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A Comparative Study of Dynamics in Federal Political Systems in Times of Crisis

By

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Doctor of Philosophy**

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Abstract

The thesis seeks to develop understandings of dynamics in federal political systems in crisis, the nature of the relationship between crisis and process, and the range of tools available for conflict reduction that extend beyond those available in the constitutional frameworks of each system.

The dissertation explores these through a comparative study of a small *n* of cases that meet the criterion of a period of crisis as the independent variable: the Staten Island secession crisis in New York City, the existential crisis of Quebec's relationship with the rest of Canada, and the crisis of the UK and European integration at the time of Maastricht. The data collection process for each is framed on a temporal basis, within the duration of crisis as defined, and spatially, within the territorial extent of the system. The thesis uses data gathered from primary and secondary written sources based on the relevance to the research questions and conceptual framework. The analysis, located in the comparative section, identifies a number of important findings that contribute to theoretical understandings of federalism. The evidence gives support to, and extends the understanding of, federalism by demonstrating that the crisis potential in each case becomes evident because of challenges to some communities' values that arise from the process-based nature of federalism, through identifiable demands and counter-demands made by actors. Moreover, it highlights how the constraining nature of constitutional frameworks makes the use of extra-constitutional arrangements essential, in particular with the use of instrumentalities. The thesis also develops an understanding of how federal power sharing evolves post-crisis with flexible understandings of the division of competences, and the potential for a return to crisis in systems in the absence of a deeper understanding and application of federal principles by political elites.

Acknowledgements

Embarking on a project as long and complex as a PhD was far from my mind when confronted, in 2008, with the stark choice of facing unemployment, or a return to school to finish my education.

This was only possible through the process, almost Monnet like, of small steps; and from the outset, those who were responsible for my education, in the broadest sense, gave me the support and encouragement to set out on, and continue, this path.

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Through the process, I have also been fortunate to have the love and support of my children, Nathan and Hannah, my brothers Charles and Paul, and my partner, Chrissie to whom I dedicate this work with love.

Table of Abbreviations

BP	Borough President (NYC)
BNAA	British North America Act (1867)
BofE	Board of Estimates
CBC	Canadian Broadcasting System
CFSP	Common Foreign and Security Policy
EC	European Community (1965-1993)
ECB	European Central Bank
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFTA	European Free Trade Area
EMU	Economic and Monetary Union
EP	European Parliament
EPU	European Political Union
ERM	Exchange Rate Mechanism
EU	European Union (Post- 1993)
FLQ	Front de Libération du Québec
FPS	federal political system(s)
FPTP	first past the post
IGC	Intergovernmental Conference
IR	International Relations
JHA	Justice and Home Affairs
LPC	Liberal Party of Canada
MDSD	Most Different System Design
MS	European Member State(s)
MSA	Mouvement de Souveraineté-Association
MSSD	Most Similar System Design
NATO	North Atlantic Treaty Organisation
NJ	New Jersey
NYC	New York City
NYS	New York State
PC	Progressive Conservative Party
PQ	Parti Québécois
PR	proportional representation
QLP	Quebec Liberal Party

QMV	Qualified majority voting
ROC	Rest of Canada
SEA	Single European Act (1987)
SI	Staten Island
TUC	UK Trades Union Congress
U.n.	Union nationale Party
UKIP	United Kingdom Independence Party
WEU	Western European Union
WMA	War Measures Act (1970)
WWII	World War II

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1. Introduction

In this introductory chapter, I frame the importance, and originality, of the use of crisis as an independent variable in the examination of dynamics that are inherent in federal political systems (FPS). I also explain the methodological approaches adopted and how these reflect in part my specific worldview. The chapter also gives an overview of the structure of the thesis, its rationale, and the overall findings of the study.

1.1. The Topic

This thesis examines the dynamic nature of federal political systems through the original use of crisis as an independent variable. As such, it draws on two strands of thinking that developed with the author. In the first, interest in the concept of crisis in political systems was piqued by studies in the functioning of the world system of states in International Relations (IR) and global governance. In the second, a life-long engagement with the functioning of the EC later developed with studies in the creation, functioning and evolution of the European project as a federal political system. These two strands of thought initially converged in a dissertation on the asymmetrical development of EMU, and the potential for crisis that this offered for the development of the EC; or, as Pryce and Wessels (1987) called it, a window of opportunity. From this started a search for a PhD subject that would combine the study of crisis with that of the dynamic nature of federal political systems. Here the publication of Michael Burgess's *In Search of the Federal Spirit* (2012) proved serendipitous, for within this work Burgess sought to identify the presence of a federalizing spirit in new federations, drawing on classic literature that examined the dynamic nature of these. I make the argument that by examining federal political systems that are going through periods of crisis, analysis of the resultant dynamics would help to clarify their functioning, using those theoretical lenses supplied by Burgess's framework that are particularly informative about the dynamic nature of federalism. The literature on FPS is dominated by discussions on institutional frameworks, areas of policy, and specific crisis events. This study seeks to add to the canon of literature that explains the federalism, the federal principles, that underpin such systems. In effect, I seek to go behind and beyond the institutional into the ideological in respect of the operation of systems organised on federal principles.

The thesis thus aims to draw on the canon of federal literature that identifies dynamic features in federal political systems – in the works of Bryce, Wheare, Livingston, Friedrich, Elazar, Kincaid, and Burgess, and to extend and update the empirical basis for the theoretical framing of the dynamic features that these scholars offer. As such, the thesis does not seek to offer a

new theory of federalism, but to extend the understanding of the application of existing dynamic based theories through an original use of crisis in a comparative methodological framework. In the theoretical canon, there is a paucity of relevant empirical evidence for the existence of dynamic features. These display elements of effect and counter-effect, in Bryce's terms centrifugal and centripetal forces (1901), in Friedrich's terms federalism as process (1968), in Livingston's terms demand and counter-demand and the existence of beyond the constitution 'instrumentalities' (1952, 1956) and in Kincaid's terms in the balancing of power (1995).

My use of the 'underused' (Hay 1999) variable of crisis enables me to locate case studies that fulfil the need of meeting similar scope conditions, but which also vary sufficiently within the understanding of federal political systems to offer sufficient contrast. The case studies, of Staten Island's secession crisis of 1989-2002, Quebec and Canada's existential crisis of 1967-1985, and the UK and EC's crisis over Maastricht of 1987-1993, cover a range of systems which, whilst not all federations, are predicated on substantial degrees of federalism as organising theory. Not only does this range of types of systems add to the richness of the data, and the potential for meaningful comparisons, but it also offers an important element of originality to the thesis.

The choice of the topic has normative aspects – the extended use of political systems based on federal principles is an identifying feature of post-World War II (WWII), and post-Cold War global development.¹ The fundamental principle of federal systems requires the management of two inherently unstable diametric concepts - unity and diversity. In their formation, and management, such systems have the capacity for dynamic change – even when they seem stable. When subjected to the pressures that arise from a crisis where the stability, or equilibrium, of the system is challenged, understandings of the potential for dynamic change that ultimately has the capacity to restore the balance between unity and diversity, are important. It is through these understandings that the maintenance and/or creation of conditions for dynamic change can be assured, or at the very least can ensure that such conditions are not reduced.

1.2. Methodological Concerns

The study seeks to examine patterns of dynamics in a number of federal political systems through the independent variable of crisis. The methodological underpinning for the project is the consideration of human interactions through an interpretive paradigm, using comparative

¹ See Burgess, M., (2012) *In Search of the Federal Spirit* Oxford: OUP pp. 1-2.

methodology as an explanatory approach. This feeds through into the research design, discussed in section 1.3.

1.2.1. Comparative Methodology and Interpretive Explanatory Approaches

The method of the research is the selection of a small n of case studies based on an identified independent variable, and the analysis of these cases through the conceptual framework of the dynamic nature of federalism. The analysis of the individual cases will give some understanding of the phenomenon of dynamics, and a subsequent comparison of the cases will enable explanations to be made through the identification of similarities and differences. As Landman and Robinson (2009) discuss, these approaches give the possibility of results that are richer than single cases:

'The field of comparative politics has been defined by what it does, namely providing explanation and understanding of important social and political phenomena through the comparison of similarities and differences across different units, where such units are typically, but not exclusively, nation states' (p.1)

'Evidence is collected and analysed in systematic fashion to yield substantive inferences that typically go beyond the confines of the case or cases that have been compared' (ibid p.2).

Ragin and Robinson (2009) identify the need for detail in each case; the selection of the n of cases in my study was made both for operational reasons and to allow time/space to be applied to detail:

'Comparative research can bridge the divide between qualitative, case oriented research and quantitative, variable oriented research. Like case-oriented methods, comparative methods maintain the integrity of cases; like variable oriented methods, comparative methods examine patterns of relationships among variables . . . [and] may be used for both theory development and hypothesis testing. With a moderate number of cases (usually around 5-50), it becomes possible to examine cross-case patterns while still attending to the details of each case' (p.15).

The approach is predicated on some previous ideas of how the research questions, concepts and variables might 'fit':

'comparativists typically begin their research with a rough idea of the concepts, variables and cases that are likely to be relevant to their research question . . . to answer their research questions by examining the fit between concepts and cases, ideas and evidence. The notion of "fit" is key. Through investigation of the fit between theory and data, comparativists discover areas for adjustment and improvement' (ibid.).

The research is based on the review of existing documentation that analyses the crises that form the empirical part of the study, and on the use of primary historical sources that give a rich understanding of the questions in my research. One of the issues in comparative politics that Mahoney and Villegas (2007) highlight is the tendency of the spatial analysis to remain the focus, where in some cases more attention should be drawn to temporality, arguing that 'temporally defined concepts are key variables of analysis' (p.78). The use of the concept of crisis as defined in the thesis enables me to locate my research at both the spatial, and

temporal, defined in terms of territory (an essential element of federalism) and time (a factor in crisis).

In the literature, the debate over the benefits and demerits of the comparative approach and the use of a small *n* of case studies centres on questions of:

'loosely framed and non-generalizable theories, biased case selection, informal and undisciplined research designs, weak empirical leverage (too many variables and too few cases), subjective conclusions, non-replicability, and causal determinism. To some, the term case study is an ambiguous designation covering a multitude of "inferential felonies"' (Gerring 2007 p.93).

Gerring continues in this vein:

'The methodological status of the case study is still, officially, suspect. Even among its defenders there is confusion over the virtues and vices of this ambiguous research design. Practitioners continue to ply their trade but have difficulty articulating what it is they are doing, methodologically speaking' (ibid.).

Notwithstanding these difficulties, Gerring identifies significant advantages in the small-*n* approach, and where the researcher seeks to explain, and conjecture, rather than to refute an existing hypothesis. However, there is an intrinsic link between the two concepts of conjecture and refutation, in a circular nature that is evident in case-study research. Here Gerring cites Charles Ragin:

'case study research is all about "casing" – defining the topic, including the hypothesis (es) of primary interest, the outcomes, and the set of cases that offer relevant information vis-à-vis the hypothesis' (Ragin 1992 in Gerring 2007 p.99).

As such, the comparison of case studies tends less towards the ability to 'confirm or disconfirm hypotheses' (Gerring 2007 p.100) and more towards the generation of paradigms. Linked to this concept, and salient to my study, is the ability for case study methodology to identify causal mechanisms, where in large-*n* studies the more associated outcome is in the identification of causal effects.

Gerring's concluding remarks are worth quoting at length, as they make a strong case for the use of case studies in most different models:

'... case studies are more useful when the strategy of research is exploratory rather than confirmatory/disconfirmatory, when internal validity is given preference over external validity, when insight into causal mechanism is prioritized over insight into causal effects, when propositional depths is prized over breadth, when the population of interest is heterogeneous rather than homogeneous, when causal relationships are strong rather than weak, when useful information about key parameters is available only for a few cases, and when the available data are concentrated rather than dispersed' (ibid p.116).

In terms of the epistemological framing of this study, I approach the discovery of the dynamic features of FPS by framing the words and actions of institutional actors within ideological and historical contexts. I argue that the actions of individuals and groups cannot be considered as pure facts using a positivist approach – the comparison of the cases studied requires a deeper understanding of the context in which events occur. In this respect, I draw on the

understandings of anti-foundationalism as discussed by Bevir and Rhodes (1999, 2002, and 2004) and on the idea that

'We cannot appeal to a logic of vindication or refutation. Objectivity rests on criteria of comparison. The interpretation we select will not be one which reveals itself as a given truth. Rather, we will select the "best" interpretation by a process of gradual comparison' (Bevir & Rhodes 1999 p.14)

The interest in the approach as defined above lays in the ability to understand the persistence or change in the application of a set of beliefs or principles that fall within the ideological understanding of federalism. As will be discussed, federalism as a principle of organisation has an ideological character, as opposed to federation as the institutional structure of federations and similar FPS. The latter can be, and indeed have been, analysed using positivist comparative methodologies (notably Wheare 1946, Watts 1999) to establish similarities and differences in their constitutional and institutional features. To understand how federalism as an underlying principle is embedded within the FPS examined, and in the absence of explicit positivist evidence (e.g. clear statements of actors' ideological and social motives for their actions) an examination of the contexts in which actors operate is essential.

Bevir & Rhodes expand on this by arguing that the study of actors 'beliefs, desires or actions' (1999 p.14) has to move away from a mere reading of 'objective social facts about them' (ibid.). They advocate the interpretation of these against the backgrounds of 1\ 'tradition' and 2\ 'dilemmas' (ibid.). In this thesis, I examine tradition in each case, and in particular the evolving nature of the understandings of federalism as process as set against the persistence of tradition as an element of territorial identity. Moreover, in the examination of the process of federalising that forms part of the theoretical framing of the study I focus on the dilemmas faced by actors in FPS in their decisions over maintaining the unity of the system and the diversity of the constituent units. In extreme situations, and this is the case in the crises examined, these dilemmas become extended to become existential – decisions made by actors have the potential to fundamentally change the historical basis of the system of governance. Indeed, for Bevis & Rhodes 'change occurs in response to dilemmas. A dilemma arises for an individual or institution when a new idea stands in opposition to an existing idea and so forces reconsideration' (2002 p.17).

Bevir & Rhodes (2004 pp. 133-135) acknowledge the role of the study of institutions, but in a move away from 'unhelpful' terms such as 'path dependency' claim that interpretive approaches offer a 'decentred' framework in which the problematic of the positivist analysis of institutions is addressed. Here, the idea of the institution as setting the behaviour of individuals is replaced with the idea that the individuals within the institution produce the behaviour (Bevir & Rhodes 2004 p.135). In their examination of British Governance, they seek to understand the changes in governance from a unitary system to a system of networks (ibid. p.133). They

set out to achieve this through a process of decentring to identify the 'ways in which individuals construct governance' (ibid.) – and use history and ethnography to construct stories 'of other people's constructions of what they are doing; that is, thick descriptions of individual beliefs and preferences' (ibid.). I apply the principles of this interpretive methodology in the examination of the case studies – as the data will show it is rare that individuals explicitly frame their actions or speech in terms of a federal ideology. My role as researcher is to seek the historical and traditional values and ideas that frame such discourses, and to map changes in these to explain dynamic features in federal political systems.

1.2.2. Comparative Method Design used in The Thesis

The research design used in the thesis is based on a comparison of three case studies. The comparative method forms one of a triptych of research paradigms, namely the *experimental*, *statistical* and *comparative* (Lijphart 1971 p.683). The first paradigm, common in natural sciences, requires two equivalent groups, of which one is exposed to a stimulus, and the other (the *control*) is not. It 'can only rarely be used in political science because of practical and ethical impediments' (ibid. p.684). The closest approximation to the experimental method is the statistical, through its use of control in *key* variables. The system uses 'empirically observed data' from situations that cannot be manipulated as in the experimental method, and then seeks to replace in part the 'control' with the use of 'partial correlations' (subsets of data sets) that uses the same 'logical functions of experiment' (ibid.). The third method, the comparative, follows the same logic as the experimental method, and it

'resembles the statistical method in all aspects except one . . . the number of cases it deals with is too small to permit systematic control by way of partial correlations' (ibid).

Lijphart argues that the comparative method is 'only a very imperfect substitute' of the experimental method, and that wherever possible the statistical method should be used (ibid. p.685). However, he qualifies this with the caveat that while the 'conscious thinker' (ibid.) in comparative politics should realize the limitations of the method, he should also 'recognize and take advantage of its possibilities' (ibid.). Lijphart critiques the comparative method for its use of 'too many variables, too few cases' (ibid. p.686) but where time, resource and energy constraints prevail,

'the intensive comparative analysis of a few cases may be more promising than a more superficial statistical analysis of many cases' (ibid.).

He cites E. A. Freeman's early (1873) assessment of comparative methods as the 'greatest intellectual achievement of the time' and the chance this gave to create 'analogies . . . between the political systems of times and countries most remote from one another' (Freeman 1873 in Lijphart 1971 p.687).

Sartori, (1991) makes a case that the comparative method is accused of ‘incommensurability’ in the sense that the explanations derived from the method do not lead to generalizable laws (p.252-253), however, he answers the question of the validity of comparative methods in two ways. Firstly, drawing from the literature he establishes *justification* by seeking the areas in which the method complements the statistical: in explaining (Przeworski 1987 in *ibid.* p.244); in providing ‘the key to understanding, explaining and interpreting’ (Ragin 1987 in *ibid.*); and in having the goal of ‘the building of empirically falsifiable, explanatory theory’ (Mayer 1989 in *ibid.*). Secondly, Sartori establishes *commensurability* by showing that the comparative method gives an analogous process of control to the statistical method. Indeed, here Sartori argues that ‘*comparing is controlling*’ (1991 p.244 emphasis in original), but merely uses a different type of control to that used in the statistical method; so Sartori argues that when faced with Lijphart’s ‘many variables small *N* problem’ (Lijphart 1971 cited in *ibid.* p.245)

‘*our best option is to have recourse to the comparative method of control*’ (*ibid.*).

The theoretical justification for the use of comparative methods alongside, or instead of, the statistical or experimental alternatives rests on elements of commensurability and effectiveness – but in respect of the application of the method to chosen problems or inquiries the problem of ‘comparativeness’ (Sartori 1991 p.246) has first to be tackled. Here we should look at the attributes of the things (in this case political entities) to be compared. Sartori makes an argument that the attributes must be classified as being either the same (similar), or different (dissimilar). There is a difference between sameness/difference and similarity/dissimilarity in terms of the nature of the criterion – and it is up to the researcher to decide on whether to adopt an exclusive (narrow) interpretation or an inclusive (broad) approach when grouping attributes into ‘classes of similarity’ (*ibid.*). In the justification of the choice of case studies below, I discuss how the selection of the cases draws from this important concept.

Once the problem of the classification of attributes has been tackled in respect of the cases under consideration, the researcher can then examine these for comparativeness. Here, Sartori argues that, according to the criteria of the attributes decided by the researcher, a decision can be made on whether the ‘things’ can be compared;

1\ if the entities are similar in every respect, then effectively they are the same entity and no comparison is possible

2\ if the entities are different in every respect then no comparison is possible

3\ if the entities ‘are in part shared (similar) and in part non-shared (and thus we way, incomparable)’ (*ibid.* p.246) *then* we can engage in a comparison.

The selection of the case studies thus depends on the researcher's decisions on questions of similarity and difference, which in themselves draw from the theoretical framework in which the researcher operates, and the questions to which the researcher seeks answers, or explanation.

In this respect, the researcher seeks to understand how the relationship between phenomena under investigation, (as the dependent variable), and their external sources, are related causally; and how consequently the researcher can make 'convincing statements about causation, given the complexity of interactions among the whole range of social phenomena, and the number of external sources of variance' (Peters 1998 p. 28). Finding correlations with these data is not necessarily the problem, finding causation remains the difficulty, but here J.S. Mill's *A System of Logic* (1846) offers a grounding for a system of case selection that creates the conditions in which causal connection between variables can be made. This contributes towards a 'comparable-cases strategy' (Lijphart 1975 p.163), that Mill based on three conditions: *the Method of Agreement, the Method of Difference, and the Method of Concomitant Variation* (Peters 1998 p.29). The table below summarises the relationship between Mill's first two methods, causality, and the methodological strategy choices available.

The fundamental logic inherent in Mill's methods rests on the principle that there is an inverse relationship between the similarities in the circumstances in which the phenomenon occurs (the independent variable) and the similarities in the observed phenomenon (the dependent variable). In the *method of difference*, if the observed phenomena are dissimilar, but the circumstances of the cases are similar barring one variable, then this variable has caused the variance. Conversely, in the *method of agreement*, if the observed phenomena are similar but the circumstances of the cases are different barring one variable, then this variable has caused the similarity (Peters 1998 p.29). The principles of logic adumbrated by Mill feed directly into the operationalization of the research in both its design and method. These are summarised in the table below.

Table 1 Mill's Method of Agreement and Difference

Mill's Method	Observed Phenomenon in cases	Circumstances of Phenomenon in cases	Cause of Phenomenon	Linked Method of systems design
Agreement	Several similar (agree)	Only one similar (agree) rest differ	One similar circumstance	Most Different Systems Design
Difference	Dissimilar (disagree)	Only one dissimilar (rest agree)	One dissimilar circumstance	Most Similar Systems Design

In selecting the 'comparable-cases' approach (Lijphart 1975 p.164) the researcher seeks to identify cases that have high levels of similarity, and thus hope to be able to attribute any difference in the dependent variable on the few remaining different independent variables. This system or design of research was later called the 'most similar systems design' (MSSD) by Przeworski & Teune (ibid., Peters 1998 p. 37), and became 'the usual method that researchers in comparative politics undertake' (Peters 1998 p. 37), as in selecting entities (usually states) that 'appear to be similar in as many ways as follows' (ibid.) researchers hoped to eliminate extraneous variances. These are variables which are systematically related to both the independent and dependent variables in the study – and are particularly prevalent in whole country studies (ibid. p.33). Peters argues that there are potential defences against such problems. The first is the use of theory in selecting the right control variables to determine the cases. The second is in the use of sub-national units within a single country to eliminate cross-country social and cultural dimensions.

An alternative proposal by Przeworski & Teune (ibid. p.38, Sartori 1991 p.250) was to reduce the phenomenon of extraneous variance through the deliberate selection of most different systems (MDSD). This approach is particularly suitable for the subject of interest in this thesis – which is the identification of the presence of common or analogous use of federalism as a principle of organization of political systems, including approaches to conflict reduction. We will discuss in the conceptual chapter the difference between federations, the institutional frameworks of organisation of a type of state, and federalism, as the theory or principle of organisation that underpins these. In seeking to understand the similarities in the application of federalism as a principle of organisation, our quest would be hampered by examining federations – for these are also similar in their institutional features (parliaments, courts,

political parties). As discussed, these comparable cases would contain the 'confounding background variables' that Peters argues can result in 'a large number of possible and plausible explanations, none of which can be ruled out' (1998 p.38) for the principle question of the theses: how do FPS in crisis resolve/reduce antagonism? This is the first reason for eliminating the MSSD approach.

The second motivation for the MDSD approach is in the possibility of increasing the potential *N* of cases available for comparison by shifting the starting point of the analyses away from countries as unit of analysis (Przeworski and Teune 1970 in Lijphart 1975 p.164). This derives from 'an assumption that the phenomenon being explored resides at a lower, sub-systemic level' (Peters 1998 p.38). In the conceptual chapter, I discuss how the understanding of federalism in the literature (Livingston 1952, 1956) is based on bottom-up processes, where changes at the individual and aggregate societal level influence the actions of individual and aggregates of elites. In this respect, the MDSD fulfils the requirement to delve below the level of the system.

The third argument for the use of the MDSD is in the logic attached to the principle of falsification. In this method, for Peters (1998), the choice of a wide range of settings for the collection of data eliminates many of the possible causes for the observed phenomena (p.40). However, the caveats made by DeFelice (1986), and Peters (1998) need to be taken into consideration here. For, whilst the systems themselves may differ, there may be deeper causal processes at work where systems contain common causal factors. These may, as discussed above, confound the researcher's understanding of causality in similarities in the observed phenomena. Here, the strategy in the choice of the cases has been based on a selection of most dissimilar – where each draws from a dissimilar tradition of federalism, has a dissimilar form of system organisation, has differing bases of cleavage, has different territorial contiguities with the rest of the FPS, varied balances of competences between constituent and federal levels, a wide range of political party systems, and differing types of protection afforded by a range of institutionalisation of rules. The discussions on these concepts follows in the chapter on conceptualizing crisis and federalism, I set out below in a table the salient criteria on which I justify the choice of the three case studies on the MDSD method.

The conceptual chapter discusses the two similarities on which the cases were selected; the first is the presence of crisis, the second on the presence of a federal principle of organisation of territorially based societies. The crisis element of each case is discussed in the case in question, and in section 1.3.1 below. Each crisis has the broad similarity of a challenge to some existing arrangement between the constituent unit and the system which affects an aspect of the society of that territory and none of the rest of the system. The broad similarity in respect of the systems themselves is based on the understanding of FPS established by

Watts (1998, 2007), and extended by Martin (1962) and Elazar (1987) to include systems at levels both below and above the state. The fundamental principles established in the literature (Wheare 1947, Friedrich 1963, 1968, Elazar 1987, Burgess 2006) refer to several facets without which a system cannot be considered federal. These include: the territorial basis of the system, with distinct societies located on identifiable territorial units; the existence of two (or more) levels of government which make laws or otherwise govern the population of a constituent unit; some form of regulation of rules, through either a written text or usage; a division of competences where either the constituent unit or the general government have at least one policy field in which they can be competent, and an arbiter to decide on disputes between levels of governance.

The differences between the FPS, and the constituent units, provide the elements of control that allow for the findings of the study, the dynamics in each system, to be compared as the dependent variable. Again, each of these is discussed in the relevant case chapter, and below in the section on the measurement of criterion. The three cases are broadly dissimilar in important areas: geography and territory; society; constitutionality; and political systems, as discussed below.

The size, and original status of the constituent units ranges from a borough of 700,000, to a former French dominion of c. 8mio, to a former imperial power of c. 63mio. The FPS of which they form part are dissimilar: SI forms part of NYC, a metropolitan area in the State of New York, itself a part of the federation of the USA; Quebec forms one of the founding units of the Canadian state, a 'classic' federation with two levels of government; and the UK is a member of a FPS in which states have integrated in a hybrid supranational/intergovernmental structure. The territorial nature of the constituent units and the FPS to which they belong also differs. Where SI had an island status until 1967, the Verrazano Narrows Bridge created a physical attachment to the rest of NYC which created conditions of change salient to the later crisis. Quebec's territorial identity was forged in the pre-British era, and though the province is contiguous with the RoC, it maintained its separate identity in terms of agriculture, language and religion. The UK has had an island status, reinforced by an exceptionalism drawing from a history of indomitability - unconquered since the Norman invasion of 1066 – and of a history of global empire building. Thus, the three cases examine FPS at the sub-state, state and supra-state levels of analysis, and vary in terms of population size

The societal basis of the three cases examined is also broadly dissimilar. In the first case, whilst the developing society of SI is Anglophone, important differences in ethnic mix, coupled with tradition, and land-use, combine to create a clear identification of SI's different identity compared with the rest of NYC. In the case of Quebec, a pre-existing society based on language, religion, culture and tradition was challenged firstly by assimilatory forces post-

conquest, and later by similar forces post-WWII with the development of the Canadian welfare state. In the third case, the complex British identity developed over hundreds of years included important elements of identification with sovereignty, and exceptionalism, that became challenged by accelerated drives to deepening integration in the EC post 1987.

The type of, and protection afforded by, written rules differs over the three cases. In SI, the existence of Charters of incorporation of the City of NYC is dependent on the agreement of the state of NYC – although citizens of NYC are consulted through referenda on changes. However, any constitutional protection afforded by the Charters depended on their respect of the overweening power of the US Constitution, and in the case in question the crisis is a function of the clash between these two constitutional documents. In the Quebec case, the 1867 BNAA formed the Constitution of Canada, but was incomplete in several respects: the reliance on the UK's parliament for amendment; the lack of provision of a second chamber; and the existence of a disallowal clause that limited in theory the powers of provincial parliaments' actions. The inability of Quebec and Canada to find a solution to the constraints of the incomplete constitution resulted in the former's quest to find alternative means to gain the 'special status' and protection that it sought, up to and including secession. In the case of the UK, domestic legislation and usage had created a form of unwritten constitution, however through treaty agreements areas of policy competence had been passed over, with the concomitant pooling and sharing of sovereignty, to a range of intergovernmental bodies.² However, with the EC/EU the nature of the pooling of sovereignty changed with the development of deeper integration through which supranational institutions were conferred with competences in more areas, with legislative capacity that over-rode Westminster's authority. It was the deepening and widening of the competences and the perceived impact that this might have on Westminster's authority, and hence the UK's constitutional integrity, that was to be at the heart of the crisis.

The final highly salient difference is in the arrangement of political parties in the systems. In the case of SI and NYC, partisanship between the two main parties (Democrats and Republicans) exists at the State, NYC Mayoral level and in the Council. However, in the BofE, bipartisan arrangements mirror those at borough level, where local interests and pressures tend to trump party political cleavages. No local parties exist, although the local representatives at BP, Councillor, and State senator carried SI's interest to the State level. In Quebec and the RoC, distinct parties developed at the constituent unit level of government, some as representatives of a new separatist movement (PQ, RIN) and some as a result of a

² NATO, UN to name but two.

separation from national parties (QLP/PLC, U.n.). National parties continued to represent Provinces in the federal government, until the development of the Bloc Quebecois. The UK formed part of a developing political system in which, from 1979, direct elections by MS of representatives at the EP started a slow, as yet unfinished process, of developing cross MS party representation of European citizens. However, at the time of the Maastricht crisis the UK's citizens' political representation rested firmly anchored with the predominantly two-party system at Westminster, and elite representation drawn from the majority party. The two parties varied their support/antagonism for the European project, both between the two, and with significant variance within each party. A feature of the post-crisis period was the development of parties devoted to a withdrawal from the EU, a goal achieved in June 2016 with the Brexit vote.

The selection of the three case studies was thus carried out within the conceptual framework of the presence of crisis in an FPS, across a range of very different systems that meet the criteria of MDSD. The consequent examination of the dynamics of the system, as discussed below, could be made taking into consideration the potential extraneous variant as discussed above, and the extent to which the MDSD eliminated these could be assessed in establishing causality between the independent variable of crisis in FPS and the dynamics of federalism as the dependent variable.

I discuss the dependent variable below, after a summary table of the structure of the MDSD research model used in the thesis.

Case	Differences	Similarities
Staten Island and Rest of NYC	<p>Small population, county status before incorporation as Borough</p> <p>Constituent unit of sub-constituent unit in FPS at third tier of federation</p> <p>Incomplete protection from loss of influence through Charter change</p> <p>Highly centralized with few high salient competencies at lowest level</p> <p>Socio-economic-environmental basis of cleavage</p> <p>No local party framework, uses existing political party frameworks from higher levels, important bi-partisan activity.</p> <p>Little evidence of intergovernmental activity.</p>	<p>Federal principle of organization.</p> <p>Territorial organisation</p> <p>Two (or more) levels of government</p> <p>Division of competences</p> <p>Liberal Democratic system</p> <p>Arbiter (court) to settle constitutional disputes</p>
Quebec and the Rest of Canada	<p>French dominion until 1763, autonomy varied until incomplete guarantee provided by Constitution (BNA 1867)</p> <p>Constituent unit in FPS at second tier of federation</p> <p>Decentralized system in process of recentralizing</p> <p>Socio-Linguistic basis of cleavage</p> <p>Has political parties both at provincial and federal level, some national/provincial links, and developing intergovernmentalism (horizontal).</p>	<p>Crisis developing from challenge to constituent unit's societal basis.</p>
UK and the Rest of the EU	<p>State with former imperial role</p> <p>Constituent unit in hybrid supranational/intergovernmental system – cross-over of integration, interdependency and independence according to competence</p> <p>Highly centralized in some competencies, non-centralized or incomplete centralization in others.</p> <p>Evolving degrees of real and perceived autonomy of action through Treaty Change</p> <p>Socio-Historical-cultural basis of cleavage</p> <p>Has political parties at national level, limited cross country parties at supranational level.</p>	

Table 2 Elements of differences and similarities in case selection

1.3. Dynamics in FPS – the Dependent Variable

The thesis seeks to identify change in FPS that takes place at the interface between the theoretical understandings of federalism as a system of organization and the institutional reality of the FPS that are dynamically linked. As we will discuss, the reflection of the societal basis of territorially organised political system (Livingston 1952, 1956) is in constant flux, as internal and external influences on the societies, and the systems in which they are located, take effect.

1.3.1. The Relationship of Crisis to the Dynamics of Federal Political Systems

The literature on the developing dynamics in FPS tends to focus on incremental change, a slow process to which the FPS have time to adapt and evolve in turn (Benz & Broschek 2013). In this thesis, the emphasis is on examining dynamics that occur as a result of a crisis in the relationship between a constituent unit and its FPS that poses an immediate threat to the historical basis of the FPS. In this respect the study does not focus on crisis of FPS that hits the system as a whole – for example the European banking crisis post-2008 that required systemic changes to ensure the survival of the system, or a critical element of the system, in this case monetary union. The focus is on systems where the equilibrium between the twin tenets of unity and diversity (Elazar 1987) is placed in peril by an event, or series of events in a short time, that accelerate the development of tensions between a constituent unit and its FPS. These developing tensions reflect the slow processes discussed by Benz & Broschek (2013), but the advent of the focusing events in the FPS moves the issues from the background (a state of immanence) to the foreground (a state of evidence), as discussed in the following chapter. The essential nature of the focusing event is in its suddenness, its potential for further harm, its geographical precision, and its simultaneous appearance to all levels of civic and political society. The table below sets out the three case studies and the nature of the immanent crisis, and the focusing events that brought these from this state of immanence into evidence.

Relationship between Crisis, Focusing Events and Threats to FPS			
Case Study	Immanent Crisis	Focusing event(s)	Threat to System
Staten Island and NYC	Continuing dissatisfaction with NYC treatment of SI in land use, attitudes, geographical discrimination. Balanced by SI's asymmetrical representation on Board of Estimates.	The withdrawal of SI's political representation in NYC's second chamber with the <i>Morris v Board of Estimate</i> (1989) decision.	The secession of SI – a symbolic and practical blow to NYC.
Quebec and the rest of Canada	Conflicting understandings of paths to Quebec's development – through full participation in Federation, or drives towards greater autonomy. Predicated on fears of assimilation and loss of distinct character.	Charles de Gaulle's 1967 'Vive le Quebec Libre' speech. The 1970 October crisis, and the impact of the deployment of troops in Quebec, along with War measures act. 1967-1970 Creation of separatist parties (RIN, PQ)	The secession of Quebec.
UK and the EC/EU	Persistence of misunderstandings of federalism as underpinning of EC project. Support by UK of Delors 1992 project without acknowledgement and understanding of spillover effects	Bruges speech 1988 (German unification 1989) Thatcher ouster 1990	The refusal of UK to agree to Maastricht – potentially preventing EMU and German anchoring in system.

Table 3 Immanent Crises and Focusing Events

1.3.2. *The Nature of Dynamics – the Metrics of Change*

In the chosen research design, the MDSD method, the researcher seeks to identify similarities of outcome by defining wide, or narrow, areas of sameness (c.f. Sartori 1991). In the cases studies and the comparative chapter I draw from the literature on federalism as theory of organisation to identify these areas that then become the broad parameters for subsequent analysis. Within these areas, I define the indicators by which change can be 1\ identified, and 2\ where possible measured. In some areas, the measurement can be quantified numerically (polling support, political representation), in others in a binary (yes/no vote, constitutional amendment/no constitutional amendment) but in others the measurement is of feelings/attitudes where the normative change can be inferred from the use of the interpretive paradigm.

In the tables below I set out the framework for the identification for each area of similarity of outcome that form the dependent variable of federal dynamics: 1\ the parameters of the area, 2\ the type of measurement, 3\ the means of measurement, and 4\ the range of measurement. In line with the method of MDSD, and following Sartori (1991) I group subsets of variables within broader areas of sameness. As discussed, in the FPS chosen as being most different precludes *direct* comparison of areas; indeed, the very premise of MDSD requires the elimination of background variances that come from similar systems design. As such, and for each case, a number of the metrics for comparison will be valid, and some will be invalid. However, across the metrics within a broad area the presence of similarities will be understood as a representation of a positive correlation, and thence a case can be made for causation in the absence of other meaningful explanations for the phenomenon.

I identify three main areas for comparison:

- 1\ Political representation,
- 2\ Demand and counter-demand leading to non-constitutional change, and
- 3\ the re-setting of relationships between the constituent unit and the FPS.

Area # 1 – Dynamics in Political Representation of Constituent Unit			
<i>Parameter</i>	<i>Type of measurement</i>	<i>Means of Measurement</i>	<i>Range of Measurement</i>
Demand for political representation following crisis	Normative	Description of demand by community under threat.	full demand to no demand (Null)
Adaptation of existing elite representation	Normative	Description of change of existing elite representation to reflect demand.	full change, partial change, no change (null)
Development of new elite representation	Empirical	New political party representation to reflect demand.	New party, no new party
Influence of elite representation	Normative	Description of success of elite representation in promoting cause.	Positive response from system elites, partial response, no response (null)
Support for elite representatives of change	Empirical	Data from Opinion polls, referenda, election results	Positive, neutral or negative support for representation of change.
Use of Intergovernmental structures (IGS)	Normative	Description of horizontal and vertical linkages between 1\ constituent units 2\ Units and general govt.	High use of IGS, low use of IGS, IGS not applicable, IGS unused
Use of Charter commissions, boards of enquiry,	Normative	Description of type of enquiry, commissioning agent, purpose, outcome and subsequent use/abuse	Existence of enquiry, unilateral/bilateral commissioning, use/non-use/abuse of output.

Table 4 Metric 1 - Political Representation

Area # 2 – Demand and Counter-Demand – Non-constitutional change			
<i>Parameter</i>	<i>Type of measurement</i>	<i>Means of Measurement</i>	<i>Range of Measurement</i>
Demand for recognition as distinct society	Normative	Description of demand by community under threat	Full demand, implicit demand, no demand (null)
Counter-demand/inertia of rest of FPS	Normative	Description of resistance of FPS – justification for inertia	Rejection, resistance, alternative proposals, no reaction (null)
Demand for change in attitudes	Normative	Description of exchanges between communities and their elites	Positive exchange of views, neutral exchange of views, confrontational exchange, no exchange (null)
Demand/resistance for territorial autonomy (T.A.)	Normative	Description of nature of demand and counter-demand	demand for full T.A., demand for extended T.A., resistance to reduced economy, no demand for T.A. (null)
Support for T.A. proposals	Empirical	Polling data, Opinion poll data, Parliamentary votes	Full support for T.A., qualified support for T.A., no support for T.A., no data (null)
Demand for changes in allocation/use of competences	Empirical Normative	Formal demands through treaty/constitutional change De facto changes through usage	Formal/de facto change, contested change, no change

Table 5 Metric 2 - Demand and Counter-Demand

Area # 3 Re-setting of relationships			
<i>Parameter</i>	<i>Type of measurement</i>	<i>Means of Measurement</i>	<i>Range of Measurement</i>
Political acknowledgment of constituent units' rights in high salience areas	Normative	Description of relationships post crisis	Full, part acknowledgement of rights, no acknowledgement (null)
	Empirical	Asymmetric conferral of rights	Conferral, no conferral (null)
Constituent units' acceptance of new settlement	Normative	Description of relationships post crisis	Full, part, acceptance, no acceptance (null)
	Empirical	Polling data, election results, parliamentary votes	Acceptance, no acceptance (null)
Potential of long-lasting settlement	Normative	Discussion of socio-political exchanges. Adoption of 'veil of ignorance'	High probability of lasting settlement, low probability, no probability (null)
Renewal of federal principles underpinning system	Normative	Examination of evidence of continuing discontent with federal basis of system	No evidence of discontent, some evidence of discontent, high evidence of discontent (null)
Use of instrumentalities: novel and extra-constitutional measures	Normative	Description of new 'habits, attitudes, acceptances, theories, (Livingston 1952 p.91)	Newly re-framed understandings, no new understandings (null)
	Empirical	New extra-constitutional frameworks, new asymmetrical legislation, new arenas of political activity	New contexts, some new context, no new contexts (null)

Table 6 Metric 3 - Re-Setting of Relationships

1.3.3. Application of Metrics

The tables above show how within each broad area of similarity of outcome, that forms the dependent variable, there are both normative and empirical measurements possible. The metrics, the actual measures of the similarities in output for each area, are in large part covered within the case study discussion, and this is particularly valid for the normative measurements. In each case study the data is presented and analysed through the theoretical frameworks of crisis and federalism, with analogous sections in each chapter that cover the development of the crisis, the crisis events, and post-crisis resetting of relationships, including the use of instrumentalities. Where appropriate links are drawn between case studies, or the analysis highlights where the nature of the dynamic of the case study is particular to that case, but still offers valuable insights into the functioning of the particular FPS.

The comparative analysis of the three case studies is mainly carried out in chapter six, where the structure of the analysis follows the tripartite framework. Here I group together the ten thematic elements that follow the research questions in section 1.5 below. These in turn reflect the understandings of the nature of FPS and crisis that are developed in the conceptual chapter. The groupings of these ten elements into the three broad areas of metrics discussed above then permits the analysis of the measured dynamics to gain an overview of the similarities in each area.

1.4. Research Design

In the choice of case studies, I apply the criteria established from the literature to establish the spatial and temporal dimensions in which to focus the data gathering; namely federal political systems and periods of crisis.

Firstly, each case study had to meet the criterion of federal political systems; the requirement that the system was a) political (as opposed to economic, social or cultural) and b) based on federal principles (territoriality, a minimum of two levels of government, balancing unity and diversity).³ This allowed for the inclusion of political systems that are not federations, but which operate on, and are imbued with, federal principles.⁴ It is in this way that I define the spatial dimensions of the case studies.

³ I discuss these principles, with reference to Wheare and others, in the conceptual chapter.

⁴ As above with reference to Friedrich, Watts.

The second criterion to establish the case study choice was that of crisis. Here I sought to identify systems where the presence of a development of the tensions inherent in federal political systems between one section, or community, and the rest of the sections was then characterised by a focusing event.⁵ This is one of the innovative and original features of the thesis; in essence, I take the focusing event as the median point in the temporal dimension of the case study in question. I then work from this point backwards, and forwards, in time, to establish the earliest point at which the crisis starts to develop from immanence to evidence, and the latest point at which the crisis subsides from evidence into a new state of immanence.

In order to contextualise the case studies, I introduce each one with a brief exegesis of the historical development of the system under examination, with specific focus on the values and identities of the constituent units that are at the heart of each case. I then draw from primary and secondary textual data sources to examine the development of the dynamic relationships between the political representations of these to interpret the evidence through the theoretical lenses of federal theory – and in particular in relation to the dynamic nature of federalism as an ideology.

I then proceeded with a textual analysis using primary and secondary sources to create a narrative account of the crisis in each case. Here I chose to use multiple sources to sustain and substantiate the narrative; there is a substantial canon of literature for each of the cases in question, which provided sufficient data. I did consider an alternative, qualitative approach – elite interviews, semi-structured interviews, but given the range and depth of data available considered this superfluous. This choice was, in many cases, one of obligation – for many of the actors involved are no longer alive, or access to them might have been practically impossible. Moreover, whilst first-hand accounts might have added to the narrative, these would still have needed interpretation to contextualise the accounts, and to try to add external evidence of their beliefs and preferences (Bevir and Rhodes 2002 p.134).

This thesis is, to borrow from post-Maastricht terminology, structured in many ways like a Greek temple, but hopefully more robustly! Across the top of the columns, the three case studies, sits the chapter on crisis and federalism, which has informed and guided the data selection process and analysis within each case study. Below the three columns is the base of the edifice, the comparative chapter; here the understandings of crisis and

⁵ As above with reference to Hay, Kingdon, Birkland.

federalism through and between each case study flows down from the theoretical chapter; above the whole edifice sits the abstract and introduction, and at the base, the conclusions.

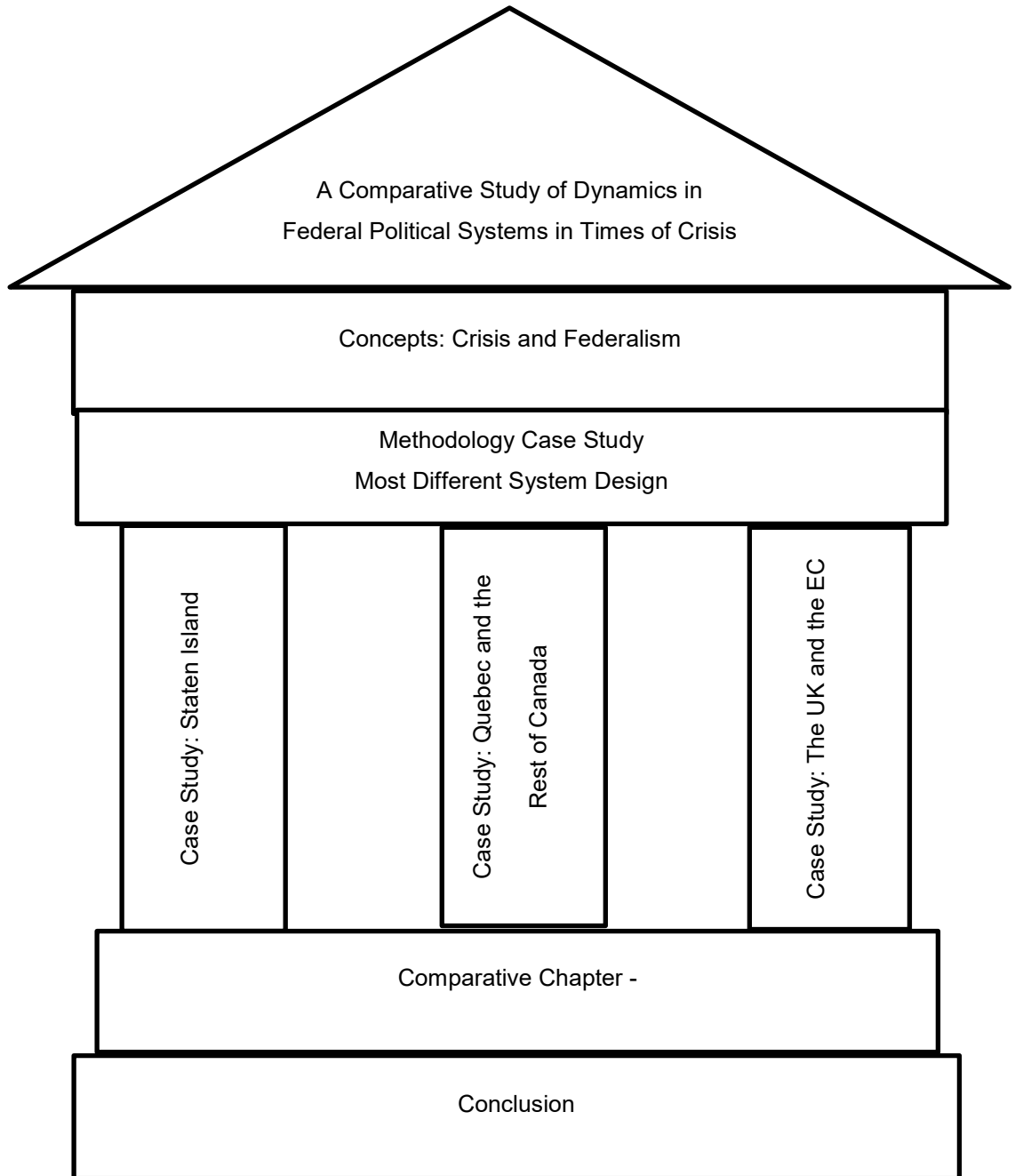


Figure 1 the Greek Temple Design of the Thesis

1.4.1. Conceptualizing Crisis and Federalism

The theoretical chapter set out to accomplish two main objectives under the broad heading of conceptualising crisis and federalism. These create the ontological and epistemological frameworks, which underpin the methodological premises on which I base the thesis.

The first objective is to establish a sound understanding of the concept of crisis as the independent variable of the study. I carry this out through a discussion of crisis as a concept in the general field of social sciences, and in particular in the sub field of political science. I place particular emphasis on the relative underuse of crisis as a conceptual framework with which to study. It is my use of crisis as a variable in the study of federal political systems that contributes towards the originality of the thesis.

The understanding of crisis as concept starts with examining the immanence of crisis in international political economy, to establish a sound foundation for the argument of crisis as a permanent feature of world society, and to establish a mechanism for defining how crisis moves from immanence to evidence. From this base, the discussion extends into the establishment of political solutions to manage crisis at and between levels of international governance, and in particular the development of world systems theories. The need for structural-functional approaches to understand and to manage conflict where systems needs and values are contradictory is also a key element in the discussion.

After these theoretical discussions on crisis, the discussion moves to the definition of crisis in a spatial/temporal context, and the use of the concept of the focusing event as the critical point in the identification of case studies. This ability to place a crisis in a territorially defined political space- and in a delimited period, is used to validate the choice of case study.

The second objective is to establish a sound understanding of the concept of federalism as a set of dynamic processes that are observable, at the time of crisis, in political systems that have federal characteristics. The data from this process contributes to a new understanding of the dynamics in each polity, but more importantly gives the data for a comparative study of the dynamics between the three polities.

The initial discussions do not try to re-define federalism, but draw on the distinction made between federalism as ideology, and federation as institution. The goal of this thesis is to try to examine for evidence of the first understanding of federalism, the ideological underpinnings to federal systems. I understand this to be a system that seeks to maintain a unitary structure for some purposes, but that is able to accommodate, indeed promotes a diverse socio-cultural identity of the communities that form the polity. The discussion then moves onto the understanding of the communities that make up federal political

systems as representing a diversity of values and needs that find expression in diverse decision-making arenas.

The critical part of the discussion is on the impact of the dynamic forces on FPS in the accommodation of diversity, whilst maintaining unity. Here I assess the contrasting concepts of federal systems, both in the way that the systems are conceptualised structurally, and the importance of the built-in flexibility of a process-based polity where elements of the system adapt and accommodate pressures from conflicting communities.

The discussion then goes on to evaluate the concept of a matrix structure of constitutionally established rules, in which the decision-making arenas interact and communicate along formal and informal lines, and in which instrumentalities (variable institutional arrangements) develop.

In the last part of the discussion, the link between identity, as expressed through elites' representation and demands, and the territorial nature of different FPS, is examined. Here the emphasis in conceptual terms is on threat to the territorial representation that in turn creates or exacerbates fears that longstanding identifiers in the territories will be under threat.

The development of these relationships in times of crisis provides the output data for each of the case studies in turn; the final part of the chapter establishes a framework of potential outcomes that is applied to each case study.

1.4.2. The Case Studies

The next three chapters contain the data produced by the application of the methods to the case studies of crisis – and each has a broadly similar structure. I firstly give an overview of the case study, before contextualising each case with a historical account of the development of the territorial and value bases, and the emergence of each crisis from the state of immanence to evidence. The narrative then moves to the nature of the focusing events that maximise the extent of the impact of the crisis on the constituent units and the wider political system; from this point, I focus on the analysis of the dynamic processes that develop in response to the crisis. The case study extends to the point at which there is sufficient evidence to suggest that the disturbance in the equilibrium between unity and diversity has reduced to a point analogous to that before the crisis. The system will have changed – these changes form the basis of the analytical comparison that I make in the relevant chapter. The nature of the change is of critical interest, for it is here that the application of the theoretical approaches, predicated on process, dynamics,

demand/counter-demand and non/extra constitutional adjustments (the instrumentalising of change) becomes evident.

In the first case study, I trace the evolution of the arrangements for the representation of five political and territorial units – the counties around New York Harbour, to show how these developed along federal principles, with separate levels of government for the counties as boroughs,⁶ and the city as a Metropolitan unit of general government. The subsequent divergence in values and identities of the smallest of these, Staten Island, created tensions that were managed through the presence of political elites in the Board of Estimate, on a disproportionate territorial basis. The process of development of the U.S. Constitution in matters of equality of representation, in the context of the broader civil rights movement, threatened the island's representation, and contributed to existing feelings of grievance; becoming sufficiently strong as to engender a secession movement that threatened the integrity of New York City (NYC) as a political unit. The responses of the elites in NYC were broadly sympathetic to Staten Island residents, with attempts to manage the crisis with new forms of representation that respected the new constitutional framework. These were not sufficient in their own right to assuage the grievances – and it required significant changes in attitudes, and the addressing of issues salient to the socio-economic specificities of SI, to restore harmony.

In the second case study, I explore the preservation of the values and identities of French-Canadians post 1867 through the development of the state-like qualities of the province of Quebec. In the post-WWII period, challenges to the integrity and autonomy of Quebec came as Canada sought to modernise and create a welfare state – challenges resisted by an introspective nationalism of Duplessis' Union nationale. The post-1960 opening up of the province with the *Revolution Tranquille* created the conditions in which a number of contrasting ideas for the constitutional development of Quebec within Canada were present both in the province, and between the province and the federal government. These differences became more evident as nationalist and secessionist parties offered political representation for these strands, brought into sharp focus with the post 1967 crisis that developed – with de Gaulle's Montreal declaration, and the actions of the Front du Libération du Québec that culminated in kidnappings and murder. The inability of the parties to find solutions through constitutional change, and the potential of a new form of settlement advocated by the Parti Quebecois, led to their election and renewed efforts to

⁶ The county remains the primary unit of local government in the US, in NYC the five counties were also boroughs of the City, but retained some limited competences as will be discussed. Henceforth I will use the term borough.

create a *de facto* political territorial space, a nation, by developing extra-constitutional approaches to the development and definition of the Quebecois nation. These changes did not become recognised in *de jure* changes to the Canadian constitution, and after the decision made by the Quebecois people to reject moves towards demanding autonomy, the federal government pushed forward a renewed constitutional package that reflected the one-nation concept of Canadian federalism. I define the end of the crisis period as the post 1984 decisions by Quebec Premiers Lévesque, and subsequently Bourassa, to work with the newly elected federal government of Brian Mulroney on the institutionalisation of the changed *de facto* status of Quebec.

The third case study, the crisis in UK/EC relations, offers the chance to examine the dynamics of a federal political system that was very much in the middle of a process of development, a process in which the crisis has its foundations. I examine the early stages of the UK's hesitant and 'awkward' (George 1990) approach towards participation in European integration. The understanding of federalism as a centralizing process with a concurrent diminution of parliamentary influence, understood through a conception of sovereignty as an indivisible singularity, persisted through the post-WWII period. This was revived by the challenges made by the implementation of the 1987 Single European Act, and the added pressures from the rapidly evolving geo-political situation in Western Europe post 1989.

The conflation of these elements led to the isolation of many of the UK's elites, and notably Margaret Thatcher, through their understanding of integration as a process predicated on intergovernmentalism. This understanding was based on the protection of the fundamentals of states' sovereignty: the preservation of parliamentary sovereignty, the maintenance of domestic monetary and fiscal policy, and the ability of states to decide on social and employment matters. The pressing need to gain the 12 Member States' signatures on the Maastricht Treaty, to enable the integration process to proceed and respond to the changing needs of the Unions' members, created the conditions for crisis in which Thatcher was to lose her place as the UK's Premier, to be replaced by the relatively unknown John Major. The continuation of broadly similar policy objectives by the latter, though with contrasting negotiating style to his predecessor, required the political elites to create new frameworks for agreement that encompass a broad range of constitutional and extra-constitutional arrangements.

The resultant Maastricht Treaty accords gave the opportunity for all involved to claim degrees of victory in its various components, elements of protection of national sovereignty, the protection of intergovernmentalism in key policy domains, and the ability of states to opt-in, and opt-out to supranational elements of monetary and social policy. I

then examine how through the ratification process of the treaty in the UK parliament, the questions of sovereignty, and the use of referendums, created the conditions for the growth of Euroscepticism. In the last section, I briefly examine the impact of the 1997 elections, and the change in dynamics of Tony Blair's administration.

1.4.3. Comparative Analysis

In this section, I examine the outputs of the case studies through the theoretical lenses as defined in the research questions; I have approached this thematically, drawing together the outputs from each case study within ten areas of discussion. From these, I have been able to draw out areas of commonality, and areas of difference, which I extend upon in the Conclusion of the thesis; I give a brief overview of these below.

In term of the origins of crisis, across the three cases I have argued that a linkage exists between the nature of crisis and the territorially based identities of communities within the system. However, crises do not occur because of the existence of diversity *per se*; it is when processes inherent in federal political systems create challenges to aspects of communities' values that these identities become more salient. Indeed, in the three cases the potential for crisis, the immanence of disquiet, was present in all three systems, but only became evident through processes that were based on revisions to the system that were, in themselves, predicated on the demands of certain communities, and which became widely identified through a focusing event, or a period of focusing events.

In my examination of the nature of crisis, across the three case studies I identify the dynamic phenomenon of value-based demand and counter-demand in the system that was theorised by Livingston (1952). The demands differ in their extent across the three cases, in Staten Island and Quebec these extend to demands for secession, and reflect Bryce (1901) in the concept of the cumulative effects of grievances and beliefs in the benefits of separation. This is not the case for the UK's approach to the EC, where the emphasis was on the limiting of the depth and extent of new integration. I argue that the differences between the case studies are based on the stage in which the processes are found; in the UK case study the FPS had not yet fully developed, the framework had been defined in the SEA (1987) but the balance between intergovernmental and supranational features was still very much work in progress.

At the heart of this thesis is the argument that in the constraints formed by the constitutional frameworks of the three cases there was insufficient flexibility to create sufficient sacrifice to satisfy grievances. In each of the three case studies I demonstrate this, in that there needed to be extra-constitutional, or beyond the constitution, arrangements to reduce the

level of grievance. The rate at which these are institutionalised, and the type of arrangement that is used, are contingent on the nature of the system and the grievance, but the range of instrumentalities is entirely consistent with that theorized by Livingston (1956).

In the final sections of the comparative analysis, I assess the outputs against a theoretical understanding of the balance between unity and diversity through the concepts of centralization, de-centralization and non-centralization. I argue that in the dynamics inherent in federal systems in times of crisis, the very nature of divisions of competences changes, that the binary distinction between *de jure* and *de facto* becomes less important, in a reflection of John Kincaid's (1995 p.44) definition of the system as predicated on the 'establishment and maintenance of power-sharing relationships'.

I also try to assess the dynamic state of each of the federal political systems at the point where the crisis condition had reduced to a level of 'normality' as defined by the conceptual framework adopted to delineate the cases. In particular, I try to don a veil of ignorance, and understand the extent to which each system has retained the *potential* for a return to crisis. Across the three cases, I make an argument that the potential for a resumption of the crisis was contingent on the continuing management of the expectations and attitudes of the communities in each system. This would require successive political elites, with the role and responsibility of reflecting their respective communities' value priorities, to grasp the fundamental aspects of the sources of, and compromises made, in each crisis. The answer to this caveat is beyond the scope of this thesis, but offers significant opportunities for further research.

1.4.4. Concluding Chapter

In the final chapter, I reflect on the effectiveness of the use of crisis as an independent variable, on the use of a comparative methodology, and on the conclusions derived from the comparative discussions. I also discuss how the thesis fits in with the field of federal studies, in particular in the areas of comparative and dynamic studies. I also develop ideas for future research in the field.

1.5. Research Questions

From the conceptual chapters I derive the following hypothetical questions that frame the research:

1\ Do federal polities move towards integration/centralisation, or disintegration/non-centralization as a consequence of crisis?

2\ Are federal systems predicated on order as a value, or do other values have equal importance?

3\ Is the analysis of federalism as process evident in the dynamic relations between communities and the polity, and in the use of instrumentalities in the polity?

4\ To what extent do federal political systems act to contain and permit, or constrain, the expression of discontent in times of crisis?

These research questions will frame the explanation of the systems in each case study to understand their features in:

- I. The nature of the development of the system – a historical overview of the system’s development with particular emphasis on the development of the instrumentalities salient to the identified crisis;
- II. The initial impact of the crisis in terms of the reactions of the actors within the decision-making arenas, and in the expression of challenges to communities’ values;
- III. The demands of the communities in the decision-making arenas for change to reduce the impact of the crisis;
- IV. The limitations of the potential for change prescribed by the framework of the constitution;
- V. The development of political asymmetry between decision-making arenas, and the communication between these;⁷
- VI. The expression of the relative positions of the decision-making units in terms of the possibilities for crisis resolution within the range of outcomes as permitted by constitutional frameworks;
- VII. The expression of alternative outcomes to the crisis that require novel arrangements, and use of instrumentalities, to satisfy a diversity of needs and values;
- VIII. The development of alternative arrangements to satisfy the principle of diversity, and the pace of development of these;
- IX. An analysis of the relationships between the decision-making arenas in the polity at the point where the crisis reaches an identifiable end, or evolves into a new crisis;

⁷ As above with reference to Elazar.

- X. A comparison of the pre- and post- crisis matrix structure of the polity, with particular regard to the evolution of the polity along the centralised/non-centralised continuum,⁸ both in formal and informal instrumentalities.⁹

I then take the outputs from the three case studies and compare for similarities and dissimilarities in a discussion chapter. The aim of the study will be to explain these findings within a conceptual framework that I establish in the hypothesis statement:

‘Crisis affects the dynamic of federalism in federal polities in differing ways that are dependent on the historical evolution of parity/disparity of values between communities, the behaviour of political elites, the use of instrumentalities in the polity, and affects the positioning of the polity on a centralised/decentralised continuum’.

1.6. Concluding Comments

In embarking on this work, I sought to contribute to the canon of work on the management of territorially based diverse communities in federal political systems. The contribution was not to be found in the comparison of the systems *per se*, but in the dynamics of these in times of crisis. This innovative use of crisis as the independent variable has allowed me to examine a diverse range of FPS, at the state, sub-state and supra-state levels of analysis. The case studies used a conceptual framework that draws on dynamic, process-driven theories of federalism, which I then examined in a comparative framework to extend and complement these understandings and the empirical basis for them. I argue that the thesis extends the understanding of the operation of federalism in three major domains: process, dynamics and flexibility.

In the first of these, I show how there is an intrinsic link between the process by which FPS develop as a response to changing demands of communities, and the development of crisis that is a consequence of change. This is, in effect, a permanent and recurrent feature of FPS, a condition resulting from the search for fundamentally dialectical goals of unity and diversity.

In the second area, I evidence how FPS are dynamic systems in which the expression of disquiet, the challenge to the existing order, is evident in the demands and counter-demands of the various political arenas within these. The systems are not static; they are

⁸ As above.

⁹ As above re Livingston.

responsive to sometimes-conflicting demands based on communities' different and evolving values.

It is in the third area that the thesis contributes most significantly to the existing canon of scholarship on federalism and federal political systems, in the development of the understanding of Livingston's (1952, 1956) and Friedrich's (1963, 1968) concept of the instrumentality, the institutionalisation of changes that extend beyond the realm of constitutional amendments. In the thesis, I demonstrate how in each of the cases the limitations of the constitution, or constraints imposed by new changes in the constitution, contribute towards crisis; this in turn creates demands for the use of more flexible changes to, and imaginative adaptations in, the way that relationships between political arenas are managed. It is in the development of the theoretical framework provided by Livingston, and in the use of the empirical evidence gained through the use of crisis, that the thesis finds its originality.

This introduction has set out the driving forces behind the choice of the topic, the methodology adopted, the research design and questions, and the structure of the thesis. The first of the substantive Chapters of the thesis now follows, where the conceptual framework for the independent variable, crisis, and the dependent variable, dynamics in FPS, is set out.

2. Conceptualizing Crisis and Federalism

2.1. Conceptualizing Crisis

2.1.1. *Crisis as the Independent Variable*

'Crisis is one of the most underdeveloped concepts in state theory and, indeed, in social and political theory more generally' (Hay 1999 p.317).

For Hay, the pervasiveness of the concept of crisis contributes towards a general absence of rigour in the application of the term; he cites a 'diversity of referents' (ibid.p.318) from which it is necessary to abstract those which are pertinent to a particular study. Hay was interested in the deployment of the term in the case of Great Britain, and in an analysis of crisis in the 'political economy of liberal democratic capitalism' (ibid.). His aim was to identify 'what precisely goes on in the cathartic moment of crisis which might punctuate existing social and political relations to establish a new developmental trajectory for the state?' (ibid.p.319). His examination drew from earlier discussions of crisis as process, where crisis is not merely the result of what he calls 'a condensation of contradictions' (Hay 1996 p.254) but a 'moment of transformation . . . in which a decisive intervention *can* (and perhaps *must*) be made' (ibid.). Hay also looks at the way that crisis is intersubjective; that the fundamental nature of the crisis is dependent on the understandings of crisis at both elite and societal levels (Hay 2013 p.23). Here policy responses will respond to the development of dominant paradigms, or where there is a paradigm shift (ibid. p.23/24). Hay uses the example of the understandings of the post-2007 fiscal crisis where understandings of a crisis deriving from a lack of growth have been supplanted with an understanding of a surfeit of debt. The thesis applies these principles in the area of federalism studies, through seeking the cathartic, the moments where change is manifest in the relations in societal and political dynamics that characterise federalism, and identifying these in comparison with similar cases.

In seeking to use crisis as a term of analysis Hay (1999 p.318) argued for the need for the concept to be re-defined, indeed more closely defined, in order to differentiate between 'a punctuated or step-wise periodization' in accounting for socio-political change and the 'more incremental and evolutionary understandings of the process' (ibid.). This understanding is critical in this thesis; for in setting the conceptual parameters for the periodization of crisis it thus becomes possible to define the opening and closing of the crisis period, and to contain the analysis of federal dynamics within a time frame that I then use across the three case studies that form the basis of the thesis.

Hay applied his analysis of crisis to the political economy of liberal democratic capitalist states, which he characterised as '[i]nertial and *re*-active systems, which tend . . . to evolve, if at all, through iterative and un-reflexive adaptation to systemic failure' (ibid.p.320). This contrasts with another form of the state which displays '[d]ynamic and *pro*-active systems, which have an institutionally inscribed capacity for managed change and organisational learning and which tend to evolve through reflexive, strategic and decisive self-transformation' (ibid.). Pertinent to the overall discussion on federalism and crisis is the differentiation between the inert, un-reflexive state and the concept of the federal polity of Friedrich (1968) in which process is the basis for a constant re-evaluation of the relationships between the constituent units and the federal government.

The structure of the initial part of this chapter draws from the framework of Hay's discussion but subsequently extends this to look at a number of facets of crisis, extending through:

1. The concept of crisis as a persistent feature of a capitalist system, where the interplay between politics and economy is the focus of study;
2. The extension of this concept to inter-state crisis where IR theory frames the discourse on crisis;
3. The examination of crisis as a feature of sub-state systems, with a reference to integration theory as explanation;
4. The concept of crisis as a social construct;
5. And the way that the literature provides analytical constructs for the understanding of crisis development within systems.

This approach is appropriate for this study in that it meets a number of criteria. Firstly, I establish a robust definition of the independent variable, crisis, to create a clear framework with which to select, and examine the case studies. Secondly, the examination of crisis as a concept that extends from the level of world approaches, through inter-state to sub-state, reflects the way in which federal ideas can operate at multiple levels of analysis, and indeed at both inter- and intra-levels of analysis.

The emphasis of the research into the nature of crisis is that of crisis *in* systems and in particular in federal political systems, as opposed to the nature of crisis *of* systems. The two are very likely to be inter-related, in that crisis *in* systems will challenge those systems and may result in crisis *of* the system, and vice-versa. This point is critical for the understanding of the relationship between the independent and dependent variable; in this study, it is the crisis *in* systems that is the independent variable, and the subject of study, the dependent variable, is the resultant dynamics in the type of political system that is

characterised by federalism. It is in the light of this need to understand the potential dialectic between crisis *of* and crisis *in* systems that the analysis starts with the crisis of world systems.

2.1.2. IPE and World Systems Approaches to Crisis

Marx and Engels categorically define the world system as one of perpetual crisis in *The Communist Manifesto* (1848); the modern era, characterised by the rise of the bourgeoisie, could not exist without a constant revolutionising of the old means of production. From an earlier period where conservation of old modes of production prevailed, came a new era where 'constant revolutionizing of production, uninterrupted disturbance of all social conditions, everlasting uncertainty and agitation distinguish the bourgeois epoch from all earlier ones' (Marx and Engels [1848] 2002 p. 223). They warn that at a given point the system would no longer support the inherent crisis as typified by recurrent commercial crises (ibid.). Indeed, for Marx and Engels the outcome of this process of periodic testing of bourgeois society was an eventual collapse into disorder, brought about by 'too much civilization, too many means of subsistence, too much industry, too much commerce' (ibid.p. 226). The system would fail and become crisis ridden because of the very means that sustain it, a situation that can only be resolved by a wilful destruction by society of those parts that were previously nurtured. It becomes essentially unfit for purpose; 'the bourgeoisie is unfit any longer to be the ruling class in society. . . [s]ociety can no longer live under this bourgeoisie, in other words, its existence is no longer compatible with society' (ibid.p. 233).

In *Capital* Marx adopts a more nuanced approach to the argument of the inevitable and inexorable nature of the crisis in the socio-economic processes of a bourgeois society (Steadman-Jones in ibid.fn.33 p.233). The presence of a surplus population as both a product of and a driver for capitalist accumulation created, for Marx, '[t]he course characteristic of modern industry, viz., a decennial cycle (interrupted by smaller oscillations), of periods of average activity, production at high pressure, crisis and stagnation . . .' (Marx [1867] 1995 p.352). In this perspective of the evolution of bourgeois society, the crisis that will inevitably cause the collapse of the bourgeois, capitalist system is ascribed to the creation and growth of the opposing capital classes and the proletariat, in which the 'accumulation of misery [corresponds] with accumulation of capital' (ibid.p.362).

This early analysis of a developing modern world system proposed by Marx and Engels informs discussions on the nature of crisis; what is salient is their conceptual framework in which crisis, a cyclical product of the inherently flawed system of capital accumulation, is

a symptom of a dynamic that exists between polarised parts of a system. Essentially Marx and Engels argued that the existence of political societies based on separation and schism are destined to self-destruct, that they are crisis driven, and crisis riven. Their analysis of the world socio-economic system did not go as far as to distinguish between possible forms of capitalist governance (or specifically federalism), but their analysis would infer an immanent fallibility in all political systems that create polarisation, and this might include federalism.

This idea of crisis as immanent in modern society is developed by the canon of work by economists working in the Marxist tradition, as examined by Wolfe (1986). In addition to the cyclical nature of economic crisis as developed by Marx and theorised as 'regulatory mechanisms by which the internal barriers to the continued self-expansion are overcome' (Wolfe 1986 p.226), Wolfe argues that in Marx's writings there is also the concept that such crises serve a purpose in extending the working classes' understanding and experience 'necessary for the eventual overthrow of the capitalist system' (ibid.). In this respect, for Wolfe, there is a dual conceptualisation of crisis with 'both an objective and a subjective dimension' (ibid.). This is, for Wolfe, rooted in a classical interpretation of crisis where:

'The objective dimension appears in the way in which the crisis appears as an externally determined phenomenon, following a course independent of the actions of the individuals whose lives it affects. The subjective dimension involves the way in which individuals apprehend and respond to the challenge posed by the crisis' (ibid.p.227).

This duality of conception of crisis reflects on the discussion in several ways; the idea of exogenous and endogenous is seen as a product of the individual's subjective choice, and not something that is defined as a pre-existing ontological given. Additionally, as discussed in the work of Wallerstein below, the existence of crisis gives rise to the possibility of welcome change, and the 'ultimate transcendence of capitalism' (ibid.).

Where Wolfe is relevant, in terms of the application of the concept of change and crisis in the analysis of federal systems, and the federalism that is implicit and explicit in these systems, is the way that crisis/crises in the past 'have served to transform capitalist modes of production and the potential implications of the current crisis' (ibid.p.228). Once again there is a clear argument for considering crisis as a phenomenon that is at the same time historically relevant, and currently relevant. The methodological approach to understanding dynamics in federalism in a specific crisis will have to take account of the historical development of the federal system in question; looking at the question in a limited time-bounded context will not give the depth of understanding of the development of the dynamic in federalism that is at the heart of this study.

It is possible to look behind the immanence of crisis and to create a system of classification of crisis that will help in the analysis of federalism as a political ideology that, whilst awaiting further discussion of the concept as mentioned above, has a link to the creation of political systems, namely federations. In this respect the work of Immanuel Wallerstein is informative and it is to this writer that I now turn.

From the early 1970s Wallerstein had developed an approach to the global that challenged the notion of a linear progression, from the industrial revolution onwards, as a process of 'organic development and progress' (1979 p.1). This reflection of Marx's argument that capitalism is a penultimate stage in world development, and that the world would undergo a 'cataclysmic political revolution' (ibid.) supports the concept of the immanence of crisis in the world system.¹⁰ Indeed for Wallerstein, the world system can be categorised as coexistence between inherently stable world empires, political structures that persist, and inherently unstable world economies, that tend towards disintegration or conquest (ibid.p.5). For the purposes of the current discussion structures predicated on federal ideas can be considered to be an element of the stabilising part of Wallerstein's diptych, with the crisis of instability in the world economy contributing to the dynamics in the systems that are the subject of study.

In a later work, Wallerstein expands on the typology of crises in the world-system (1991 p.104). He argues that there are not many crises in the system, but one crisis which manifests itself in three spheres of social action. The economic sphere is, for Wallerstein, not unexpectedly the simplest to classify, as the crisis in the capital world economy is basic, inevitable, straightforward and simple (ibid.p.111). In the other domains, the crises in the sphere of socio-political movements (see below) and in the sciences, are areas where individuals have a chance to affect outcomes (ibid.).

Wallerstein's subsequent interpretation of a post-Cold War world system was not one of a successful victory for the liberal and capital systems, but a disintegration of the previous stable system, which though littered with 'noisy quarrels' between conflicting ideologies, was inherently beneficial to a capitalist system (Wallerstein 1993 p.1). This collapse marked, for Wallerstein, 'the onset of an acute crisis, since it lifts the Leninist justification of the status quo without replacing it with any viable substitute' (ibid.p.4).

He argued that the post-American and post-liberal era in which man had embarked 'promises to be a time of great world disorder' (ibid.), in which the capitalist world-economy

¹⁰ See also Phillips and Ensign (1981) pp. 293-4.

would 'continue to operate in the short run . . . but operating in this way will only exacerbate the crisis' (ibid.). Mini-crises had always formed part of the dynamic of the capitalist system, and functioned to strengthen the system by eradicating weaknesses in production and maintaining the constraints on the working classes. But for Wallerstein a greater crisis awaited when the logical extension of the constant expansion of capitalism into new spaces, and the proletarianization of the working classes in the conquered spaces, came up against the barriers of space (ibid.p.3).¹¹

Wallerstein considers the first half of the twenty-first century as a time of a move from equilibrium towards bifurcation, a time of uncertainty and terminal crisis (Wallerstein 1998 p.320). Wallerstein later differentiates between true crisis, where a system encounters problems it can no longer resolve, and the looser use of the term to describe 'a difficult period in the life of any system' (Wallerstein 2004 p.76):

'True crises are those difficulties that cannot be resolved within the framework of the system, but instead can be overcome only by going outside . . . the historical system of which the difficulties are a part. . . A crisis means making a choice of alternative paths-what new kind of system will be constructed?' (ibid.).

However, this study is predicated on the study of the dynamics in federalism in extant federal systems, where although crisis may have pushed the system to the brink of disintegration, the systems proved resilient in the face of the changes that occurred. The purpose of the acknowledgment of Wallerstein's theoretical position in the discussion is to allow for a conceptualisation of the potential of crisis at its very extreme.

E. H. Carr adds to the debate on the immanence of crisis in IR theory at the world analysis level, and also reflects his knowledge and understanding of the Marxist approach to International Political Economy in his analysis of the sources of crisis and conflict. In the seminal 'Twenty years' Crisis' Carr challenges the utopian direction of IR in the interwar years from a realist perspective, grounded in critical thought. The subject of his study is the crisis in modern politics that arises from the opposition between Utopia and reality and the failure of the former to operate within the latter (Carr 2001 p.19).

For Carr, reflecting Marx, the immanent crisis of the period was averted by the utopian persistence in the belief of a harmony of interests between actors, a harmony that only persisted whilst fresh markets were available to ensure an attenuation of competition between interests, and that merely postponed the class issue by a partial re-distribution of prosperity (ibid.p.45). Here, in a reflection of both Marxist ideas of class consciousness,

¹¹ Further discussion on the crisis of space in capitalist systems is covered by Hardt and Negri (2000) *Empire*.

and a proto-conceptualising of constructivism, Carr also argues that the idea of harmony encouraged the belief that 'the world was ordered on so rational a plan as the natural harmony of interests' (ibid.). In this way, crisis is postponed by the socially constructed concept of a harmony of interests, at both the individual and national level. However, this utopian basis for the persistence of the harmony of interest was not able to withstand the crises of the post war (1914) years, and Carr draws an important lesson from this. He postulates that the underlying source of conflict and crisis was the rise of Social Darwinism, in particular in politics, with the concomitant move towards nationalism, protectionism, and, somewhat perversely, free competition. The latter was re-framed in terms of the survival of the fittest, and the demise of the weakest, as a positive attribute of Darwinism (ibid.p.47). The concept of harmony of interest is relevant to the discussion of crisis and the impact of crisis on federalism and federal structures. For as will be discussed, federalism, with its focus on the separation and allocation of competences within and between levels of government, is predicated on an acceptance of harmony of interests, failure of which can place stresses on the inter- and intra-governmental relation and dynamic.

2.1.3. Crisis at, and Beyond, the Inter-State Level

The discussions above would suggest that the world system is inherently unstable, and prone to irreconcilable schisms between interests embedded in socio-economic systems represented in the political realm, and evidenced by crisis/crises. This apocalyptic interpretation is challenged in the literature in the explanations of how states manage, and avoid crisis that emanates from the chaotic world system. The literature will inform as to how states have moved into a phase of cooperation, in the structural-functional domain, and how further integration along federal lines, or at least with federal thinking, has occurred.

