ABSTRACT
To comprehend Quebec's immigration policy, it is important to understand how Canadian federalism works. Decentralization of immigration policies in Canada since 1991 have brought innovations specific to the demands of local labor markets (ie: in Quebec, recruitment of qualified immigrants requires a knowledge of French language). However it has also created a model of asymmetrical federalism. Quebec is the only Canadian province with autonomy in recruiting immigrants. With the advent of Canadian multicultural society, came also demands for the recruitment of immigrants and implementation of Quebec's own migration policy. We see this policy as a good example of how asymmetrical federalism works in Canada. Quebec's immigration policy is the product of a multicultural society, within the context of asymmetrical federalism. The policy has also had a major effect on the decentralization of relations between Ottawa and other Canadian provinces. As much as we observe federalism influencing policies in Canada, these policies shape federalism as well. This paper presents a theoretical and historical approach critical to understanding how a single province can be autonomous to establish and coordinate the recruitment of immigrants that meet their specific interests. Quebec has a cultural peculiarity that has resulted in great autonomy in managing certain public policies, and the province's immigration policy is an extension of that.

INTRODUCTION
This article presents the model of Canadian federalism. I believe that to understand the development of Quebec’s immigration policy, it is essential to discuss the theoretical and historical basis that has allowed an individual province to gain autonomy to establish a specific coordination and recruitment of immigrants that meet its particular interests.

As the Canadian multicultural society developed, this has led to

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demands from Quebec for the recruitment and implementation of its own immigration policy. Since the 1970s Ottawa has been trying to limit Quebec’s nationalism. Therefore as a result of a bargaining game, the province gained autonomy to rule over its own immigration policy. Permitting the province autonomy in this respect was a way of showing that the federal government was open to negotiations on specific demands, but only if this would not mean a potential risk of secession for Quebec (GAGNON; IACOVINO, 2007). So I see the immigration policy of Quebec as a good example of how asymmetric federalism works in the country. Thus, the immigration policy of Quebec seems to be a direct result of the development of a multicultural society within a context of asymmetric federalism.

Justification for the need to have its own immigration policy was the argument that Quebec is a different society with different necessities from other provinces. Quebec's immigration policy has had a major effect on the decentralization of Ottawa’s relations with Canadian provinces as a whole. Within the federation, Quebec is the only province with a constant demand for asymmetry.

Thus I begin this paper by presenting what exactly is Canadian asymmetric federalism. I will show that Quebec is a culturally peculiar province, the result of which has been to be granted greater autonomy to manage certain public policy. The province's immigration policy is an example of this situation. I believe that to understand a federation, it is important to study its political, fiscal and legal dynamics. It is precisely these three points that I will try to discuss below.

**ASYMMETRIC CANADIAN FEDERALISM**

A study of Canadian federalism should take into account some specificities of the country. First, the current institutional design is questioned by Quebec’s nationalists, regionalists from the Western provinces, centralists, and those in favor of decentralization. Second, Canada is a multinational federation (besides Francophones, mainly concentrated in Quebec, there are First Nations and the English majority of the rest of Canada). Moreover, the country has regional differences.

One should also take into account that federalism, the way it has been practiced in Canada on the whole, has never been popular in Quebec. This does not mean
that the francophone population is opposed to federalism, but rejects it in the way it has been implemented by the central government. There are two reasons for this disagreement: federation members (provinces and territories) should have greater autonomy, and not be subordinate to Ottawa’s impositions (which are seen as to be in favor of the English majority). Quebec commonly interprets that Canadian federalism would be better aligned to its interests, if it were more community oriented, which would enable regions to have a more decisive role in the political game in terms of identification and support for central government (GAGNON, 2009b).

At the same time, within this cauldron of criticism, political and social pressures, Canadians see federalism as having qualities that contribute to the longevity of democracy when it guarantees right of access to institutions for minority groups. From what can be seen, this connection is achieved through the redistribution of goods and resources, through a balance of power between the central government (located in Ottawa) and peripheral governments (provinces and municipalities), and also management of political conflicts – usually via political parties which express the country’s diversity within the Canadian Parliament, and act as mediators of interests.

The Westphalia model of nation-state remains very popular in English-speaking Canada, but not in the French part. This means that asymmetrical federalism would be the best way to integrate and function as an important instrument that would accommodate political demands made by minorities within a democratic environment. However, in Canada, political concessions only come when the central government is willing to take claims made by minority nations seriously - particularly under threat of secession. Adjustments over the years aimed to ensure that the changes were only for the benefit of the weakest demanders. But I have seen that others often claim the same rights or “complain” about what they deem to be privileges granted to minorities. In Canada, the federal principle of non-subordination is frequently attacked by the central government under the support of the Anglophone provinces (GAGNON, 2009c).

