above. For instance, in Canada, a combination of geographic, demographic, and economic

¹⁴ F. Leslie Seidle and Gina Bishop, "Public Opinion on Asymmetrical Federalism: Growing Openness or Continuing Ambiguity," in *Asymmetry Series* (Kingston: Queen's University Institute of Intergovernmental Relations, 2005).

¹⁵ William S. Livingston, *Federalism and Constitutional Change* (Oxford: Clarendon Press, 1956).

¹⁶ Jan Erk, *Explaining Federalism: State, Society and Congruence in Austria, Belgium, Canada, Germany and Switzerland*, Routledge Series in Federal Studies, (London ; New York: Routledge, 2008).

¹⁷ Andreas Heinemann-Gruder, "Is Russia's Federalism Sustainable?," *Perspectives on European Politics and Society* 3, no. 1 (2002).

asymmetry in Canada's Atlantic Provinces has led to the Atlantic Accord, more favourable equalization deals, and higher guaranteed representation in the senate.¹⁸ In a similar vein, Germany has recently targeted asymmetric economic and infrastructural development funds towards the eastern Lander.¹⁹ Also, geographic isolation, such as is the case with the Canary Islands in Spain, has been used to justify increased authority in a variety of areas.²⁰ In Russia, despite a continuing formal symmetry, deals with individual federal units based on economic and demographic issues have become increasingly common.²¹ Thus, we can see how the various forms of circumstantial asymmetry can motivate other forms of asymmetry and that understanding one form of asymmetry can be essential to understanding the others.

Selection Asymmetry

As noted above, there are two different forms of selection asymmetry. One of them — the variation that occurs between federal units due to different choices within their areas of jurisdiction — is present in almost all federations, especially those that are relatively decentralized. Since this form of asymmetry is somewhat commonplace and well understood, I shall focus my attention on the second form — the variation that occurs when different federal units opt-in/out of new powers or funding that has been made available by the central government.

One of the most notable versions of this is the ability of Canadian provinces, dating back to the Established Programs (Interim Arrangements) Financing Act, 1965, to opt-out of new federal programs that are created in areas of provincial jurisdiction in exchange for similar funding or tax incentives. Even though there have been many instances where any province could have made use of this provision, it has been used almost exclusively by the province of Quebec, perhaps most recently and most notably in the “side deal” Quebec completed along with the 2003 First Ministers’ Accord on Health Care Renewal.

Somewhat different versions of these arrangements exist in the federal structures of Spain, India, and Russia. These states have pursued arrangements of constitutional symmetry, but where individual units have proved successful in negotiating bilateral agreements for asymmetrical treatment with the central government.²² While many of these agreements, as we shall see below, are formal in nature, and not available to other units, many of them are made with the understanding that other units could, eventually, argue for similar treatment. In Spain, this eventual decentralization to all units has been called *café para todos* or “coffee for everyone.”²³

There are a variety of possible motivations and effects that arise from federal arrangements that can lead to selection asymmetry. The motivations generally arise from one or more units making claims for special treatment based on circumstantial asymmetry or previous federal relations deemed to be unfair. However, often — as is the case in Spain²⁴ and Canada for certain — making the powers available to other units is merely a tactic to

¹⁸ Milne, 6.

¹⁹ Saskia Jung, "German Federalism — still a Model of Symmetry?," in *Asymmetry Series* (Kingston: Queen's University Institute of Intergovernmental Relations, 2005).

²⁰ Robert Agranoff, "Federal Asymmetry and Intergovernmental Relations in Spain," *ibid.*

²¹ Marat Salikov, "Russian Federation," in John Kincaid et al., *Constitutional Origins, Structure, and Change in Federal Countries*, A Global Dialogue on Federalism (Montreal: Published for Forum of Federations and International Association of Centers for Federal Studies by McGill-Queen's University Press, 2005).

²² Heinemann-Gruder, 74-75.

²³ Agranoff, 7.

²⁴ *Ibid.*

avoid giving special treatment or recognition to particular units — often ones containing a national minority. By making the same powers that have been taken advantage of by the national minority available to other federal units, arguments of favouritism — both by the unit governments and the public — are defused. As we shall see below, this was certainly the case with immigration.