The period between the end of WWII and the fall of the Soviet Empire illustrates the ability of inter-state systems to deal with crisis without the collapse of the nuclear peace. Coral Bell identifies some of the reasons for this; in the case of the US/Soviet bipolar system she argues that it was in both sides' interest to maintain the status quo, and to manage crises that arose accordingly (Bell 1984). The management of crisis is critical; for while

'crises are not of course the cause of war . . . they are the potential occasions of war, so the level of skill with which they are managed or (preferably) avoided by the decision makers of the powers is a matter of importance for the survival of all of us' (Bell 1984 p.325).

Bell argued that the chance for crisis was still high in the international arena, and although it had reduced with the dismantling of the final colonial links, the proliferation of new states had raised the chances of a new raft of crisis. Bell's final message is clear; in an anarchic

world with increasing numbers of actors (at the state level) the conventions for managing crisis need to be extended 'from the central balance to the regional balances, as well as a general codification of those conventions' (ibid.p.336). In terms of the discussion of crisis and federalism, it is possible to extend this argument to the intra-unit level; the constituent units of federal states, or groupings of states in a federal type of organisation, are equally prone to the effects of crisis. Whilst these may not result in war,¹² it is the *potential* for conflict that remains in these units' relationships, and the underlying crises, that require both skilful management and either a codification of convention, or a revised understanding of existing codification. Federalism offers forms of convention and spaces for skilful political operators to manage crisis, this thesis examines these structures and dynamics.

Further insights into the relationships between crisis and conflict at the international level are given by Michael Brecher, who stresses that there may be prolonged periods of conflict between adversaries, but that crises are usually focussed on a single issue (Brecher 1996 p.128). Here Brecher cites the definition of conflict given by Ted Gurr, where:

'conflict, in the broadest sense, refers to "overt, coercive interactions of contending collectivities" . . . characterized by two or more parties engaged in mutually hostile actions and using coercion to injure or control their opponents' (Gurr 1980 in Brecher 1996 p.128).

Once again, where applied to the inter-unit model of federal systems, the same principle can be argued; that the differing interests of collectivities, or communities, is a source of conflict requiring management in order to avoid crisis. Brecher also discusses the structural implications of crisis in terms of process that draws from Oran Young's work; he argues that crisis is characterized by 'a basic change in processes that might affect structural variables of a system' (ibid.p.130). Indeed, for Young such intensification of interactive processes over and above the usual level is indicative of crisis and is 'characterized by . . . significant implications for the stability of some system or subsystem' (Young 1968 in ibid.). The link between structure and process is one that is also extensively discussed in the federalism literature, and this thesis is particularly grounded in the idea of federal polities as resilient structures within which processes can evolve and adapt in reaction to and resolution of crisis.

The concept of establishing linkages between communities and collectivities was developed in the work of David Mitrany, in particular in functional approaches to reducing the tensions that underpin (international) conflict. Mitrany's work was focussed on

¹² War, or armed conflict, is possible in some FPS – Yugoslavia, Nigeria, USA, and indeed in the Quebec 1970 October crisis. This thesis focuses on the dynamics of FPS that have successfully managed crisis.

establishing a 'working peace system' (Mitrany 1966) that was to diminish the possibilities for future conflict and war between nation states, but the principles and processes that Mitrany developed can be applied to the organisation of any groupings of territories, either at the international or national (in federal states).

For Mitrany, this functional approach drew from his understanding that

'a rounded "political-constitutional" approach tends to harden the mind, and consequently policy, into a set view . . . and that a set view breeds an attitude of "struggle" – of classes, of nations, of sections, of creeds. The "functional" approach helps to bring out the real elements of whatever issue is at stake' (Mitrany 1975 p.45).

The approach 'holds that violence has its roots in the social and economic circumstances of people' (Taylor 1975 p. xi); and a 'moderate sufficiency of what they want and ought to have will keep the peace' (Mitrany 1944 cited in *ibid.*). Mitrany's concerns focussed on how to provide such needs without recourse to constitutional re-drafting; 'how to weld together the common interests of all without interfering unduly with the particular ways of each' (Mitrany 1975 p.115). The segments in which functional linkages were to operate could not be organised on a prescribed formula, but would allow for variation according to the nature of the segment, 'the conditions under which it has to operate, and to the needs of the moment' (*ibid.*p.116). It is in the fields of the '*positive* active functions (economic, social, cultural)' (*ibid.*) as opposed to those '*negative* functions' of security and law and order, that Mitrany sees the possibility of devolution along functional lines.

The development of these functions is, for Mitrany, an organic process, through natural selection, with the development of corresponding political instruments for assuring the function. Changes in the functions as driven by the needs of the common interest would also provide for changes to the political instruments without the need for formal rules or 'constitutional division of authority and power' (*ibid.*p.118). The hindrance to the natural development of these cross cutting cleavages along functional lines was the 'legal structure of the state and of our political outlook' (*ibid.*).

The development and operation of federal systems might, for Mitrany, be a consequence of such organic groupings along functional imperatives, and he cites the development of the federal authority of the US in which through 'the gradual accumulation of new functional tasks and powers, the government at Washington now has come to represent an organic unity which binds the country together much more solidly than the Constitution ever did or could' (*ibid.*p.119). Mitrany originally wrote these comments in 1941, and identified a phenomenon that would accelerate post WWII, towards what Kincaid (1990) called cooperative federalism. The impact of this process is discussed in section 2.2.3; what is salient for our discussions is that in the federal/functional systems there is the possibility for change in response to changing functional demands of collectivities and communities,

which consequently reduce the conflicts that are at the source of crisis. Moreover, Mitrany extends his understanding of functionalism in the international system to the intra-state level; along with the argument that the legalistic elements inherent in the systems prevented the development of informal change.

The move towards examining the world system below the inter-state level has been supported by a growing understanding of the interconnectedness of domestic and foreign policy; the notion of the billiard ball model has given way to that of 'linkage politics and interdependence' (James and Rioux 1998 p.782). This reflects the debate on the 'reversed second image', whereby the conventional position on domestic policy and its effect on the foreign policy of the state as described by James Rosenau is reversed, for 'International relations and domestic policies are therefore so interrelated that they should be analysed simultaneously, as wholes' (ibid.p.785). Their conclusion that 'the connection of domestic with international politics needs to be acknowledged and explained' (ibid.p.804) calls for an abandonment of unidirectional analysis of linkage politics between the second and third images; for them political forces operate in both directions, both simultaneously and with a lagged effect.

These are relevant points in the discussion of the concept of crisis. For if there is logic in examining the relationship between levels of analysis as a potentially multidirectional phenomenon, then the same logic must apply to the examination of crisis, which cannot be considered as remaining discrete either within or between levels of analysis. It will therefore be necessary to examine dynamics in federal systems, the dependent variable, as part of an inter- and intra- image evaluation. The realm in which crisis operates as a driver of dynamics in systems is operationalized at both the endogenous and exogenous, for it exists simultaneously both within and outside of systems.

The persistent theme in the discussions to date had been the analysis of crisis as a phenomenon that operates within, and between levels; between world systems, inter-state systems and intra-state systems. This is an important part of the stratagem of examining federalism and federal polities in times of crisis, for these systems emphasise the existence, and as will be shown, persistence of multiple, cross cutting linkages between units; the national state, the constituent state, the sub-state units, and communities all participate in and contribute to the dynamics of the system. The discussion now moves to the process of examining some of the work on crisis to derive some understandings of the critical approaches to the phenomenon in the literature.

2.1.4. Creating Frameworks for the Independent Variable: Crisis

The work of Charles F. Hermann provides useful foundations for the approach to crisis as a variable. He identified the link between the nature of crisis in the field of IR and characteristics that could be extended to 'the generic class of formal or complex organisations' (Hermann 1963 p.62). Hermann argues that crisis places systems under 'extreme conditions' (ibid.p.63) which both 'highlights some of the essential features of organizational and decisional processes, and differentiates them from less vital factors' (ibid.). His working definition of an 'organizational crisis' is one that '1\ threatens high-priority values of the organization 2\ presents a restricted amount of time in which a response can be made, and 3\ is unexpected or unanticipated by the organization' (ibid.p.64). This taxonomy can be used in the context of federal systems where 1\ the high priority values are the maintenance of both unity and diversity, 2\ federal systems may respond quickly to a crisis, not in offering a resolution but in promoting the efficient use of process in finding solutions in the longer term, and 3\ where in federal system the potential for crisis is a persistent nature of the polity.

In this thesis I use the idea that federal polities are systems, and that the relationships, between the units and sub-units within such polities have characteristics of international relations, and apply some of the findings of later work by Hermann to the understanding of crisis. Hermann and others re-considered the narrow definition of crisis as an event that had a 'visible impact on the configuration of the system' (Holsti cited in Hermann 1972 p.9). They argued that this would exclude the majority of crises which, following Young's definition, can impact on the stability of 'some pattern of interaction, system or subsystem' (Young 1968 cited in ibid.p.8); where stability is defined as 'the ability of a system or a pattern of interactions to undergo a disruptive sequence of events without breaking down or suffering qualitative changes of nature' (ibid.). Hermann argued that 'the suggestion that systemic crises must involve transformation of the system is misleading. What is required is that the crises have the potential of system change' (ibid.p.10).

Further examples of research on political systems and their relationships with crisis includes the work of Boin et al. (2008), and Kingdon (1995). These seek to establish patterns in the behaviour of political elites, and subsequent policy-making, as a consequence of crisis. The focus of this research is not on policy specifically, but on federal political systems, and their elites, with the emphasis on changes of dynamics rather than of the policy outputs. Nonetheless, the conceptual frameworks in which these authors operate gives valuable guidance in creating a valid and robust epistemological and ontological frame.

Boin et al. examine the results of crisis and the way political elites handle post crisis dynamics. Here, crises are events that challenge the way people understand the world around them, and are 'marked by a sense of threat and uncertainty' (Boin et al. 2008 p.3). In the range of crisis events they include those that result from 'malfunctions in a society's sociotechnical and political administrative systems' (ibid.). They argue that 'crises do have dynamic potential to prompt change' at policy and institutional levels of analysis (ibid.p.10). The threats of crisis to the 'security and rewards obtained by relevant actors and stakeholders' (ibid.) provide '. . . "windows of opportunity" for reform' (ibid.). They cite Birkland (1998) and Kingdon ([1995] 2003) in this conception of 'windows of opportunity', but it is also a concept that has been used to conceptualise the positive aspect of crisis in the evolution of the federal process in the EC, in particular by Pryce & Wessels (1978). Indeed, it is an approach that contributes to an understanding of the evolution of political systems, and the interplay between crisis, federalism as an ideology and federation as an institutional framework.

Boin et al. (2008) develop the conception of crisis and its effects on politics; for them crisis does not lead in a linear fashion towards change. The polarisation of 'stances and responses' to crisis extends from 'those who categorically advocate a change of leaders and policies' to 'staunch supporters of existing policies and institutions' (ibid.). The operationalization of data collection in respect of an examination of dynamics as a result of crisis will have to reflect this polarity, but will also need to be sufficiently nuanced to register smaller changes along the continuum. For, as discussed earlier in the context of Wallerstein's definition of crisis, the dynamic resulting from crisis may not result in a total abandonment of federal structures, but to changes within the broader understanding of federalism as a multiplicity of structures.

Boin et al. (2008) establish a framework of research that examines the changes to governance after crisis, as a result of 'crisis-induced accountability processes' (ibid.p.11). These processes take place in a multitude of forums at the state level, and below the state that have powers (or at least do so in liberal democracies). Boin et al list these, non-exhaustively, as 'parliaments, auditors, courts and mass media' (ibid.p.11 fn.5). They also extend on their discussion of the non-linear nature of this process, arguing that 'it is almost naïve to expect some kind of societal synergy' within these. They cite the changing nature of forums, notably the media industry, the changing attitudes of 'the modern citizen' (ibid.p.12) and the evolution of the relative strengths of citizens as part of these processes and dynamics (ibid.p.12).

Notwithstanding the fact that Boin's (2008) study looks more at the forums of governance, and less at crisis as a factor, their work does give an insight into the need for

methodological processes that are both sensitive and focussed on small changes, but also broad enough to encompass multiple forums. Indeed, in their analyses of crisis outcomes, they set up categories in their domain of policy and institutional change to encompass this need for analysis at both macro and micro levels. These categories range from 'fine tuning' to 'policy reform' to 'paradigm shift' (ibid.pp.16, 17).

Of more direct salience to the thesis's conceptualising of crisis is their link of the 'scope and nature of the crisis' (ibid.p.18) and their focus on 'accountability and learning processes' (ibid.). They use two factors of analysis to examine the socio-historical situations in which the crisis develops. The first relates to the 'scope and nature of the crisis' (ibid.), and here they develop a taxonomy of crisis that ranges from the 'incomprehensible', encompassing natural disasters to 'mismanaged' crisis where the governmental machinery is challenged, to 'agenda-setting' crisis where the challenge is extended beyond the mechanisms of governance and institutions to 'reflexes and reflections beyond the specific incident itself to a questioning of an entire policy domain and beyond' (ibid.p.19).

Boin et al.'s (2008) second factor of analysis examines resistance to change of polities and institutions, and the accumulation of resources and assets that accrete to these over time. Again, the design of the methodology in data collection will need to reflect the relative importance of shifts in the federalism/federal dynamic within the case studies in order to reflect the variable amounts of acquired credibility in each system. In some cases, the polity will have a high reserve of credibility, so that demands on the system as a result of crisis can be accommodated by assurances of future change. Conversely, in systems where credibility is low, for example where prior demands for change as a result of crisis were unmet, or insufficiently met, then demands on the system may be both more sustained, and less easily satisfied by promises of change.

The idea of background and foreground as a concept in understanding crisis is addressed by Kingdon (1995). Salient to the discussion is establishing why issues become pushed to the forefront of policy makers' consciousness, and included on policy agenda; here Kingdon identifies crisis as part of the range of processes that promote issues from the background to the foreground. For Kingdon (1995), crisis may result from a process where changes in indicators become 'exaggerated in the body politic' and these changes become symbolic of something larger (Kingdon 1995 p.93). Evolutions of issues, from a background position of monitoring of indicators, to a foreground position of public awareness and policy action, are also affected by 'focusing events, crises and symbols' (ibid.p.94). The progression of an issue from low to high salience, to attaining the status of crisis, can be a process of aggregation, where successive failures or deterioration in a

policy/social domain reach a tipping point (ibid.p.95). Alternatively, crisis can come about as a direct result of a focusing event; in the study Kingdon cites transportation and health policy events as examples of dramatic moves of issues from the background to the foreground of domain salience (ibid.p.98).

Thomas Birkland's definition of a focusing event complements these concepts, as

'an event that is sudden; relatively uncommon; can be reasonably defined as harmful or revealing the possibility of potentially greater future harms; has harms that are concentrated in a particular geographical area or community of interest; and that is known to policy makers and the public simultaneously' (Birkland 1998 p.54).

These events can lead to a multi-actor reaction, and Birkland identifies 'interest groups, government leaders, policy entrepreneurs, the news media, or members of the public' (ibid.p.55) as groups where focusing events can lead to the identification of new problems, or '[to] paying attention to existing but dormant problems' (ibid.). In the context of the definition of crisis, this type of focusing event, and the cross-level analysis of the groups in which the discourses of crisis are located, will be applied to the analysis of the case studies in federal systems.

The discussion to date has established a conceptual approach, as an epistemological and ontological framework in which to posit crisis as a variable. The work will help in the evaluation of a robust methodological approach to the question of crisis and dynamics, both in the operationalization of the data gathering, and in the choice of crises that will form the basis of this study. The choice of case studies will reflect these operational necessities. A practical working definition of crisis will need to encompass the following elements:

- Crisis cause issues to change from a state of immanence to one of evidence
- Crisis is a phenomenon that is both grounded historically and currently relevant
- Crisis can challenge the historical basis of systems
- Crisis challenges existing harmonic relations between actors
- Crisis operates both within, and between levels of analysis
- Crisis moves issues from the background to the foreground of salience
- Crisis is a social phenomenon

Such a definition may be expressed thus:

Crisis is a social phenomenon, operating within and between levels of analysis, which causes issues to rise in salience and can result in a challenge to the historical basis of a system of governance, and to existing harmonic relations.

The application of a working definition of crisis to the methodological approach, notably in the identification of suitable case-studies, will allow for a revision, a fine tuning of the definition. In addition, it is worth noting that further research on the nature of federalism as

a concept, and in the methodological application of the concepts of crisis and federalism together, may well produce revisions of the definition. However, the essential cross-disciplinary, cross-image, and cross-level nature of the analysis will remain fundamental to the underlying question of dynamics.

2.2. Conceptualising Federalism

2.2.1. Introduction

In this part of the Chapter I move to the concept of federalism and the relation of crisis to federalism.

The first part of the section looks at the defining characteristics of FPS and in particular at the post King (1982) emphasis on the difference between the concepts of federation, the institutional structure of federations and similar FPS, and federalism as the ideology that underpins, permits, and promotes the creation of federal structures. It is the expression of these ideological tenets of federalism in the dynamic features of FPS that is the major focus of this study, as the dependent variable.

The thesis continues with a discussion of the concept of federalism as a process, the constant evolution of relationships between the constituent elements of federal systems, and compare this with the concept of federalism as finalité. This conceptual difference is important, as this study is predicated on the understanding of, and expression of federalism as process, a constant work in progress, by the communities and collectivities that make up the FPS. The absence of the ability to cause effects in this process in times of crisis will be an indicator of the absence of federalism as ideology, and a sign of a system that has reached finalité; no longer able to adapt to crisis the system can only respond with coercion, force, or alternatively will break up.

I then turn to examine the dynamic processes that form, maintain and challenge the relationships between the communities and collectivities that make up FPS, and the constraining structures within which these processes operate. The particular interest here is the ability of FPS to both restrain, and enable dynamic processes, but without the system itself breaking apart.

The final section examines the nature and source of identity, and in particular the linkage between identity and territory. The thesis is not a study of identity, but examines cases where there is a clear link between territory and identity, and where the threat of crisis challenges the territorial foundations of identity.

2.2.2. Defining Characteristics of Federal Political Systems

The first conceptual challenge is that of establishing a working definition for federalism in FPS. The Oxford English Dictionary gives a very brief definition of federalism as 'The

federal principle or system of political organisation; advocacy of this principle' (OED 2013). The problem with this definition is that there is no differentiation of the system, the institutional aspect, and the advocacy of the principles, the ideological/philosophical. In the definition, the relation between the two, or indeed the ordering of the two, remains unclear. In this thesis, I examine the way that crisis *in* systems creates dynamic responses *from* systems. The emphasis is not on the structure of the system *per se*, but on the way that crisis in the system creates pressures for change of the system, or in the way that the system is able to contain and withstand such pressures. But, as discussed at length, the understanding of the system as structure is important, in the same way that the understanding of the concept of crisis at the international, worldwide level is necessary to allow for the understanding of crisis at the national and subnational levels.

It is in the light of this extension of the conceptual framework of crisis to that of federalism, the acknowledgement of the role and function, and relationships between federalism as structure and federalism as ideology that I turn to Preston King's *Federalism and Federation* (1982). King's work draws from the traditions of earlier writers who had started to describe the concept of federalism as separate from that of federation. He cites the work of Joseph Proudhon, and later Alexandre Marc, and their recognition of the need for a 'comprehensive philosophy' (Marc stops short of calling federalism an *idéologie*) that provides the 'revolutionary awareness which is today the *sine non qua* of our salvation' (Marc 1961 in King 1982 p.20). For King, the importance is making the difference in the use of federalism between the 'political philosophy of diversity-in-unity' (*ibid.*) and the 'institutional matter of fact with no particular concern for either promoting or undermining such a form of unity' (*ibid.*).

King (1982) establishes a clear distinction between the use of *federalism* as a term to describe an ideological position on the nature of power in a political organisation, and moreover that such an ideological position is a product of the contested nature of power, and *federation* which is an uncontested description of an institutional arrangement.¹³ King helps in the understanding of the potential for crisis in federal systems by describing federalism as a 'variable response to the opposed demands for the centralization and decentralization of power on a specifically territorial basis' (p.21). It is within this continuum, from decentralization to centralization, that the effects of crisis as the independent variable have their effect. As discussed, the thesis looks at extant, i.e. surviving FPS (as opposed to failed FPS), where by definition the range of response to

¹³ Although as we will see in Riker's comments, and as King comments, federation as the 'best or most appropriate' (King 1982 p.21) form of constitutional arrangement is in itself contested.

demands has remained within this continuum. King establishes the argument that federalism as an ideology is weak, even in the expression of concentration of power at the centre 'federalist centralism' or in the decentralising of power from the centre 'federal decentralism' in that neither extends to the absolutes of classic sovereignty (in the form of a post-Westphalian state on Hobbesian, or Bodinian lines) or in the form of an anarchism (along the lines of Bakunin or Kropotkin) (ibid.p.22-23).

Within this continuum there is, for King, a common conception of federalism as balance, and, associated with this, federalism as a compromise based on forms of contractual arrangement (ibid.p.56). The idea of federalism as *foedus*, a pact freely entered into, implies 'an agreement that is freely and mutually consented to, whereby each party surrenders a degree of autonomy in exchange for some compensating advantage' (ibid.). Or, as Carl Friedrich puts it,

'we can properly speak of federalism only if a set of political groupings coexist and interact as autonomous entities, united in a common order with an autonomy of its own' (Friedrich 1974 in ibid.p.56).

These definitions contribute towards the understanding of the dynamics of federalism in crisis in the sense that in the case of a breach of contract, an in particular in the case of a group contract, then there must exist in the system rules to protect such groups. These rules themselves need to be capable of revision, through a set of constitutional agreements that set out the terms and conditions for amendment of the overall contract that the constitution provides.

Michael Burgess (2006) draws from King's work, and offers a useful interpretation of federalism as

'the recommendation and (sometimes) the active promotion of support for federation. A federation is a particular kind of state. It is a distinctive organisational form or institutional fact the main purpose of which is to accommodate the constituent units of a union in the decision-making procedure of the central government by means of constitutional entrenchment' (Burgess 2006, p.2).

Burgess adds an important caveat to this meaning; he makes the point clear that the relationship between federalism and federation is not static, there is a symbiosis, a two-way process of influence that is never completed (ibid.). Moreover, Burgess draws on S.R.Davis's understanding of *foedus* as 'the promise of communality and individuality' (Davis 1978 in ibid.p.3); for federalism is not promising a society where either the community or the individual is favoured, it seeks to accommodate the drive of human life for an environment in which 'to convert human goals and intentions into human achievement' (ibid.p.4). For Burgess, it is the 'creative tension that arises out of this predicament, the dual goal of unity and diversity, [which] gives the federal principle its special appeal' (ibid.), and for the purposes of the study, will underpin the search for the

nexus of dynamics. In the contextualising of federalism, it is more a question of knowing where to look than at what to look, locating the nexus, or nexuses, where federalism as a process is evidenced is the goal of the work; my interest lies in the dynamics at the interface between federalism and federation.

Kincaid comments on this difficulty of accommodating 'communal diversity in plural societies' (Kincaid 1995 p.30) in federal structures, and given the diverse views and understandings of federalism advocates an examination of 'the values and objectives of federal systems to political problems . . . more than federalism itself' (ibid.p.31). Kincaid sees this as a way of dealing with the multiple heuristic associated with federalism as a concept, that changes according to 'historical and cultural contexts' (ibid.p.30). For Kincaid, although there is a range of values that underlie the initial will to create a covenant between states, the will to federate itself is imperative, without this will no arrangement can be made. And, although the will to federate must be present, the type of federal arrangement that results is itself a product of the different values at both the time of federation, and within the life of the federation (ibid.p.32).

The subsequent discussions in the case studies of crisis as applied to federal polities will need to acknowledge the dynamic potential of these values; but inherent in this will be the underlying argument of Kincaid that these values are not equally represented in, and do not equally contribute to, the federal polity under examination. Kincaid stresses that 'different federal arrangements reflect different value emphases, and particular values may rise and fall in prominence over time within a federation' (ibid.p.32). Indeed, for Kincaid

'at the core of federal arrangements lie the establishment and maintenance of power-sharing relationships, rather than structures per se, among self-governing jurisdictions which seek to accommodate or maximise certain values appropriate to their common circumstances' (ibid.p.44).

It becomes evident, on reflection on the works of King, Burgess, and Kincaid, that there are processes at work, which will differ from polity to polity, and the resultant federal arrangements will differ between polities, and within polities over time. What remains as a constant variable is the idea of the plurality of values in and between communities to which the polity (in this case a federal polity) must respond. In essence, there is no finalité in respect of FPS, the systems respond to, and create the need for change, in a constantly evolving circular dynamic.

In order to understand the impact of crisis on the development of value based relationships, it is worth considering how to conceptualise the link between values, nations and federations, and here the work of Ferran Requejo is useful. He examines the nature of plural cultures in liberal democratic polities, in particular in federal polities where cultural pluralism is present, and more importantly where demands are made by social or political

movements in respect of 'rights, institutions or procedural principles' (Requejo 2005 p.49). Requejo identifies four conceptual criteria for identifying demands made by such movements in what he describes as 'non-state nationalism' (ibid.) which are applicable to the understanding of crisis in federalism.

In the first of these criteria, he identifies temporality, whether the movement is based on a *transitory* claim, usually on a single issue, or is of a *permanent* nature. In the latter Requejo identifies claims of a collective nature, 'designed to maintain or develop *specific* cultural characteristics (such as religion, language, customs) considered valuable in themselves' (P.49 emphasis in org.). In this thesis, the concept of crisis as immanent is connected to Requejo's *permanent* identifiers; it is in challenges to these persistent values, that arise from focusing events, that crisis develops.

His second classification is *territoriality*, where demands made by movements come from groups whose members are either spread across a state or, in a well-defined specific geographical location (ibid.). Non-state nationalism is predicated on this concept of territoriality, and this study is of federal polities, where territorial arrangements are inherent in the polity.

The third classification encompasses in the broad categorisation of *political objectives* both cultural and political aspects. In the case of the cultural aspect, there can be demands made for the inclusion of the group's cultural aspects in the polity, or conversely for a 'differentiated citizenship' (ibid.), whereby certain characteristics of the group are included in an extended notion of citizenship in which these differences can be accommodated. In a similar concept, political demands made by groups may be for an *integration* of the group's rights into the extant political system, or for a process by which the political system allows for a *differentiation* of the group, or collective (ibid.p.49-50).

Requejo's last criterion is that of the demand for collective representation, either within a state's institutional framework, or in a form of self-government. The historical tendency for non-state national movements has been towards demands for both types of representation, and such claims are made on 'both empirical and normative standpoints' (ibid.p.50).

Overall these four criteria for demands of groups that are classed as 'non-state nationalist' are summarised by their permanent nature, their territoriality, the aim to preserve cultural differences and political differentiation, and the right to some form of collective representation. For Requejo, the optimal solution for the management of these demands for plural societies within one state is via 'some kind of *federal agreement*' (ibid.p.55 emphasis. in orig.), with

'a better accommodation of different national identities with historical and territorial bases in the symbols, institutions and representational and participatory mechanisms of the different political collectives in which individuals are situated' (ibid.).

In a reflection of King's work, Requejo makes a clear distinction between the fundamentally normative nature of federalism which

'refers to the territorial organization of a political community and in which there are two spheres of government that combine the principles of self-rule plus shared-rule or, in other words the principles of self-government and shared government' (ibid.),

and 'federal agreements', which refers to the description of a 'wide range of institutional practices' (ibid.) which extend from regional states to confederations, and include various types of federation.

The discussion thus far has established some key tenets of the concept of federalism that will be explored through the case studies, in the context of crisis. The first is that there is a conceptual differentiation between the idea of federalism as the search for accommodation between groups' interests, and federation as the institutionalisation of a system of management of such accommodation. The second is that such groups are socio-political communities with cross cutting cleavages in terms of values. The third is that these groups have a link to a defined territory. And finally, that there is a form of state in which there is some representation for the groups and some representation for the nation as a whole in the management of the dynamics of the relationships between groups, and between groups and the general management structure. The management of these relationships is established with the use of a set of rules, a constitution, within which there are rules for amendment. What is evident is that there is at the very least the potential for dynamic change in these systems, and that these dynamics are present in two dimensions: the spatial, between territorial groups; and the temporal, over time periods. However, to interpret the potential for dynamic change, I examine the different concepts of federalism as a process which permits and constrains such dynamics, as opposed to an understanding of federalism as a system which is defined, finite, in that it is rigid, inflexible and resistant to change.

2.2.3. Dynamic Processes and Constraining Structures

At this point, I clearly differentiate between the concept of process as the method of achieving change, and process as evolution. In the former, process is the application of previously agreed rules for the achievement of agreed outcomes, which also includes

ideas of path dependency.¹⁴ The latter and this is the meaning adopted, is the understanding of process as the setting out of broad frameworks within which solutions to problems and adaptations of the rules of a system can evolve, without an ultimate goal in sight.

In the case of federalism as process the work of Carl J Friedrich is informative, and in terms of the relevance of the work to this thesis there are a number of facets that need to be addressed. Friedrich develops his analysis of federalism as process in his work on *Trends of Federalism in Theory and Practice* (1968), to which I will turn in due course. However, his earlier work on the more general role and purpose of government (1963), develops the concept that the purpose of political orders as the location of and promoter of stability has become reified, and that the underlying values and interests of communities are not recognised as fundamental elements in these.

He argues that four definitions of order and hence of political order have become significant:

'a structured arrangement of political units; a systematic arrangement of political units . . . integrated into a coherent whole; a community in which peace prevails . . . in which "law and order" are maintained; [and] when there is an absence of nongovernmental violence' (Friedrich 1963 pp. 336-337).

The difficulty, for Friedrich, is that these concepts are based on the premise that 'either explicitly . . . or implicitly . . . a complete elimination of strife or violence is desirable' (ibid.p.337). However, as communities' political representatives pursue goals that vary according to the values and interests of their communities in a political system, 'a certain amount of disorder is inescapable and that therefore disorder may be desirable in the political community in order that its goals may be achieved' (ibid.p.337). Friedrich argues for a system where community values are determinants of the political order, wherein the parts are so organised as to be '*relative to the values, interests and beliefs of a given community*' (ibid., emphasis in original), and in which order as a value is not absolute, for 'human communities rarely, if ever, prefer order to all other values' (ibid.).

Friedrich's development of this idea of a plurality of values, including order, leads him to the conclusion that there is a misperception by outsiders of societies in which competing

¹⁴ In the discussions on methodological approaches, I mentioned the avoidance of path dependency as a framework of analysis – for Bevir & Rhodes (2004) such approaches create limitations on the ability of the researcher to delve beneath the level of the institution to acknowledge the agency of the individual. Indeed, the study of processes in FPS as evolutionary requires the examination of the dynamic relationship between systems, and their institutions, and the individuals, and groups of individuals from which the systems develop. This is discussed in the section below on Livingston (1952, 1956) and the social basis of federalism.

values drive the political order; such political orders seem chaotic, and anarchic. He extends this to the type of political order classed as 'decentralized' which 'exhibit an apparent "disorder" of diffuse groups each with its own authority, yet somehow functioning effectively as a whole' (ibid.p.338). Drawing from the need for accommodation of values of the communities which form the political order, Friedrich proposes a new definition of a political order as

'to designate the political situation of a community in which component parts or units are arranged in such a way as the actions required for the attainment of the purposes of the community will be taken' (ibid.).

This system in which values are relative, as opposed to absolute, is capable of accommodating the inevitable disorder that arises from changes in the constituent communities' values, interests and beliefs, as 'such areas of disagreement are recognized and taken into account in structuring the community' (ibid.p.339). A dialectic can arise where there is opposition between the values of one group, and the needs for communal action; but this can be accommodated in the processes that communities organised on a relative value basis can use; compromise is possible, even though the values and beliefs remain different (ibid.p.339). Such orders that can accommodate compromise and change are, for Friedrich, dynamic, as opposed to static. Dynamic orders can contain disorder, 'disturbance factors' (ibid.), however brief they may be, even the temporary absence of such disorder would not render the system static; in essence dynamic orders retain the potential for the accommodation and resolution of disorder within them that arise from changes in values. This fundamental distinction between dynamic and static political orders becomes relevant in the analysis of federalism as a process-based organising principle in political systems, to which I now turn.

In Friedrich's analysis federalism 'should not be considered a term for a static pattern, designating a particular and precisely fixed division of powers between governmental levels' (ibid.p.594), but should

*'designate the process of federalizing a political community, that is to say the process by which a number of separate political organizations, be they states or **any other kind of association**, enter into arrangements for working out solutions, adopting joint policies and making joint decisions on joint problems'* (ibid. emphasis added).

Friedrich acknowledges the role of federalism as a means of moderating political issues that come about through the interaction of various levels of community:

'Federal relations are fluctuating relations in the very nature of things. Any federally organized community must therefore provide itself with instrumentalities for the recurrent revision of its pattern or design. For only thus can the shifting balance of common and disparate values, interests and beliefs be effectively reflected in more differentiated or more integrated relations' (Friedrich 1968 p.7).

The ability of the system to change, to reflect the shifts in the balance between communities depends on 1\ the nature of the communities and the values upon which they are based (or which they have developed between the formation of the polity and the time of change) 2\ the nature of the challenge to the values that comes about through the evolution of the polity, or in the case of this study, as a result of a crisis, and 3\ the nature of the instrumentalities – the way the rules for change are structured, and made accessible to those communities that seek change.

James, Lord Bryce's examination of the pressures that come from contrasting and competing values in federal systems, and the nature of the instrumentalities of the system, contributes to this thesis. As Burgess stresses, Bryce's work helps to explain the 'federal predicament' (Burgess 2006 p.18) in which there needs to be a balance between those forces which would separate communities, those forces that would cause communities to integrate, and the flexibility or rigidity of the instrumentalities of the system to permit or constrain such forces.

Bryce contrasts the need for a 'Rigid Constitution' (1901 p.220) in federal entities in preference to a 'Flexible Constitution' (ibid.) to contain and manage the 'centrifugal forces' (ibid.) that arise in society and that are both complex and immutable (ibid.p.221). Bryce discusses the existence in communities of the polarising effect of grievance on certain groups within society that give rise to such centrifugal forces (ibid.p.218). Conversely, Bryce identifies 'centripetal forces' (ibid.p.217) which draw men together in the formation of a political agreement, a constitution, in which 'the complex totality of laws embodying the principles and rules whereby the community is organized, governed, and held together' (ibid.).

For Bryce, rigid constitutions, familiar in federal systems, offer the possibility for groups that desire 'some control of its own affairs . . . a valuable means of securing these objects' (ibid.p.220) and this reduces the centrifugal tendencies in favour of centripetal tendencies by giving 'so much recognition and play to the centrifugal as may disarm them, and may allow the causes which make for unity to operate quietly without exciting antagonism' (ibid.).

Bryce identified the history of the 'Rigid Constitution of the United States' (ibid.p.250) as exemplifying the advantages of this structure in both its flexibility, through the use of amendments, and of the initial recognition of the balance between 'centrifugal and

centripetal forces as they actually stood at the time when it was framed' (ibid.p.251). In addition, Bryce applauds the provisions in the constitution for the conduct of central government, for these were

'expressed in such wide and elastic terms as to be susceptible of interpretation in a more restricted or in a more liberal way, i.e. so as to allow either a less wide or more wide scope of action for the Central Government' (ibid.)

Essentially, and pertinent to the understanding of federalism, the argument that Bryce makes is for the need for a constitutional arrangement

'by which the several rights of the component communities which are to form the State may be so protected that they need not fear to give their allegiance to the State and cordially support its Central Government' (ibid.p.252).

The way in which the State/component community interests are allowed to be managed in this constitutional arrangement is set out in the rigidly defined provisions of the constitution. The demands made by the constituent communities on constitutional provisions are indicative of the direction of the federalist tendencies of these groups, either towards more centralisation, centripetal, or towards more decentralisation, centrifugal.

As Burgess discusses, Bryce offers a number of factors which caused disequilibrium between the State and its component communities, many of which have the capacity to act as both centripetal and centrifugal forces (Burgess 2006 p.18, Bryce 1901 pp.221-229). These factors, which include obedience, individualism, interest, sympathy, religion, identity and nationality, will be present in greater or smaller proportions in the crises that confront federal polities. The direction of pull of these factors will be largely determined by context and circumstances, as Burgess says 'the federal predicament was contextual and circumstantial' (Burgess 2006 p. 18), and for the purposes of the study will give data needed for the comparison of these dynamics between polities.

A specific set of circumstances may, however, lead to an inexorable push towards secession by a constituent state; the pressures may be such that the ability of a rigid constitution to allow the absorption of the centrifugal forces thus created is tested to the extreme. Bryce (1901) cites a range of such 'tendencies' that affect one part of a population as 'race feeling, resentment for past injuries, grievances in respect of real or supposed ill-treatment in matters of industry, or of trade, or of education, or of language, or of religion' (Bryce 1901 p.238). As Burgess notes, Bryce argues that there may be a combination of this force, and a

'sentiment of dislike on the part of the disaffected section towards the rest of the nation, or else a belief that great material advantage will be obtained by separation; and the latter of these cases is almost sure to produce the former. When two or more of these tendencies combine in any given case, so much stronger does the desire for separation become' (Bryce 1901 p.238, Burgess 2006 p.19).

So, for Bryce, secession may result in a combination of disaffection towards the majority of a population by a minority, potentially as a result of grievances, and the idea of secession offering material advantage. Secession is a significant event in the evolution of a federal system, and at the far end of the continuum of the outputs of dynamics in such a system. As discussed, crisis will create dynamics in a federal system, and such dynamics will be evident in the narratives of minorities, and minority nationalities, and in the manner in which the majorities, and the constitutional arrangements of the federal polity, combine to mitigate and satisfy such dynamic tendencies. Bryce identifies constitutional amendment, or use of existing constitutional provisions for exemption, as methods with which federal polities can reduce centrifugal, or secessionist tendencies, in addition to the provision of local autonomy, regionalised government, subsidiarity, and the exclusion of certain competences from central government (Bryce 1901 pp. 243,244). Bryce is particularly emphatic on the benefits of the provision in constitutions for local legislatures to enable certain legislative functions to be carried out by 'minor local areas, such as counties, empowering them to regulate their local affairs in their own way' (ibid.p.244). He does, however add a caveat; whilst the practice, and love, for local self-government are positive in that they reduce friction, ' . . . where there exist grievances fostering disruptive sentiments . . . the existence of local bodies with a pretty large sphere of activity need excite disquiet' (ibid.).

Bryce's discussion of the need for a rigid constitution to contain the forces of conflicting effects of values suggests a conceptual differentiation between these forces and the instrumentalities designed to frame, contain and constrain. However, as seen from the discussions on crisis as a concept where there is the potential for endogenous and exogenous forces to be at work in a dialectical relationship, these relationships do not operate discretely, and so the (changing) needs of the communities, individually and as a nation, and the instrumentalities of the nation also must be conceptualised as a dynamic relationship.

Kenneth Wheare's *Federal Government* (1947,1964) contributes to the understanding of federalism in a number of ways; he gives a comprehensive account of the elements that are necessary for a polity to be classed as federal, but more importantly he identifies areas where the prescribed structures evolve, or are constructed, with flexibility. For the purposes of the discussions, it is worth examining these particularly closely, for where

there is flexibility there is also the space for a dynamic, and in the case of the current study the dynamic caused by crisis.

For Wheare (1964), federal government is for most people 'an association of states for certain common purposes, but in which the member states retain a large measure of their original independence' (p.1), and the United States should provide the 'most important and successful example' (ibid.) and definition of federal government.

From this basic premise, Wheare extracts the 'federal principle' (ibid.p.10) that makes the case of the USA exemplary as a federal government that is strong enough and capable of governing those affairs to which it was entrusted, and 'capable of regulating the common concerns and preserving the general tranquillity of the United States' (ibid.p.8). For Wheare the federal principle means

'the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent' (ibid. p10).

This principle should be constitutionally established, ideally in a written constitution, which for Wheare is a supreme instrument, in that it binds general and regional governments (ibid.pp.53-54); federal government needs the supreme constitution to be federal, and a written constitution to work effectively (ibid.).

However, and salient to the discussion, Wheare makes a clear distinction - indeed this is a primary distinction - between the federal principle and the application of the federal principle in federal constitutions and governments. For Wheare it is the presence of the federal principle as a predominant element in the constitution and government that render these federal:

'Is the federal principle predominant in the constitution? If so that constitution may be called a "federal constitution" . . . It seems essential to define the federal principle rigidly, but to apply the term "federal constitution" more widely' (ibid.p.15).

Indeed, some flexibility is permitted in constitutions that still retain the federal principle, and, following Bryce's argument, it is the presence of flexibility in a constitution that is rigid in the application of the federal principle, that is a factor in absorbing the tensions between the constituent units of the polity.

This concept of federalism as a realisation of flexible arrangements between associations, or governments, embedded within the rigid strictures of a constitutional framework, is expressed in the division of powers between general and regional governments, and in how competences are allocated (ibid.p.75). In the first instance Wheare, and Riker after him, make a clear requirement for either regional or general government to have at least

one competence that is under their exclusive control. However, and as Riker points out,¹⁵ whilst the theory of a clear division of competences between general and regional governments is simple, the reality, the practical application of the division of competences, is more complex, and will be shown to be a location of dynamic change.

For Wheare, whilst competences theoretically fall exclusively to either the general or regional government, in reality some competences may be covered by both. The federal principle is maintained as long as for each competence there is the potential of primacy, that in the case of conflict or dispute one level has the potential to prevail over the other (ibid.), for as Wheare argues:

'There must be some matter, even if only one matter, which comes under the exclusive control, actual or potential, of the general government and something likewise under the regional governments. If there were not, that would be the end of federalism' (ibid., emphasis added).

Wheare goes on to illustrate the variation in individual polities' arrangements in exclusive and concurrent competences (as at 1947) where in the U.S. the latter were commonplace, compared to Canada where there were few concurrent competences, and Switzerland, which fell somewhere between the two. In the cases studied in this thesis, and as will be discussed, the extent, and quality of the division of competences varies – but in all three there is at least one competence where either the constituent unit or the general government has the control to which Wheare refers.

The arrangement of competences and powers between levels of government, whether actual or potential, is both complex and evolving. Wheare argues that it is beyond the capability of even the most adroit framer to draft a constitution in which all competences, current and future, can be effectively allocated between levels of government, not least as the constitution as framed will also tend to reflect the balance of interests at the time of framing (ibid.pp.75-79). Wheare goes on to illustrate the difficulties of framing lists of competences, either those exclusive to regional government, or to general government, with the residual competences falling to the alternate sphere of governance (ibid.). On the one hand, newly federated states tend to be reluctant to give residual powers to the general government, and thus seek to create

¹⁵ Riker argues that it is futile to try to calculate empirically how many competences fall to each government, general or regional, for these are in a state of constant evolution (1975 pp.102-105).

'an exclusive list for the general government which contains as many as possible of the important subjects of general concern and to hope that if any new subject of general importance arises, the need for general control will ensure that it will be handed over to the general government' (ibid.p.80).

However, if such states were to decide to

'enumerate the powers which they wish to retain exclusively, and to leave the residual powers to the general government, objections of a different kind may be imagined' (ibid.).

These discussions illustrate how the simple concept of a division of competences between levels of government can become complex in execution and can give rise to disputes and conflicts in the system; as Wheare concludes, 'a concurrent jurisdiction is not incompatible with federal government, but may it not be incompatible with good federal government' (ibid.pp.81-82). In the context of the current study, the evolution of the dynamic in the movements from and to concurrent and exclusive competences in crisis situations will be part of the empirical data collected and compared.

Here Wheare moves from the description of how federal government should be organised at the theoretical level to how federal government works in practice, and as an example shows how the sources and application of finances can contribute to a problematic relationship, between the general and regional governments (ibid.pp.93-6). There is, for Wheare, a persistent disparity between the allocation of functions to regional and general governments, and the allocation of resources, that can only be resolved by constant adjustments (ibid.p.116). Crucially, and once again Wheare refers here to the inadequacy of the written constitution to cover such eventualities, it is left to the interested parties to negotiate settlements in the absence of a formal mechanism. Such mechanisms do exist, Wheare cites that of Switzerland, but as far as the U.S., and Canada is concerned, 'it is a matter of politics' (ibid.p.117). I use this exemplar as a template in the case studies for relevant instances of inadequacies in the constitutional frameworks for each of the FPS.

Discussions on the nature of constitutional federalism as rigid and inflexible are further developed by William Livingston, who develops the approach of federalism as process, in which *instrumentalities* are a recurring feature. Livingston advises students of federalism to look beyond federalism as a legal concept; although he acknowledges that the legal element of federalism does pose huge challenges. He argues that

'a better understanding of the nature of federal government can be secured by trying to picture its workings as a process in which the diversified elements that compose a federal state integrate and compromise their differences, rather than as a set of institutions and procedures whose operation is wholly determined by the legal norms and structures' (Livingston 1956 preface).

It is in this realm beyond the legal and constitutional understanding of federalism that Livingston develops the linkage of federal society and federal government. His range of *instrumentalities* includes those commonly found in all FPS; a constitution, a formal

distribution of powers, a mechanism for constitutional interpretation, representation in the legislature, dual citizenship, a federal executive (ibid.p.11). However, and this is Livingston's main argument, the range and type of instrumentalities deployed is a product of the underlying society, and

'The problem of federalism is to make the instrumentalities fit the society beneath' (ibid.p.10).

For Livingston, there is a range of social diversities that may produce federalism:

'Differences of economic interest, religion, race, nationality, language, variations in size, separation by great distances, differences in historical background, previous existence as separate colonies or states, dissimilarity of social or political situations - all these may produce a situation in which the particular interests and qualities of the larger community must be given recognition' (ibid.).

The understanding of federalism as a response to forces akin to Bryce's centripetal/centrifugal analogy is also present in Livingston's understanding of federalism as process for accommodating the effect of demands that come from the 'total pattern of these diversities' (Livingston 1952 p.90). This is a salient point for the understanding of this thesis, for in a crisis the reaction of the constituent communities may not be limited to one clear demand for recognition of diversity; the demand may be a composite of demands that draw from a set of diversities that will be unique in each crisis. What is important to recognise is not only the pattern of diversity, but the effect of the demand for recognition that is produced, and the resultant counter-demand, and the instrumentalities that are used in this dialectic (ibid.):

'This demand must in most cases meet a counter-demand (or inertia, which is equally a force) for increased unity or integration. These two demands or forces - the one compelling towards autonomy and independence for the component units, the other impelling towards centralization and the suppression of diversity - meet each other head on; the result of their conflict is the federal system' (ibid.).

Livingston then goes on to clearly define the nature of the federal constitution as the rules within which the instrumentalities operate:

'The federal system is thus an institutionalisation of the compromise between these two demands, and the federal constitution draws the lines of this compromise. The constitution will be more or less federal in accordance with the relative strength of the two demands. Thus, societies in which the demand for integration is stronger than the demand for decentralization will produce a set of institutions that is more nearly unitary; and a contrary situation will result in a contrary result.' (ibid.).

The operation of these institutions is dependent on 'different social and cultural concepts' (ibid.p.91), depending on the context institutions can become instrumentalities; the existence of similar institutions in one federal policy may not lead to the same understanding of, and use of the institution, in another. Instrumentalities are not, for Livingston 'merely a clause in the constitution' (ibid.), but are the way in which the

constitution and the institutions are operated and also incorporate 'many things that are far from constitutional in importance in the ordinary sense of the word' (ibid.).

These *beyond the constitution* instrumentalities are an essential part of the way that federalism in this thesis is understood; Livingston identifies 'such things as habits, attitudes, acceptances, concepts and even theories', (ibid.) as part of the slew of non-constitutional elements that are part of the processes in the moderating of the forces in play between communities with different demands on diversity. It is in the analysis of the way that these instrumentalities develop, as a reaction to crisis, that gives the data for comparison between the case studies that form the empirical part of the study.

But as Livingston points out, and indeed as discussed, the nature of the instrumentalities changes as a constant feature of societies where

'the pattern of forces within the society changes with the passage of time. Society is never static but changes constantly in accordance with the interplay of the various dynamic forces within it' (ibid.p.93).

Insofar as this thesis relates to Livingston's work, the persistent change in demands for recognition of diversity as a consequence of change is one aspect of political society; FPS will change through the development of instrumentalities that are flexible, but can become institutionalised, all within a framework of a constitution that is rigid in that there is a 'special amending process' set out in which the interests of the federal elements in the society are consulted (Livingston 1956 p.302).

Such processes for the formal amendment of the rigid constitution differ from polity to polity- the interest of this thesis is not to rehearse the comparisons between federal polities in terms of processes for amendment. However, changes to the instrumentalities of federal system that are subject to crisis, and which may include moves to more formal amendment processes, are the subject of the thesis.

In a later work, Daniel Elazar also examines federal process, as a response to the permanent search for stability in the world order. In a reflection on earlier discussions on the immanence of crisis in the world systems, and indeed in intra-state systems, Elazar argues that

'humanity today finds itself confronted with a number of political problems, many of which are seemingly intransigent, whose sources lie in conflicting national, ethnic, linguistic, and racial claims arising out of historical experiences. Some of these problems are headline material almost daily, others are less visible but constantly aggravating, and still others have been temporarily submerged but only await the appropriate moment to reappear further to disturb the worldwide quest for peace' (Elazar 1987 p.11).

The federal principle that Elazar establishes, of 'self-rule plus shared rule' (ibid.p.12) rests on three elements within a contractual framework that; '1\ provides for power sharing, 2\ cuts around the issue of sovereignty, and 3\ supplements but does not seek to replace or

diminish prior organic ties where they exist' (ibid.). In common with earlier writers, Elazar avoids the idea of federalism as a set of institutions associated with 'monist or centralist' ideas (ibid.); in a federal polity there is

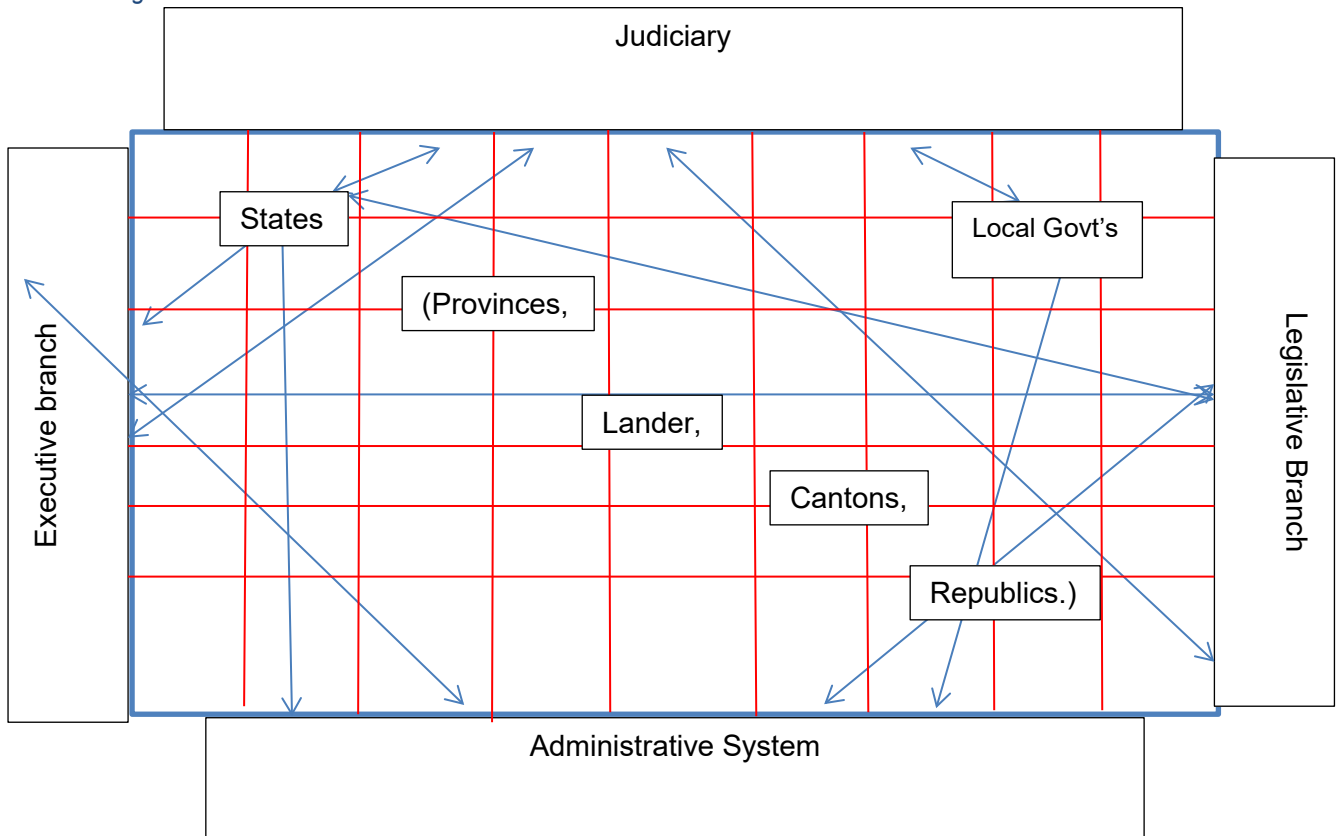
*'some conception of the federal idea, some persuasion or ideology that endorsed federal solutions, some particular application of the federal **principle**, and some particular federal **framework**'* (ibid.p.13 emphasis in original).

Earlier discussions of the federal idea, and the federal principle, were covered in the examination of Wheare; where Elazar is apposite is in his analysis of the framework in which these federal tenets operate. As an antithesis to the dominant paradigm in social sciences and political science of the 'centre-periphery model, for political integration as for other things' (ibid.), Elazar introduces the concept of federalism as a matrix - a polycentric design - 'a womb that frames and embraces . . . a communications network that establishes the linkages that creates the whole' (ibid.). In this conception, the relative strengths of the centre and peripheries as a measure of political integration gives way to a measure of the matrix as a whole.

The purpose of this multi-dimensional matrix of communications is for Elazar a reflection on the nature of human relationships, where there is a propensity for humans to accommodate a dialectical tension; 'if dynamic theories of psychology are correct, the human personality is forged out of the interaction of several components that may pull in different directions' (ibid.p.30). It is within the matrix that the 'creative dialectical tension' (ibid.p.31) can flourish, and 'produce better results than if efforts are made to stifle the expression of these different and even contradictory impulses' (ibid.).

Elazar uses a range of pictorial representations to illustrate his concepts: a pyramid to identify the concept of decentralization, where governments are organised in a hierarchy according to the power that each level possesses; or a set of concentric circles to display the centre-periphery model in which power is aggregated at the centre. His illustration of the matrix model identifies the characteristics of the federal system where 'there are no higher or lower power centers, only larger or smaller arenas of political decision making and action' (ibid.p.37).

Figure 2 Elazar's Matrix Model of FPS



Source: Elazar (1987) p.37

Elazar's metaphor of the matrix allows for an interpretation of relationships between arenas which avoids the hierarchical notion of the distribution of powers; as a multidimensional bounded space in which the different 'decision-making centres are linked through formal lines of authority with both *formal and informal* lines of communication crisscrossing it' (ibid.p.37, emphasis added). Elazar did not intend the matrix model to represent a typology of federal arrangements in any one polity, nor does it include all of the potential decision-making arenas, or indeed any concept of the positioning of the polity in question on a continuum from centralization to non-centralization. It does offer, however, a conceptual framework against which to examine and evaluate the functioning of the FPS in each of the case studies.

The theoretical framework thus far shows that in the models of federalism as process the main discussions pertinent to this thesis are concentrated on the management of demands of communities in a federal polity that come about as a result of evolving value driven needs. However, there is a concurrent need for a type of structure that permits change, within a constraining framework that has rigid and non-rigid characteristics.

Livingston's work theorises the use of instrumentalities as part of a pattern of processes, in that the institutions of different federal polities were context dependent¹⁶ in their operation. In this respect, the comparison of federal actors becomes problematic, for the actual scope and function of similar institutions: parliaments, boards, judiciaries, executives, political parties, in the process model, is case-dependent. The thesis seeks to examine the dynamics in FPS in times of crisis, and the instrumentalities in each case study will be context dependent, and will be examined on a case-by-case basis. The thesis is not seeking to rehearse the comparative studies between types of federal polity that have been so effectively discussed by Watts (1999, 2008, 2015), and Burgess (2006, 2012). This caveat notwithstanding, there are some points on the role and nature of actors within FPS that need discussion: the role of local government, and the role of political parties.

The role of local government in political systems, and in particular FPS, is a particularly good example of federalism as matrix that is context-based. In FPS, for Elazar, the 'essential bargain is between a general government and state governments or their equivalent' (Elazar 1987 p.187); these equivalents are noted in the matrix model as Provinces, Lander, Cantons, Republics. However, conditions exist where the essential bargain is extended to encompass a wider set of decision-making arenas that enter into the matrix, and these include local governments and municipalities. Elazar cites the case of the U.S., where although legally local governments are the 'creatures of their states' (ibid.p.187), there has been an extension of the original bargain between the states and the federal government through to the local governments. In most cases this has been confirmed with the amendment of the states' constitutions, but even without this *de jure* confirmation there has been a *de facto* extension of local governments' rights. As have discussed, the nature of the FPS for each case study will differ, and the extension of the basic federal bargain beyond that of the general/state government will thus be contextual. However, as Elazar sums up:

¹⁶ Here I use the term context dependent in respect of both the historical antecedents that framed the development of the institutions in a system, and the concept developed by Livingston that these were also predicated on the societies that formed the system. In this respect, the concept draws from Bevir & Rhodes (1999, 2002, and 2004) in the acknowledgement of the actor in the shaping of institutions, in addition to historical path dependency. For the literature on historical path dependency, see Mahoney & Villegas (2007) pp. 78-81.

'when federal principles are translated into political structures, real possibilities are opened up for governmental arenas of all sizes to maintain the ability to act freely within the complexities of the whole' (ibid.p.188).

In terms of this thesis, due regard will be paid to the existence, role and function of these governmental arenas; identifying these will need a careful understanding of each case study's matrix. As Steytler (2009) points out, there exist a large number of these that include 'counties, municipalities, townships, town councils, school districts, special districts, rural local authorities, villages and traditional or tribal authorities' (p.5). The identification of these decision-making arenas that become salient in times of crisis will be an important part in the empirical sections of this study.

The operation of decision-making arenas within the matrix of each FPS implies some form of political structure, and the literature covers ideas of the relationship between political parties at the state and federal level, and on 'political mobilisation for decentralist reforms' (Burgess 2006 p.151). Pertinent to my theory of crisis and federalism is the idea that constituent units have a constitutionally assured capacity to challenge and restrain federal government. Indeed, in the case of sub-state units the federal characteristic of challenging higher levels of governance is equally exemplary of this capacity (Riker 1987 pp. 76-78). Linked to this idea of constraint and restraint is the existence, or absence of the veto right in FPS. The literature on veto rights examines the nature of veto players, and their ability to impact on policy decisions.¹⁷ In this study, I acknowledge the potential for veto, and the use or non-use of veto as a feature of dynamics in FPS. In the case of SI, it is the absence of a decision to veto secession legislature rested with the NYS governor; In the case of Quebec, Trudeau's decision not to veto successive language legislation; and in the UK case the decision by Major not to veto progression on EMU.

It is in disharmony that this thesis finds its theoretical and empirical grounding, and in particular in the ability of FPS to manage crisis as a fundamental element of diverse societies grouped in a system. Burgess argues that federalism is dynamic and that this needs to be acknowledged in order for the student of systems to understand how these work when challenged by 'new strains and tensions' (1993 p.10). In this thesis, such new challenges are defined spatially and temporally by the conceptual framework of crisis. In this manner, the thesis hopes to respond to Burgess's call for the investigation of 'the *capacity* of federations to adjust and adapt to new forces which acquire political salience' (ibid., emphasis in original).

¹⁷ See especially George Tsebelis (2002) *Veto Players: How Political Institutions Work* Princeton: PUJ

The political use of federalism is analysed by Alain-G Gagnon (1993) both in relation to the specific nature of Canadian federalism, further discussed in Chapter IV, but also from a theoretical stance, in particular the role of federal systems in the management or resolution of conflict. Gagnon's arguments reflect the discussion above on Friedrich's concept of order as a low salience issue compared to communities' political values, and inform the understanding of federalism and crisis:

'The success of federal systems is not to be measured in terms of the elimination of social conflicts but instead in their capacity to regulate and manage such conflicts . . . [c]onflicts must be viewed as an inherent component of all federal societies. Paradoxically, the capacity of a federal system to reflect diversity constitutes a built in weakness since it allows for conflicts to emerge and to be politicized' (Gagnon 1993 p.18).

Gagnon goes on to examine Smiley's analysis of the paradox of federal systems, referring to the writing of former Canadian prime minister Pierre Trudeau:

' . . . Trudeau made a perceptive analysis of the relation between federalism and nationalism. He saw a paradox here in the sense that the cohesion and desire for autonomy of particular groups in federal states which made federalism necessary at the outset makes such regimes somewhat unstable. Because of the continuing strength of such spatially demarcated diversities there is an ever-present impulse for those who wish to preserve the existing federation to counter such divisive forces by resorting to nationalistic appeals' (Smiley 1987 cited in *ibid.* p.18).

It is precisely this type of impulse that this thesis seeks to examine in FPS that are placed under the stress that arises from challenges to the cohesiveness and autonomy of groups in times of crisis, in terms of the basic impulse of seeking to preserve the polity, and in the range of instrumentalities employed (including nationalistic appeals) to achieve this.

In the examination of the case studies in this thesis, the identification of the dynamics in disharmony between the interests of the decision-making units in times of crisis, and the corresponding cleavages that occur between political parties at both intra- and inter- unit level, will be integral.

2.2.4. Identities and Values

In the FPS studied, the nature of the crisis is dependent on the existence of identity as a collection of identifiers that differs between, and across the units of the systems. The primary consideration for the case study is the idea of identity and territoriality. In FPS, the organising factor is territorial, and in each of the crises there will be a clearly identified territory within which a community is identified, and a clearly identified other, also territorially based, with substantively different identifiers. In the case studies as selected, the territories/identifiers and the nature of the threat to these can be summarised as:

Table 7: Territories, Identifiers and Threats in the Cases

Federal Political System	Territorial Unit in the case study	'Other' Territory or territories	Type of identifiers in the crisis	Nature of Threat
New York City	Staten Island	Rest of New York City	Cultural, Socio-Economic, Ethnic, Islander,	Reduced political representation – loss of voice/veto Further deterioration of environment with attendant challenge to special nature of culture Continued treatment of Islanders as second class
Canada	Quebec	Rest of Canada	Linguistic, Cultural, Socio-Economic,	Loss of French language and <i>Canadien</i> culture with the development of Quebec's economy Absorption of province into one nation Canada / negation of claim for special nation status. Quashing of nationalist movement
The EC/EU	United Kingdom	Rest of EU (the Continent)	Cultural, Socio-Economic, Islander, Exceptionalism	Nature of parliamentary sovereignty, and cultural identifiers – currency, socio-economic conservatism. Post-war world status and continued exceptional global role. Islander status – forced Europeanization.

In each case study the type of crisis will be dependent on the complex relationship between sources of identity, but common to them all will be the underlying perception of threat to one, or several elements of the identity of the community in the territory.

These complex relationships between identifiers that make up an identity will be made evident as a result of the crisis and in particular through the study of the expression of diversity in the federal unit in the lead up to the crisis event (the focussing event), during the crisis, and in the post crisis period.

Identities are, for Charles Tilly (2005, pp.207-209) 'social arrangements that are responses to questions of "who are you?" "Who are we?" and "Who are they?"' (ibid.p.209); responses which are 'assertions, always contingent, always negotiable, but also always consequential' (ibid.). Identities are made up of four components:

'1\ a boundary separating me from you or us from them; 2\ a set of relations within the boundary; 3\ a set of relations across the boundary; 4\ a set of stories about the boundary and the relations' (ibid.).

It becomes evident that in such a concept of identity, crises can alter the answer to the questions by challenging the existing relationships, boundaries and stories.

Tilly extends the nature of identity to that of *political* identities which occurs when governments, or political entrepreneurs, become parties to identities. In this thesis, the interest is in identifying the dynamics that arise from crisis as applied to the relationships between political identities as a product of the changes in the identities of groups. Tilly argues that to understand these dynamics 'two classes of problems: generation and constraint' (ibid.p.210) need to be worked on. Generation is 'what causes the processes involved to a) begin, b) change', and constraint is 'once they are in operation, how do the processes affect social behavior a) on the small scale, b) on the larger scale' (ibid.). In terms of the current thesis, and the typology of crisis, Tilly's work gives insights into how the dynamics created by changes to the sets of relations between communities can feed into changes to the political identities as formed by political entrepreneurs, these both reflect and reinforce, and have the potential to increase divergence between group identities.

2.3. Concluding Comments

Thus far in the thesis I have established the ontological footings of the study, and addressed questions of method and research design. The present Chapter has in turn developed these through the operationalising of the design through the identification of the concepts that create the framework for data collection, and analysis.

The innovative use of crisis as the independent variable creates an analogous time dimension across the case studies; each is similar in the emergence of crisis from a background of socio-political activity, each has the feature of a focussing event(s), and each has a period of management of the crisis before this recedes again to a background level.

Drawing from IR theory, the cases selected reflect the relevance of crisis across levels of analysis, from the macro to the micro. In the case of the UK, I examine the relationships between states in a FPS in which state sovereignty, state cooperation at the intergovernmental level, and states' integration in a system with federal characteristics co-exist. In the case of Quebec, I examine the developing status of a province in a federal state that seeks to gain the trappings of nationhood, and to protect these through developing sovereignty. In the case of Staten Island, I drop down into the analysis of New York City, a constituent unit of New York State, which had developed a system of local government that included provisions for territorial representation for its own boroughs as constituent units.

The second area of conceptual framing draws from the literature on the dynamic and process based characteristics of federalism as a principle of organisation of political systems that are territorially organised. In the utilization of these principles as fundamental aspects of federal systems, I can extend the examination of these away from classic federations to include above and below the state FPS. The subsequent data collection and analysis of the cases is framed in an extended interpretation of the notion of instrumentalities; the beyond the constitution tools available to reduce conflict in crisis. I use the concept of dynamic systems in which demand and counter-demand, centrifugal and centripetal forces, and 'creative tension' co-exist, to locate and contextualise the events pertinent to the research questions and hypothesis.

Having thus established the methodological and conceptual contours of this thesis, I now present the three case studies.

3. Case Study - Staten Island 1987-2002

3.1. Introduction

Writing in 1960, Sayre and Kaufman identified the unusual political and governmental system of NYC, based on the recognition of the five boroughs, which make up the first city of the USA. They described this as a

'system of "open" politics, [with] the absence of a single dominant ruling elite, a pattern of competition and bargaining from which no group is for long alienated or excluded, a system inherently conservative but not incapable of innovation' (1960 p.17).

However, changes in the greater matrix of the U.S. federal constitution were to lead to a crisis in this system, with one borough, Staten Island (SI), seeking to leave the city and gain city-status of its own. This case study examines the dynamics of the system in this period.

The case of SI secession from NYC has roots that reach back almost to the creation of the City in 1897, with a persistent disquiet on the part of the SI residents in terms of their identity in contrast to the other boroughs of NYC, and in terms of their treatment as 'second class' citizens. This identity crisis was, in many ways, kept in check by an evolving arrangement in NYC's local government for the territories of the city to enjoy representation in the main decision making body, the Board of Estimates (BofE). It was the challenge to the legality of this body, on the basis of the principle of equal representation as enshrined in the U.S. 14th Amendment, that was to represent the focusing event that precipitated the secession crisis from 1983 to 1993.

The Chapter is structured as follows. The first section covers the background to the crisis with the history of NYC and the special arrangements to ensure the boroughs' territorial representation in the management of the city's affairs; this gives evidence of the development of a system of government with distinct federal characteristics. I then follow with the discussion of the developing crisis, and the source of the focussing event, with the impact of *Reynolds-vs.-Sims* and *Board of Estimate-vs.-Morris* on SI's political representation in NYC. The crisis zenith, with the focussing event, then follows. Here the impact of these decisions is discussed in the context of the persistence of disquiet on the part of the SI residents and the salience of identity divergence, which led to crisis of the secession movement of political elites and grass-roots movements. I then turn to examine the reaction of NYC and New York State (NYS) to crisis, and the role of side-payments in attempts to resolve the crisis. This is followed by the analysis of the 1990 and 1993 referenda, and subsequent political decisions to reset political relationships, and an

analysis of the post 1993 evolution of SI's relationship with NYC and NYS, a case of reframing relationships and restoring balance.

The chapter concludes with a discussion on the nature of the SI crisis and the federal dynamics at work, the flexibility of federal principles that allowed for significant dissent, and demands for restructuring relationships. An important factor is that the process allowed for time for the parties to engage in debate and discussion, and I examine the role of NYS's legislature in these processes. The conclusion also reflects on the concept of the 'tragic hoax' whereby disquiet is addressed by the promise of extended autonomy that is ultimately withdrawn.

3.2. Background to the Crisis

3.2.1. *New York City as a Developing Federal Political System*

Elazar (1987) examined the principles of federalism in which federalism as an ordering of civil societies acts both at the level of the federal (or general) government, and the constituent states, and extends beyond this in some cases to the level of local government (Elazar 1987 pp. 187-189, see also McKay 2005 pp. 62-63, Martin 1965 pp. 32-35). For Elazar, in the U.S.

'the essential bargain is between a general government and state governments and their equivalent . . . all local governments are legally the creatures of their states' (Elazar 1987 p.187).

However, the essential nature of the non-centralized relationship between the two levels has been extended, in many cases, either *de facto* or *de jure*, to the level of local government, and in 'the overwhelming majority of state constitutions' (ibid.) there are provisions for local Home Rule provisions. Later discussions will show how the *de facto* extension of rights in the case of NYC developed into full *de jure* rights in terms of the constitutional framework. Given this principle of extending federalism to the local level of government, it is possible to examine the nature of NYC in terms of a type of federal arrangement as understood by the constituent communities in terms of a 'coming together' local polity (Stepan 1999), in which the constituent units and the general government are, in Wheare's terms, separate but coordinate, and in which the territorial identity and identity of the constituent units is maintained (Wheare 1947 pp.16,17).

For much of the 19th century, the City of New York was the Island of Manhattan, until growing pressure for economic development led to demands for a 'unified municipal control over the territory surrounding New York Harbour' (Briffault 1992 p.780). Such a development required the passage of enabling acts in the NYS legislature, and

referendums of metropolitan area voters. The process of consolidation was lengthy and complex, but the move gained the support from the small population of SI, where in the 1894 referendum in the small county of 51,000 residents 5531 voted for as opposed to 1505 against (ibid.fn.30).

For this case study, what is especially important is the interpretation of the need for the incorporation of territorial, (i.e. borough) representation that is evident in the charter commission report that was adopted in NYS legislation of 1897, and which led to the creation of NYC. As a lawyer, Briffault argues that the legislation was 'silent as to the form of the new city's government' (ibid.p.782), but I think that he misses an important point; although the legislation may have been silent, the commission that drew up the charter for the new city was clear in setting out the framework for new relationships between the constituent units. They reminded the NYS legislature that their task was not one of creating a charter for a city built from scratch, but was the incorporation of different existing cities and communities into one community, which shared

'the outgrowth of the commercial and industrial life of the historic City of New York . . . [but which] 'are located upon three different islands and on the main land, and thus they are divided geographically into natural subdivisions almost as distinct as the historical antecedents that have marked their life' (New York State 1897 p. X).

This statement reflects a key tenet of federalism; the acknowledgement of the territorial and historical identity of constituent units. The commission recognised the need for minorities to be represented in the new, enlarged electorate and 'arranged in both houses of the Municipal Assembly for a system of representation by districts that will secure always a certain representation for the minority' (ibid.p.X). They bemoaned the absence in the proposed constitution of formal provision for such geographical representation, and urged for such amendments to take place. This was only partly met, for the final charter for NYC included provision for an upper house of 29 members from large council districts, and a lower house of 60 members from each assembly district. In these asymmetric territorial representation¹⁸ was in part assured by the provision for ex-Mayors of the constituent communities to an *ex facto* seat in the upper house, and 'each administrative head of department to a seat in the lower house' (ibid.p.XIII).

In terms of the representation at the executive level of local government, and highly salient to the discussion, is the recognition by the commission of the usefulness and efficacy of the Board of Estimates, a body which they not only retained, but to which they also gave

¹⁸ By which I mean the presence in the two chambers of representatives elected on the basis of a territorial rather than per-capita basis- assuring equal numbers of representatives for each borough irrespective of population.

enhanced powers. This body as retained by the 1898 Charter was dominated by the mayor, and two of his appointees, the other two positions being filled by elected representatives. The mayoral domination through the board extended to control of the city budget, and to 'approve franchises, debts, taxes and assessments' (Viteritti 1989 p.21). For Viteritti 'this approval power was extraordinary, since only franchising is commonly controlled by the executive branch; the others are usually considered the prerogative of the legislature' (ibid.). As such, and as Briffault (1992) argues, in this structure of government the Borough Presidents (BP) were left with little power in legislative terms, with their roles limited to sitting on the Board of Public Improvements, responsible for regulating capital expenditures on which their voting rights were limited to affairs which directly affected their own boroughs.

However, the BPs also sat as chairs of the newly created local boards, which corresponded with the twenty-two senatorial districts of NYC. Initially created to 'represent community interests regarding local improvements' (Viteritti 1989 p.22), they also 'established a precedent for the notion of community government in New York City' (ibid.). From the point of view of the original sentiments expressed by the framers of the 1897 Charter, the recognition and representation of the boroughs of NYC as 'natural subdivisions' had not been fully realised; the overweening power of the mayor in the affairs of NYC was not balanced by the presence in the upper house of borough politicians, nor was the presence in the lower house effective in terms of asymmetric legislative representation. This situation was to evolve quite rapidly; the evidence will show that successive attempts to re-organize the local government of NYC reflected the sentiments of the early charter commissioners in recognising the need for local governance that acknowledges the role of the local communities, and especially the role of the boroughs.

Early charter amendments in 1901 moved towards increasing the relative importance of the boroughs. These came about as a result of pressure from the 'Republicans, insurgents and Brooklyn Democrats, dismayed by their exclusion from the Manhattan-dominated Democratic City government' (Alta Charo 1985 p.743), and resulted in the replacement of the upper (council) chamber by a strengthened BofE, in which the voting rights of the members were adjusted so that 'three votes were granted to each of the city-wide officials [Mayor, Comptroller¹⁹ and President of the Board of Aldermen], two votes to the Borough Presidents of the two larger boroughs, Brooklyn and Manhattan, and one vote to each of the other Borough Presidents [Bronx, Queens, SI]' (ibid.). In this respect, the city officials

¹⁹ The head of the financial department in the City.

held the majority, as a caucus, of nine votes, against seven for the territorial representatives. Although the smaller boroughs had relatively low voting rights, as a corpus the BPs had

'significant influence over the city's budget and received broad executive authority over the delivery of municipal services, borough planning and development . . . [this] represented a partial redistribution of executive power away from the Mayor and towards decentralization' (ibid.p.744).

This newly enhanced BofE was, for the charter commissioners, to become

'in reality the centre of all legislative activity in relation to financial affairs, and of much of the administrative activity of the City. It will be in effect an upper house of the City Legislature and also a cabinet of the most important administrative officers' (New York State Charter Commission 1901 in ibid.p.744).

With the change to the BofE came more powers for the BPs as regional representatives, who were allocated full voting rights in all matters affecting the city's administration and not just on those that affected their boroughs.

The efficacy of NYC's local government was the concern of the charter commission set up in 1921, for whilst the NYS Constitution had been amended in 1913 with the intention of strengthening Home Rule for cities and the formal allocation of powers in some twenty-one matters (Weiner 1937 p.560), these powers subsequently proved difficult to exercise. Effectively cities could not freely adopt local policy; in many cases these were subject to legal challenge on the basis that such local laws amending policy fell afoul of the provisions of general law, and of the cities' own charters. In essence, any changes to local laws still needed the approval of the NYS legislature (ibid.pp.560-562).

The drive for amendment to the NYS Constitution came from NYC's difficulties in the provision of local transportation, where changes to local laws to enable NYC's competence in this area were persistently referred to the NYS legislature and defeated (ibid.p.564). This difficult situation between the local and state governments in their exercise of competences was, for the commission of 1921, one of the main drivers for amendment:

'The city . . . will control its own affairs, within the limitations imposed by the letter and the purpose of the State Constitution, thus rendering unnecessary and unwarranted those continual appeals to the [State] Legislature which, upon one hand, result in mandatory legislation that robs the City of the power to direct its own expenditures and, upon the other, affords an excuse, not often a justification, for inaction or unwise action upon the part of City authorities' (New York State 1923 p.6).

After the 1924 passage of the Home Rule Amendment in the NYS Constitution, the NYC Charter was amended to create a system of government at the local level characterised by a two-chamber model, separating legislative and executive duties, and with enumerated joint, and exclusive competences. The BofE gained *de jure* status as upper house of the NYC legislature after the passage of the 1924 City Home Rule Amendment to the Charter of NYC, with a Board of Aldermen (councillors) as the lower house. These two institutions

were protected from abolition or from being stripped of essential powers (ibid.p.9) and whilst the effective powers of the city might be distributed to other 'offices, boards and departments' (ibid.) the two boards retained ultimate power. The BofE's make-up was preserved in terms of voting rights (see above), but with the new charter came a new role for the system of governance, as NYC 'through the medium of its legislative bodies and administrative officers, will control its own affairs, within the limitations imposed by the letter and purpose of the State Constitution' (ibid.p.6). In an illustration of federalism as process, the commission argued that far from being revolutionary, the new charter developed the earlier form of government that had worked well in representing the 'divergence of interests which it represented' (ibid.p.7).