Multinational federations require the establishment of asymmetric models of federalism to allow different communities the opportunity to fully realize their citizenship. This can be done through emphasis and adjustments that enrich the context of
choice for everyone. Equity for citizens does not mean the same thing as equal treatment for all provinces. An asymmetric model can be seen as a provider of moral equality – since it ensures that the national identity of minorities receives the same concern and respect that the majority normally does. In Canada, Quebec has been one of the primary claimants for deeply rooted constitutional changes which can not easily be changed later on by any federal government. Throughout history, the French-speaking province has been forced to accept political arrangements that could be modified at any moment according to the current government’s whim. These agreements have generally not held long-term stability. This fragile coexistence is what has lead Quebeckers to think about the need to withdraw from the Canadian federation.

Asymmetric federalism, as it has been practiced in Canada, is seen by most supporters of Quebec’s sovereignty as a strategy for demobilization of the province's nationalism. It is also seen as insignificant compensation for incursions on it's jurisdiction by the federal government. For supporters of Canadian federalism in Quebec, asymmetry is seen as a last hope for the survival of a shared society: they believe it is still possible to find an effective way to coexist without so many tensions.

However, such arrangements cannot become reality as long as fierce opposition to a full-blown version of asymmetrical federalism continues to manifest itself. Outside of Quebec, asymmetrical federalism has more often than not been denounced as presaging the erosion of the very foundations of the Canadian nation that is usually presented as ‘sea-to-sea’ and indivisible (GAGNON, 2009c, p.260).

Acceptance of asymmetry for the preservation of national integrity is affected by the independent and sometimes interdependent projects of "Canada", "Quebec", and "First Nations". Thus, there are heated discussions about the principles of a shared society that the majority of the country (Anglophone) and minority nations need to internalize to be able to keep the nation from breaking apart. It is understood that society as a whole is greater than the sum of its parts. But for asymmetry to succeed it must be understood that loyalties need not to be hierarchically established to be cultivated. And, it is believed in the expansion of institutional spaces where democratic dialogue can in fact occur. According to Gagnon (2009c), there are two conditions for the permanent establishment of asymmetrical federalism: the advocates of the majority in
Canada and Quebec should accept that other collective projects must be developed; and most importantly, no cultural identity should be dominant at the expense of recognizing the other (what the English part of Canada does with Quebec, and both impose on First Nations).

In a world characterized by deep diversity asymmetrical federalism represents a unique institutional construction that gives considerable flexibility in governance. Most forms of differentiated treatment in Canada are usually seen by a good number of Canadians outside of Quebec as an expression of unequal treatment, as privileges accorded to Quebeckers. This same majority of Canadians is opposed to all expressions of even a minimally distinct status for Quebec. […] Canadians nationalists have opposed the few initiatives that might have favored the implementation of asymmetrical federalism in the country (Gagnon, 2009c, p. 266-267).

Some Canadian political scientists believe that Quebec will never stop trying to exert power in central institutions even if the status of distinct province – as claimed – would be institutionalized because its appetite is insatiable (Kostov, 2009). On the other hand, I must remember that throughout the twentieth century, symmetrical federations (such as the Soviet Union, Yugoslavia, Czechoslovakia, etc.) faced secession. This argument is seen in Canada as an attenuator of the opposition to asymmetric federalism. But we do not observe a real demobilization of barriers for the full implementation of a disproportional model.

The Canadian multinational will materialize institutionally the day that asymmetrical federalism is perceived to be legitimate; it is thus worthwhile to defend this principle that contributes to a recognition of Quebec’s national diversity. At present, the main challenge is to address the recognition of Quebec according to its own terms – in the terms of a nation that is fully constituted (Gagnon, 2009c, p. 268).

Canadian nationality presupposes a federalism that recognizes the existence of diversity and shared identities. Thus, while the history of the constitution of the country is a great achievement, it is also a great tragedy in everyday relationships.

A tragic contest existed between French and English, who were “like brothers that hate each other… [and] have to dwell under roof”. […] The tragedy of Canada is compounded and complicated by the presence of minorities of various kinds. Among them are “third force” Canadians, recent immigrants who belong to neither the French nor English majorities
and who regard their membership in Canadian society as precarious. Their fear – which is shared by women, gays, and other groups – is that they will be relegated to second-class citizenship and suffer the disabilities and indignities that accompany it. As a result, these divergent groups often join together in demanding the creation of “one Canada”, which they associate with undifferentiated citizenship for all Canadians. Together with Aboriginals, they opposed the (failed) Meech Lake Constitutional Accord of 1987 because they believed that the recognition of Quebec as a distinct society undermined the rights and dignity of their group (LASELVA, 1996, p. 4).

Many Canadians – especially from the English-speaking provinces – have difficulty accepting secession naturally. For them, this type of alteration to the country's existing territory and borders would be a tragedy and a disaster for all. Fragmentation is viewed as the path leading English Canada increasingly to incorporate cultural aspects of the United States. This does not necessarily equate to the disappearance of political independence, but the loss of a distinct cultural identity so valued by Canadians.