Formal Asymmetry

Again there are distinctions to be made here between formal constitutional asymmetry and asymmetry arising from statutes and bi or multilateral agreements. The most prominent example of constitutional asymmetry exists in Belgium, where two different federal units exist — geographic regions and cultural-linguistic communities. Each of these units possesses different powers under the Belgian constitution, but asymmetry is created since, in the case of the Flemish, the two overlap and are administered by a single government. Malaysia also applied constitutional asymmetry in 1963 to Sabah and Sarawak, the Borneo states, despite being an otherwise exceptionally centralized federation. India's 1950 constitution contained special provisions for Kashmir.²⁵ There are also various measures in the Canadian constitution that outline asymmetrical arrangements for Quebec as well as other provinces. These include constitutional recognition of Quebec's civil law system, asymmetry in senate representation, the ability of only Quebec and Ontario to directly fund denominational schools, and Quebec's exemption from minority language provisions under the Charter of Rights and Freedoms.

Constitutional asymmetry is often sought for its permanence and gravitas, but for this same reason it can be difficult for units seeking asymmetrical arrangements to convince the other relevant actors — be they the central or other unit governments — to come along for the ride. As a result, formal asymmetry based upon statutes or bi or multilateral agreements is also fairly common. As noted above, Spain and Russia achieve asymmetry in a constitutionally symmetrical arena by making bilateral agreements with individual federal units. While often these agreements include promises that could later be made available to others, this is not always the case. In Spain, Catalonia has much greater control over the financial and banking sectors, the Basque Country and Navarre regions have unique taxation powers, and the Canary Islands receive special powers due to their geographic isolation.

In Russia, asymmetrical relations are created to give ethnically-based rights to non-Russian groups. Russia's constitution is symmetrical, but recognizes Russia as a “multinational sovereign.”²⁶

In Germany, the decision focus economic development funds into the less-developed eastern Lander means that similar funds are not available in the west.²⁷ In Canada, several projects, including a variable project cost-sharing formula, have been made available to the smaller, less populated, and less economically developed Atlantic Provinces. The motion to recognize Quebec as a “nation within a united Canada,” while largely symbolic, is still asymmetrical in nature. Ottawa also allows Quebec and New Brunswick to operate in the international arena, in particular by sending representatives to the Franophonie.

So what motivates these forms of asymmetry? Constitutional asymmetry — with a few somewhat obtuse exceptions like Ontario's involvement in denominational schools —

²⁵ Louise Tillin, "United in Diversity? Asymmetry in Indian Federalism," *The Journal of Federalism* 37, no. 1 (2006).

²⁶ Heinemann-Gruder, 75.

²⁷ Arthur Benz, "From Unitary to Asymmetric Federalism in Germany: Taking Stock after 50 Years," *Publius* 29, no. 4 (1999).

seems to be almost exclusively motivated by the presence of minority national or ethnocultural groups. This is the case in Belgium, Canada, and Malaysia. It seems that other factors that could motivate asymmetry have not proven sufficient to see constitutional entrenchment. In the Canadian example at least, we know the political and popular resistance to any constitutional recognition of asymmetry. The motivations for statutory asymmetry run a similar gamut to the motivations for selection asymmetry. However, the difference is that the political and popular resistance to asymmetry that would normally lead to the same powers being offered to all either isn't present or has been overridden by other concerns. Such an arrangement seems to require the units to make convincing arguments through appeals to cultural, geographic, economic development, or other forms of difference. There are three main directions such an argument can take. First, units could attempt to demonstrate that gains made through the policy would be relative, and thus that a symmetrical approach would accomplish little. Funding for a minority language education is an example of this. If funding were given to all languages, one could argue that the effects would cancel out. Second, they could attempt to show that the circumstantial asymmetry is so debilitating that the only way to achieve anything like symmetry of outcome is to have a formally asymmetrical arrangement that is not also open to others. Much formal asymmetry justified by economic development and geographic difference falls under this category. Third, for minority national groups, a claim could be made on the grounds of national self-determination.

This gives us a decent grounding in examples as well as motivations for the different forms of asymmetry from across federations. I now wish to turn to my specific case study in asymmetry: Canadian immigrant selection and settlement policy.