Further amendments to the NYC Charter came in 1936 under the Thacher Commission, and coincided with a move towards a proportional representation (PR) method of electing the Board of Aldermen, which had, since 1915, been dominated by the Democrat majority, and as a legislative had become 'uninterested and uninteresting . . . its legislative output consisted of a few ordinances of no real importance' (McCaffrey 1939 p.841). The lower house was to be replaced with a City Council, but the BofE was to be retained as 'a unique and successful part of the existing charter' (ibid.p.843). The Thacher Commission resisted vigorous calls for either the abolition of boroughs and BPs, or conversely increasing borough powers, arguing that the balance of representation, and in particular the presence on the BofE of the BPs was upheld across the city. They argued that:

'The commission is satisfied that there exists in a large part of the city an overwhelming sentiment not only for borough representation on the Board of Estimate but that strictly local improvements . . . be entrusted to local officers. . .' (New York State 1936 p.7).

The commission also reiterated earlier arguments for the composition of the BofE-

'it must be representative, and some of its members must be intimately familiar with the conditions and needs of the boroughs. It must always be sensitive and responsive to the welfare of the city as a whole, with which the welfare of all the boroughs is also vitally concerned' (ibid.p.13).

Under the PR system for electing the council, the boroughs 'became significant power bases through their legislative delegations' (Alta Charo 1985 p.747), in addition to the power wielded by the boroughs through their representation on the BofE, which had 'significant but not decisive control . . . on the City Council and as the primary authority over city finances' (ibid.p.748).

The PR system came under pressure for repeal after WWII, as the propensity for the system to elect minority parties, and in particular Communist and American Labor representatives, clashed with growing anti-communist sentiment (ibid.p.749). Added pressure from the Republican Party, whose official candidates often faced 'independent

Republicans', resulted in the repeal of PR in 1948. The BofE retained its format, and thus resumed its primary importance for borough control over the city's finances and land use, and over the council.

The growing population of the smaller boroughs through the post war years resulted in demands for an equalization of voting rights between the BPs. This came about after the 1958 Moore Charter Commission, where the city officials retained a majority in the BofE, with four votes apiece, the five BPs votes were equalized at two apiece (ibid.p.750). However, the BofE came under criticism from the Moore Commission for the manner in which it operated, in both the concentration of power in the board, and the 'practice of reaching decisions *in camera*, prior to hearing public tendency' (ibid.p.750).

This shift of power away from the mayor towards the BPs was immediately challenged by Mayor Wagner, 'concerned with the growing power of political bosses in the boroughs' (Viteritti 1989 p.26). The subsequent Cahill Charter Commission of 1961 was important in two respects; firstly it reduced the role of the BPs in favour of the mayor in respect of the transfer of their administrative duties in public works to the City Planning Commission, whose president was a mayoral appointee (ibid.p.27). Whilst the role of the BPs was reduced in the BofE, their involvement in community governance increased with the creation of borough-improvement boards, and

'this community-based role in planning and land use complemented the citywide powers the Borough Presidents had as members of the Board of Estimate in these areas' (ibid.).

For Viteritti, the commission's 'work resulted in the early definition of the structure of community government as it is known today' (ibid.).

The second major impact of Cahill came from the attempt to provide opportunities to territorial representatives and minority parties that had been lost with the abandonment of PR after 1948; here two council seats were allocated, to be elected on at at-large basis in each borough, with the proviso that each party could only nominate one candidate in each borough. Once again there is a clear intention to maintain territorial representation that is not proportional to population numbers.

The final major change to the representation at local (borough) level in NYC government prior to the upheavals of the 1983-1989 period was the Goodman Charter Commission of 1975, which represented a drive towards 'a government that was more responsive to New York City's diverse population but also sought to establish another check on the power of elected officials through the involvement of an informed citizenry at the neighborhood levels' (ibid.p.28). In terms of representation at the level of the boroughs, the system of community government comprising Community Boards and Borough Boards was established that continued through the period of upheaval and indeed continues to this

day. In this respect the BP sat as chair on the Borough Boards, which were made up of the council members representing the borough, and the chairpersons of all of the Community Boards in the borough (City of New York 2014). These Community Boards, made up of up to 50 unelected residents of the communities, and managed by a district manager, have important responsibilities including advisory roles on land use and zoning issues (ibid.). The final coordinating role for land use and zoning issues remained vested with the BofE, the unique structure of which was recognised by the Goodman Commission, in a continuation of the sentiments of earlier commissions:

'The Board of Estimate is a valuable and unique institution of City government that should be continued . . . well-structured to make important political decisions and to resolve conflicts between City-wide and local interests . . . Its mixture of City-wide and borough officials provides a balanced perspective . . . an institution forged from the singular historical development and attributes of New York City and its distinct geographic parts' (Goodman Commission report 1975 p.84 in Alta Charo 1985 p.754).

This exegesis shows how the somewhat tortuous development of the model of governance for NYC came from a combination of resistance to the dangers of the tyranny of the majority, and recognition of the sentiment for the preservation of the identity and territoriality of the constituent units. The discussion moves forward to the changes to representation in states and states' subunits that was to come about with the increasing emphasis on the principle of one-man one-vote from the early 1960s, and which in major part reflected the changing nature of the US political landscape with the emphasis on individual and civil rights. This development of US federalism was part of a process, which 'expanded the impact of the Fourteenth Amendment on state and local governments' (Kincaid 1990 p. 144), which later developed in respect of SI.

3.2.2. The Impact of Reynolds vs. Sims, Andrews vs. Koch, and Morris vs. Board of Estimate on the Boroughs' Political Representation in NYC

At the heart of these three court judgements is the principle of equal protection of the laws that is found in the Fourteenth Amendment of the Constitution of the United States:

'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws' (US Senate 2014).

The principle of equal representation on a population as opposed to a territorial basis in legislative bodies is the fundament of these decisions, and was to lead to enforced changes to the representation of the smaller boroughs in NYC's legislature, especially for SI.

The first of the decisions came in 1964 from a challenge to the asymmetrical size of voting districts in the State of Alabama, where the Supreme Court adopted ‘the one-person, one-vote rule that requires state legislatures to devise election districts that are substantially equal in population’ (Parker 1989 p.175). As part of the judgement, the Supreme Court argued that:

‘Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system’ (Reynolds vs. Sims 1964 at 562).

In Justice Warren’s written opinion ‘the political balance of most states was upset by a decree which required that in both houses of state legislature, the districts must be “substantially equal” in population’ (Asch 1965 p.190). Asch’s paper gives a rich understanding of the longstanding reluctance of the Supreme Court to enter into what Justice Frankfurter referred to in 1946 as a ‘political thicket’ in referring to their involvement with problems of apportionment in state legislatures.

As discussed, the over-riding preoccupation of the framers of successive NYC Charters was the preservation of territorial representation of the constituent units, the boroughs. As Asch predicted, the decision reached by the Supreme Court in *Reynolds*

‘has set off not only ripples, but waves, in courts and legislatures. It is certain that these problems will be troublesome for many years to come. It is also certain that a permanent impression has been made on the basic structure of the American governmental system’ (ibid.p.188).

Indeed, this challenge to the functioning of states and their local government apparatus was to impact on the rights of states to recognise and to organise the functions and institutional structures of their sub-units.

In the case of NYS, as discussed by Weiner (1937), the earliest constitutions of the state recognised the existing rights of the sub-units to elect town officers, and this was carried forward through successive constitutional amendments. This principle had been challenged by the state through the late 19th and early 20th centuries, largely as a consequence of the growing wealth of the cities in the post-Civil War industrial era; wealth which for Weiner ‘The legislators in Albany were naturally reluctant to leave untouched’ (ibid.p.559). As have discussed, this involvement of state legislators in local government affairs was reversed with the passage of the 1924 Home Rule Amendment, thus enabling the latter to adopt structures and procedures that reflected the type of local federal arrangements described by Elazar.

The ability of states to manage their legislative representation was seen to be constrained by the 1964 decision in *Reynolds* and was soon challenged by the Council of State

Governments who requested Congress to consider amendments to the US Constitution that 1\ allowed one chamber in a bi-cameral state government to be elected on a 'basis of factors other than population' (Asch 1965 p.192) and 2\ to 'prevent the federal courts from exercising jurisdiction in apportionment cases' (ibid.). More radical proposals also came from U.S. Senators Dirksen and Javits, who proposed an amendment in which states could use factors other than population in the election of both bicameral *and unicameral* state legislatures. Neither proposal was passed by the Senate, in the case of Dirksen the proposal was voted 57 for and 39 against, just seven short of the required two thirds majority (Asch 1965 p.197). In parallel, amendments in the US Congress proposed removing the jurisdiction of both 'the district courts and the appellate jurisdiction of the Supreme Court in apportionment cases' (ibid.p.198). Once again, the proposed amendment came to no avail, and paved the way for future challenges to states' legislative structures.

Essentially, the rights of the states and their subordinate units to make decisions in their constitutions in respect of the composition of their legislative bodies had been removed, and placed with the U.S. Supreme Court. The concept of one-man one-vote, the election of all legislators on the basis of equal, or near equal constituencies, had become the norm, and the persistence of other factors for election, primarily territory, was threatened. In the case of NYC, the significant legal challenges came in 1981, and were to 1\ the presence in the NYC Council of two members elected at large on the basis of territoriality in each of the boroughs in addition to the members elected on the lines of districts based on population and 2\ the dilution of citizen's votes in the BofE through the equal voting rights of the five BPs irrespective of the populations of their respective boroughs.

In the first 1981 case three Brooklyn residents complained to the District Court of New York that NYC's electoral plan of electing 10 of the 45 members of the City Council on an at-large basis 'violates their constitutional rights under the "one person, one vote" principle derived from the Fourteenth Amendment's equal protection clause' (*Andrews vs. Koch* 1981 supp. 248).

The disparity between the representations of the most populous boroughs, and the least populous, SI, was calculated to be in excess of 50%, and as such the plaintiffs complained their voting rights were diluted (ibid.supp.251), as the following table shows.

Table 8 Variance in Council Representation in NYC²⁰

County	Population	Council Seats	Population/Member	Dev norm %
Brooklyn	2,230,936	13.20	169,010	- 7.56
Queens	1,891,325	11.00	171,938	- 9.42
Manhattan	1,427,533	8.92	160,037	- 1.85
Bronx	1,169,115	8.08	144,692	+7.92
SI	352,121	3.80	92,663	+41.03

Source: Andrews vs. Koch (1981) supp. 248

The defence team of the at-large members recognised this disparity, and that as such it violated the guidelines of *Reynolds* and later judgements. However, in a reflection of the persistent mantra of successive charter commissions, they argued that the particular nature of the representation in NYC needed to be taken into consideration

‘two distinct political interests were advanced by the borough-wide election of two Council members per borough. One goal was to ensure minority representation in a local government dominated by a single party, and the other to do so through political units, the boroughs, having a strong traditional base in New York City government, so as to assure adequate representation of borough-wide interests in replacement for the diminished powers of the Board of Estimate’ (ibid.sup.250).

Judge Neaher’s judgement is important, for he dismissed the claim for the boroughs’ at-large representation on the council, by arguing that the BofE satisfied these needs:

‘additional channels of communication exist between the boroughs and City Hall through the Borough Presidents, who sit on the Board of Estimate, and the Borough Boards consisting of both at-large and district Council members as well as representatives of local Community Boards’ (ibid.sup.251).

Neaher ordered that NYC adopt an electoral plan for the Council that ‘accords due recognition to the population differences among the boroughs’ (ibid.sup.252). This was carried out in 1983 with the single-issue charter commission in which the at-large posts in the council chamber were eliminated (Schwarz 2014). The resultant legislative chamber of NYC comprised 35 members, elected according to equal population districts across NYC, ending disproportional representation for SI in the council. In this way, the changes in representation, on a people not places basis, and the development of the protection of individual rights as discussed by Kincaid (1990) were made. However, this only affected the lower chamber, the BofE remained intact, until it was, in turn, challenged. –.

The second case, *Morris v Board of Estimate* (1981), in essence argued the same point as in *Andrews vs. Koch* (1981):

²⁰ The maximum variance of 50.45% is calculated as the difference between the most under-represented borough, Queens (-9.42%), and the most over-represented, SI (+41.03). Some Council seats straddle two boroughs, the seats in the table reflect this e.g. there is a seat that covers 0.8 of SI and 0.2 of Brooklyn.

'Plaintiffs claimed that the voting scheme providing one vote each for each of the Presidents of the variously populated boroughs was an unconstitutional dilution of the citizen vote . . . [and] cited the obvious unfairness created when the President of Brooklyn, a borough of 2.25 million persons, casts the same one vote on the Board as the President of Staten Island, a borough of less than half a million residents' (Alta Charo 1985 pp.757,758).²¹

The initial judgement of the District Court was that the BofE 'was not the sort of governmental body subject to the one-person, one vote requirements of the fourteenth amendment' (ibid.) and the case was dismissed. After appeal the case was referred to the US Court of Appeals which in 1983 reversed the lower court's decision. However, the court granted time to the lower court to examine the issues of malapportionment, and in particular the degree to which 'policies and interests can justify deviations from malapportionment. And can the current Board of Estimate be justified on these policies?' (ibid.). The higher court finally decided the BofE was unconstitutional in 1986, and as a consequence the Koch administration appointed Richard Ravitch to chair a charter revision commission with the view of planning 'what was expected to be the most radical restructuring of city government in more than a century' (Purnick 1988 p.1). This was to include, 'it appeared, abolishing the Board of Estimate' (ibid.), and was to go before a city-wide referendum.

However, in a surprise move, in April 1988 the U.S. Supreme Court decided to review the lower courts' judgements, and the charter revision process for reforms to the BofE was suspended pending the court's decision (Schwarz 2014 f.n.3, Purnick 1988). When the Ravitch Commission's mandate expired in late 1988, a new commission was set up under Frederick Schwarz in anticipation of the wide-ranging reforms needed in the case of the Supreme Court's decision.

The March 1989 decision was unanimous; the Supreme Court upheld the decision of the lower court on the principle of one-man one-vote representation, and most significantly dismissed the argument for the retention of the territorial distinctiveness of representation,

²¹ As with the *Andrews v Koch* case the plaintiffs were supported by civil society – in this case the New York Civil Liberties Union.

'that the board is essential to the successful government of New York City, is effective, and accommodates natural and political boundaries as well as local interests . . . do not suffice to justify a 78% deviation from the one-person, one-vote ideal, particularly because the city could be served by alternative ways of constituting the board that would minimize the discrimination in voting' (Board of Estimate vs. Morris pp.701-703).

The continuation of the charter commission's work on re-shaping the government of NYC was further complicated by the implications of the 1965 Voting Rights Act,²² which, as Mauro summarises,

'seeks to ensure that minorities have an equal opportunity to participate in electoral politics and to elect representatives of their choice. The courts . . . have scrutinized systems involving at-large (jurisdictionwide) elections and unusually large electoral districts. Such systems are viewed with concern because substantial minority populations may be "submerged" within a citywide or other large district and thereby be precluded from electing representatives of their choice' (Mauro 1989 p.62).

The impact of this slew of court judgements made the work of the Schwarz Commission extremely complex, as they sought to re-shape NYC's legislative framework to reflect new legal restrictions and the persistent demands for territorial recognition. This is discussed below, but for the sake of clarity the following table summarises the main judgements and their impact.

²² In itself this act was one of the primary pieces of legislation that emerged from the Civil Rights Movement, and was designed to force electoral districts, especially in the south of the US, to drop discriminatory practice see Department of Justice (2015)

Table 9: Cases Impacting NYC's Legislative Framework

Date	Case/Court	Nature of Case	Impact on NYC
1964	<i>Reynolds v Sims</i> U.S. Supreme Court	Challenge to voting based on asymmetrically apportioned districts in Alabama. Counter to 14 th Amendment on 'equal protection'. Case Upheld.	No immediate impact. Required challenge from NYS resident for judgement to be considered
1981	<i>Andrews v Koch</i> U.S. District Court	Challenge to allocation of 2 seats per borough in NYS Council (lower chamber) on at-large basis. Counter to 14 th Amendment. Case upheld	Judge Neaher orders restructuring of Council. Abolition of at-large seats reduce SI's representation on lower chamber. Neaher emphasises role of BofE, Borough Boards and Community Boards in representing boroughs interests
1981-1989	<i>Morris v Board of Estimate</i> U.S. District Court U.S. Court of Appeals U.S. Supreme Court	Challenge to disproportionate vote of largest and smallest boroughs based on population with presence of BPs in BofE. Rejected by district court (1982) Rejection upheld on appeal Decision reversed by Court of Appeals (1983) but time granted to lower court to find solution Final decision of Court of Appeals (1986) that BofE was unconstitutional Decision by U.S. Supreme Court to review lower courts' judgements (1988) Final decision by U.S. Supreme Court (1989) rejects argument that BofE is essential and that massive deviation from one-person one-vote is justified.	The early impact on NYC was the revival of the secession movement with Senator Marchi's examination of SI's viability as new city. This was based on assumption that BofE would be abolished ending borough's representation (especially SI). Commencement of Ravitch Commission's work (1986) Commencement of Schwarz Commission's work (1988) Abolition of BofE in November 1989 Start of secession process with passage of Bill 773 (1989)

Schwarz's Commission had to take the need for revised electoral arrangement to reflect this emphasis on minority representation, a matter that had already been addressed in part by the Ravitch Commission. This had already heard expert legal opinion on the structure of the BofE, and had concluded that even a re-weighting of the votes of the members would fail to satisfy the Voting Rights Act 'because of the use of citywide elections and districts as large as the current boroughs' (ibid.p.63), as the weighted voting system would continue

'a system in which a white plurality in at least Brooklyn, Queens, and citywide elections, voting as a bloc, is able to frustrate minorities' ability to participate in the political process and to elect representatives of their choice' (ibid.p.65).

The Schwarz Commission examined the possibilities of maintaining a bi-cameral system that still included territorial representation in an expanded upper house by either 1\ electing additional members on a borough-wide basis to sit alongside the BPs in a nineteen-member body, and 2\ to elect members to the upper house based on smaller, equal districts. The first option was discarded on both cost and complexity, whilst the second was dropped on the grounds that an effectively districted fifty-one seat council would be more reflective of the city's diversity (ibid.pp.66-67).

Schwarz's later interpretation of the possible choices was clear, and stark '[w]e had to fix that constitutional problem and we did so by choosing to abolish the Board. Moreover, Schwarz's commission challenged the view that the BofE was "an institutional success" with "extraordinary characteristics"' (Sayre and Kaufman 1965 cited in Schwarz 2014 p.106). For the Commission, the BofE tended to compound the crises which confronted NYC by their high-profile interventions at the end of policy processes (ibid.pp.106-107), with its focus on 'individual land use matters and discretionary contracts' (ibid.), and as a consequence 'diverted attention from the city's underlying problems . . . and the Board's prominence weakened the City Council' (ibid.p.107).

Schwarz saw the task of the commission as 'recognizing the interconnected structures of city government' (ibid.p.98) and agreed with proposals to strengthen the role of the mayor, by enhancing both the powers and the accountability of the post. In eliminating the BofE, the strengthened City Council of 51 seats was both a check on the mayor's powers, and for Schwarz, would enhance the attention given to non-Manhattan boroughs, in addition to the continuing of the BPs, with 'specific checking and balancing roles on the budget, land use and contracts' (ibid.p.102). Schwarz's counsel on the charter commission, Eric Lane also added that the new charter 'contains several provisions to protect Staten Island's say in city government. One provision requires all land-use decisions to be made

in a way that insures that all boroughs receive their “fair share” of the benefits and burdens’ (Lane in Kolbert 1989a p.3).

This assault on two fronts on the powers of representatives from the boroughs as territories thus culminated in the judgments that at-large representation in the legislative chamber of the council, and also in the executive chamber of the BofE, was unconstitutional. The resulting changes in the governance of NYC in the new charter, as approved in the referendum of 7th November 1989²³ replaced the BofE with the 51-member council and stronger mayoral office.

As discussed, the extent of the borough’s representation in the former have been subject to constant evolution, but it was the threat to and ultimate abolition of the hitherto protected, and indeed growing, influence of the BPs in the BofE that was to be the precursor, the focusing event (in Birkland’s parlance) that led to the most sustained efforts by SI to withdraw from the federal type polity that NYC had become since the early charter of 1901.

Changes in political representation, whilst a crisis in their own right, may not have represented a significant enough challenge to the residents of the boroughs to create the sort of movement that developed in SI. The next section will examine the particular nature of the identity of SI, and its interaction with the developments of political representation that were to lead to the secession movements of the 1980s and 1990s.

3.2.3. The Persistence of Disquiet on the Part of the SI Residents and the Salience of Identity Divergence

The development of SI’s particular identity can be ascribed to several factors. The first is the well-defined geography, and communications links with NYC, NYS and the neighbouring State of New Jersey (NJ). The Borough of SI remained physically detached from the rest of NYC until the construction of the Verrazano Narrows Bridge in 1964. Until this point, communications with the boroughs of Manhattan and Brooklyn were assured by ferry link, the only fixed links were the three bridges that joined SI to the neighbouring NJ city of Bayonne. These had been built in the period between 1928 and 1931 following pressure from the SI and NJ waterside communities, who were ‘dissatisfied with ferry service’ (Kramer and Flanagan 2012 p.3). Notwithstanding the improvements to communications with the opening of the Verrazano Narrows Bridge, the islanders still complained of the extra time to commute to the rest of NYC, and the ‘remoteness

²³ By a majority of 488,000 to 403,400 some 55% for and 45% against, see Finder (1989) p.1.

continue[s] to plague residents' (ibid.p.4). Senator Marchi emphasised the distinct nature of SI residents' identity: 'We're islanders . . . [t]he Irish, the British, the Japanese would understand, I guess. We feel pretty strongly about it' (Marchi in Carroll 1983 p.1).

A second factor is the relatively low population of the borough, which, even after the growth of residents after the opening of the bridge, is small in comparison to the rest of NYC, and unlikely to ever represent more than six to seven percent of New Yorkers (ibid.p.4). Moreover, the island's relatively low population density has contributed to continuing tensions between the residents of SI and the rest of NYC. This is the case in the use of SI for those functions of the City that require use of large areas of land, with the Fresh Kills landfill site as the most conspicuous example; the perception of SI as the 'city's unkempt backyard' (Kramer and Flanagan 2012 p.4) has bred resistance and resentment among the residents.

A third factor is the distinct and growing divergence between SI residents and the rest of NYC in terms of demographics and associated political identities. The identity is distinct, in that the early settlers of the borough were predominantly white, Catholic, and European of origin. This feature of the island's identity was accentuated during the era after the construction of the Verrazano Narrows Bridge, as the 'white flight [of] Irish and Italian Brooklynites moved to Staten Island after the violent civil disturbances of the 1960s' (ibid.p.5). The resultant demography of SI differs significantly from that of NYC, with the persistence of a non-Hispanic white majority in SI of 67% in 2007 (ibid.), compared to a non-Hispanic white minority in NYC as a whole of 35% in 2007(ibid.). As Bill Kauffman puts it eloquently 'Staten Island's demographic profile cuts a sharp contrast with the other boroughs. Where they are heterogeneous, Staten Island's mien is Italian American' (Kauffman 2012 Ch.2). Kramer and Flanagan (2012) argue that there is a correlation between demographic and political views, where whites and non-whites have both a different stance on the role of government in the provision of social goods, and of the type of government best suited to deliver such goods. This difference between SI and the rest of NYC both creates a difference in perception of identity, but also becomes salient as SI votes may be disproportionately important in closely run elections.

A fourth factor is the essentially suburban character of SI; residents are typically middle class, with higher average salaries than the other boroughs, excepting Manhattan, with higher rates of owner-occupancy, and with more resemblance to adjoining suburban counties in NJ and other states than to the other four boroughs that make up NYC (ibid.). Jobs on SI tend to be lower paid, and those SI residents who have come to the island to enjoy a different quality of life compared to the other boroughs have to commute to higher paying work in Manhattan, where the long and expensive commute has continued to be a

source of complaint (ibid.). Recent developments in reducing the costs for SI commuters in their use of the SI Ferry and NYC mass transit system, and in the reduced tolls on the Verrazano Narrows Bridge for SI residents will be examined later to show how these initiatives recognise the special status of SI.

3.2.4. The Fresh Kills Factor - a Tale of Waste and Duplicity

The development of the Fresh Kills landfill on the west side of the island is highly relevant to the understanding of the factors leading up to the crisis, as it illustrates both the physical and ideological manifestations of what Staten Islanders felt was the attitudes of the rest of NYC towards their interests. Originally, Fresh Kills was 'a bucolic stretch of meadow, marsh and woodland populated by rabbits, fish and many species of bird' (ibid.p.114). However, by 1992, it had been the recipient of some 5.2 million tons of waste from NYC²⁴ (Briffault 1992 p.784). NYC's government had been under pressure to find alternative methods of waste disposal to the method used until 1938 of dumping at sea (Kramer and Flanagan 2012 p.114). Robert Moses had earlier, whilst acting as Mayor La Guardia's Commissioner of Parks, Planning and Construction, rejected using Fresh Kills as a site for landfill. However, in a change of direction in 1945, Moses chose the site for landfill, promising that this would serve as fill to create a new park, a process that would only last two years (ibid.p.115). Opposition in the BofE was quelled by the compensation of the agreement by NYC 'to build a highway through the area' (ibid.p.115), and further assurance from Mayor O'Dwyer that dumping would only last two years (ibid.).

Attempts by SI's representatives in the NYS legislature to limit by statute the duration of the landfill operations was vetoed, by Governor Dewey, at the request of O'Dwyer, provoking angry responses from NYS Assemblyman Radigan of SI, who tabled a movement for 'a committee to investigate all phases of the question of whether we should become the City of Staten Island' (Orr, Walden & Gill 1947 p.20). Radigan's resolution, for an early secession of the island, did not reach the floor, although the attempt was remembered long after.²⁵ The pattern was set for conflicting messages from NYC on the proposed life of the landfill site, with successive closing dates set, and passed. Post 1965 the NYC authorities stopped setting such dates altogether, and even limitations to the extent of the site obtained in 1975 did not slow the activity, the engineers merely built

²⁴ The site was also used for SI's waste which represents about 7% of the total quoted (Briffault 1992 f.n.55).

²⁵ Radigan's protest was retold as part of Assemblyman Vitaliano's 1984 newsletter to residents (Kramer and Flanagan 2012 p.115).

upwards, creating what local paper the *Advance* called the 'Alps of garbage' (Kramer and Flanagan 2012 p.116).

For NYC choices on waste disposal were few; alternative locations to dump within the city boundary were limited and diminishing, and early plans for incineration plants in the five boroughs were felled by 'hot community opposition' (ibid.). Federal theory would suggest here that under the notion of reciprocity SI would accept the burden of siting the waste disposal facility for the city in return for compensating beneficial developments. However, the growing use of the site through the 1980s, with increasing road traffic, the visual impact of the ever-growing heaps, the smell, and fears of environmental degradation from rainwater run-off were all significant and omnipresent in SI residents' lives.

In terms of the effects on the identity of SI, it is necessary to consider the original attraction of the island, as a semi-rural location to which Italians in New York moved before WWII 'seeking cheap land on which to build houses and raise vegetables and goats' (Glazer and Moynihan 1970 p.187). Moreover, the expanding population of SI, especially after the opening of the Verrazano Narrows Bridge, brought an affluence of 'Italian and Irish Brooklynites' (Kramer and Flanagan 2012 p.5), contributing to a doubling of the island's population between 1950 and 1980 (Geist 1983 p.2). The consequent development moved people and businesses closer to the site, sight and smells of the landfill; as a consequence, the issue gained added salience (Kramer and Flanagan 2012 p.113).

The impact of Fresh Kills on the image of SI was profound, and was often linked by SI residents and political elites to the evolving political representation of NYC; BP Anthony Gaeta said in reaction to initial challenges in 1983 to SI's representation 'We'd get dumped on' (Geist 1983 p.1). Indeed, as already discussed, there were early links between proposals to site waste disposal facilities on SI and secessionist movements; as well as Radigan's case, similar proposals of 1916 and 1938 were also met with talk of secession, but in these cases the city cancelled these (Briffault 1992 p.783 & f.n.46). A comment from a resident in 1983 illustrates the prevalence of secession as part of the make-up of SI's identity;

' . . . to grow up on Staten Island was to hear about secession at your daddy's knee. "You talk about it at the dinner table . . . Everybody has always felt that we could govern our island better than a bunch of outsiders"' (Geist 1983 p.1).

The salient point in this exegesis of the development of identity in SI and NYC politics is the relationship between developing/changing identities of groups, and the process of federal development. In this case, it becomes evident that the relationships set out in constitutional type arrangements have been challenged by a developing asymmetry between the values and needs of the communities. The response of the communities to

these developing differences is the point of crisis; the nexus at which federal responses, the drive to re-establish the equilibrium between unity and diversity, becomes apparent.

3.3. The Crisis

3.3.1. *The Secession Movement - Political Elites and Grassroots Movements*

As already discussed, the SI electorate was no stranger to calls for secession, and in the case of the decisions by the various courts in respect of *Morris vs. Board of Estimate*, discussions over the continuing presence of SI as one of the five boroughs of New York was to persist for the next decade, and beyond.

The initial response to the 1983 *Morris vs. Board of Estimate* judgement by SI politicians was robust, with SI BP Anthony R. Gaeta saying that '[i]f we don't have a fair voice, then we don't want to be part of New York' (Geist 1983p.1). The representative for SI in the NYS Senate, and chair of the Finance Committee, John Marchi, 'issued a report justifying secession as an alternative to remaining in a City without equal borough representation on the Board of Estimate' (Briffault 1992 p.784). Marchi's report, 'Remedies of a Proud Outcast' included his sentiments on SI's future;

'we will not abide passively, the semi-colonization of upwards to [sic] 400,000 men, women and children in a society that professes to condemn colonization' (Kauffman 2010 ch.2).

The report warned that in the absence of the BofE SI faced

'a grim future . . . an "unwelcome powerplant" or "unwelcome physical installations" would be forced upon the borough in its "totally emasculated position"' (ibid.).

The alternative prospects, for an independent City of SI, were positive; '[a] new City "would have no problem surviving as an independent financial entity"' (ibid.); Marchi went on to argue that 'Staten Island should throw off its step-child status and separate from New York City if the federal courts take away its voice in the City government' (ibid.).

Marchi emphasised the responsibility of Federal Judge Neaher to 'stop short of abolishing Staten Island's identifiable role on the Board of Estimate' (ibid.), and in a reflection of Judge Neaher's judgement in the case of *Andrews vs. Koch* argued that '[p]olicy and interest will justify a deviation from the literal one-person, one-vote formula' (ibid.). Additional support came from the Comptroller of NYC, who assessed the economic viability of SI, and concluded that 'the bottom-line is that Staten Island can support itself at the same level and would have a surplus in this financial year' (Goldin 1983 in ibid.). The legal question was not resolved until the judgement of the Supreme Court in 1989, and so for the interim the secession movement at the elite level remained calm (Briffault 1992 p.784). However,

an indication of the initial grassroots support for the movement was given in a poll by the *Staten Island Advance*, which showed a 96% support for secession (Carroll 1983 p.2). The move to secession restarted after the final decision of the Supreme Court, with moves by Senator Marchi to introduce legislation for a referendum of residents of SI on separation; a YES vote would lead to the creation of a commission that would draft a Charter for the new city of Staten Island, which had to be approved in a second referendum of SI residents (Briffault 1992, p.785).

I have already discussed how the changing demographic in SI resulted in an increasing divergence between the republicanism of the island and the democratism of the rest of NYC. This schism was brought into sharp focus with the November 7, 1989²⁶ general elections resulted in of a new mayor; David Dinkins. His victory over Giuliani²⁷ contributed to the feeling of alienation of SI from City Hall (Sonenshein and Hogen-Esch 2006 p.482); the process of differentiation between the predominantly Catholic, White, conservative/Republican SI and the remaining boroughs had been a constant feature, and was emphasised in the election of a Black, Democratic mayor. Racial issues between white and African-Americans had been a source of tensions in NYC in the 1980s, although SI was spared the worst of the violence that occurred in other boroughs. However, racial discrimination was evident on the Island, with low representation for African-Americans in local administrative bodies, and process of discrimination that isolated this group in the Northern part of the Island (Kramer & Flanagan 2012 ch.6). An indication of the 'depth of the gulf that separated him [Dinkins] from the borough's residents' (Kramer and Flanagan 2012 p.128) can be gleaned from the results in the SI districts, where Dinkins only received 20% of the vote (ibid.).

The underlying reasons for the shift of predominantly White, Catholic residents to SI was complex, with elements of race, the search for semi-rural location, and rising affluence all playing a part. The resultant concentration in SI of the support for Giuliani as a White, Catholic, Italian-American candidate was not based on a single factor of electoral leaning, but as Carsey says

²⁶ The same day a NYC wide vote approved the Schwarz Commission's Charter which finally abolished the BofE.

²⁷ By a narrow margin of 48.3% to 45.8%, just 47,000 votes out of a city-wide turnout of 1,899,845 (Brecher et al. 1993 p.107).

'surely people do not typically make choices regarding where to live based on their electoral leanings. Yet even if the contextual effect uncovered in this analysis were exclusively due to a self-selection process, the fact that it manifests itself politically is important to know and understand (Carsey 1994 p.227).

Explanations of voters' choice are discussed by Karen Kaufmann, who argues that 'the degree of racial and ethnic polarisation in any given local political contest is inextricably linked to the electoral environment and the extent to which it *mitigates or exacerbates intergroup conflict*' (Kaufmann 1998 p.657 emphasis added). It thus becomes possible to argue that in the case of SI, the developing identity gap between the islanders and the rest of NYC included elements of race, ethnicity, religion, and contextual elements of urban usage, identification with territory and a semi-rural lifestyle, which with the election of Dinkins was thrown into sharp focus.

So, by the end of 1989, a toxic combination developed of a crisis of identity, with Staten Islanders' increasing alienation from the rest of NYC, a crisis of representation with the removal of the longstanding representation of SI's political elites in the BofE, and a persistent crisis of urbanization as characterised by the tensions between islanders and the city over Fresh Kills and other controversial developments, and a newly elected mayor antithetic to the SI identity.

The opportunity for the expression of sentiments on SI's position in respect of NYC was offered to the SI's electorate with the 1990 referendum which was to result in an overall 83% support for the creation of a State Commission to study the feasibility of SI's independence as a city in its own right (Sonenshein and Hogen-Esch 2006 p.482). The discussion will return to the referendums of 1990 and 1993, but an examination of the reactions of NYC and NYS to the demand for a referendum will help to subsequently identify federal principles at work.

3.3.2. The Reaction of NYC and NYS to Crisis

Senator Marchi's initial referendum proposal on secession required an enabling bill, submitted to the NYS legislature in early 1989. For Kauffman (2012), and Kramer and Flanagan (2012), expectations for the bill to proceed were limited. Whilst Marchi could count on solid support in the Republican dominated senate, the passage in the Democrat controlled assembly, and subsequent approval by NYS's Democrat governor Cuomo were less sure. Two factors allowed for the unexpected passage of the enabling bill. Firstly, SI Democrat Assemblymen Connelly and Vitaliano were in support of the bill to safeguard their support on the island, and were able to garner support from the Democrat leadership. The second factor, and crucial to the discussions, was the question over the signature by

the governor of the bill; expectations were that the 'hypercentralist' (Kauffman 2012 ch.6) Mario Cuomo would veto the legislation.

This second factor merits further examination, in particular the comments of the governor on the evolution of SI in the proposed new government of NYC. In effect, by withholding his clear intention to veto SI's referendum bill, Cuomo brought pressure on NYC to accommodate SI's needs. From the time that the assembly had approved the bill, the governor's statements suggested that his veto was not a given; 'we need to keep Staten Island in the City of New York. I hope that's the way it comes out' (Cuomo April 1989 in Kramer and Flanagan 2012 ch.7). In a later news conference, on the day after the legislature had passed the bill, Cuomo characterized the measure as a 'political statement' (Kolbert 1989a p.1) and went on to say that 'by approving the measure state lawmakers were asserting that "Staten Island should be protected" in the wake of the Supreme Court decision' (ibid.) and that he was 'not out of sympathy with that message' (ibid.). Moreover, referring to the Schwarz Charter Commission report that was to abolish the BofE, Cuomo 'said that he sympathized with the concern of Staten Islanders "that they are going to be overlooked" under the new form of city government that voters were expected to asked to approve' (ibid.). Cuomo acknowledged the dilemma facing the charter commission, '[t]he central problem is: how do you configure the government of the City of New York so it meets the constitutional requirements and still gives Staten Island the feeling that it is a full partner in the process' (Cuomo 1989 cited in ibid.).

Robert Straniere, NYC Assemblyman for SI district 60 from 1980 to 2004, gives a valuable insight into Cuomo's possible motivation for allowing the secession referendum; that Cuomo, an Italian-American, suburban dwelling individual who had been treated as an outsider by the 'Wall Street legal world' identified with the Staten Islanders' complaints (Kramer and Flanagan 2012 p.125). But, although SI BP, Ralph Lamberti, 'called the secession measure "a great victory for Staten Island."' (ibid.), he made clear that the likely reaction to a possible veto 'would be "disappointment, anger and frustration"' (ibid.).

Cuomo's final decision came in December 1989, after he had rejected initial technical claims by NYC on the legality of the secession referendum (see below). NYS Law 773 signed by Cuomo set out the process by which SI residents were to be asked by a referendum in November 1990 if they wanted to create a charter commission to submit proposals for secession with a charter for the new City of Staten Island, which would then be voted on in a second borough-wide referendum (Underweiser 1991 p.151).

However, in an additional amendment to the bill, Cuomo asked the 'lawmakers to approve another measure that would give the Governor and state lawmakers the final say on a new

Staten Island Charter' (Kolbert 1989b p.2). SI Assemblyman Vitaliano, one of the original supporters of the bill, argued that it would be 'doubtful that the legislature would give itself the final say . . . it doesn't make sense to do that' (ibid.). He was then to change his stance, supporting the amendment on the grounds that 'it would strengthen the legal argument for the State's usurpation of the city's home rule privileges'²⁸ (Kramer and Flanagan 2012 p.125). The amendment to Law 773 was finally passed by the legislature, and signed into law as Chapter 773 by Governor Cuomo in March 1990.

This was, for BP elect Guy Molinari, a development that rendered that secession issue a 'kind of tragic hoax' (ibid.p.126). For, even though the final decision on SI's secession would ultimately be taken by the NYS legislature, in effect the ability of NYC to influence the outcome of the final decision remained;

'[i]f the City's political leadership wanted to kill Staten Island secession, they could lobby their borough delegations in Albany and City leaders in the state legislature to shut down the movement' (ibid.).

Outgoing NYC Mayor Ed Koch, who had traditionally relied on support from SI voters, reacted to the initial passage of the bill through the assembly with a statement that 'the city would have to appeal to Staten Islanders, "convincing them that being part of New York City is much more important and to their advantage than a Staten Island by itself"' (Kolbert 1989a p.2). However, he reacted to the final passage of the bill in late 1989, saying that the Governor 'is plunging a dagger into the city's heart' (Kolbert 1989b p.1) and speculated that Cuomo's decision was based on the need for SI's support in the 1990 gubernatorial election campaign (ibid.).

Although the bill was passed by both houses of the NYS legislature, and obtained the signature of the governor, it was still subject to the eventual challenge to its constitutionality. The next section examines the process of challenge, and the complex interplay between Home Rule provisions and states' rights in determining the structure of local governments.

3.3.3. Challenges to Secession Legislation

Legal challenges to Chapter 773 by NYC were based on two elements; the first was that by preventing the remaining four boroughs from participating in the referendum these voters were denied equal protection (Underweiser 1991 p.152). This argument was rejected by the court on the grounds that as approval was required by the NYS legislature

²⁸ We discuss Home Rule provisions below.

for any secession, the referendum was only advisory in nature. A subsequent appeal judgement by, Justice Wallach agreed with the finding that Chapter 773 did not violate the equal rights provision as

'Staten Islanders were affected disproportionately compared to other residents of New York City, the distinction between the groups was very precise, and the geographical classification was acceptable' (ibid.).

This important confirmation of the distinct nature of SI's population was based on earlier Supreme Court judgements in the case of 'a "single-shot" referendum, where . . . to be constitutionally permissible, the issue must have a "disproportionate impact on an identifiable group of voters"' (ibid.p.157), and must be subjected to tests as to the differentiation between the groups' interests, if these are shown to be 'substantially identical' then such a restriction of the franchise would not be permitted (ibid.p.158). In the case of SI, this test was upheld, on the grounds that

'[t]he distinction between Staten island residents and the residents of the other four boroughs is reasonable and precise, and the two groups clearly have different interests' (ibid.p.159),

and that the goal of the state to allow SI residents solely to express their interests justified the restricted franchise.

The second argument against Chapter 773 was based on the concept that a Home Rule message from NYC was required to make the law valid or indeed to make any subsequent decision by the NYS legislature valid. State laws, such as Chapter 773 that affected one area managed under Home Rule provisions, had to meet the constitutional requirements of the NYS Constitution. These restricted the NYS legislature in acting

'in relation to the property, affairs or government of any local government only by general law, or by special law only . . . on request of two-thirds of the total membership of its [NYC's] legislative body or on request of its chief executive officer concurred in by a majority of such membership' (New York State Constitution 2011 Art. IX, section 2 para. 2).

The concept of Home Rule under which the maintenance of intergovernmental relations at the level of local government was left to local governments themselves was challenged by the decision of the courts, for in the case of SI, the courts upheld NYS's argument that '[m]atters of state concern. . . are never subject to Home Rule constraints regardless of the effect on localities' (Underweiser 2006 p.153) and that 1\ the power to create local governments is automatically a State concern, and 2\ most saliently that 'state interest is created in resolving a conflict between a county and the rest of the City of New York' (ibid.). In the case of SI, for Underweiser:

'When almost 400,000 residents of the State are so angered by their local government that they wish to secede from it, the State is the most reasonable political force available to maintain a degree of stability. Therefore, based on the court of appeals' view of Home Rule, the State Legislature may remove Staten Island from New York City without a Home Rule message from the City' (ibid.p.168).

The discussion on the strengths of the arguments for the interests of the rest of NYC to have a say in the loss of part of its territory, as against the right of the State to rule supreme over any Home Rule provision is covered at length from the legal standpoint by Briffault (1992), Underweiser (2006), and Viteritti (1995).

For these writers, the principle of Dillon's rule of 1868 continued to prevail even after the incorporation of Home Rule provisions into the NYS constitution as discussed. In this judgement, Judge Dillon argued that:

Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it so creates, so it may destroy. If it may destroy, it may abridge and control. (Dillon cited in Viteritti 1995 p.12).

However, for Martin (1965) the concept of absolute constitutional rights of the state in respect of its sub-units differs in practice, 'the law has it that the city is a creature of the state, but practice accords the city a considerable measure of independence' (Martin 1965 p.30). This is part of a wider principle, that, even in the absence of US Constitutional recognition of local government, such local structures have become *de facto* members of the 'federal partnership' (ibid.p.33). Martin cites Elazar's observation that 'local governments- rural, urban, and suburban, are part and parcel of the American federal system' (Elazar 1961 in Martin 1965 p.33).

This is at the fundament of the dialectic between Home Rule rights of a city, in this case NYC, and the equal rights of the alternative sub-unit, namely the county of Staten Island, to manage their interests within the federal framework of the state, and nation. Such discussions are at the basis of the legal challenges as above, and also of the political discussions on the notion of secession. Viteritti (1995) discusses the 'conditions of justifiable secession' and in a reflection of Bryce's work on the forces and tendencies that lead to secessionist movements cites Madison's principles that in a 'large and diverse republic, political interests would be transitory in nature' (ibid.p.28), covered in greater depth later.

3.3.4. The Referenda and the Death of the Secession Movement

The referendum on Chapter 773 took place on 6 November 1990, in which the SI electorate voted by 81% to 19% to set up a charter commission to create a city charter for

SI. This charter would then be subjected to a further referendum, ratification in the NYS legislature, and final approval by the governor.

After a series of 13 public meetings, chaired by Senator Marchi, the commission reported to the governor and state legislature on 2 February 1993, and produced the final proposed Charter on 2 August 1993 (Staten Island Charter Commission 1993a p.2). The report identified that SI could be financially viable as a city, although there would have to be adjustments to tax bases to fill a \$170-million gap between services received from NYC and taxes contributed by SI (Kramer and Flanagan 2012 p.129). It set out recommendations for the composition of the City of Staten Island's governance; under the executive control of a Mayor and non-elected executive, a 15- member legislative serving four-year terms, and a system of community advisory boards (Staten Island Charter Commission 1993b).

This charter, and the attendant question on secession, was put before SI's electorate on 2 November 1993 for approval, the result of the ballot was 65% to 35% in favour. The commission was then charged with drawing up enabling legislation to be presented to the NYS legislature that would move the process of creating the new city of SI forward. The bill's passage through the NYS Senate was fairly straightforward, with a margin of 36-17 (Sonenshein and Hogen-Esch 2006 p.483); with the same deference extended to Senator Marchi as had been shown in the earlier 1990 vote on the referendum bill, and the underlying affinity of the Republican controlled senate to the largely Republican sentiments of SI.

It was at this point that the secession legislation was stopped in its tracks by the 1994 decision of the Democrat Speaker of the NYS Assembly, Sheldon Silver, to hold up the vote on the secession bill until permission was granted by the NYC government under Home Rule legislation (ibid.p.483, Kramer and Flanagan 2012 p.130). As seen, earlier judgements had discounted the need for such a ruling in Charter 773 legislation, based on the premise that the state's interest precluded such a ruling, and that the referendums were advisory in nature. Mayor Giuliani made clear that such a message would not be forthcoming (Kramer & Flanagan 2012 p.131), and two city officials, the Council majority leader Peter Vallone and Counsel Richard Weinberg both agreed with Silver's interpretation of Home Rule: '[b]asically the Constitution says you can't pass legislation significantly affecting a locality without a request from the locality' (McFadden 1994 p.1).

The last legal phase of this process was the challenge by Straniere, and his fellow NYS Assembly members for SI, to the constitutionality of Silver's decision. The challenge to the decision was rejected by the Appellate Division of the Supreme Court of New York State

on 22 February 1996. The ruling was based on the constitutionality of Speaker Sheldon's actions, upheld under the provisions of the Speech and Debate Clause of the US Constitution, designed to allow legislators to carry out their business with protection from legislative action. Effectively, Silver's actions could not be questioned by a court. The material fact of Silver's and Counsel's potentially erroneous demand for a Home Rule message was also covered by this clause (*Straniere vs. Silver* 1996).

This ultimate rejection by the courts effectively ended the legal route for SI secession, but the discussion now turns to the political developments that accompanied the passage of the secession litigation through the courts, to examine the way that political relationships were re-shaped through this period.

3.4. Re-Setting Relationships between SI and the City

3.4.1. *Changing Political Representation*

As of November 1990, Staten Islanders had a new mayor, David Dinkins, who was the antithesis of defeated candidate Giuliani in terms of common identity, along demographic, religious, and political cleavages. Moreover, the representation of SI in NYC's legislature had reduced to just three full City Council members and with a reduced role for their BP Molinari.

For Kramer and Flanagan (2012 p.128), the dislike for Dinkins in SI was based on a 'complicated mix of race and ideology that is difficult to untangle'; this was exacerbated by Dinkins' disregard for SI residents' needs and desires. They cite Dinkins' continuing opposition to the completion of the Navy homeport, to the one-way toll on the Verrazano Narrows Bridge that had been introduced by BP Lamberti in 1986 and which benefited the SI residents in reduced traffic congestion and pollution in the borough, Dinkins' unguarded remarks that the health problems on SI may not be due to Fresh Kills, but to pollution from NJ, and his proposals to raise SI ferry prices and reduce services (ibid.p.128).

The 1993 Mayoral elections re-pitted Dinkins against Giuliani, and resulted in Giuliani's narrow victory, polling 50.7% to 48.3%, although turnout was just over 50%, considerably lower than the 60% in 1989 (Purdum 1993). Support for Giuliani from the electors in SI was high, at 84% (Kramer and Flanagan 2012 p.128). For some commentators, the added incentive of voting for the secession bill on SI resulted in an increased turnout of SI's electorate which 'may well have been the difference in . . . Giuliani's extremely narrow victory (Sonenshein and Hogen-Esch 2006 p.483).

The question of Mayor Dinkins' continued opposition to SI secession, was raised in the run up to the elections; the simple logic was that without SI support Giuliani's success was impossible, and as a rational choice actor Dinkins would have benefitted from the absence of SI voters in the long term. Moreover, in Dinkins battle with NYC's financial deficit, the curtailment of the net tax outflow to SI, estimated between \$170 and \$199 million dollars annually, was an appealing prospect (Myers 1993). These options were, however discounted; Dinkins' deputy, Norman Steisel, said that

'[n]otwithstanding the outcome of the election, Mayor Dinkins still believes that the future of Staten Island and of the City lies with unity' (ibid.) and that '[i]t was the Mayor's sentiment . . . that to save the City as the City, with all its symbolism and intangibles, we should find some other way to save the money' (ibid.).

Mayor Elect Giuliani had also been an opponent of secession, and had 'made it very clear that he would not support any Home Rule message' (Kramer and Flanagan 2012 p.131). But, Giuliani 'depended on a heavy turnout and overwhelming support from Staten Island voters . . . In the context of the politics of the 1990s, Giuliani needed to keep the borough from seceding' (ibid.p.114). Indeed, the long-term prospects for Republican Mayors of NYC depended on keeping the votes of SI electors; secession would have potentially deprived them of the power base that SI represented. However, throughout his campaign he had

'emphasized that he understood where Staten Islanders were coming from with regard to their complaints about the City and their fears about life after the Board of Estimate' (ibid.).

Giuliani's next statements are critical in the understandings of the development of the post-crisis relationship between the Island and the City. On a visit on 25 October 1993, he dismissed Dinkins authoritarian attitude towards the SI secession question, saying that 'whichever way the people of Staten Island vote, then I will be in a position to work with them to try to solve their problems, not dictate to them' (cited in Manegold 1993). Then, on a 10 November 1993 visit, he said that Islanders might reconsider on the secession issue:

'I believe that if we get the opportunity to restructure New York City government to address the problems of Staten Island in a way in which Staten Island has a Mayor that is committed to solving their problems and understanding their problems, over a period of time there may well be a different attitude' (Giuliani in Hicks 1993).

An indication of the direction such reforms might take was made by Giuliani; he advocated the establishment of regular meetings of BPs to focus on 'the powers they would like to see restored to the borough level' (ibid.). BP Guy Molinari, long-time supporter and friend of Giuliani, reiterated his stance on the secession issue, but said 'it was possible that a more responsive administration in City Hall could persuade borough residents to give up the idea of splitting from the city, (ibid.).

The next steps for the secession movement, post the 2 November 1993 referendum, lay with NYS legislatures; the City-wide actors were no longer directly responsible for the decision, they could now only canvass and lobby for their optimum outcomes. Changes in the political landscape between 1990 and 1993 were to have an important bearing on the potential outcome of the legislature's decision. Mario Cuomo, signatory of the original Charter 773 legislation, was defeated in the 1994 gubernationals by Republican George Pataki. Pataki had said in November 1994 that he would sign a secession bill (Kramer and Flanagan 2012 p.131).

Secondly, and most salient, was Giuliani's victory over the incumbent Dinkins in the NYC Mayoral elections of 2 November 1993. Giuliani was, for Staten Islanders, the ideal victor, as a white American-Italian conservative, and a stark difference compared with Dinkins as a Black, Democrat. Indeed, for Kramer and Flanagan,

'the election of a Mayor. . . whose identity and interests so closely aligned with the borough's as to almost make the loss of power through the elimination of the Board of Estimate something that was easily forgotten' (ibid.p.110).

But, while Giuliani was at odds with SI was in the idea of secession, where he was against the loss of the borough to the city, Giuliani later claimed that he identified with the minority:

'I am not going to forget the little guy anywhere. When I got elected Mayor of New York City, I didn't forget anybody. The place that kind of won the election for me was Staten Island' (Giuliani 2007 in ibid.p.10).

Notwithstanding Giuliani's positive approach towards SI, the reality was that the adoption in 1990 of the Schwarz Charter revisions had left the boroughs, and their presidents, largely emasculated, their role became restricted to monitoring, reporting, and making recommendations to the mayor and city officials 'in the interests of the people of the borough' (New York City 2010 paras. 81-86). The challenges to this process had been unsuccessful, the movement towards representing people, not acres had prevailed. But in the operation of political systems, in particular federal polities, there can be developments within constitutional frameworks that act to reduce inter-group conflicts through policy changes that fall into Livingston's theory of instrumentalities. The next section will examine some of the developments in the policy field that illustrate the change in the relationship between SI and the rest of NYC.

3.4.2. Addressing SI's Grievances

The prime grievance, certainly the most visible, was the Fresh Kills waste site on the west of the Island. In 1996, Mayor Giuliani and Governor Pataki signed an agreement for the closure of the landfill by the end of 2001. Both men had enjoyed support from SI in the mayoral and gubernational elections, indeed Kramer and Flanagan (2012) argue that they

both appreciated past support and relied on future backing in the forthcoming elections.²⁹ Moreover, BP Molinari was persistent in 'importuning City Hall staff until they gave in and suggested to their boss that the landfill be shut' (ibid.p.118). However, and quite reasonably, fearing broken promises from future incumbents of these positions Marchi and Vitaliano introduced their own closure bill in the NYS legislature, passed in 1996, and signed in a high-profile ceremony in front of SI's Borough Hall (ibid.p.117).

The dump received its last barge of waste on 22 March 2001, although the site had to be temporarily reopened to deal with the debris from the 9/11 attacks (ibid.p.118, Dominowski 2009). The site is now being transformed into an extensive park, wetland area and nature reserve with the first phase opened in 2012.

The second raft of policy changes that helped to defuse SI's grievances were in the domain of transport, for the geographical position of SI had at once contributed to the identity of the borough in terms of land use, and demographic, but had a deleterious effect on access to the rest of NYC.

The opening of the Verrazano Narrows Bridge both enabled growth in the Island's economy, but also brought added burdens of traffic. The 1986 initiative by Lamberti to have one-way tolls to alleviate queues through SI persists to this day, and survived the efforts of Mayor Dinkins to restore two-way tolling. However, the redundant tollbooths on the Island that had continued to contribute towards delays and pollution on the Island were finally dismantled in 2010/11 (Johnson 2010). The role of SI political representatives in a cross party initiative to address this problem was identified, and lauded as an example of 'common sense solutions' (Hyer-Spencer in Johnson 2010 p.1).

The long commute for SI workers to mainland NYC was not something that could be addressed, in the absence of a sub-harbour rail link from the St George Ferry terminal on the north tip of the island to Manhattan. However, as part of a rationalization of free transfers on the MTA³⁰ system, under which transfers between modes of transport within the MTA area was covered under one ticket, the SI Ferry fare was abolished by Giuliani in 1997. The motivation, for Giuliani, was the issue of equalising costs for commutes across all the five boroughs and for SI residents the cost saving was estimated at \$21 per week (Sontag 1997 p.1).

The third major grievance was over the perceived lack of attention that City Hall gave to the residents of SI. The elections of Giuliani, and his successor Michael Bloomberg, have

²⁹ 1997 for NYC Mayor, 1998 for NYS Governor.

³⁰ The Metropolitan Transportation Authority of NYC.

resulted in SI residents being 'flattered, courted and rewarded by City Hall for over a decade. That is not likely to last when the city starts electing Democratic Mayors again' (Kramer and Flanagan 2012 p.134). This last point of grievance is the most difficult to assess in terms of the degree to which SI residents now feel genuinely assuaged, but the comments by Senator Marchi in 2002, immediately after the shock events of 9/11 do give some support to the idea that SI felt that the city was paying more attention. Marchi acknowledged that the movement for secession had largely dissipated; 'secession is not a burning issue at this point' (ibid.p.132) and added that the 'movement for separation "seemed to have a chastening effect on the City Council and the City generally, and they have been less outrageous than they were and more attentive to Staten Island"' (ibid.).

Having briefly outlined some of the post-crisis evolution in terms of political representation and the resolution of grievances in the relationships between SI and NYC, the thesis moves on to examine the evolution, expression and resolution of the secession crisis using the conceptual framework for crisis and federal dynamics.

3.5. Discussion: Federal Dynamics at Work

3.5.1. *Aspects of the Crisis from a Conceptual Standpoint*

The use of crisis as a theoretical framework for analysis draws from the concept of crisis as a persistent factor in inter- and intra-state relations, and applies this to political systems which exhibit federal characteristics in the management of relationships between these elements. The case study of Staten Island met the conceptual framework for a crisis as used as the independent variable in each case. The case will now be examined in this framework to establish the fit of the case study.

Staten Island forms part of an existing federal system of the United States of America as part of the local government structure that operates below the constituent unit (state) level of the system. It forms part of a Municipality, NYC, that was created from the joining together of a number of smaller units. The initial grouping of these in a harmony of interests was challenged soon after its completion. Evolutions in demographics, driven by external factors, and changing perceptions in identity between NYC's communities, led to decreasing harmony in relations; policy decisions, and policy mismanagement in high salience areas contributed to SI's increased feeling of alienation. The development of a governance system in the city, based on constitutionally protected asymmetrical representation, was effective in restraining the potential for crisis, as expressed by secessionist tendencies.

In the SI case, the focussing event was the final decision by the US Supreme Court that the system of government employed by NYC was unconstitutional. This came as a result of external events that pre-dated the final judgement, and for which the repercussions may have been manifest to legal and political elites. However, the focussing event in 1989 brought the crisis to the attention of a wider population, notably the residents of all of the boroughs, but impacted particularly on the population of SI. The resultant changes to the representation of the constituent units in NYC resulted in the formal commencement of a contested legal process that would have resulted in the secession of a SI; this was countered by opposing moves to retain the integrity of NYC.

The final outcome of the crisis was for the city's integrity to be maintained, and as such the case study falls into the permitted range established in the definition of the independent variable. The outcome was neither secession of one constituent unit, nor the break-up of the city into a number of units, on one extreme, or the resumption of unitary authority, on the other.

Having established the suitability of the crisis as a case study, it is now possible to examine the dynamics of the federal system to identify federalism as an ideological concept within the evolution of the crisis.

3.5.2. Secession as Process to Re-set Political Relationships

The possibility of secession, the breaking away of one community from another community, or group of communities, has been in the consciousness of Staten Islanders since the early days of the association with NYC. The expression of secessionist tendencies varied in importance and depended on other factors, notably perceived threats to the borough; the siting of facilities such as waste incineration, correctional facilities, social provisions, mental health hospitals, low cost housing, have all at some point resulted in some demand for secession.

The difference in the demographics, the well-defined geographical nature of SI, and the relatively homogeneous nature of the population all lend themselves to a justification of the idea of secession. In addition, the new city would still be large enough to maintain certain economies of scale, and could offer an alternative, competitive location for NYC residents and businesses.

However, secession as a practical proposition would be extremely complex, not least because the land on which the Fresh Kills landfill is sited is owned by NYC, and post secession would not automatically revert to SI control. In addition, there are the problems of restitution for the improvements and infrastructure paid for from NYC tax in areas such

as schools, fire stations, roads, streetlights and the rest of the paraphernalia of urban development for which SI was so keen to enjoy when it joined the NYC in 1898.

Burgess (2006) argues that secession is only morally justified if the

'federal bargain or contract has been either abandoned or undermined to such an extent that it neither satisfies the goals nor meets the basic needs of one or several parts of the federation'. (p.280).

McGee (1994) argues that there is a philosophical basis in the permanent right of secession irrespective of the geographical nature of the entity, he argues that it should be possible to secede and join another entity, even if geographically detached (p.14). McGee also argues that no group is too small to secede and it is up to that group to decide that it is, or is not viable (ibid.).

But as Briffault asks, where the minority view fails to be accommodated in spite of deliberation and debate between the minority and the majority parties in a plural political community, would democracy be better served by allowing the separation of the minority community? He goes on to critique Lincoln's view that 'the central idea of secession, is the essence of anarchy' for it elevates the role of the minority over the majority in a polity where unanimity is impossible (Briffault 1992 pp.845-846).

Given these initial thoughts as to the nature of secession, the examination moves on to the SI crisis in terms of federalism as process.

3.5.3. Process in Constitutional Structures

In the US, the relationship between the national government, the states' governments, sub-unit governments, and constituent units in sub-units, is established and maintained by the legal frameworks of constitutions or charters which set out the relative roles, responsibilities and competences of the different elements in a 'matrix' of governance. As have discussed, this interpretation of the US system by Elazar draws on the concepts of mutual compacts between each and every part of the system. The matrix acts in a way that both restrains and permits flexibility of action by the constituent elements of the system but is in itself rigid in that the possibility for fundamental change to the matrix is limited. In the case of the US constitution, such changes can occur through the formal process of amendment, or in the re-interpretation of the meaning of existing compacts by the highest court, the Supreme Court.

In the case of the secession crisis in SI, changes in the matrix came from challenges to the constitutionality of systems of apportionment, in a reflection of the changing societal attitudes towards representation, in a series of challenges to NYC's electoral systems that were seen as unconstitutional. *Morris vs Board of Estimate* resulted in the removal of the

flexible adaptation that had been evident in the relationship between SI and NYC from the first significant charter amendment in 1901. Some argument is made that, as the original charter of 1897 did not include this flexible arrangement, subsequent claims for SI's secession based on a breach of compact were void (Briffault 1992 p.788). However, the *detail* of developing the original arrangement was left to the newly incorporated NYC, and the framers of the 1897 charter made explicit the responsibility of NYC to create such frameworks for governance that reflected the regional, territorial and cultural diversity of the constituent units.

This forced change to the flexible adaptation in the governance of constituent units by NYC had an effect on the balance of the system, and in particular on SI. Residents and elites saw that negative elements in the compact, the increasing divergence in demographic and cultural commonalities, the perception of being treated as second rank, the siting of anti-social facilities on the territory, were no longer balanced by the presence of political elites in the main decision-making bodies of NYC.

Post *Reynolds* challenges to changes in the greater US federal system, posed by the re-interpretation of the US constitution, came to no avail. Later challenges to the asymmetric election of members to the BofE and the NYC city council were made, and defended by NYC. At this point political elites from SI expressed concern, and raised the prospect of a secession movement if the judgements went against the interests of the SI electors. These representations on behalf of the SI electorate did not result in the reversal of the principles of equal representation that had now become part of the constitutional framework of the matrix. The final decision of the US Supreme Court effectively ended any further exploitation of the judicial route towards avoiding the enforced change in the governance of NYC.

During the evolution of the crisis, and in particular the period while *Morris vs Board of Estimate* made its way through the courts, the NYC government examined possibilities of re-structuring the governance of NYC in anticipation of the courts' final decisions. The successive changes to the NYC Charter, culminating in the Schwarz Charter of 1989, were unable to accommodate through process the conflicting interests of the US constitutional changes and SI electors' interests.

3.6. Post-crisis Processes

The 1989 crisis had peaked with the concurrent final decision of the US Supreme Court and the adoption of the Schwarz Charter which resulted in SI representation in NYC affairs being reduced to limited reporting and commentating roles in the competence of urban

planning and land use. Bryce's analysis, is relevant in showing that the centrifugal forces brought about by a complex combination of perceived

'race feeling, resentment for past injuries, grievances in respect of real or supposed ill-treatment in matters of industry, or of trade, or of education, or of language, or of religion'
(Bryce 1901 p.238),

were no longer balanced by the centripetal forces of obedience, individualism, interest, sympathy, religion, identity and nationality, forces which for Bryce can, depending on context, operate in both directions. These tendencies can be combined with the 'belief that a great material advantage will be obtained by separation' (ibid., Burgess 2006 p.19), resulting in a move for secession by the constituent unit.

The expression of these combined forces resulted in the demands by SI elites, and evidenced by the grassroots sentiments, for SI to use the Home Rule provisions in the NYS Constitution to establish their own city government. As have discussed, the de-facto independence of cities or other sub-units in states' local governments to manage their own affairs was countered by the constitutional proviso that all the states' local government units were their legal property.

The NYS government and political elites allowed for a process to develop which gave the opposing sub-units the space in which to air their grievances. The wording of Bill 773, the legal instrument by which SI sought to secede, was such that it satisfied the Courts in respecting the Equal Representation and Voting Rights acts, and was therefore immune to challenge from NYC; it included the proviso that the initial and subsequent results of referendums of SI electors were to be advisory, and did not bind NYS to allowing secession.

I argue that in this manner, NYS created the time for the conflicting parties to try to reach new understandings and for processes to evolve which would enable the continued existence of NYC as a sub-unit. The decision, enabling legislation to proceed, was an option that when seen from Cuomo's comments was based on a complex decision-making process, in which rational choice was modulated by crosscutting cleavages.

The space and time created by the decision to enable legislation was used by the protagonists to develop reports on the sustainability of secession, and on the advantages of retaining the five-borough city structure. This process was public and open, and helped to educate both parties at the grass roots level on the cost/benefits of secession.

The initial phase of this process, where the outcome of the secession movement was still in the control of the legislature, was terminated by the 1994 decision of Speaker Silver,³¹ to reverse the original arguments of the NYS legislature, and Courts that no Home Rule message was needed from NYC. The existence of the process, the opportunities for the parties to exchange and understand their relevant positions, and the outcomes of the process, are linked to the political and societal context in which they operate. Care must be taken not to build straw men when ascribing causality of process outcomes, but the persistence of a trend in process towards the accommodation of SI's grievances both during and after Silver's decision may give credence to the argument that a re-configuration of political relationships is evident.

3.7. The Outcomes of the Process

3.7.1. *Change in the Treatment of SI by NYC/NYS Elites*

The initial reluctance on the part of successive NYC Mayors to accommodate the moves to secession by SI did not change as an outcome of the process. Koch, Dinkins and Giuliani all rejected the concept of a section of the city breaking away. This position has been ascribed to the party-political forces in the city, and the relevant benefits/harm that secession might bring to either the political elite, or the elite's competitor. However, there is some evidence that the desire to maintain the unity of the system reflects an underlying principle of federal systems, that the perpetuity of the system is inviolate, in the discourses of both Dinkins and Giuliani. Moreover, there is evidence that the short-term potential gain to political elites of allowing secession was countered by a desire to resolve the grievances through negotiation. The initial conclusion is that the federal principle of preserving unity by accommodating diversity extends beyond and surpasses individual political motivation and actions predicated on rational choice theory. The change of political elites that came with the victory of Giuliani over Dinkins, and of Pataki over Cuomo, can thus be interpreted as either independent, or co-dependent of the processes of restoring political relationships between communities.

³¹ Sheldon Silver was an idiosyncratic politician, who seemed to relish his pivotal role in the Albany legislature (Purnick 2007) He has latterly been stripped of the speakership over corruption charges.

3.7.2. *Removal of Iconic Grievances and Restoration of Political Powers*

SI residents' longstanding grievances over land use, planning, communications and more intangible feelings of neglect, all contributed to centrifugal forces. Staten Islanders' feeling of neglect by NYC was partly rooted in a divergence of identity, a feeling of alienation, from the rest of NYC and NYC's political elites. Whilst Dinkins was ineffectual in attempting to change these sentiments, Giuliani exploited his commonality of identity to promote a strong message of solidarity with SI residents' concerns. This process could be carried out over the term of his tenure, so that the prevalence of SI's concerns had reduced significantly by 2002. This is not, *per se*, a product of federal principles; it is more an accident of history that Giuliani embodied the qualities with which SI residents could identify. However, the resultant re-orientation of the relationships between the units had the potential to persist, in the absence of new external effects to disturb the equilibrium of the system.

The eventual removal of Fresh Kills, the most visible object of SI's grievances, can also be ascribed to a combination of efforts by local elites in persuading NYC's administration to remove the site, and on a change in context as environmental concerns became prevalent during the 1990s and beyond. The transformation of the site into an asset that is identifiable with the semi-rural nature of the Island has the capacity to reduce the grievance associated with its earlier function.

After WWII, low-population boroughs enjoyed increasing asymmetric powers in NYC, but after 1983, these were steadily reduced by processes of re-equalization which already discussed. The Schwarz Charter Commission considered maintaining the institutional framework of a separate executive to work alongside the council and mayor, but to achieve this would have resulted in a re-structuring of the weight of votes for the borough representatives that would have left SI voiceless. The decision was made to abolish the BofE, to enhance the powers of the mayor and council, and to reduce the *de jure* powers of the BPs. The abolition of the BofE, the long-standing base for these posers, was the catalyst for the secession movement, and could not be reversed given the new constitutional framework in which process could operate.

Local political elites were no longer able to 'log-roll' each other's projects in the BofE; In this respect the concept of crisis as opportunity for a development of new political linkages that respond to electorates' needs can be applied. In the hands of capable operators, who respond to electorates demands in order to gain re-election, local communities' needs can be promoted. These informal networks are epitomised by the longstanding relationship

between BP Molinari and Giuliani; the extension of these networks both horizontally, between BPs, and vertically, between BPs, Assemblymen and City Hall have the potential to compensate for the lack of formal powers at the BofE.

3.8. Concluding Comments: A Tragic Hoax?

BP Molinari had referred to the secession movement as a ‘tragic hoax’ (Kramer and Flanagan 2012 p.126). Home Rule provisions in the NYC Constitution give a framework for the creation of new cities or other structures, but are silent on the legal processes for the dismantling of existing structures. The two principles discussed earlier, between the right of existing sub-units to decide their own destiny, and the rights of states to act as they wish, are brought into play here, within the broader context of the federal constitution’s over-riding impact on the life of all US citizens. However, the outcomes of the process, with the restoration of a form of equilibrium of interests between Staten Islanders and their city has been positive; the unity of NYC has been maintained, important changes to the constitutional framework needed to allow full and fair representation have taken place, and significant grievances have been resolved.

In terms of the overall conceptual framework of the thesis, and as will be discussed in the comparison chapter, there are complex dynamics in this case between the formal constitutional constraints, and informal political bargaining. The inability of the system to meet the demands of the SI residents and their elites came from a wider constraining factor, with process driven changes to the US Constitution. The constraints of the rigid, NYS constitution in turn ultimately halted the formal secession of SI, notwithstanding the legality of the final decision of Speaker Sheldon.

The outcome, a formal cessation of secession prospects, was in many ways a ‘tragic hoax’ as Molinari warned; throughout the process the possibilities of SI acquiring city status were always limited by political pressures towards the maintenance of the *status quo* in the organisation of NYC. The relationships between SI and NYC were reset through changes in attitude from NYC political elites, policy changes, infrastructure and environmental improvements, and new informal power relationships which became evident as the crisis unfolded. These changes became established, and sat alongside the formal constitutional arrangements for NYC’s governance to create the *instrumentalities* that reflect the particular composition of the FPS, and its communities as constituent units. In terms of the status of SI and NYC, indeed between all of the boroughs and the city, the formal recognition of the territorial and identity differences of the constituent units has undoubtedly diminished. However, in this examination, it is in the beyond the formal that I identify new power arrangements, and informal changes which has resulted in the

maintenance of the distinct status of SI, and shows the continuing presence of the federal principle as a fundamental aspect of NYC's governance.

In this respect the comments of former Mayor Giuliani, in 2007, are relevant:

'Our system recognizes the fact that different cities and different states face different challenges. They demand flexibility for local decision making. . . . The genius of our system is we have the flexibility to allow local governments and to allow states to respond to the different challenges in a different wayFederalism gives us the flexibility to solve our own problems, it encourages innovation and experiment' (Giuliani 2007 p.6).

In these comments, I identify a reflection of Sayre and Kaufman's original 1960 analysis of the political and government system of NYC and the fundamental principles of federalism that reach right down into the local levels of US political life.

4. Case Study - Quebec and Canada 1967-1985³²

4.1. Introduction

'The Canadian federal relationship, long believed to be a very stable compromise, has in recent years become the subject of violent controversy. An insistent demand for independence on the part of a substantial group of the French Canadians has precipitated a crisis of major proportions. It is a striking case of the disruptive force of nationalism and linguistic separatism' (Friedrich 1968 p.116).

Carl J. Friedrich, after Livingston, sought to go 'beyond the institutional and structural field' (ibid.p.viii) in examining within federal systems '[S]ocial forces, societal substructures, innovations' to develop an understanding of 'federal behaviour' (ibid.p. ix). In the case study of Canada, I demonstrate how in the absence of certain constitutional provisions for revision, political elites had to utilise non-constitutional instrumentalities, as conceptualised by Livingston (1952,1956). The unity of the Canadian federal system was in effect to come to depend on the use of such instrumentalities, for in Friedrich's perceptive analysis of the situation in 1968 –

'The Canadian case certainly suggests the very real danger that a cultural and religious minority, in defending itself through its domination in one or more units of the union, becomes stratified in its oppositional role and eventually seeks the union's destruction through the demand for secession' (Friedrich 1968 p.61).

But, for Friedrich, 'a supple handling of federal relations may in fact alleviate the tensions and provide an outlet for the minority's energy and need of cultural autonomy' (ibid.).

The case study takes as the focusing event the October 1970 kidnapping of Andrew Cross, British Diplomat, and the kidnapping and murder of Pierre Laporte, Quebec Politician, by the Front de Libération du Quebec, the subsequent deployment of federal troops in the province of Quebec and the passage of the War Measures Act (WMA) in the federal parliament in Ottawa. This case study examines post-crisis changes from the perspective of federalism as process designed to reduce tensions where the fundamental differences in the values associated with groups, immanent since the defeat of the French in 1763, were progressively brought into sharp focus in the post 1945 period, culminating in the period of extended crisis from 1967 to 1985. In the absence of clear constitutional formalities for the development of Quebec as a political actor in response to changing demands from an evolving nationalist movement, the use of instrumentalities became evident in the period after the 1970 crisis.

³² In this Chapter I draw on some resources only available in French, and provide translations of relevant sections in the text. I attach the original texts in Appendix 9.1 in the form of endnotes – i,ii,iii etc.

The first sections (4.2,4.3) cover the political development of a distinct Quebec nation, and the challenges to this province that came about after WWII and which resulted in competing understandings of the role and nature of the province within the Canadian federal system. The second group of sections (4.4, 4.5) analyses the events from 1967 to 1970 that led up to the focusing events of the crisis, where the polarisation between the federal and autonomist positions became critical, and became evident in the October crisis and the reactions of the federal government. The third section (4.6, 4.7) examines how, after the failure of the efforts to seek constitutional reform that might protect gains in autonomy for Quebec, political elites in both Quebec and Ottawa utilised non-constitutional instrumentalities to promote contrasting visions of Canadian federalism, and how the separatist position became represented in an elected political party, the Parti Québécois (PQ). The fourth part of the chapter (4.8) discusses the conceptual fit of the case study, and the role and function of instrumentalities in the evolution of the crisis both before and after the focusing event, and argues that through these processes the federal political system retained both fundamental aspects of unity, and the maintenance of diversity. The concluding part of the chapter (4.9) argues that this renewed federal understanding is in many respects sub-optimal, with a continuing lack of a constitutional formula to reflect the changing realities of the Quebec-Canada relationship. A short summary of concluding comments (4.10) completes the chapter.

4.2. Background to the Crisis

From the time of the conquest of New France³³ by the British in 1763, until the passage of the British North America Act (BNA) of 1867, the survival of the French speaking population was 'marked by uncertainty, ambivalence and sometimes violence' (Legendre 1982 p.5). That this group of largely rural, Catholic individuals had survived conquest, and resisted assimilation that came through deliberate efforts of a competing majority, or evolving local and global pressures, is fascinating. This section looks at some its history to understand the formation and nature of its developing identity.

³³ The French Territories in what is today Canada.

4.2.1. *The Political Development of Quebec*

'Modern-day Canada is all about striking a balance between the constitutional laws of 1867 and of 1982, the first one providing a strong anchor for federalism and provincial powers enabling Québec to be free and distinct, while the second one integrates the whole country with a nationalizing Charter of Rights and Liberties' (Laforest 2010 p.19).

Guy Laforest's interpretation of the development of the modern Canadian nation refers to two key moments in the development of Quebec. In order to frame the development of the later crisis I will briefly outline the salient points leading up to the first of these, the BNAA, and the developing affirmation of Quebec as a nation, and how the potential for conflict and crisis, that was to remain largely immanent until the post-WWII era, developed.

New France was ceded to Great Britain in 1763 after the Anglo-French wars (Bothwell 1998 p.12). The majority of the 70,000 French-speaking, Catholic population became 'subjects . . . of a Protestant and English speaking monarch . . . New France was finished; the valley of the St Lawrence was now called the Province of Quebec, a province of Great Britain' (ibid.p.14).

Over the next three decades, the growth of the French-speaking community in the province was driven by high birth-rates, and in the English-speaking community by the influx of refugees from the American Wars of Independence. The latter tended to settle in the future Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island, and in the lands around the upper reaches of the St Lawrence. By the 1790s the Province of Quebec had developed distinct territorial and linguistic cleavages, with the c.200,000 occupants of the lower reaches of the St Lawrence remaining 'mostly French, Catholic . . . and . . . primarily rural' (ibid.p.25), and ca. 25,000 in upper Canada mainly English Protestant. There were, however, significant minority populations of English speakers in the developing urban areas of Lower Canada – by 1831, these comprised 45% of Quebec City, and 53% of Montreal (ibid.).

Demands from the English settlers for representation in government, and the countervailing need to have the Canadiens'³⁴ consent for British governance, posed a 'dilemma' for the British, resolved by the Constitutional Act of 1791 which split the province and created the two provinces of Lower Canada and Upper Canada, each with separate legislatures, and 'signified the beginning of a special political status' for the French-Canadians (Legendre 1982 p.6).

³⁴ Bothwell uses the term *Canadien* to describe the early French Canadian population.