The Canadian paradox is that while internal divisions foster a distinct identity, they also generate social instability. A positive factor is that the country's history can also be seen as a chronicle of the acceptance of division and differences as ingredients for the common good. The centerpiece of Canadian federalism – which gives stability to the federation – is the existence of a citizenship with an equity of social guarantees, shared by both the English and the French part: “(...) when collisions cannot be avoided, they often can be softened” (LASELVA, 1996, p. 6). The Canadian State struggles to promote individual and community freedom, social and criminal justice – which are seen as essential to having freedom. “Some nations associate greatness with cultural homogeneity and military aggrandizement, but in Canada it is more often identified with the acceptance of difference and with the creation of a more just society” (LASELVA, 1996, p. 7).

Therefore, part of a Canadian sense of belonging is expressed through the institutional design of federalism. This is seen as an instrument to alleviate tensions and prevent disruption. Citizens can be members of both the larger community (Canada) and also maintain another distinct regional identity. One can participate in the common culture without renouncing identities and particularities.

Due to this freedom of diversity, however, Canadians see their own
country as difficult to govern and of fragile integrity. “Part of the difficulty is that Canadians usually regard federalism as a solution to their difficulties, yet the instrumentalities of federalism are as often a source of the strains that afflict their country” (LASELVA, 1996, p.9). The three pillars of the constitutional system of Canada are: federalism, parliamentary government, and the Charter of Rights and Freedoms (SMILEY, 1986). But, we have to highlight the importance of the Welfare State as an anchor for territorial integrity. The arrival of this model of society has helped to centralize the federation during the second half of the twentieth century.

Political identities are highly contested in Canada, and social programmes have emerged as instruments of nation-building. For the central government, social policy has been seen as an instrument of territorial integration, part of the social glue holding together a vast country subject to powerful centrifugal tendencies. National social programmes create a network of relations between citizens and the central government throughout the country, helping to define the boundaries of the national political community and enhancing the legitimacy of the federal state. However, provincial governments, especially the Quebec government, have also seen social policy as an instrument for building a distinctive community at the regional level, one reflecting the linguistic and cultural dynamics of Québécois society. For both levels of government, therefore, social policy has been an instrument not only of social justice but also of statecraft, to be deployed in the competitive processes of nation-building (BANTING, 2005, p. 90).

Thus, policies for social welfare are rooted in linguistic and regional divisions. More than just a federal state, Canada is a federal society. It was the first country in the world to fuse federalist institutions with the parliamentary Westminster type of government – one which concentrates power in the hands of the executive at both the federal and provincial levels, known as executive federalism (WATTS, 1989). In a few provinces we can observe local political parties bypassing Parliament bureaucracy and going directly to the national level with their specific demands. This dynamic has created distinct political negotiations. There has generally been a weak verticalization of power running through political parties. That is why so many social programs are developed through direct negotiations between the executives of the federal and provincial governments. This has raised criticism about the lack of republicanism in decisions made at ministerial meetings\(^2\).

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\(^2\) The First Ministers’ conferences function as a forum for decision making. But these meetings have not been provided for by the Constitution.
To better understand the history of Canadian Federalism, I highlight three distinct major historical periods: pre-World War II, in which the country deployed a decentralized federalism with few social policies; a centralizing expansionary phase from 1940 until the mid 1970s, which saw a rapid development of social programs implemented by the federal government; and post-1980, when a model of shared centralism was developed in which policy decisions have been implemented through direct negotiations between the provinces and Ottawa.

The 1940s marked a period of strong political domination of the federal government. Much of the power obtained by Ottawa is due to the war effort. There was an increase in power with regards to national bureaucracy and tax collection. “(...) the federal government entered the post-war era in a powerful position. During the subsequent decades Ottawa was anxious to retain enough of the tax fields to expand conditional grant programmes and equalization payments to poorer provinces” (BANTING, 2005, p.102). Thus, the federal government could build a pan-Canadian agenda via the development of interprovincial equalization programs. But from the 1960s on, provincial dissatisfaction with the power concentration began growing. Nationalism in Quebec was reborn via the Quiet Revolution. This was a time of administrative modernization within the French-speaking province. It transformed the provincial bureaucracy's cultural role to that of a more proactive one. “After the 1960s Quebec governments came to see social policy as central to the preservation and enhancement of a distinctive French-speaking community in North America” (BANTING, 2005, p. 132).

Quebec was stimulated by the idea of building its own model of social Welfare with cultural and linguistic diversity. Thereafter, we observe the emergence of a semi-centralized model of social Welfare, but still with a strong control of the central government through economic power of tax collection and conditional transfers for social programs. “The mid-1990s represented the high point of federal retrenchment and the low point in federal-provincial relations. Since then, governments have sought to repair some of the damage” (BANTING, 2005, p. 129).