Shifting Asymmetry: Canadian Immigration Policy

Canadian immigration policy represents an interesting case study in asymmetry. While recognized as one of only two areas of concurrent federal/provincial jurisdiction in s.95 of the Canadian constitution — along with agricultural policy — immigration policy was planned and administered almost exclusively by the federal government for over 100 years, from confederation until the early 1970s. From there, it moved to become a formal statutory form of asymmetry with Quebec, then a form of selection asymmetry with all provinces in the 90s-00s, and now seems to have reverted to a form of formal statutory asymmetry, but on much shakier ground. I shall begin by outlining the historical context of immigrant selection and settlement policy in Canada, showing its transition between the different forms of asymmetry, before demonstrating the problematic nature of where this policy arena has arrived.

Immigration Policy

As mentioned above, immigration was initially established as an area of concurrent jurisdiction between Canada's two levels of government. It is largely on the basis of this element of the constitution that has allowed provinces to slowly make the case for more authority. After World War Two there was a push within the federal government to include the provinces more in the planning of immigration policy. The problem, however, was that provinces lacked the expertise and infrastructure necessary to carry on such conversations. As Hawkins points out, "... the management of immigration, in all its essential features, has been an exclusive federal concern. Until the late sixties, Ontario was the only province which

had had an active immigration program.”²⁸ The late 60s saw the emergence of interest in immigration as provinces gained the capacity to understand the benefits of immigration being gleaned from Ontario, who dominated immigrant intake. Manitoba’s NDP government in 1969 sought to gain their “fair share” of immigrants, (a still common refrain) and argued for policies that would send them more immigrants and allow them to promote themselves.²⁹ However, it wasn’t until the new Immigration Act of 1978 that provincial involvement was enshrined as a principle of policy making. It reaffirmed immigration as a co-jurisdictional responsibility and tied the federal government to consultations with the provinces on overall immigrant levels as well as their own labour and demographic needs. It also gave the minister responsible for immigration the ability to enter into agreements with the provinces.

However, initially only Quebec made significant strides in establishing itself as an authority in immigration policy. Early immigration agreements in the 70s and 80s were principally geared towards improving communication, information sharing, and ensuring consultation over immigration plans.³⁰ Meanwhile, the western provinces were mostly concerned with ensuring that the level of immigration and the distribution of immigrants were fair. Lobbying along these lines was matched by the Atlantic Provinces in the early 90s, when they began to take an interest in attracting more immigrants.³¹ Meanwhile Ontario, which continued to receive the lion’s share of Canada’s immigrants, argued that immigration was essentially a matter of federal responsibility all the way into the 2000s.³²

Quebec occupies a unique position in Canada’s immigration landscape due to the minority linguistic and cultural status of the Quebecois people. This has led to a unique history and politics attached to immigration in the province, but also a unique system to go along with it. There is an obvious tension that exists for the Quebecois as they are a majority to the immigrants who settle in Quebec, but are a minority within Canada aiming to preserve their culture, language, and distinctiveness. This fact led to an historical ambivalence or even hostile xenophobia toward immigration in Quebec, a sense that persisted as the dominant and elite perspective until at least the late 60s.³³ During the Quiet Revolution, with the speedy modernization of Quebec’s society and economy, the potential economic and demographic benefits of immigration became apparent to the more progressive governments of the time. This led Quebec’s first immigration ministry — established in 1968 — to call for a fair share of immigrants in order to address labour market and demographic issues.³⁴ Both of these pressures — cultural security and economic growth — continue to play a significant role in the politics of immigration in Quebec to this day.

It was this desire and a persisting sense that federal control of immigration was being used to water down Quebecois culture and the French language — or was at least

²⁸ Freda Hawkins, *Canada and Immigration : Public Policy and Public Concern*, 2nd ed., Canadian Public Administration Series (Kingston ; Montreal: McGill-Queen's University Press, 1988).

²⁹ Hawkins, 180.

³⁰ R.A. Vineberg, "Federal-Provincial Relations in Canadian Immigration," *Canadian Public Administration* 30, no. 2 (1987).

³¹ Vineberg, 46.

³² Vineberg, 28.