This arrangement was to produce among French-Canadians a rise in 'ethnic consciousness and nationalism . . . [the] feeling of being a minority and of losing control over their destiny' (Legendre 1982 p.6), for the Assembly of Lower Canada was dominated by an Anglophone executive council. However, developing nationalist sentiments were taken up by Francophone political elites, and by the 1820s a nationalist party developed, the '*patriotes*', led by the speaker of the lower assembly, Louis-Joseph Papineau (Bothwell 1998 p.28). Papineau upheld a form of ethnic nationalism in defence of a 'people whose origins were in the old regime, who spoke French and who belonged to that culture'; a response to 'the grievances of his people', with the intention of emancipation from 'this English Protestant rule' (ibid.p.29). The radicalisation of the Nationalist Party through the 1830s extended from a 'reaction not only against the Anglophones inside Lower Canada, but against the Americans' (ibid.p.30) and posited an independent Quebec, which, for Papineau, would also offer the possibility of a separation of the church and the state, to 'end the compromise between the Catholic Church and the British governors that dominated French-Canadian society' (ibid.).

In Lower Canada unrest in the 1820-1830s, and rebellions of both the English and French speaking communities of 1837/8,³⁵ led to the British imposition of a regime with an assimilatory intention in which both provinces were merged to form the United Province of Canada, under a single legislature. Lord Durham's report recommended the creation of a political union of the two provinces with the intent of enabling the flourishing of a single national character. Anticipating the evolving superiority in numbers in the Anglophone community in the Provinces, this was intended to develop into an English population, with 'English laws and language . . . and a decidedly English legislature' (McNaught 1982 cited in Simeon & Turgeon 2006 p.14). Feelings of despair after the Nationalist's defeat were countered by the development of a strategy of political accommodation and cooperation between the French-Canadians and Anglophones; this capacity for coalition building prevented the assimilatory intent of the Durham Report, to either the assimilation of the Francophones or a dominance of the Anglophone community (ibid.p.15). The capacity of French-Canadian elites to maintain a coalition with their English-Canadian counterparts led to their continued presence in a political system which 'by the 1860s . . . had become so finely balanced as to be unstable and uncertain' (ibid.p.37).

³⁵ In Trudeau's interpretation the rebellions differed qualitatively; whilst the Anglophone rebellion of Mackenzie was driven by a desire for 'democratic self-government' the revolution of Papineau's pitchfork wielding followers was a 'fight for national self-determination' (Trudeau 1968 p.105).

Ultimately, the growth of the 'English and protestant Canada West [Upper Canada] led to demands for "Representation by Population", fuelling fears of dominance by an English-speaking majority' (ibid.p.15), and resulted in a breakdown of this regime by the early 1860's (ibid.). The United province of Canada had in effect become ungovernable; a combination of unstable government and rising racial and religious passions raised fears of a future under a sombre light amongst political and religious elites' (Tremblay 1957a p.11-12). By 1864 these elites had decided to act to break the political impasse, the outcome was a series of constitutional conferences which were to form a new Confederation of the two former provinces of United Canada, Ontario and Quebec,³⁶ and two of the four Maritime Provinces³⁷ (Bothwell 1998 pp. 35-6), under the British North America Act of 1867.³⁸

The degrees and areas of autonomy were set out in the BNAA with areas of legislative exclusivity for the Federal and Provincial governments, and joint powers in the case of education. The BNAA gave the power for making laws for the 'Peace, Order and good Government of Canada' to the Parliament of Canada along with residual powers not enumerated for the provinces, and not being of a 'local or private nature' (BNAA Art. 91 para.29). The provinces had powers over local taxation for provincial purposes, property and Civil Rights, Justice and 'Generally all Matters of a merely local or private Nature in the Province' (ibid. Art. 92 para.16). Education was left to the provinces, with provisions for the maintenance of both Catholic and Protestant schools in both Quebec and Ontario, and the right of the federal government to intervene if such provisions were not upheld. The BNAA allowed for the use of either French or English in the Parliament of Canada and in the Quebec legislature, and for the use of either language in the Courts of Canada or in any of the courts of Quebec (ibid. Art.133),³⁹ but was silent as to the nature of the official language of the Canadian nation.⁴⁰ The BNAA did not contain any guidance on the provision of social security and pensions, these were to follow in 1940 (ibid. Art. 91.2A) and 1951 (ibid. Art. 94A) and ultimately fell under the federal government's jurisdiction.

The BNAA contained very few provisions for amendments, these were limited to emergency provisions for the continuation of parliament in times of war, and the

³⁶ Ontario had formerly been called Upper, or West Canada, and Quebec Lower, or East Canada.

³⁷ Nova Scotia and New Brunswick joined with Ontario and Québec in the first confederation of 1867. See BNAA Art. 2. Subsequent colonies joining the Union was covered by Art. 146.

³⁸ The BNAA of 1867 was amended on multiple occasions, and in 1982 renamed the Constitution Act (1982). For the purposes of this work the use of the term BNAA shall refer to the 1967 Act, or the most recent amendment as appropriate in the context of the discussions.

³⁹ Provisions of a similar nature were enacted for Manitoba in 1870 (BNAA 1867 f.n.67).

⁴⁰ See also Smiley (1976 pp. 161-162).

amendments of provincial constitutions, and, barring these exceptions, the constitution could only be amended by the Parliament of the United Kingdom. Moreover, the federal government had the right to disallow any act passed by a provincial government, in addition to powers of Lieutenant Governors to withhold assent, on the federal government's instructions, and in the powers of appointment of juridical positions held by the federal executive (*ibid.*). This formed part of an extensive power of disallowal retained by the British government over the Canadian parliament under Arts. 55, 56 and 57 of the BNA which was replicated and extended to provincial parliaments under Art. 90.⁴¹

These shortcomings notwithstanding, the BNA served to re-establish Quebec within a federal Dominion and for French-Quebec elites meant its 'political renaissance . . . resurfacing as an autonomous, distinct, self-governing political community' (Laforest 2010 p.21). Moreover, the presence in the BNA of Art.94 gave guarantees for the preservation of the distinction of Quebec's prior legal framework on property and civil rights; any harmonisation of such laws by the federal government would only apply to the three other provinces at the time of federation (Laforest 2014 p.27).

In terms of the preservation of the nature of Quebec as a French-speaking territory, the relative numerical status of the Francophone population in Canada continued to diminish as the federation expanded with the addition of new, largely Anglophone provinces. However, the refusal of these provinces to adopt language rights' provisions, and the limitations placed by Ontario on French language schooling, had the 'effect of keeping French Canadians within the confines of Quebec' (Simeon & Turgeon 2006 p.16). The BNA thus had two important effects, for it

'not only had the effect of opening an institutional space from which Francophones could pursue self-government within the province of Quebec, but also provided the space for other provinces to limit the use of the French language' (ibid.p.17).

It was the second of these that had the effect of completing an evolution in Francophone identity from that of being

'Canadiens, the first white settlers of what is now Canada, to French-Canadians, defined primarily by language and religion, and eventually to the contemporary Québécois, a national identity centred on the Quebec state' (ibid.).

This discussion of the development of the Quebec national identity has examined how a distinct, territorially defined community, with different characteristic values and cultural signifiers, developed. From the federal theory standpoint, this community enjoyed measures of self-governance as set out in a constitutional arrangement that also required

⁴¹ For Wheare (1947) the BNA contained elements which made the BNA as a constitutional document 'not completely federal; it is quasi-federal' (p.22)- through the presence of the 'power to disallow.'

acceptance of areas of shared governance; but the community, whilst in the majority within its own territory, was a significant minority in the federal system as a whole.⁴² The next section examines how the integrity of this community was challenged by the post-WWII development of 'new federalism', and identifies the threads of ideology which developed in response, and which can be then seen in the development of political parties and elite representation in the later part of the 1960s.

4.2.2. Post-war Developments in Quebec: Challenges to Conservative Nationalism and Introspection

While the main 'levers of power' (Wheare 1946 cited in Simeon & Turgeon 2010 p.15) were in the sphere of the federal government in the original conception of the BNAA, decentralizing pressures soon came from both Ontario and Quebec, with the latter's efforts aimed at 'the power to preserve its own language and culture in the face of an English-speaking majority at the national level' (Simeon & Turgeon 2006 p.16). This period of a developing 'provincial rights' movement . . . ushered in a period of provincial autonomy that lasted until the beginning of the Second World War'. However, post-WWII, with the impact of both the pre-war depression, and the developing concept of the welfare state and Keynesian economic doctrine, the Federal government and most provincial governments 'grew rapidly as taxing and spending powers' (ibid.) in order to jointly finance developing social policy. It was during this era of 'new federalism' (Behiels 1985 p.185) that multiple 'pressures; demographic, economic, and political' (Bothwell 1998 p.80) led to a divergence of responses from the Anglophone and Francophone communities;

'English Canada responded to change in its environment by developing a set of national priorities and institutions different from those in the years around 1945; but in Quebec, authorities replied to the same circumstances by patching together what already existed, even though the forces for change were all around them.' (ibid.pp.80-81).

The outcome of this process was the steady development of a contrast between a forward looking English Canada, and an introspective Quebec in which a majority of the French-Canadian community was challenged by post War change, and the movement towards a 'new, prosperous and united Canada' (ibid.p.96).

Quebec's introspection was epitomised by the ideology of Quebec's Union nationale (U.n.) party, in power under Maurice Duplessis from 1944 to 1960, which has been described as 'to resist assimilation from without, to resist emancipation from within' (Pierre

⁴² Friedrich also makes the point that as a result of the concentration of French speakers in Quebec, the 'subsequent federal recognition of a nationality and its language reinforces its differential development and hence centrifugal tendencies' (Friedrich 1968 p.117).

Vadeboncoeur cited in J T Saywell 1968 p. viii). This was based on a concept of provincial autonomy to ensure cultural survival through a 'firm alliance between the government and the conservative elements in society- rural Quebec, the Church, big business and right-wing nationalists' (ibid.). The ideology of the Duplessis regime was characterized as a form of defensive nationalism that sought a form of autonomy that protected the traditional ways of Quebec (Whitaker 1992 p.289).

Behiels (1985) discusses how the introspection of the dominant nationalist ideology of the U.n. came to be challenged by two ideological movements that had their origins in the post-war period; the neo-nationalists and the citélibristes (pp 5-6). The neo-nationalists' firm belief was that the 'survival and development of the French-Canadian nationality was dependent on a pragmatic and meaningful provincial autonomy' (Behiels 1985 p.192). They complained that 'federal monopolization of direct taxation made it virtually impossible for Quebec to finance and administer areas of provincial jurisdiction in a manner that best reflected French Canada's distinct social, cultural and religious values' (ibid.p.193.).

The citélibriste ideology, developed through the political thought of Pierre Elliot Trudeau and Gérard Pelletier,⁴³ had some commonality with the neo-nationalists, in that they argued for a more active role for an 'interventionist and pluralist nation-state' (ibid.p.68). For the citélibristes, however, this was to be used to achieve the objective of

'the preservation of individual rights and personal self-realization . . . [through] . . . the pursuit of collective goals such as greater equality of economic condition between classes and a more democratized political culture and socio-economic institutions' (ibid.).

The antagonism of the citélibristes towards traditional nationalism, and to an extent towards neo-nationalism, was based on the belief that the

'emergence of a dynamic, creative, indigenous, French-Canadian culture and society rooted in North American . . . would survive and flourish, not because of any nationalist doctrine, but by maturing into an open, democratic, pluralist, secular, urban-industrial society in harmony with, yet distinct from, that of the rest of North-America' (ibid.p.85).

Duplessis recognised the potential impact of these two new ideological movements, and in particular the neo-nationalist ideals, which found traction amongst adherents to his party. Indeed, pressure by the neo-nationalists on the Duplessis regime to adopt what Behiels calls a 'positive autonomist' approach, and in particular in 'Quebec's aggressive exercise of provincial taxing powers and social prerogatives' (Behiels 1985, Laporte 1957) led to renewed efforts by a broad coalition of nationalists to press Duplessis on the 'constitutional and financial problems confronting all levels of the government' (ibid.p.198).

⁴³ Co-editors of the influential *Cité-libre* periodical.

This resulted in a 'change of heart' by Duplessis on the setting up of a Royal Commission to investigate federal-provincial relations.

The resultant Tremblay Report recognised the impact of the Duplessis regime's resistance to new spending and taxation powers; this had, since the mid-1930s, caused Quebec to

'deprive itself of important revenues rather than consent to a mode of subsidization which would imply a diminution of its autonomy and a surrender of its prerogatives' (Tremblay 1957b p.9).

Quebec had foregone the resources to modernise the state rather than lose the right to maintain the difference between the French-Canadian and English-Canadian cultures which were

'[t]wo great communities of differing origin and culture [which] constitute its [Canada's] human components and each of them intends to live according to its own concepts and to preserve its own identity from one generation to another' (Tremblay 1957b p.11).

For Tremblay 'the duality of cultures is the principle premise of the Canadian political problem' (ibid.), and as such gives the fundamental reason for the existence of the federal system, for 'only federalism as a political system permits two cultures to live and develop side by side within a single state' (ibid.p.12). However, a paradox arises where the maintenance of difference is countered by a drive towards a nation in which the federal government 'looks at Canada as a whole . . . [with] no differentiation of inspiration or ways of life . . . as if the nation were not primarily and essentially a community of culture' (ibid.).

Tremblay identified the centralizing thrust of the federalists, based on their understandings that the Constitution gave the central government 'the main economic powers, and possessed "unlimited power" to tax, and "absolute" power to spend' and that this 'pursuit of economic and social goals had, in some way, priority over cultural objectives . . . and priority over the provinces' (ibid.p.19). Tremblay's counter-argument was that

'[c]ultural policy and social policy are only extensions of each other . . . they must be entrusted to the government which, being itself a participant in the culture, can best grasp its spirit and express it through laws' (ibid.p.20).

Tremblay's important finding was that the realisation of such goals could be attained through differentiated responses for the realization of provincial autonomy in Canada:

'[either] a degree of special status in what we now call an asymmetrical federal system, with exclusive control over all social welfare programs, education, health . . . [or] a push for a considerable devolution within the Canadian federal system, whereby all the provinces would receive full control over all these areas as well as the tax and revenue to allow them to carry on' (Bothwell 1998 p.105.).

The findings of the Tremblay Report went a long way in giving voice to contrasting ideas of maintaining cultural differences in an evolving context. However, the ideological developments that were acknowledged in the Report were still to be positioned in political vehicles that could challenge the Duplessis regime in the Province of Quebec. The next

section examines how these ideologies were to develop within the resurgent provincial Liberal party.

4.3. The 'Quiet Revolution'

4.3.1. *The Resurgence of the Quebec Liberal Party (QLP)*

Alongside the U.n.'s partial acceptance of political change in Quebec, by 1956 the QLP had amended its electoral platform to partially challenge the U.n. in offering a 'commitment to a number of major social and economic reforms' (Behiels 1985 p.249). However, 'neither of these existing traditional parties reflected the vastly altered socioeconomic realities of modern Quebec' (ibid.). During the same period, attempts by the neo-national and 'citélibriste' ideological movements to find a common ground and to form political parties were to falter (ibid.pp.239-40). Both movements were still without a political party to challenge Duplessis and the U.n., but still maintained degrees of antipathy to the only real alternative, the QLP.

The Quebec Liberals were always notionally separate from their federal party, the Liberal Party of Canada (LPC), but the 1958 defeat of the latter in the federal elections⁴⁴ allowed the provincial party to adopt 'an aggressive stance on the question of provincial autonomy' (ibid.p.258). The election of their new leader, Jean Lesage, in 1958, ushered in a reformist movement that

'came to perceive that . . . a combination of these two ideological currents [neo-nationalism and citélibriste] could produce a very potent political force. It would be a force that could regenerate the dormant, but none the less very real desire of all French Canadians for cultural and linguistic equality and fuse it with the urgent need expressed by increasing numbers of French Canadians, working class and new middle class alike, for the modernization of the political, social and economic institutions of their society' (ibid.p.260).

This was transformed into a programme for the 1960 provincial elections by former party leader Georges-Emile Lapalme, 'with a strong emphasis on the role of the state in the renewal of every aspect of French-Canadian culture' (ibid.p.261). While citélibriste ideas of

'equality of opportunity and . . . equality of condition . . . [were] cloaked in the broader concern for the fulfilment of the national aspirations of French Canadians or, as they were increasingly wont to refer to themselves, Québécois' (ibid.p.262),

Neo-nationalist ideas were more influential in the formulation of proposed reforms, which sought to redress the influence of non-Francophones in the Quebec economy, and the

⁴⁴ Replaced by the Conservatives under John Diefenbacher.

renewal of federal-provincial relations along the lines recommended by Tremblay in restoring fiscal autonomy (ibid.pp.262-264).

The final line-up of the QLP's team, their '*équipe de tonnerre*',⁴⁵ was made up of Lesage, Lapalme, Paul Gérin-Lajoie, and René Lévesque. Gérin-Lajoie was a 'nationalist-oriented constitutional adviser' who had been considered too inexperienced to take on the leadership (ibid.p.258), and Lévesque was a well-known former newspaper and TV journalist who had responded to the call from the QLP, and who's 'intuitive support for neo-nationalist solutions to Quebec's problems' was reflected in the QLP's program (ibid.p.265).

Citélibristes, including Trudeau and Pelletier, remained reticent towards the QLP, and the former refused to participate in a party in which nationalist policy direction did not compensate for the potential impact on the social democratic principle of the primacy of individual rights over collective rights. While Behiels argued that Trudeau desired a Liberal defeat to allow 'authentic reformist forces' to regain their urgency (ibid.p.266), Trudeau did in fact encourage readers of *Cité-Libre*, who believed that the QLP would accept the 'democratic challenge', to support the party at the elections (Saywell 1968 p.x), although his distaste for such advice was clear:

'I am not overly proud to have to make these comments. But if I did not do it, I would be denying the lengthy manifesto which appeared in an earlier Cité-Libre, and I would be backing away from a logic . . . associated with my principles of "democracy first"' (Trudeau 1960 pp.12,13).ⁱⁱ

In the run-up to the 1960 elections, Duplessis died, and his successor, Paul Sauvé, was only in post for three months before he too died. The QLP was, for Behiels, fortunate in this respect, for the new U.n. leader, Barrette, did not have the same leadership skills (ibid.p.262). The QLP took control of the Assemblée Nationale with 51 seats representing just under 52% of the popular vote.

Table 10 June 1960 Quebec election results

Party	Seats	Popular vote %	% seats
QLP	51	51.4	54
U.n.	43	46.6	45
Independents	1	2	1
Totals	95	100	100

June 22 1960 Quebec provincial election results Source: Quebec National Assembly:

<http://www.assnat.qc.ca/en/patrimoine/votes.html>

⁴⁵ Literally – thunder team, best translated as 'A-team'.

4.3.2. The QLP 1960-1966

In power, the QLP started the process of rapid reform, the *Révolution Tranquille*⁴⁶ and ended the period of the *grande noirceur* – the dark ages, of the Duplessis regime, and a period marked by the end of the ‘long polarisation between the Liberal Party [QLP] and nationalist movements’ (Linteau 2000 p.34).ⁱⁱⁱ

Initial reforms in the fields of health, education and social welfare were rapidly undertaken (Comeau 2000 p.16,). However, in the domain of economics ‘the Liberal party’s unhealthy timidity’ in reforms of private industry (Lévesque 1986 p.230) fired Lévesque’s determination to complete the nationalisation projects of natural resources in the Province, notably Hydro-Québec. The realization that a further mandate was necessary from the Quebec electors for such a step led to the calling of early elections in November 1962 under the slogan ‘*maîtres chez nous*’⁴⁷ (ibid.pp.235-8). The U.n., under new leader Daniel Johnson, opposed the nationalisation project, and although the Party continued to be strong in rural areas, continued support for the QLP from urban areas, and amongst Anglophones, resulted in a clear victory for the QLP (ibid.p.245):

Table 11 November 1962 Quebec election results

Party	Seats	Popular vote	% seats
QLP	63 (51)	56.4 (51.4)	66.3 (53.7)
U.n.	31 (43)	42.2 (46.6)	32.7 (45.3)
Ind,	1 (1)	1.5(2.0)	1 (1)
Totals	95	100	100

1962 Quebec provincial election results – 1960 results in brackets Source: Quebec national Assembly <http://www.assnat.qc.ca/en/patrimoine/votes.html>

After the QLP’s 1962 election, two phenomena developed which challenged the direction and depth of reforms in the *Révolution Tranquille*. Firstly, by the time of the 1966 elections there were, for McRoberts, clear distinctions between those groups who argued that the reforms under Lesage had gone too far in changing Quebec’s institutions, and those who argued that the reforms had not gone far enough (McRoberts 1993 p.172). Secondly, the period saw the creation of two new separatist parties, the *Rassemblement pour l’Indépendance Nationale* (RIN) and the *Ralliement national* (R.n). The period also saw the resurgence of the U.n., under new leader Daniel Johnson; at his first Party congress in 1965, Johnson had launched a pamphlet entitled *Egalité ou Indépendance* (Johnson

⁴⁶ There is some debate in terms of its novelty of this Quiet Revolution, was this a truly new phenomenon, or merely the extension of earlier modernisation and secularisation? (Comeau 2000 pp. 11-20).

⁴⁷ Masters in our own home.

1968) which had expressed the 'constitutional choice presented to Quebec: equality within the bosom of Canada or political independence' (Bélanger, E., 1999 p.6).

For Bélanger, the emergence of the U.n., and their success at the 1966 elections in Quebec, is 'due in major part to a context favourable to a new nationalism centred on demands for autonomy for Quebec, no longer as a province but as a nation' (ibid.p.3).^{iv} Bélanger argued that the move towards a demand for either *égalité* or *indépendance* was, predominantly, instrumental; in order to accommodate the federal/national split in the U.n., and to pressure the federal government into making the reforms to the existing federal constitution to reach his long held desires for a binational Canada (ibid.p.12).

Table 12 1966 Quebec election results

Party	Seats	Popular vote %	Seats %
U.n.	56 (31)	40.8 (42.2)	51.9 (32.7)
QLP	50 (63)	47.4 (56.4)	46.3 (66.3)
RIN	0	5.6	0
RN	0	3.2	0
Independent	2 (1)	3.1	1.8
Totals	108	100	100

1966 Quebec provincial election results – 1962 results in brackets Source: Quebec national Assembly <http://www.assnat.qc.ca/en/patrimoine/votes.html>

. Bélanger argues that Johnson's time as Quebec premier is largely forgotten, but that as the first Quebec prime minister to

'openly flirt with the option of independence, giving credibility and legitimacy to the hitherto marginal idea . . . profoundly impacted on Quebec politics through his thoughts but predominantly through his action on the constitutional question' (ibid.p.1).^v

This first clear expression of a separatist concept in a mainstream party was to have profound effects on the developing political landscape of Quebec and Canada.

4.3.3. The Split in the QLP and the Birth of the Parti Québécois

By 1964, cracks had appeared in the ranks of the QLP over the direction of reform. A majority sought to slow down the process which challenged the existing constitutional status quo (Comeau 2000 p.18), but a minority, including Lévesque, sought to accelerate the programme to see the Quebec nation contribute towards the development of a 'true national bourgeoisie' (ibid.p.19). Essentially, the former sought to extract the maximum autonomy for the development of Quebec from within the existing constitution, where the latter sought a new form of constitutional arrangement in which Quebec's values could develop.

Lévesque had originally sought to effect change from within the QLP to promote his developing ideas for Quebec's extended autonomy (Bothwell 1998 p.122). At the Liberal

convention of late 1967 Lévesque's proposal for *souveraineté-association* had been defeated by that of Paul Gérin-Lajoie which had developed from the push for 'special status' for Quebec, and the recognition of the 'two nations' status for Quebec with relevant changes to the Federal Constitution (Gagnon 1990 p.97). The constitutional changes were, for Gérin-Lajoie, based on a move away from symmetrical arrangements where all provinces enjoyed the same status to one where the existence of two nations, or societies, would be taken into account (ibid.p.98).

Lévesque's intentions in setting up his own party were in part a consequence of the clear nationalist message that had been delivered by Daniel Johnson in 1965/6, which went far beyond 'traditional demands',^{vi} (Lévesque 1986 p.283) Moreover, For Lévesque, Johnson's declaration had put the QLP into an impossible situation, to either replicate the latter's approach, to remain fixed on their federalist position, or to drive forwards. The final decision of the 1967 QLP convention made it clear for Lévesque that the creation of a new party, or movement, with a clear statement of intent, was the way forward. Lévesque and his colleagues proceeded with the publication of their 'little book', based on the defeated proposals at the Convention.

This 'little book', *An Option for Quebec*, set out the ideas of the new Party, the Mouvement de Souveraineté-Association (MSA), and opened with a clear message on the future of the nation of Quebec within a new constitutional arrangement

'capable of reconciling the reality of interdependence with those exigencies of political sovereignty essential to the development of modern nations, in which the state plays such a large role in the economic, social and cultural life of the people' (Lévesque 1968 p.7).

For Lévesque, the persistence of Quebec society had hitherto been guaranteed by the isolation, relative shelter of rural life, and 'our lack of awareness, even our ignorance' (ibid.p.14). However, this protection was inadequate for the preservation of the community of Quebec, 'the old protective barriers are less and less able to mark safe pathways for our lives' (ibid.p.16). The danger, for Lévesque, was that in the attempts to engage with the developments in social progress, the Quebec community might develop 'self-rejection' (ibid.p.17) which ultimately would lead to its assimilation, 'a comfortable submersion in the Great Whole' (ibid.).The only way to counter this possibility was to create 'a proper and appropriate place' in which the Québécois could 'earn our living and pursue our careers in French' (ibid.) and in which the image of the community was preserved.

The progress made in the period of the Quiet Revolution was, for Lévesque, only partial- in the areas of social welfare, education and the economy. Quebec society faced two risks, either a slowing down of the modernization process, which would leave the project half completed, or that the process was moving too fast, which carried with it fears of

assimilation. For Lévesque, the path back to an isolated Quebec community was closed; the only way available was forward, in such a way that the integrity of the community might be maintained.

However, the development of the Quebec nation was hampered by the 100-year-old framework in which the 'two "complete societies" quite distinct from each other' (ibid.p.20) try to get along. The proposed solution was a form of extended sovereignty in which Quebec would gain 'complete liberty . . . the complete mastery of every last area of basic collective decision-making' (ibid.p.27). However, Quebec would be associated with the rest of Canada in a 'New Canadian Union' (ibid.p.28) that extended only as far as the basic elements; a monetary union, some fiscal coordination, and a common market (ibid.pp.39-46) and from which the two societies might redevelop relationships – 'to rediscover themselves, freely and without prejudice, creating little by little new points of contact as the need arises' (ibid.p.47).

A little over a year after his departure from the QLP, Lévesque's nascent MSA was, in October 1968, to absorb the two smaller Quebec independentist parties, to create the new *Parti Québécois*, with Lévesque as party leader. At the same time as this new political force emerged in the province, another force was going through a process of transformation, and was to become instrumental in the development of the focusing events of October 1970; the FLQ.

4.3.4. The Front de Libération du Québec (FLQ)

Eric Bédard argues that the development of this strand of extremist nationalism in Quebec was 'akin to the struggles of the Algerians, Vietnamese, or Afro-Americans against the forces of colonisation' (2008 p.46). He goes on to draw a link between the success of the Algerian independence movement of 1962, and the creation in 1963 of the FLQ; 'a clandestine organization that fully expected to overthrow Anglo-Saxon colonialism through tried and true revolutionary methods' (ibid.p.47).

This organisation carried out a series of attacks between 1963 and 1970, targeting symbolic elements of the Canadian government, or of 'big "Anglo-Saxon" capital' (ibid.). The evolution in the FLQ's tactics over the period was not solely the result of a 'new philosophy, matured at length' (ibid.p.53), but a consequence of the changes in context in which ideas were formulated within some sections of the FLQ. The election of the U.n. in 1966, and of the Liberals in 1970, with the defeat of the PQ, contributed to the feeling that 'the Québécois feared real change. . . [and] the time had come . . . to apply real shock therapy to this people unaware of its true alienation' (ibid.). This represented a change

from a *millénaire* approach, of a slow transformation of the populations ideas on a separate state, to the use of ‘an intensified bombing campaign (more and bigger bombs)’ (Tetley 2010 p.19) to ‘lead industrial and rural workers to rise up’ (ibid.).

Bédard warns of the danger of ‘drawing parallels between the *souverainisme* of the Parti Québécois in 1968 and the radical *indépendantisme* of the FLQ’ (Bédard 2008 p.53), although as is evident in the analysis of the FLQ manifesto, their impatience with the PQ’s approach towards independence was evident. In the context of the thesis, the interrelations between these two notions of independentism form a dynamic, and thus a source of understanding of the functioning of the federal political system in which the dynamic operates.

4.4. The Developing Crisis

The case study is now at the point at which developing ideological strands of nationalism, neo-nationalism, and liberal thought had found political vehicles in which to act – or had resulted in new political vehicles evolving. The discussion now moves to the processes that move the crisis from a phase of immanence to one of evidence.

4.4.1. *Vive le Quebec Libre*

The first event which caused a reaction from political elites in the provincial and national arenas was French President Charles de Gaulle’s 1967 visit to Montreal, for this included the ‘explosive little phrase’

‘Vive Montréal. Vive le Québec. Vive le Québec libre. Vive le Canada français. Et Vive la France’ (de Gaulle 1967).

This was, for Lévesque, to create a worldwide shock (Lévesque 1986 p.280-281), and indeed the words of de Gaulle were transmitted to both the crowd in Montreal and to a wider world; it was, for Lévesque a statement that had ‘immediately, and in one fell swoop, carried the name of Quebec right out to the most isolated corners of the planet’ (ibid.pp.279-280).^{vii}

In terms of this thesis, the salient question is in the way that the impact of his words gives insight into the nature of the evolving crisis, and of the nature of the understanding of federalism in Canada. De Gaulle identified in his speech the efforts that were being made in Quebec towards enfranchising and modernisation ‘I have noticed the immense reforms, progress and development and in consequence enfranchising you are accomplishing’^{viii} (de Gaulle 1967).

Federal Premier Lester Pearson’s response was forthright:

'certain statements by the President tend to encourage a small minority of our population whose aim is to destroy Canada and as such they are unacceptable to the Canadian people and its government. The people of Canada are free. Every province of Canada is free. Canadians do not need to be liberated . . . Canada will remain united and will reject any effort to destroy her unity' (Rogers 1967 at 08.56).

However, a wider acknowledgment of the emerging crisis in Quebec-Canada relations resulted in an initiative to discuss forms of new arrangements, called by Ontario premier John Robarts, attended by all the provinces' premiers, including Quebec's Daniel Johnson (Bothwell 1998 p.123).

Pearson's reaction to this initiative was clear- he 'made up his mind . . . [I]f there was a choice between a stable Constitution and a united country, then it was the Constitution that must give way, and he so informed his cabinet, including his new justice minister, Pierre Elliot Trudeau' (ibid.p.123). However, Trudeau's robust antipathy to nationalism and to constitutional reform was a longstanding element of his political credo approach, and was the reverse of Pearson's primacy of unity over constitutional stability.

It was Trudeau's understandings that were to come to dominate, especially after Pearson's retirement in 1968 and the re-election of the LPC under Trudeau in June 1968. Indeed, continuing demands for 'urgent and early reform of the constitution on bi-national lines' (Smiley 1976 p.40) that had been reinforced by the election of Johnson in Quebec, met with increasingly less conciliatory attitudes from Ottawa towards the provinces. This was especially so for Quebec's demands for greater autonomy, such attitudes being influenced by the 'presence of Pierre Elliot Trudeau and the Liberal "new guard" from Quebec in the federal government' (ibid.). Trudeau later explained his position;

'revising the constitution was not an urgent priority . . . [T]he existing constitution had proved itself to be a flexible instrument and under it there had been in recent years a shift of power to the provinces' (ibid.).

Trudeau's ideas were evident in the terms of reference announced for the conference, predicated on a prior establishment of 'the more effective protection of human rights [including linguistic rights] through their constitutional entrenchment' (ibid.) followed by a 'consideration of "the central institutions of Canadian Federalism" . . . to make these more representative of the "federal character of the country"' (ibid.). The idea was that through a rational agreement on 'general principles about the nature of the Canadian community' (ibid.p.43) based on the federal government's emphasis on individual rights, would lead to these being embodied in 'concrete constitutional changes' (ibid.p.42).

4.4.2. The Effect of Language Laws

Following the sudden death of Johnson in September 1968, his place as Premier of Quebec was taken by Jean-Jacques Bertrand, the leader of the more traditional wing of

the U.n. This enforced change in leadership reduced the impact of the nationalist drive that underpinned Quebec's demands for further change in the federal system, for as McRoberts recounts, the U.n. leadership under Bertrand returned to a full commitment of remaining within the federal system, without the threat of leaving that was explicit under Johnson (McRoberts 1993 p.215).

Bertrand's more immediate impact was in the area of Language Laws in the Province, where a reluctance by the U.n. to 'intervene in the linguistic choice of immigrants' (ibid.p.216) under Johnson changed when Bertrand introduced a bill to allow immigrants to choose the language of instruction of their children (ibid.). This met with a substantial, vociferous and highly visible opposition from Francophone groups,⁴⁸ and whilst Bertrand initially retreated, the resultant Bill was driven through by Bertrand, on a 'point of honour-motivated by a promise made to "some Anglophone group"' (Lévesque 1986 p.318), and while the Bill

'claimed to promote the French language, [it] offered to all, immigrants included, free access to the school of their choice. Put otherwise, no more barrier to Anglicisation,'^{ix} (ibid.).

Although the final Bill, Law 63, contained some amendments to 'appease francophone opponents' (McRoberts 1993 p.217), this 'execrable law' was finally passed (Lévesque 1986 p.318). The reaction to the threat to the French language inherent in the Bill was to become evident in the list of grievances in the FLQ manifesto of October 1970.

Further assaults on the use of French in Quebec came in 1969 with the Official Languages Act, an extension of earlier changes designed to increase the use of bilingualism in the federal public service (Smiley 1976 p.172). The rationale behind this early legislation from the new LPC leader, Trudeau, was a resistance to the bi-national concept of the Canadian state that had been argued by Johnson. Such efforts promoted a strengthening 'of the position of the French-Canadian communities outside Quebec . . . [and] a much more explicit end [of] extended commitment to cultural and linguistic dualism' (ibid.), and were intended to contain the pressures for autonomy 'within limits compatible with the continuing survival of the Canadian federation' (ibid.), and as such formed part of Trudeau's concept of a developing pan-Canadian form of civic nationalism.

However, this was to have an analogous effect to that described by Simeon and Turgeon in respect of the effects of the BNAA in actually reinforcing civic nationalism in Quebec, for, as Karmis points out, 'this development of Québec citizenship . . . is closely linked with

⁴⁸ Lévesque recounts how protesters in their thousands surrounded parliament day after day (1986 p.318), and McRoberts claims that 'on one occasion 50,000 people demonstrated before the Quebec legislative buildings' (McRoberts 1993 p.216).

the culture and language of the majority' (2004 p.85). As such, the introduction of Bill 63 by Bertrand, and the Official Languages Act by the LPC, had the effect of reinforcing in Quebec the development of what Karmis refers to as Jacobin nationalism (ibid.p.82), with its inherent emphasis on assimilation of the (non-Francophone) minority within the (Francophone) majority.

4.4.3. A New Direction for the QLP

After 1968, the departure of the modernisers of the QLP led to a change in leadership, and a shift in ideology that was to prove instrumental in the October crisis. Robert Bourassa, a 36-year-old Oxford and Harvard trained Montreal lawyer, was elected to the head of the Party in January 1970, following Jean Lesage's August 1969 resignation (Winter 1970 p.1).

The changing emphasis of the QLP's ideological stance towards Quebec and relations with Canadian federalism can be summed up in the term profitable federalism, 'un fédéralisme rentable' (McRoberts 1993 p.223). This 'rejection of the *étatisme* of the Lesage regime' (ibid.p.219), was based on the idea that the interests of Quebec Francophones would be best served by the economic development of 'private economic forces' (ibid.p.218) and not necessarily through the 'continuing expansion of the powers and activities of the Quebec state' (ibid.). This signalled a move away from the dependence on the role of a developing Quebec for the preservation of Francophone values and a shift back towards the engagement in the federal system that had been advocated by Gérin-Lajoie.⁴⁹

In his leadership campaign, Bourassa made a number of points in support of this new form of federalism; firstly, that with a good team of Quebecers in the heart of the federal parliament in Ottawa, including the presence of Trudeau, Quebec's interests would be well served, and secondly that the flexible and elastic nature of federalism would be sufficient to manage the multi-ethnic nature of Canada (CBC 2015 at 0:48). He went on to argue that with 'good government in Quebec we can benefit from confederation' (ibid.at 1.06) citing the case of the presence in Ottawa of Ontarian representatives and the benefits that this brought to that province in the federal system (ibid.at 1:18).

⁴⁹We discuss the implementation of the Gérin-Lajoie doctrine in respect of Québec's developing international identity as part of the section on the use of instrumentalities.

Bourassa's new platform for the QLP was to be assessed against the contrasting platforms of the PQ and the U.n. in the pivotal elections of 1970 that was to prove a major catalyst in the October crisis.

4.4.4. *The 1970 Election and its Impact on the Crisis*

Bertrand's ruling U.n. party came under pressure through the 1969/70 period with rising unrest; he had the 'misfortune to govern during a time of mounting social crisis in Quebec. There was a crisis, and riots, over the issue of language, in schools and daily life' (Bothwell 1998 p.127). Bertrand called new elections, and on 27 April 1970 Quebecers returned the QLP to power in the Assemblée Nationale – with the U.n. forming the official opposition.

Table 13 April 1970 Quebec election results

Party	Seats	Popular Vote%	% Seats
QLP	72	45.4	66.6
U.n.	17	19.6	15.7
PQ	7	23.1	6.5
Crédit Sociale	12	11.2	11.1
totals	108	99.3	

April 29 1970 Election Results Assemblée Nationale Quebec Source : Elections (1970)

For the young PQ, it was 'a defeat which seemed like a victory'^x (Lévesque 1986 p.321), in that the PQ had, in effect gained just under a quarter of the votes in Quebec. Lévesque went on to criticise the Quebec electoral system which distorted representation – 'thanks to the cutting up of a map which continues to favour the rural to the detriment of the city dweller'^{xi} (ibid.p.322),⁵⁰ and which had given more seats to the U.n. and the Creditistes with far lower shares of the popular vote.

However, the claim made by Lévesque for the role of the PQ as 'official opposition' in public opinion (ibid.), in that the seven elected members represented 24% of the popular vote, needs to be assessed in respect of the voters' understandings of ideas of independence. McRoberts argues that whilst there was no doubt that the PQ was clear in its promotion of extended autonomy, support for this varied according to whether this meant full political and economic independence, or a form of political independence through an economic association with Canada (1993 p.239). The *le Devoir* survey of 24/04/1970 cited by McRoberts indicates the depth of support for the latter option over the former:

⁵⁰ A warning of the 'falsified democracy' was made public by the *Gazette* (1970 p.4).

Table 14 Support for types of separation in Quebec 1970

Survey Question do you support a:	Full sample		PQ supporters	
	For	Against	For	Against
Political and economic separation of Quebec from Canada	14%	76%	39%	50%
Political separation through an economic association with the rest of Canada	35%	55%	70%	24%

Source: McRoberts (1993) p.239.

Taking into consideration the expression of the PQ's concept of independence as rehearsed in the 'Option for Quebec' as a form of political independence in a new union with Canada, as opposed to a complete separation, these figures go some way to supporting Lévesque's claim for being the official opposition. However, if the understanding of independence as a complete separation is used, then even among the PQ's own supporters there is no clear mandate for opposition on this issue alone. It is this potential conflation between the sovereignty association advocated by the PQ, and the independence as demanded, or at least as understood as a demand of the FLQ, that becomes problematic post October 1970.

4.5. The Focusing Event - Kidnappings and Murder

On 5 October 1970, the FLQ kidnapped James Cross, the commercial attaché at the British Consulate, and, five days later, another FLQ cell abducted a French-Canadian, Pierre Laporte, who had served alongside Lévesque in the Lesage administration, and was now a Cabinet Minister for labour in Bourassa's government (McRoberts 1993 pp.200-201, Bothwell 1998 pp.128-131). The federal government became involved from the outset, as Cross was a foreign diplomat, and thus the combined forces of the Royal Canadian Mounted Police, the Quebec provincial police, and the Montreal police became involved (Bothwell 1998 p.129).

In addition to demands for the release of a number of political prisoners, sums of gold, and free passage to Cuba, the terrorists demanded that their manifesto be read out by the French-Canadian Broadcasting System (CBC), a decision acceded to by Gérard Pelletier, secretary of State in Ottawa, with some disdain 'No objection, it cannot do too much harm'^{xii} (Lévesque 1986 p.324). The manifesto had already been made public the previous day on a local Montreal radio station (Bélanger, D-C., 2007 p.1) and on 8 October was broadcast on the CBC. For Lévesque,

'a multitude of Quebecois identified with the manifesto, not with the call to revolution, but with the long list of requests which preceded it, and which were far from being without foundation'^{xiii} (Lévesque 1986 p.324).

For William Tetley, minister of revenue in the Bourassa government, the manifesto 'was intended to shock, and parts of it touched a sympathetic nerve when it mentioned evident inequalities in Quebec society' (Tetley 2010 p.32). The principle areas of inequality referred to in the manifesto were: the past reliance on foreign capital, and cheap French Canadian labour, to the advantage of Anglophones (Canadian and American); the inequalities of the electoral system and the division of constituencies; to the repression of labour laws; and federal trade policies which disadvantaged Quebec's producers. Language laws, notably law 63 on parents' choice on the language of choice for their children, and laws that promoted the improvement of elites' French language skills, rather than extending opportunity for Francophones, were also criticised. Finally, the manifesto dismissed the patience advocated by Lévesque after the Liberal victory:

'We briefly believed that it was channelling our energy and our impatience, as René Lévesque so aptly put it, into the Parti Québécois, but the Liberal victory clearly demonstrates that what we call democracy in Quebec has always been, and still is, a "Democracy" of the rich' (Bélanger D-C, 2007 p.3).

The call to revolution of the manifesto had, for Tetley, minimum effect on the public-

'there was no labour uprising or strike, let alone a general strike. Students held meetings in their colleges and universities, but there were no demonstrations or marches in the streets, no riotous confrontations with police, no breaking of windows, no looting, no property damage. And no personal injury or arrests' (Tetley 2010 p.36).

Moreover, Tetley dismissed claims by Fernand Dumont, sociologist at Université Laval, that the manifesto had had a great effect, and that whilst

'there was some sympathy with the complaints listed, . . . the vast majority of the population was unimpressed with the solutions it proposed. The positive impression the manifesto may have made was quickly displaced by popular revulsion at the FLQ's methods' (ibid.p.37).

The second kidnap, of Pierre Laporte, took place on 10 October, two days after the FLQ manifesto was broadcast, adding to the pressures on the combined police forces, and to the pressure on the young Premier, Bourassa (see Bothwell 1998 pp.129-130). To alleviate the former, 'the Bourassa government asked Ottawa for help to support the Quebec provincial police- help in the form of the Canadian Army' and, subsequently, asked for the 'proclamation of emergency powers using the federal emergency statute, the War Measures Act' (ibid.p.130). For Trudeau, the decision to agree to deploying troops in the Province was to free up police to protect 'members of the government and the important members of society' (Tetley 2010 p.63) from the creation of a *de facto* parallel power to the government, from organisations that resorted to kidnapping and violence.

Thoughts of 'parallel', 'provisional', or 'alternative' government were also prevalent in Quebec, where

'people like Claude Ryan, editor of Le Devoir, and union leaders wanted to create an alternative to the government if needed, because they were scared that Bourassa would break down' (Bothwell 1998 p.130).

Tetley argues that these rumours of an alternative government 'did not affect the deliberations of the Bourassa cabinet during the October crisis' (2010 p.118). However, in a speech delivered in Quebec's Assemblée Nationale on 15 October, Bourassa acknowledged the wider challenge to Quebec;

' . . . the democratic regime is under threat. This regime, for which tens of millions of individuals have sacrificed their life, across all époques, in our province, is currently threatened, and it is our prime and essential responsibility to protect it' ^{xiv} (Assemblée Nationale 1970).

It was following this speech, and with the agreement of the heads of the other parties in the Assemblée, that on 15 October Canadian Federal troops were positioned in Montreal, and, the following day, the WMA was proclaimed.⁵¹

In terms of the overall aims of these actions by the Quebec and federal governments, in practical terms the results were a failure; Laporte was found, murdered, on 17th October. Cross, was later found, alive, on 3rd December, and the kidnappers were given safe passage to Cuba.

The literature on the effectiveness and legality of the imposition of the WMA is substantial, what is salient to this thesis is the understanding of, and changes to the dynamic in, the relations between Quebec and the 'Rest of Canada' that resulted from this focussing event. The events have persisted in Quebec's psyche, as I found in a 1999 Guide Book of Montreal purchased on a visit, which still referred to the events:

'On the pretext of curbing a dreaded climate of revolt, the federal government, headed by Pierre Elliot Trudeau, reacted quickly, and enforcing martial law. . . [T]he reaction of the Canadian government was harshly judged by many, who did not hesitate to accuse it of having used the political context not only to bring the FLQ under control, but above all to try to halt the rise of the nationalist movement in Québec' (Prieur 1999 p.28).

McRoberts extended this understanding of the role of the federal government, arguing that 'for some, the October Crisis demonstrated that the federal government was prepared to defend the economically powerful and to subordinate Quebec to its will' (1993 p.201). He also commented that whilst in the short term, the actions of the federal government;

⁵¹ For a summary of the chronology of the October Crisis see Bélanger, C., (2000).

'may have shaken popular readiness to use even legal means, such as the election of the Parti Québécois, to secure social and political change. . . [B]ut the actions also served to reinforce alienation from the federal order among many of the activists within law-abiding opposition groups, whether the Parti Québécois or the various union movements'(ibid.).

Lévesque was trenchant in his critique of the reactions of not only the federal government and Trudeau, but also of the climate of confusion and mistruth that accompanied these, for while Lévesque maintained the argument that the crisis was an affair of Quebec, and for Quebec to deal with:

'It was, sadly, precisely from Ottawa, Toronto and elsewhere that was soon unleashed the final offensive under which fury Quebec would be made a gulag . . . 'xv (1986 p.327).

In respect of the response of 'just watch me' that Trudeau gave to reporters who asked him just how far he would go in respect of dealing with the crisis, Lévesque commented that Trudeau would go

'as far as barefaced lies, of course. At least. Like pretending to see, in the meetings I have mentioned,⁵² "a parallel power . . . which menaces the elected representatives of the people"'xvi (ibid.).

The fear that the Bourassa government would weaken led to a three-way pressure being exerted from Trudeau, the 'Hawks' in Bourassa's cabinet, and the civic administration in Montreal, all urging him to hold a firm line on ceding to the FLQ's demands. Bourassa, along with the 'doves' in his cabinet, who felt a strong personal attachment to Laporte, wanted to negotiate, it was with this in mind that he met with the opposition leaders, and subsequently the committee led by Ryan, Lévesque and the union leaders, that was interpreted as 'an alternative to the government, if needed' (Bothwell 1998 p.130).

After the immediate end of the crisis the federal troops remained in Montreal until 4th January 1971 (at the request of the Quebec government), and the WMA was repealed by the federal government on 30th April 1971 (Tetley 2010 p. xli). In the terms of analysis of this thesis the departure of the federal troops from Quebec can be seen as the end of the focussing event, which brought the stark polarisation between the positions to a wider population, and had created substantial questions about the future of Canada; not just for the Francophones of Quebec, but also to the Anglophones of the rest of Canada.

It is in the contrasting interpretations of the relationships between the political arenas in both Quebec and the federal government that the diverging and divergent understandings of the potential for change, and the preservation of diversity become evident; along with the diverging and divergent understandings of the threat to unity that such changes might bring about. The intervention of the federal state, whether interpreted as an autocratic act

⁵² Here Lévesque is referring to the meeting that he had with Claude Ryan see above.

by Trudeau through the agency of Bourassa, or as the salvation of the Canadian state, set the framework for the upcoming decade in which post-crisis dynamics between Quebec and Canada were to culminate in the referendum of 20th May 1980, and 'the end of the dualistic dream for Canada as it had been formulated in Quebec throughout the twentieth century' (Laforest 1995 p. vii).

In this respect, the future of the two communities depended on the ability of political elites to find accommodation within an existing polity with federal characteristics that had been set severe challenges by the changing context of the post-war era. These challenges were seen, in the immediate aftermath of the crisis, as being both substantial and indeed existential.

Ryan (1971 p.4) reflected on the comments made by the director of the Canadian Forum, Abraham Rotstein, on the necessity for 'a more fruitful future collaboration between the two nationalisms' (ibid.), and on philosopher George Grant's question on how such an alliance could take place in the current political context. Ryan concluded by reiterating Grant's question on how the maintenance of a vibrant creative French way of life could be achieved. This was a question which had been put to English Canada by René Lévesque, and which remained unanswered, but 'had become more urgent due to the current crises, (ibid.). It is to this question that the analysis turns; of the dynamics of the political forces in Canada, and in particular in the relationships between the constitutional and instrumental that is at the heart of the thesis.

4.6. Liberal vs. Liberal Attempts at Re-setting Relationships

The question of the survival of the Canadian State was dependent on the capacity of these elites to respond to what Ronald Watts was later to refer to as an 'unprecedented challenge to Canadian unity' (1977 p.59). Watts warned that in responding to such challenges through radical change in constitutional arrangements these might actually 'encourage uncertainty and lack of confidence in the future of the federation' (ibid.p.54). It is the examination of the political space between radical change, and the unacceptable status quo, that instrumentalities became evident which offered possibilities for an evolution of the relationships between Quebec and Canada.

In this section I examine the dynamics of the post-crisis relationships between the constituent unit of Quebec and the federal government of Canada, and how instrumentalities are part of these. In a parallel with the Staten Island case, and in particular the notion of the 'tragic hoax', I discuss the use of the 'ultimate instrumentality', that of the

decision of the Supreme Court to allow for the legal, but illegitimate, Trudeau package on the modification of the BNAA without Quebec's approval.

In the case of the post-crisis dynamics in Quebec/Rest of Canada (ROC) relationships the options for meaningful change through instrumentalities has to be seen in the context of: 1\ Trudeau's conflation of such changes with a 'fundamental change in the regime' (Trudeau cited in Bonhomme 1971 p.6) and 2\ the combination of both the continued support by Bourassa for federalism, and the lack of a credible threat by the Quebec liberals to support their demands for change (McRoberts 1993 p.224). Moreover, the range of options for constitutional change was curtailed by pressures on Bourassa from nationalist sentiment in Quebec, made evident in the failure of the Victoria accords.

4.6.1. The Victoria Conference

In Quebec, successive regimes had sought to preserve or develop Quebec, as a nation, to protect a group identity from assimilation into a wider identity based on different values-language, religion, and economic status. Efforts to achieve this outcome through constitutional reform continued after the October crisis, but proposals made at the 1971 Victoria Conference were to fail, elements of which are salient to the understandings of post-crisis dynamics.

The Victoria Conference was the conclusion of the constitutional conference opened in February 1968 after John Robart's initiative, and sought to reach an agreement on a formula for amendment of the BNAA. Trudeau agreed to hold the conference, based on the understanding that Bourassa would gain his cabinet's approval for the agreement on a formula for amendment of the BNAA (Bothwell 1998 p.133); this gave the two most populous provinces (over 25% of Canada's population) a right of veto over any proposed constitutional amendment (Dunsmuir 1995 p.13). But Bourassa's main priority was not

'for the entrenchment of Québec's national aspirations in the Canadian Constitution; rather, he sought a revision of the federal system that would assign Québec the requisite powers and resources needed for an affirmation of the bicultural character of Canada' (Gagnon 2004 p.134).

As McRoberts comments, negotiations over these competences were seen by Quebec to be an extension of, and 'logical completion of the piecemeal shift of responsibilities from Ottawa to Quebec that had occurred during the 1960s' (1993 p.225). It was the formalisation of changes, from *de facto* to *de jure* recognition of the 1960s' shift, that was rejected by the federal government (*ibid.*), for proposals for constitutional change only went as far as recognition of provinces' rights to be consulted on federal programmes in the

social competences field,⁵³ and assurances that ‘federal programs “should not affect the operation of provincial laws”’ (ibid.). For Bothwell (1998) it was Bourassa’s acceptance of pressure from nationalist actors in his cabinet to ‘extract additional concessions in the social policy field’ that resulted in Ottawa’s resistance, ‘the federal refusal’, and eventually to Bourassa’s final decision not to agree to the Victoria accords (ibid.p.133, Stein 1984 p.124).

After the failure at Victoria, in the absence of progress on the reform of the constitution, the use of instrumentalities in the re-setting of relationships was soon to be made clear by both Bourassa, and Trudeau. Bourassa would confirm his preference for the use of these measures in the absence of constitutional reform, and Trudeau would both acknowledge the potential offered by the use of instrumentalities, but express a continuing reticence towards moving away from changes that went beyond a narrow interpretation of the constitution, in another reminder of his understanding of federalism.

4.6.2. Explicit Use of Instrumentalities by Bourassa and Reactions from Trudeau

Indications of Bourassa’s strategy for countering the constraints of the BNAA was seen in his electoral reform proposals in late 1970 (Assemblée Nationale 1970), in proposals on the redrawing of the electoral map, and the examination of voting methods (ibid.).^{xvii} For Bourassa, the negation of the effects of BNAA article 80⁵⁴ was the start of this process, and although this was a part of the BNAA constitution, and hence subject to, yet undetermined rules on amendment, Bourassa argued that Quebec’s legislature was competent to act on this matter:

‘We have shown that Quebec has the power to abolish this article, as it had the power, yesterday, to take action on the matter of immigration with Bill 64.⁵⁵ These are examples which show the flexibility of federalism when one knows how to use it’ (Assemblée Nationale 1970).^{xviii}

Consequently, Bill 65, abolishing the protection for the 17 constituencies, was successfully passed at the third reading, which led to a redrawing of the constitutional map in time for the 1973 elections. The question of electoral reform, including both the abolition of the

⁵³ Stein explains how Quebec sought ‘paramountcy’ in areas of social policy through an amendment of BNAA Section 94A (Stein 1984 p. 124).

⁵⁴ Art 80 designated the number of constituencies in Québec, and included in the second schedule a list of those constituencies where boundary changes could only be effected if a majority of the affected members gave consent.

⁵⁵ Bill 64 concerned the extension of the requirement for bilingualism, or at least a fair command of French, in certain professional categories of immigrant worker, e.g. doctors, dentists, pharmacists, so that they could ‘protect the population of Quebec in its language’.

reserved constituencies, and the re-drawing of ridings to better reflect the rural/urban balance, had been advocated by Levesque, and recognised by Bourassa, on the day of the latter's election (Harris 1970 p.2, Gazette 1970 p.4). The *Gazette* writer did point out that although the boundary changes would remove the guarantee of an Anglophone representative in some rural areas, a re-distribution of members on a population basis would also favour the English and allophone urban voters- and 'this is an anti-separatist vote' (Gazette 1970 p.4). However, although this process had garnered cross party support immediately after the 29 April elections, this issue had gained added import as it formed one of the main demands of the FLQ manifesto made public in early October 1970.

Bourassa set out his strategy for a new approach after the failure at Victoria, in a recognition of the 'failure to secure Quebec's goals through formal constitutional revision' (McRoberts 1993 p.225). In an interview with *Le Devoir* Bourassa explained how he no longer sought to try to

'seek understandings with Ottawa and the other Provinces on general texts . . . but would instead try to resolve concrete problems one by one through legislative and administrative formulas. And, once the immediate everyday questions had been resolved, when the new ways of collaboration had been finalised which respected both Quebec's objectives and federal norms, then it would become possible, and easier, to go back to work on constitutional reform'^{xix} (Roy & O'Neill 1971 p.1 emphasis added).

This strategy of piece-meal additions to Quebec's autonomy that was started by Bourassa would prove to be a qualified success, to be covered in the later part of the chapter. However, in the short term the implementation of, and reactions to, this new strategy demonstrate the advantages and shortcomings of instrumentalities.

The first area in which Bourassa acted was in the reform of the regime for family allowances. Trudeau's response to reforms of the regime (McRoberts 1993 p.225) was that such arrangements were 'exclusively of an administrative nature and there was no question of the federal government abandoning its right to law-making in the area of family allowances'^{xx} (Bonhomme 1971 p.1).

Moreover, Trudeau made it clear that the overall use of such administrative or legislative tools to adapt federal programmes to Quebec's demands would be subject to limitations in their extent; for these propositions

'constitute a fundamental change in the administration (of the regime), not just in its mode of application and its payments'^{xxi} (Trudeau quoted in *ibid.*p.6).

Bourassa warned that 'if Ottawa were to reject this proposition, it is as if to say that one wants a unitary federalism, a rigid federalism. And that, Quebec could not accept'^{xxii} (*ibid.*p.6 & McRoberts 1993 p.225). In stressing the asymmetrical nature of these arrangements, Bourassa went on to say that

'the other provinces are not obliged to accept themselves the formula proposed by Quebec. They will have complete freedom, should they see fit, to adopt the programmes of social allocations and social assistance. Or, alternatively, they could take advantage of the clause that Quebec is requesting from Ottawa'^{xxiii} (Bonhomme 1971 p.6).

In qualifying the extent to which he was prepared to use instrumentalities in the search for autonomy for Quebec, Bourassa reiterated in the interview that the QLP's fundamental direction under his leadership, the federal orientation of the party, would not be up for question (ibid.). He went on to say the essential nature of the federal system would persist, for even if

'... provinces gained independence, they would be obliged to establish a common market [with the ROC] within which they would have to harmonise their social policies. This would be even truer in a federation where each of the regions had its own characteristics'^{xxiv} (ibid.).

In this way, Bourassa acknowledged the limitations of asymmetrical arrangements within a federal polity, which were to become evident in the practical application of demands for provincial autonomy in areas of shared competence.

4.6.3. Evaluating the Effectiveness of Instrumentalities

McRoberts argued that whilst on paper Bourassa's demands for more autonomy in the field of family allowance were successful, 'in effect, the federal government did reject Quebec's position' (1993 p.225), for Ottawa retained the power to set 'national' norms, and in this case set them so high as to restrict provinces' autonomy to just 40% of the funds available (ibid.). McRoberts also critiques attempts to take jurisdiction over the competence of communications, which Bourassa contended 'has an intimate relationship with the cultural integrity of Quebec' (ibid.p.226). Here, whilst Quebec's attempts to garner interprovincial support proved successful, in the end the refusal of the federal government to accede to Quebec's demands led to this coalition crumbling. For McRoberts, these examples of how Quebec was frustrated in seeking additional powers led to a rising discontentment with some Quebec Francophones of the potential for change within the federal system, and a persistence in the preference for political independence as a means to achieve these.

Smiley offered a contrasting impression of the effectiveness of demands for, and achievement of, the 'advancement' of Quebec's interests, arguing that 'in pursuing its quest for power and autonomy in a piecemeal and pragmatic way the Bourassa government claims a high degree of success' (1976 p.176). He highlighted how the government's rationale expressed 'the cultural sovereignty of the province within the framework of Canadian federalism as a set of economic devices which are profitable to Quebec' (ibid.). Moreover, Smiley argued that, *contra* McRoberts, in terms of those areas 'defined as culture' the province's 'aggressive' approach (ibid.) had been successful in

negotiations with the federal government in the areas of telecommunications, and in the field of family allowance payments (ibid.).

Smiley also cites the use of inter-governmental conferences by the Bourassa government in promoting Quebec's interests within the existing federal framework, a change from the vertical negotiation that had been prevalent until the failure of the Victoria Accords, and indeed a reversion to the horizontal diplomacy that existed before the Quiet Revolution (ibid.).

4.6.4. The Use of Instrumentalities in Developing Quebec's External Competences.

In the area of Quebec's evolving identity, the role of the province's international relations also illustrates the use of instrumentalities, but here the processes started well before the crisis, and as such in terms of the thesis are salient only in respect of how Trudeau and Bourassa's respective understandings of this area are expressed.

The BNAA was silent on the attribution of competences for foreign policy; as a Dominion, such affairs were handled in London (Balthazar 2004 p.449). However, the rising vision of Canada as a nation-state in the post-war period led to a resistance from Quebec to the centralization of foreign affairs, in a reflection of the two-nation understanding of Canada. As part of this process, the Gérin-Lajoie doctrine set out to extend Quebec's competences in areas reserved for the provinces to encompass international relationships. These were notably in those areas that related to the cultural and linguistic identity of Quebec, (Balthazar 1999 p.158), that related to the 'personality and rights' of the province (ibid.). This developed under Lesage's QLP government of 1963-1968, enabled by Pearson's 'attitudes and policies of the Canadian tradition of conciliation, compromise and internationalism' (ibid.p.166). The *zeitgeist* of the movement was neatly summed up by Lapalme, after a visit to Paris in 1960: 'the time has come to view the provincial state as a cultural phenomenon' (Lapalme cited in Bélanger, L., 2002 p.199).

Resistance to this initiative came from Trudeau, whose single-nation theory was expressed in a 'unique foreign policy based on Canada's national interests, defined in Ottawa' (Balthazar 1999 p.166), but in the area of Quebec's representation in *la Francophonie*, Trudeau and Bourassa compromised on a formula whereby Quebec became a member of the Agency for Cultural and Technical Cooperation as a 'participating government' (Bélanger, L., 2002 p.202). Balthazar attributes the success of this to Bourassa's patience, and moreover argues that he 'discreetly pursued and enhanced Québec's international relations without confrontation with Canada' (2004 p.161).

The above examples show how Quebec under the Bourassa regime was able, with some success, to use instrumentalities to attain some of the goals of preserving Quebec's identity whilst remaining in a federal system, in attaining degrees of asymmetry in certain policy fields.

4.6.5. *The QLP's Conditional Mandate*

The October 29, 1973 elections resulted in a substantial change in the pattern of elite representation in Quebec, with the virtual elimination of the Cr ditiste Party, and total elimination of U.n. representation, in favour of a substantial increase in the QLP's representation in the provincial assembly.

Table 15 October 1973 Quebec election results

Party	% Popular Vote	Seats	% seats
QLP	55 (45)	102 (72)	93 (67)
PQ	30 (23)	6 (7)	5 (6)
Ralliement Cr�ditiste	10 (11)	2 (12)	2 (11)
Union nationale	5 (20)	0 (17)	0 (16)
		110 (108)	

1973 Quebec provincial election result (with 1970 results in brackets)
Source: Elections (1973), Elections (1970).

However, in terms of the continuation of the QLP's policies of *f d ralisme rentable*, and the use of instrumentalities, there soon came a stark warning from Trudeau and a reminder on the federal government's position on constitutional reform. No movement would be made towards the granting of special status to Quebec, only an agreement to a constitutional charter which guaranteed linguistic and other fundamental rights, to all Canadians, and which would be 'profitable' for Quebec (Roy 1973b p.1). For as Trudeau made clear:

'The position of the government is that the Canadian constitution must be repatriated, that a Canadian formula for amendment must be recognised, and that a human rights bill, as well as linguistic guarantees must be recognised in the constitution'^{xxv} (Lemelin 1973 p.1).

In the absence of Quebec's agreement to a charter, Trudeau was quite content to continue with the piece-meal negotiations which had until then been useful for Quebec in certain specific domains (Roy 1973b p.1). Here Trudeau was clear in reiterating his understanding of the limitations of non-constitutional reform; the use of asymmetrical concessions to one or many provinces was to be contained within well-defined limits.

Moreover, a warning came from Jacques-Yvan Morin, that Trudeau's intentions following the QLP's victory was to

'restart the process, brutally interrupted by the "NO" of Mr Bourassa at Victoria, and as such to present himself at the upcoming elections as the father of the new confederation, having succeeded, in spite of what was happening in Quebec, in finally bringing to heel the rebellious child'^{xxvi} (as cited in Roy 1973c p.6).

For Morin, a return to the constitutional dossier, as sought by Trudeau, would in effect stop the processes by which certain competences, and here he cites the areas of communications, labour, and immigration, would be repatriated to Quebec. In essence, once a Victoria style accord was passed, such changes in the distribution of competences would become impossible without the agreement of a weighted majority of the provinces.

Morin identified Trudeau's motivations for constraining Bourassa's actions:

'Taking advantage of this artificial majority and of an [Quebec] assembly that impresses onlookers because the Liberals have taken over 100 seats, Mr Trudeau, with an imperturbable Machiavellianism, and without giving Mr Bourassa the time to re-open his projects, is trying to lead him onto his [political] terrain'^{xxvii} (ibid.).

In the global interests of the Québécois, the formulas contained in a Victoria style agreement would be 'dangerous' (ibid.). Whilst the right of veto that Quebec would enjoy might be useful in countering 'excessive centralisation' that was typical of the Duplessis era, in the modern era, and in the extension of the Quiet Revolution, the desires of Quebec to extend her competences would *always* depend on a 'YES' from the other provinces.

At this point, the options for Bourassa in pursuing *féderalisme rentable* can be seen to be limited, to be conditional, on the acceptance of a scope for action that was defined by the federal government and Trudeau. However, one area in which he did seek to extend Quebec's asymmetrical relationship through instrumentalities was in the area of language law.

4.6.6. Language Law #1

Bertrand's U.n. had passed Law 63, and the Trudeau federal government had responded with legislation to reinforce the concept of Canada as a bi-lingual state. From the time of the collapse of the Victoria talks, Bourassa's attempts to pursue 'power and autonomy' (Smiley 1976 p.176) were particularly aggressive in the cultural domain; and in the field of language rights Bourassa sought to demonstrate his government's 'determination to effect a new linguistic regime in the province' (ibid.p.177). The resulting Official Language Act, Bill 22, passed into law on 31 July 1974, made French the 'official language of the province of Quebec', but contained provisions for parents' choice for access to English-language schools that were to become highly contentious (McRoberts 1993 pp. 228-229, Smiley 1976 p.177, Fraser 2001 p.61).

The Act was designed to reduce conflict and tension between the drive towards autonomy of Quebec and the resistance to asymmetrical arrangements by the federal government

(Smiley 1976 p.178, Mc Roberts 1993 p.228). While the constitutionality of the Act was discussed in the federal cabinet, it refused to either disallow it, or to ask the Supreme Court for advice on its constitutionality (Smiley 1976 p.176).⁵⁶ However, Trudeau criticised the Act, arguing 'how hard [it] made it for Liberals to sell bilingualism to the rest of Canada' (Fraser 2001 p.61).

Bill 22 also failed in its goal of creating a consensus that would satisfy both main linguistic groups; 'both groups were merely confirmed in the fear that their respective interests were not being served' (McRoberts 1993 p.229). Indeed, Bill 22

'became the ultimate disaster in consensus politics: it outraged every constituency of the language issue, and satisfied virtually no-one. The English were horrified at the prospect of any restrictions in access to the English school system, and angry at the regulations making the knowledge of French compulsory in various professions. Quebec nationalists were appalled that any immigrant or francophone child who could be coached to pass a test could enter the English, rather than the French, school system' (Fraser 2001 p.61).

In terms of the overall conceptual framework of this thesis, it would appear that the use of this instrumentality failed to alleviate tensions and conflicts over language use that had come to the fore in the pre- and post-1970 conflict era. Moreover, there was continuing discordance between Trudeau's calls for equal status for languages throughout Canada and the demands by the French-speaking inhabitants of Quebec for the protection, and development, of French as both a cultural and economic foundation.

However, the need for a language policy in Quebec that addressed internal divisions had become inevitable, for the potential for renewed social disturbances effectively precluded a *laissez-faire* attitude; the government had to act decisively (Bothwell 1998 pp 149-150). The direction of the policy, to seek the middle ground reflected the 'Liberal belief that all differences could be ironed out, all problems could be solved, all setbacks and failures rationalized and explained' (Fraser 2001 p.61). In replacing Bill 63, Bill 22 created new tensions, which were only to be resolved decisively, albeit in favour of the Francophone community, after the PQ was to take power; indeed, the offer of reform in this respect formed a part of their platform in the run up to the 1976 elections. However, before such a reform could take place the PQ had to work on their electability, and one element of this was in question of the offer of a referendum on independence.

⁵⁶ Smiley did argue that such a challenge would eventually be forthcoming.

4.6.7. *The Use of the Referendum Offer as Instrumentality*

In the run-up to the 1973 Elections, the PQ passed a resolution whereby in the event of receiving a mandate to govern, this would automatically give them a mandate to declare an independent nation of Quebec:

'the sovereignty of Quebec would be acquired by a simple proclamation by the National Assembly without it being necessary to have recourse to a referendum . . .^{xxviii} for the majority of the Péquistes,⁵⁷ an electoral victory for their party, even if gained with 35 percent of the votes, would necessarily signify independence'^{xxix} (Roy 1973a p.1 emphasis added).

This definition of the PQ's position on the question was needed to 1\ clear up the 'ambiguities and confusion'^{xxx} (ibid.) of the previous campaign on this question and 2\ to 'counter the position adopted by the U.n. and the Ralliement Créditiste who had brought, or intended to bring to their programmes the idea of a referendum on independence'^{xxxi} (ibid.).

This position, for McRoberts, was problematic, for it polarised the campaign around the independence question and thus 'apparently limited PQ support to only those who had an unconditional commitment to independence, with or without an economic association' (1993 p.239). This changed just before the 1973 elections, when the PQ placed advertisements in the press explaining that the 'election of a Péquiste government should be followed by a series of negotiations with the federal [government], leading to a referendum on independence in 1975'^{xxxii} (Elections 1973). In spite of this 'process of sugaring . . . the pill of independence' (Fraser 2001 p.171), the polarization still had a limiting effect; whilst the PQ gained more support, in terms of the popular vote, the QLP still remained in power with its *féderalisme rentable* programme. However, this signalled the start of a steady process by Lévesque of re-orienting the PQ away from a pure independence position, and by the time of the 1976 elections, this had become 'a commitment to seek a mandate in a referendum first. And then begin negotiations' (ibid.), a position formally adopted at the 1977 congress (ibid.).

The change in emphasis away from the association of a vote for the PQ with a *de facto* support for independence, accompanied by an offer of a referendum, can be seen to be the use of an instrumentality, in much the same way as seen in the case of Staten Island. In the latter case the referendums were used to mobilise support and maintain pressure, for either a disallowance of proposed changes to the Board of Estimate, or for more amenable alternatives to be found. In the case of Quebec, the offer of a referendum can

⁵⁷ Supporters of the PQ.

be seen to be used as a way of garnering support across the separatist-federalist divide in order to give the PQ the chance to govern, and then gain a mandate to challenge the existing constitutional arrangements between Quebec and Canada. In essence, without the offer of a referendum, and with the persistence of an understanding that a mandate, even partial, would ineluctably lead to a declaration of independence, the PQ would remain side-lined. With the offer of a referendum, the PQ could garner the support necessary to at least take control of the province, and then try to obtain the definitive mandate required for independence.

In terms of the conceptual framework of this thesis, the very existence of offers for referendums on secession are noteworthy, and will be discussed in the comparative chapter of the thesis. What is salient at this point is to note that in the BNAA there was no constitutional provision for the generalised use of referendums in managing either provincial or national questions, nor was there any provision for the secession of a province from the federal polity. In this respect these demands and offers fall well outside constitutional methods for managing Canada as a federal polity, and well within the concept of instrumentalities as developed from Livingston's theories (1952, 1956).

Quebec's constitution provided for a referendum on constitutional matters 'at the option of the provincial government' (Leslie 1999 p.142). The passage of similar enabling legislation in the case of Staten Island's referendums was made possible by the existence of a consensus between political parties in the NYS senate and assembly. In the case of Quebec, such a consensus would not have been forthcoming, given the QLP's adherence to continued *fédéralisme rentable*, such legislation would have been contingent on the PQ gaining a majority in the provincial assembly.

There thus existed in Quebec before the 1976 elections a paradox, for in order for there to be a referendum on renegotiating the federal relationship, which might well still result in rejection, there first had to be sufficient support for a political party which was committed to independence in some format. In simpler terms, for a NO vote on independence to be registered, the PQ had to become electable and garner enough votes to a yet undetermined political programme. The problem for the PQ was how to propose a formula that was acceptable to a majority of those who supported the concept of extended autonomy, but that also included those who might later come to reject separation.

4.7. The PQ in Power After 1976

The outcome of the 1976 provincial elections in Quebec, called two years early by Bourassa,⁵⁸ was a confirmation of the PQ's tactics on moderating the referendum question, to removing the link between the election of the PQ and an immediate move to independence, for the PQ won an absolute majority with 71 seats. However, as the table below shows, the persistence of the first past the post system worked in the PQ's favour, with just over 40% of the popular vote the PQ gained 65% of the seats, and an absolute majority.

Table 16 November 1976 Quebec election results

Party	% Popular Vote	Seats	% seats
PQ	41 (30)	71(6)	65(5)
QLP	34 (55)	26(102)	24(93)
U.n.	18(5)	11(0)	10(0)
Ralliement Cr�ditiste	5 (10)	1(2)	1(2)
		110(108)	

1976 Quebec provincial election result, with 1973 results in brackets Sources: Elections (1976), Elections (1973)

The reform of Bill 22 was, along with the promise for a referendum, a key commitment made by L vesque and the PQ in the campaign for the November 1976 elections. The discussion returns to the referendum question and the federal utilisation of instrumentalities in this respect, after an examination of the first area to be tackled by the PQ, language law.

4.7.1. Language Law #2

The revision of language laws was to dominate the early months of the new government (Fraser 2001 p.91); Camille Laurin, as Minister for Culture, was charged with the preparation of Bill 1, and which passed into law as Bill 101.

The Bill set out to address the intrinsic illogic of Bill 22 which had sought to establish a 'French-speaking society and, at the same time, establishing institutional bilingualism' (ibid.p.103). In this respect, it reflected the diverging positions between the QLP, who saw

⁵⁸ One of the reasons for Bourassa calling the elections early (in 1976) instead of 1978 was that he became convinced that Trudeau would act unilaterally in terms of the need to patriate the BNAA, against traditional opposition from Quebec, and in the absence of agreement on a new division of powers. This led the former to the conclusion that the only way to stop him was to hold an election on the issue. This decision was confirmed when Trudeau made it clear in the Queen's speech from the throne at the opening of parliament 'that he was determined to proceed with unilateral patriation' (Fraser 2001 p.64).

Quebec, and its language groups, as part of a Canada, and the PQ, who sought use language to promote Quebec as 'an embryonic nation-state' (Coleman 1981 p.462). The opening statement of the White Paper reiterated Lévesque's⁵⁹ 1968 conceptualization of Quebec as an unambiguously French place where all aspects of life were carried out in the French language:

'The Quebec we wish to build will be essentially French. The fact that the majority of its population is French will be clearly visible- at work, in communications, and in the countryside. . . the use of French will not merely be universalized to hide the predominance of foreign powers from the French population; this use will accompany, symbolize and support a re-conquest by the French-speaking majority in Quebec of that control over the economy which it ought to have. To sum up, the Quebec whose features are sketched in the charter is a French-language society. There will no longer be any question of a bilingual society'(ibid.).

The outcomes of the implementation of Bill 101 on the aspect of the crisis that hinged on the linguistic question was to 'generate a new perception of linguistic protection among francophones' (Dion 1993 p.40). This had an unexpected impact in terms of the dynamics of the relationships between nationalism and secession, for as Dion argued

'it dissuaded many moderate nationalists from joining the sovereignty camp and, by doing so, was a factor in the defeat of the pro-sovereignty position during the 1980 referendum' (ibid.).

The confidence of the French language speakers was to remain strong, until the defeat of the PQ in the 1985 elections, and the return of the QLP, with a renewed challenge to the provisions of Bill 101 (ibid.). Indeed, for Dion the 'fragile' linguistic confidence of Francophones was contingent on the continued presence of the PQ in power (ibid.).

For Fraser, the impact of Bill 101 in terms of symbolism mirrored that of the sovereignty-association platform, in that for the social groups in the province the options were clear; it was either acceptance or rejection, there was no longer any room for discussion, no 'middle ground' (2001 p.111). Bill 101 removed references to English as a specific 'other language' permitted in the operation of local administration of social provision, including education (Coleman 1981 p. 465). In this respect the reinforcement of French as the sole language of communication at and with the provincial level, whilst allowing other languages at the local level where applicable, reinforced the *pluraliste* approach of the PQ for a unilingual nation as compared to the bilingual approach of the Liberals across Canada (Ibid.p.466).

This continuing drive towards the reinforcement of linguistic divisions between the Francophones of Quebec and the Anglophones of the rest of Canada was to form a

⁵⁹ See Lévesque 1968 p.17, pp. 27-28.

significant element of the considerations of the Pépin-Robarts Report, which moreover contains evidence of the continuing understanding of the potential of instrumentalities in seeking a solution, or in restoring an equilibrium, in the relationships between the two communities.

4.7.2. *Trudeau's Response – The Pépin-Robarts Report*

This report was a product of Trudeau's identification of the threat posed to the unity of the Canadian federation by the election of the PQ, (Bélanger, C., 2001) which had

'demonstrated the failure of the Trudeau government's attempt to fully engage Quebeckers – in particular francophone Quebeckers – in his pan-Canadian nation-building project' (Guibernau 2006 p.56).

The 'direct response' of the PQ's victory was the setting up of the Pépin-Robarts Task Force on Canadian unity (ibid.).

In the January 1979 report of the committee,⁶⁰ *'A Future Together'*, there is evidence of the use of instrumentalities in both the mandate given to the Task Force, and in their interpretation of their role:

'While we recognize the existence of tensions and the need for reforms, we intend to point out the positive aspects of the Canadian experience, both material and emotional, its flexibility and its potential for improvement under the pressure of enlightened public awareness' (Pépin-Robarts 1979, p.142).