**FISCAL FEDERALISM IN CANADA**

Until the early 1990s, intergovernmental relations in Canada had been
dominated by constitutional discussions. Distribution of funds was obviously always important, but it appeared more as an administrative and technical discussion rather than a constitutional issue.

The failure of the Charlottetown Accord\(^3\) in 1992 signaled the end to this era. A year later, the Liberal Party took power with a commitment not to talk about the constitution and to focus instead on creating jobs. Subsequent events, however, soon changed the situation for the new government. First, the victory of the Parti Québécois\(^4\) in 1994 placed Ottawa on the defensive on national unity. Second, the state of public finances pushed the Chrétien\(^5\) government to emphasize deficit reduction rather than employment and led it to undertake a major revision of federal transfer payments to the provinces. As the window on constitutional questions was being closed almost definitively, a new one on the division of financial resources opened up at the forefront (NOËL, 2009, P.273).

The fiscal imbalance thus became one of the major subjects of dispute between the provinces and the federal government from the mid-1990s and continues even up to today.

The issues in this respect are multiple, important, and complex. They involve, obviously, fiscal imbalance, a problem that became the object of a wide consensus across the country and that all federal political parties ended up acknowledging. They included as well the various agreements on health care financing, notably the 2004 agreement, which opened the door to asymmetrical federalism, the ongoing debate on the reform of equalization, and the tensions created by the growth of oil revenues in a few provinces. All of these questions concern the way in which financial resources are shared within the Canadian federation, between the two orders of government, and among the provinces and territories themselves (NOËL, 2009, p.274).

Noël (2009) presents a historical review of the moments of sharing revenues in the Canadian federation. The author tries to show the importance of observing correspondence between the division of powers and resources. The Canadian federation is based on a Constitution that integrates separate communities within the same legal framework. The principles that normally define a federation are separation of powers and administrative autonomy. Furthermore, the establishment of a second

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\(^3\) The Charlottetown Accord was a package of amendments to the Constitution proposed by the Canadian federal and provincial governments in 1992. It was submitted to a popular referendum on October 26th of that year and was defeated.

\(^4\) Parti Québécois, a nationalist party whose central theme is the struggle for sovereignty in Quebec. It took political control of the province in 1994.

\(^5\) Jean Chrétien, the Liberal Party leader, Prime Minister of Canada between 1993 and 2003.
chamber (a Senate) is usually seen as a mechanism for representing the interests of members of regional units. But in Canada, the Senate has become an institution with little legitimacy. Most provincial claims occur through direct relations with the central government.

The division of financial resources concerns primarily the autonomy principle. To be autonomous, a federal entity must dispose of its own revenues, and be able to exercise its jurisdiction without requiring transfers from the federal government, transfers that are always susceptible to being accompanied by conditions (NOËL, 2009, p. 275).

The costs of decentralization can include sacrifices in equity and efficiency. Usually, when it is implemented, a widening in social inequalities occurs. So if this is not the intention, it is desirable to have a federation with fiscal imbalance favoring the federal government, even at the expense of the members’ autonomy – the majority of theorists of federalism recognize that a centralized budget favors equality, even though it generates a lack of competition and economic inefficiency. This is precisely the argumentative position taken by English-speaking Canada, although it implies a weakening of the constitutional principle of provincial autonomy.

After the 1929 crisis, Canada began a movement for the centralization of tax collection. Since the mid-1950s, this centripetal direction of fiscal policy has been camouflaged. It apparently expresses centrifuge – a resumption of power by provinces. New forms of taxation and collection have been authorized and provincial power was somehow able to compensate for an inequity of domestic transfers.

These new taxes – on the sale of goods and alcohol and the registration of automobiles, for instance – turned out to be fragile in the face of economic downturns, and provincial revenues declined dramatically during the Great Depression of 1929-39, just as needs were jumping up. Thus weakened, provincial governments accepted at the beginning of the Second World War a constitutional amendment that allowed the federal government to adopt a law introducing a federal unemployment insurance program (1940). They also agreed to temporarily cede to Ottawa their share of personal and corporate income taxes (1942). In terms of financial resources, the 1942 tax rental agreement was particularly significant. With this agreement, the provinces abandoned all control over direct taxation, and gave back to the federal government the pre-eminent role in the division of resources.

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The 1942 agreement was supposed to be a temporary arrangement, to allow the federal government to finance the war effort (NOËL, 2009, p. 279).

After World War II, the Canadian State became a relatively modest actor. With an explosion of power and tax collection capacity associated with the war effort, the costs of all types of government in Canada fell to 24.2% of Gross Domestic Product (GDP) in 1950, a level slightly more than half of what is spent now – 42.2% of GDP in 2004 (NOËL, 2009). In 1954, the government of Quebec's Prime Minister Maurice Duplessis implemented the collection of income tax directly by the province, amounting to 15% of the total allotted to the federal government. This led Ottawa to withdraw a similar part of the budget that was redistributed to Quebec. In 1971, both agreed to end the idea of a common and integrated space for tax collection.