³³ Gladys L. Symons, "The State of Ethnic Diversity: Structural and Discursive Change in Quebec's Ministère D'immigration," *Canadian Ethnic Studies* 34, no. 2 (2002).28

³⁴ Symons, 29-31.

ambivalent to it³⁵ — that led Quebec to push for their first three bilateral immigration agreements with the federal government.

1. The Lang-Cloutier Agreement, 1971: allowed Quebec immigration counselors to be placed in federal offices abroad, however this was only in certain locations, in a limited capacity, and their advice or decisions could be overruled by the federal government.
2. The Andreas-Bienvenue Agreement, 1975: allowed Quebec to send immigration officers as well as information agents to foreign offices, even ones they created independently to focus on representing Quebec. It also allowed them to comment on the applications of immigrants likely to settle in Quebec. Also opened the door to allow Quebec to consult on selection and levels.
3. The Cullen-Couture, 1978: granted Quebec both a positive (admitting candidates who passed their criteria even if they failed Canada's) and negative (those who did not meet Quebec's standards could not be admitted to Quebec) veto on economic immigration candidates. This left only reception and settlement under full federal control.³⁶

Each of these agreements gave Quebec an increasingly significant role in immigration, helping them address the cultural and economic dilemmas they faced. However, the failure of the first sovereignty referendum — with the vast majority of immigrants voting for federalism — and the changing ethnic face of immigration in the early 80s, led to further concern about what role immigration could play in Quebec. Quebec attempted to reach out to its so-called “cultural communities” to bring them into mainstream Quebec society, which was taking on a growing republican form that was attempting to establish a coherent and inclusive public sphere based around French as a common language.³⁷ This included efforts to fight racism, enshrine minority rights, and encourage cultural interchange. The attempt was to create something of an “intercultural nationalism.”³⁸ Quebec attempted to gain more power over immigration in the Meech Lake negotiations. When Meech was rejected, bilateral negotiations began eventually resulting in the 1991 Canada-Quebec Immigration Agreement which gave Quebec a significant role in determining immigrant levels, control over the selection of compassionate or humanitarian immigrants, and authority over reception and settlement services. The federal government also committed an initial \$332 million in the first five years to pay for integration services.³⁹

The agreement gave Quebec more power than ever to craft its own approach to immigration and integration. However, it also served as a catalyst for change across the rest of Canada.

Several important events in the 90s and early 2000s served as catalysts for the rapid decentralization of immigration policy that has come in recent years. Somewhat counter-intuitively, much of the early incentive for decentralization came from the federal government. After the 1991 Canada-Quebec Immigration Agreement was signed, and in

³⁵ Gilles Grenier “Immigration Policy in Canada: A Quebec Perspective,” in Charles M. Beach et al., *Canadian Immigration Policy for the 21st Century* (Kingston, Ont.: John Deutsch Institute for the Study of Economic Policy, 2003).

³⁶ Chris Kostov, “Canada-Quebec Immigration Agreements (1971-1991) and Their Impact on Federalism,” *American Review of Canadian Studies* 38, no. 1 (2008).

³⁷ Symons, 32-34

³⁸ Cory Blad and Phillippe Couton, “The Rise of an Intercultural Nation: Immigration, Diversity and Nationhood in Quebec,” *Journal of Ethnic and Migration Studies* 35, no. 4 (2009).

³⁹ Kostov, 98-99.

light of growing interest by provinces in the east and west to assert authority in the area, the federal government became concerned about pushes for Quebec-style immigration agreements in the other nine provinces. There was also a desire to limit Quebec's special status by showing that the authority over immigration could be claimed by any province. Wanting to avoid such an intense erosion of their authority, the federal government offered a compromise: the Provincial Nominee Program.⁴⁰

The federal government proposed the program in 1995 and the first provinces to sign on were Saskatchewan and Manitoba in 1998. By 2004 every other province except Ontario had signed onto the project, with Ontario finally following as stipulated in their 2005 immigration agreement. The program started very meekly in 1999 with only 477 admissions. However, with the addition of other provinces and an increased enthusiasm for the use of the program by provinces, the number increased to 22,411 by 2008.⁴¹ The program moves provinces decisively past the role as immigration consultants into the realm of actual immigrant selection. While the federal government maintains responsibility for basic immigrant classes, immigration levels, and citizenship rules, the provinces are becoming major players in immigrant selection.