In the Report, I identify elements of change that fall into the analytical framework of this thesis in respect of instrumentalities, that of the changing of attitudes and perceptions of people, and the need to 'encourage the development of attitudes and beliefs more conducive to national unity' (ibid.p.4). However, the authors identified difficulties in this process which reflect the deficiencies of instrumentalities, where exhortations of change in attitudes may themselves be insufficient. They argued that attitudinal change would only come *after* institutional and policy reform, that the Report itself would be insufficient to cause such change, and that the time available to engender such change was limited. Moreover, where developing expectations of the Canadian people went beyond the attitudinal, 'it is now inconceivable that a settlement satisfying to a majority of Canadians could be reached in the absence of political and constitutional reform' (ibid.p.5).

The Report, published in January 1979, was balanced between the continuation and reinforcement of economic integration in Canada, and a significant reduction in the role that the federal government had progressively taken in the linguistic and cultural affairs of

⁶⁰ Reported on at some length by Graham Fraser in the *Montreal Gazette* see Fraser (1979).

the provinces. Indeed, for *Le Devoir* the report had something for both one-nation federalists and the Québécois who advocated a two-nation solution (Bissonnette 1979 p.1). Whilst bilingualism would become constitutionally recognised in respect of the operation of the federal government, the use and development of minority languages in education, health and social services would become the near total preserve of the provinces (ibid.). In this respect the report called for the repeal of clause 133 in the BNA to allow provinces to decide on the linguistic rights of their minorities (Pépin-Robarts 1979 p. 52);⁶¹ but added that they did not see this as a licence for the provinces, and especially Quebec, to ignore the rights of these minorities. These *had* been ignored in Manitoba, but the Report stressed that they saw in Quebec's Bill 101

'proof that the rights of the English-speaking community in Quebec can be protected, without any constitutional obligation, and that the governments of Quebec are quite capable of reconciling the interest of the majority with the concerns of the minority' (ibid.p.52-3 emphasis added).

The report expressed the right of Quebec to self-determination, and 'the full recognition of the cultural distinctiveness of Quebec' (ibid.p.61), but in an attempt to avoid the development, or continuance, of negative connotations, 'repugnance' (ibid.p.87), of the concept of 'Special Status' for Quebec, the authors proposed a re-distribution of powers between the federal and provincial spheres. In addition to a fundamental change in distribution, so that residual powers became vested with provincial governments, the Report called for *all provinces* to have the same powers as those intended for Quebec 'to maintain its distinctive culture and heritage' (ibid.). However, in placing such powers within the area of 'concurrent jurisdiction with provincial paramountcy', and with the constitutional provision for 'the intergovernmental delegation of legislative powers' the other provinces could choose not to 'exercise these responsibilities and instead leave them to Ottawa' (ibid.). In this respect this represents a form of institutionalised instrumentality, where the relationships between the provinces and the federal government could evolve in such a way as not to test the limits of constitutional asymmetry, through the development of 'Special Status', but which would preserve diversity.⁶²

The Report was published in the last months of Trudeau's Liberal federal government in Ottawa, and whilst Trudeau described the Report as a 'landmark contribution' the Report was 'shelved', as being counter to his ideas, particularly in respect of the 'decentralist thrust and its emphasis on "asymmetry"' (Bélanger, C., 2001, Guibernau 2006 p.6). Moreover, as Laforest (1995) commented, Trudeau's reluctance to 'officially ratifying any

⁶¹ See also Frazer (1979) for a commentary on the support expressed by the Report to the 'Push for French'

⁶² This constituted a formula of opt-in and opt-out that we will encounter in the UK/EC case study.

of the task-force's recommendations' whilst still prime minister, and his subsequent reversion to 'his own ideas on national unity and constitutional reform' during the federal election campaign, was tantamount to a clear disassociation of Trudeau from the Report (p.26). However, Guibernau's interpretation was more sympathetic, in that Trudeau's government did respond to the Report by

'signing a bilateral agreement with Quebec on immigration . . . and by softening its tone, thus showing a much more flexible approach to Quebec's demands' (2006 p.56).

She makes a comment on 'this newly generated environment' in which the Quebec referendum was to later take place, and how it was instrumental in Quebecers' failure to realize that a

'resounding victory for the "NO" platform would encourage Trudeau to pursue his programme of constitutional reform and to ignore the recommendations of both the Pepin-Robarts report and the Beige Paper' (ibid.).

The discussion now turns to these elements in the context of the referendum campaign of 1980.

4.7.3. The Instrumentality of a Call to Referendum

Lévesque clarified understandings of the future relationship between Quebec and the Rest of Canada in Quebec's parliament (Assemblée Nationale 1978). The idea of sovereignty first, then association, was explicitly ruled out in the formulation of the referendum question to be put to Quebec to give the PQ a mandate to negotiate, to be followed by a further referendum to agree any changes in political status:

'The government of Quebec has made known its proposition to reach, with the rest of Canada, a new understanding, founded on the principle of an equality between peoples;

*this understanding will allow Quebec to acquire exclusive law making power, to raise taxes and to establish external relations, that which is sovereignty – **and, at the same time**, to maintain with Canada an economic association including the use of common currency;*

all change in political statutes that result from these negotiations will be put to the population in a referendum;

as a consequence, do you give to the government of Quebec a mandate to negotiate the proposed understanding between Quebec and Canada?' (Lévesque 1986 pp.404-405 emphasis added).

Lévesque's referendum question contained nothing new, most elements were already evident in his 1968 work *Option for Québec* (Roy 1978 p.4), but, as Roy argued, this placed considerable pressure on the federal government to formulate proposed changes to the arrangements between the federal state and Quebec, for if the former were to campaign against a YES vote from Quebec, this would have to entail clear indications of what

alternative a NO vote would give in terms of future arrangements (ibid.). Marc Lalonde⁶³ commented; 'all is possible within the frame of a federal system',^{xxxiii} and while this might have been undeniable from a judicial stance, it was highly contestable from a political and historical one (ibid.), for past events had proven that whilst reaching constitutional settlements on federal relationships in response to changing circumstances might have been possible, in reality the political will needed to reach such agreement was lacking.

In this respect the use of the call for a referendum had an impact both in responding to a (partial) mandate from the Quebec electorate for the promise of referendum made before 1976, and, salient to this thesis, had an instrumental effect in pressuring the federalists to develop formal and cogent responses. The PQ had the upper hand, for it had the ability to call a referendum, and pass the attendant enabling legislation, and moreover could choose the timing of this. The timing of the referendum was in fact delayed by Lévesque in order to avoid clashing with federal elections due at the end of Trudeau's mandate (Lévesque 1986 p.399). During the course of the federal elections of May 1979 Trudeau continued to insist on the need for 'the promotion of strong central government, expressing apprehension at the balkanizing tendencies of some provincial policies' (Laforest 1995 p.21), and reiterated his intentions on patriating the constitution, 'unilaterally should the need arise' (ibid.).

After the defeat of the LPC, Joe Clark, leader of the Conservatives, took over with a minority government, and took the initial responsibility to respond to the challenges posed by the PQ. Whilst Clark's mandate⁶⁴ did not last sufficiently to produce any concrete proposals on political and constitutional reform, some indications of possible future directions were given. A 'new approach to federalism and to Quebec' (Bothwell 1998 p.163) was, for Clark, important to demarcate his government from previous administrations, and he had already announced that 'he saw Canada as "a community of communities"' (ibid.p.162). Clark's approach had many similarities with the concept of the renewed federalism that was outlined in the Beige Paper, discussed below, in that there was a clear understanding of a view of Canada in which there was a clear sense of the identity of the rest of Canada as 'having its own political identity, one that was separate from but strongly linked to Quebec's political identity' (ibid.p.156). The development of Clark's ideas on the bi-national, was, however curtailed – for the Clark government fell after a defeat on the budget speech, and, having returned from retirement, Trudeau led the LPC into a new administration with a small majority. As a consequence, the decision

⁶³ Veteran of the Victoria Conference of 1971 who led the Federal negotiations at the conference.

⁶⁴ From May 1979 to February 1980 (Bothwell 1998 p.162).

of the PQ to set the date of the referendum for 20 May 1980 was to result in the confrontation of Trudeau and Lévesque in the campaign.

4.7.4. Alternative Constructs: 'Renewed Federalism'

Just before Trudeau's return to power in February 1980, an alternative concept of renewed federalism emerged in Quebec from the QLP opposition under their new leader, Claude Ryan. The report, '*A New Canadian Federation*', known as the 'beige paper' was, crucially, published before the date set for the referendum in Quebec, for the content of the paper was not dissimilar to that of the Pépin-Robarts Report, in that it contained proposals for 'a form of federalism that would be flexible enough to make room in its institutions for Quebec's legitimate aspirations' (Laforest 1995 p.27). Indeed, for Laforest,

'the objectives stated in the beige paper shows that the authors wished to find a compromise between Québécois nationalists, on one side, and Mr Trudeau's government and those of the English-Canadian provinces on the other. These objectives included affirmation of the equality of the two founding peoples, the granting of guarantees that would satisfy Quebec without contradicting the principle of equality among all partners of the federation, and recognition of the judicial primacy of individual rights and fundamental freedoms' (p.27).

In this respect the paper went a long way towards accommodating the conflicting ideologies of Quebec's demands for recognition and Trudeau's idea of a single Canadian identity, and the 'recognition of . . . individual rights and fundamental freedoms' (ibid.).

Trudeau did not discuss the details of the paper, in particular during the federal election campaign; 'he remained utterly silent on the subject' (ibid.p.28). Moreover, Trudeau explicitly forbade Ryan from referring to the beige paper during the referendum campaign, and in particular to the idea that in the case of a NO vote, the contents of the beige paper would formulate a view of the future, and would formulate 'some kind of contract' (Bothwell 1998 p.163). During the campaign, Ryan explained the absence of the Beige Paper proposals by explaining that the parties comprising the NO group each had 'its own positions on constitutional change' but that 'on many points these positions overlap' (Harris 1980 p.1).

Trudeau's silence on the future shape of relations between Quebec and the rest of Canada was punctuated by interventions targeted to 'give maximum effect' (Laforest 1995 p.29). In the first of these, on 14 April 1980, in the House of Commons, Trudeau addressed the outcomes of a possible YES vote in Quebec. Firstly, he argued that the federal government, and the rest of the provinces, would refuse to negotiate on a new economic association with a PQ government, so a YES vote would lead to an impasse (ibid.). Secondly, he argued that in the area of sovereignty over law-making, in tax collection and the establishment of external relations, the new Ottawa government had received a

mandate from Quebec to act in these areas, and thus could not cede them to Quebec (Canadian Parliament 1980 p.35). Ryan reiterated Trudeau's sentiments on the mandate question, pointing out that with 74 of the 75 Quebec seats in the Canadian parliament, the Liberals had a mandate for preserving the Canadian federation (Harris 1980 p.1).

Contrasting these federal arguments against the YES vote, Ryan and Trudeau went some way to identifying what a NO vote would mean. Whilst not giving specifics, Ryan argued that a NO vote would lead to a 'greater and better Canada for the future and for a stronger and more original Quebec within a renewed Canadian federation' (ibid.). Trudeau went on to say that whilst a NO vote would mean the end, *pro-tempus*, of the sovereignty-association question, this would not necessarily create sufficient impetus to force the PQ to negotiate the 'renewed federalism everyone wants' (Canadian Parliament 1980 p.36); for Trudeau, the only way to achieve this would be

'a massive No, a No that rings so loud and clear that the PQ government would understand that Quebeckers truly do not want to separate from Canada, and that they had better buckle down to the task of renewing federalism instead of destroying it' (ibid.).

Roy (1980a) went further, interpreting Trudeau's comments as arguing that 'Quebeckers, if they want a new regime better suited to their aspirations, should first of all remove the PQ from power' (p.10).^{xxxiv}

In an open letter to the Québécois of 24 April 1980, Trudeau reiterated his position that if a NO vote were to prevail: 'real reforms would be impossible as long as a government bent on the destruction of federalism held power in Quebec' (Laforest 1995 p.29), although he 'promised to devote all his energies to the project of renewing the constitution' (ibid.).

For Laforest, the 'most emotionally charged' of all Trudeau's interventions was at the 7 May 1980 NO rally in Quebec City. Drawing on his own Québécois heritage in arguing that the creation and maintenance of Quebec's place within Canada was within his abilities 'Trudeau reaffirmed his own belief to conduct successful negotiations on Quebec's place within Canada' (ibid.p.31).

It was not until his public intervention on 14 May 1980, in Montreal, that Trudeau 'finally consented to clarify the meaning of his message' (ibid.) in that where he had thus far focussed on the meaning of a YES vote, 'the impossibility of renewed federalism and eventually the destruction of Canada' (ibid.), he made clear that a NO vote would *not* result in the maintenance of the status quo in respect of Quebec – Canada relations, for a NO would be followed by an immediate move towards change:

'I will not accept that a NO vote be interpreted by you [Canadians outside Quebec] as a sign that change is not needed, that all is fine. We want change and we will move immediately to achieve it after our victory next Tuesday [day of referendum]' (Trudeau cited in Phillips 1980 p.1).

Taking Trudeau's comments at face-value, the inference is that the support for a NO vote would lead to a form of renewed federalism, and for support for Quebec's aspirations from the Liberal Party in Ottawa. The problem is in how the understandings of renewed federalism were to become distorted.

4.7.5. Trudeau's Final Intervention: Distorted Understandings of Renewed Federalism

Laforest argued that, for Quebec, renewed federalism had gained a particular meaning through the understandings of the P  pin-Roberts Report and the beige paper that included the elements of special status for Quebec, reforms to the provinces' role in federal institutions, and reducing the powers that made the Canadian federation a 'quasi-unitary political system (Laforest 1995 p.33). These reports were mentioned by Trudeau in his final intervention, a televised speech two days before the referendum, which Laforest paraphrases as follows:

'These two reports displayed an undeniable sensitivity to the aspirations that Quebec had nurtured since the Quiet revolution, for they at last partly promised that federalism would be rebuilt according to dualist and bicultural parameters' (ibid.).

It is the juxtaposition of Trudeau's reference to the two reports, favourable to Quebec's 'aspirations', and Trudeau's most recently expressed intentions to react to a NO vote with 'renewed federalism' that is, for Laforest, so deceptive. For, in 'multiplying his ambiguous references to renewed federalism' Trudeau was trying to 'convince undecided voters to support the NO camp' (ibid.p.34).

The *Montreal Gazette* reported the speech, in which Trudeau was reported as offering a chance for constitutional change *irrespective of the outcome of the referendum*, and the confirmation that 'L  vesque would be "respected and well received" if he entered the negotiations for a new power-sharing arrangement among the provinces and the central government' (Laurent 1980 p.1) although there was a caveat that 'central government should remain strong' (ibid.). Moreover, whilst echoing these points, *Le Devoir* commented on Trudeau's recognition of the Canadian tradition that demanded that for constitutional amendments to be accepted these must be unanimously approved by all the provinces (Turcotte 1980 p.10).

The effect, and interpretation of, Trudeau's final interventions on the outcome of the referendum is, for Bothwell (1998 p.165), moot, in that the polling suggested that the NO

campaign would have prevailed irrespectively of Trudeau's comments.⁶⁵ Later discussions show how the reality of Trudeau's intentions became clear, but I now turn to examine the immediate interpretations of the referendum.

4.7.6. *Referendum Results and Reaction*

The Francophone and Anglophone newspapers announced the outcome of the referendum on 21st May 1980; on an 84% turnout, 59.6% of Quebec had voted against giving Lévesque a mandate to open talks on a new form of federal arrangement. The NO vote comprised the vast majority of English speakers, but also a 'slight majority' of French speakers (ibid.p.166).

Michel Roy (1980b) discussed the elites' interpretations of the NO vote after the result became clear. For Lévesque, the vote gave the federal camp another chance, a responsibility for them to flesh out the engagement that they had undertaken. For Ryan, the Québécois sought to continue to find their future within Canadian federalism, but reiterated his party's, and others' promise to fight for a profound transformation of the Canadian regime. For Trudeau, the verdict from both camps was one of a desire for change, that needed addressing as soon as possible. Roy went on to argue that the NO vote was a rejection of sovereignty-association, a NO vote to a future outside of Canada, but that the NO voters did not say NO to a new relationship, nor to the 'equality of peoples'. However,

'at the same time they have placed their faith in all those who have announced and promised change. This is why, as Mr Ryan underlined last night, the obligation agreed by the NO camp has such heavy consequences for the future. It is no longer possible, either in Ottawa or in Quebec, to deceive these expectations, to betray the promise of change'(ibid.).^{xxxv}

The co-author of the Pépin-Robarts report, Jean-Luc Pépin, also emphasized the responsibility placed on English Canada to move towards constitutional change, but in a reflection of the imprecise understanding of 'renewed federalism' argued that 'the next step in the constitutional debate is to try to define renewed federalism, "All the formulas must now be wrapped together, so we can take the best from each of them"' (Pépin quoted in Wills & Wilson 1980 p.2).

⁶⁵ Maurice Pinard interpreted the results of the referendum, and commented that the result would have been the same whether the poll had been taken in 1977, 1978, 1979 or 1980 – that the solid 40% of the yes vote were "those who were basically in agreement with a lot of the traditional grievances of French Canadians" (Bothwell 1998 p.166).

4.7.7. Renewed Federalism Made Clear

Any ambiguity on the meaning of Trudeau's idea of 'renewed federalism' was answered

'swiftly in the days following the referendum . . . Trudeau engaged in a massive constitutional offensive, with the intention of acting unilaterally if necessary' (Laforest 1995 p.45).

For McRoberts this was a continuation of Trudeau's early initiatives including the Official Languages Act of 1969, and 'did not mean an enhancement of the powers of the Quebec government' (1993 p.348). The three key elements of the new constitutional package, which was proposed by Justice Minister Jean Chrétien during the summer of 1980 to the provinces, were

'first, a true federal government with real powers, matched by true provincial parliaments with real powers; second, a Charter of Rights and Freedoms that would apply to all Canadians; and third, a formula transferring the power to amend the Canadian Constitution from the British parliament to Canada – what was called "patriation"' (Bothwell 1998 p.168).

Trudeau's package of proposals was rejected by eight of the ten provinces at a constitutional conference at Lake Megantic in September 1980, mainly over the question of the inclusion of the Charter of Rights in the Constitution (ibid.). Quebec's conditions for progress hinged on the recognition of the distinctive character of Quebec, the principle of the freely given consent of each province to the constitution, thus avoiding the need for an explicit expression of the 'right to auto determination', an amendment formula which guaranteed Quebec its established right to a veto, and a modification of the Charter of Rights to ensure the maintenance of Quebec's pre-existing language rights (Roy 1980c p.12).^{xxxvi}

At the same time, Lévesque, coming to the end of his five-year term, called provincial elections. In the manifesto, he wrote that of all the political parties in Quebec only the PQ was sufficiently exclusively Québécois to demand, as an absolute minimum in any future constitutional discussions, the explicit recognition of the distinct national society of which Quebec was the nation, of its inalienable right to self-governance and of linguistic rights^{xxxvii} (Lévesque 1986 p.431). An initial interpretation of the strength of this argument might be deduced from the overall result of the 13 April 1981 elections which returned the PQ to power with an increased overall majority, and a near plurality in the popular vote.

Table 17 April 1981 Quebec election results

Party	% Popular Vote	Seats	% seats
PQ	49(41)	80(71)	66(65)
QLP	46(34)	42(26)	34(24)
U.n.	4(18)	0(11)	0(10)
Ralliement créditiste	0(5)	0(1)	0(1)
		122(110)	

1981 Quebec National Assembly election results, with 1976 results in brackets Sources: Elections (1976), Elections (1981).

MacDonald (1981) interpreted the polling trends that had predicted the PQ's victory as a consequence of the migration of a majority of rural and suburban voters from the U.n. (leading to this party's virtual elimination) towards the PQ. This was, in part, in response to the latter's agricultural policies and rural investment, but also, in a reflection of the old values as espoused by the U.n. under Duplessis, as a result of the PQ's claim to have 'become an autonomist rather than a sovereigntist party, for the time being at least' (MacDonald 1981 p.7). This position had been announced by Lévesque to the National Council of the Party in which the calling of a renewed referendum during the next mandate was expressly ruled out, the PQ having committed itself to the defence of Quebec's interests within the federal regime (Descoteaux 1981). McRoberts (1993) supported the latter evaluation, arguing the PQ's re-election was a product of their distancing themselves from the sovereignty option (p.342). Essentially to become re-electable, much in the way that the PQ had become initially electable, the party had to move away from its independentist position.

As McRoberts argues, the PQ now found itself in the position of having to accept that the goal of separation was no longer available, and by April 1981 had also come to accept that an agreement on an incomplete constitutional reform would be better than an imposed formula. Latouche argued that after the defeat in the referendum, the PQ had to maintain its public support and 'deliver on its long-standing promises of political equality for Quebec' (Latouche 1988 p.137). In the spirit of keeping the momentum for constitutional change, Quebec accepted a revised formula with the seven other dissenting provinces, which included Quebec's abandonment of its historical claim to veto, compensated with an 'opt-out' available for 'transfers of jurisdiction to the federal level', with financial compensation to meet the costs of programmes (ibid, McRoberts 1993 p.355). This meant that provinces could decide on whether to accept centralising amendments to competences, or retain these at the provincial level with full compensatory funding (Dunsmuir 1995 p.4).

In the mean-time Trudeau had decided to proceed unilaterally with the reforms, arguing that the interest of Canadians was at stake:

'I know that Canadians believe that there is a national interest. They do want a strong country, and they do believe that we are more than a collection of provinces, more than a community of communities' (Trudeau cited in Bothwell 1998 p.169).

Legal challenges to the constitutionality of the unilateral repatriation plan proposed by Trudeau were made by the provinces of Manitoba⁶⁶ and Newfoundland,⁶⁷ the former's majority decision was that Trudeau's project was legal, the latter declared it was clearly illegal (Decary 1981 p.1, Lévesque 1986 p.437).

The Conservatives in the Ottawa parliament also 'fought the unilateral package to the point where Trudeau felt obliged to go to the Supreme Court of Canada' (Bothwell 1998 p.170). The Court's final decision, on 28 September 1981, ruled that 'the federal initiative was legal but illegitimate' (Laforest 1995 p.45), but introduced a new concept of 'substantial compliance' (ibid.) where a non-specific number of provinces needed to be in agreement, although it stopped short of demanding unanimity for such a decision, arguing that such would leave Canada in a 'straightjacket' (Bothwell 1998 p.171). The decision of the court to allow the politicians to agree on the exact definition of substantial compliance was qualified; 'they considered that in the current scenario the number of opponents [eight] to the Trudeau project was largely sufficient to deny him this assent'^{xxxviii} (Vastel & Bissonnette 1981 p.10). Moreover, the Court rejected Quebec's subsequent argument that, as a founder nation, they had the right to a *de facto* veto; that if they were not part of the provinces that agreed to the formula then the 'substantial compliance' condition would not be met (Bothwell 1998 p.171).⁶⁸ Lise Bissonnette gave a final understanding of the term 'renewed federalism' in the judgement, that of a move away from the original conception of an egalitarian interpretation of the BNAA towards an unequal hierarchical order between the federal and provincial levels, a direction that Trudeau had, through his mental omissions, sought to hide from the NO voters of 1980, and with good reason (Bissonnette 1981 p.8).^{xxxix}

4.7.8. Unilateral Repatriation

The final act in the struggle between the conflicting visions of Canadian constitutionalism was to take place in late November 1981, when the provincial leaders were once again summoned by Trudeau to try to achieve the now well-defined 'substantial compliance' he needed to take to London in order to repatriate the Constitution. The common front of

⁶⁶ Decision made on 3 February 1981 in the Manitoba appeal court.

⁶⁷ Decision made on 31 March 1981 in the Newfoundland appeal court.

⁶⁸ See also Livingston (1956) pp. 44-54 for a discussion on the validity of the compact theory. He makes a case for the resolution of the divisions between the two camps on the topic – arguing that continuing divisions would imperil the unity of Canada.

resistance by the eight provinces was broken when Lévesque accepted Trudeau's offer of a country-wide referendum on the constitution, an offer the provinces were fearful of losing, and which they saw as divisive (Bothwell 1998 p.173). As a consequence, on 5th November 1981, Quebec was isolated, as the nine provinces gave Trudeau the 'substantial compliance' he required for the passage of the package on reform. There was one provision for provincial governments to 'pass resolutions specifically overriding the Charter of Rights and Freedoms⁶⁹ on particular issues, the "notwithstanding clause"' (ibid.p.174). This was, however, for Lévesque, a limited and grudging concession on the part of Trudeau, in that it gave back to Quebec opt-out rights and compensation in the fields of education and culture (Lévesque 1986 p.448), but this fell well short of the original demands for veto, and covered a more limited range of competences than before.

The Bill on the repatriation package went through the parliament, and was signed into law on 17 April 1982, but with the absence of Quebec's agreement. Latouche argues that the constitutional change was

'both in substance and in procedures . . . considered a breach of trust by the entire Québec political class . . . [and] as monumental case of constitutional hijacking' (1988 p.133,135).

Thus started a new phase in the relationships between the province of Quebec and the rest of Canada; the '1982 constitutional reforms worsened it [the situation] and resulted in the internal exile of Québécois within the Canada of the Charter' (Laforest 2014 p.22). The final act of Trudeau in 'prevailing over Québec sovereigntists definitively' (ibid.p.23) was an example of his understanding of nationalism in the pan-Canadian context, and in a rejection of the drive towards balance between 'a design for a Canadian nation and a Québec nation' (ibid.). Laforest argues that the problem with the Charter is that it was adopted in an 'anti-democratic way, without our consent' in defiance of the opposition of our government and the National Assembly' (ibid.p.29).

4.7.9. The Abandonment of Separatism by the PQ – the 'Beau Risque'

At the 4 September 1984 federal elections Brian Mulroney's Progressive Conservative (PC) Party comprehensively defeated the LPC under new leader John Turner⁷⁰ (Parliament of Canada 2015). In the run-up to the election *Le Devoir* applauded the

⁶⁹ Henceforth 'The Charter'.

⁷⁰ Pierre Elliot Trudeau had announced his resignation on 29 February 1984, and thus left the political arena, in the sense that he was no longer party chief of the LPC. However his influence was to be felt later in the discussions around the (failed) Meech Lake Agreements (Laforest 1995 pp. 110-111).

anticipated election of the PC, and supported this as the best guarantee that ‘the point of view of Quebec would be heard, respected and taken into consideration in the affairs of the federation’^{xi} (Roy 1984 p.10).

Within the PQ, the prospect of the end of the LPC’s hegemony and the obstinacy and intransigence of Trudeau and his ‘henchmen’ gave space for renewed progress on a path towards a healthier, less centralised federalism^{xii} (Lesage 1984 p.10). Lévesque committed the PQ to the ‘*beau risque*’ of working with Mulroney in achieving Quebec’s goals from within the federation. The immediate resignation of the hardliners from Lévesque’s cabinet, notably Jacques Parizeau and Camille Laurin, (Bothwell 1998 p.181) marked the end of the coalition within the PQ that had been forged by Lévesque between those who sought a future for Quebec as an autonomous province within Canada, and those who had remained determined to achieve full independence, a coalition which had been under pressure since the failed referendum (see McRoberts 1993 pp.382-3).

Lévesque’s subsequent decision to leave politics in late 1985, before the end of the PQ’s second mandate, gave way to a new leader, Pierre-Marc Johnson (son of Daniel Johnson), who ran a campaign on the platform of ‘national affirmation’ which eschewed ideas of independence and sovereignty-association (Bothwell 1998 p.181, McRoberts 1993 pp.442-3).

The PQ was to face the QLP under Robert Bourassa, who had returned to replace Claude Ryan. The December 1985 elections were characterised by a new initiative from Bourassa based on a pledge to

‘sign (and “complete”) the 1982 constitution subject to five conditions: the restoration of Quebec’s veto over constitutional amendments; recognition of Quebec in the preamble to the Constitution as a “distinct society”; more power for Quebec over immigration; participation by the Quebec government in the naming of Supreme Court justices; and limits on the federal spending power’ (Bothwell 1998 p.183, Gagnon 2004 p.140).

Moreover, Bourassa promised to use provincial legislation to restore an element of balance in the rights of the Anglophone community in Quebec, although such measures, including amendments to Bill 101, were to wait until rulings on challenges to the Bill in the Supreme Court (Bothwell 1998 pp.183-184).

The outcome of the provincial elections in Quebec gave a clear mandate to Bourassa, and thus the development of the dynamics in the post-crisis period came to result in two sets of political actors who had gained mandates for the completion of a project of the reform of the Constitution that would include the re-setting of the final question of Quebec’s ‘special status’ within Canada.

Table 18 December 1985 Quebec election results

Party	Seats	% Popular Vote	% seats
QLP	99 (42)	56 (46)	81 (34.4)
PQ	23 (80)	38.7 (49.2)	19 (65.6)
Other	0	5.3 (4.7)	0 (0)
Totals	122		100

1985 Quebec National Assembly general election (1981 results in brackets) (Source: National Assembly 2015).

The PQ in opposition had become ‘a party like any other’ in seeking a solution within the Canadian federal system, and the question now confronted by the party was how, and indeed if, they should revert to the drivers of the movement of the 1960s in restoring the primacy of the national question^{xlii} (Roy 1985 p.8).

It is at this point that I pause in this examination of dynamics, as the case has reached the point at which the crisis had subsumed to pre-crisis levels, as I now discuss.

4.8. Discussion: Federal Dynamics at Work

4.8.1. Aspects of the Crisis from a Conceptual Standpoint

The twenty years from 1960 to 1980 has been called a period in which:

‘Quebec has constantly been in the headlines, a bomb always seemingly about to explode, an enigma and a question mark always hovering on the Canadian horizon’ (Whitaker 1981 p.27).

The ‘forces in play in the Quebec cauldron’ (ibid.p.37) were brought into sharp focus by the October crisis and brought into play an array of actors from the FLQ, the PQ, the federal and regional Liberal parties, and brought the immanent conflict in Quebec to a wider audience.

The crisis ‘convulsed the whole of Quebec society, and eventually involved the whole of Canada’ (Bothwell 1998 p.129), and was seen to challenge the very existence of the political system in the province. Even after the resolution of the immediate crisis ‘the symbolism of 1970, of what was called the October crisis, lasted much longer’ (ibid.p.132). Moreover, the very integrity of the Canadian state was challenged in both the 1970-71 crisis and in the 1980-81 events of the referendum on developing a new status for Quebec within the Canadian state (see Burgess 1990 p.1, Gagnon 1999 pp. 287-9).

The case study is situated in temporal and spatial terms with a focusing event as established in the conceptual chapter of the thesis. In spatial terms, the crisis is seen as being located in a federal political system, within which Quebec, as a differentiated socio-

political entity, had existed either *de facto* or *de jure* since the establishment of the French Colony, extending through the period of British conquest until the final entrenchment of Quebec as a province with the BNAA of 1867.

In temporal terms, I argue that the start of the crisis is the period post WWII, and in particular with the change in elite representation in 1960, when Duplessis' conservative nationalism was replaced with a new Liberal administration that sought to accommodate the processes of change whilst accepting the growing demands for a form of autonomy for the province that would ensure the protection of linguistic and social values.

The development of the crisis from a state of immanence to evidence came in three coevolving strands: 1\ the developing elite discussions and expressions of diverse understandings of the political and social reforms needed to accommodate demands for autonomy, 2\ the commissioning of reports on the growing need for fundamental reform of Canadian federalism, and 3\ the rise of independence movements that drew from the revolutionary *zeitgeist* of the period.

The focussing events of the crisis are defined as the call for a Free Quebec by de Gaulle in 1967, the defeat of the PQ by the QLP in 1970, and in particular the October crisis, with the deployment of federal troops in the province, and the dissemination of the manifesto of the FLQ.

The attempts to resolve the underlying constitutional crisis at Lake Victoria foundered on the principle of special status for Quebec, in the face of nationalist opposition, and led to a process of incremental and piecemeal development of asymmetrical status for Quebec, coupled with a renewed focus on intergovernmentalism both horizontal and vertical. However, the perception that these processes were insufficient to meet Quebec's demands, coupled with the developing status of the PQ as an alternative to a discredited QLP, and the decoupling of the independence question from a PQ mandate, led to the election of the party in 1976.

The PQ administration adopted coercive measures in establishing the French-speaking nature of the province, but the failure of the PQ to obtain a mandate for starting talks on a confederal arrangement, sovereignty-association, was exploited by federalist elites, and resulted in the enforced reform of the federal system. However, I argue that at this point the long crisis of 1968-1982 had abated to pre-crisis levels for;

- Quebec had attained linguistic autonomy
- French Quebecers had largely attained socio-economic parity with Anglophones
- A form of elite representation sympathetic to Quebecers was in power

The settlement of the constitutional issue was only partial, in that Quebec refused to accept the new constitutional reforms, which passed under the 'substantial compliance' formula. Whilst the outcome of the constitutional reforms may have been interpreted as a defeat, in that the 'right to difference' (Laforest 2014 p.30) was ignored in the Charter, and that the reforms were 'deeply inauthentic' (ibid.), Laforest makes the point that 'Québecers have chosen to live their quest for identity and freedom from within Canada. Québec is in Canada to stay, even if it recognises itself imperfectly in Canadian institutions' (ibid.). Whilst the search for constitutional provisions for reform as a way of recognising difference legally might have persistently failed, Quebec's decision of May 1980 to remain within the federal political system came about at a time when the Quebec National Project was already tackling many of the problems that led to the crisis of 1970. Here Laforest argues that these developments had resulted in a dualist process of nation-building of both Quebec and Canada which through the consolidation of the legitimacy of a parliamentary, representative liberal regime, which publicly promotes a political culture of pluralistic and democratic deliberation (ibid.p.56).

In terms of the conceptual framework of this thesis, while there was an absence of reforms in the Canadian constitution for the recognition of two nations with their attendant values, norms, languages and identities, such recognition had been achieved through the use of other modalities, notably the use of non-constitutional tools that fall within understandings of Friedrich's and Livingston's instrumentalities. Laforest cites these in the areas of the welfare state, the control of resources, media and communications, education, a Quebec Charter of Liberties, Language laws, citizenship and immigration, cultural and scientific policies, a distinct network of civil society associations, international relations, and argues that there has been a parallel development in both nations, which he likens to 'Siamese twins' (ibid. pp 55-57).

The development of strands of nationalism that had, in the first instance, imperfect expression through the political elites of the U.n. under Johnson, and then the QLP under Bourassa, subsequently became fully expressed in the PQ of Lévesque. The use of instrumentalities in developing responses to the expressions of Quebec's needs for differentiation in language, welfare, and socio-economics, was to have achieved a substantial, if still partially incomplete, answer to separatism in the form of sufficient degrees of autonomy of Quebec. These had not been reflected in the constitutional reforms of the patriated constitution and Charter of Rights and Freedoms, and in many respects these reforms fell short of the understandings of *renewed federalism* that prevailed in Quebec at the time of the referendum.

By 1984, support for separatism had reduced significantly in Quebec, signalling, in the terms of this thesis, a return to a pre-crisis condition of equilibrium in the relations between the province and the federal government. Indeed, as discussed below, post-1984, the PQ as political party which espoused separation came to drop this position, a stance that was to persist until Jacques Parizeau led the Quebec electorate to a new initiative for separation, narrowly rejected in May 1995 in a renewed referendum in the province.

4.8.2. Instrumentalities

William Livingston's main argument is that in FPS there are a range of options available to meet demands from peoples and constituent units in response to internal and external dynamic change. Livingstone does not exclude the constitution as an instrumentality; it is the manner in which it, and other things, 'habits, attitudes, acceptances, concepts and even theories . . . serve as instrumentalities for the expression of the diversities within a society' that is salient (Livingston 1952 p.91).

The BNAA did not include in its design the ability for amendment by the general government or constituent units, such powers being reserved to the Privy Council of the United Kingdom. This element was to become critical during the period of the crisis, as the demands of Quebec's elites for a new form of federalism that allowed for the protection and development of the Quebec nation as a home for French Canadians, and for Quebec to gain 'special status' was contingent on this mechanism.

Demands for reform to the BNAA, largely dormant until the crisis, became salient as Quebec elites and society sought formalised changes in the constitution to recognise their collective demands. However, nationalist pressures from inside Quebec for a radical solution, in the form of a range of demands for separation, were to preclude the acceptance of a compromise formula at Victoria in 1971. In this respect, the positions of federal elites, in particular the ideologies of Trudeau, and Quebec elites, in the ideologies of Johnson and Lévesque, became polarised along continuums of bi-culturalism and bi-nationalism, and centralisation-decentralisation. Efforts to reach compromise, to include Quebec's demands for special status, were substantially altered in the aftermath of the failed referendum, after which the idea of 'renewed federalism' became forcibly reformulated in the Trudeau package for the patriation of the constitution.

Successive national and provincial governments, and political parties, had identified the existence of the immanent crisis in Quebec / ROC, and/or French/English speaker relations. The common response has been in the commissioning of a range of inquiries and reports on the causes of disharmony and potential remedial measures, starting with

the Tremblay Report, under the Duplessis regime, the Laurendeau-Dunton Report under the Pearson regime, the P  pin-Robarts Report under Trudeau, and the beige paper of Ryan's QLP. A common feature of these reports, in Livingston's terms, is that they advocated theoretical developments to the relationships between the national and provincial governments, and recognized in the original BNAA of 1867 the fundamental nature of Canadian federalism as a reflection of a social reality that was contextual, and that as contexts developed so did the need for amendment to these arrangements.

The intellectual activity of these commissions, and the participation of both elites and broader society in the preparation of the reports, was tempered by the ability of political regimes to manage the expectations of the reports in the context of the reality of political expediency. As a consequence, the commissioning parties tended to largely distance themselves from the contents of the reports; however, the existence of these contributed to the development of Canadian societies' understandings of the theoretical framework of the contested political domain.

The BNAA provided for the right of disallowal by the national government, or the provincial governors, of acts passed in provincial governments. This right had always been used sparingly, but in the case of the development of Quebec's language laws which became progressively more coercive in the implementation of French as the official language of the province, the absence of the use of the disallowal provision is evident. Trudeau's government did not make use of the provision, and challenges to the PQ's Bill 101 did not come until after the re-election of Bourassa in 1985, at the new Supreme Court of Canada.

In the sphere of socio-economic competences, after the decision to withdraw from the Victoria Conference, Bourassa made new moves towards establishing asymmetrical powers for Quebec (with the proviso that all provinces could act in a similar way). Trudeau reacted by qualifying the extent that such developing policies could go beyond the permitted range of administrative flexibility into *de facto* changes to existing laws on competences. Moreover, he warned against the extension of the use of these powers horizontally, to other provinces.

Bourassa's success in realising the policy outcomes of these adopted powers is contested; Smiley (1976) identifies successes in the Bourassa's methods in negotiating potential benefits for the province, but the lack of evident benefits as perceived by Quebec Francophones is cited by McRoberts (1993) as evidence of the need for full political independence to realise their ambitions.

The dynamic between a continuation of a sub-optimal process of asymmetrical development of Quebec's powers and the need to come to a negotiated settlement of

constitutional reform is also problematic. Whilst the former would allow certain developments of asymmetrical development, in the case of agreement on amending formulae these developments would then become contingent on other provinces' agreement.

The BNAA is silent on the use of referendums in terms of the legality of the outcome of the ballot and on the liability established by such a mechanism on governments. In the case of Quebec, the PQ offered a referendum to decouple the mandate to govern from a mandate to declare independence. In this way, the PQ was able to broaden the extent of its support to include those Québécois who, whilst sympathetic with the aims of the party towards an extended degree of autonomy within the Canadian federal system, would not support calls for independence. As a consequence, the party came to power in 1976, and was re-elected in 1981 and 1985. However, in contrast with these provincial election successes, and not unexpectedly, the PQ failed to obtain the support in the referendum on opening talks on sovereignty-association.

The extended period before the 1980 referendum was a period in which political elites were able to promote forms of political association that might satisfy competing demands of the Quebec community and the other provinces within the federal system. What is clear from the evidence on the developing understanding of the 'renewed federalism' sought by diverse communities is that the very concept itself was contested, and contextual. The space thus created for experienced political actors to manoeuvre, both in the lead up to the referendum, and in the immediate aftermath resulted in a division of interpretations of the outcome of the referendum. For the federalists, it was a vote for a strong Canada based on individual rights and a hierarchical order with primacy given to the national government. For the autonomists, the responsibility now lay with the federalists to make good on their commitments to profound changes to Canadian federalism that reflected the former's interpretation of 'renewed federalism'.

4.9. Post-Crisis Outcomes

4.9.1. *Outcomes Post-1982*

I defend Gagnon's (1993 p.18) assessment that Canada's FPS has regulated and managed social conflicts, and in particular the deep division between two communities on linguistic, social and economic values. Quebec achieved twin goals; the modernization of a society that had been held in stasis and was confronted by the pressures of a changing socio-economic context, and promoting the preservation of the values of linguistic and

cultural distinction that had been defended since the province first gained political identity in 1791.

In terms of how the language law affected the position of French speakers' economic situation, the 'accelerated francisation' (Fraser 2001 p.111) of Bill 101 improved the possibilities for advancement of young French-speaking employees, and, moreover, the gap in earnings between French and English speaking groups narrowed during the 1980s as the demand for French speakers, and especially bilingual Francophones, increased (Shapiro and Stelcner 1997 pp. 124-6).⁷¹ However, this process was not completed; the "hesitation" or "reluctance" in strictly enforcing the language laws' as identified by the Legault-Plourde Report of 1996, due to *laissez-faire* attitudes of successive governments, meant that 'French is still not the "normal, everyday language of work"' (ibid.p.117), an outcome sought by Lévesque in his 1968 elaboration of a future Quebec society.

Quebec has gained significant autonomy in the management of those affairs that had been contested as a result of the imperfect definition in the BNAA of 'affairs of a local or private nature' (Art. 92), which had an impact on the cultural and linguistic character of Quebec (Laforest 2014). The federal government, until the imposition of the Charter, had remained reluctant to use formal constitutional tools to arrest this process. However, during the referendum debate, and in the November 1981 constitutional conference, Trudeau used 'Machiavellian traits' of the recognition of *fortuna* in seizing opportunities to promote his own vision for Canada, and *virtu* in challenging the separatist process when such opportunities arose (Laforest 1995 pp.111-114).

The departure of the two main protagonists in the contrasting visions of Canadian federalism, with the retirement of Trudeau from politics in 1984, and the resignation of Lévesque in 1985, was followed by a renewal of political elite representation in the federal government and in the provincial government of Quebec, and renewed questioning of the fundamental relationship between the two in terms of the constitutional provisions for the recognition of the 'special status' for Quebec.

4.9.2. Failures at Meech Lake and Charlottetown for Quebec's Quest for Recognition

After the 1985 election of the QLP, the declaration by Minister for Intergovernmental Affairs Gil Rémillard on 9 May 1986 (Proulx 1986), was the first 'official' confirmation of

⁷¹ Shapiro and Stelcner (1997 p.127) do note that this position was not the same for Allophones, whose position worsened during the same period.

Bourassa's five conditions⁷² that were based on the understandings of the QLP's approach to constitutional reform, and which prioritised the acceptance of the phrase 'distinct society' in any constitutional reform. Indeed, this

'explicit recognition of Quebec as a distinct society constitutes the first demand of Quebec . . . and was even, for Rémillard, "a precondition for any negotiation which might lead to Quebec's agreement to the constitutional law of 1982"'^{xliii} (ibid.p.10).

The 1986 Annual Premiers' Conference reached agreement to start negotiations based on Quebec's 'five conditions', which led to agreement at Meech Lake on 30 April 1987 on a draft agreement, which was subject to development into a legal document and approval by all ten provincial legislatures (Dunsmuir 1995 p.9). The first approval on 23 June 1987, from the Quebec National Assembly, started the three-year time allowed for ratification, a process that was to fail, when Manitoba and Newfoundland did not ratify, and as such the Meech Lake Accord died on 23 June 1990 (Laforest 2004 p.109). The 'Achilles heel' of the agreement was the 'distinct society' clause; opposition to this was, for Laforest, developed through the continuing involvement of Trudeau in promoting the rejection of dualism (ibid.pp. 119-123).

Two reports commissioned in Quebec⁷³ confirmed that the 'Canadian dream of the Québécois was Dualism' (Laforest 2004 p.151), and the federal Beaudoin-Dobbie Report also gave qualified support to aspects of dualism in Canada (ibid.pp.159-160), and efforts were made to restart the process of reform. This led to renewed agreement on a revised text, the Charlottetown Accords in which a 'Canada Clause' was placed alongside the 'distinct society' clause in the interpretive provisions (Dunsmuir 1995 Appendix 1 pp.1-2). The Charlottetown Accords were rejected, in October 1992 referendums held simultaneously in Quebec and the rest of Canada, 'by a majority of Canadians in a majority of provinces, including a majority of Quebeckers and a majority of Indians living on reserves' (ibid.p.25). For Gagnon (2004) the Charlottetown Accord represented a retreat from the principles of duality, and an acceptance of the strengthening of federal power. This resulted in both the defeat of Mulroney's PC, and the rise of nationalist representation, both in Ottawa with the Bloc Québécois, which became the official opposition, and in Quebec with the 1994 election of the PQ under Jacques Parizeau (pp.142-143).

A further chance for Quebeckers to decide on independence came after the reversal of political elite representation post-1993; Mulroney's PC was replaced in Ottawa by the LPC under Jean Chretien, and a year later after Bourassa's retirement Pierre-Marc Johnson's

⁷² See above at 4.7.9.

⁷³ The Allaire Report commissioned by the QLP, and the Bélanger-Campeau Report commissioned by the Québec National Assembly.

QLP lost to a revitalised PQ under the 'hard line' Jacques Parizeau. The PQ had campaigned on the promise of a renewed referendum offer, this time a single-shot ballot on independence to follow their election (Bothwell 1998 pp.257-258) that would give the PQ a mandate to unconditionally separate from Canada. The outcome of this final referendum was closer than that of 1980, with a slim majority (50.6%) voting NO and (49.4%) YES to the proposal. After this latest rejection of Quebec's path to sovereignty, 'the federal regime . . . continued its assault on any form of provincial autonomy and chose to reinforce the new constitutional order of 1982 by establishing the rules of the game on its own' (Gagnon 2004 p.144).

4.9.3. Persistence of Division Post-1995

This thesis examines dynamics in FPS in case studies bounded by spatial and temporal parameters to provide similar units of comparison. As such the ending of the crisis as defined with the final acts of 1982 and 1985, the imposition of an imperfect constitutional system, the abandonment of the separatist mission of the PQ, and the acceptance by Quebec of the idea of solutions to be found within the federation, create a closure to the case study. It is not the place of the thesis to examine further crises in the system; but it would be remiss not to acknowledge that, in some cases, the search for constitutional entrenchment of those arrangements reached post-crisis is still ongoing, and might be the source of crisis later in the life of the polity. This is indeed the case in the crisis of Quebec and the rest of Canada.

The persistent division between the two communities remains that of the recognition of the special status of Quebec as one of the two founding nations of Canada, as opposed to the developing idea of a multi-cultural Canadian federal space in which all groups in society (including the First Nations) are given equal status. This is a fundamental issue which cannot be reconciled without either the separation of Quebec, which has been effectively ruled out through the use of referendums in 1980 (and in 1995), or through the creation of a bi-national federal polity, which is antithetic to the dominant multi-cultural concept of Canadian unity.

The situation that developed from the time of the Quiet Revolution in effect gave rise to two developing understandings of Canada. These opposed a bi-lingual and multicultural nation of provinces with equal status enshrined in an imposed constitution, consistently rejected by Quebec, and a bi-national federation with special status for Quebec in respect of the linguistic, cultural, legal and socio-economic differences between the bloc of nine provinces and a single, foundational, nation. Quebec's situation is deplored by Laforest (2014) as an 'exile within the federation' had, for McRoberts, resulted in a persistent

polarity of visions of Canada, and since 1995 and the 'quasi-victory of the sovereignty movement' no 'serious effort to accommodate the nationality question of Quebec had been seen'^{xliv} (2000 p.129).

In the absence of a constitutional recognition of Quebec's status, there has been a continuation of the progress in the defence of Quebec's autonomy through what the QLP of Jean Charest claimed were 'non-constitutional means, such as the signing of administrative agreements' (Charest quoted in Laforest 2014 pp.84,85) within a revitalized Canadian federal system.

4.10. Concluding Comments

This case study set out to examine the dynamics in the federal political system of Canada in a period that met the conceptual understandings of crisis as an independent variable. The territorial, or spatial context was established by the post-1867 affirmation of the political status of Quebec, which both confirmed and deepened the diverse nature of the province in comparison with the evolving Anglophone provinces.

The temporal setting of the crisis was established as the consequence of the increasing tensions between the need to adapt to the post-war development of the Canadian welfare state whilst retaining Quebec's identity, and the attempts of the QLP to respond to this situation. The perceived failures of the post-1960 Quiet Revolution led to the development of contrasting and competing understandings of nationalism; the response of the QLP to these developments resulted in a schism, with the development of a political party that advocated the radical solution of a separation of Quebec from Canada.

After the election of Bourassa's QLP with a reversal of moves towards separation, and the attendant failure of the PQ to gain power, came the focussing event, in Birkland's concept, was the dual kidnapping of 1970 that resulted in the death of Pierre Laporte, the deployment of federal troops in the province, and the declaration of the WMA.

From that point until the imposition of a constitutional solution by Trudeau in 1982 the political elites reverted to the utilisation of competing instrumentalities in their attempts to promote their understanding of a form of accommodation between the diverse groups in Canada and Quebec.

It is in the relative success or failure of these attempts within the dynamic political context post crisis that the nature of instrumentalities becomes clear. First, instrumentalities can be utilised by many actors both in the pursuit of their outcomes, and also to frustrate the success of outcomes which are antithetic, as exemplified by Trudeau's actions in the run up to the 1980 referendum. Second, the use of instrumentalities may be sub-optimal in

terms of their immediate outcome, either further straining relationships, in the case of Bourassa's language laws, or may be frustrated by the powers retained by the federal government. Third, the use of instrumentalities becomes effective in those areas where existing constitutional provisions are incomplete or silent, as in Quebec's development of an indigenous foreign policy activity, and in the ability of political elites to offer to their electorates the option of direct democratic participation. In this last example, the use of the instrumentality can have the effect of changing the potential influence of a political elite, as in the case of the PQ's electability, and create a dynamic force which requires responses from political elites with opposing positions, as in the case of Trudeau's responses to the PQ's election after 1976.

In the post-referendum dynamics, the relative strengths of the positions of the political elites on the future shape of federalism in Canada had changed, and this resulted in the use of instrumentalities by Trudeau in forcing through constitutional reforms, but the refusal of the separatists in Quebec to accept these reforms led to further efforts to find acceptable compromises. However, these were only to take place once the political elites that had espoused polarised positions were replaced by alternative actors whose approaches were more towards an acceptance of the de-facto development of Quebec's status within Canada. These new efforts were in turn to fail, and were to result in further divisions between political actors in the post 1992 period.

5. Case Study – UK/EC 1987-1993

5.1. Introduction

This case study examines the period between 1987 and 1993, during which European political elites sought to transform the Communities into a Union, a process accelerated by the prospect of a unified Germany. For the UK, the completion of the single market set out in the SEA (1987) was entirely consistent with the drive towards free market economies and reduced governance. However, the change in direction, and tempo, of the integration process became clear as Jacques Delors, Francois Mitterrand, and Helmut Kohl pushed forward with ideas of deepening integration, with the emphasis on supranational integration over intergovernmentalism. The need to tie in France and Germany into a new treaty framework with provision for economic, monetary, and political union created tensions as the UK fought to preserve its preferred model for integration, based on states' sovereignty and intergovernmental cooperation in all but the field of trade. The crisis developed over the late 1980s, with the focusing event of Thatcher's forced resignation in late 1990 – at the time when the other eleven Member States⁷⁴ were in broad agreement on the main structural and policy changes needed in a new treaty to be signed by the end of 1991.

Thatcher's successor, John Major, continued defending the UK's interests, but the negotiations at Maastricht in late 1991 were ultimately to reach agreement in extensive policy areas, but only through a slew of innovative arrangements, which allowed the UK's position to be accommodated. The final Maastricht Treaty did not come into force until 1993, as the MS needed to ratify the treaty according to their national governments and constitutional requirements. In the UK, the crisis seemed to have abated, with the final acceptance of the treaty after a lengthy parliamentary process. However, this process was accompanied by a rise in political antipathy towards the direction of the integration process with the creation of political parties which were to campaign on calls for referendum on the nature of the UK's participation in the EC (the Referendum Party), and subsequently on a single question, withdrawal from the Union (UKIP). These parties struggled to gain parliamentary representation, and with the crushing defeat of the Conservatives at the 1997 elections the UK's political leadership under Tony Blair's Labour Party positioned

⁷⁴ Henceforth the 11 MS.

itself as more ostensibly pro-European. In the terms of analysis of the thesis, this represented a return to the levels of immanence of the crisis, with a broadly pro-European party in power, although policy differences, notably on the question of the single currency, remained.

In the case study, I firstly examine the reasons for the UK's particular approaches to European integration, drawing on the literature that discusses the evolution, and effect, of the UK's position as a world power from 1870 to post-WWII. I then take up the case study from 1984, the point at which the largely sclerotic decade that followed the UK's accession gave way to a decade of substantive change in the integration process, that whilst initially positively accepted by the UK was, post-1987, to become antithetic to her fundamental values and ideals. I examine the developing divisions between the integration approaches of the UK and the other MS, and the attendant tensions that this created within the UK's political elites. After the departure of Thatcher, seen as the focussing event in the crisis, I examine the new and changing relationships between the UK and the other MS, and the way that new approaches and institutional frameworks developed to enable the ultimate signature of the Maastricht Treaty. I then briefly cover the post-treaty period, where evidence shows that the underlying divergence between the UK's and the EU's understandings of integration remained substantial.

5.2. The UK and European Integration

5.2.1. The Paradox of UK Approaches to European Integration as a Federal Project

Michael Burgess (1995) gives a fascinating underpinning to the debate on the UK's position on European integration in the post-WWII period, where he argues that there was a longstanding presence of federalism as an ideology within UK political elites. Post 1870, the unification of Germany and Italy prompted ideas of a 'United States of Europe' in which a federation would 'guarantee peace and liberty in an age of large-scale political units' (Burgess 1995 p.134). Such ideas were discussed in the UK in the late 1800s, and re-emerged with greater strength and a broader acceptance after the cataclysmic events of 1914-1918 (ibid.pp.135-138).

However, after the end of WWII, 'the idea of a federal Europe opened up a glaring gap in British politics between rhetoric and reality' (ibid.p.151). The reality of European integration is best understood in the Schuman declaration, in itself a reflection of the plans of Jean Monnet, and it is a federalist reality based on the creation of supranational community (Pentland 1973 pp.174-176). Beloff (1996) argued that this view was of a process of

integration in which, although with no fixed timetable, the ultimate goal was the passage to the new Union of

*'the main attributes of sovereignty, that is, the making and interpretation and enforcement of laws, as commercial policy, the issuing of currency and the control of credit, security and defence, **which had been in modern times the attributes of the nation state**' (Beloff 1996 p.3 emphasis added).*

Indeed, the direction of travel, and ultimate *finalité* of the integration process was set out by Monnet, and expressed by Schuman in 1950:

*'By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a **European federation** indispensable to the preservation of peace' (Europa 2016 emphasis added).*

For Beloff, this was a view only held by a minority among UK statesmen, who had, since post-WWII, hoped for a Europe based on the same principles of eradicating war and conflict, but through 'the actions of nation states, using the supranational organisations as vehicles for their common purposes when this seemed desirable' (1996 p.3). Northedge (1983) discussed how this preference for the support and promotion of integration along 'traditional' (p.17) intergovernmental lines contrasted with the growing support from people in Western Europe for 'pooling sovereignty' (ibid.) in the creation of forms of 'limited federation'.

Prime Minister Winston Churchill made clear the understanding of British involvement in response to Aristide Briand's 1930 proposals for a United States of Europe: '[w]e are with Europe, but not of it. We are linked but not compromised. We are interested and associated but not absorbed' (cited in Gowland and Turner 2000 p.19). He repeated this idea of being 'with' but not 'of' Europe at Zurich in 1946 (Churchill 1946), and again once re-elected as prime minister in 1951 (Geddes 2004 p.24).

5.2.2. Sources of Divergent Values

This understanding of the nature of European integration as antithetical to the UK's interests has a number of sources that are discussed in the literature. Beloff (1963), writing just after de Gaulle's first veto of UK membership, argues against the dismissal of the "Little England" element in British political attitudes' (p.576) that draws from a combination of nationalist and isolationist strands, which tend towards 'repudiating the necessity of any permanent political entanglements and emphasizing self-reliance' (ibid.). Northedge confirms the idea of a 'mental detachment' (1983 p.16) from Europe, 'a place for holidaying, not for politics' (ibid.p.15), but argues that this 'traditional' position came about as the UK's foreign policy interests shifted from Europe with the growth of her Empire, and that 'for centuries after the Norman Conquest in 1066 England and the continent [had]

formed an undivided political community' (ibid.p.16). For Marcussen et al. (1999 p.625), British élite views can be summarised as in terms of 'othering', where Europe is Britain's other, and which

'reflect collectively held beliefs about British, particularly, Anglo-Saxon identity . . . There is still a feeling of "them" vs. "us" between England and the Continent. In the political discourse, "Europe" continues to be identified with the Continent and perceived of as the, albeit friendly "other" in contrast to Anglo-Saxon exceptionalism' (ibid.).

These antipathies towards European integration came from a range of sources, which have, for Northedge,

'made the process of British association with the movement towards unity in Western Europe more painful than it has been for any other country' (1983 p.20).

For Skidelsky (1992) the principles underlying the UK's policies are 'considered so axiomatic they are hardly worth stating' (p.107), but, following Tilly,⁷⁵ these are foundational to the UK's identities and values as represented by political élites. The first, and most axiomatic, is the survival of the attitudes that draw from the physical, geographical separation of the UK from the Continent (ibid.p.108). Ash identifies a sequence of separation, with the physical followed by, after the end of the Hundred Years War, a political separation from the rest of Europe. The historiography of this separation, 'the dominant version of our history well into the 1950s and 1960s' (Ash 2001 p.6), was born in 'late Victorian Britain' (ibid.); it is of the exceptionalism of British (or English) history of '[t]he slow, steady organic growth of institutions, of Common Law, Parliament, and a unique concept of sovereignty, vested in the Crown in parliament' (ibid.p.6). It is, for Ash, to be contrasted with 'the fickle mutability of the continent, with its constantly changing regimes and borders and monarchs and constitutions' (ibid.).

The question of the nature of sovereignty is at the heart of the British problem with European integration in which parts of sovereignty remain at home where other parts are 'signed away to other authorities in Brussels or elsewhere' (Northedge 1983 p.23). Absolute power, inherited from absolute monarchy, rests with the government, with little or no constitutional or judicial restraint. Governments may decide to give powers from the centre to other authorities, but 'it could be taken back again if the centre felt like it'⁷⁶ (ibid.). For Northedge, the very fact that Britain had survived WWII without losing her sovereignty, as had been the case with many Western European states, made it more difficult to

⁷⁵ See discussion on page 61.

⁷⁶ Writing in 1983, Northedge could make these arguments quite convincingly. From the perspective of 2017, it is no longer possible to make the same arguments; the devolved powers of Scotland, Wales and Northern Ireland, and the existence of the Supreme Court, have all substantially changed the constitutional framework of the UK.

contemplate losing sovereignty – where for those states which had lost their sovereignty ‘it is not too hard to get accustomed to the idea of losing it again’ (ibid.p.25).

Another factor, the product of Empire, was a natural affinity for the old links between the country and the Commonwealth, based on ‘popular sentiment that could easily be mobilized in favour of “kith and kin” . . . and against “foreigners” in Europe’ (George 1990 p.16). The idea of the myth of the UK’s identity, or more precisely the English identity, and the effect that this domestic constraint has on foreign policy, is theorised by Risse. He argues that the construction of a notion of ‘Englishness’ since the 1950s has created notions of incompatibility and distinctiveness with Europe, and ideas of federalism or supranationalism (Risse in Geddes 2004 pp. 26-27).

For William Wallace, post-WWII, the national identities of states, the image projected in dealings with the ‘foreigners with whom [the government] deals’ (1991 p.66) changed. For those states that were ‘occupied or defeated’ (ibid), this led to a redefinition of the ‘basis of nationhood’, and with the phenomenon of rising interdependence has brought about an erosion of earlier boundaries ‘between the national and the foreign’ (ibid.). In the case of the UK, the development of *pragmatic* relationships between the UK’s political elites, and broader society, with Europe (and indeed the wider world) has evolved along with the rise of interdependence. However, the development of the ‘national rhetoric and imagery’ (ibid.p.68) of many political elites in the UK has not, followed, for as Wallace argues:

‘The close links between the concept of the British state, the centrality of the Westminster parliament, the distinctive traditions of English common law and the myth of English exceptionalism - a free country confronting an unfree European continent - have made it peculiarly difficult for the political elite to come to terms with the redefinition of national identity needed to cope with international economic and social interdependence and with Britain’s altered international position’ (ibid.p.69).

This inability to move beyond ‘ideological assumptions which date from the Edwardian era and beyond’ (ibid.) is not located within one political party, but cuts across party lines. For Wallace, this continued presence of a nostalgic understanding of the past in contemporary understandings of national identity prevents the ‘pursuit of altered objectives in changed circumstances’ (ibid.p.70). It is precisely to these changed, and changing, circumstances that the analysis now turns, to examine the UK’s developing relationship with European Integration.

5.2.3. UK’s Developing Relationship with European Integration

The post-war reconstruction of Europe saw the UK lead in many of the projects that worked towards the re-establishment of economic and security order, but as Northedge (1983) pointed out, these were predicated on ‘international cooperation . . . on traditional lines’

(p.17), that avoided any surrender of sovereignty. Britain proposed alternative formations – the OEEC,⁷⁷ and what was to become the Council of Europe, while rejecting the Schuman Plan that required the surrender of sovereignty to a High Authority (ibid.), and which was to be ratified by six states⁷⁸ as the European Coal and Steel Community (ECSC). After the French failed to ratify the agreed European Defence and Political Communities (which the UK had also declined to join for similar reasons), the ECSC Six met at the Messina Conference to frame a European Economic Community (EEC) which ultimately adopted a similar institutional architecture to the ECSC, with supranational and intergovernmental elements. Britain attended the conference as an observer, but in spite of US support for the project, declined to participate, and set up a more limited free trade area with six other Western European states. The salient aspect of the UK's alternative proposal, EFTA,⁷⁹ was that it strictly limited the depth of integration, with no surrender of sovereignty in the competence of economics (George 1990 pp.26-27).

The UK's position on EEC membership changed in the period after the 1956 Suez crisis; a 'psychological watershed' (Lyon 1989 in George 1990 p.57) in Britain's approach to European integration. As Burgess (1995) discusses, the confluence of the Suez crisis, Macmillan's understandings of the future of Britain's relationship with the Commonwealth, 'his own ability to sense which way the economic wind was blowing in the late 1950s' (Burgess 1995 p.153), combined with a belief that 'the constitutional and political aspects of membership could be confined to modest proportions' (ibid.). The decision by Macmillan to apply for membership of the EEC started a new debate in the UK, which was to rehearse and reify the ideas of indivisible sovereignty that were to reappear in subsequent debates. These turned around questions of the extent to which the EEC was a 'Trojan horse' for a federalist project of federation, and the extent to which the UK had already surrendered elements of sovereignty in her 'membership of NATO, EFTA and the WEU' (ibid.p.155). Macmillan's Cabinet discussed how the UK's accession to the EEC, albeit post-Treaty of Rome would still offer the chance to influence the final shape of the EEC with the result that:

⁷⁷ The Organisation of European Economic Cooperation.

⁷⁸ France, West Germany, Italy, Belgium, Netherlands and Luxembourg.

⁷⁹ European Free Trade Area.

'The effects of any eventual loss of sovereignty would be mitigated:

- 1) *by our participation in majority voting in the Council of Ministers and by our being able to influence the Commission's work;*
- 2) *if resistance to Federalism on the part of some of the Governments continues which our membership might be expected to encourage'* (Beloff 1996 pp.62-63).

But, Beloff also identifies an understanding in the same discussions of the 'process in the Community'; where existing interdependence placed 'no constitutional brake on our power of independent decision' (ibid.p.63), joining the EEC would impose 'treaty limitations of a more precise and definite character than any existing alliances impose' (ibid.).

This contrasts starkly with the interpretations offered by Gaitskell, leader of the Labour opposition, during the 1961 debate on the commencement of negotiations for the UK to join the EEC. Gaitskell reminded Macmillan of the latter's 1951 statement that 'for us to sign the Treaty of Rome would be to accept as the ultimate goal political federation in Europe, including ourselves' (Burgess 1995 pp.156-157). Gaitskell spoke again about federalism and Europe at the Labour Conference in early October 1962. He argued that joining the EEC would put the UK at risk of participating in a project whose destination might be unsure at present, but that the creators of the EEC had intended to have a federal nature, and ultimately become a political federation (Gaitskell 1962 p.7). He argued that this would make the UK into 'no more than a state (as it were) in the United States of Europe, such as Texas and California . . . the end of Britain as an independent nation state' (ibid.). Gaitskell went on to reiterate the threat to Britain's independence, arguing that to take the decision to join the EEC 'means the end of a thousand years of history' (ibid.).

Ultimately the decision to join what was, for Beloff (1996), a process of integration in which '[t]he political objectives . . . were dangerously obscure' (p.70), was vetoed by Charles de Gaulle. However, as Burgess (1995) discusses, the legacy of the limited and fragmentary discussions on the nature of federalism and sovereignty was the misunderstanding and misrepresentation of both terms (p.163), a legacy that survives until the present day.

Harold Wilson, successor to Gaitskell as leader of the Labour Party, took office at the General election of 1964, and although understood as an anti-marketeer had, by 1966, both a renewed majority, and a cabinet dominated with pro-marketeers⁸⁰ (Beloff 1996 p.71). The 1966 Labour Party manifesto contained commitments to enter the

⁸⁰ Beloff cites Roy Jenkins, Tony Benn, and George Brown. Jenkins was to continue to support EC integration, Benn was to change sides on the issue.

Communities⁸¹ 'provided essential British and Commonwealth interests are safeguarded' (George 1990 p.37). Beloff argues that the origins of Wilson's changed stance on the UK's entry into the EC are unclear, merely citing the growing understanding of the 'fading out' of the Commonwealth 'as an organization' (Beloff 1996 p.71). George (1990) points to the presence in the cabinet of Brown, who believed in 'the necessity for a wider economic zone than the nation-state to become the basis for future prosperity' (p.37), as well as the 'realities of office' that contributed to Wilson's change of position (ibid.). However, his understandings of membership were predicated on an evolving EC that had seen a reaction to supranationalism in the form of the Luxembourg Compromise (Burgess 1995 p.164). Wilson interpreted the Treaty of Rome as containing the potential for a 'great deal of supranationalism', but it 'did not imply federalism', and argued that in the case where advances in political union were possible, these would not imply advances towards 'federal control of foreign policy or the creation of a European defence policy' (ibid.p.165).

In this respect, the second application had many similarities with Macmillan's, in that both were luke-warm in respect of their embrace of the understandings of the integration project as 'espoused by the leaders of the founder states' (George 1990 p.40). De Gaulle's 1967 rejection of this second attempt confirmed that, in his view, 'very vast and deep changes' (de Gaulle 1967 cited in ibid.p.38) would have to take place in Britain before the UK could join.

These changes did indeed occur, in both the global political economy and in the leadership of the actors involved, and, to a certain extent, in the attitudes towards the EC of the UK's elites, and vice-versa.

In the first of these realms, the gradual disintegration of the Bretton-Woods system of fixed exchange rates, and a deterioration of the US's relationship with Western Europe over defence, acted as a push factor (George 1990 pp.42-46). In the second of these, the election of the pro-European Edward Heath at the head of a new Conservative administration in 1970 came soon after the replacement of de Gaulle by Georges Pompidou as French President, and with Willy Brandt as German Chancellor. Pompidou was seen as 'more pragmatic' than his predecessor, and willing to accept the UK's membership of the EC (Beloff 1996 p.76), and alongside Brandt was 'in favour of the first EC enlargement' (Burgess 1995 p.165). In the third realm, there was an apparent

⁸¹ In 1965 the EEC, ECSC and Euratom Treaties were grouped by The Merger Treaty, and henceforth became the EC – the European Community. Whilst the EEC, or the Common Market, remained common parlance in the UK for the European integration project, from this point forward we shall adopt the term EC. Ultimately, the UK did pass a bill – the European Communities Act 1972, to join these communities (Burgess 2000 p.86).

rapprochement in understandings of integration by the UK and France, with Pompidou's assurances to 'British viewers on television that by "Europe" he did not mean "federalism"' (Beloff 1996 p.76.), and UK government assurances to parliament in a White Paper that in membership '[t]here is no question of any erosion of national sovereignty' (ibid.).

The presentation of the White Paper on accession to the EC, in July 1971, re-opened debates on the nature of the UK's membership, and the nature of the EC's potential development. For Burgess, Heath had made an exaggerated claim at the start of the debate on the development of a consensus on both these concepts amongst UK parliamentarians (1995 p.166). In the subsequent debates, and as might be expected given the cross-party dissonance on the question, the critique of the EC project involved questions of the direction and speed of travel of the integration project, and the inexorable deepening of involvement implicated in membership (ibid.pp.166-7).

Later debates in parliament on the motion to apply for membership continued to be haunted 'by the spectre of federalism' (Burgess 1995 p.167), and 'in the public mind . . . political integration had become synonymous with federalism. And federalism meant *ipso facto* the surrender of British sovereignty' (ibid.). These caveats notwithstanding, the Conservative government enjoyed a majority of 112 in the 28 October 1971 Commons vote and an overwhelming majority in the Lords (Beloff 1996 p.77).

Participation in the EC required the resolution of an outstanding problem from the de Gaulle era, that of the funding of the EC's budget. De Gaulle had halted plans for the EC to have its own budget, in line with his preference for restricting the supranational nature of the Commission, under Pompidou this changed, and agreement was reached for an own-resources funding formula (George 1990 pp.53-54). This agreement, which came between the second veto, and Heath's renewed request for membership, created terms that were unfavourable for the newly joining UK, which 'faced the prospect of becoming one of the largest net contributors to the budget' (ibid.). In early accession discussions, in July 1970, and in May 1971 Heath had sought, and obtained, assurances that these problems would be dealt with after the period of transition, and that imbalances in budget contributions would reduce as the budget expanded, and the UK became the beneficiary of funds other than its limited CAP receipts (ibid.).

In the Paris summit of 1972, at which the three new candidate states⁸² participated, the discussions around the future shape of the EC were, for George (1990) a form of

⁸² The UK was seeking to join at the same time as Denmark, and the Republic of Ireland.

'constitutional convention' (p.57). Here the main direction of the developing community formed part of a final communiqué, and Heath's priorities and reserves indicate some of the areas where future conflicts would appear. In the area of common social policy, the common consensus amongst all of the MS, with the exception of Britain, was for the development of common employment, and social security policy (ibid.p.59). As George points out, this opposition continued, to the point where during the UK's 1976 presidency Thatcher 'tried to wipe such issues off the Community's agenda once and for all' (ibid.)

In the area of Economic and Monetary Union (EMU), which had been set out in an earlier summit, the UK's initial response had been positive, notably after the 1971 Dollar crisis (ibid.p.61) but the UK's developing 'awkwardness' (George 1990) came with her preference for the continuing use of non-community organisations, the OECD and IMF, over placing monetary management with the Commission (ibid).

However, in spite of these differences, the 1972 European Communities Bill became an Act of Parliament on 17 October 1972, and the UK became a member of the EC on 1st January 1973. George describes the UK's developing relationship post-accession as one where the UK's 'strong pursuit of national interests had not been paralleled by the need for compromise and package deals' (ibid.p.70).

The defeat of Heath's Conservatives in the February 1974 general election was largely due to domestic issues, notably the issue of wage restraint, and resulted in a minority Labour government under Wilson. The second election in that year, in October, produced a small majority of three seats. At both elections, the Labour Manifesto included a commitment to renegotiate Britain's terms of entry, followed by a referendum on continuing membership (Beloff 1996 p.79). The renegotiation of the UK's terms was carried out by James Callaghan, finalised at a meeting of the European Council in March 1975 at Dublin (ibid.p.85). Notwithstanding that the 'original terms of entry were modified in no substantial respect' (Northedge 1983 p.27), Wilson portrayed the negotiations as 'an unequivocal acceptance of the British demands, a capitulation of the foreign dragons to the courage of the British champion' (George 1990 p.89). In many respects, the renegotiations were a cosmetic exercise; the actual terms of membership were not at the heart of the matter, what continued to be at the heart of discussions in both camps was the question of sovereignty, although predominantly a Labour concern (ibid.pp.88-89, Beloff 1996 pp.80-82). Ultimately, Wilson, and the majority of his cabinet, voted in favour of presenting the terms to the UK's electorate. However, the decision in Parliament to accept the terms highlighted the continuing split in the Labour Party on acceptance; a majority of Labour's MPs voted against the Bill, which only passed thanks to solid Conservative support (George 1990 p.93).

During the referendum campaign, more mundane issues submerged discussions on high-politics issues of sovereignty, and the long-term nature of the UK's commitment to participation in a project whose destination was uncertain (ibid.p.93, Beloff 1996 p.83). These hinged on matters of price stability, and on the personalities of the opposing campaigners. Here, the characteristics of the leave campaigners, 'a motley collection' (George 1990 p.94), compared poorly with the majority of remain campaigners whose experience in government contributed to a preference amongst voters for the preservation of the *status quo*. The British voters finally decided on 25 June 1975, and for Northedge (1983) the popularity of the choice to remain,⁸³ reflected a 'sense of relief that Britain was at last in the Community and the acrimony and disappointments of the past were over' (p.26). However, in a stark contrast to this, and consistent with the developing relationship between the UK and the EC, Northedge highlights the fact that accession to the EC was seen as 'a policy of last resort' (ibid.). Britain had, reluctantly, to accept the fact that her foreign policy based on the role of a link between 'Europe, Commonwealth and the Atlantic Community [notably with the USA]' had weakened in respect of the latter two of these three (ibid.p.27). In a last comment, he argues that 'in the innermost thoughts the British were never really convinced about the merits of European unity: unity was all right as a slogan . . . but it was not a programme for practical action' (ibid.p.26).

The case study now moves forward, to re-join the process of EC development, after a decade of glacial development in the integration process, to track the events after the 1984 Fontainebleau Summit, and a relaunch of the EC's early dynamism.

5.3. The Crises

5.3.1. *European Integration and Crisis Immanence*

The period from the resolution of the UK's budget question, and the arrival of Delors at the EC, in 1985, and Thatcher's Bruges speech of September 1988 encompassed the passage of the SEA, that set out a new or newly re-stated direction for European integration. A brief discussion of this period helps in the understanding of how the immanent opposition to deeper EC integration was revived and became progressively more evident among UK elites.

The 1984 Fontainebleau Summit came at a period when the macro-economic policies of the twelve MS came to converge on a monetarist, low tax-low spend model, where tackling

⁸³ Over 67% on a turnout of nearly 65% (George 1990 p.95).

inflation, as opposed to maintaining full employment, became the prime goal of government policies (Marcussen 1999 pp.383-411). Newly appointed Commission president Jacques Delors' early efforts in restarting the activities of the 'sclerotic' EC focussed on the completion of the single market, an area on which all MS could agree.⁸⁴ Thatcher's UK Government, having finally gained resolution of the long-standing dispute over budgetary contributions, supported the development of the single market programme, but with misgivings over the social aspects of the proposals (Pryce 1994 pp.36-7). These early understandings of the extension of the single market to which Thatcher cleaved were predicated on concepts of liberalization, 'with implications for deregulation and elimination of government controls' (Baun 1996 p.23).

The preference for 'low politics' by MS came to be challenged by the new post-Cold War context and the 'geopolitical earthquake' that followed the sudden collapse of the Soviet Empire, the Berlin Wall, and the prospect of a reunified Germany (Baun 1996 p. xii, 1-2). As Baun argues, the effect of these events was to create a new context for European integration in which both the development of 'low politics' in economics, and 'high politics' in the process of a deepening of integration, reflected in the processes and content of the Maastricht Treaty. For Baun,

' . . . although the treaty had important roots in EC developments before 1989, particularly in existing plans for Economic and Monetary Union (EMU), it can also be understood as the response of European governments to the new geopolitical conditions and imperatives created by the end of the cold war and German unification' (Baun, 1996 p.3).

Moreover, the prospect of Eastern enlargement brought with it the need for ' . . . deeper integration . . . to enable the Community to serve as the architectural cornerstone for the New Europe and to allow the EC to adequately address the problems and needs of post-communist Eastern Europe' (ibid.).

5.3.2. The Impact of Implementing the SEA

It was the development of the Delors' 1992 project as a product of the 1987 SEA, or at least the developing understanding of the transformative potential of this project, that was to steadily bring Thatcher, and the neo-liberal ideas that she and her supporters held, into an increasingly adversarial position with the EC, and was to finally result in the crisis in the critical months in the run-up to the Maastricht Treaty.

The SEA included a timetable for the removal of physical and other barriers to trade and the movement of goods, persons, services and capital under Art 8a, formalized new policy

⁸⁴ See Grin undated p.5, Pinder (1996) p.126.

areas including 'economic and social cohesion' under Art. 130a, and extended the scope of decisions made by the QMV system, whilst simultaneously giving the European Parliament (EP) an expanded role in consultation under Art. 100a, including in the area of 'most of the measures "which have as their objective the establishment and functioning of the internal market"' (Nugent 2010 p.54).