From that moment on, each regional government could determine their own level of tax revenues – but only based on a recipe handed down by Ottawa. Apparently, Canada was experiencing a highly decentralized model of federalism. Administrative regions collect most of their own revenue and are less dependent on federal contributions. However, it has never been simple to understand what is happening in the country until the present day. Due to constitutional issues that ensure the autonomy of provinces, Ottawa's social policies can not be implemented without cooperation from regional governments.

However, what we can observe is an intervention with "shared costs". After the Second World War, and continuing until the present, the federal government has introduced "shared" programs with a commitment to defray most of them. But the provinces should respect Ottawa's determinations. Thus, it was possible for equity programs to emerge in education, health, urban and rural development, and social services (issues of provinces' jurisdiction). Ottawa promoted the diffusion of social policy innovations and facilitated the harmonization of programs as it financed the development of pan-Canadian measures and standards (NOËL, 2009, p.282).

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7 In 1960, the federal government got 60.8% of all taxes compared to 21.8% of the provinces and 17.3% of the municipalities. Federal transfers accounted for almost 30% of provincial revenues. In 2004, federal revenues decreased to 38.7% of total tax revenues, with 42.1% going to the provinces and 11.7% to municipalities (the remaining 7.5% was allocated to the Pension Plan of Canada and Quebec). Thus, the proportion of provincial revenues from transfers fell 15% (NOËL, 2009).
Thus, the federal government could impose equity and integration, by promoting social protection. This "collaborative" and vertical federalism occurred with inequality in political relations. “The Quebec government consistently opposed this centralist orientation, to assert its autonomy and preserve its jurisdictions” (NOËL, 2009, p. 283). Things became stormy as Quebec moved for political autonomy, with the Quiet Revolution\(^8\). This lack of autonomy to develop guidelines and manage their own resources resulted in a modernization of provincial public management under a small budget – as compared to the federal one. And this gave rise to new demands from Canadian society. Rather than oppose federal intrusion on behalf of the political and social status quo, Quebec's government established its own project for a social transformation best suited to its needs and began to demand recompensation for social program costs: “(...) to the era of collaborative federalism, marked by direct federal transfers to citizens and shared-cost programs (1940-77), succeeded a period of transition characterized by block transfers and the definition of ‘national standards’ (1977-95). Provinces then gained both in capacity and in autonomy (NOËL, 2009, p. 284)”.

In the early 1960's, the federal government began to show flexibility and allowed Quebec to be financially compensated through "shared costs". Thus, Quebec's government managed to create its own pension plan – in parallel to greater Canada's pension plan. Provincial governments were modernizing and gaining fiscal autonomy. Also the federal government saw a rise in governmental debt within the context of an economic slowdown, inflation, and growth in social spending. Under these circumstances, "shared costs" programs appeared to be cumbersome and unnecessary (as they reduced control of both governments on spending). This policy and fiscal openness soon was ended when Canadian Prime Minister Pierre Elliott Trudeau\(^9\) began to oppose any form of special status for Quebec.

\(^8\) The Quiet Revolution was the period defined by the resurgence of nationalism in Quebec. After the 1960's, the provincial government took control over health and education, creating ministries, expanding public services, and making great contributions to the public education system and urban infrastructure. The government allowed unionization of civil servants. It took measures to increase control over the economy and nationalized electricity production and distribution. The Quiet Revolution was a period of great economic and social development in Quebec.

\(^9\) One remarkable prime ministers in Canadian history, Trudeau was the lider of the Liberal Party and assumed the Canada's government in two distinct periods: between 1968 and 1979, and between 1980 and 1984.
In the 1990s, the federal government's greatest necessity was to reduce the fiscal deficit in an environment of increasing interest rates and depreciation of the Canadian dollar – especially after the Mexican crisis in December 1994. Thus, the federal government\(^\text{10}\) decided to make deficit reduction a priority. From there, we can observe a drastic reduction in federal contributions to social programs with shared costs. At the same time, the provincial budget was increasingly restricted by the need to increase their investment in social programs in order to compensate for reductions, the federal government was able to quickly get out of deficit. Therefore, Noël (2009) sees these federal surpluses to be carried out at the expense of the provinces.

This was the central paradox of the period that began in 1995. In a sense the provinces became more autonomous since they depended less on federal transfers and relied more on their growing own source revenues. At the same time, provincial governments remained strongly constrained by expenditures that proved difficult to contain, notably in health care, and they struggled to maintain balanced budgets just as the federal government accumulated large surpluses that could be used to increase spending both on its own programs and on programs with provincial jurisdiction. (…) From this point onwards, the fiscal imbalance took centre place in Canadian intergovernmental relations (NOËL, 2009, p. 285).