Motivated by a newfound understanding of the potential of immigration to address economic and demographic issues, empowered by a previously little used constitutional section, and emulating each other's practices and strategies, the provinces have awoken from dormancy on immigration policy. Adding to their consultations with the federal government on the overall quantity of immigrants admitted annually, they now see control of immigrant selection via the PNP as an essential tool to ensure the best gains from immigration and the best outcomes for immigrants. It has also given provinces that receive fewer immigrants, most proactive amongst them Manitoba, to incentivize immigration to their part of Canada. This has allowed the federal government to avoid policies that direct immigrants to particular parts of the country — no such policies exist in Canada.⁴² Indeed, some have argued that any such attempt would violate the Charter.⁴³ By creating classes such as the community class, as Manitoba has, smaller communities can create enclaves that make a significant difference in attracting immigrants who do not speak English or French as a first language.⁴⁴

However, as Alboim and the Auditor General caution, the PNP has not been surveyed closely, and provinces have not been asked to report on progress to see if its short-term focus is economically viable, and whether it is properly balancing the immigration goals of the provinces and Canada appropriately. Without such verification the speed with which the PNP is overtaking the normal economic immigrant class is potentially distressing. Despite attempts by the federal government to stabilize the number of PNP immigrants at around the same level as federal economic immigrants, provinces are resisting this limitation. There is also the fear that the programs will make immigration to Canada needlessly confusing, complex, and time consuming. Alboim notes that, "while provincial nominees serve an important purpose in a country as large and diverse as Canada, the program is growing without the benefit of common standards or a national framework. Potential

⁴⁰ Vineberg, 47

⁴¹ Naomi Alboim, "Adjusting the Balance: Fixing Canada's Economic Immigration Policies," ed. Maytree (Toronto: The Maytree Foundation, 2009).

⁴² James Ted McDonald, "Toronto and Vancouver Bound: The Location Choice of New Canadian Immigrants," *Canadian Journal of Urban Research* 13, no. 1 (2004):165.

⁴³ Kostov, 91.

⁴⁴ McDonald, 177-79.

immigrants are confronted with the Quebec immigration program, nine provincial nominee programs, and one territorial program, each with their own sub-component, selection criteria, fees, application processes, and timelines.”⁴⁵ This same level of complexity and lack of equality and cohesion is a theme I wish to explore in my work on settlement policy.

Settlement Policy

The story of integration and settlement policy in Canada follows a similar trajectory to that of immigration policy. The major difference is that, while immigration has been around since before Canada itself, settlement policy is a relatively new concept. Early settlement programs in the post-war era were essentially constituted of very basic language and citizenship training programs. In the 60s, negotiations around cost sharing of such programs constituted one of the first areas of federal-provincial cooperation in immigration and settlement policy, followed soon after by programs to extend health and social assistance benefits to immigrants in their first year after arrival.⁴⁶ Despite the relatively young nature of these programs, Canada is still considered an innovator internationally in the realm of integration policy.⁴⁷

However, while settlement policy arrived as a major focus later than immigration policy, it has seen a similar devolution to provinces along a similar timeline. The first significant devolution of power from Ottawa was in the early Quebec immigration agreements, culminating with the Canada-Quebec Immigration Agreement of 1991 and the withdrawal of the federal government from all settlement services in Quebec. In return they transferred Quebec \$75 million annually for settlement services, an amount that had grown to \$237.5 million by 2008-09, still by far the most favourable funding arrangement in the sector.⁴⁸

As noted above, the federal government was eager to avoid signing nine additional Quebec-style immigration agreements, thus being motivated to start the PNP. However, this was also the era of the Chretien/Martin Liberals who were on a quest to slash the budget and eliminate the federal deficit. Towards this goal, CIC was asked to slash \$62 million from its budget. As had been the practice in other ministries, the department would aim to accomplish this by offloading services to the provinces, in this case settlement and integration services.⁴⁹ Some of the provinces responded enthusiastically to the offer of additional powers, but complained about the meager levels of settlement funding made available to them compared to Quebec. The federal government, thus, increased the level of the base grant to provinces outside Quebec from \$118 million to \$180 million, ironically increasing funding by almost the exact amount they sought to cut it by.⁵⁰ In the end, only Manitoba and B.C. agreed, and began delivering settlement services in 1998.