The SEA had as an over-arching purpose the completion of the single market, but this was to create tensions in the relationship between the UK and the EC, and within UK political elites, as forces for integration implicit in the SEA, and reactions to these, became clear in a series of speeches from Delors, as Commission president, and Thatcher, most importantly in the September 1988 Bruges Speech.

At the EP in January 1988 Delors summed up the Commission's programme for the year as centring 'on exploiting the large market as a force for integration' (EC 1988b p.7); although the form that such integration would take was something the MS had yet to agree on (ibid.p.8). At the subsequent summit in Brussels, agreements paved the way for the completion of the large market at the Hanover European Council in June 1988. Delors regretted the lack of progress in the social area, where he hoped that the Council would give a political signal on the desire to 'create a common economic and social area rather than just one big market' (EC 1988b p.2). He also argued for the realization of economic and monetary union, which formed part of the SEA and also was seen as a necessity following the adoption of the freedom of capital movement and in liberalizing financial services (ibid.).

The outcome of the Hanover Council largely met these aspirations, including the social dimension, with a stress on promoting both employment, and workers' conditions. In addition, the Council reconfirmed the content of the SEA and the agreement reached on 'the objective of progressive realization of economic and monetary union' (EC 1988a p.164).

The decision taken at Hanover to renew the mandate of Delors as President of the Commission, was, for Thatcher, one that the UK 'whole-heartedly supported' (Thatcher 1988a), but she did use the post-summit press conference to make clear her understandings of the general direction of European integration in the implementation of the SEA. Her comments on the social dimension reflected the neo-liberal understandings of this concept, promoting the argument that the single market would be beneficial in 'improving everyone's living standards and working conditions' through the pursuit of 'sound economic policies which produce non-inflationary growth and which create jobs' (ibid.). She also reflected on the creation of the Delors' Committee set up to discuss how

the EC might achieve the progressive realization of EMU – but was clear in her disagreement with the idea that such a union might result in a single currency, a European Central Bank, and how that to achieve an irrevocable fixing of currencies would ‘mean giving up many national powers’ (ibid.).

A week later, in the EP, Delors commented on the outcome of Hanover (EP 1988 p.137). He discussed progress made in the European social area, and monetary integration, which followed from the implementation of the ‘Delors’ package’ (ibid.p.138). In an indication of his understanding of the UK’s distaste for EC directives in the area of employee/company involvement,⁸⁵ which ‘would disrupt voluntarist systems of industrialist relations’ (Docksey 1986 p.281), Delors made it clear that in the area of employee involvement in European companies’ statutes would be optional (EP 1988 p.138). He also recognised differences of approach that MS had on the ‘order of priorities’ between political and monetary union; where some favoured political convergence before monetary union, and others the inverse,⁸⁶ and on issues of the Central European Bank, would have to take into consideration not only technical issues, but ‘the macroeconomic dimension and the institutional and political environment’ (ibid.p.161).

However, Delors also commented on the shift of decision making away from the intergovernmental Council of Ministers towards a triangular institutional framework of the Council of Ministers, EP, and the Commission, based on his qualified advocacy for fresh proposals for an extended role for the EP: ‘though not in agreement with all of these, I have lent them my personal support, for two reasons: the need for efficiency, and the *displacement of the centre of decision-making*’ (ibid.p.140 emphasis added).

Delors went on to say, and this is what was to prove most controversial, that

⁸⁵ For a discussion of the arguments raised by the Vredeling directive see Christopher Docksey (1998) ‘Information and consultation of employees: The United Kingdom and the Vredeling Directive’ *The Modern Law Review* 49:3 pp. 281- 313 [online] available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1986.tb01690.x/pdf> accessed 07/10/2015.

⁸⁶ See Wolf (2000) on the contrasting understandings of the Locomotive and Coronation understandings of attaining EMU.

'My own feeling is that we are not going to manage to take all the decisions needed between now and 1995 unless we see the beginnings of European government, in one form or another. Otherwise there will be too many decisions to take, too many complications, too many sources of delay. Quite what form this might take remains a matter for conjecture.

As for the displacement of the centre of decision-making, I find it extraordinary that the national parliaments, with the exception of those in the Federal Republic of Germany, and the United Kingdom, should have failed to realize what is going on. Ten years hence, 80% of our economic legislation, and perhaps even of our fiscal and social legislation as well, will be of Community origin' (ibid.).

In the context of the theoretical position of this thesis, the antagonistic positions between understandings of integration from the Delors' perspective, and that of the UK as epitomised by Thatcher and the Conservative, neo-liberal ideology, started now to become known to a wider constituency; in the written press, in televised debates in parliament, and on popular radio.

The Times led with the headline 'Parliament "doomed" by European government' (Owen 1988) for it was to this "embryo" of a European government' that 'the existing system of national parliaments would have to give way' (ibid.). *The Guardian's* position differed slightly, while they led with the headline 'Europe rules, OK? The growing challenge from the European Parliament' (Palmer 1988), the article stressed the need for the EP to bring a democratic balance to the secretive, and increasingly powerful Council of Ministers.

Thatcher responded to Delors' comments in the House of Commons, where during Prime Minister's Questions Sir Richard Body's asked:

'Has my right hon. Friend seen a report of the speech made by the President of the EEC at Strasbourg yesterday in which he estimated that, with the Single European Act in place, in 10 years' time 80 per cent of social and economic decisions now made by national parliaments will be made in Brussels? Does she agree with that estimate of 80 per cent and if it is some other percentage will she tell the House?' (Thatcher 1988d).

Her response was:

'I heard the reports of what was said in Brussels and I do not agree with what was said on the occasion.' (ibid.).

In a later interview with the BBC Radio 2 'Jimmy Young' programme Thatcher responded to the question of the speed of developments towards an 'embryo European Government' by firstly arguing that this was a reflection of Delors' position as head of the Commission, and the search for 'more and more [administrative] powers for the Commission' (Thatcher 1988b p.3). On further questioning by Young, in respect of the circumstances in which she would be prepared to hand over 'the vast majority of social and economic decisions' to Europe, Thatcher's response was categorical, there would be '**no circumstances in which I would do it**' (ibid.p.4 emphasis added).

A second fundamental difference of position between the UK and the EC on the direction of integration was to become evident after Delors made a speech to the UK's Trades Union

Congress (TUC). The TUC had a longstanding ambivalent relationship with the European project (Teague 1989), but had adopted a pro-EC stance in a reaction to the arrival of Thatcher's Conservatives in power, and in particular to their raft of 'restrictive legislation' of the early to mid-1980s (Mitchell 2012 p.33-34). In this respect the TUC cleaved onto Delors' ideas for a social dimension to accompany the liberalising programme of the single market (ibid.p.37), which comprised a proposed Charter of Rights for European workers, and for the enforceability of rights through the EU's institutional structure. Delors' restatement of these ideas at the TUC's annual conference in Bournemouth on 8 September 1988 (Delors 1988), was described as a 'thinly veiled criticism of the British Government . . . [which] brought himself into immediate conflict with the Government's view of 1992' (Rudd 1988). Consequently, the diametrically opposed positions of the Thatcher government and the Delors' Commission became evident; the speech 'enraged Mrs. Thatcher' (Grant 1994 p.89) with its specific call

'on the British Unions to play a key role in establishing a Social Europe, where statutory labor rights would counterbalance the liberalizing thrust of the Single Market project' (Mitchell 2012 p.30).

It was the connection between the development of the single market, and development of social rights that Thatcher, and latterly John Major, were to rail against as anathema to their understandings of the development of free market economies, that was to become clear in the Bruges speech and in the rejection of the Social Chapter by Major at Maastricht.

What became clear, however, was that after the passage of the 1987 SEA, and even before the additional pressures that the changing global context was to bring, the direction of EC integration was becoming increasingly problematic for Thatcher, and the supporters of a neo-liberal market, for as Burgess (2000) points out, the paradox was that for the 'single market to succeed there has to be a public recognition about the need for greater centralization of political authority in the EU' (p.198). Thatcher could, and indeed did, choose to represent the 'anti-integrationist wing of the party' (Aspinwall 2003 p.357), a reflection of her natural tendencies towards the neo-liberal (Baun 1996 p.23). This point notwithstanding, the overall values and norms of the Conservative ideology were for the preservation of 'hearth and home', an indivisible understanding of sovereignty, tradition, slow and evolutionary change in political and social institutions, many of which were reflected in the small-c conservatism of the UK as discussed above.⁸⁷

⁸⁷ For a pithy summary of conservatism, see Scruton, R., *A Dictionary of Political Thought* London: Pan pp. 90-91. For a less pithy version see Scruton, R. (1984) *The Meaning of Conservatism* (2nd ed.) Basingstoke: Macmillan.

5.3.3. *The Bruges Speech and its Impact*

On 22 September 1988, Thatcher gave a speech at the College of Europe⁸⁸ in Bruges; in this speech, her reactions to challenges to fundamental values and norms that she attached to the UK became evident. Here Thatcher made clear that whilst she considered the European integration process as beneficial in some areas of competence, and that in these there should be a single voice, this closer working did not require 'power to be centralised in Brussels' and that decisions should not be 'taken by an appointed bureaucracy' (Thatcher 1988c). Thatcher applied the guiding principles of her conservatism and neo-liberalism to the EC; 'the best way to build a successful European Community [was through] willing and active cooperation between independent sovereign states' (ibid.). The particular identities of each state were, for Thatcher, values to be preserved through the 'preservation [of] the different traditions, parliamentary powers and sense of national pride in one's own country; for these have been the source of Europe's vitality through the centuries' (ibid.). Indeed, for Thatcher there was a significant risk inherent in the integration project: 'To try to suppress nationhood and concentrate power at the centre of a European conglomerate would be highly damaging and would jeopardise the objectives we seek to achieve' (ibid.).

Essentially, for Thatcher, a centralizing integration process was inimical to the successful promotion of 'dispersing power and decisions away from the centre,' as demonstrated by the UK's model, which she summed up in a section of the speech that was widely reported:

'We have not successfully rolled back the frontier of the state in Britain, only to see them re-imposed at a European level with a European super-state exercising a new dominance from Brussels' (ibid.).

For Thatcher, continuing integration in certain policy areas was acceptable, but at the political level she sought to 'squash Delors and his ideas' (Grant 1994 p.89) of extending the role of the Commission beyond that of 'a mere civil service for carrying out the Council of Ministers' wishes' (ibid.).

In countering Delors' drive towards deeper integration, Thatcher continued to express her ideologies of the Conservative Party that had been re-elected in 1987; based on an economic vision of the state as a market capitalist economy freed from the 'harm that government intervention can cause' (Norton 1990 p.42). Moreover, although Thatcher had adopted this neo-liberal stance in the domain of the economy, her Tory, and Methodist, ideological antecedents remained strong, with the attendant views that the foundation of

⁸⁸ A 'small postgraduate body funded by member states but independent of the Community' (Thatcher Foundation 1988).

society rested in the family, and in the respect for and acceptance of 'the legitimacy of existing institutions of authority' (ibid.).

Her leadership of the party imbued elements of her credo into both the policy and the thought of the parliamentary party, but this process was far from complete, as within the parliamentary party, and indeed within her cabinet, there was a range of views on approaches to free market and monetarist positions, and on the EC. For Dyson and Featherstone elements of the party, ministers and senior officials, that supported 'a "constructive engagement" in EC matters probably formed a majority in the 1988-1991 period' (1999 pp.564-5). Thatcher's hardening of her stance towards Europe, coupled with an increasing detachment from her cabinet, resulted in her:

'Set[ting] herself a course of action in which she invested her much-vaunted stridency and resolution. Style and policy thus came to build a wall around her, which inhibited the reflection and adaptation that might have been prompted by the wider government machine' (ibid.p.565).

The rejection of Thatcher's style and the perceived lack of success in dealing with EC started with the resignations of two of her longstanding supporters in cabinet, Nigel Lawson, and Geoffrey Howe, which, coupled with the divisive effect of the debate on Europe on the party, were to culminate in her losing the support of the middle ground of the party, and ultimately her premiership.

5.3.4. 'Destructive Conflict' #1

Indeed, Paul Skidelsky draws a clear distinction between the 'constructive period' of 1984-1986 and the 'destructive conflict' of 1987-1990, with the latter period defined by the resistance of Thatcher to the increasingly explicit realisation of 'the subtext of the Single European Act . . . monetary union, tax harmonization, and a "social common market"' (Skidelsky 1992 pp.114-5). In her rejection of the process of 'building Europe through institutions' (ibid.p.116) Thatcher was seen by the rest of the EC as having 'decided to play the anti-European card to rescue herself from mounting political difficulties at home' (ibid.). In this respect, Thatcher clashed with her two important allies in her Cabinet; Nigel Lawson, Chancellor of the Exchequer from 1983, and Geoffrey Howe, foreign secretary.

Lawson shared Thatcher's understanding of EMU as 'incompatible with national sovereignty' (Beloff 1996 p.102), and in this respect was not in agreement with Howe, who

saw membership of the Exchange Rate Mechanism (ERM)⁸⁹ as a first step to a single currency;⁹⁰

[but] what both agreed upon was the need to take a more conciliatory tone towards the Commission and its initiatives and the other heads of government. They both deplored Mrs Thatcher's insistence that it was only by standing up to pressure even when Britain stood alone that its objectives could be met' (ibid.).

As such they tried to persuade Thatcher to at least accept the UK's entry into the ERM, as a way of enabling the UK to fully participate in negotiations on EMU, as a willing and cooperative partner. This would allow for the UK to negotiate on a break to the 'link between stage 1 of EMU and proceeding to the final stage' [monetary union] (Dyson & Featherstone 1999 p.548). They saw the alternative Thatcherite tactic as highly risky, with the potential for 1\ the UK's being forced into EMU, and 2\ the UK being considered as having been 'relegated to the second rank of the EC' (ibid.p.549).

The pair placed Thatcher under considerable pressure on ERM membership in the run-up the Madrid summit in late June 1989, threatening a joint resignation, and she finally conceded to a renewed negotiating position that resulted in Britain's agreement to join the ERM at a future date. The UK Press, and other EC leaders, saw this as an important concession by Thatcher, and the latter were effusive in complementing Howe for his 'victory' over Thatcher (ibid.p.551). Howe's victory was short-lived, as a 'vengeful and dismissive' Thatcher acted quickly after the Madrid summit to demote him from foreign secretary to become Leader of the House of Commons with the title of deputy prime minister (ibid.). Lawson too was to be forced into an unsustainable position, as Thatcher's advisor Sir Alan Walters was reported by the *Financial Times* as 'saying that the ERM was "half-baked"' (ibid.p.552); Lawson's demand for Walters' dismissal went unmet, and Lawson resigned on 26 October 1989. In terms of the new make-up of the cabinet, John Major, assistant to Lawson, was first advanced to the position of foreign secretary after Howe's demotion, and after Lawson's resignation was named as Chancellor of the Exchequer. The vacant position at the Foreign and Commonwealth Office was filled by Douglas Hurd. Both new actors were to play important roles in the negotiation processes, notably Major as new prime minister from 22 November 1990.

What is salient at this point, however, is the fact that Thatcher's intransigence in respect of her dispute with Lawson and Howe over the matter of ERM membership was indicative of a deep seated 'divergence of policy philosophies and principles' where '[e]ach was

⁸⁹ The system by which the MS committed to keeping their exchange rates within a set range of variance against a basket of EC currencies.

⁹⁰ See also Dyson & Featherstone (1999) pp. 563.

pursuing a different conception of Britain's role in Europe' (ibid.p.556). The very nature of the debate over this role is at the heart of the developing crisis, which, at this stage was emerging, both in respect of the perception of the UK by her EC partners of 'intransigence partnered by periodic confusion', and by UK interests, where a clear division started to emerge between those advocating joining the ERM, the TUC, the Confederation of British Industry, and those rejecting such moves; the Institute of Directors and backbench Tory Eurosceptics (ibid.p.557). The cleavages, which were to persist and grow, and to become evident to a wider audience, reflected the historic divisions on the approach to EC/EU membership, and were to persist through and beyond the immediate crisis of Maastricht.

5.3.5. *Global Changes*

In parallel with the developing crisis within the UK government, dynamic changes in the global context that had started with the process of *glasnost* and *perestroika* under the Presidency of Gorbachev were to place more pressure on the achievement of those processes of integration re-started at Hanover. For Dyson and Featherstone (1999), there had been an initial reluctance by the EC to force the pace of integration, out of respect of British sensitivities towards, notably, EMU; expectations after the Madrid conference were for 'a long-drawn-out process stretching well into the 1990s once the single market programme had been finished at the end of 1992' (p.4).

However, the prospect of a newly unified German state changed the dynamic in the EC, putting pressure on the main actors, notably France and Germany, to accelerate the process of EMU, through the early announcement of an Intergovernmental Conference (IGC) on deepening integration. At the Strasbourg IGC in December 1989 the date for the conference was set, scheduled to meet within a year (EC 1989 p.8).

The belief of Mitterrand and Kohl was that a new Germany should be 'firmly anchored' within a politically strengthened Europe (Pryce 1994 p.38). At a series of meetings during the early part of 1990 the pair had four meetings, seeking 'a solid bilateral initiative in strengthening the multilateral context of Community action' (Mazzucelli 1997 p.64). As a consequence, the two leaders called for a second IGC on political union that would run concurrently with the proposed IGC on EMU, an agreement that was reached at the EC Dublin summit of June 1990 in spite of 'Mrs Thatcher's scorn and opposition' (Pryce 1994 p.38); such matters were decided on a simple majority (Mazzucelli 1997 p.64). The parallel completion of 'German unification and European unification' (ibid.) was to be achieved through the twin process of IGCs on not just the progression of EMU, but on a new initiative, that of treaty changes to 'accelerate the political construction of Europe' (Ibid.).

Before the summer's Dublin summit, Thatcher had made clear her limits on an acceptable destination for political union, which 'should not call national identities into question,' (Mazzucelli 1997 p.64), should maintain the integrity of national parliaments and national legal systems, should not result in a centralization of powers 'to benefit the EC institutions' (ibid.), should preserve the role of NATO, and not restrict MS' rights in setting their foreign policy (ibid.). The formal negotiations were set to start at IGCs in Rome, on 13th December 1990 for EMU and 14th December for European Political Union (EPU). For the first conference, where substantive process had been made on the relevant issues, the Economic and Finance (ECOFIN), and General Affairs Councils had been charged with the preparation. However, with the political conference the agenda setting was left to the Foreign Ministers, 'with contributions from national governments and the Commission' (EC 1990a p.5) along with 'close dialogue' with the EP (ibid.).

Delors continued to expand upon his understandings of the future of integration; in January 1990 at the EP he set out his vision for the constitutional changes that would lead to exactly the type of institutional changes that Thatcher had consistently opposed:

'My objective is that before the end of the millennium [Europe] should have a true federation. [The commission should become] a political executive which can define essential common interests . . . responsible before the European Parliament and before the nation-states represented how you will, by the European Council or by a second chamber of national parliaments' (Delors 1990 in Grant 1994 p.135).

After criticism from Europhobe sections of the French government, Delors toned down his visionary rhetoric, and indeed made no further 'speeches on political union until November 1991' (ibid.p.136). However, as Grant comments, where Delors had adopted a low profile, 'others took up the battle for political union' (ibid.).

In this respect, the framework for integration offered by the 1987 SEA, and the renewed dynamic in the EC towards a new treaty, gave the EP the opportunity to re-launch the project of a federated Europe that had formed the backbone of their European Union Treaty (EUT) proposals in the 1980-84 period (Burgess 2000 p.202). Following on the Martin Resolution,⁹¹ the EP developed a Resolution on the proposed agenda of the IGCs, and in particular on the interpretation of the definition of political union set out in Dublin; an interpretation which the EP feared was 'merely a reinforcement of the intergovernmental level of cooperation among the governments of the Member States of the EC' (EP 1990 p.3). The EP advocated extended the decision-making capacities of the Council, through extending non-unanimity voting, and extending the powers of the EP

⁹¹ The Martin Resolution called for the transformation of the EC into a European Union of a federal type (Burgess 2000 p.202).

through giving the institution rights of initiative and of co-decision making. However, *contra* Delors' proposals, the EP did not see fit to argue for a new 'chamber of national parliaments' (p.6).

5.3.6. *Rome I Summit and the Developing Conflict*

The EP's proposals were in part recognised at the special meeting of the European Council on 27 and 28 October 1990, in Rome.⁹² In this preparatory meeting before the opening of the twin IGCs in December, the two processes, EMU and EPU, were discussed. The outcome of this preparatory meeting was ultimately to lead to the further exacerbation of the crisis between the UK and EU, and the downfall of Thatcher.

In respect of the IGC on EMU, the British remained the last MS to resist accelerating EMU, for Germany's Chancellor Kohl⁹³ had accepted this in return for Mitterrand's support on the former's unification plans (Pryce 1994 p.43). The Italian presidency of the summit followed Kohl's lead and pushed for the commencement of stage two of EMU on 1 January 1994 (ibid.p.43, Dyson and Featherstone 1999 p.633). Thatcher was 'incandescent' at this development; she had hoped that with Kohl's support the single currency option for EMU would have been directed towards her plans for a 'hard Ecu' that would have run alongside MS own currencies (Pryce 1994 p.43). Dyson and Featherstone argue that Thatcher, and her entourage, had not understood the link between Kohl, unification and the setting of the date for the second stage of EMU (1997 p.633). The final result was a communiqué which isolated the UK, stressing that the 11 MS had reached agreement on setting the date for stage 2, which included the establishment of a new Community institution to

*'make it possible, in particular, to: (i) strengthen the coordination of monetary policies; (ii) develop the instruments and procedures needed for the future conduct of a single monetary policy; (iii) oversee the development of the ecu'*⁹⁴ (EC 1990b p.9).

Whilst agreeing 'that the overriding objective of monetary policy should be price stability' (ibid.), the UK sought to slow down the process, argued that the substance of such moves, i.e. the creation of the institution, should be decided before the date was set – and that this approach would be acceptable to allow for the necessary treaty change.

In the second area of discussion, the setting of an agenda for the EPU conference, the conclusions of the meeting called for 'the will progressively to transform the Community

⁹² Henceforth Rome I.

⁹³ Kohl was also concerned that with an upcoming federal election in Germany this opportunity to commit to EMU might not be available in December, thoughts that he communicated to the Italian premier Andreotti (Baun 1996 p51).

⁹⁴ The ECU was the name used for a single currency at this time, only later was the Euro adopted.

into a European Union by developing its political dimension and by the strengthening of the other unions' (EC 1990b p.7). However, in response to this the UK preferred not to comment on the agreed position of the 11 MS, essentially disagreeing with the provisions (ibid., Dyson and Featherstone 1999 p.632). It should be noted, that contrary to the interpretation of the UK as isolated, it was not alone in opposing some of the elements of political integration; while a majority accepted the need for the Council to remain the main decision making body, there was no consensus on the extension of the use of qualified majority voting (Pryce 1994 p.44). Moreover, France continued to have a more intergovernmentalist approach, favouring 'increasing the role of the European Council and building representation of national parliaments into the Community framework' (ibid.). Mazzucelli identifies the contrast between the idea of the integration process proposed by Delors as being of 'general interest' in the Community with Thatcher's 'determination to defend national sovereignty at all costs' (1997 p.96). However, in a reflection of the nature of process in FPS, Mazzucelli comments on the nature of political systems such as the EC, citing the work of Robert Ludlow, in respect of the extent to which such systems can allow for a MS to 'maintain a position of reserve indefinitely without breaking either the system or itself' (ibid.). But a break was to come, in terms of the crisis that was growing in the position of the UK towards the directions of integration proposed by the negotiated frameworks at Rome, and this was in the MS government, with the events of 30 October and 1st November 1990 in London.

The isolation of Thatcher, and the conflictual relationship between her and the other 11 MS premiers was covered widely in the UK press on the Monday after Rome I. *The Guardian* commented on Thatcher's behaviour as 'like a woman determined to abort the process [of EMU] before it had begun' (Young 1990). Whilst accepting that to an extent the summit 'was never meant to go this far' in setting the start date for EMU Stage 2, Young commented that Thatcher's 'tone of abrasive contempt . . . close to hysteria' had not only removed 'any chance of securing European allies in the run up to the December conference', but had also failed to satisfy the anti-marketeters in their expectations that she might exploit the Eurosceptic elements in Europe about EMU to negotiate a better position for the UK. He ended up by making the point that the Summit in Rome 'unexpectedly reopens . . . a question which has been dead for months: is this the leader that the Tories still want?' (ibid.).

The Guardian's leader writer continued this theme, arguing that Thatcher's style, tone and 'rigid convictions' had now become a liability, in that she was no longer able to 'attract loyalty at home and credibility abroad' (Guardian 1990a). Whilst she might have enjoyed some support from the 'backbench heavyweights' (White 1990a), her ministerial

colleagues, and the federalists in the party, were faced with the prospect of trying to reach new compromises with the 11 MS at the IGCs. *The Independent* commented that this was based on the hope that the 11 MS would fear the UK's departure from EMU, a project which was embedded in the Community system of unanimity and the use of common institutions, and which would be a 'policy [that] touches on virtually every other area of the EC's activity' (Usborne and Eisenhammer 1990). In this article came an early indication of a possible opt-out, with proposals by Delors that

'while all members should sign up to the new treaty amendments, some could be given grace periods of specific lengths before being obliged to participate in Stage Two' (ibid.).

This offered an alternative solution to the problem of both keeping the UK on board, and still allowing for EMU to progress.

The Times commented that Germany, far from disheartened by Thatcher's 'protestations' was on the whole positive; the UK would have to withhold her veto over the move to Stage 2, a move seen as imperative for Kohl to 'calm French fears that a united Germany is losing interest in the EC' (Murray 1990a). Murray also picked up on the proposal by Genscher that the UK could 'be given a special status within the EU that would allow it to stay out of any agreement on monetary union for an indefinite transitional period' (ibid.).

In the context of this thesis, the extent to which the FPS will adapt in a crisis situation to accede to the demands of a MS is constrained by the rules and principles of the system. As discussed later, in the EC there are '*acquis*',⁹⁵ based on the understanding that there are laws and policies in which MS have to participate in order for the 'basic common foundation' (Mazzucelli 1997 *ibid.*p.97) of the system to be respected, defined as the agreement to adhere to the 'rules of competition policy' which extended to 'transport policy, fiscal policy, environmental policy or industrial policy' where opt-outs in these areas led to distortions in competition policy (ibid.).

5.3.7. '*Destructive Conflict*' #2

It was in the chamber of the House of Commons that the developing crisis of the direction of the EC was to play out and to become known to a wider audience, with the ultimate effect of the replacement of one of the main actors, Thatcher, and a signal change in the negotiating style, though not necessarily of substance, of the UK in the election of John Major as new prime minister. It was the moment when the crisis, which had since 1988

⁹⁵ *Acquis*, the French past participle of *acquérir*, to acquire. This term refers to those legal, normative and procedural aspects of a system that had been acquired.

and the Bruges speech been between a state of immanence and evidence, became fully evident to the elites and population of the UK, and beyond.

Thatcher gave a statement on Rome I to the House of Commons on 30 October 1990. She stressed that she saw the future of the UK as both remaining committed the existing treaties, and to the development of the EC in political, economic and monetary areas, but that in the run-up to the IGCs she had not wanted to commit to the outcomes of these in advance, and in these areas had reserved the UK's position. In respect of the EMU project, Thatcher reiterated the opposition of the government to setting a firm date for the commencement of Stage 2 (Thatcher 1990).

In terms of the primacy of the UK parliament, Thatcher stressed that

'while we fully accept our commitments under the treaties and wish to co-operate more closely with other countries in the European Community, we are determined to retain our fundamental ability to govern ourselves through Parliament' (ibid.col.871).

As far as the EMU project was concerned, she reiterated her refusal to contemplate, under the current parliament, the abandonment of the pound:

'I again emphasised that we would not be prepared to have a single currency imposed upon us, nor to surrender the use of the pound sterling as our currency' (ibid.col.870).

Thatcher was criticised by the Labour leader, Neil Kinnock, for uniting 'the rest of Europe against her' and for both dividing her own party and weakening 'the influence that Britain needs in order properly to uphold our national interests in the European Community' (ibid.col.871). When challenged over the weakened position that the entry into the ERM meant for the UK in being able to have an impact on the future direction of EMU, and how her 'tantrum tactics' (ibid.col.872) would reduce the chance of making other EU MS' heads listen to the 'sensible arguments that can be deployed in favour of sovereignty in the Community' (ibid.) Thatcher made her now famous retort:

'Yes, the Commission wants to increase its powers. Yes, it is a non-elected body and I do not want the Commission to increase its powers at the expense of the House, so of course we differ. The President of the Commission, Mr. Delors, said at a press conference the other day that he wanted the European Parliament to be the democratic body of the Community, he wanted the Commission to be the Executive and he wanted the Council of Ministers to be the Senate. No. No. No.

Perhaps the Labour party would give all those things up easily. Perhaps it would agree to a single currency and abolition of the pound sterling. Perhaps, being totally incompetent in monetary matters, it would be only too delighted to hand over full responsibility to a central bank, as it did to the IMF. The fact is that the Labour party has no competence on money and no competence on the economy--so, yes, the right hon. Gentleman would be glad to hand it all over. What is the point of trying to get elected to Parliament only to hand over sterling and the powers of this House to Europe?' (ibid.col.873).

In response to a challenge by Paddy Ashdown, Liberal Democrat leader, Thatcher clarified the link between the maintenance of the pound, and Britain's sovereignty:

'Of course, if there is a parallel currency and people choose to make more and more use of it, it could evolve into a single currency, but that could not be done without a decision coming back to this House and, I believe, to the people of this country. I take it that the right hon. Gentleman's policy is to abolish the pound sterling, the greatest expression of sovereignty. In any event, it would be totally and utterly wrong to agree to that now. That matter is one to be decided by future generations and future Parliaments. Parliament is supreme, not the right hon. Gentleman the Leader of the Liberal Democrats' (ibid.col.874).

And finally, she agreed with the position taken by former SDP Leader and anti-marketeer David Owen in his assessment of Rome I as 'a bounce which led only one way-- to a single federal united states of Europe' (ibid.col.877).

One of her back-bench MPs Sir Ian Lloyd, sounded a note of caution in reminding Thatcher of the danger of refusing to contemplate

'any change, however small and however slowly achieved, in the balance of powers between this House and the European Parliament' [in trying to achieve the] 'vision of a united Europe bequeathed to us by the great founders, including Winston Churchill, whom I believe was a federalist' (ibid.col.887).

Here Thatcher responded by accepting that some progress made under the SEA had been achieved through the use of majority voting, but that henceforth any changes should not result in losses to national identity, or with any national interests being overridden (ibid.col.888), and that changes and treaty amendments should only be made through unanimous agreement.

5.3.8. Immanence to Evidence – Woman Overboard!

The conflicting visions of EU integration, with Thatcher's vocal resistance to any further progress that might diminish the UK's sovereignty as represented by the primacy of the British parliament, to challenges to the pound, and against the promotion of a Federal Europe, became very clear in the days immediately after the summit. In her report to parliament, and responses to interventions, her position was made clear, and was widely reported in the UK media.

The focus of much of the comment was on the developing understanding of the binary choice faced by the UK in respect of further deepening and widening of the EU, that the 11 MS had made a choice at Rome I towards EMU and EPC, and that

'this is what the intergovernmental conference will decide to do. Britain will then face the decision of whether to set out down that same road, hoping to be vindicated en route [on their warnings of the folly of deepening] or dissociate herself from the entire enterprise' (Jenkins 1990a).

Jenkins went on to point out that the exchanges in the House of Commons 'illustrated how bogged down the debate in Britain remains in abstract notions of national sovereignty' with the linkages of the loss of the national currency to a loss of political sovereignty and national identity (ibid.).

Howe had written an article for *International Affairs* which, coincidentally, appeared on the same day that Thatcher made her comments on the nature of the indivisibility of the UK's sovereignty and the significance of both parliament and the pound sterling. Extracts of this article were quoted in *The Times*, and summarised Howe's position on sovereignty which opposed the singular understanding of Thatcher⁹⁶ in that sovereignty is 'something that can be divided and exploited in the interests of the nation' (Oakley and Ford 1990). Oakley and Ford draw attention to Howe's interpretation of the 'absolutist definition of sovereignty' that was advocated in the early 1970s by opponents of EC membership, and which 'can sometimes lead even experienced observers to deny in the name of theory the reality of flexibility and diversity that exists before one's eyes' (ibid.).⁹⁷

Howe's most significant act, one which was to impact on the development of the crisis over Europe, was his resignation on 1 November 1990. In his letter of resignation, and in a resignation speech to the House of Commons on 13 November, Howe made clear the wider issues on which he disagreed with Thatcher, and which reflected his thinking on sovereignty. Here he reiterated his stance on the interests of the UK being best served by a deployment of Britain's sovereignty, and his anxiety at

'the mood you [Thatcher] have struck – most notably in Rome last weekend and in the House of Commons this Tuesday [30 Oct 1990] – will make it more difficult for Britain to hold, and retain, a position of influence in this vital debate' (Independent 1990).

Howe's understanding of the nature of the European integration process reflects that of Friedrich (1968), for he argues that:

'We have done best when we have seen the Community not as a static entity to be resisted and contained, but as an active process which we can shape, often decisively, provided that we allow ourselves to be fully engaged in it, with confidence, with enthusiasm, and in good faith' (Howe 1990b).

Moreover, and once again reflecting the understandings of the evolution of federal systems as elaborated by King (1982), Howe went on to warn against a binary view of the choices facing the UK:

⁹⁶ Howe had, in a speech in Blackpool in 1990, put this concept in graphic terms: 'Sovereignty is not virginity, which you either have or you don't' (Howe 1990 p.679).

⁹⁷ Howe also argued that in the UK understandings of shared sovereignty, in respect of dealing with the Ireland question, were a long-standing feature (Howe 1990 p.680). This is very much the argument made by Burgess (1995), a monograph based on his earlier PhD thesis.

'We must at all costs avoid presenting ourselves yet again with an over-simplified choice, a false antithesis, a bogus dilemma, between one alternative, starkly labelled "co-operation between independent sovereign states" and a second, equally crudely labelled alternative, "centralised, federal super-state", as if there were no middle way in between' (ibid.).

And finally, Howe drew on Winston Churchill's understandings of federalism, and set them against the dystopian vision of European integration that he ascribed to Mrs Thatcher:

'The European enterprise is not and should not be seen like that—as some kind of zero sum game. Sir Winston Churchill put it much more positively 40 years ago, when he said: It is also possible and not less agreeable to regard this sacrifice or merger of national sovereignty as the gradual assumption by all the nations concerned of that larger sovereignty which can alone protect their diverse and distinctive customs and characteristics and their national traditions. I have to say that I find Winston Churchill's perception a good deal more convincing, and more encouraging for the interests of our nation, than the nightmare image sometimes conjured up by my right hon. Friend [Thatcher], who seems sometimes to look out upon a continent that is positively teeming with ill-intentioned people, scheming, in her words, to "extinguish democracy", to dissolve our national identities and to lead us through the back-door into a federal Europe' (ibid.).

In *The Guardian*, the crisis was defined as an argument of symbols and icons, the pound versus the ecu, the monarchy versus the Brussels bureaucracy, pints versus litres, highly redolent of the arguments at the time of the 1975 referendum; however, it was also seen as a deeper division between the compatibility between

'Thatcherism, the unending belief in the financial and moral worth of free-market individualism . . . [and] the reconstruction of the European economic order along the weakly social democratic lines epitomised above all in Germany' (Kettle 1990).

For Michel Ignatieff, writing in *The Observer*, the critical issue was that unlike the German and French, the UK retained a particular understanding of sovereignty as extending over economic areas, which had long since ceased to be in the sole control of national governments. He also identified the

'growing chasm in the country between people who still define their Britishness in terms of attachment to the old symbols of Crown and Parliament and people who, while they may still respect the old symbols, define themselves as essentially Europeans first' (Ignatieff 1990).

As Peter Ludlow (1992) pointed out, the 'several moments of high drama' were such that

'readers of the quality press, particularly in the Anglo-Saxon countries, might at times have been tempted to believe that the negotiations as a whole were at risk. In reality this was far from being the case. With the single exception of the UK government . . . all participants operated on the assumption that the political commitment to EMU was now irreversible, pushing the Community in the direction that political leadership had decided to go' (Ludlow 1992 p.420).

Ludlow went on to comment that in the post Rome I declarations, the UK's position had been clearly noted, but that the message from the II MS, and the Commission, was clear:

'Eleven governments had decided to commit themselves to Stage Two by January 1994 and to make a serious effort to move on to Stage III three years later. One had disagreed. The Eleven would nevertheless go forward' (ibid.p.428).

Here Ludlow commented that, in respect of the limitations on the nature of the Community process of consensus, the UK could not maintain her position of reservation indefinitely, either the system or the position had to cede (ibid).

Howe had also commented on this aspect of the 11 MS' available choices in his resignation speech, in that the UK's intransigence in preventing the other MS to progress in the area of EMU could result in the UK becoming isolated:

'The 11 others cannot impose their solution on the 12th country against its will, but they can go ahead without us. The risk is not imposition but isolation. The real threat is that of leaving ourselves with no say in the monetary arrangements that the rest of Europe chooses for itself, with Britain once again scrambling to join the club later, after the rules have been set and after the power has been distributed by others to our disadvantage. That would be the worst possible outcome' (Howe 1990b).

Howe advocated seeking a compromise position, as had already been made with the hard ecu proposal by John Major, but criticised Thatcher for appearing

'to rule out from the start any compromise at any stage on any of the basic components that all the 11 other countries believe to be a part of EMU—a single currency or a permanently fixed exchange rate, a central bank or common monetary policy. Asked whether we would veto any arrangement that jeopardised the pound sterling, my right hon. Friend replied simply, "Yes." That statement means not that we can block EMU but that they can go ahead without us' (ibid.).

In the aftermath of Howe's resignation speech, challenges emerged from the Europhile wings of the Conservative Party when Michael Heseltine, former defence minister, announced that he was challenging her for leadership.

Heseltine outlined his understandings of the relationship between sovereignty and integration in a speech in Hamburg on the same day as Howe's resignation speech (Murray 1990b). He 'defended the sovereignty of the House of Commons but gave a warning against any idea of Britain standing apart from closer economic ties with the European Community' (ibid.). Heseltine was convinced that the future lay in continued and increased political co-operation, 'but not political federation' (ibid.). He accepted that Thatcher had been right to approach these matters 'with proper caution', but that whilst asking that the other EC states recognise this as a prudent approach, at the same time 'we have to recognise their belief that the journey upon which they are embarked has a destination. Most journeys do' (ibid.). In seeking to 'unify the Conservative Party over Europe' (ibid.), Heseltine thus confirmed that in future negotiations with the EC national parliaments would retain their primacy, although as *The Times* commented, his position remained 'opaque', with conflicting understandings of his commitment to federalist thought, and his assertions on 'never selling out British interests' (*The Times* 1990).

Thatcher failed by just four votes to gain an absolute victory in the 20 November leadership election, which meant going to a second round (Younger 1993). Although Thatcher decided to contest the second round,

'sufficient numbers of her own cabinet decided she could not win, and rather leave the field to Heseltine, they advised her to withdraw and open the field to others. This she did with a heavy heart but great responsibility' (ibid.).

In the second round of the contest, held on 27 November, Heseltine was challenged by Major, and Hurd, and after Major had obtained a majority (albeit two short of that required by the rules) the other two candidates withdrew, leaving Major as the new party leader and prime minister. Major's election was, for Aspinwall (2003), a return to a balancing role of leadership, and an acceptable alternative to the losing candidates, both of whom were perceived as being pro-European (p.358). However, although Major inherited a substantial majority, he too was faced with the prospect of confronting a substantial, 'and increasingly vocal group . . . who provided passionate and powerful arguments against the continued integration of Europe' (ibid.).

The end of the Thatcher era, hastened by the events of the Rome I summit, and Howe's resignation, brought the European question squarely into the British and world public conscious. Described as 'a political cataclysm' (Binyon 1990) the dramatic events of October and November 1990 posed considerable challenges for the 11 MS, indeed for Binyon 'Europe's future turns on what happens in Britain' (ibid.). In the context of this thesis, and as has been discussed in the case studies of both SI and Quebec, it is in the dynamic relationship between the constituent units and the FPS that became evident in this period, and after the crisis events, that the understandings of federalism as process, and the use of instrumentalities, becomes evident.

5.4. Re-setting Relationships

5.4.1. *New Approaches at Rome II*

The initial contest between Thatcher and Heseltine, sparked by Howe's resignation speech, came as the 11 MS were considering how to take the process forward at the upcoming Rome II Summit after the problematic outcome of Rome I. The emphasis was on finding a suitable formula that would allow for the eventual victor to sign an agreement on EMU at Rome II (Palmer 1990a). The 'olive branch' that was to be offered to the UK before Rome II was 'originally floated by Sir Leon Brittan, the vice-president of the

commission and a former member of the Thatcher cabinet' (ibid.),⁹⁸ and allowed for the UK to set the timetable for joining stage three of EMU. This 'opt-out' would last until such time as the UK Parliament agreed to accessing the single currency. In Palmer's understanding this would postpone the decision on accession to '1997 at the earliest' (ibid.); what is of note here is that the understanding of the compromise was based on a question of *when* the UK joined, rather than *if*, as will be discussed later this is a form of temporary asymmetrical arrangement.

Thatcher's resignation announcement, on 22 November 1990, also brought in to the EC a sense of relief, that '[t]he woman who increasingly has stood in the way of faster and closer political and monetary union will no longer be there to apply the brakes' (Binyon 1990). The hope, for Binyon, was that whilst an overnight change in policy was not to be expected, at least 'there will be a feeling that the next prime minister can compromise' (ibid.).

Major made aware his understandings of key tenets of the 'community method'; the evolutionary nature of integration, the emphasis on consensus, and the search for compromise. In a speech to parliament before he had announced his candidature, he reiterated his position on an 'evolutionary approach' to European integration:

'In recent months, policy on Europe and the debate on economic and monetary union have occupied centre stage. That is not surprising, for there is a great deal at stake in economic and monetary union. But the rapid push towards the Delors version of economic and monetary union owes almost everything to pressures for closer political integration in the Community and very little to the fundamental need for deeper economic and monetary integration. That was the message from the Rome Council, but it is the wrong way to approach such important and far-reaching decisions. What is needed is a constructive, practical and pragmatic approach. That is the approach that the Community has been following over the past five years or so' (Major 1990).

In an interview on the day after he had announced his candidature, Major predicted the likely outcome of the forthcoming IGC, he accepted that in public that the other MS had rejected his plans for EMU based on a hard, parallel, currency (as opposed to a single currency), but he did not foresee a situation where the 11 MS would try to force a decision on the single currency option, 'the House of Commons would not accept that and no British prime minister could sign it' (Jenkins 1990b p.21). Indeed, for Major, the desire of the others for Britain to remain at the heart of the union, 'for their own reasons' (ibid.), would ensure that such a confrontation would not take place, and that some compromise would

⁹⁸ What is noteworthy here is that so far we have three claimants to ideas of opt-outs, or deferral of the UK's membership of EMU – Delors, Genscher, and now Brittan.

be found; 'Europe has developed a genius for compromise, which on some occasions has been described as fudge' (ibid.).⁹⁹

What was not clear, at the time of Major's election, was the extent to which he 'would change not only the style but the substance of her policies' (Pryce 1994 p.44). For some commentators, there was 'scepticism in some [EC] capitals about the likelihood of a change in UK policy on European union' (*The Guardian* 1990b), although there was hope that along with a change in style there would be an associated change in content with 'a more positive British commitment to building that united Europe' (ibid.). As a relatively unknown quantity, Major was seen as being 'Thatcher's poodle' in some circles, notably the French, (Lichfield et al 1990), but the German Foreign Ministry spokeswoman expressed the hope that 'she did not expect Mr Major to pursue Thatcher's opposition to European unity moves' (ibid.).

Major owed his election success to the ability of appealing to both the Thatcherite wing of the party, which tended towards Euroscepticism, and the pro-European wing of the party (Oakley 1990); what is important to note is that the nature of the compromises that Major was prepared to accept were framed by a need to 'rally the party and the country behind us' (ibid.). Much thus depended on the way in which Major's own ideas for EMU, the hard ecu plan, were dealt with at Rome II, as a first step towards an eventual single currency. More important was the hope that alongside the

'softer language on Europe . . . EC partners will be looking for . . . any sign that Mr Major is prepared to offer a compromise whereby Britain signs up to the goal of a single currency and independent central bank but reserves the right to join only when conditions are right and Parliament agrees' (ibid.).

In the run-up to Rome II, Major's new Chancellor, Norman Lamont, attended a meeting of EC finance ministers to discuss how

'a political compromise may now be possible which would allow EMU to go ahead in two further stages to its eventual goal of a single European currency and a supra-national EC central bank the "Eurofed" without risking a split between Britain and the rest of the Community' (Palmer 1990b).

In return for an agreement from the UK not to veto the two-stage approach, 'Britain will be allowed to make its own mind up about when exactly it wishes to accept the single currency' (ibid.). Once again, the interpretation is clear – Britain would join the single currency, as part of a Community – it was a question of *when* rather than *if*.

⁹⁹ Goldstein (1992) also comments how 'Europe's gift for pragmatism and compromise will surely help as it experiments with new forms of organisation' (p.131)

Major's first engagement as Premier was at the Rome II summit in December 1990, at which the twin IGCs on EMU and EPU were to be convened. However, as discussed earlier, the Rome I talks of October 1990 had produced divided positions between the UK, and the 11 MS. From the UK perspective, the new approach by the Major government was based on reconciliation, but this new mood was 'marred' (Wapshott, Keegan and Smith 1990) by the accusations from a 'distrustful' (ibid.) Delors that Major's plan for a hard ecu was 'an attempt to supplant the imposition of a single currency before the end of the decade [90s]' (ibid.). Moreover, the tensions over the social dimension of Europe were evident in the opposing stances of Major, and the Italian prime minister, and President of the European Council, Giulio Andreotti. Where the latter said 'approval of the Social Charter did not meet with any objections' (ibid.) Major had qualified his agreement to the substance of the policy area with the caveat that 'the different customs and traditions of member states on social matters must be respected' (ibid.), and repeated that '[o]ur reservations about the Social Charter are well-known' (ibid.).

The renewed antagonism towards the UK from Delors and Andreotti drew attention to the need for Major to return to the UK without having given the impression that he was 'edging towards a sell out over a single European currency and central bank' (White 1990b). Staunch *Times* critic William Wyatt pilloried Major on his lack of resolution on a clear-cut rejection of the agenda proposed by the EC, towards a political federal union, and restated Thatcher's Bruges speech arguments on the surrender of parliamentary democracy (Wyatt 1990).

In these comments, I argue that the undercurrents of the crisis were still evident, for the contrasting drivers for the EC elites, in seeking to accommodate the developing regional and global contexts, were set in, and against, domestic constraints and institutional preferences.

Notwithstanding these comments, the initial discussions did set up a framework agenda for the IGC on EPU, although this 'took an agonizing series of twists and turns as the Twelve struggled to arrive at some form of consensus, however fragile' (Burgess 2006 p.206). This agenda sat alongside the earlier agenda that had been agreed for the discussions on the EMU project, the discussions now turn to the developing dissonance between the UK and the 11 MS on the detail of the treaty outcomes of the IGCs, and the use of novel and new solutions to contain the pressures arising from these.

5.4.2. *The IGCs – the UK Versus the 11 MS*

The twin IGCs on EMU and EPU officially started in mid-December 1990, and were tasked with the preparation of parallel proposals for ratification 'before the end of 1992' (EC 1990c p.10). This process involved not just the UK and an amorphous 11 MS, each MS had their own negotiating position; moreover, within each MS there were conflicting elite ideas on matters of process. In terms of the broader picture, and in order to frame the continuing crisis, I briefly set out below the lines of general agreement and conflict, in order to highlight the UK's position, and the extent to which this perpetuated the crisis; this will help to determine the way in which the new instrumentalities functioned in respect of resolving the UK's particular grievances.

5.4.2.1. *EMU Positions*

Broadly speaking the 11 MS were in agreement with the creation of an Economic and Monetary Union, in part as a way of challenging the hegemony of the Deutschmark, but in the post-unification period the emphasis changed towards EMU as a way of integrating 'a united Germany into the Community, and thus limit that nation's future independence and dominance' (Baun 1996 p.60). The French position also reflected fears of a unified Germany, not least in the possibility that the latter might reposition herself with an evolving Soviet Union in return for achieving unification (Dyson and Featherstone 1999 p.127). Germany's position reflected this fear, by seeking 'to demonstrate its continued commitment to European integration' (Baun 1996 p.60). Braun points out that there were differences between the Finance Ministry and Bundesbank, who together sought a more cautious approach to the speed of EMU, and the Foreign Ministry, who along with Chancellor Kohl sought an accelerated timetable for EMU (ibid.). The Italian position was one of supporting EMU as a way of providing an 'external tie' (Dyson and Featherstone 1999 p.452) to counter 'long-term institutional weaknesses' (ibid.p.453). The smaller MS sought EMU, but feared 'being left behind in a two-speed EMU' (Baun 1996 p.61), and also sought to use support for an accelerated process of EMU in order to leverage 'additional financial and economic assistance' (ibid.).

This brief overview of the adopted positions sets off the stark contrast with the UK's adopted position, which, as discussed, became more and more entrenched as the full ramifications of the SEA, and the pressures of the changing geo-political context, developed. Baun sums up the position of the UK as being:

'The primary opponent of EMU . . . which viewed it as a gross infringement of national sovereignty and a step in the direction of a federal Europe' (ibid.).

Although hopes were high that Major's negotiating style might differ from Thatcher's, 'the British government did not give up its basic scepticism about monetary union *and went*

into the negotiations with the intention of limiting or delaying any EMU agreement' (ibid. emphasis added).

5.4.2.2. EPU Positions

The agenda for the EPU conference was less well-defined, although the conclusions of the Rome II summit did make clear the areas in which the IGC should seek reform notably

'the development of common foreign and defence policies, the reform of EC decision-making[sic] institutions, and the expansion of Community authority in such areas as social, environmental, industrial and immigration policy' (Baun 1996 p.79).

Once again, Baun (1996) offers a good overview of the diverse national positions on these main headings, and of particular salience to this thesis is the contentious areas where federalism, and a consequent reduction in sovereignty, was seen by the UK as embedded in the process.

In the general positioning of states, Baun identifies two lines of positioning, based on the size of the MS, and positioning on the federalist/intergovernmentalist continuum. In the smaller states support for extending the EC's supranational institution's roles, especially the powers of the Commission, was based on the premise that these states would thus have a greater voice (1996 p.79). In terms of the major states, Germany occupied a stance as a 'major proponent of political union' (ibid.p.80) both as a necessary counterpart to EMU, and also as an extension of the processes of 'peaceful European integration' (ibid.) that Germany had pursued since the creation of the federal Republic 1949, and sought to reinforce post-unification. The French position still retained much of the Gaullist reticence towards supranational integration, but in certain areas where her interests were best served accepted further cooperation (ibid.).

Once again, the UK's negotiating position, whilst modified in terms of style, continued to reflect deeply held views on those concepts of sovereignty, and socio-economic positioning, which epitomised the UK's identity as discussed in section 2 of the chapter. As discussed, the agenda for the EPU was vague in terms of the intended outcomes of the conference, in contrast to EMU where a specific goal was determined (albeit over the UK's vociferous protests). In this respect, I briefly outline below the main areas of discussion, and the UK's position, before returning to discuss at more length those areas of debate that, in terms of this thesis, were evidence of both the existence of crisis, and where new, or newly utilised, instrumentalities emerged as a (*pro-tempo*) solution.

On efforts to create a common foreign and security policy (CFSP), the outline framework called for the development of the

'vocation of the Union to deal with aspects of foreign and security policy, in accordance with a sustained evolutive process and in a unitary manner, on the basis of general objectives laid down in the treaty' (EC 1990c p.5).

In respect of defence matters, the framework called for the MS to discuss the future role of the Union, including that of the provision of 'mutual assistance' (ibid.p.6). However, the natural leanings of the UK were towards an Atlanticist understanding of policy, anchored on the dual understandings of a close attachment to the US, and to a continued pivotal role for NATO (Baun 1996 p.84); these were accommodated in the framework's emphasis on 'the importance of maintaining and strengthening the ties within the Atlantic alliance and without prejudice to the traditional positions of other Member States' (EC 1990c p.6).

In the area of the changing institutional framework of the EC, the agenda called for MS to consider both the question of 'democratic legitimacy' (EC 1990c p.3), and the 'effectiveness and efficiency of the Union' (ibid.p.9). In these co-related areas, fundamental questions of the federalising tendencies of EC integration were to be discussed, including a greater role for the EP (ibid.p.3): in extending the co-decision procedures (ibid.p.9); in extending the scope of decisions in the Council that fell under the majority voting rule; and in giving the Commission strengthened implementing powers (ibid.). Here again, evidence of the UK's reluctance to endorse reforms that would lead to such changes had been made abundantly clear in Thatcher's responses to Delors' visions in the run-up to the crisis, and informed the UK's stance in the Maastricht negotiations under Major. However, once again in the framework there are distinct references to the role of national parliaments in the community's development (ibid.p.4), and in the need to consult and acknowledge the 'special competence of regional or local institutions . . . ' (ibid.). In this area, the UK was not alone in challenging the federal direction of the EC, towards supranationalism; the French sided with Britain in seeking to retain 'as much national sovereignty and independence as possible within European institutions' (Baun 1996 p.87).

In addition to these areas, the MS were also called on to discuss a further extension of the Community's competences, into 'areas of policy that had largely remained the province of national governments' (ibid.). These included 'economic and social cohesion . . . the health sector . . . research . . . energy policy . . . infrastructure . . . heritage . . . ' (EC 1990c p.8) as well as 'certain key areas of home affairs and justice, namely immigration, visas, asylum and the fight against drugs and organised crime' (ibid.).

The contentious 'social dimension' was set within this broad area of discussion, but was also enumerated in a separate section, which reflected the main issues included in Delors' 1988 Bournemouth speech to the TUC that had contributed to Thatcher's ire, so explicitly expressed at Bruges. In seeking to avoid the danger of an unfettered market, in which

companies would choose those MS with the least social protections, and thus put pressure on other EC MS to ‘dismantle social and labor protections’ (Baun 1996 p.88), the ‘charter of fundamental social rights’ (ibid.) had been proposed by EC leaders at Strasbourg in 1989, and, in a ‘watered-down form’ (Philip 1994 p.129) had been accepted by the 11 MS, with only Thatcher opposing. This was to form the basis of what would become the Social Chapter of the Maastricht Treaty, but by the time of the IGCs in 1991 ‘the Conservative Party had become aware of the implications of European integration in the social policy field and was *fiercely opposed to any further development in it*’ (ibid.p.130 emphasis added). Once again, in this area, much as in the area of EMU, the UK’s blanket opposition to the development of the area competence stood in stark opposition to the remaining MS.

5.5. Maastricht – the Deployment of Instrumentalities

The development of the EC as a polity with federal characteristics is, for scholars in the tradition of Livingston (1952, 1956), Friedrich (1963,1968), and Burgess (2006,2012), a process by which relationships between constituent units are managed in the context of evolving instrumental and institutional frameworks provided by treaty revisions. This section of the study will analyse the findings of the research into the development of post-crisis developments in the UK/EC relationships, with particular focus on the acknowledgement and accommodation of the conflict and cleavages in values between the UK and the EC, and of the contrasting understandings of EU development. The thesis will examine the evidence for the abilities of instrumentalities in the EC to accommodate the UK’s diverging stance on the direction of the polity, in particular in the treaty changes negotiated at Maastricht.

The unfolding of the negotiations in the year between the start of the IGCs on 15 December 1990, and the final treaty agreement at Maastricht in the early hours of 11 December 1991 covered the main points of argument within the EC12, and

‘the confrontation between the Delors Commission and Great Britain would illustrate the need for a flexible approach in the face of entrenched opposition by one member state on issues like EMU and social policy’ (Mazzucelli 1997 p.96).

In a reflection of Major’s comments of 23 October 1990, the outcome could be interpreted as a ‘fudge’ – indeed the final outcome has been variously referred to as resembling a

'curate's egg'¹⁰⁰ and having been built in a 'Heath Robinson'¹⁰¹ style (Burgess 2000 p.210), where the 'compromise-laden nature' of the treaty seem to satisfy few (Baun 1996 p.103).

Salient to this thesis is the understanding of the Maastricht process as being one where in areas of negotiation where entrenched positions were based on symbolic issues, forms of arrangement allowed the progression of the integration process, allowing all 12 MS to continue to be part of the FPS. The typology of these new arrangements, or modification of existing arrangements, are referred to in the literature as instances of 'variable geometry' (Mazzucelli 1997 p.96), in the next section I draw links between the issue sectors, symbolic importance, and types of arrangement, within the overall understandings of instrumentalities that frame the thesis.

5.5.1. Changing the Institutional Framework – the 'Greek Temple'

In this section I discuss how an evolving institutional framework, based on a 'Greek temple' design, allowed the MS to progress with EPU avoiding including contentious policy areas within the main treaty provisions.

The overall foreign policy preferences for the UK, in terms of defence, was the continuing predilection towards maintaining an Atlanticist stance in respect of defence policy within the NATO framework. However, in terms of the negotiations in the IGCs leading up to the treaty agreements the British position 'was neither awkward nor isolated' (Blair 1998 p.87). The position had become slightly clearer after Thatcher's stance on 'the UK's rejection in principle of the very concept of a common foreign and security policy' (ibid.p.88) was replaced by Major's more positive stance, that sought linkages between the existing membership of the Western European Union (WEU), EC defence, and NATO.

This preference for a linkage, rather than an incorporation of defence within the new treaty structure, was opposed by France and Germany (Blair 1998 p.90) who sought to identify within the broader understandings of CFSP areas of 'common policy' (ibid.), in which the developing EC might act. These discussions were brought into sharper context with the limitations that the EC12 faced in taking a 'coordinated position' in the wake of the January 1991 invasion of Kuwait by Iraq (Edwards and Nuttall 1994 p.89). The draft agreement reached after the June 1991 Luxembourg summit confirmed the

¹⁰⁰ A reference to an egg offered to a nervous curate, which, being partly rotten, was assessed as being 'in parts excellent'.

¹⁰¹ A reference to the cartoons of Heath Robinson which depicted over-complex machines made for a simple purpose, mainly using ill-suited materials (string, wood, steam, etc.).

'unanimous desire to reinforce the identity and role of the Union as a political identity on the international scene, as well as the concern to ensure the consistency of all its external activities' (EC 1991 p.3).

The question of the EC's defence identity was dealt with in a separate paragraph, and acknowledge the continuing differences between MS;

'[T]he European Council has agreed that the question of strengthening the defence identity of the Union will be decided at the final stage of the Conference. That identity will take account of the traditional positions of certain Member States' (ibid.p.4).

The institutional structure that met the need to bring CFSP closer to the EC, and thus to enhance political cooperation, was a 'Greek temple' configuration (Blair 1998 p.91). In this there were three pillars, pillar one which contained the supranational areas of EC action, and pillars two and three which would contain areas which remained intergovernmental in character, CFSP, and Justice and Home Affairs (JHA) (see below) (Monar 2012 p.722). This novel arrangement emerged under the Luxembourg Presidency of the Council in April 1991, and was the preferred option of the French and German governments, who saw the possibilities of the later development of these initial steps towards cooperation towards a more community based approach (ibid.).

The construction of the pillar system ensured that policy areas on which MS remained divided on principles of sovereignty and parliamentary primacy, notably (but not exclusively) the UK, could be brought into the emerging political union, with an emphasis on persistence of the intergovernmental dominance of the area. The final wording of the treaty, in Title V, constrained the supranational direction of CFSP by only giving to the Community institutions such status, and scope for action, as was agreed unanimously by the Council, on the basis of general guidelines from the European Council (TEU 1992 Art.J.3). Once such matters had been decided, further decisions on the implementation of the adopted action was taken on the basis of QMV (ibid.). In an additional protection for the role of the WEU and NATO, Art J.4 prevented the use of QMV in any 'issues having defence implications' (ibid. Art J.4).

In respect of the importance of the CFSP debate to the crisis between the UK and EC, Blair highlights two important points. Firstly, CFSP was not as highly ranked by the Conservative Party, in particular in back-bench opinion, when compared to the high-profile issues of EMU and the social chapter (Blair 1998 p.97). Secondly, Major used the strong position that Britain enjoyed, as key member of NATO, and P5 member, to influence the outcome of the discussions to limit EC cooperation to the intergovernmental, and thus to retain a right of veto on the core element of policy direction (ibid.). In a final comment, Blair identified the skill of Major in managing 'the interface between domestic political opinion and the CFSP negotiations effectively' (ibid.).

JHA was the second area of policy development in EPU that had the capacity to create controversies and disagreement between all of the MS, for it touched on the fundamental identification of the state in respect of the control of citizenship and borders. However, from the outset the recognition by the MS of the sensitive nature of these areas meant that they were 'grouped together . . . and placed in a separate pillar', pillar three (Anderson, den Boer and Miller 1994 p.104).

The fundamental freedoms established at Rome in 1957 included the free movement of peoples, and the SEA reinforced this within the stated aim of creating a single market (ibid.). The implications inherent in these goals were understood to include the 'abolition of controls on people crossing . . . mutual borders' (ibid.p.105) with the consequent need to shift 'such controls to a common external frontier' (ibid.). Here, this would have needed a common approach on 'people coming from third countries including rules about visas, asylum-seekers' (ibid.). Early efforts to reach agreement in these sensitive and controversial areas resulted in some MS seeking intergovernmental agreements external to the EC, notably at Schengen in 1985 (see below).

Associated with the progressive removal of border checks was the increase in cross border cooperation in those areas of JHA that would become internationalized as a consequence, including cross-border crime, terrorism, and public order offenses (ibid.p.112). Here the pillar structure of the Maastricht Treaty allowed for the MS to continue their preferred method of intergovernmental cooperation (ibid.p.113). This 'minimalist' approach (Monar 2012 p.721), a position shared by the UK with Denmark, Greece and Ireland (ibid.) and the compromise of the 'Third Pillar' in which a minimum of Community action could be taken, would much later develop into a policy area in which the EU was to extend its range of actions. However, in terms of the immediate goals sought at Maastricht, the development of EPU, the inclusion of JHA in the pillar structure achieved the extension of the capacity of the EC but crucially without risking further challenges from the 'minimalist' MS.

5.5.2. Policy Asymmetry: EMU and the Social Chapter

In the areas of CFSP and JHA discussed above, the potential nature of the impact of the policy areas was acknowledged by all parties, and the measured approach, whilst still leaving the potential for further integration, and the skilful negotiating of the participants in the IGC, led to formulae for integration that neither aggravated, nor precipitated, further crisis. The examination now turns to the use of policy asymmetry in the resolution of the crisis in the two areas of EMU and social policy. In both cases a description of the

negotiating processes will be given, before a more analytical approach is taken in the discussion section below.

5.5.2.1. EMU

The UK's position on any commitment to a single currency, to the establishment of a European bank, and to European economic policy was in diametric opposition to the direction of the 11 MS. The initial basis for discussion, the Commission's 1990 draft treaty on EMU, was complemented by the Luxembourg Presidency's 1991 draft treaty. In the first of these documents, the clear linkage between the two IGCs, on EMU and EPU, was evident, with the necessity for parallel progression in order to realise the 'complementary objectives' that would maintain the equilibrium in the institutional development of the EC, and which would allow an 'osmosis' between the 'political, social, economic and monetary' (EC 1990d p.3). This clear statement of the direction of the EC was, however, countered by the continuing acceptance of the hard reality that the agreements on any future shape of EMU were only held by eleven of the twelve (*ibid.*p.5), indeed the Commission did not, in the preamble to their draft treaty, attempt to address how this problem was to be resolved.

The Commission proposal did also raise potential difficulties for an accord between the French and German positions, notably on the timings of the establishment of a Central Bank, and on the duration of Stage 2. However, these were largely dealt with in the Luxembourg Draft Treaty (Pryce 1994 p.45),¹⁰² which had formed the basis for discussion at the Luxembourg Council meeting in late June 1991. This discussion on the technicalities of EMU were accompanied by the UK's continuing demand for a system based on the retention of MS national currencies, linked to a 'hard ecu' (*ibid.*). However here Major's stance did change, as a consequence of the continued, and hardening, opposition from the 11 MS (*ibid.*), and Delors' suggestion 'at an informal meeting of Ecofin ministers in May' was that while no MS should be able to veto progress towards EMU, at the same time no MS 'should be coerced into joining them' (*ibid.*p.46). As a consequence, the UK dropped its plans for the 'hard Ecu plan', agreeing that it would not veto progress on EMU.

Paradoxically, the alternative, that the UK benefit from an 'opt-out', was also problematic for the UK; the implication here was that the UK might be permanently excluded from the future option of coming into the single currency (Dyson and Featherstone 1999 p.654).

¹⁰² Stage 1 dealt with the liberation of capital movements, the setting up of independent central banks, and the adoption of convergence programmes in the MS. Stage 2 covered a period of convergence of MS economies, and the establishment of system of European central banks, before Stage 3 fixed exchange rates between a minimum of eight MS prior to the adoption of the single currency, (See Luxembourg Draft Treaty (1991) Arts. 109C, D, E, F, G.

Delors' 'unguarded' comments after the meeting on the possible inclusion of a clause in the treaty allowing 'a future British parliament to make a decision on participation in stage 3' (ibid.) was also criticised by the British, for effectively an early agreement on this position would have reduced the UK's ability to influence the evolution of the discussions on EMU (ibid.p.655). The outcome of the discussions of the Luxembourg Draft Treaty in the June Council meeting was a reluctance on Major's part to 'agree a certain set of principles on which a final EMU deal might be established' (ibid.) – effectively the continuing, but reluctant, participation in the process resulted in 'two hours of discussions in circles' (Mitterrand cited in Mazzucelli 1997 p.105), as the British 'reserve . . . forced the leaders to return to the point of departure with no change in positions' (Mazzucelli 1997 p.105).

The discussions at subsequent IGC meetings then turned around the question of the nature of an opt-out, in particular on the limitations in the clause to prevent this becoming a source of a weakening of 'general resolve and offer a temptation to others' (Pryce 1994 p.46). The Dutch proposal in September 1991 that removed the obligation for a MS parliament to participate in stage 3 came with an added declaration 'that it is their strongest intention to participate in stage 3. . . without exemption' (Dyson and Featherstone 1999 p.657). This second part was rejected by the British, and the option for all states to opt-out also received little support from the other MS (ibid.).

The final resolution of the UK's opposition to EMU came during the Maastricht European Council of December 1991, after agreements had been reached in the areas of CFSP and defence (see above). Here the division between the French and Germans on the pace of the transition between the second and third phases was resolved, and 'as part of a package deal' a protocol was agreed between all twelve signatories that allowed the UK to opt-out, or as Major 'preferred to refer to it as an "opt-in"' (Pryce 1994 p.50) to participation at a future date in stage 3 of EMU. This came with the 'commitment that Britain would not seek to block others moving forward to Stage Three' (ibid.); together these formed protocol 11 which (subject to ratification by all MS), would form part of the treaty.

The agreement permitted the UK to decide on moving to stage 3 of EMU, either at the same time as other MS, or at a time of her choice (paras. 1& 2). Britain's sovereignty in respect of her currency, independent central Bank, monetary and fiscal management was, in major part, retained, recognised in paras. 4, 5 & 6. However, the second element of the protocol reduced the UK's ability to pool her sovereignty, and hence protect her interests, in the development of EMU, for paras. 7 & 8 excluded the UK from the 'rights to participate in setting the rules for the club' (Dyson and Featherstone 1999 p.662). The third element in the protocol addressed the conditions, and modalities, for an eventual accession of the

UK to the single currency system. Here, the demerits of the protocol for the UK were clear in respect of: 1\ the UK having to meet pre-established convergence criteria; 2\ the UK having to join a system, in which she had not been able to participate in designing; and 3\ the acceptance of her application would have to be agreed by a qualified majority of the 11 MS – with the ‘inherent risks that the bargaining between the UK and the rest might involve other conditions being asked of the newcomer’ (ibid.).

5.5.2.2. *The Social Chapter*

The second problematic area was the UK’s continuing staunch opposition to the inclusion in the treaty of a social chapter, and this was tackled later in the summit, after the opt-out on EMU had been agreed. The UK’s position on extending the treaty’s social chapter, exemplified by Thatcher’s refusal to agree the social charter at Strasbourg in 1989 continued in the form of ‘Major’s determination to resist these [new provisions], on both ideological and political grounds’ (Pryce 1994 p.51); countered by ‘equally determined resistance from a very powerful coalition of both Christian Democrats and Socialists, led by Kohl and Delors’ (ibid.).

For those seeking ‘a profound reform of European social policy’ (Falkner 1996 p.3), after the ‘cautious’ (ibid.) negotiations in the IGCs, this continuing hostility from the UK ‘even threatened the rest of the Maastricht texts’ (ibid.). As with progression on EMU, treaty changes required the accords of all twelve MS, and it ‘proved impossible to find a compromise acceptable to both sides’ (Pryce 1994 p.51). Indeed, as Pryce comments, the British counter proposals were aimed to ‘water down the provisions so that they became innocuous’ (ibid.). Resistance from the majority of the MS to a second opt-out for the British required a ‘different and unprecedented type of compromise’ (ibid.).

Here, the very last minute agreement of the twelve MS was in the form of the inclusion of the social chapter protocol 14 (TEU 1992 p.196), to which was annexed an agreement signed by 11 of the 12 MS, excluding the UK (ibid.pp.197-201). As an annexe, the protocol fell within the institutional framework of the EC, where the signatory MS were allowed to ‘use the EC institutions to carry out their agreement’ (Pryce 1994 p.51). The compromise on the social policy area allowed for the EC12 to sign the draft treaty, but as Pryce warned, this came ‘at the expense of setting a precedent and a procedure which threatens to become a source of institutional and legal wrangling’ (ibid.). Moreover, whilst the compromise agreement allowed Major to claim that the UK was now exempt from the legal constraints of decisions made under the Agreement, the reality of interdependence under single market conditions meant that the UK was *de facto* part of the developing social policy framework of the EC (Falkner 1996 p.11).

5.5.3. *Federalism, Federation and Crisis*

The asymmetric policy agreements at Maastricht, seen as 'special treatment for Britain' (White and Travis 1991) bought with them 'relief that an historic treaty had been agreed' (ibid.). I have already discussed how the British elites, and notably Thatcher, had conflated the understanding of federalism with the drive towards federation, or a 'superstate', which although challenged by Howe in his arguments over the nature of the indivisibility of sovereignty, remained an important factor.

Indeed, the very presence of the word 'federal', (or as Michael Burgess refers to it, the F-word), in the proposed treaty texts was important because of the attachment to an understanding of the direction of travel of the integration process, one that had been set out in the very earliest statements of Robert Schuman. As such, the presence of the word 'federal' in the proposed treaty texts created a further conflict between those parties who were both seeking for the treaty to go beyond the deepening of integration that had been achieved with the SEA, and 'made no bones about depicting their actions as steps towards a federal Europe' (Koslowski 1999 p.569), and the British position of 'insisting that the Union they were entering was in no way a federation' (ibid.). The latter's position was predicated on the association between federalism and 'a loss of sovereignty to an overbearing Leviathan' (ibid.).

A significant factor in the crisis was the decision by treaty drafters at the Luxembourg Summit of June 1991 to include an explicit reference to the federal direction of the EC, given that this understanding of the constructed meanings of 'federal' was abundantly clear from, notably, the British.¹⁰³ Part of the explanation for this, the *first explicit* inclusion of these terms,¹⁰⁴ came from the need to include in the treaty texts an acknowledgement of the federal process to 'mollify the pro-integrationist states' (Wincott 1996) after the abandonment of efforts to include the CFSP and JHA in the 'Communities proper' (ibid.), and the adoption of the Greek Temple structure as discussed.

The continuing contestation by the UK of the presence of the federal reference, would, for Corbett (1992) have led to a refusal of the UK to sign the treaty, but for many of the other

¹⁰³ The French also had some misgivings about the inclusion of the federal vocation wording, although Mitterrand had agreed to this in correspondence with Kohl; the concern was in 'pushing the idea too fast and too far', and the rise of the National Front who also attached meanings of sovereignty and values to the 'tricolor'. (Mazzucelli 1997 p.160).

¹⁰⁴ In the prior Treaty texts, no explicit mention had been made of the federal vocation of the integration process – this had been covered with the term 'ever closer union of States'.

MS this was based on a 'fetish to do with internal divisions within the UK Conservative Party' (p.281.). Chancellor Kohl

'wanted a reference to the "federal vocation" . . . in the Treaty but realized that there was a question of the differing interpretations of the phrase's meaning by Britain (Mazzucelli 1997 p.180).

As discussed, the potential of such interpretations to create division was huge, with the resignations of Lawson, Howe and Thatcher all attributable to different understandings of the impact of a federalizing Europe. Corbett argues that the MS understood this, and their insistence on the element being kept in the draft Treaties was for the removal to be negotiated at Maastricht, 'thus allowing Prime Minister Major to claim victory at that point, leaving the substance intact' (Corbett 1992 p.281). This point was also made in *The Independent* where the 'presence of the word [federal] until the last moment is in fact a plot by some Europeans to allow John Major a surprise triumph at Maastricht' (Savill 1991). The imminent elections in the UK¹⁰⁵ was also seen as a factor, with Kohl 'anxious not to make his friend and fellow conservative lose a general election' (ibid.), and the possibility of Major achieving 'something visible, if not substantial . . . such as the removal of the word' (ibid.), might have an appeasing effect on the 'rejectionists at home' (ibid.). Moreover, before the Luxembourg summit Kohl 'did not want to have an in-depth discussion. . . on the most contentious issues, he hoped to avoid isolating his colleague and friend, John Major' (Mazzucelli 1997 p.139). Here Major confirmed that the understanding of the term 'federal' was not a problem for him, but for his parliament, and that he would be happy to sign at Maastricht as long as the word was removed (Savill 1991), although his Foreign Minister, Douglas Hurd, did formally oppose the inclusion (Mazzucelli 1997 p.149).

A compromise solution was sought by which the clause on the federal vocation remained in the Draft text, in addition to the inclusion of a clause confirming that the new three pillar structure (as opposed to a unitary structure) was temporary (ibid.p.148). This had come about after a proposal of the German State Minister for European Affairs at a May 1991 meeting for the introduction of a 'general evolutionary clause' (ibid.p.139).

As a consequence, the final draft treaty at Luxembourg included two clauses, the first which overtly acknowledged the federal vocation of the union:

¹⁰⁵ The end of the five-year term of the parliament was May 1992.

'This treaty marks a new stage in the gradual process leading to a Union with a federal vocation' (Luxembourg Presidency 1991 Article A).

The second clause formed part of Article W of the draft treaty, in which after ratification the Maastricht treaty could both be amended after any MS had made such a demand (ibid. Art. W.1), such amendments being themselves subject to ratification (ibid.), but more importantly that

*'A conference of the representatives of the Member States shall be called in 1996 to examine, in the perspective of a reinforcing of the **federal character** of the Union, the dispositions of the present treaty for which revision is provided'* (ibid. Art. W.2).

Here the use of the term 'federal character' is noteworthy, when considered alongside the term 'federal vocation' – and the semantics of the two terms could be a topic for future research – but it suffices for the purposes of this thesis to accept that the two terms would be considered by the British as clearly referring to the final object of federation discussed above.

The outcome was the removal from the final Maastricht Treaty texts of all references to federalism. Draft Article A was replaced with a new clause, which referred to the direction of the EC process of integration as

'a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.' (TEU 1992 Art. A).

The second reference to federalism in Art. W.2 of the Draft Treaty was replaced under Art.N.2 of the TEU by which:

'A conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B' (TEU 1992 Art. N.2).

This text too, once the federal reference was removed, was acceptable to the British (Mazzucelli 1997 p.182).

However, as Corbett points out, the removal from the text on federal principles was in fact replaced by a reversion to the long-used 'ever closer union' which could be interpreted as a 'more centralized Union than a federal one' (1992 p.281), but which, as Burgess points

out, 'satisfied the British delegation probably because it had been fossilized in the Treaty of Rome for over 30 years' (Burgess 2000 p.207).¹⁰⁶

Nonetheless, the removal of all references to the word federal was seen as, and claimed as, a success for the British – 'the British government saw as a major victory its success in excluding the "F-word" from the Maastricht Treaty. This success was important for the prevailing British discourse, which regards federalism as the centralization of EU power in Brussels' (Bulmer 1996 p.21-22). Here, the misconception of federalism by the UK is clear, and contrasts with King (1982) as discussed in chapter II of this work, where federalism is a 'variable response to the opposed demands for the centralization and decentralization of power on a specifically territorial basis' (p.21), which allows for the adjustment of the relative balance of competences between the federal and constituent elements in a federal system, *without any emphasis on either centralization or non-centralization*.

This misconception was made clear, and the hollowness of the apparent success was challenged by Eurosceptic Conservative M.P. Gerald Howarth:

'My right hon. Friends [Major, Hurd] have done well to remove the word "federal" from the text of the treaty, but we should delude ourselves if we believed that we had stopped federalism in its tracks. Many of our continental partners have made it clear that their federal ambitions remain undiminished, and they will simply come back at the next opportunity to gain some of the territory that they failed to take at Maastricht' (Howarth 1991).

The Labour Party's spokesman on foreign affairs also identified Article N.2 of the TEU as being a clear indication of the meaning of 'ever closer union' – 'They [the EC12] agreed, too, to a specific review process which could expand and extend even further the "process of ever closer union" among an increasing number of European countries' (Kaufman 1991 p.1).

Over and above the discussions on the inclusion/deletion of mentions to federalism, the Maastricht negotiation also hinged on the inclusions of a concept that had become closely linked to federalism, that of subsidiarity.