Based on budgetary constraints, the Canadian federal government can keep provinces in a relationship of dependency. While the central government can quickly reduce its deficit, the provinces struggle to maintain a balanced budget. With the increase in commodities' prices in the international arena, there has been a disparity in revenue between the provinces. The federal program of regional equalization became less and less successful at carrying out its constitutional goal, which was to allow all provinces to offer similar qualities of public services.

When Stephen Harper of the Conservative Party became prime minister in 2006, he took steps to resolve the situation by increasing transfers to social investment, and also by reforming the equalization program. From them on, the provincial governments have seen their budgetary situation improve. However, the biggest fiscal imbalance – and a source of constant questioning on the part of provincial governments – still lingers: the federal government continues to accumulate large surpluses and invest in areas which are the province's constitutional jurisdiction. Tax

\(^{10}\) Government of Jean Chrétien, leader of the Liberal Party.
reform implemented by Harper has neglected this issue. Since the Conservative government's election, the existence of a fiscal imbalance has been officially recognized. This is Quebec's claim nowadays. The French-Canadian government places great weight on the constitutional principle that allows provinces to determine their own path – which is not possible under tax inequality (PELLETIER, 2009). The province thus struggles for a more balanced division of powers as an essential tool for promoting diversity, a historical milestone in the country’s consolidation.

SUPREME COURT OF CANADA

Any approach about the Supreme Court of Canada that ignores its federal role would fail. Since implementation of the Canadian Charter of Rights and Freedoms, the court has never refused to discuss and be a major player in the equalization of social tensions in the country. The Supreme Court of Canada has nine judges. It is a convention that three are appointed by Quebec, three by Ontario, two of the Western provinces (typically one by British Columbia and the other shared among Alberta, Saskatchewan and Manitoba), and the last via the Atlantic provinces (Nova Scotia and New Brunswick). All are named by the Governor General of Canada – which is the Queen of the United Kingdom's representative in the country. The prime minister also has a say in the recommendation of who will be appointed. A Supreme Court judge, like all federal judges in the country, can only hold office until the age limit of 75 years.

The federal principle is an entrenchment clause of the Canadian state. But this principle is somehow cast aside when it comes to appointing Supreme Court judges, which ultimately give it a regionalized characteristic. At the same time, this balance of forces does not change its centralized structure – and the tendency to favor the federal government. “The evolution of Canadian federalism over the last generation also confirms that centralization is hardly inevitable. Nevertheless, the globalization of economic and communications systems in the 1980’s is reinforcing the pressures on local units wishing to preserve their power” (BANTING, 1991, p. 48).

Within the game of sociopolitical tensions in Canada, the Supreme

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11 The Canadian Charter of Rights and Freedoms was a document establishing constitutional rights. It is designed to unify Canadians and it was implemented during Pierre Elliott Trudeau's government.
Court plays an important role as a tool for controlling provincial governments aims – ie, it works with a bias towards centralization. “The decision to establish a supreme court in the first place was motivated in large part by a desire for a source of respected judicial opinion on which Ottawa could draw for guidance and support in the exercise of the power of disallowance and in battles with the provinces” (BANTING, 1991, p. 42).

The debate over the need for a national court faces tensions rooted in the function of the court itself as arbiter of the federal-provincial balance. Often, this role as a mediator of legal tensions has been questioned by Quebec. Not surprisingly, the French-speaking province has, even until today, refused to ratify the Canadian Constitution. On many occasions throughout history, the highest court of Quebec has not submitted appeals, under the traditional view that the Supreme Court is not qualified to judge civil law cases. This gives an aspect of illegitimacy to decisions that may affect the interests of the French-speaking province.

Throughout this instability, represented by the 1995 referendum, when by a very small margin the secession of Quebec was not approved by the majority of the province, Ottawa decided to establish standards and procedures for Quebec or any other province that would want to secede (CANADA, 2000). In December 1999, the draft of the Clarity Act was sent by the federal government for the first reading in the House of Commons. It was approved in March 2000, and by the Senate, on June 29, 2000. The Clarity Act establishes rules for a legal process of secession. It recognizes the right to secede, but this can not be done unilaterally. After a decision by a majority of the provincial population, in a referendum with a clear question (and only if the question does not generate any ambiguity or doubt among voters), Ottawa may open negotiations on how to grant “defederalization”.

The Clarity Act is based on a previous decision of the Supreme Court against an inquiry regarding the right of Quebec to unilateral termination (IN THE MATTER OF…, 1998). In this inquiry, the Superior Court responded to three questions: whether under the Canadian Constitution, the National Assembly of Quebec or Quebec's government could proceed to secede unilaterally; if from the point of view of

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12 The civil law doctrine is the legal structure officially adopted in Quebec. Rather, the common law in the rest of Canada. The big practical difference between the two is that the former relies more on the text of the law and the second in case law.
international law, the National Assembly of Quebec or Quebec's government would have
the right to cause unilateral disruption on the grounds of its right to self-determination;
and considering a legislative conflict between Canadian and international law, which of
the two would prevail to decide on a unilateral termination of Quebec.