The expansive agreements of B.C. and Manitoba, and the more modest agreements of other provinces have led to five levels of decentralization within the Canadian scheme of settlement policy: 1) Quebec’s comprehensive control of all immigration and settlement policy; 2) B.C. and Manitoba’s ability to craft, administer, and maintain almost all of their own settlement policy while leaving welcoming and other basic services to Canada and; 3) a co-management model as in Alberta; 4) a tri-level consultation model present only in

⁴⁵ Alboim, *Adjusting the Balance*, 34-35.

⁴⁶ Hawkins, 192.

⁴⁷ Myer Siemiatycki and Triadafilos Triadafilopoulos, "International Perspectives on Immigrant Service Provision," ed. Mowat Centre for Policy Innovation (Toronto: Mowat Centre for Policy Innovation, 2010).

⁴⁸ Vineberg, 45.

⁴⁹ Vineberg, 48.

⁵⁰ Ibid.

Ontario/Toronto; and 5) a model based on consultation, information sharing, but with planning and delivery undertaken by the federal government.⁵¹ Interestingly, each of the major immigrant-receiving provinces – Ontario, B.C. and Quebec – has a very different relationship with the federal government.

Immigration Policy and Forms of Asymmetry

As I have demonstrated, immigrant selection policy and settlement policy, while separate areas of policy, advanced along very similar trajectories. Despite the constitutional recognition of concurrent authority in the area, the federal government dominated immigration policy until the late 70s. Then, through the three early immigration agreements with Quebec, the federal government created a formal asymmetrical situation, where Quebec received differential treatment based on its standing as a minority national group and its need to increase immigration to address its demographic and economic development challenges. This process has been largely successful, as Quebec can no longer economically differentiated from the rest of Canada as it once was, and immigration has played a role in this.

After Quebec gained full control of immigrant selection and settlement with the 1991 Canada-Quebec Immigration Agreement, the federal government took a new tact, allowing, and even motivating other provinces to seek more authority in the area through bilateral agreements. This created a selection asymmetrical situation, one where provinces were free to opt-in, and gain more authority over immigration and settlement in exchange for more federal funding. This was justified partly by provincial calls for more authority, by a federal desire to equal the playing field — coffee for all — and partly by a desire to offload costs during a time of fiscal restraint. Again, while not without questions and possible criticisms, the emerging system has come with significant benefits, such as the ability of provinces to select immigrants based on their local economic conditions and to craft more locally responsive settlement programming.

Thus, between 1971 and 2009, asymmetry in immigration in Canada had always been clearly justified, driven by a clear and justifiable purpose, comparable to other international examples, and understandable within theoretical and normative analysis of asymmetry. With recent developments, beginning with the 2010 Ontario Budget, this has changed.

Recent Developments and Atypical Asymmetry

After several years of expressing concerns, to no avail, that the federal government was not living up to the funding requirements in the Canada-Ontario Immigration Agreement, the Ontario government, in their 2010 budget, announced that they would “begin to negotiate a new immigration agreement that would include devolution to the Province of settlement and language training and full funding for these programs.”⁵² This essentially meant that Ontario was going to seek a similar agreement to those of B.C. and Manitoba. Since this policy sector had been operating for over a decade in a system of selection asymmetry, and since the existing agreement was set to expire in 2011, it seemed that this request would be something of a formality. However, this has not been the case. The federal government flatly rejected Ontario’s call for decentralization, leading Ontario Premier Dalton McGuinty to attempt to make the disagreement into an election issue, saying in April 2011 “...just give us the money. We’ll deal directly with our settlement agencies in

⁵¹ Keith Banting, "Federalism and Immigrant Integration in Canada," in *Immigrant Integration and Canadian Federalism: Exploring the Issues* (University of Toronto: The Mowat Centre, 2011).