¹⁰⁶ In the European Council meeting of February 2016, at the request of the UK, clarification of the term was made – this was to be included in future Treaty revisions – though whether this will now happen given the outcome of the Brexit vote is debatable. The clarification text reads 'The references in the Treaties and their preambles to the process of creating an ever closer union among the peoples of Europe do not offer a legal basis for extending the scope of any provision of the Treaties or of EU secondary legislation. They should not be used either to support an extensive interpretation of the competences of the Union or of the powers of its institutions as set out in the Treaties . . . These references do not alter the limits of Union competence governed by the principle of conferral, or the use of Union competence governed by the principles of subsidiarity and proportionality. They do not require that further competences be conferred upon the European Union or that the European Union must exercise its existing competences, or that competences conferred on the Union could not be reduced and thereby returned to the Member States' see <http://www.consilium.europa.eu/en/press/press-releases/2016/02/19-euco-conclusions/> .

5.5.4. Subsidiarity

Specific to the integration processes in the EU is the principle of subsidiarity, a term which is, alongside federalism, 'frequently misunderstood and misrepresented' (Burgess 2000 p.224). For

'in the public mind . . . [I]t has come to represent an instrument crucial to the integrity, and indeed the very survival, of the national state in Europe' (ibid.).

The development of this Catholic principle posits that a public organization of groups of communities should limit its involvement in individual political communities to solely enable the latter to 'carry out their tasks, fulfil their duties and exercise their rights with greater security' (ibid.p.229). This principle, was not significant in the earlier SEA negotiations (ibid.p.231), but in a response to Thatcher's

'nightmare vision of a "European Super-state"' in her Bruges speech, Delors had advanced the principle as 'the perfect antidote to this unfounded fear' (Mazzucelli 1997 p.54).

The general agreement in the preparatory stages for the IGCs, after the Dublin Summit was for the inclusion of the principle in the IGC frameworks, but that this should not lead to a 'government by judges' and an impairment of the 'Community decision-making process' (ibid.p.71). The German attachment to the principle was a reflection on the German state's own federal structure, where the Lander retained the powers to negotiate on specific competences (ibid.p.79).

The Luxembourg draft text included Article 3.B., by which:

'The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein . . . [I]n areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community' (Luxembourg Presidency 1991).

The final Maastricht Treaty included an additional line, dubbed the 'necessity test' by Hurd (Burgess 2000 p.234); 'any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty' (TEU 1991 Art. 3b).

The common theme emerging from the Maastricht process is the adoption of new, or adaptation of existing, understandings of variability and flexibility in the type and degree of commitment made by each MS to the integration process. This range of novel implementations falls within the range of understandings of instrumentalities as theorised by Livingston (1962,1956), as a response to the crisis condition, and the reconciliation of the needs of the system and the disquiet of one of the constituent units. I discuss how these instrumentalities represent new approaches to European integration in the next section.

5.5.5. *Asymmetry - Differentiated Integration and the European Integration Process*

Federal theory understands asymmetry as the differentiated application of competences across and between constituent units, and is an indication of the inevitability of imperfect matches between constituent units, in Duchacek's terms 'disparities' (1970 pp.280ff); here I identify a correspondence with Livingston's instrumentalities in what Duchacek calls 'extraconstitutional overlaps' (ibid., Burgess 2006 p.210). I have already shown how some of these disparities, which Duchacek identified as being based on

'size, population, political power, administrative skills, wealth, economic development, climactic conditions, predominance of either urban or rural interests, social structure, traditions, or relative geographic location' (Duchacek 1970 p.280),

can have an effect on relationships.

In this thesis, the need for the recognition and management of these disparities became evident when the political systems were subject to the stresses of crisis, and where as a result new forms of accommodation were required. In respect of the nature of the constituent units that have formed the case studies, whilst some, notably the Borough of Staten Island, and the Province of Québec, did not have the status of 'State' in the Westphalian understanding, they did exert state-like attributes in their demands for secession/separation and in their demands for forms of autonomy. However, in the case study of the UK and Europe, the constituent units in the integration project can be defined as Westphalian in origin, and indeed as have discussed in the case of the UK's persistent disquiet with the integrative project, Westphalian notions of indivisible sovereignty remain highly salient.

The origins of the integration process, in the Schuman declaration, clearly envisaged a progressive transfer of sovereignty in defined areas of competence, between the constituent MS and the evolving political community. However, as Burgess (2000 p.7) points out, this process had to acknowledge the existence of the 'fundamental integrity and autonomy of its constituent parts', in a complex interrelation between 'federalism, the state and the European idea.'¹⁰⁷ The Treaties of Paris, and Rome, limited competences to economic sectors; attempts to extend integration and pooling of sovereignty into political areas, with the European Defence and Political Communities (EDC/EPC), were to fail – when the French National Assembly failed to ratify the EDC/EPC in 1954. For Pentland,

¹⁰⁷ For Burgess the 'European idea' is defined as 'the political union of Europe based on federal principles' (2000 p.17).

this represented a check in progress towards a federal Europe that might create a 'direct challenge to national sovereignty' (Pentland 1973 p.181), and a forced return to a form of pragmatic federalism that became better known as 'neo-functionalism' (ibid.p.182). It is when the limitations of pragmatic federalism are reached, and the integration process challenges Westphalian concepts of states' integrity, that tensions occur, and the crisis that forms the basis of this case study is exemplar. In this respect the development of what became known as 'differentiated integration' is salient to the discussion.

Duchacek (1970) had already identified the 'disparities' between constituent units in developing political communities. Pentland (2000) argued that the extension of the integration process into groups of constituent units that in themselves were Westphalian in concept brought with it the same recognition of disparities, here he cites how in the later conceptions of the EC these were recognised through such 'formalized inequalities of status' (p.274) as numbers in votes in the Council [through QMV] and size of delegation in the EP.

However, and here I touch on a crucial aspect of the EC as a political community; Pentland also argued that the EC itself, as a regional community, had Westphalian concepts embedded within it in respect of the equal treatment of states, in that

'Within the EU there has always been a presumption in favour of the uniform application of rights and duties and the equitable (not necessarily equal) distribution of the costs and benefits of the European enterprise. Here a classic norm of international society reinforces the more general notion – recognizable at all levels of social organization – that selective or privileged participation is incompatible with, and potentially corrosive of, the very concept of community. In the EU, as in most federal systems, deviations or derogations from these norms tend to be characterized as temporary abnormalities or asymmetries, at best to be tolerated, not encouraged or emulated' (ibid.p.274).

Yet the EC as a federal system did indeed use deviations and derogations at Maastricht, as part of the use of instrumentalities in balancing the needs to both preserve the forward progress made in the integrative process, to maintain the *acquis*, and to create the opportunities for further integration and expansion. These deviations and derogations are, however, differentiated, in three areas categorised as time, space and matter (Stubb 1996).

The first of these, *time*, comprises agreements that symmetrical application of the communities' *acquis* will be made by MS within an agreed time-frame; these include EMU, for states that do not have an opt-out, new MS Accession Agreements, and transition periods. The emphasis in all these examples is on the commitment to the ultimate goal of symmetry between MS in policy areas (Stubb 1996 p.285).

In the second of these, *space*, Stubb identifies areas where the Treaties allow for agreement in certain policy sectors that 1\ do not cover all of the MS, 2\ cover some MS

and some external states. Here the *Schengen* agreements, and certain defence agreements (WEU, Eurocorps, Eurofor) are positioned within the communities' legal framework (ibid.). These reflect the essence of the EU's development of intergovernmental cooperation alongside supranational agreements, and the *sui generis* (Burgess 2006) nature of European integration.

It is in the third domain, that of *matter*, where Stubb's taxonomy is most salient to the discussion. Here agreements reached which represent the 'extreme of the spectrum' (Stubb 1996 p.288) are located, for it is in this domain where MS can pick and choose which policy areas in which to integrate. The original formulation of the European integration project had envisaged 'ever closer union', in which areas such as monetary and economic policy, and a deep commitment to social policy, were enshrined. The necessity for the EC to agree to opt-outs that gave the UK, and Denmark, the absolute choice over participation in EMU, and the agreement on the social chapter that gave the UK the choice on an opt-in, represent significant departures from the norm of symmetrical participation as discussed by Pentland (2000).

However, whilst the decision to allow for an *à la carte* development was born out of the necessity to reach some sort of agreement at Maastricht, and no legal constraints were placed on MS to re-negotiate on their positions, this option was left open for the future, for new contexts.

5.6. Post-Maastricht – After the Lord Mayor's Show!¹⁰⁸

'When finally, it was all over, everyone claimed victory' (Pryce 1994 p.51).

Major could return to the UK, and claim 'Game, set and match' (ibid.) and the federal drivers in the MS obtained a full set of twelve signatories on a treaty that was 'a major achievement, as ambitious in its commitments as the Rome Treaties' (ibid.). The complex range of novel agreements, designed to allow the most awkward member of the Twelve to sign, provides deep understandings of the functioning of the developing federal political system in the context of this study on crisis and dynamics. In terms of the crisis as defined in the conceptual framework I move now to examine the extent to which these arrangements had reduced the crisis from a level of evidence to a level of immanence.

The six years that followed the signature of the treaty are highly salient in this respect, as they include key events, the ratification process, Major's continuing struggle to manage

¹⁰⁸ The Lord Mayor of London takes part in a horse-drawn parade, with much celebration and pageantry. After the show has passed, someone has to collect the droppings!

elements in the party, the emergence of political parties espousing Eurosceptic ideas, and the counter-emergence of the Labour Party as a strong advocate of the EC.

5.6.1. *The Ratification Process #1*

Article R.1 of the TEU specified that ‘This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements’ (TEU 1992) and, where required, a referendum. In the UK, no such referendum was required under existing legislation, but the treaty did require ratification by both Houses of Parliament. After the signature at Maastricht in December 1991, the UK had re-elected the Conservatives under Major in the April 1992 election, albeit with a reduced majority of just 21.¹⁰⁹ As Duff comments, the Maastricht Treaty ‘had not featured much as an issue in the election campaign because all three major parties were committed to its ratification (Duff 1994 p.54); however, a recap of manifesto commitments on Europe is illuminative.

The smallest party of 20 MPs, the Liberal Democrats, actively embraced the idea of a federal Europe, but emphasised a non-centralizing understanding of federalism:

‘Our vision of the new Europe is of a federal community, where power is exercised at the lowest level consistent with good government. For us, federalism means decentralisation: passing powers down more than passing them up’ (Lib Dems 1992 section 5).

The Labour Party, advocated the reversal of the opt-outs on The Social Chapter, and argued for a greater participation in a New Europe, with the end to isolation, although they remained non-committal on the UK eventually joining the Euro (Labour 1992).

The Conservatives argued that:

‘The Maastricht Treaty was a success both for Britain and for the rest of Europe. British proposals helped to shape the key provisions of the Treaty including those strengthening the enforcement of Community law defence, subsidiarity and law and order. But Britain refused to accept the damaging Social Chapter proposed by other Europeans, and it was excluded from the Maastricht Treaty’ (Conservatives 1992).

The ratification process thus started in the House of Commons in which the ‘major parties were committed to its ratification’ (Duff 1994 p.54). In this process, notwithstanding the overall commitment by the leaders of the three main parties, the longstanding divisions on the understandings of the direction of the European integration project, and its impact on the UK’s fundamental values, became evident.

In May 1992, Foreign Minister Douglas Hurd opened the debate on the second reading of the Bill amending the 1972 European Communities Act by acknowledging the fears of

¹⁰⁹ See <https://www.parliament.uk/documents/commons-information-office/m13.pdf>.

'doubters of both sides of the house . . . that Maastricht, like other agreements, will lead us relentlessly to a centralised Europe, in which eventually there will be a single executive holding all worthwhile power, and a single Parliament, with national Parliaments being steadily stripped of substance' (Hurd 1992).

He responded by arguing that the retention of unanimity voting for areas of CFSP and JHA 'recognised that these things do not need to be done centrally, with a common line dictated at the centre and going right across the board. The principle of subsidiarity is likewise established by treaty' (ibid.). Moreover, he noted that '[n]othing in Maastricht, either in the review clause [Art. N.2] or in the treaty, dictates the next step' (ibid.). In a further reference to subsidiarity, he argued that this applied not just in areas of joint competence, but in 'any action by the community' (ibid.col.515). Hurd also referred to the reinforcement of the role of national parliaments in the use of the pillar structure – where the intergovernmental policy areas remained largely outside of Community legislation (ibid.col.517).

In response, Labour's Gerald Kaufman largely applauded the content of the treaty– '[I]n fact, the treaty can in some respects be said to contain more Labour Party policy than Conservative Party policy' (Kaufman 1992). However, Kaufman did say that he would vote against the provisions in the bill for European common defence policy (ibid.col.523), the provisions of the opt-out on third stage EMU (ibid.col.525), and on the UK's opt-out from the Social Chapter (ibid.cols.525-526). In summing up his position, Kaufman argued that:

'A second-tier United Kingdom in Europe, which is what the Bill entrenches, cannot immunise us from errors made by the rest of the Community. It merely implicates us in such errors while depriving us of sufficient influence to limit or to rectify them. We shall take our own initiatives instead of reacting to the initiatives of others' (ibid.col.527).

Labour Leader of the Opposition, John Smith, argued that the Maastricht Treaty reflected the need for a new approach to cooperation in a world which had dramatically changed since the 1960s and 1970s (Smith 1992), but stressed that the UK's opt-out on EMU and on the Social Chapter were flawed (ibid.col.584) in that they were based on:

'the British Conservative delusion that we cannot so much compete as undercut, that jobs can be secured and maintained only if wages and conditions are worse and that investment will somehow be attracted if we have a low-tech, low-skill and low-wage economy. The Government are choosing to be a bargain-basement economy on the edge of Europe' (ibid.).

Two votes were taken at the sitting, after the debates, the first, the 'Reasoned Amendment', called for the rejection of the treaty on the basis of the flaws that had been discussed on the opt-outs of the Social Chapter, and deeper integration. This amendment was defeated by 261-360. The house was then asked to vote on passing the Bill for a second reading, which passed with a majority of 336-92.

However, the rejection of the treaty in Denmark, the first of the states whose constitutions required a referendum, delayed the progress of the Bill through parliament. The Danish

parliament had adopted the treaty, but hostile sectional interests,¹¹⁰ antipathy towards Brussels, and a certain anti-German element (Duff 1994 p.55), resulted in narrow defeat for ratification in the June 2 1992 vote (EUR-LEX 2016). The 'Danish question' was settled at the Birmingham summit in October 1992 with further concessions, including extended subsidiarity clauses, and opt-outs on joining the Euro. The EC MS confirmed these at the later Edinburgh Summit, and subsequently Danish voters approved the revised terms in a second referendum (Duff 1994 pp.56-63).

5.6.2. Ratification #2

The clarification of the Danish position after Birmingham allowed Major to resume the ratification process (Duff 1994 p.63). The Bill returned before parliament on 4th November 1992 in what amounted to a 'second second reading' (Duff 1994 p.64); although technically not required, Major had promised that parliament would have a second chance to debate once Denmark's position was known. The final outcome of the vote to proceed to the committee stage was indicative of the challenge faced by Major, the Bill passed by just three votes (319-316); without the four Liberal Democratic votes the Government would have faced a failure which 'would have dashed the treaty not only for Britain but for the whole of Europe' (Duff 1994 p.64).

The Committee stage was lengthy, occupying 'parliament for much of the first half of 1993' (Beloff 1996 p.135, Duff 1994 p.64), and it was not until after the Danish people gave their agreement in their second referendum that the Bill was read for the Third time. This was, for Hurd, the moment that

'after this detailed scrutiny and preparation, the House stands ready to take its decision on the Bill and the treaty as a whole. The Danish people . . . voted decisively in a second referendum on Tuesday in favour of ratifying the treaty, as clarified and amplified by the agreement at Edinburgh . . .' (Hurd 1993).

Hurd argued that in ratifying the treaty, with the protocols on the opt-outs for EMU, the Social Chapter, and the three-pillar structure, 'I do not think that the treaty is constitutionally more radical or innovative than the Single European Act, which the House approved in 1986. It is not the blueprint for a European super-state' (ibid.col.384). In a clear expression of an understanding of the Union's federal potential, Hurd did acknowledge that '[t]he treaty is not the final word in the development of the Community' (ibid.), but that the treaty marked an advance for 'our approach' (ibid.). He rejected critics of the treaty as a pathway to a European superstate, for in areas of foreign policy and JHA the emphasis on the pillar

¹¹⁰ Notably women and farmers (Duff 1994 p.55).

structure and cooperation between MS meant that these areas 'would be managed more effectively, between national Governments accountable to national parliaments. The Commission will not enjoy a monopoly of initiative and the processes will not fall under the jurisdiction of the European Court' (ibid.col.390).

Hurd also highlighted the principle of subsidiarity as 'one of the most important innovations in the treaty . . . that will become a legally binding provision of the treaty of Rome. Before that, and anticipating that, we have worked, as the House knows, to create it as a political fact' (ibid.).

The Bill passed in both houses, and received Royal Assent on 20 July; however, included in the Act was a commencement clause, by which:

'This Act shall come into force only when each House of Parliament has come to a Resolution on a motion tabled by a Minister of the Crown considering the question of adopting the Protocol on Social Policy' (European Communities (Amendment) Act 1993 Para.7).¹¹¹

On 22 July Labour's John Smith¹¹² tabled an amendment to a debate on the adoption, effectively trying to force the Government to sign up to the protocol's provisions. This amendment was defeated (on the casting vote of the Speaker). However, the Commons also rejected the Conservative's counter-motion, against the adoption of the protocol, by eight votes. This absence of a positive endorsement of the Government's policy on excluding the Social Chapter, prompted Major to resort to the 'nuclear option' in calling for a vote of confidence:

'That the House has confidence in the policy of Her Majesty's Government on the adoption of the Protocol on Social Policy' (Major 1993).

Major made it clear that a defeat in the confidence vote would result in the dissolution of parliament and new elections, this prompted Labour's John Smith to taunt Major;

'he has been forced to make a humiliating threat to his own party: that unless Conservative Members come into the Government Lobby today he will press the self-destruct button of a general election, which both he and they know would result in a massive defeat for this Government and in the loss of their seats' (Smith 1993).

The confidence vote in the Government's policy on the Social Chapter passed with a majority of forty votes 'as Tory instincts for self-preservation surfaced' (Duff 1994 p.64). However, although Major claimed that his MPs had "come back into the fold" (Baker et al

¹¹¹ The 'Commencement clause' had been included in the bill to ensure its survival in the earlier stage of debate by postponing the vote until after the bill was enacted. See Baker, Gamble and Ludlam (1994) for a full discussion of this.

¹¹² Labour Party Leader.

1994 p.45), and that the prospect of the fall of the Government had been averted, divisions were to continue.

The final act of the UK's ratification was the formal deposition of the treaty with the Italian Presidency in Rome on 2 August 1993, and the ratification by all twelve MS was thus complete; The Treaty on European Union, known as the Maastricht Treaty, became law on 1 November 1993.¹¹³

5.6.3. *The Referendum Question*

The UK had decided in 1975, by a substantial majority, to remain in the EC. Extensive parliamentary debate on ratifying the Maastricht Treaty also included questions of a new referendum on the UK's membership of the EC. This not only rehearsed some of the old questions on sovereignty, but also created the impetus for the emergence of political parties that were, in the longer term, to have substantial impact on the UK/EC relationship.

During the debate on the Bill, Major was questioned on his continuing refusal to grant the British people a referendum, in particular in the light of the French and Danish referendum results. Major rejected such calls, arguing that

'in a parliamentary democracy, the House is the place in which to consider the Bill--line by line and clause by clause. Other nations may have a tradition of referendums: they may call a referendum, followed by a debate on the whole Bill lasting one or two days, and approve every part of the Bill immediately. That is not our parliamentary tradition, and I do not believe that it would be acceptable to the House of Commons' (Major 1992).

Labour Party policy opposed a referendum, in spite of calls from the left wing, notably Tony Benn, for this transfer of powers to be put to a popular plebiscite (Goodwin and Bevins 1992). The Labour leadership, of Smith and Kaufman,¹¹⁴ argued that a referendum would be diversionary, and 'help the Conservatives out of their own disarray' (ibid.), by providing a unifying anti-referendum issue on which to campaign which would isolate the Thatcherite faction, and 'do wonders for John Major's popularity' (Kaufman cited in ibid.).

Liberal democrat leader, Paddy Ashdown, reiterated his longstanding support for a referendum necessitated by the idea of a shift in sovereignty:

¹¹³ The delay was caused by a wait for the German Constitutional Court to rule on whether the Treaty was compatible with the German Constitution (Nugent 2010 p.56).

¹¹⁴ Former Shadow Foreign affairs spokesman, now national executive committee member.

'I have always supported a referendum on the matter, and I hope that one will be agreed under the Bill. I agree that the Bill involves a shift of sovereignty - one that I recommend to the British people and in which I passionately believe - but the House does not have the right to give away sovereignty that it does not possess' (Ashdown 1992).

The Ulster Unionist Party confirmed its opposition to the federalising process of Maastricht, even allowing for the opt-out provisions, arguing that government should 'recognise the strength of the British people's opposition to the Maastricht Treaty . . . [and] let the people speak through a referendum' (ibid.col.341). The UUP had been allied to the Conservatives until the early 1970s, and were still expected to ally their nine votes with the Conservatives or at worst abstain over key votes that threatened Major's slim, and reducing, majority (Wynn Davies 1993).

From the Conservative benches, calls were made by Thatcher's successor as M.P., Hartley Booth, who dismissed claims that such a referendum be too complex, or become 'mixed up with other issues such as the economy' (ibid.col.363). He refuted such arguments as a 'weakness':

'It is never weakness to trust the people. The House of Commons has been in existence for almost 800 years. It has grown great and become the mother of parliaments by trusting the people. We should do that again in this crisis' (ibid.).

William Cash's argument that in a survey of business men over two thirds both wanted a referendum and opposed the treaty was also rejected by Douglas Hurd who reiterated Major's arguments on the idea that parliament was the place to take such decisions (ibid.col.375).

In the House of Lords, a Conservative amendment was tabled to include provision for a Referendum (Blake 1993), which once again called for the choice for the substantial constitutional changes inherent in the Bill to be put to the British people (ibid.col.241). Lord Blake's amendment also rested on the fact that none of the main arguments in the 1992 election turned on the issue of Maastricht; the matter was given little attention by the leadership teams of the main parties, who failed 'to explain in simple, or even in roughly approximate, language what the issues are about' (ibid.col.242). As head of the 'Campaign for a British Referendum', Blake claimed neutrality as to the substance of the treaty, but confirmed his belief in the right of the people to be informed and to make a decision on the 'measure which irrevocably and irreversibly in some respects affects their governance' (ibid.col.240).

The Conservative leadership continued to argue that in a representative, parliamentary democracy it is the parliament's (both Houses) responsibility to take decisions, and that the calls for referendum undermined this sovereignty:

'They are advocating that Parliament abdicates its responsibility to take a decision in this case. I believe it would be wrong to place our experience and judgment in baulk and to stand aside while the people decide' (Wakeham 1993).

Lord Wakeham dismissed the arguments that the public were given no choice during the 1992 elections, and that as all three parties substantively agreed on the issue of Europe no choice was available (*ibid.*). Lord Wakeham pointed out there was no such demand for a referendum with the passage of the 1987 SEA, although this had set up a framework for deeper integration, notably through an extension in the use of QMV under Art. 100A,

'the new express powers given to the European Community by the Maastricht Treaty are definitions and codifications of powers which the Council has been exercising under the general articles (Articles 235 and 100A) already' (Lord Wilberforce cited by Wakeham in *ibid.col.245*).

Lord Howe¹¹⁵ pointed out that the legitimacy of the 1975 referendum result on the question of the transfer of sovereignty was still relevant, for at that time this,

'could be seen as ratifying not just the original far-reaching transfer of sovereignty, but also the far from marginal adjustment of the position of the [Labour] government since the date of their arrival in office' (Howe 1993).

For in effect the 1975 referendum confirmed the original decision of the Heath Conservative government to enter the EC, *and* Labour's change in stance from opposition to agreement. Howe argued that the content of the Maastricht Treaty, in developing the SEA, was an extension of what had been

'constitutional common ground at least since the 1975 referendum. That common ground is the ground that was taken for granted at the time of the Single European Act' (*ibid.*).

Baroness Thatcher¹¹⁶ disagreed with the fundamental interpretation of the Maastricht Treaty as being an extension of the provisions of the SEA, and in particular in the extent to which QMV, understood by Thatcher as to apply only to the realization of the single market –extended to policy areas where she expected the unanimity rule to prevail. Thatcher accepted her 'fundamental error' in thinking that the Commission would be self-limiting,

'that perhaps our idea of good faith and what the Council of Ministers had decided about unanimity would be upheld by the Commission. After all, they were European. Not a bit of it. That has not been used merely to get free trade and free goods moving about the Community; it has been used to get all kinds of social things which are no business of the Commission or the Community but which should be for us to decide here' (*ibid.col.283*).

Moreover, Thatcher argued that the treaty created a new kind of Union, with,

¹¹⁵ Former foreign secretary under Thatcher, Geoffrey Howe had now been advanced to a peerage.

¹¹⁶ The former prime minister had also been advanced to the Lords with a hereditary peerage.

'all the structures of a sovereign state. That is why we have citizenship, European and monetary union, common defence policies, common foreign policy, and so on. It is something quite different' (ibid.col.284).

A number of comments pointed out that referenda should not be used as a last-minute attempt to wreck the passage of the bill in its very last stages, having gone through the detailed analysis and scrutiny in parliament, by those who had failed in their attempts to change the direction of the UK in the process of integration (Richards 1993). Former Labour Chancellor Lord Jenkins argued that

'if there was to be a referendum, it should without question have been at the beginning of the process of ratification, and not at the end of an incredibly tortuous and long drawn-out process of parliamentary argument which, apart from anything else, has bored the country stiff' (Jenkins 1993a).

Jenkins had also drawn attention to the danger of a referendum being used to make a stand on the current performance of the government and the economy,

'with the present lack of respect for government—exceptionally but not uniquely strong in this country—many electors would be disposed to seize any opportunity of cocking a snook at the ministers of whom they are so contemptuous. And I would not wish to tie the fate of Britain's long-term orientation to the present vote-winning capacity of this Government, or to the chance of whether or not the green shoots of recovery might at last begin to burgeon before the votes were cast' (Jenkins 1993b).

In spite of the depth of the discussion around substantial areas of constitutional and political import, this final attempt to stay the ratification of the Maastricht Treaty was defeated, as Blake's amendment was defeated by 176 – 445.

In examining these debates from the House of Lords, and with the benefit of hindsight, clear analogies can be drawn with the debates held between 2010 and 2015, ultimately leading up to the Brexit decision of 23 June 2016. However, it is not the place of this thesis to draw such comparisons, what is salient is to see how continuing demands for a referendum impacted on the dynamics of the crisis until the election of the Blair Labour Government in 1997, and the passage of the Amsterdam Treaty.

5.6.4. Euroscepticism –the Rise of the Referendum Parties

After the ratification of the Maastricht Treaty, and the refusal of parliament to accord a referendum on the treaty, the question of Europe continued, on membership, and on certain policy areas: Monetary Union, Schengen, JHA, and Social Policy. The period also saw the emergence of a number of political groupings outside of the mainstream parties that reflected the continuing schism in British opinion, as well as a continuing presence of tensions over Europe within the major parties.

Of the political parties that emerged in this era, the only survivor is UKIP. Formed in 1993, the party originally concentrated on trying to influence policy through actively seeking

recruits in the Conservative heartlands of the South of England (Ford and Goodwin 2014 p.282). Following the change in policy in UKIP towards gaining representation, and the possibility afforded by the adoption of a form of proportional representation, UKIP won three seats in the EP in the 1999 elections (Morgan and Cracknell 1999 p.7). Thereafter, the party continued to gain support in second-tier elections (EP, Local)¹¹⁷ but with the continuance of first past the post only (FPTP) gained seats in Westminster through defections, and one election victory in 2015.¹¹⁸ This factor notwithstanding, the impact of UKIP on the British political scene post-2010 was huge; however, for the purposes of this paper their impact until 1997 was marginal.

The Referendum Party, founded in 1994 by billionaire entrepreneur Sir James Goldsmith, called for a referendum on the UK's relationship with the EC post-Maastricht. Formerly sympathetic to the European ideal, Goldsmith developed a vehement opposition to the Maastricht Treaty, in which he saw the development of a European superstate (Carter et al 1998 p.470). The divisions within the Conservative Party, their small majority,¹¹⁹ and the trauma of the events of Black Wednesday,¹²⁰ all gave Goldsmith advantages in furthering his political aspirations (ibid.). In their developing manifesto, the emphasis was on 'championing the cause of the little guy' (ibid.p.472), and on the restoration of democratic choice, through the offer of a referendum based on the question:

'Do you want the UK to be part of a Federal Europe? Or do you want the UK to return to an association of sovereign nations that are part of a common trading market?' (ibid.p.472).

Here again the expression of the cleavage in British political thought becomes evident, between the political project of integration in a federalising sense, and the cooperation between sovereigns at the intergovernmental level in restricted policy areas. The impact of the party on mainstream parties went beyond any potential electoral support; for it placed the Europe issue high on the media agenda (ibid.p.483), but more importantly created a wave of panic amongst Conservative candidates for the 1997 election, of whom 317 'pledged their opposition to a single currency' (ibid.p.482). At the party level, the

¹¹⁷ This refers to those elections that are not to the national offices – Reif and Schmitt refer to local government bodies, non-executive heads of state, and European Parliament election. The phenomenon of voting against the incumbent party in second tier-elections is discussed, and challenged, in Marsh, M., (1998) 'Testing the Second-Order Election Model after Four European Elections' *British Journal of Political Science* 28 pp. 591-607.

¹¹⁸ Their sole M.P., Douglas Carswell, had a fraught relationship with the party leadership. He ultimately resigned from the party on 25 March 2017 to become an independent M.P.

¹¹⁹ At the 1992 election Major had a small but workable majority of 21, by 1996 this had been whittled down to nil by November 1996 through 'by-election defeats and defections' (Carter et al 1998 p.471).

¹²⁰ On 16 September 1992, the UK was forced to withdraw the pound from the ERM. The impact of the withdrawal of the pound from the ERM was important not only for those who, like the author of this thesis, were involved in business where stability in exchange rates was critical, but, for the overall perception of the Maastricht project within the Conservative party.

Conservative cabinet took the decision to make a manifesto commitment to a referendum on a single currency to confirm an eventual parliamentary decision. The Liberal Democrats had had a long-standing commitment to a similar referendum, and Labour 'followed suit' in November 1996 (ibid.p.479).

Support in the 1997 general election, at which the Referendum Party managed to field a candidate in 547 seats, amounted to an 'impressive . . . 811,827 votes – an average of 3.1% in those seats it contested, but under FPTP yielded no seats. Ultimately, the effect on the landslide election of the Labour Party under Tony Blair was minimal, as Heath et al. (1998 pp.107-108) argue; the cost to the Conservatives of Eurosceptic candidates¹²¹ was probably only six seats. However, for the Conservatives, the internal divisions created by the response to Goldsmith 'reinforced the widely-held and electorally damaging perception of a weakly-led, divided party (Carter et al. 1998 p.484).

In addition to the emergence of single-issue parties, the schism in the Conservative Party over the Europe question continued after Major's 1992 election victory, and the final signature of the Maastricht Treaty. In the quelling of the rebellion over Maastricht in the vote of confidence, Major had used the 'nuclear option' (Baker et al 1994 p.44), and subsequently argued that everyone had 'come back into the fold' (ibid.p.45). However, in reality the divisive nature of the Maastricht debate was 'a proxy for unresolved conflicts within the party over the Anglo-American alliance, the future of Thatcherism, and conceptions of British nationhood' (Sowemimo 1996 p.77). After Maastricht, the level of dissidence between the pro-and anti-integration factions was higher, and more sustained, than in earlier periods of EC membership (ibid.pp.78-79).

Moreover, the traditional fault lines between the 'national sovereignty [free-marketeters] versus interdependence' (ibid.p.82) ideologies became more complex; in the former group the single-currency issue created a further split. This resulted in the formation of three broad groups: Thatcherite nationalists opposed to a federal Europe *and* any form of currency management; neo-liberal integrationists who accepted monetary integration but remained opposed to the social chapter and economic '*dirigisme*'; and interventionist-integrationists, a limited group that went as far as espousing the social chapter on top of a single currency (ibid.pp.82-88). This development of 'factionalism . . . [and] sustained ideological alignments' (ibid.p.78) was, for Sowemimo, a departure from the traditional operation of the party. Previously, where groupings came into being for a specific issue, these broke up afterwards; but the deep divisions over Maastricht and its ratification 'led

¹²¹ UKIP also fielded some candidates in the 1997 election.

to sustained, disciplined and uncompromising dissidence from the opponents of the treaty' (ibid.), which by 1995 reached as far as the cabinet (ibid.). Moreover, the development of separate 'organisations' in the party helped to perpetuate the 'critique of Britain's membership of the European Union' (ibid.p.79).

No formal challenge was made to Major's leadership of the Conservative Party he had led to election victory in 1992, although speculation of such a challenge had thereafter been a persistent feature (Heppell 2007 p.474). In order to try to restore his legitimacy as leader of the party, Major once again resorted to a 'nuclear option' (ibid.p.475), when on 22 June 1995 he resigned as leader of the Conservative Party, and challenged the Eurosceptics to 'put up or shut up' (Macintyre 1995). Cabinet member John Redwood emerged as a challenger from the right-wing, and although he was substantially defeated this did nothing to heal the rift between the two ideological wings of the party, although Major stated his 're-election as leader postponed, and, I hope, saved the party from an irrevocable split over European policy' (Major cited in Heppell 2007. p.479).

After the 1997 election defeat, Major resigned as party leader, and the party leadership took a decisive anti-European shift, with the election of William Hague (Gowland and Turner 2000 pp.322-324). In the subsequent period, a series of broadly anti-European Conservative politicians held the leadership, notably Iain Duncan Smith and Michael Howard, until David Cameron was elected in 2006. Much of this positioning was in response to Labour's clear identification as the party of Europe, and more a result of domestic electoral pressures than foreign policy (Geddes 2004 pp. 88-92). The growth of UKIP in both second-tier election representation, and in vote share in the UK's general elections, can also explain the Conservative's continuing Eurosceptic position. This shift was tempered when the Conservatives came out as the leading party in the 2010 elections, with their coalition with the pro-European Liberal Democrats. However, in the lead up to the 2015 elections, Cameron bowed to the pressure of the Eurosceptic voices, and made a promise for an in-out referendum on the UK's presence in the EU, the consequences of which are now well documented.

This thesis, however, seeks to examine the crisis as defined – with a focussing event and subsequent return to crisis immanence. On 1 May 1997, the pro-European (as compared to the Conservatives) Labour Party were elected with a substantial majority on a mandate of 'constructive engagement' with Europe (Geddes 2004 p.90). This change notwithstanding, the return to pre-crisis immanence did not imply a wholesale revision of the persistence in some areas of the UK's awkwardness, as now discussed in the final section of the case study.

5.6.5. *Fin de Crise? The UK Under New Management*¹²²

The Maastricht Treaty included a commitment to a follow-up IGC in 1996 to re-assess the functioning of the new decision making processes, and in particular in CFSP (Dinan 2005 p.163). Preparations for the conference continued to highlight the different positions of the UK, with her antipathy to supranational solutions, and continued pressure for the institutionalization of types of flexible arrangement by which the UK, and other MS, could opt in and out of policies in an 'à la carte, pick-and-choose EU' (ibid.p.164).

The expectations of the other MS were that with the likely replacement of the Conservatives with the Blair Labour government, progress on constitutional change in the EU would resume (ibid.p.165). Blair's approach to Europe in the run up to the election had given the European MS leaders hope that the prevalent Eurosceptic discourse would be replaced by more positive relations between the UK and the EU (Gowland and Turner 2000 p.326, Geddes 2004 p.90).

The change in government did, as expected, result in a significant shift, and not just in style; as Gifford (2010 p.322) argues the agreements reached at Amsterdam and the decision to reverse the opt-out on the Social Chapter reflect a new approach to the EU. The agreements reached at Amsterdam also included a compromise on limited institutionalisation of 'the use of flexibility in certain policy areas' by which a number of MS could cooperate, alongside a provision for non-participating MS to block such initiatives should they fear their 'national interest' was challenged (Gowland and Turner 2000 p.334-335). However, in respect of the commitment to the Euro, Labour kept the UK's options open, here it was a question of 'when' rather than 'if', and was predicated on economic considerations (ibid.pp.330-331). Although the decision made by Chancellor Brown to vest control of UK interest rates with an independent Bank of England met one of the pre-requirements for participating, and was well received (ibid.p.327), the UK was under no commitment to join, but could do so if conditions suited, subject to approval in the promised referendum. The decision was not just to be based on economic considerations, as Baker (2003 p.239) discusses, for ultimately this was a political decision for the parliament and the UK voters in a referendum. The return to immanence of the crisis of the UK's relationship with Europe also meant continuity in the preferred position on intergovernmentalism, as opposed to a full commitment to integration (Geddes 2004 p.90),

¹²² Taken from Gowland and Turner 2000 pp. 322-340.

and in the preservation of an Atlanticist policy of maintenance of strong links with the US (ibid.).

In respect of the return to immanence, the strongest evidence is the return to a clear contrast between governmental preferences for a continued presence in the European project, albeit with some caveats, and an opposition that had adopted an adversarial position advocating a strong Eurosceptic line. Two main differences are evident though. Firstly, the roles of party of Europe and Euro-antagonists had reversed, with New Labour adopting the former, and Conservatives the latter role. The Liberals/Liberal Democrats provided a measure of stability as a third party that remained committed to Europe. Secondly, where prior to Maastricht opponents to European integration had no alternative to the mainstream parties, post-Maastricht saw the development of alternative choices in the Referendum Party, and later UKIP. This, when taken with the persistent division within the Conservative Party as discussed above, was the legacy of Maastricht, a return to immanence of the UK's crisis. What had changed, however, was that the integration project had advanced significantly, and the return to crisis, in the aftermath of the 2008 recession, was to ultimately lead to the decisions taken on 23 June 2016 and the UK's eventual departure from the EU.¹²³

5.7. Concluding Comments

In the two preceding case studies, the dynamic was based on the premise of resolving crisis to ensure the continuation of a federal political system that was already established; existing constitutional arrangements were in place, although these had developed as a result of process; the extension of civil rights' law in the SI case, and the impact of Keynesian welfare state policies in the case of Quebec, which resulted in developing pressures on existing relationships between groups.

In the case of the UK and the European project, the constitutional arrangements, the treaty structure of the project, developed through balancing the preservation of past accords and the developing of new agreements. This too was process based, as MS and the Commission reacted to the changing geo-political context between and within the political arenas that make up the polity. What is different in the European project case study is that there is the simultaneous effect of the efforts to hold existing arrangements in place, whilst developing new arrangements. In Stepan's (1999) parlance, a dialectic dynamic exists

¹²³ At the time of the thesis submission the Conservative government of Theresa May had obtained parliamentary approval to invoke Art. 50 of the Lisbon Treaty, and a formal request was to be made to the EC for the start of the Art. 50 procedures on 29 March 2017.

between what is effectively a holding together FPS and a coming together FPS, where the use of instrumentalities can be determined in both the maintenance of existing arrangements and the pursuit of new accords.

At the foundation of the crisis between the UK and EC was the different understandings of the direction and form of European integration, where the UK's identity and value base made full engagement with the federal principles of the project difficult to reach. The UK joined the EC after two failed attempts, rejected by de Gaulle on the basis of the UK's incompatibility with European ideals. When the UK did join, understandings of the EC as a federal project were subsumed by domestic, and trade and commerce, concerns. The passage of the SEA in 1987 was welcomed by the Conservatives as part of a development of the single-market – the crisis developed when the drive towards deepening integration with federal implications, implicit in the SEA, started to be made clear. The opportunities for change, with the 'perfect constellation' of EC leaders, and converging economic policy, along with the drive of Kohl, Mitterrand, and especially Delors, were accelerated with the dramatic geopolitical changes of 1989.

The crisis became evident as Thatcher chose an anti-integrationist stance, that became increasingly at odds with the rest of the EC's MS. Ultimately, her domestic problems, coupled with disquiet on her handling of the UK's negotiations, led to her ouster, and replacement with Major. This change notwithstanding, in the EC understandings of the necessity for the UK to be as full a participant as possible in the project required novel and imaginative developments of the proposed treaty changes. Moreover, the changed geopolitics of Western Europe meant that reaching agreement with all twelve MS at Maastricht became critical; in essence the system faced a crisis of existence.

The range of instrumentalities deployed at the Maastricht IGCs cover many of those elements theorised by Livingston (1952,1956); with changes of attitudes, formal constitutional (treaty) change, changes to the institutional and legal framework, policy asymmetry, the use of subsidiarity, and the elimination of the 'F-word'. The utilisation of these allowed for the UK's participation in the final agreement reached at Maastricht, and for the integration project to move forward. The nature of the instrumentalities employed permitted future UK governments to continue to enjoy the choice of deeper integration in policy areas at their time of choosing, which allowed for Major to claim that the UK's interests had been protected in respect of further encroachments on her sovereignty. However, the lengthy ratification process highlighted discussions and debates over the commitment to an integration process that would, for many, continue to challenge the UK's sovereignty and identity. Calls for a referendum went unmet, contributing towards the

development of both in-party dissent, notably in the Conservative Party, and the development of new parties with hard Eurosceptic agendas.

The long decline of the Conservative Party with the attendant divisions continued after the election of New Labour in 1997, and recreated a reverse image of the 1980s when 'Old' Labour had held the anti-European role. As now known, the period of New Labour's governance was one of enormous changes in the EU, with the failed Constitutional Treaty, the Lisbon Treaty, and the events after the 2008 global banking crisis. All of these happened well after the end of the Maastricht crisis, as defined by the independent variable of this thesis. I argue that post-Maastricht, the long period of Labour governance is analogous with the period of Thatcher's Conservative governance from her election in 1979 until the manifestation of crisis after the 1987 SEA. The same tropes of the UK's incomplete participation with the process were present, what was different, however, was that the integration process in the EC had moved on, and the continuing failure of the UK's elites to come to terms with this was to have significant impact.

6. Comparative Discussions

6.1. Introduction

The case studies that form the data sections of this thesis contained significant elements of analysis in respect of the nature of the dynamics within each case, examined through the lenses provided by the theoretical framework of crisis, and the understanding of federalism as an ideology that underpins the organisation of FPS. Where appropriate I have drawn links between and across case studies within the studies themselves; however, the nature of this thesis is a comparative study, as discussed in chapter I.

In chapter 1 the broad areas of dissimilarity of the cases were discussed, and most importantly those areas where areas of similarity could be identified, and measured, and where an argument for causality might be made; the focus being on the detection and measurement of dynamics that can be reliably attributed to the presence of federalism as organising principle as developed in the conceptual framework chapter.

This chapter moves forward, and in line with the structural approach of the thesis, draws the methodological principles and conceptual understandings through and across the three case studies to form areas of comparison. These mirror the methodological framework; the three tabulated areas of potential similarity are represented below in three sections of discussion. The sub-sections of these draw from the themes established as sub-sets of the four research questions established in section 1.5. They are organised in such a way as to broadly sit within the areas of similarity. It is within these thematically organised sub-sections that the similarities of dynamics in the case studies are developed, contrasted with a rehearsal of the dissimilarities of each system.

From this, and for each sub section, a discussion of the similarities aims to establish a link between the phenomenon observed across the cases, taking into due consideration the extent to which the dissimilarities preclude other variable (notably the extraneous variables), and hence to establish an argument for causality. At the end of each of the three broad sections cross thematic comparisons are made and conclusions drawn. These then feed into the conclusion chapter where the overall comparative findings are mapped against the research questions.

6.2. Dynamics #1: Political representation

6.2.1. Locations of Dialogue – the ‘Nexus’ of Crisis and Federal Political Systems

In the section I compare the three FPS in terms of where and how the crisis was addressed, drawing on the matrix model of FPS as theorized by Elazar (1987), to show that in each of the FPS there was the opportunity to discuss issues in public and institutional frameworks. For, as Elazar hypothesized, it is within the matrix that there exists a ‘creative dialectical tension that can produce better results than if efforts are made to stifle the expression of these different and even contradictory impulses’ (Elazar 1987 p.31). In this thesis, the emphasis has been on the dynamic nature of FPS, in times of crisis, and in particular in the use of instrumentalities. However, the existence of the space in which political actors can operate through ‘formal and informal’ cross cutting lines of communication must be considered as a pre-requisite for such instrumentalities to emerge against the formally institutionalised backdrop of the constitutional framework. Moreover, as Elazar argues, it is when ‘federal principles are translated into political structures’ (ibid.p.188) that the persistence of action of all governmental arenas, irrespective of size, is maintained. The evidence from each case study of the persistence of arenas, or the replacement of arenas with homologous structures that fulfil analogous purposes, will give a deeper understanding of the persistence of the federal principles as theorised by Elazar.

In the case of SI these arenas extend from the political representation at local, city and state level, the Charter Commissions, the Courts, and civil society. The creation of the FPS of New York City, with the 1897 Charter, gave limited constitutional rights to the constituent units, the boroughs. However, the federal principles of the recognition of territorial diversity and the rights of minorities were acknowledged by the initial framers and subsequently incorporated in de jure rights in amendments to the Charter. In later amendments, under the Cahill and Goodman Commissions, although borough powers at the level of the BofE were reduced, the principles were maintained in the provision of strengthening community-based governance.

In the period before the final Supreme Court Judgement, the principles of minority, and territorial representation were upheld in both Judge Neaher’s 1981 judgement, and the 1983 judgement in Board of Estimate vs. Morris. The initial judgement that the BofE was constitutional, whilst overturned on appeal, require a deep examination of the Board’s function in representing ‘policies and interests’. The work of the Ravitch, and subsequently the Schwarz Commissions, to create formal rights for representation of the boroughs and their presidents through amendments to the composition of the BofE and the City’s Council

came to no avail, in the sense that these did not go far enough to satisfy SI elites and voters, who subsequently approved the 1990 call for secession. However, there is evidence to suggest that the changing attitude of NYC elites towards SI engendered an acknowledgement of the political legitimacy of the island's demands for a voice in their own, and the City's affairs. Moreover, with the arrival of Giuliani as Mayor, the development of the informal lines of communication as theorised by Elazar (1987) can be seen in the data, effectively the reduction in the scope and reach of formal powers in the local government arena were compensated by a development of informal powers.

In the Quebec case, the development of the relationship between the province and the State in the post-WWII era can be summarised as one of progressive retrenchment of the province through a form of 'defensive nationalism', in the face of rising pressures to integrate into Canadian 'new federalism' (Pelletier 2000 p.71-73). Challenges to this came late in the 1950s, with a developing coalition of ideological movements and civil society, and the Tremblay report's findings on the future of the province. In terms of Elazar's matrix model, the formal representation of alternative ideas as espoused by Tremblay came with the departure of Duplessis and the election of the QLP, recently de-coupled from the national Liberal Party. The subsequent development of political parties that openly advocated forms of extended autonomy, and calls from informal actors (de Gaulle), resulted in the start of new forms of exchange between political actors in the form of IGCs, in which the principles of the respect of the bi-national character of the Canadian State, and human and linguistic rights, were explored. The Victoria conference, as a continuation of these exchanges, came close to success, but the continuing communication of nationalist demands via Bourassa's cabinet led to an ultimate rejection by the QLP of the accords offered at the IGC.

With the cessation of efforts for formal constitutional reform, the arena for the expression of political elites shifted to provincial and national parliaments, with the development of contrasting strategies by Trudeau and Bourassa, initially, and Leveque, subsequently, through which both intended to respect understandings of federal principles based on each party's perception of these. Moreover, while formal legislative changes were made in the two parliamentary arenas, Bourassa in particular sought to extend informal exchanges with his homologues in the provinces through the continuation of IGCs, albeit in the absence of the participation of the national government. In the final phase of the crisis, after the election of the PQ, the QLP and the LPC sought to address the federal principles at stake, and at risk, from a positive response to a referendum on Quebec's sovereignty-association. Embedded in the Pepin-Robarts report, and the Beige Paper, were expressions of intent in reaching agreement on Quebec's future special status. However,

and in a reminder of the difference between the predominance of formal and informal relationships in political arenas, the post-referendum (re)-affirmation of 'new federalism' by Trudeau, in the form of the repatriation package, was to ultimately take precedence over the Quebecois' position as stated by the sovereigntists. Here, Elazar's argument that the dialectic inherent in dynamic FPS 'can produce better results' (Elazar 1987 p.31) breaks down, the outcome can only be seen as 'better' if the impulses of the 40% of the Quebecois who supported separation are ignored.

In the third case, that of the UK/EC crisis, the matrix model becomes stretched to accommodate states, as constituent units of a multistate union, within a frame of a constitution (in the form of treaties), a legislature, and an executive, with delineated competences. This sits alongside another political structure, in which states interact in cooperation through an inter-governmental framework, where decisions for deeper integration, either through cooperation, or the formal conferral of competences to the Union, are made. The scope of operation/cooperation of states in this hybrid construct is in itself moderated by restraints at the domestic level, both constitutional/legislative and political, and also by inter-relationships with other MS, and indeed other non-EC states. This complexity notwithstanding, it is still possible to apply Elazar's theoretical approach to the understanding of the resultant extended matrix as a dynamic context in which competing and contrasting federal principles are expressed.

In the UK's domestic arena, the persistent and recurrent expression of the rejection of federal principles reflected changing global relationships from the post-WWII period onwards, with a reluctance to embrace the federal and supranational direction, real or constructed, of the EC/EU's integrative efforts. Competing pressures from within political parties, and the trades unions, founded on contrasting understandings of the benefits and costs of integration, fed into the decision-making processes of political elites, across the ideological spectrum. The confluence of political and economic ideology in the post 1984 period created an environment in which the completion of the single market was acceptable to a broad range of actors, including the UK's political elites and Unions.

However, the impact of such a project, as defined in the 1987 SEA, in terms of deepening integration, became clear as actors started to express their contrasting understandings of federal principles. In the matrix of the FPS, the executive, in the form of the Commission, especially President Delors, expressed the ideals of a federal system based on extending the single market to encompass areas of economic and social cohesion. Moreover, Delors also proposed the shift of the decision-making locus away from the intergovernmental into the supranational, reducing MS parliaments' influence in favour of a European Government. Thatcher used non-parliamentary and parliamentary arenas to express her

contrasting ideas, arguing for the preservation of MS' parliamentary supremacy, and the use of the single market in a reflection of her neo-liberal understandings to attain the same benefits as expressed by Delors – but with minimal government (EC or MS) intervention. The principle of extending the benefits of the single market through a process of currency alignment, with the eventual goal of a single currency, was rejected by Thatcher, based on her understandings of the anti-integrationist concept of the link between currency and national identity. In the UK parliament, there was, however, a range of expression of understandings of federal principles, and how these might be attained. Labour supported the idea of a deepening of the integration process to provide stronger defence of social and economic principles of mutuality, and worker participation. Within the Conservatives, senior figures, notably Geoffrey Howe, identified that the EC/EU integration process was based on shared sovereignty and rejected the idea of the 'loss' of sovereignty in the sense of an indivisible construct.

In intergovernmental fora, the divergence between the UK's position, as (forcefully) stated by Thatcher, and (less so) Major, was particularly evident in the areas of the single market, economic union, monetary union, and increasing use of QMV. These differences, identified in the agenda for the Rome II summit, were finally resolved at the Maastricht Summit, where in the IGC principles of compromise and recognition of states' positions resulted in the accommodation of the UK's position, through the use of instrumentalities, innovation, and Major's 'fudge'. Ultimately, federal principles prevailed; changes to the structure of the shared rule elements of the FPS were reached through agreement and compromise. Whilst the idea that this continuing engagement might take the UK down a path towards deeper integration was raised in the UK's parliament, and in wider civil society, the option for a clear mandate through a referendum was not obtained, nor had it been for the 1987 SEA that laid out the framework for such integration. This missed opportunity for a clarification of the federal principles at play was, ultimately, to create difficulties in the persistence of divergence in understandings of the UK/EU relationships, culminating in the choice in the 23 June 2016 referendum to leave the EU.

Across the case studies the evidence shows how, in Elazar's conception of the structure of FPS, the existence of multiple arenas, and the dynamic, and dialectical, exchanges based on principles of federalism, can be discerned. In the case of SI, the argument that this resulted in a 'better' system can be sustained. This argument is less valid for the UK, where a refusal, or inability, to recognise federal principles at play lies at the foundation of the UK's split from Europe. In the Quebec case, the evidence of the recognition of federal principles is clear, the difficulty arises from the existence of multiple understandings of the nature of federal principles in respect of the nature of territorial and individual rights. The

important lesson from this analysis is that in crisis, the dialectics inherent in, and essential to, the functioning of these systems, reflect the understandings of the federal principles on which each system is based, and the identities and values that drive these.

6.2.2. Balancing Unity and Diversity; Centralization, Non-Centralization and Decentralization

The literature on FPS draws extensively on the concepts of centralization, non-centralization and decentralization.¹²⁴ Some analyses start by examining divisions of competences to locate the system on a centralised/decentralized continuum, but while this division forms a 'federal principle' that is at the basis of some of Wheare's (1947) work, the concept is much more complex. Indeed, Wheare goes on to argue that the arrangements of competences between spheres of government were, by necessity, the subject of constant adjustment to take into consideration the fallibility of the original framing, and became the source of conflict and dispute. In the conceptual framework, the ideas of King (1982), Requejo (2005), Kincaid (1995), and others show how FPS are dynamic systems in which the balance of power is located in an understanding of federalism *qua* ideology that allows and even demands that communities express their individualities and their commonalities to allow the system to flourish.

In SI, the power balance between the constituent units and the FPS of NYC was not originally predicated on a substantively decentralized division of competences. However, in later political arrangements the influence that the BPs exerted in the BofE was such that the constituent units, and notably SI, were satisfied with the representation in areas of competence that were most salient, notably planning and land use. The changes to the representation of SI that followed the 1989 decision of the Supreme Court did not, *per se* change the extent or nature of the division of competences, but, in the view of SI, removed the power of the BPs to protect against unwelcome development. In the post-crisis phase, the data shows how in the absence of the BofE new power relationships between the BPs, the community boards, and the mayor's office, that are based on informal networks, have developed, and in areas salient to the grievances of SI, notably land use, these have been remarkably effective.

In the case of Quebec, in the immediate post-BNAA era, the balance of competences was firmly skewed in favour of the federal government, but matters of a 'local' nature were reserved for the constituent units. In the inter-war period the provinces worked to maintain

¹²⁴ See Elazar (1987 pp. 34-38) for a full discussion on the difference between non- and de- centralization.

and increase their autonomy, and in Quebec the emphasis was on the maintenance of language and culture. Post-war dynamics changed so that Quebec was forced into a strategy of self-isolation in the face of robust attempts to modernize Canadian social and welfare policies – a competence that cut across the federal/provincial divide. With the *revolution tranquille* came a policy of reform in the social and welfare spheres, and calls for constitutional reforms that would lead to a significant shift towards non-centralization for Quebec, and indeed the other provinces, with an emphasis on realising the goals set out by Tremblay. In the failed Victoria process, the provinces, and notably Quebec, sought to affirm the *de facto* de-centralisation through a constitutional process that would result in a *de jure* non-centralization of competences. This established the broad context for the province's search for the recognition of the principles established by Tremblay, and later P  pin-Robarts, for the extended use of shared competences with provincial paramountcy, where provinces could opt to cede a competence to Ottawa, or retain within the provincial domain.

After the referendum of 1980 the (mis)-understanding and/or Machiavellian (mis)-representation of *Renewed Federalism* as including significant amounts of 'de-centralization' was clarified, with the drive of the repatriation package towards an unequal hierarchical order (Bissonnette 1981 p.8), with some opt-out rights for the provinces with the 'notwithstanding clause' in restricted competences of education and culture. The *de facto* shifts in power between Ottawa and Quebec did, however, survive the assaults of the patriation and the failures of Meech Lake and Charlottetown, and in the post-crisis period the de-centralization process has continued, even in the absence of a constitutional recognition of Quebec's distinct/special status.

In the case of the UK/EC, the problematic confronts us, with the nature of European integration, and the *formal* conferral process by which competences are transferred from the MS to the Union, notionally only by 1\ treaty and 2\ by unanimity. As such, the balancing act between the process of unity and diversity, between centralization and non-centralization, should remain firmly anchored with the MS, in effect the EU can only gain powers through explicit conferral, notwithstanding the EC/EU's longstanding commitment to 'ever closer union'. The 1987 SEA included agreements to complete the transfer of competences in the area of trade, monetary and economic cooperation, and social and labour rights. Some of these moves, where they coincided with Thatcher's neo-liberalism, were essentially welcomed. However, the subsequent confirmation by the Commission that the deepening of these competences would require a corresponding transfer in powers and influence away from the national/intergovernmental sphere, into the supranational, created the backlash from Thatcher that started the crisis. Moreover, the

SEA included a commitment to deepening in the competence of economic and monetary management, and once these became explicitly associated with forms of monetary competence that impinged on the UK's idea of sovereignty, Thatcher, and Major afterwards, again refused to countenance such extensions to conferrals of competence. These rejections of the deepening of competences might have prevented the ultimate goals, made more urgent by global events, of the EMU and EPU IGCs. To prevent this risk, forms of agreement were reached that created asymmetrical arrangements in the *degrees, modalities, and timings* of integration by MS, with the UK (and Denmark) obtaining various opt-outs and opt-ins in the conferral of competences.

In terms of Elazar's analysis of centralization, de-centralization and non-centralization, the *prima facie* achievement of the Conservatives at Maastricht was to obtain a set of agreements that were non-centralizing in nature, protected by treaty. However, in reality the discussions before and after Maastricht within the UK's political elites, and subsequently in rising Euroscepticism, seem to suggest otherwise; that in effect the UK had been given palliatives in the form of de-centralizing opt-outs, and opt-ins. Indeed, ultimately the UK would have to accept a progressively centralizing EU; *de facto* subject to the deepening of the conferral of competences in major policy areas, without sufficient influence to challenge any errors in the process.

In the three case studies, the analysis of the data confirms Wheare's (1947) interpretation is that in the matter of competences it is not a question of adding up the competences conferred exclusively on the central government, the constituent units, and those that are jointly made. The balance between unity and diversity, when seen through the lens of the dynamic of FPS in times of crisis, is more a question of power politics (Kincaid 1995). The real deployment of policy in areas of competence ebbs and flows between the federal government and the constituent units as a product of the conflict between the diverse groups that make up the system. As such, whilst the research questions identified the shift on a centralizing/non-centralizing as an expected output from the case study comparison, in reality such a question becomes redundant. For, in reality, the systems in question are characterised by a capacity to operate in terms of power dynamics as theorized by Kincaid (1995).

6.2.3. Similarities of Output in the Dynamics of Political Representation

As discussed in section 1.2.2., the three FPS under examination are very different in respect of their political composition and functioning. Indeed, the FPS are the product of

very different historical processes, based on a broad range of societies, and have very different institutional frameworks. The literature of Watts (1998, 2007), Livingston (1952, 1956) and Elazar (1987) all cover how the range of political systems organised with federal principles reflect these variances. In examining the post-crisis dynamics of each system, the comparison to be drawn against the understanding of the variance, the dissimilarity, of FPS; here we must assess the three cases against the similarities, as defined in table #4, and draw a broad conclusion based on the presence of a predominance of positive indicators of the dynamic under examination. Null responses can be a part of the analysis, if these can be shown to be insignificant, or to be not applicable.

Across the three FPS there are a range of outputs that indicate the presence of a federal understanding in the actions of political actors at the constituent unit and general government levels of analysis.

All three cases show how the changes in the FPS driven by processes can be inimical to certain communities and how in each case these communities' demands are articulated by political elites. In some cases, (SI, UK) the existing political representatives take up the demands, whereas in Quebec both existing elites (the QLP) and new parties (PQ) are instrumental. Overall, the evidence is clear that political elites take up the demands of the territorially based communities that are under threat. These elites are successful in promoting these interests, and in eliciting responses from the political elites in the system.

In some cases, this response is entirely positive, here we see how in SI Senator Marchi's efforts are met with overall support and sympathy from the elites of NYS. In the Quebec case the response from the political elites is sympathetic, in that the overall demands for Quebec's protection were recognised; however here the contrasting understandings of federalism become problematical. In the UK's case, the EC's political elites are initially antagonistic to the UK's demands, as can be seen from the free range given to Delors in his pre-Bruges utterances; however, the tone and content of the EC's response changes to be broadly neutral until the Rome I summit. Here the renewed antagonism, driven by geo-political constraints, culminated in Thatcher's ouster – after this event the leading actors are careful to seek accommodation with Major in the Rome II negotiations.

The evidence for support from the community for the elites demanding change can be difficult to evaluate; in the SI case the support for Marchi's initiative is clear from the referendums held, but no clear lesson can be drawn from voting in Mayoral elections, as in these cases all Mayors were sympathetic to SI's cause but did not accept the idea of the county seceding. In the Quebec case, the QLP retained support for the 'federalism rentable' approach until 1976, but once the PQ offered a form of autonomy based on

sovereignty-association as opposed to full independence Levesque's party gained power. Their loss to the QLP under Bourassa in 1985 did not indicate a lack of support for Quebec's case, but a reorientation towards a formal settlement based on the 'five conditions'. Trudeau's continued preference for a mono-national, multi-lingual solution was ultimately replaced by Mulroney's acceptance of Levesque's, and latterly Bourassa's attempts to resolve the crisis, only stopped by the failures at Meech Lake and Charlottetown. The UK case is the most complex; cross and intra party support for the defence of the UK's interest as defined by Thatcher drew on multiple cleavages, and varied according to whether it was the style, or substance of her negotiating position. However, the persistence of the anti-European parties post-Maastricht, and indeed post 1997, is indicative of the continuing antagonism towards the settlement reached.

The discussions of the similarities of the dynamics in political representation give a robust level of support for the idea that in FPS multiple arenas of political action can act in the case of conflict between a constituent unit and the rest of the FPS. Moreover, and fully reflecting the premises of federalism as a principle of organisation, the articulation of these demands is accepted by and respected by the elites of the general government.

6.3. Dynamics #2: Demand, Counter-Demand and Non-Constitutional Change

6.3.1. *Identity and Territoriality*

Territorially bounded identity is at the basis of crisis in each case study. The examination of these in a comparative framework draws out some important analogies, not least in the concept of development of identities that come from forms of isolation, in Tilly's parlance the element of identity that derives from the existence of 'a boundary separating me from you or us from them' (Tilly 2005 p.209).

SI's identity derives from a geographical accident that is strengthened by socio-economic development. The isolation of an island status contributed to the development of a particular socio-economic population and hence an identity; white, catholic, Italian-Americans sought to replicate on SI the semi-rural bucolic nature of their homelands. These processes also contributed to the creation and maintenance of an essentially suburban, Republican, conservative society that was to become increasingly at odds with the development of the multi-ethnic boroughs of the rest of NYC, and to the perception of the second-class character of SI by both its residents, and the rest of NYC.

In the case of Quebec, the development of the identity of a catholic, rural, French-speaking community is predicated on the principle of the survival of an island of diversity in a sea of

assimilatory forces, that are historically more or less overtly active. In the post-Durham era, and especially with the 1867 settlement, the assimilatory forces, coupled with a refusal of the Anglophone provinces to accommodate linguistic diversity, were, paradoxically, to reinforce a territorial distinction based on strong cultural identifiers. This reification of the differences between the Anglophone and Francophone communities of Canada was to continue through the post-war period, with the resistance of the Duplessis regime to pressures to change that came from both outside and inside Quebec.

In the last case, that of the UK, the prevalence of the island mentality and the indomitable spirit of the little Englander is the product of, in Gaitskell's (1963) historically debateable terms, terms 'a thousand years of history'. It is notoriously difficult to pin down the concept of the 'British' identity, in this thesis I have used the composite identity derived from the literature which encompasses a respect for democracy, and a strong attachment to an idea of an indivisible sovereignty located in a Westminster style of parliament. Moreover, the extent to which social and monetary policy defined the British identity becomes clear in the crisis over Maastricht, with the strong symbolic attachment to the Pound, and to a form of social welfare which reflected a protestant, bordering on puritan, work ethic. Notwithstanding the difficulty of *defining* national identity, an identity that required defence was at the heart of the crisis that pitted the UK's political leadership, in the form of the Conservative Party, against the integration process that accelerated post-1987, and which culminated in the final compromises over the Maastricht Treaty.

This initial comparison, based on factors of identity and territoriality, must however be made in the context of the contingent nature of crisis, the process by which changes in the FPS brings political representation of groups into play. Identity *per se* does not, in the cases studies, create crisis, it is not a case of persecution or evident mistreatment of groups on either an identity or territorial basis; the crisis develops as a function of the challenges to groups that creates a space for the political actors to fulfil their role and purpose.

6.3.2. *Immanence to Evidence*

In each of the case studies there is a process by which the crisis immanent in the system becomes evident.

In the case of SI, the process started with the *Reynolds vs. Sims* case of 1964, gradually becoming evident through further challenges to the representation of the SI electorate in the political system of NYC. The possibility for either a rejection of the legal challenges in *Andrews vs. Koch*, and *Morris vs. the Board of Estimates* or for a new formula for

representation to emerge, was sufficient for active popular opposition to the moves to be limited, although support for a form of political independence was high. However, the final decision of the Supreme Court in 1989 was to bring the issue into evidence, with the confluence of both grassroots and elite support for a secessionist movement.

In Quebec, the *Quiet Revolution* failed to create a cohesive idea of the development of the Quebec nation, and led to the emergence of a four-way split in the understanding of the ideal-type political arrangements for Quebec within a federal state. For Trudeau, this model was based on individual rights, entrenched in a mono-national state, with protection for cultural and linguistic diversity for all citizens; for Daniel Johnson, the choice was between equality for Quebecers or independence; for Robert Bourassa, the desire was for a *fédéralisme rentable*; and for René Lévesque a form of sovereignty-association. The FLQ Manifesto, that in many respects made evident the inequalities in Quebec society, that became well known as a result of the barbarous acts of the group, brought these elements out to a pan-Canadian, and wider audience.

In the last case, for the UK, the potential for crisis over the direction of the integration process in the EC had been voiced from the time after WWII when membership was first mooted. However, this potential became immanent ever since the 1975 referendum confirming the UK's membership in a project that *might* and probably would lead to forms of political integration that would be antithetic to the UK. The warnings made by prescient speakers in the House of Commons on the possible direction of the EC, based on both history and an understanding of the Monnet/Schuman plans, highlighted the challenges of such developing integration and the impact this might have on an unsuspecting UK public. The opportunities for such development, thwarted by the empty chair crisis, and oil shocks, re-opened in the early 1980s, and with the 1987 SEA the framework for a step change in European integration was created.

In terms of the overall conceptual framework of the thesis, it is therefore possible to make a strong argument that in the three cases there is a process of immanence to evidence, that the potential for crisis was, in each case, contingent on developing contexts. In this area, the very nature of FPS is, as I have conceptualized from the theoretical stance of Friedrich (1963, 1968), predicated on dynamic change in the search for the balance between unity and diversity.

6.3.3. Focusing Events and Federalism as Process

In the literature, the emphasis on a 'cathartic moment' (Hay 1996 p.254), a 'focusing event' (Birkland 1998 p.54), or an 'agenda-setting' crisis (Boin et al. 2008 p.19) forms the

conceptual framework for the delimitation of the crises that form the case studies in this thesis, and these events are implicated in the evolution of the crisis from imminence to evidence. Here the link between developing crisis and the dynamic nature of process in FPS, as theorized by Friedrich (1963, 1968), becomes clear. Drawing comparisons between the three cases in this context offers valuable insights into the operation of these systems.

In the SI case, the focusing events derive from the dynamic created by new interpretations of a constitution that is sparse in detail, and developing understandings of a political system in which processes of enfranchisement of all individuals within a 'representative form of government' (*Reynolds vs. Sims* 1964) were embedded in a wider civil rights' movement. It is when this process impacted on the abilities of the constituent units, the states, and other political systems, notably that of New York City, to continue with forms of representation that were based on territory as opposed to the individual, that the crisis developed. Challenges at the federal level to this intrusion into states' affairs that came as a result of *Reynolds vs. Sims*, through proposals for formal Constitutional amendments were defeated. Although the full effects were, as Asch (1965) predicted, not to become evident immediately, in the SI case these, when combined with the challenges to SI residents' values, came to create the conditions in which the equilibrium between Bryce's centrifugal and centripetal forces (1901) were to tip towards disintegration. However, the mere passage of the *Reynolds* and similar cases in the Supreme Court did not, in isolation, lead to changes at the level of the states or sub-state units in terms of representation, these required affirmative action on the part of civil society actors. In essence it was only once there was a reaction to the new interpretation of the 14th Amendment as a confirmation of people over places at the local level that the crisis became evident. If this dynamic had been absent, or had the challenges to the legality of the Board of Estimate failed, the crisis may not have reached the tipping point.

In Quebec, the development of 'New federalism' in Canada in the post-war context came to challenge the processes of decentralization that had characterized the period from the original passage of the BNAA in 1867. Quebec, under the conservative nationalism of the U.n. and Duplessis, resisted the processes of modernization that were perceived as a threat to the traditional ways of Quebec. The developing dynamic, identified in the Tremblay report, set two visions of Canada on opposing paths; and reinvigorated the dialectic of understandings of the community based nature of Canada. The alternatives, set out by Tremblay, were for either an asymmetric status for provinces according to their particular values and identities, or a development of a new federal system in which all provinces enjoyed considerable autonomy.

Alternative visions for Quebec's status and role as a nation in which traditional values and identities could be protected evolved through the 1960s, with a process of increasing political fragmentation. This took place at both the federal and the provincial levels, with changes in leadership of the LPC, and alternating political representation in Quebec between the QLP and the U.n. Attempts to assuage Quebecers' fears on challenges to linguistic autonomy came from both federal and Quebec governments – but paradoxically were to result in deepening divisions. These were to become accentuated with deepening division between nationalist and federalist movements in the run up to the 1970 elections, before the October 1970 crisis brought these into sharp focus.

In the case of the UK, the development of the integration process in the EC was contingent on the coming together of a combination of macro-economic factors, and the driving forces of federalist ideologies as defined by key European actors, notably Kohl, Mitterrand, and Delors. The sclerosis that characterised the period until the 1984 Fontainebleau Summit gave way to a renewed integration process that, whilst initially focussed on clearly defined economic goals, the completion of the single market, developed to include areas of social, and economic and monetary integration as a result of functional spillover.¹²⁵ These processes, whilst initially acceptable to the UK's political elites, notably the Conservatives under Thatcher, became increasingly problematic as their extent became more widely known. The institutional impact, in particular on the influence of the UK parliament, aligned with the impact of the developing direction of integration in social and monetary areas, led to a stark expression of the opposition of the Conservative leadership at Bruges in 1988, and subsequently highlighted the divisions within Conservative Party elites. This developing dialectic between visions of European integration, fed by longstanding contrasting ideas of potential directions, came to a head at the Rome I IGC, and was to precipitate a crisis in the UK's political leadership.

In each of the three cases there is a link to the evolution of the political system as part of a process towards a re-framing of the participation of peoples in the system, but with the attendant effect of challenging the territorially based identities of some groups. These, initially gradual, almost imperceptible, processes became more evident as time passed, but in each case a focusing event, or closely successive events, can be identified. Once this point had been reached, it became incumbent on the political elites at the (sub)-constituent unit and the general government to acknowledge the crisis.

¹²⁵ see Rosamond, 2000 pp. 59-64 for a full discussion of the application of Ernst Haas's theories of functional spillover.

6.3.4. *Demand and Counter-demand*

The conceptual framework of this thesis identifies FPS as 'Dynamic and pro-active' with a potential for 'managed change and organisational learning' (Hay 1999 p.320), and in which, for Friedrich, there is a relationship between communities' values and the organisation of the system (1963 p.337). The disorder that results from the crisis in each case study should, for Livingston (1952 p.90) be reflected in the changing patterns of the system, and be evidenced by value defined demands and counter-demands, that operate dynamically between the constituent units and the general governments in each case, an argument later developed by Kincaid in his definition of federal politics with the core principle of establishing and maintaining power-sharing relationships (1995 p.44). The composite of demands unique to each crisis both confirms the dynamic nature of each system and gives evidence that such complex patterns of demand and counter-demand are evident across the cases. In each case the initial reaction, or counter-demand, to the demands from constituent units can be based either on a conflict in values, or in the identification of limiting factors in the potential for constitutional amendment to allow change beyond pre-existing acceptable parameters.

In the case of Staten Island, demands made by the political elites, BP Gaeta and Senator Marchi, were for the maintenance of the political voice that would protect the population of the island from *further* encroachments inimical to the preservation of the values of the community. The maintenance of this political power was, for Marchi, to come from a flexible interpretation of the 'one-person, one-vote formula' that was at the basis of the challenge to the legitimacy of the BofE. While the initial interpretation of the Court in 1983 was favourable to Marchi's interpretation, the subsequent decisions, and the final confirmation by the Supreme Court, led to considerable efforts by NYC to find acceptable alternatives that would maintain SI's voice whilst remaining within the new interpretation of the 14th Amendment. The problematic development of the new NYC Charter to meet both demands was acknowledged by Governor Cuomo, who sympathised with SI in respect of the likely sub-optimal outcome for the community, but notwithstanding these comments, and the efforts by the Charter Commission, the political elites of SI pursued their demands in the form of a secession bill.

This persistent demand by SI drew reactions from NYC and NYS elites, which combined both sympathy for the dilemma in which the SI residents found themselves, and a consistent refusal to countenance the break-up of the city, or the departure of SI as a separate entity. The preservation of the entity, of the political system, was based in part on the identification of the benefits that accrued to both SI and the City, and also was

framed by the constitutional imperatives as interpreted by the courts that gave both NYC *and* NYS legitimacy in the process. The outcome of this dialectic between demand and counter-demand was the refusal of the NYS legislature to allow the secession bill to pass, without the agreement of NYC. Although such a refusal might have led to further demands by SI, the mitigating effect of concurrent processes, in the use of instrumentalities, were sufficient to compensate, or to satisfice, these, as discussed below.

In Quebec, demands made by political elites were based on the development of Quebec as a modern political, social and economic unit in which French Canadians could enjoy a renewal of their culture. The early development of this came under the regime of Lesage and the QLP, but divergences as to the effectiveness of their programme led to calls for the development of Quebec as a nation, as explicitly expressed by Daniel Johnson. Reiteration of this call for 'equality or independence' came from de Gaulle, and whilst initial resistance from Pearson made clear the primacy of the Canadian State's integrity, he acknowledged the need for constitutional reform in pursuit of this goal. The type of demand for reform became further differentiated with the split in the QLP over the ideal-type of relationship to be sought between Quebec and the rest of Canada. The QLP's preference for special status was countered by the MSA's (and later the PQ's) demands for extended sovereignty in a 'New Canadian Union'. Resistance to these demands continued, in the form of the drive by Trudeau's federal administration to re-define the Canadian State as bi-cultural and bi-lingual, with a single national identity.

Demands made on the federal state changed with the return of the QLP to power under Bourassa in the April 1970 election. Moves away from the 'statist' approach of the Lesage regime placed more emphasis on expectations that the federal system would provide sufficient flexibility to allow for both the economic development of the province and the preservation of the multi-ethnic nature of Canada. This expectation also depended on the perceived positive benefit of the presence of Trudeau, and other Quebecers, in Ottawa, in the defence of Quebec's interests. This demand, formulated by the QLP, was challenged by the demands of the PQ and the U.n. for forms of autonomy that, as discussed, went beyond those of the QLP, although the limited extent to which the support for these two parties represented a demand for an independent Quebec, as opposed to extended autonomy, is clear in the data. Demands made by the FLQ, however, for a revolutionary change in Quebec's status, created an understanding of cleavage between the sovereigntist demands of the PQ and U.n., and the demand for full independence which had some support within these parties' electorates. This conflation of the two strands, of demands for autonomy and independence (via revolution), can be understood in the analysis of the intervention of the federal state in the October Crisis as a reassertion of the

unity of the Canadian State as a mono-national entity. At the Victoria Conference, post-crisis demands by Bourassa for a formal constitutional entrenchment of autonomy gained *de facto* by Quebec were met with resistance by the federal state, and this, coupled with the effect of nationalist pressure, led to the failure of the talks. At this juncture, the data suggests that opportunities for constitutional change had been exhausted, and that demands and counter-demands in the dynamics between Quebec and the ROC, far from being satisfied, would have to be addressed through non-constitutional avenues.

In the UK/EC case, between 1984 and 1987 the value-based demands of elites in the UK and the EC MS were broadly convergent. The completion of a single market in goods, timetabled for 1992 by Delors, and consistent with the neo-liberal ideals of the Thatcher government, formed a major element of the 1987 SEA. However, and consistent with past Treaties, within the text were elements which presaged the potential transformative role of the EC, in seeking 'ever greater union', 'economic and social cohesion', and 'economic and monetary union'; however, as with past Treaties, the realisation of such lofty ambitions depended on the political will of the constituent units, the MS. The UK's consistently stated preferences were for such goals to be realised within the context of intergovernmentalism, and without impacting on the sovereignty of MS parliaments.

This context changed with the drive by the Commission, as expressed by Delors at the EP in early 1988, for the use of the single market as a 'force for integration', and for promoting social cohesion, and the completion of EMU. At Hanover, Delors' mandate was renewed, and the general direction of the developing integration agenda was agreed; although Thatcher seemed not to identify the potential that more demands for change might have on her neo-liberal understandings of the *means* to achieve the Commission's goals. Demands that the decision-making locus be moved away from national capitals were met with stiff resistance from Thatcher, as were demands that the role of trades unions might develop in the social arena. Resistance to initial proposals of the EP/Commission was clearly expressed by Thatcher in the Bruges speech, with a reiteration of the tenets of sovereignty, intergovernmentalism and neo-liberalism that underpinned her political ideology.