In response to these three questions, the Supreme Court established
that there is no legality in causing unilateral disruption. However, the Court points to the
need to open up negotiations between the federal and the regional governments, in the
case that referendum on secession would be approved by a provincial majority, provided
that it had a clear and unambiguous question. Therefore, the judges recognized the right
of secession, as long as it follow certain democratic procedures.

Democratic decision of Quebecers in favour of secession would put those
relationships at risk. The Constitution vouchsafes order and stability, and
accordingly secession of a province “under the Constitution” could not be
achieved unilaterally, that is, without principled negotiation with other
participants in Confederation within the existing constitutional framework.
[...] A clear majority vote in Quebec on a clear question in favour of
secession would confer democratic legitimacy on the secession initiatives
which all of the other participants in Confederation would have to recognize
(IN THE MATTER OF..., 1998, p. 5).

On the other hand, since the 1970s, under the baton of Peace, Order,
and Good Government doctrine (POGG), Supreme Court decisions have tended to favor
the central government in disputes with the provinces. The Court is responsible for
providing legal support to the actions of the federal government. Nevertheless, most of
their decisions are seen as balanced enough to be viewed as victories, by both the federal
and provinces governments (BAIER, 2006).

Not only Canadian political nationality is fragile. The country has
witnessed several unratified attempts at constitutional establishment as well by Quebec.
Despite that such flaws can be seen as an indication of disruption, Canadian social
scientists believe that rather than a crisis, Canada is experiencing a cauldron of interesting
possibilities. Unlike the Supreme Court of the United States – which was created to
ensure individual rights and freedoms – the Canadian one was created to defend minority
communities against the power of the majority. Judicialization establishes a tool to
accommodate different identities within a political and national environment (BAIER,
Questions about the need for Supreme Court justices to be bilingual are frequent. This is a major point of disagreement as to the role of the judges. Although hearings and sessions were simultaneously translated into French for judges who do not speak the language\(^\text{13}\), the translation has limits and can not communicate all the impressions and emotions conveyed by a lawyer in the act of advocacy. Thus, a monolingual English-speaking judge has no direct access to a case presented by a Francophone litigant.

Another important aspect of a Supreme Court judge’s duties is to interpret bilingual legislation. Federal legislation, as well as the legislation of Quebec, New Brunswick, Manitoba, Nunavut, the Northwest Territories and the Yukon is bilingual, and both versions have equal status and authority. The situation is the same for all public general statutes of Ontario since 1992, as well as many other statutes and many regulations in that province. Some legislation in other provinces is bilingual. The same is also true of the Constitution Act, 1982, which includes the Canadian Charter of Rights and Freedoms. It should be noted that the French version of federal legislation is not a mere translation of the English. Rather, the federal drafting process involves the concurrent drafting of the two versions by two teams of drafters who strive to produce English and French versions that respect each language’s drafting tradition. As a result, the French version is often more concise and more precise than the English version.

Giving equal status to both versions surely means that the ultimate interpreter of legislation must be able to understand them both. In truth, a bilingual judge will be in a position to benefit from the additional information contained in the French version. In some cases, even a quick look at the French version might very well resolve an ambiguity that arises from the English version. Moreover, the well established rule of interpretation that requires judges to give bilingual provisions their shared meaning, that is, a meaning that can be supported by both versions, obviously requires the judge to be able to understand both (GRAMMOND; POWER, 2011, p. 7-8).

The presence of monolingual English judges in the Supreme Court has contributed to the marginalization of the French part. Another argument against having no requirement that Supreme Court judges be bilingual is the fact that they do not have access to a vast literature of law written exclusively in French. For many Quebeckers, the legitimacy of the Supreme Court which would act in their defense is often viewed with suspicion. And the absence of bilingual English judges collaborates to raise awareness for and strengthen this argument. Knowledge of at least a second language shows an

\(^{13}\) Judges appointed by Quebec are usually bilingual.
intellectual conscience open to curiosity, a characteristic that should be intrinsic to those who occupy a position of such great social relevance. “The Constitution requires the Supreme Court of Canada to be a bilingual institution fully able to hear cases in French. Simultaneous translation at the hearing is not an adequate substitute to judges being able to listen to argument in French. It undermines the equality of status and use of French and English” (GRAMMOND; POWER, 2011, p. 16).