⁵² Government of Ontario, "2010 Ontario Budget," ed. Ministry of Finance (2010).

the same way you've authorized B.C. and Manitoba to do so. We're closer to the services. We better understand what's happening on the ground.”⁵³

At the same time, on the immigrant selection side, the federal government has moved to cap the PNP at current levels.⁵⁴ The problem with this move is that provinces that have not fully taken advantage of the program yet will be trapped at their current levels unless other provinces decrease their levels. This somewhat indirect form of formal asymmetry has been encountering resistance, particularly in Atlantic Canada, where the programs were just getting going, and where the desire for immigration is growing.⁵⁵

This new position for the government is problematic because they have moved from a selection asymmetry system to a formal asymmetry system: one where certain provinces — B.C., Manitoba, and Quebec — have a significantly different arrangement than others and the option of a similar deal is not open to others. McGuinty appealed directly to this principle in his speech on the issue during the election campaign, stating, “The reality is the government of Canada can’t justify having one set of rules and services for immigrants in some parts of Canada without applying some of those same rules and giving those same services to immigrants who arrive in Ontario.”⁵⁶

This arrangement is not inherently problematic since, as I pointed out above, there was a formal asymmetrical arrangement in immigration with Quebec in the 70s-90s. Where it becomes problematic is that formal asymmetry requires the articulation of a principle that justifies asymmetry. For formal asymmetry to be normatively just, and accepted by the governments and citizens of a federation a valid explanation must be present. In The Quebec case, this explanation revolved around Quebec’s status as a minority nation that was attempting to protect its culture and language, as well as their need for economic development. This argument could still be used to justify asymmetrical treatment for Quebec and Ontario, but it does not fly in relation to Manitoba and B.C. In this instance, there seems to be no principled reason to deny Ontario decentralization

So what are the reasons for the federal government’s about-face? The most important difference is the change in government from the Progressive Conservative and Liberal governments that brought in the previous immigration agreements, to the current Conservative government. It seems, despite their generally favourable disposition towards decentralization, that the current government does not look favourably upon the decentralization of immigration policy and is trying to slow or halt the process. One could also posit that there is an advantage for a party attempting to improve its fortunes with immigrant voters to be the ones that provide funding to settlement programs and rule on the admission of other immigrants.

This attempt to halt a process of decentralization in a way that creates asymmetry is problematic and lacking much precedent in Canadian history. As such, I argue that it is unsustainable, both in terms of the effects it could have on intergovernmental relations, and in terms of public perception, where fairness between provinces is always a major issue.⁵⁷ Given this, there are only really two ways that the situation can be reasonably resolved. The first would be to recentralize the process for all provinces except, perhaps, for Quebec.

⁵³ CBC News, "Ontario Needs Greater Control over Immigration: McGuinty," *CBC News*, April 20th, 2011 2011.

⁵⁴ Heather McLaughlin, "Capping Nominee Program Will Hurt - City," *The Daily Gleaner*, April 5th, 2011 2011.

⁵⁵ The Canadian Press, "Nova Scotia Wants to Double Immigration by 2020 by Targeting Skilled Labour," *The Canadian Press*, April 29th, 2011 2011.

⁵⁶ Rob Ferguson, "Mcguinty Pushes Immigration as Federal Election Issue," *Toronto Star*, April 20th 2011.

⁵⁷ Seidle, 5-10.

However, such a move is also without precedent in Canadian politics. When speaking of decentralization in Canada, there is essentially no way of putting the genie back in the bottle. The second option, and I would argue the one that will inevitably be chosen by a future government, is to return to a model of selection asymmetry, allowing Ontario and, perhaps, other provinces from seeking decentralization of immigrant settlement policy.

Conclusion

This paper had essentially two missions. The first was to clear up the slippage and lack of clarity in terminology around asymmetry in the federalism literature and create a model that emphasizes the important divisions between different forms of asymmetry in federalism. It is my hope that this model could be useful in any federation to analyze the form, purpose and justification of different forms of asymmetry

The second purpose was to investigate an interesting and contentious form of asymmetry in Canadian politics: immigrant selection and settlement policy. It was shown how this policy area moved, justifiably, through different forms of asymmetry before, most recently, arriving at an arrangement that is not justifiable normatively or politically. As such, it was argued that this position is unsustainable and, since other paths are constrained, will likely result in a return to the previous form of selection asymmetry, where provinces would be free to opt-in to more control of immigrant selection and settlement should they choose. I hope this section can serve not only as an interesting illustrative example of the different forms of asymmetry, but also as a way of illuminating an interesting and important area of Canadian public policy.

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