FINAL REMARKS

In Canada, asymmetrical federalism manifests itself in different ways: constitutionally, financially, in the legislative and administrative. Quebec faces strong centralist resistance from the rest of the provinces, who understand that asymmetry is a threat to provincial equality and also between individuals. They see the federal government as the only possible guardian of the federation. Asymmetry itself – as well as flexibility and diversity – are, instead, effective means for promoting the true values of Canadian federalism.

History has demonstrated that, far from undermining national unity and dividing countries, the adoption of asymmetrical measures enables decentralized entities (provinces) to coexist harmoniously with the central authority, thus reducing unwarranted tensions, counterproductive confrontations, and even demands for secession (PELLETIER, 2009, p. 478).

Despite all these questions, Quebec remains an internationally autonomous actor and with its own foreign relations. The province carries great weight in the promotion of Francophone culture in the world – because this is a historical strategy of cultural survival within Canada – and is even able to sign bilateral agreements, which is a way to promote its interests. Internally, the struggle for a constitutional affirmation of its uniqueness continues. I realize that at the same time the union between different nations within Canada is beneficial for the country, it also generates positive externalities for the provinces as a whole.

I understand that both the English and the French provinces have difficulty recognizing each other. They relate to each other as strangers within the same country. The challenge today is how to instill within an institutional design, the affinity that gave rise to the founding myth. In addition, important issues have been resolved
consistently by court procedures, and / or by political and bureaucratic elites. Many French Canadians are opposed to federalism, because they believe that they should be in charge of their destiny according to their own culture. On the other hand, they see economic, political and social benefits to remaining united, which leads them to diminish the importance of cultural unity, and only focus on the benefits of a functional business alliance with the rest of the country.

“Canadian federalism has moral foundations precisely because of its connection with this powerful ideal [Canadian political nationality]. Moreover, the concept of fraternity contains within it the very identities and loyalties that federalism presupposes” (LASELVA, 1996, p. 23). Canada is guided by the moral value of fraternity, which in turn is instrumentalized through governmental programs for regional equalization based on the idea of the Welfare State. This fraternity also represents the fragility of Canadian federalism.

Fraternity, however, is a difficult ideal to realize. Not only has Canada sometimes failed to realize fraternal relations between French and English, but aboriginal Canadians have not been treated fraternally at all. Their treatment has been paternalistic, and their demand for native self-government within Canada can be interpreted as a demand that the ideal of fraternity should apply to them as well. Federalism can facilitate the realization of such a demand because it enables each citizen to have more than one loyalty and more than one identity (LASELVA, 1996, p. 29).

The union has been, almost always, called into question by the French and First Nations. This is because when either imagine their nation, often the first image that comes to mind is, respectively, Quebec and their indigenous ethnicity. They identify only fraternally with the English part. Historically, the union has been seen by elites of the English and French parts as the best survival strategy against a fear of being annexed by the United States. Particularly for French Canadians, this has been the best solution for the survival of the French "race".

While the Nationalists want to limit fraternity, the Federalists seek to expand it. The fraternity does not exclude the nationalists’ goals. But many Canadians do not understand the possibility of dividing loyalties and becoming members of two communities. “Federalism is not simply a moral ideal. It is also a constitutional device that has crucial implications for the kind of life that citizens can lead (LASELVA, 1996,
To resolve this issue, most Canadian political scientists, who I have presented in this paper, somehow converge on the same conclusion: the psychological barriers that exist can only be broken by equal opportunities. This would require a full reconsideration of the current federal model – a concession that apparently the English part is not voluntarily willing to make.

“Canadian federalism is about divided jurisdiction, divided loyalties, multiple identities, and intersecting communities of belonging. When it is so understood, it becomes capable of mediating the potentially divisive traditions of Canadian pluralism (LASELVA, 1996, p. 187)”. For Quebec, an important demand is a greater recognition of French language as the best way to express themselves concerning their interests (even considering the dominance of English language at present in the globalized world), that French linguistic skills would also guarantee dignity and social value. For the First Nations, the struggle is for autonomy within their territories, like the Canadian provinces already have.

I note that federal actions have been important in transforming innovative regional initiatives for national programs. Quebec's immigration policy is a great example of respect for the Canadian federal pact by Ottawa. It is an innovative public policy that allows Quebec to specifically attract immigrants who have characteristics which are better suited to the demands of its local labour market. The decentralized model of immigration policy, at the same time, has created social inequalities among new immigrants. A joint action by the federal government and provincial governments is necessary for the implementation of shared political integration of immigrants into the labor market.

At the same time we observe federalism shaping social policies in Canada, we also observe them shaping federalism. Social welfare programs are seen as instruments for social integration in divided societies. In many countries, social programs are designed to redress social class divisions. In Canada, they are viewed as tools for cultivating integration. “Many Canadians, especially in English Canada, have come to see Medicare and other national social programmes as part of the Canadian identity, something that distinguishes them from their powerful neighbours to the South, and part
of the social glue holding their vast country together” (BANTING, 2005, p. 131).

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