Demands for an accelerated, and deeper integration, of the 12 MS came with the confluence of the Dublin 1989 summit and the prospect of a unified Germany. The next summit, Rome I, prepared the agendas for the upcoming Rome II summit that was to open the IGCs; here the clear difference in the demands of the UK, and the other MS, in particular in respect of EMU, was evident. Thatcher's negotiating style, and political stance, came under substantial domestic scrutiny, both from the opposition, but also from within her own party, where different understandings of federalism and sovereignty came

to the fore, notably in Howe's resignation speech. Tensions inherent within the Conservative Party over European integration were to result in the leadership challenge that resulted in the end of her premiership and the election of Major. From the start of Major's premiership, his negotiating style changed from that of his predecessor, but the essential contrast in the demands made by the 11 MS and the UK, in the area of EMU, but also in the EPU, were evident right up to the point of the critical negotiations at Maastricht for a treaty that was to allow for the deeper integration of the 12 MS.

In each of the case studies, the data demonstrates how in the dynamic situation that resulted from the crisis the demands and counter-demands of the political representations of societal interests became clearly identified. Moreover, these demands remained entrenched and were defended by either side until such time as compensating formula(e) were established. The theoretical frameworks provided by Livingston (1952), Friedrich (1963) and Kincaid (1995) for the existence of dynamics of federal systems that take the form of demands and counter-demands are clear in the crises that form the case studies. Moreover, the case studies add empirical evidence to support Livingston's theoretical understanding of composite demands made from demands drawn from a set of diversities.

6.3.5. Summary of Demand and Counter-Demand

Table 19 Summary of Demand and Counter-Demand

Case	Demands by Constituent Unit	Counter-Demands / Inertia
Staten Island/ NYC	Maintenance of SI's political voice Change in negative attitudes from NYC Protection from unwanted developments Preservation of social, economic and geographical character of SI Improvements in environment (Fresh Kills) Creation of new City of Staten Island	Reduction in SI's representation following <i>Morris vs. Board of Estimate</i> (itself following <i>Reynolds vs. Sims</i>) Preservation of integrity of NYC Inclusion of right of veto in Bill 773 Challenges to secession Preservation of Dillon's rule on state's rights to manage sub-units Rejection of Charter bill by Legislature
Quebec/ ROC	Maintenance of Quebec's social, linguistic identity Development of Quebec's national aspirations Own external presence Forms of separation/autonomy Recognition of 'two nations' principle of distinct society Radical independence movement (FLQ) Linguistic protection – language laws Constitutional reform Secession referendum	Pearson's rejection of ' <i>Quebec Libre</i> ' sentiment Trudeau opposition to two-nation concept Drive towards bi-lingual, bi-cultural principles Resistance to constitutional entrenchment of extended <i>de facto</i> autonomy Emphasis on bilingualism – Official Languages Act LPC intervention in 1980 referendum – use of 'renewed federalism' Patriation of Constitution – rejected by Quebec
UK/EC	Maintenance of intergovernmental EC – rejection of Federal Union Reduction in role of government in citizens' lives Retention of states' roles in economic and social management Protection of states' sovereignty and parliamentary influence Limited Economic Union – price stability Limited Political Union – QMV restricted to single market policy Continuing emphasis on Intergovernmental defence policy (NATO)	Resumption of integrative process towards greater supranationality Completion of single market including social aspects Economic and Monetary Union – single currency – central bank Political Union – gravitation of decision making towards EC institutions Inclusion of 'federal vocation' in Treaties

source: own data

6.3.6. Similarities of Output in the Dynamics of Demand and Counter-Demand

In this section I approach the question of similarities using the MDSD method, and again draw from the metrics established in section 1.3.3., contrasting the dissimilarities of the cases studied with similarities in output.

The broad area of similarities and dissimilarities covered under the heading of demand and counter-demand reflects the theoretical underpinnings of federalism as defined by Livingston (1952) and Burgess (2006) – in their analysis the compromise between demand and counter-demand, in Burgess's words the 'creative tension' (2006 p.4) is at the heart of FPS. This is particularly appropriate when the concept of federalism as process, theorised by Friedrich (1963, 1968) becomes evident in the FPS under examination; here existing compromises become stretched to the point at which one party challenges the new status quo.

Across the three case studies the nature of the demand for recognition is consistent, in that it is based on a recognised difference between the constituent unit and the rest of the system. In Tilly's theory, the boundaries that separate them from us are recognisable (2005 pp. 207-209). These pre-existing differences are dissimilar in their composition – they can draw from language, religion, culture, geographical factors that create a multi-faceted identity. However, in each case there is a clear definition of identity that is situated in a clear territorial context. In each of the cases the development of the FPS as part of the process driven dynamic of FPS, which changes to reflect the underlying societies on which it is based, can result in a challenge to these identities. This has the effect of both threatening and re-invigorating the society that cleave to this identity.

The data clearly shows how in each of the cases the dynamics of the FPS function along the lines theorised by Friedrich, Livingston and Burgess, and defined in table 5 in section 1.3.3. In the three cases the demands and counter-demands are clearly identified, with the constituent unit's case for some form of differential treatment to be made to protect and preserve their identity. Initial resistance to demands, or inertia, in responding to demands, is countered by increasing demands for changes in attitudes, and ultimately demands for forms of territorial autonomy. As discussed below, these demands may extend up to secession – although in all three cases ideas of a complete separation from the FPS were moderated. In the case of SI, separation would not ultimately have led to a reduction on the influence of NYC on the Island's identity. In the case of Quebec, the separation finally advocated by the PQ was not complete – a form of monetary and customs union would

have remained. In the case of the UK, resistance to further integration was balanced by a persistence of ideas of benefits from remaining in the economic union.

The support for proposals of extended autonomy varies according to the nature of the demand made. In the case of SI, and as discussed, support from the population of the Island was high for a form of separation from the administration of NYC. This fact notwithstanding, SI would have not have become fully autonomous – the new city would have been subject to the constitutional order imposed by NYS, and as discussed above the influence of NYC over SI's affairs would have remained considerable. In Quebec's case, the idea of full independence – a state sovereign in every respect, did not garner full support – and even the idea of negotiating for sovereignty-association failed to get support in the 1980 referendum. In the UK, no referendum was allowed on the outcome of the Maastricht Treaty, but parliament eventually did agree to continuing participation in the deepening of the EC integration project – essentially rejecting the possibility of halting this process.

What is clear from the three cases is that in each, and in the absence of a form of separation of the constituent unit from the FPS, demands were made for adjustments to the allocation of competences, and the use of competences. In the case of SI, the high salience issue of land use had been dealt with by the BofE, with members agreeing not to outvote BPs in sensitive areas. The loss of this de-facto allocation of competences with the constituent units' right of veto was a significant part of SI's motivation for separation. In Quebec, and right from the collapse of the Victoria Accords, successive provincial administrations sought, and obtained (often through unilateral or contested actions), shifts in allocations of competences and operation of competences in those areas that were defined as of local interest in the BNAA. In the case of the UK, and as discussed below, the demands for changes of allocations of competencies took the form of refusals by the UK to agree to deepening integration in high salience areas of sovereignty, monetary and economic union and the social chapter. Here the onus fell on the FPS to create new forms of frameworks for the use of competences that both permitted deepening integration but allowed the UK (and Denmark) to retain significant, and symbolic, control in these areas.

6.4. Dynamics #3: Resetting of Relationships

6.4.1. *Demands for Secession/Separation*

This thesis is not, *per se*, about secession, at the theoretical, empirical or normative level of inquiry. This caveat notwithstanding, in the conceptual framework of the study I did

identify the concept of secession as an extreme potential outcome of crisis, at the opposing end of a spectrum from the recreation of a unitary state. Moreover, in the discussions of the work of Bryce (1901), the theoretical output of a combination of centrifugal forces, driven by grievance, and a belief that the population would do better outside of the system, was for calls for separation by a constituent unit.

In SI, calls for secession predated the eventual crisis examined in the case study, but post-1980 the conflation of a crisis in representation, and evolving socio-economic divergence between SI and the rest of NYC created the circumstances in which political elites revived the secession agenda. Initial moves to secession contained expressions of grievance, and, in Marchi's report, claims that SI would indeed be a viable entity outside of NYC, elements consistent with Bryce's theory. The secession movement remained calm until the focussing event of the final Supreme Court decision, although once enabling legislation had been passed in 1990, the ability of NYC to block the eventual creation of a new City of SI became evident. This was not sufficient, however, to prevent further demands for secession in the 1993 referendum. Although the legality of the halting of subsequent legislation by Speaker Silver was challenged, ultimately the combination of this failed challenge, and the resetting of relationships, was to lead to a sufficient reduction in grievances, and attractiveness of life outside NYC, for the movement to have largely dissipated.

With the case of Quebec, the 1867 BNAA restored to the province levels of autonomy and self-governance that had been removed after the conflicts of the 1830/40 period. Policies of 'conservative nationalism' to preserve the distinct identity of Quebec were challenged by the evolving socio-economic and political context of the post-WWII period, and ideas of extended and extending autonomy grew. These found political representation post-1960, but were challenged by calls for a more decisive approach, that of independence for a Quebec State. These ranged from political independence, within an economic union, to full independence, but the political reactions to the events of the October crisis brought a deeper understanding of the challenge of separation to the forefront of all Canadians' consciousness. The policy of the PQ post October 1970 for a *de facto* secession of the province in the event of their election evolved to a more pragmatic approach, with the inclusion of Lévesque's commitment to a referendum in the run-up to the 1976 elections, at which the PQ came to power. In Bryce's (1901) theoretical approach, the separation advocated by the PQ was not complete, Quebec would gain political independence but would remain in an economic union with the rest of Canada. The grievances of the Quebecois, over the continuing influence of Ottawa on their political affairs, coupled with the understanding that political independence would bring benefits to the province,

culminated in demands that fell short of full independence. This halfway house position, as discussed, was partly in response to the paradox of the PQ's inability to gain power by promoting full independence, and partly as a consequence of Lévesque's long-standing avocation of the *souveraineté-association* position. The final decision, at the 1980 referendum, was a clear rejection of the PQ's policy, and, for some observers, an acceptance of 'renewed federalism' that would have resulted in changes to the relationship between Quebec and the ROC that would have reflected the special status for the province provided for in the 'Beige Paper' and the Pépin-Robarts report.

In the third case, that of the UK/EC, the longstanding reluctance of the UK in respect of full participation with the emerging Union can be summed up in George's (1990) analysis of the UK as an 'awkward partner'. Successive, and alternating, political elites have denigrated the integration process as being both inimical to their ideals, and the UK's identity and interests. The persistent understanding of the UK as either a state capable of full autonomy, or within a more beneficial union with other actors (the USA, Commonwealth), had provided a backdrop against which the relationship of the UK and the EC developed. Although the Labour Party had pledged a policy of the withdrawal of the UK from the EC in its disastrous 1983 election manifesto, (George & Haythorne 1993 p.2), for the period of the crisis as studied, no mainstream party campaigned on this platform. In this case study the stated preference for the UK (as with some other MS) was for a continuation of the predominance of MS' parliaments rather than the developing integration process with its emphasis on extending supranational institutionalisation. In the sense that the 1987 SEA had already set out the framework for this extending and deepening integration, the UK was in some respects advocating a withdrawal from, or at least a freezing of, the integration process.

With Thatcher's dethroning, Major's policies continued in this vein, in his resistance to the twin IGC's thrust towards deeper integration. The 11 MS, and in particular France and Germany, driven by the need for tying the latter to EU European integration post-unification, were prepared to allow the UK to become a MS that could maintain many of the essential tenets of sovereignty and identity through asymmetrical arrangements. In respect of Bryce's theoretical understanding, in the UK case during the time of the crisis the continuing expression of grievances was clear, but the expression of moves towards separation was only to come post-Maastricht, but was thereafter a permanent feature of the UK's political landscape.

In the three case studies, there is evidence to support Bryce's theoretical approach of the combination of grievance and belief in the benefits of separation leading to demands for 'degrees of separation'. In the first two cases, where the institutional structures of the FPS

had reached a degree of stability, or maturity, these became clear through demands for separation, in the last case, that of the UK, the grievance factor was expressed in a resistance to deeper integration, in the first instance, and only later in real demands for separation. I argue here that there is a link between the stage at which the process of integration and the crisis meet, and the nature of the demands for separation, although the expression of grievances remains constant.

6.4.2. System Change and Limitation – Satisficing

Process, inherent in FPS, is at the root of the emergence of crisis, and continues as a phenomenon post-crisis. However, process in FPS can only take place in the context of defined limitations to system change, set out in rigid frameworks of the constitution, as theorised by Bryce (1901), but which, are subject to interpretation and have some capacity for flexibility. For each of the case studies I will look at these limitations, and the extent to which system changes were proposed that might have 'satisficed', where sacrifices on both sides might have satisfied both, and resolved the crisis. Once again, I stress that this thesis is not a study of the constitutions of the FPS in each case study, but an understanding of the limitations of these on opportunities to resolve crisis are pertinent to the study.

In the case of SI, the constitutional impacts of the 1964 *Reynolds vs. Sims* decision and the general move towards representation of 'people not places' have been covered. The NYC Charter revisions adopted following the work of Ravitch and Schwarz were constrained by the new interpretations of the 14th Amendment, thus restricting any amendments to the charter to maintain disproportional representation of SI. The changes that could be made within the framework of the NYC Charter, as limited by the NYS and US Constitutions, were limited to ensuring that key policy outputs, in areas such as land use, were fair. The policy decisions would, however, be made in the newly framed executive and legislature of NYC which would no longer include disproportionate representation for the Boroughs. The added impact of the election of Mayor Dinkins at the head of the newly framed 1990 administration, with the attendant feelings of disconnection between SI and the Democrat Mayor, were, I argue, when combined with the limited offer of *post hoc* policy management, insufficient to assuage the grievances of SI. This insufficiently satisfying proposal, and the perceived sacrifice on the part of SI, thus made the balance of 'satisfice' unacceptable. As such the population of SI voted overwhelmingly in the first referendum, of November 1990, for the setting up of the SI Charter Commission.

In the run-up to the 1993 Mayoral elections, held concurrently with the second SI referendum on secession, the status of SI within the NYC legislature was unchanged, the

new legislative and executive had been in place from 1 January 1990. This factor notwithstanding, assurances were made by Giuliani in SI on potential restructuring of BP's representation, and whilst such assurances might have been responsible for the very strong support for Giuliani from SI in the mayoral ballot, the concurrent ballot on secession was still overwhelmingly in favour of the move, although support was reduced from 81% to 65%. In spite of the ultimate block of the move to secession by Speaker Silver in 1994, the salutatory effects of the presence of successive Republican Mayors in NYC seems to have rebalanced the satisfaction/sacrifice conceptualization of the residents of SI to the point that, by 2002, the movement for secession had largely dissipated.

In the case of Quebec, for a period post-WWII, increasing powers assumed by the federal government in taxing and spending in areas of social policy were coupled with an unwillingness to abandon autonomy in areas seen as essential to the maintenance of the distinct nature of the province. The Tremblay Report identified those changes to the constitution that might satisfy the dual requirement for cultural autonomy and the realisation of economic and social goals, and after Duplessis' regime the QLP started on a process of reform to achieve these goals within the existing constitutional framework. The efforts to satisfy the emergent demands for greater autonomy, and remain within the constraints of the BNAA, were interpreted differently by political elites, with splits forming between elements within the QLP, and then between the U.n. and Pearson's federal government. Pearson's and Robart's initiatives in opening the constitutional dossier ultimately ended in failure at the Victoria conference, where the process of formalising constitutional changes did not satisfy the nationalist elements in Bourassa's cabinet, and were confronted with refusal from Trudeau to cede.

The limitations of the BNAA became evident in the pursuit by successive Quebec premiers Bourassa and Lévesque in areas of social competences, notably in the introduction of language law bills that ran contrary to the Bi-Lingualism/Bi-Culturalism that underpinned Trudeau's concept of the Canadian Nation. In response to the election of the PQ, Trudeau commissioned the Pepin-Robarts report, which made a case that institutional change was required to engender positive change in attitudes towards Canadian unity – but the main findings were largely antithetic to him. During Trudeau's (albeit temporary) departure from power the QLP published the *Beige Paper* which also outlined for Quebecois the potential contours of constitutional reforms. These understandings of 'renewed federalism', implicit in Trudeau's campaigning for a NO vote in the May 1980 referendum, cannot on their own be taken as having caused the decision against separation, but in the immediate aftermath any idea that Trudeau's vision allowed for significant sacrifice of power from Ottawa to the provinces was comprehensively quashed. The sole sacrifice that was made, in the

'notwithstanding clause' of the revised constitution, was to some provision for provincial rights in education and culture. It was not until the failed Meech Lake and Charlottetown initiatives that more substantial offers that might have 'satisfied' Quebec were made, for these included a 'special status' clause for the province, but other provinces, and ultimately a majority of all peoples in Canada rejected the concept of dualism. In the absence of these accords and the 'satisficing' they might have bought to the Quebecois, disquiet within a significant part of the population over the absence of 'special status' continued, with the 1995 referendum, and the continuation of the 'exiled' status of Quebec within the federation (Laforest 2014).

The case of the UK/EC poses a problem for the analysis of the rigidity/flexibility of constitutions. Each new initiative for deepening or widening integration requires either adherence to existing treaties that provide the constitutional framework for the Union, or agreement by all members on a new treaty, and hence constitutional reform. However, there is another aspect that comes into play, and that is the overall understanding of a direction of the integration process that is founded on the principles of economic and social cohesion, and the drive towards a 'federal Europe'. As such, the treaty provisions of the 1987 SEA, for the completion of the single market, created the conditions for a significant push in the direction of deepening integration. When coupled with a rapidly evolving geo-political context in Europe, the need for such integration became ever more important, and required the continued participation of the ever more awkward UK (as well as other MS such as Denmark) to reach the new treaty agreements as framed in the Rome I and II Summits.

The *de facto* requirements of the treaty to satisfy the most important newly framed integrative directions were in monetary union, social cohesion, and to a lesser extent political union. The complex set of sacrifices made by the 11 MS allowed Major to report his satisfaction with the treaty provisions to parliament. But during the lengthy ratification processes, the full extent of the *potential* sacrifices in areas of monetary policy and parliamentary sovereignty became clear in extensive debates in parliament, and with persistence of calls for a referendum, a call finally answered in 2016.

Across the three case studies the data suggests that the ability of 'satisficing' to sufficiently develop to reduce crisis is constrained within existing constitutional frameworks to the extent that these solutions are ultimately insufficient. In respect of the theoretical frameworks developed by Bryce, Wheare and Livingston, the extent to which the rigidity of constitutions is mitigated by potential for constitutional flexibility is, in the case studies, insufficient to manage crisis. In the absence of the possibility of constitutional reform, the lack of scope for flexible arrangements within constitutional bounds thus constitutes a

formidable barrier to finding satisfactory compromise and reduce crisis. It is in these cases that such systems have to find non-, or extra-constitutional means to counter crisis, in forms that derive from Livingston's conceptualisation of instrumentalities.

6.4.3. *Beyond the Constitution: Instrumentalities*

Thus far in this comparative chapter, the focus has been on the processes and dynamics of crisis and FPS, with some emphasis on the institutional and constitutional frames that contain and constrain these. The analysis of the systems and their crises has shown these had been inadequately managed by means of formal constitutional reform. In each of the case studies the reduction of the expression of disquiet that formed the basis of the crises came about through changes that took place beyond the constitution, and here I use the understanding of instrumentalities as initially theorised by Livingston (1952,1956) that are dynamically linked to changing patterns of forces within society.

The SI crisis was based on the resistance to the potential impact of changes in representation on the particular identity of the people and environment of the island. As such, part of the changes that occurred beyond the Charter *qua* constitution were in revisions to the attitudes of political representatives, notably in the post-Dinkins era, and a development of formal and informal communications between the boroughs and the City through the Borough Boards and BPs. The institutionalisation of these revised attitudes towards the boroughs that characterised the tenures of both Giuliani and Bloomberg *may* be sufficient to ensure that these are carried forward into periods of Democratic mayors – notably with the election of Bill de Blasio, further research would confirm/deny Kramer & Flanagan's (2012 p.134) negative analysis of this point.

The other significant area of crisis was in the neglect and abuse of SI in terms of the territorial and geographical separation from NYC, with both perceptions of this 'othering' and physical manifestations that reinforced SI's sense of grievance. The longstanding impact of the highly visible Fresh Kills landfill site, and the political deceptions on the siting and management of the site, could only be dealt with by the decision of Giuliani to close the site, with binding legislation that followed. In the same vein, problems over transport links were addressed to minimise the impact of the SI residents' island location, and to reduce environmental impacts. These improvements to the life and environment of the residents of SI had the effect of both minimizing grievances *and* improving the positive perception of continuing participation in the FPS of NYC.

In the case of Quebec, although much progress had been made in re-orienting the relationship between the province and the federal state, in the course of the early 1960s,

the crisis of post-1967 required renewed re-setting of relationships. The failure of the Victoria accords that were to confirm the *de facto* changes and concessions obtained by the province during the Quiet Revolution led to Bourassa seeking to continue the exploitation of extra-constitutional possibilities in the fields of education, culture and social policy. Where possible, this would take place through the passing of legislation in the provincial parliament, and whilst in some areas this was successful, the power to limit such autonomy in joint competences remained with Ottawa. Bourassa was also able to continue the drive for external competences in the recognition of Quebec's cultural distinctiveness started under Lesage's administration, a measure in part supported by Trudeau.

These adjustments notwithstanding, the federal government, and in particular Trudeau, did not accept the principle behind the efforts of the elites in Quebec, a drive towards a bi-national concept of Canada. There did not seem to be, in Livingston's terms, any changes of attitudes that would have been followed by an institutionalisation of such. In the aftermath of the election of the PQ, and the robust assertion of Quebec language and socio-cultural rights with the passage of Bill 101, Trudeau was forced to act, setting up the Pépin-Robarts committee. The findings of the committee recognised that without institutional change no attitudinal change would be possible, a direct contradiction of Livingston's idea of changes of attitude preceding institutionalisation. Trudeau's rejection of the report's thrust was tempered by some softening and flexibility over immigration, an element that may have impacted on moderate Quebecer's decisions in the later referendum—but hard-line attitudes against the 'balkanizing' of the provinces remained evident in the LPC's campaign in the 1979 Federal elections.

During the hiatus in Trudeau's premiership, for the nine months of the Conservative Clark government, the attitudes of the federal government seemed to be softening towards the bi-nationalism of Canada, with clear senses of identity for both Quebec *and* the rest of Canada. Simultaneously, the QLP's *Beige Paper* contained elements that indicated a potential middle ground between the federalist and nationalist positions. The potential for these positive changes in attitude was not to be realized, as after Trudeau's return to power in 1980 the position of the new government became equivocal, and allowed for contrasting interpretations of potential change in Quebec/RoC relations. After the repatriation of the Constitution, Lévesque's attempts to engender new attitudes by working with the new PC government of Brian Mulroney was rejected by the nationalists within the PQ, and after Lévesque's resignation the PQ was defeated by the returning Bourassa's QLP.

Bourassa advocated the completion of the 1982 Constitution, in Pépin-Robart's terms the institutionalisation of change as a precursor to change in attitudes. The QLP's 'five conditions' were tested at Meech Lake and Charlottetown, and as discussed were rejected

comprehensively. Post-crisis, further attempts were made to institutionalise the differences in approaches to Canadian unity, with the 1995 referendum, or to acknowledge the understandings of opposing views on unity and autonomy, and such changes of attitude, whilst not being a 'paradigm shift' (Laforest 2014 p.87) may ultimately lead to institutional change. These questions will have to wait for future research, but in terms of the thesis Livingston's theoretical understandings of the potential of instrumentalities is, in this case, problematic. During the period covered by the case study, changes in attitude proved to be ephemeral, and not sufficiently robust, or sustained, to engender institutional changes that might result in an enduring resolution of the grievances of a significant section of Quebec society.

The third case study, of the UK/EC, is different from the two previous cases, in that the normally pedestrian pace of change in European integration became accelerated as a consequence of geo-political changes. In the period up until the Strasbourg summit of 1989, there was developing antagonism between anti-integrationist sections of British elites and the Commission's proposed direction and modalities of EC integration, although such a position was moderated by Mitterrand's intergovernmentalist approach to Europe and the long tradition of German federalist preferences. Post-November 1989, with the fall of the Berlin Wall, the dynamic changed, with a new Franco-German drive towards EPU alongside EMU, confirmed at the Dublin summit of June 1990, and a clear separation between the UK and the eleven other MS. The deepening of the separation between the two camps became even more evident at Rome I in October 1990, largely attributable to the ouster of Thatcher. The thesis is based on the understanding of crisis affecting one territorial unit of a system. In the case of the EU, the geo-political changes did affect the system as a whole, but in turn, this placed more pressure on the UK and the 11MS to reach compromises. Indeed, with the arrival of John Major, the expectations among the 11 MS were of more flexibility and a change in tone, if not in content, on the UK's position.

The negotiations between the MS covered a range of policy areas, in which there were varying degrees of accord in terms of approach, but with a persistent factor of the UK's opposition. In the area of EMU, the attitudes of the UK to continued opposition were softened by the acceptance, and subsequent institutionalisation, of the idea of the opt-out to enable the 11 MS to forge ahead with EMU with the UK having the choice to join at a later date. In the area of the social chapter, with the intransigence of the UK to provisions in anything other than an innocuous form, the 11 MS agreed to keep the chapter as an opt-in in a separate protocol, permitting the UK to join later. In the area of CFSP and JHA, the UK's position was not as isolated; here the creation of a new institutional framework placed contentious areas that impacted on MS' sovereignty in the intergovernmental

arena. In the final area of contention, the negotiations dealt with the excising of use of the 'F'-word, and the inclusion in the treaty texts of the principle of subsidiarity. Across the range of policy and competence areas there was, in effect, a range of responses and adaptations to contrasting and nuanced understandings of the integration processes. In terms of Livingston's analysis of the nature of non/extra-constitutional instrumentalities there is a problematic to be resolved; in theory at least, *all* of the agreements at Maastricht were, as Lord Wilberforce had pointed out, merely 'definitions and codifications of powers which the Council has been exercising under the general articles [of the SEA] already' (Cited by Wakeham 1993). The agreements reached at Maastricht had the effect of moving the powers from the domain of the non-defined and non-codified into the defined and codified, through constitutional changes, i.e. treaty, and quasi-constitutional changes, i.e. protocols and definitions. The range of structure and content in these can be seen, however, in Livingston's terms, to have reflected the 'different social and cultural concepts' (1952 p.91), an argument made by Hurd in his statement to the House in the first ratification debate of 1992. When taken together, it is therefore possible to argue that the dynamics of the negotiations over Maastricht do reflect the understandings of the operation of FPS as theorised by Livingston; sufficient changes in attitudes, concepts, theories, coupled with the mutual recognition of demand and counter-demand, were made to enable the parties to create a new constitutional/quasi-constitutional framework that contained sufficient compromise for most, if not all of the systems actors.

In the theoretical framework of the thesis, the use of arrangements that are broadly classed as alternatives to constitutional change, and more specifically identified as instrumentalities by Livingston, was posited as being a key indicator of the dynamic nature of FPS, and the inherent ability of such systems to respond to crisis. The requirement to satisfy a diversity of needs and values, and to reduce the evidence of conflict, through the restructuring of the arrangement of political units, is dynamically linked to the ever-changing communities' values and interests. Over the three case studies there is a clear identification of this linkage between communities and the political systems in which they are located. The cases show how the restructuring of the FPS takes place, at varying speeds, and with variable results in terms of the extent to which *all* communities are satisfied, in order for the disquiet to reduce to a level at which relative order is restored in the system, or to use Friedrich's (1963 p.338) analysis, 'apparent "disorder"' in a functioning political system. In the case studies the nature of the restructuring of each FPS reflects the range of *instrumentalities* defined by Livingston, and as discussed, the aim of the thesis is not to compare the processes for amendment of each FPS, but to identify and empirically confirm the presence of such ranges of instrumentalities in each case of crisis.

The commonality across the three case studies is, in effect, the recourse to these non-/extra-constitutional processes; the variance between them in terms of the type, deployment, and efficacy is dependent on the specificities of each of the cases.

6.4.4. The Legacy of Crisis – Return to Immanence?

In this final section of the discussion on re-setting relationships, I reflect on the extent to which the FPS in the case studies returned to a state of immanence. I discuss whether the disquiet between communities within the system had reduced to a level that can be classified as 'normal'; and if disquiet had merely been managed, with the potential for re-emergence later. Here I restrict the analysis to periods designated as the temporal limitations to the cases, in the design of crisis as the independent variable. The empirical analysis and data collection required to extend the scope of the study beyond this would require resources in terms of space and time that are not available, but as discussed in the conclusion may provide the basis for future research.

In SI, the outcome of the crisis as at 2002 can be understood as a satisficing of the demands of the residents and elites of the island in respect of the changing nature of their representation. They no longer had the extent of the representation that they had enjoyed in the past, but had both developed parallel power in respect of their influence in certain competences, and a sympathetic mayor in NYC. The improvements, or promised improvements, in the socio-environmental sphere, and changing attitudes towards the community assuaged their fears of an erosion of their values. The permanence of the changes, in particular in respect of changes to the built environment, was as yet unproven, and the pattern of broken promises in the past was reflected in the insistence to get promises in writing. The permanence of changes in attitude from NYC had depended on the initial election, and subsequent re-election of Giuliani as a sympathetic head of the NYC executive. Overall, however, the evidence supports the assertion that the factors and values that were in dynamic opposition, and that brought disquiet from a state of immanence to evidence, had been managed to the extent that the relationships between SI and NYC were returned to a state of 'normality'.

In Quebec, as of 1985, drives towards independence had halted with the election of the QLP with a clear mandate to seek new forms of constitutional arrangement with a new Federal government that might finally confirm Quebec's status and place *de facto* changes in the distribution of competences on a constitutional basis. The Charter that formed part of the Constitution of 1982, whilst not accepted by Quebec, had created, paradoxically, a reconfirmation of the status of the Canadian majority, and hence a reciprocal right for Quebec to be different (Laforest 2014). Within the province, improvements in the

attainment of linguistic autonomy and equality, and in the area of socio-economics, had met many of the goals elaborated during the period predating the crisis. However, the resolution of the fundamental question of Canada as a bi-national state, advocated by both the QLP and PQ in 1985 was contingent on obtaining accords from the rest of Canada. In this respect, the best assessment was that a reduction in drives towards independence had been confirmed, through improvements in Quebec's powers and rights, but that the absence of confirmatory constitutional reforms might remain as a potential driver of disquiet.

Finally, the assessment of the post-1993 relations between the UK and the EU hinged on the development of the deepening integration project. Here, the potential for renewed spillover, embedded in the structure of the Maastricht Treaty, might lead to a deepening of the UK's involvement in the project, against the wishes of political elites and sections of society. This would be especially pertinent where the understandings of the European integration project remained rooted in concepts of sovereignty that precluded pooling or sharing, that were absolutist. Assertions that the treaty represented a bulwark against forms of integration that were antithetic to the UK's position on parliamentary sovereignty, social and labour policy, and monetary union, had been widely discussed in parliament. Within the Conservative Party, a significant and growing minority of anti-integrationists had predicted the nefarious outcomes of the signature of the treaty, and had demanded a referendum on its ratification. The Labour Party, long-term opponent of integration, was, with some exceptions, now converted to the support of the economic and social benefits that they saw as a product of integration. Finally, the continuation of the partisan nature of press coverage of the relationship with Europe, coupled with high impact negative news stories on the vicissitudes of our European neighbours, showed no signs of abating.

In the assessment of the three case studies, supposing a veil of ignorance over what is known to be the continuation of each, a common element is that in each the potential for a return to crisis was contingent, on the continuing successful management of the revised expectations and attitudes between the communities of each system. It thus would fall to succeeding political elites in both the central government and the constituent units to grasp the fundamental elements of why these crises developed, and to continue to seek to find compromises that would maintain the balance between harmony and disharmony, and between unity and diversity. Indeed, at the very heart of the understandings of the theorists of federalism as process is the requirement for political communities to respond to 'fluctuating relations' (Friedrich 1968 p.7) to reflect 'the shifting balance of common and disparate values, interests and beliefs . . .' (ibid.). Livingston makes the case that where these fluctuating relations are based on the 'changing pattern of social relations' (1956

p.7) it is unlikely that the 'instrumentalities will keep pace' (ibid.). For this reason alone, the understanding of the nature of FPS and the principles of federalism that underpin these is essential for political elites, the ability to assuage feelings of grievance through reassurances may be enough to forestall developing crisis and allow the system to 'catch-up'.

6.4.5. Similarities of Output in the Dynamics of Resetting Relationships

The extent to which FPS have the capacity to re-set relationships between constituent units and general government in times of crisis is at the heart of this thesis. A FPS is, for the theorists discussed, a system in which two drives, fundamentally opposed, need to be accommodated – the drive for preservation of identity in diverse societies which make up the system, and the preservation of the system to respond to certain collective needs.

The initial incapacity of the system to respond to the demands of the constituent units led to moves for forms of autonomy that were resisted by the elites of the FPS. However, the re-setting of relationships started once the FPS started to recognise the constituent unit's demands in high salience areas. In SI, it was the need to replace the powers enjoyed by SI in the BofE with analogous powers in a non-institutional domain. In the case of Quebec, it was the need to accommodate and recognise the 'French fact', and in the UK the recognition of the long-held concepts of sovereignty (mis)-held by significant elements of her elites.

In the three cases, the comparative method reveals the common use of the type of novel and extra-constitutional measures that I conceptualised, drawing on Livingston's ideas of instrumentalities (1952, 1956). Here the operation of the FPS is not limited to the confines of the legal and constitutional, but extends into the way that the prior utilisation of institutions changes, replaced by 'new habits, attitudes, acceptances, even theories' (Livingston 1952 p.91). Moreover, the constraints of the operation of a constitution, even though it may be rigid (Wheare 1947) in the formal use of the amendment process, give way to extra-constitutional solutions that extend from and complement Livingston's understandings of instrumentalities. We see positive examples of this fundamental aspect of FPS across the three systems. In SI, the constraints exerted by the courts' interpretation of the 14th amendment are addressed by the development of the new understandings of the importance of the BPs and Borough boards, in the absence of any formal constitutional provision. In Quebec, the BNAA's constraint is its absence of amendment formula; but here the province(s) and federal government develop new asymmetrical extra-

constitutional arrangements, albeit with varying degrees of initial assent, and some recourse to unilateral action. In the case of the UK, the EC develops new frameworks of asymmetry to satisfy the needs of the FPS and the UK; here these are limited to space, and time (Stubb 1998), they fit within existing models. However, where the asymmetry extends to matter (ibid.) we see a departure from the status-quo, with a fundamental departure from the principles enshrined in the *acquis* where no MS has the right to pick and choose integration in certain areas of EC competences.

In examining the three systems post-crisis, the MDSD method allows us to understand how the systems changed, but importantly retained those features that signified their continuing federal nature.

In SI, the institutions had changed, with the formal abolition of the BofE, but were to an extent replaced by formal and informal institutions. The BPs and the Borough boards acquired certain rights of consultation and soft veto that mirrored prior arrangements in delivering sufficient checks against excesses of NYC's general governance. Of more importance were the changes in attitude from NYC towards SI, which reflected the particular concerns of the islanders in terms of land use, and of the general feeling of neglect. Measures such as the removal of the Fresh Kills site were highly visible, but other measures such as the changes to transport were also significant in reducing the antagonism of the islanders.

In Quebec, no formal change to the institutional framework of the BNAA was possible after the failure at Victoria to agree new terms for amending a new constitution. The drive for these amendments, to enable provinces to develop their competencies in those matters of local concern that was identified in the BNAA (Art.91), and developed by successive Royal Commissions, was to take place in the extra-constitutional domain. However, the ultimate recognition of provinces' rights in respect of local matters did develop, through the de-facto changes brought about under Bourassa, Levesque, and once again under Bourassa's second period as Premier. Post-1982 patriation, and the failure of the PQ's referendum, their re-election gave them a new mandate, interpreted by Levesque as a chance for the bold attempt – 'le beau risque' – in re-setting relationships with Ottawa. This was continued under Bourassa and very nearly reached formal confirmation of the new arrangements at Meech Lake. While it cannot be argued that the development of new understandings between Quebec and the RoC was reached amicably, the principles of federalism were maintained in this process. As we have discussed, the problem lay in the different understanding of the Canadian nation offered by Trudeau, based on a mono-national model of federalism. It has not been the goal of this thesis to argue for one form of federalism over another, but in the understandings of the principle developed in Wheare

(1947), Livingston (1952, 1956), Friedrich (1963, 1968), Elazar (1987), and Burgess (2006) the idea of territorially defined units with their own identities is paramount. In this understanding, the eventual arrangements of Quebec and RoC did indeed retain the type of distinction of territory and identity, and indeed enhance this, albeit through imperfect constitutional processes.

In the final case, comparisons are complicated by the presence of two systems of organisation in the FPS; both intergovernmental and federal principles are present in the development of the EC project. However, the comparison of the project before and after the Maastricht crisis shows clearly how the federal principles sought by the founders of the Union developed – in the completion of the single market, in the move towards EMU, and in deepening integration in social and foreign policy domains. What is of note is the way that where the *acquis* were previously considered to apply symmetrically across the MS, in the new configuration changes were made to this principle to accommodate MS' particularities. The UK was given asymmetric rights in terms of opt-outs on monetary and social issues, and, along with all MS, retained control of defence and JHA using the pillar system. The newly forged arrangements of the post-1993 EU represented a leap forward in the realisation of the very earliest ideas of the Schuman declaration for a federal Europe. The continuing presence of the UK in such a project, given its newly developed dynamic, depended on certain cosmetic changes – most notably the deletion of the F-word from the treaty, but the nature of the EC/EU project as one based on federal principles as set out in the theoretical framework of this thesis remained unchanged. Paradoxically those elements requested by the UK, in particular the use of subsidiarity, as a foil to the perceived excesses of a centralizing EU, were in themselves a reflection of the federal principle of ensuring that competences were distributed between the constituent units and the general government effectively.

6.5. Concluding Comments

The thematic comparisons above draw from the conceptual frameworks and offer individual conclusions for each theme across the three case studies. In this section, I make a final analysis of the cross-case findings, in the context of the conceptual framework and the thesis statement; I reserve discussions on the methodological understandings, the contribution of the findings to the relevant literature on federalism, and indications of future research possibilities to the thesis conclusion in Chapter 7. In respect of the comparisons *per se*, it is possible to make sustainable arguments for a number of findings that draw from the empirical work.

In the first instance, the understandings of federalism as a dynamic process in the FPS can be identified. The dynamics are an intrinsic part of the processes and functioning of these systems, and not only allow for the resolution, or reduction of crisis, but also, somewhat paradoxically, contribute towards this. Linked to this, and although at first somewhat axiomatic, is the territorially based nature of the crisis in each case study. This is axiomatic in the sense that, as Livingston (1956) argues, unless systems are organised territorially they are not federal, and thus it is a *sine no qua* that *any* crisis in a federal system will be territorial. However, in the case studies, the crises are not only territorially bounded, but through processes of development and resolution of these crises, territoriality is emphasised. Indeed, for each case the mutually recognised differences between the territorial identities were enhanced as a product of crisis; although this does not always result in the forms of *de jure* constitutional recognition sought by elites during and after the crisis.

The nature of the dynamics in each system is based on a case specific 'pattern of diversities' (Livingston 1952 p.89) that feeds into a set of demands and counter-demands that reveals the salient values and identities of each constituent unit. These demands are themselves brought into evidence when the process-driven evolution of the FPS creates the conditions for disquiet that can lead to crisis when associated with a focusing event. However, I have highlighted that in each of the case studies the nature of the response to these demands differed where a range of contrasting interpretations of federal organising principles came into play

The comparative analysis of the case studies extends the understanding of dynamic features of FPS as theorised by Elazar (1987), in respect of the function and existence of political arenas. Here it is important to note that, where previously institutionalised instrumentalities proved insufficient to manage crisis, new or revised arenas developed, in the form of commissions of enquiry, intergovernmental relationships, both horizontal and vertical, and extended participation in debates.

In the analysis of the case studies, the effects of the constraints posed by existing institutionalised instrumentalities, either 'clauses in the constitution' (Livingston 1952), or reified practices, become clear. The flexibility provided in the institutions proves insufficient to manage the crisis, until such time as the parties move away from these constraining institutions and bring in the range of non-, and extra-constitutional processes theorised by Livingston. In each case, the identification and utilisation of these processes developed at different rates, defined by the context of each case. In SI, the long legal process between the first *Morris* hearing of 1983 and the final Supreme Court hearing of 1989 gave time for these to develop. In the case of Quebec, the period between 1970 and 1976, in which

Bourassa tried to re-orient relationships between the province and the RoC, gave time for the PQ's position on a referendum, and hence their electability, to develop. In the case of the UK/EC, the pressures created by the fall of the Berlin Wall in 1989 and the prospect of German unification meant that an accelerated process of creating new understandings became necessary.

The analysis of the case studies in respect of the division of competences confirms the understanding of these as going well beyond any understanding of delineated spheres; FPS are systems in which the division of competences is complex and context dependent. Moreover, and in a further confirmation of Wheare's (1947) analysis, this very complexity can give rise to disputes and conflict in the system. Wheare refers in particular to concurrent jurisdictions as potentially being 'incompatible with a good federal government' (1947 pp.81-82). In the case studies, I discern a range of outcomes of crisis where the dynamic nature of the division of competences has an effect.

In SI, until 1990 the policy competence of land use and development sat with the BofE, enabling all territorial units' participation, with some veto powers in this policy area. Post-1990, the competence was transferred to the new NYC administration, although some efforts to compensate the loss of power was made by the mayor's office in promoting inter-level cooperation, and most importantly the closure of the Fresh Kills waste site was finally agreed.

In Quebec, the interpretation of competence in matters of language and culture crossed over from the BNAA's provisions on 'matters of a local nature', into areas where the BNAA was silent, in matters of foreign affairs. Here the complexity of the division of competences both added to the crisis dynamics but, and once again this is a paradoxical feature, also enabled Quebec to gain powers through the use of interpretations of competences in areas of language law, education, and importantly through the use of the Gérin-Lajoie doctrine.

In the last case, the UK and EC, further complexity arose from the division of competences in a hybrid system in which both intergovernmental and supranational decision-making co-exists. The crisis came about from a conflation of two threats to the UK government's powers. In the first instance, it was the conferral of areas of competence to the EC through intergovernmental decision, in respect of agreements to treaty reform. This was the case with the 1987 agreement to complete the single market. But, however, in the implementation of these areas of competence through supranational processes that the crisis develops, as actors in the EC sought to maximise the scope of the new competence in areas of policy that were sacrosanct to the UK, notably economic union, monetary union, and the social component of the single market.

In examining the question of the potential of the return to crisis, there are a number of risks in making a *post hoc* analysis. The knowledge of the development of the three systems since the time of the crisis had required the use of a veil of ignorance, and the development of an understanding of what constitutes a 'normal' level of conflict in FPS, where a presence or potential for conflict is the norm. In the first instance, the use of crisis as an independent variable to frame the period in which each case study is located needed to be rigorously applied so that the location in time of the closure of each crisis was consistent. Moreover, the interpretation of the data in each case study in respect of the return to immanence could only focus on the status of the FPS under examination at that point in time, and where possible would disregard subsequent evolutions of each. For the second point, a difficulty arises because FPS are dynamic systems that are process driven, and contingent on process. As such, I must be cautious with the idea of a 'return to normality' in the sense of a return to a pattern of political relationships as they were before crisis. In each of the case studies, the evidence suggests that there is a return to a new, or different normality, and a new status of immanence; for, in each of the cases the fundamental distinctions between the territorially organised constituent units remained. The political elites had, in each case, sought and obtained compromises that reduced the crisis from evidence to immanence, and it would be reasonable to argue that analogous elites would be faced with the same challenges in the future given the process basis of FPS.

7. Conclusion

7.1. Effectiveness of the Thesis # 1 – Comparative Methodology

This work aims to extend the understanding of concepts of federalism that are linked to a broad classification of 'process', and that are dynamic; there are identifiable changes and counter changes within and between the groups that make up such systems. The conceptual framework of the thesis develops an understanding of the nature of crisis as a phenomenon that is both a product of, and feeds into, process as a fundamental principle of federalism in FPS. The thesis examines the nature of FPS, as groups of territorially organized communities with varying degrees of social, economic and value differentiation, through the deepening understanding of the dynamics of the system in crisis, and the limitations of the constitutional frameworks within which they operate. Here, the addition of empirical data to the theory of Livingston (1952, 1956) in respect of instrumentalities is a significant contributor to the originality of the work, and to the canon of literature.

The methodological approach chosen for the thesis developed through a deepening understanding of the nature of the subject of investigation, FPS, as systems where the history, context and identity/value composition of each were unique. As such, a comparison of the constitutional and institutional compositions of one typology of system would have failed to deliver the understandings of the federal principles that underpin such systems. The comparison of case studies of FPS, where the similarity is based on the presence of a federal principle in the organisation of the system, rather than in any particular typology of system, created the opportunity to study a range of systems – at the local, provincial and inter-state levels. This was developed using a system of comparison that drew from Mill's Logic of Comparison, and developed as the MDSD by Przeworski and Teune (Peters 1998 p.40). This multi-dimensional approach both gives added depth to the understanding of the systems in each case, but also, importantly, extends the study from that of FPS as federations, e.g. Watts (1999), Burgess (2012), to encompass different multi-level governance systems; the canon of comparative literature in respect of the presence of the federal principle in these systems is limited.

The thesis draws from theorists' work on a range of elements that I link together as being typical of the process driven dynamic nature of FPS. The accumulation, or amalgamation, of the concepts that are found in the seminal works of Bryce (1901), Wheare (1947), Livingston (1952,1956), Friedrich (1963,1968), Elazar (1987), Kincaid (1990,1995), Burgess (1993,2006, 2012), and others, was not, as stated in the introduction to this work,

intended to create a new single 'grand' theory of federalism. This statement notwithstanding, the use of crisis as the independent variable extends the understanding of these elements, and draws them together in a comparative analysis in a way that allows substantive linkages to be drawn. The limitations of the extent of the analysis in respect of the main themes must, however, be acknowledged, for where the emphasis has been placed on a broader, explanatory approach, inherent in the comparative case study method, some sacrifice of depth must be made. However, the compensation for such shortcomings is the ability to include in the analysis a range of theoretical concepts that gives a wider breadth of explanations. This balance between depth and breadth is conditional on the *n* of cases in the study; as Gerring (2007) suggested the single case study favours depth over breadth, where increasing the number of cases creates the inverse. In the next section, I briefly discuss the main findings of the thesis established in the comparative chapter, and map these against the four hypothetical questions that frame the research, with a reflection on the effectiveness of the research methodology for each.

The question of the effectiveness of the thesis in answering the four research questions which framed the study is discussed below. However, it is also appropriate to examine the effectiveness of the whole nature of the study, in the use of comparative methodology and focusing events, and how these have been effective in enabling explanations of the dynamics of FPS. Essentially, the two constructs, taken with the territorial nature of the study, defined the scope and depth of the cases and the ability to draw clear explanations of the dynamics of FPS as defined as the dependent variable, whilst limiting the problem of 'confounding background variables' (Peters 1998 p.38).

The fundamental premise of federalism is the existence of territorially defined units which group together for the realisation of a common purpose. Across FPS the nature of these units differs – in scale, population, geographical contiguity, as well as the identity signifiers – ethnicity, language, religion, culture. As discussed by Peters (*ibid.* p.33), the diversity of FPS in respect of the nature of their constituent units makes comparison difficult – if limited to the MSSD method. However, in this study the use of the alternative MDSD model not only avoids the problem of commensurability highlighted by Sartori (1991), but contributes to the explanation of the functioning of FPS. In effect, from this choice of method I have been able to show how across three very different systems, with three very different types of constituent unit, the same defining characteristics of federalism as principle of organisation can be used as an explanation for the outcome of crisis – the restoration of a new form of equilibrium in the system.

The use of the MDSD in the choice of the case studies also led to the comparison of characteristics of three very different systems: at the below the state level, at the state

level, and a system that had elements of above the state federalism intertwined with intergovernmental principles of organisation. In comparative politics in general, and in the subfield of comparative federal politics, little attention is given to comparisons of this type. The comparison used in this thesis has shown how the principles of organisation based on federal concepts retain these, albeit in changed institutional arrangements, post-crisis, and that these principles are understood as being of importance by the actors in the process.

The use of crisis as the independent variable was crucial in the definition of the temporal dimension of the case studies. As discussed by Hay, as well as being an underused concept in social and political theory, crisis offers the theoretical lens through which to define a period when a system is in a transformative moment (1996 p.254) and where changes must be made to prevent the system's deviation to 'a new developmental trajectory for the state' (1999 p.319). The comparison of the three FPS before and after the crisis as defined by the focusing events (as shown in table 3 above) shows how in each case the dynamic between the continuation of protection for constituent units' rights, and the need of the FPS to change in response to a wider demand, was managed. The most important finding from this comparison was that this was not resolved by the suppression or repression of the demands, although initially there was, as theorised by Livingston (1952, 1956) evidence of counter-demands or resistance in all three cases. The comparison shows how the combination of demand and counter-demand resulted in a new, or revised, structure of the FPS, with the use of instrumentalities, which retained federal principles of organisation.

Overall, the use of the MDSD comparative methodology, using crisis as a framework for locating territorial systems in a temporal context, has enabled the thesis to explain how FPS are dynamic, and how this dynamism is a product of the social-based processes which defined, and continue to redefine, FPS. There can be no argument against the idea that the FPS in this study have undergone substantial transformations when compared before and after crisis; but the foundations of the system on federal principles.

7.2. Effectiveness of the Thesis #2 – Research Questions Revisited

The foundational elements of the thesis rest on the interplay between the concepts of crisis, and dynamic change in FPS. The nature of the methodology required a broad development of the case studies with both a focus on the crisis period as defined in the

conceptual framework, but also a study of the historical development of the crisis. The first focus, on the crisis period, was carried out through the study of primary and secondary sources relating to the conceptual elements assessed as 'dynamic' within the canon of federal literature. The second element, the contextualising of the crisis, required a substantive exploration of the context in which the crisis developed, with a focus on: the development of the FPS in each case; an understanding of the actors involved; and an overview of the constraining factors in each. This necessity for a solid understanding of the contexts of each case is made in the literature (c.f. Burgess 2006 p.18). I now re-state the research questions and assess the elements of the comparative chapter's conclusions against these, with reference to the effectiveness of the research methodology in each.

1\ Do federal polities move towards integration/centralisation, or disintegration/non-centralization as a consequence of crisis?

Across the three case studies, the analysis of the development of the FPS in terms of a crude positioning on a centralized/non-centralized continuum is problematic. In terms of constitutionally entrenched powers, the evidence from each case is for a centralizing process, or at least a prevention of a non-centralization of powers. In the case of SI, the NYC legislature gained constitutional powers at the expense of the Boroughs. In the case of Quebec, the 1982 constitution did not confirm the de-centralization processes of the 1960s and 70s; and with the UK, the migration of powers into the intergovernmental sphere of Union governance, whilst not embedded in the treaties *per se*, represented a movement away from constituent units towards the centre. However, once a differentiation is made from an analysis based on a division of competences in a constitutional sense, and the *operation* of the FPS as encouraged by Wheare (1947), Livingston (1952,1956), and Friedrich (1963,1968), a more nuanced picture emerges. In the case of SI, the powers of the BPs in respect of crucial policy areas have continued through informal networks; in Quebec, the gains in *de facto* autonomy have been not only preserved, but have, to a degree, been enhanced. However, in the third case, there is evidence to suggest that the influence of the UK in the EU was, post-Maastricht, only notionally preserved, that the deepening of existing competences in the supranational sphere, and the migration of competences into the intergovernmental sphere, was a centralizing process.

However, the thesis topic calls for the above to be considered in the context of Elazar's (1987) analysis of the difference between non-centralization, the constitutionally entrenched protection afforded to constituent units' powers, and de-centralization, where the powers of the constituent units are subject to the continued accord of the general government, which can rescind/revoke these without the constituent units' approval. In the case of SI, whilst the Charter protected the functioning of NYC governance that included

a territorial representation, this was subject to the compliance with the broader constitution of the US, which set out the parameters for the governance of constituent units and any sub-units. Effectively, those powers enjoyed by SI before 1989 were de-centralized, as opposed to non-centralized. In the case of Quebec, at the time of the end of the crisis, the political elites were still focused on attempts to complete the processes of Victoria in respect of the confirmation of the non-centralized nature of Quebec's hitherto de-centralizing autonomous development. The third case, of the UK, is more complex in that integration takes place both through intergovernmental and supranational processes. In the first of these processes, the interpretation of the positioning of the system along the continuum of centralization/ non-centralization should be moot; there is no reason to make such an analysis as the constituent units retain the option of non-participation in any competence that falls in this cooperative process. However, in reality the very processes of integration through the intergovernmental process infer closer and deeper cooperation that, notwithstanding the rights of opt-outs and opt-ins, creates an engagement on the part of the constituent units to a centralizing process.

The use of the comparative methodology of case studies that covers a range of FPS has offered valuable insights into the nature of the relationships between constituent units and their systems; as well as extending on Elazar's theoretical discussions on the nature of centralizing and non-/de-centralizing, the research has extended the understanding of the persistence of the balances of power relationships in systems. In the first two cases, existing power relationships persisted through the evolutions of the nature of the divisions of powers from de- to non- centralized, in a confirmation of Kincaid's (1995) understandings. The third case study is a useful foil to the first two; here the importance of the decisions made in the 1987 SEA, later became clear; it re-set the EC's integrative process towards a substantive change in the power dynamics between the constituent units that created the conditions for crisis as the UK fought a rear-guard action to prevent centralizing pressures.

2\ Are federal systems predicated on order as a value, or do other values have equal importance?

Carl Friedrich emphasises the concept of federalism in terms of the organisation of systems that respect the values of the constituent units to the extent that some disorder is inescapable; that in effect order in the system is a secondary objective (1963 pp. 336-338). Two elements are required for the system to function in such a way as to prioritise a plurality of values over order: the first is the pursuit of communities' goals by their political representatives; the second is the ability for the systems to compromise and change, to have the capacity for dynamic change as opposed to being a static, ordered, system (ibid.).

The comparative analysis of the three case studies offers substantial evidence to support the idea that the constituent units' representatives pursue their communities' interests and values, and that this development of their role is contextual to the challenges to these in times of crisis. The promotion and preservation of communities' interests in all three cases rises in evidence as a consequence of the challenges, and to the extent that order in the FPS becomes itself challenged, this becomes a secondary consideration. The counter-demands of the general governments, in respect of their representation of other, alternative, community values, also place order as secondary.

In SI, Senator Marchi's campaign for the protection and preservation of the islanders' values came about because of the challenges arising from the need to change the system to address other groups' interests, notably in the context of a developing civil rights agenda. In this case, the potential for the breakup in the order that prevailed was very real; and, consistent with Friedrich's analysis, the elites of NYC and NYS worked towards finding acceptable compromise and change to prevent such an outcome.

In Quebec, the developing alternative ideas for the preservation of the community's values acquired political representation with the PQ, QLP, and U.n. In the crisis of the post-1967 period, the differentiated proposals for a new settlement for Quebec challenged the existing order, culminating in the call for a substantive separation of the province from the Canadian federation. The reaction of the general government was, once again, consistent with Friedrich's analysis, with the search for a compromise that would have satisfied the contrasting value demands of the French- and English-language communities.

In the third case, the UK and the EC, the particularity of the relationship between the constituent units and a *developing* integration project is problematic, where the former had, notionally, a large degree of influence in the representation of their values and interests in the latter. In theory, the system could not become disordered; this would have necessitated the agreement of MS to developing integration that included policies, practices and institutional developments that were antithetic to their individual values. In the normal context of the development of the EC, without the changing geo-politics of the late 1980s, the dynamic change in the system might have been constrained; however, as the evidence shows, the changing context created pressures that led the elites of the EC to drive towards deeper union. This in turn created pressures on the UK's elites to resist the challenges that this represented to their values, and to demand the compromise and change from the other 11 MS; with the resultant disorder in the system becoming evident in the IGCs in the run-up to Maastricht.

The comparative analysis of the three case studies has therefore given substantive empirical support to the theoretical premises of Friedrich in respect of the understandings of the primacy of values over order, and the dynamic nature of FPS. However, in order to understand how these compromises and changes are realised in the context of dynamic systems, I turn to examine the links between process, dynamic relations and the use of instrumentalities.

3\ Is the analysis of federalism as process evident in the dynamic relations between communities and the polity, and in the use of instrumentalities in the polity?

The evidence from the comparison of the case studies clearly shows that in each of the cases the process of federalising, the development of the systems to accommodate diverse and evolving requirements of the communities, is linked to both the idea of crisis, and to the need for change. Livingston's argument, that the nature of the federal system reflects the underlying societies in the territorial units, becomes clear through the lens of crisis. In SI, Quebec and the UK the evolution of the systems in response to certain community's values puts the system under pressure to change, or for the units to accommodate the change. As Burgess pointed out, the resultant, evolving, federal system is a consequence of these tensions (see Burgess 2006 p.4). The understandings of the mechanisms for change in the FPS develop through the work of Wheare (1947), Friedrich (1963,1968) and Livingston (1952,1956) in their examination of constitutionalism, formal mechanisms of change, and those mechanisms for change that are one of the foci of this study, the concept of 'instrumentalities'.

The comparison of the cases allows me to make a clear connection between the changing needs of the communities and the development of the FPS through formal and informal mechanisms. The evidence shows how the use of the latter is critical in the management of the crises when the mechanisms for formal change preclude the re-establishment of a satisfactory equilibrium in the systems.

In the case of SI, the amendment to NYC's Charter, as a result of changes to the US Constitution, were challenged; when these challenges were rejected the actors in the system were faced with the problem of retaining the unity of NYC whilst respecting the diversity of the boroughs, notably SI. The drive towards the separation of SI from the system reduced steadily through the post-1993 period, in part because of changes in the political elite in NYC, but at the same time, there were significant changes in those mechanisms identified by Livingston. These were most notably in the area of attitudes to the role and status of Staten Islanders, and to the understanding of the problems faced by this group in their attempts to maintain a distinct community.

In the case of Quebec, resistance to the modernisation of the province, seen as antithetic to the preservation of values and identity, gave way to demands for a new relationship with the RoC based on a special status for the province. Here the emphasis was on developing *étatisme*, where Quebec would acquire the maximum amount of autonomy in order to preserve the qualities of the nation, and modernise. However, in spite of the acquisition of *de facto* powers, changes in the area of attitudes towards the concept of the special status of Quebec were never realised during the phase of the conflict. Here it was only after the departure of Trudeau that new efforts were made to develop attitudes towards Quebec that might have matched the *de facto* changes in the institutional relationships between the province and the RoC.

In the case of the UK and the EC, clear evidence of the use of instrumentalities can again be seen in the period of crisis as a response to the need to push the integration process forward, whilst allowing the UK to opt-out of integration in areas of policy that were antithetic to her values and identity. Here my interpretation follows that of the Quebec case, in that the changes in attitudes, from the UK's elites and population, would only follow the effective deployment of institutional changes. The pressures on the EC to integrate post-1989 were such that the normal process of institutionalising post-attitudinal change had to change for the sake of the expediency of process. What became evident between the signature at Maastricht and the election of the Labour Party in 1997 was that these attitudinal changes did not follow.

The comparative analysis of the three cases has therefore established the link between the process inherent in FPS and crisis, and the need for the use of instrumentalities either to accommodate the demands for change, or to create new attitudes towards the constituent units that sought such change, where change was constrained by the FPS.

4\ To what extent do federal political systems act to contain and permit, or constrain, the expression of discontent in times of crisis?

The theoretical underpinnings to this thesis emphasize the ability of FPS to adapt, cooperate, compromise, and respect the diversity of the values of the territorial constituent units. There is, however, an important countervailing thread which stresses the need for the maintenance of sufficient unity between the constituent units and the general government for the latter to fulfil its role of 'working out solutions, adopting joint policies, and making joint decisions on joint problems' (Friedrich 1963 p.594). The rise in tensions between these two imperatives in the time of crisis might lead to the prioritization of the FPS's values over a minority unit's, and hence a constraint of the latter's expression of its discontent.

I limit the evaluation of the case studies in respect of the constraining effect of the FPS to the areas consistent with the main thrust of the thesis, the beyond the constitutional, or instrumental. This is consistent with the theoretical framework in which I look beyond the constitutional; but with the caveat that a reluctance, or abstinence, from using constitutional tools falls within the understanding of extra-constitutional. In effect, an absence of constitutional action can, in and of itself, be considered an instrumentality.

There is a variation across the three case studies in the extent to which the expression of diversity is accepted by the other communities, and the general governments of each. In the case of SI, there is insufficient evidence in the case study to suggest that the other four boroughs of NYC actively rejected SI's grievances. However, there is evidence to confirm that NYC's, and NYS's elites sought both to permit, and indeed to positively respond to, the expression of discontent. This attitude must, however, be identified alongside a clear statement of intent from the elites to counter the desires of the SI elites for the creation of a new city; an argument made both on the basis of the preference for the retention of NYC's integrity, and on the deleterious effect of secession on both NYC and SI. In the case of Quebec, there is a considerable range of reactions; with the development of the inter-governmental processes in the horizontal plane, and some early acknowledgement of grievances under Pearson. However, in the period of crisis, Quebec's drive towards recognition and autonomy was, in the main, countered by the emphasis of the Trudeau regime for a FPS based on contrasting principles. However, this was punctuated by periodic efforts to develop understandings of the grievances with the commissioning of Royal Commissions. There is also a marked contrast between the reluctance of the Trudeau regime to use the power of disallowal to curb the Quebec parliament's legislative programme, and the later unilateral act of the Patriation of the Constitution. In the last of the cases, the UK's outsider status was contingent on the policy area under discussion, in some areas, notably defence and home affairs, the grievances of the UK coincided with other MS, and hence reduced the pressures on the UK to agree to deepening integration. However, in areas where the overwhelming consensus of the MS was for deepening integration, such as EMU, and the completion of the single market, the MS and the key players in the EC placed considerable pressure on the UK.

In comparing the output from the three case studies, the temptation is to hide behind a platitude that 'all systems are different'; for in the cases there is indeed a range of reactions and counter-reactions to the expression of discontent. However, an important finding is that the empirical evidence confirms the dynamic nature of FPS as theorized by Friedrich, through the presence in each case of the expression of contrasting positions on the nature of the FPS and its development.

7.3. Locating the Thesis in the Field

The originality of this thesis draws from the application of an underused variable in comparative politics, crisis, to the development of the understandings of the operation of FPS as dynamic process. As such, it is not, *per se*, an examination of crisis, but a study of the consequent dynamics in the federal political systems, and the federal principles which are identified in the canon of literature.

The theoretical chapter is thus divided into two sections; in the first of these I develop the independent variable of crisis in a FPS, drawing on the field of IR, and understandings of crisis management in the broader field of politics. In developing the understanding of crisis, I became aware of a wealth of work where crisis is the *dependent* variable, in particular in the related fields of political economics, where reactions to and management of crises such as the global financial crisis, and the Eurozone crisis, are the subject of examination. It was not the intention of this thesis to embark on an analysis of the broad range of studies carried out in these areas; this would extend well beyond the constraints of the current study.

However, in my work on the conceptual framework of federalism, I examine the literature of the classic federal theorists through the broad conceptual framework offered by scholars who study federalism as a dynamic process in contrast to a legalistic institutionalised approach. This approach is operationalised through the use of a comparative methodology, with three case studies. It is in this application of the comparative approach that the study finds its major contributions to extending and deepening the work of these, as Burgess (2012 p.220) commented, we are 'standing on the shoulders of giants' in that we base our work on the 'greats'; Wheare, Livingston and Friedrich. Here the work differentiates from, and contributes to, the canon of comparative federalism in three key areas; the use of crisis as an independent variable and theoretical lens, the extension of comparison from federations to include FPS, and the focus on the empirical analysis and theoretical development of the concept of instrumentalities.

In the first of these areas, the thesis uses crisis as the independent variable, to frame the studies in the all-important temporal dimension; this permits the identification of homologous periods in the systems examined to provide a basis for comparison.

I have mentioned the second of these areas, the extent of comparison, in the overview above. To reiterate, the thesis extends the work of Watts (1999, 2008) and Burgess (2006); for where these acknowledge the import of the comparative examination of federations,

and the existence of federal political systems, they do not compare *per se* a range of FPS that extends below and above the level of the state.

These first two elements, whilst being on their own significant contributions to the field, enable the development of the understanding of the third element, the dynamic nature of FPS. It is here that the thesis has extended understandings of the use of instrumentalities in the management of conflict between territorially based societies, or communities. This is achieved through the development of the theoretical approaches of Wheare (1947), Livingston (1952,1956) and Friedrich (1963,1968) which were based on bringing a dynamic approach to understanding the relationship between FPS and their constituent communities. This developing understanding between the 1940s and the 1970s of the theory of FPS and their communities went undeveloped until Burgess' 2012 work on the nature of the federal principle, or spirit. My work extends the empirical evidence for the process basis of systems, a major tenet of the theories of Wheare, Livingston and Friedrich, and develops these through identifying the link between process and crisis, and most importantly, the limitations of constitutions and the need for instrumentalities. I apply empirical flesh to the theoretical bones of multi-level federal political systems based on dynamic processes and the utility of instrumentalities in crisis management.

7.4. Opportunities and Ideas for Future Research

In this thesis, I have compared three case studies through the lens of crisis to understand more about the dynamic features of FPS. It is evident that the conceptual framework of crisis and federalism, as well as the case studies, all contain a range of opportunities for further study. In this last section of the thesis, I focus on those areas that lead directly from the fundamental principles of the thesis. This is, in part, an acknowledgement of the inevitable lacunae that are present in the thesis because of time and resource restraints; moreover, it is to highlight the original nature of the thesis, and to consider how to apply the framework in further work. Broadly speaking, future developments can be categorised as revisiting, extending, and deepening.

In the final sections of each case study I identified the dynamic features of the FPS to assess how the crisis in each had returned to a level of evidence (or immanence) consistent with the conceptual framings of the thesis. I did, however, acknowledge that for each of the systems in question, and indeed for all FPS, the nature of the systems was such that there was a possibility for renewed crisis, whether in the same area (of actors and values) or in new areas within new contexts. In this respect, the first area for future research will be in the *revisiting* of the FPS already studied - SI, Quebec, and the UK, - to identify the long-term outcomes of the original crises. The output from this might take the

form of another comparative study, or individual case studies; notably the 1995 referendum in Quebec, and the post- May 2015 relationship between the UK and the EU after Cameron's election.

I would also aim to *extend* the use of the concept of crisis to other cases that fulfil the selection criteria, the independent variable. In the first instance, this would take the form of a survey of FPS across levels of analysis (local, constituent unit, general government, multi-state), to generate a database of crisis that would include a number of key variables. This would serve two purposes: in the first instance to allow for quantitative research data to be analysed; and in the second to encourage collaborative or independent work on the completion of the research of any case that met the conceptual framework.

The third opportunity for future research would lead in the direction of qualitative studies – through an examination of crisis in FPS and the resultant dynamics using interviews with a range of actors in the political arenas identified by Elazar (1987). This would *deepen* the understandings of the way that FPS are understood to operate in terms of the conceptual framework of dynamics and process. In this thesis, Where I have been limited is in the analysis of the motivations, and understandings, of the actors from a first-hand perspective. The dilemma in prioritising the first-hand over the historical is that in the understandings of crisis as developed, I have advocated the delimitation of the crisis to include both a start- and end-point. A rigorous application of this principle would preclude the collection of data until the parameters of the crisis were set – i.e. until the crisis was over. This caveat notwithstanding, ongoing data collection using the conceptual framework of this thesis would give a valuable resource for future research.

8. Bibliography

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9. Appendices

9.1. Original French Texts

ⁱ 'Les chefs politiques et religieux du Bas-Canada sont inquiets et envisagent l'avenir sous un jour sombre'

ⁱⁱ 'Il va sans dire, mais cela ira peut-être mieux en le disant, que je ne suis pas autrement fier d'avoir à faire ces constatations. Mais si je ne les faisais pas, je renierais le long manifeste publié dans le numéro sous-dit de *Cité Libre*, et je reculerais devant la logique à laquelle je risquais d'être pris en jouant à 'démocratie d'abord'

ⁱⁱⁱ 'Le deuxième élément de spécificité de la Révolution tranquille est ce qu'elle met fin à celle longue polarisation qui opposait le Parti libéral et les mouvements nationalistes'.

^{iv} 'Cette victoire des néo-nationalistes était en due grande partie à un contexte alors propice à un nouveau nationalisme axé sur la revendication pour le Québec d'une autonomie non plus provinciale mais bien nationale'

^v 'De tous les premiers ministres québécois, Daniel Johnson fut en effet le premier à flirter ouvertement avec l'option d'indépendance, donnant ainsi une crédibilité et une légitimité à cette idée jusque-là marginale . . . Cet homme a néanmoins profondément marqué la politique Québécoise par sa pensée mais surtout son action dans le dossier constitutionnel'.

^{vi} '. . . son propos dépassait d'emblée tout ce qu'il est convenu d'appeler . . . les revendications traditionnelles'.

^{vii} 'Ce dont nous devons lui demeurer reconnaissants, c'est qu'il avait porté en même temps d'un seul coup, le nom du Québec jusque dans les coins les plus insolites de la planète'.

^{viii} 'J'ai constaté quelles immenses réformes de progrès de développement et par conséquent d'affranchissement vous accomplissez'.

^{ix} 'Ce texte d'une insigne maladresse, tout en prétendant "promouvoir" le français, offrait à tous, immigrants compris, le libre accès à l'école de leur choix. Autrement dit, plus de barrière contre l'anglicisation.'

^x 'Est-ce vous ne trouvez pas . . . que c'est une défaite qui a l'air d'une victoire'.

^{xi} 'Grâce au découpage d'une carte qui continuait à favoriser les ruraux au détriment des citadins'.

^{xii} 'pas d'objection, avait-il laissé tomber avec dédain, ça ne peut pas faire grand mal'.

^{xiii} 'Lorsque, le jeudi 8 octobre, le manifeste avait résonné sur les ondes, une multitude de Québécois s'y étaient reconnus. Non pas certes dans l'appel . . . à une révolution. . . mais en revanche, le long réquisitoire qui précédait cette conclusion était loin d'être sans fondements'.

^{xiv} 'Actuellement, au Québec, le régime démocratique est menacé. Ce régime démocratique pour lequel des dizaines de millions d'individus ont sacrifié leur vie, à toutes les époques, dans notre province, est présentement menacé'.

^{xv} 'Hélas, c'est justement d'Ottawa, de Toronto, et d'ailleurs que se déchaina sans tarder l'offensive finale sous la furie de laquelle on ferait pour quelques temps du Québec un goulag. . .'

^{xvi} 'Jusqu'au mensonge effronté, bien sûr. La moindre des choses. Comme de prétendre voir, dans ces quelques rencontres que je viens d'évoquer, "un pouvoir parallèle . . . qui menace les représentants élus du peuple'.

xvii 'En ce qui me concerne personnellement, cela fait suite à un engagement que j'avais pris le 29 avril, le soir même de l'élection, de procéder avec la plus grande rapidité possible à une véritable réforme électorale. Il est évident, pour tous les citoyens du Québec et pour tous les partis qu'il y a une nécessité indéniable d'une réforme électorale, qui comprendrait une nouvelle carte électorale, l'examen possible d'un nouveau mode de scrutin de même que des amendements qui pourraient être apportés à la Loi électorale. D'ailleurs, l'ancien gouvernement avait soumis dans le bill des amendements pour améliorer la Loi électorale et nous avons l'intention au cours de la prochaine session de reprendre son projet de loi et, s'il y a lieu, de le modifier'.

xviii 'Nous avons constaté que le Québec avait le pouvoir d'abolir cet article, comme il a eu le pouvoir, hier, de poser des gestes en matière d'immigration avec le bill 64. Ce sont des exemples qui révèlent la souplesse du fédéralisme lorsqu'on sait s'en servir'.

xix 'Au lieu de chercher à s'entendre avec Ottawa et les autres provinces sur des textes généraux . . . tentera plutôt de résoudre un à un des problèmes concrets par des formules législatives et administratives. Et, lorsque des modes nouveaux auront été réglés au point qui respectent à la fois les objectifs du Québec et les normes fédérales, alors il deviendra possible, et plus facile, de se remettre à l'œuvre de la réforme constitutionnelle'.

xx 'Le Premier Ministre a souligné que les arrangements proposés par M Bourassa . . . étaient exclusivement de nature administrative et qu'il n'était pas question que le gouvernement abandonne son droit de légiférer en matière d'allocations familiales'.

xxi 'La proposition de M. Bourassa constitue un changement fondamental dans l'administration (du régime) et non pas dans ses modes d'application et les paiements'.

xxii 'Si Ottawa rejetait cette proposition, autant dire qu'on veut un fédéralisme unitaire, un fédéralisme rigide. Et cela, le Québec ne pourrait l'accepter'.

xxiii ' . . . les autres provinces ne sont pas tenues d'accepter pour elles-mêmes la formule propose par Québec. Elles auraient toute liberté, si elles le jugent à propos, d'adopter des programmes d'allocations sociales et d'aide sociale. Le cas échéant elles pourraient profiter de la clause que le Québec réclame à Ottawa.'

xxiv ' . . . provinces accèdent à l'indépendance elles seraient amenées à établir un marché commun à l'intérieur duquel elles devaient harmoniser leurs politiques sociales. A plus forte raison, doit-il en être ainsi dans une fédération où chacune des régions a ses caractéristiques propres.'

xxv 'La position du gouvernement, as-t-il dit, est que la constitution canadienne devrait être rapatriée, qu'une formule d'amendement proprement canadienne, devrait être reconnue et qu'un bill des droits de l'homme ainsi que des garanties linguistiques devraient être reconnus dans la constitution.'

xxvi 'De remettre en marche le processus brutalement interrompu par le NON de M. Bourassa au lendemain de Victoria et, de la sorte, de se présenter aux prochaines élections comme le père de la nouvelle confédération, ayant réussi, malgré tout ce qui se passe au Québec à mater finalement l'enfant rebelle.'

xxvii 'profitant de cette majorité factice et d'une assemblée qui impressionne les badauds parce que les Libéraux ont pris plus de 100 sièges, M. Trudeau, avec un machiavélisme imperturbable, sans laisser à M. Bourassa le temps de rouvrir ses dossiers, tente de l'amener sur son terrain.'

xxviii 'la souveraineté du Québec serait acquise par simple proclamation de l'Assemblée nationale sans qu'il soit nécessaire de recourir au référendum.'

xxix 'Les quelques interventions favorables à l'organisation d'un référendum sur l'indépendance aussitôt après une élection victorieuse pour le PQ ont été fort mal accueillies. . . Pour la majorité des péquistes, une victoire électorale de leur Parti, serait-elle acquise à 35 pour cent des suffrages, signifie nécessairement l'indépendance.'

xxx 'Dissiper les ambiguïtés et la confusion.'

xxxi 'Les députés ont tenu à s'inscrire en faux contre la position adoptée par l'Union nationale et le Ralliement des créditistes qui ont porté ou s'apprentent à porter à leurs programmes l'idée d'un référendum sur l'indépendance.'

xxxii 'L'élection d'un gouvernement péquiste serait suivie d'une période de négociations avec le fédéral, menant à un référendum sur l'indépendance en 1975.'

xxxiii 'M Marc Lalonde a raison de rappeler que l'on "peut tout faire à l'intérieur du cadre fédéral". Juridiquement cette affirmation est inattaquable. Mais politiquement et historiquement, elle est hautement contestable.'

xxxiv 'Ce qui, en clair, signifie que les Québécois, s'ils veulent un nouveau régime mieux accordé à leurs aspirations, devront d'abord écarter le PQ du pouvoir'.

xxxv 'C'est pourquoi, comme le soulignait M Ryan hier soir, l'obligation contractée par le camp de NON n'est lourde de conséquences pour l'avenir. Il n'est désormais plus possible, ni à Ottawa ni à Québec, de décevoir ces attentes, de trahir la promesse de changement'.

xxxvi 'Mais nul progrès n'est concevable dans cette voie si le gouvernement fédéral et les autres provinces ne reconnaissent pas clairement le caractère distinctif du Québec, foyer principal de la langue et de la culture française au Canada. D'autres conditions ne sont pas moins indispensables : la future constitution doit faire référence à l'adhésion librement consentie de chacune des provinces, évitant ainsi d'évoquer explicitement le « droit de l'autodétermination » ; la formule d'amendement, au sujet de laquelle les participants ne semblent pas loin de s'entendre, devra toujours accorder au Québec le droit de veto qui lui est déjà acquis ; les dispositions linguistiques du projet de la Charte des droits et libertés doivent être modifiées au chapitre de la langue d'enseignement, de telle sorte qu'elles ne contredisent plus au Québec les objectifs de la Charte de la langue française ; la dualité des institutions fédérales doit être assurés.'

xxxvii 'A ce propos, je crois reconnaître ma prose dans ce passage de notre programme électoral ou, soutenant que « faut rester forts au Québec », nous demandions : « Lequel des partis en présence est assez exclusivement québécois pour exiger comme un minimum vital, dans toute reprise éventuelle des pourparlers (constitutionnels), la reconnaissance explicite de la société nationale distincte dont le Québec est la patrie, de son droit inaliénable à disposer librement d'elle-même et de son droit exclusif en matière de langue d'enseignement ? Nous croyons très simplement que poser la question, c'est y répondre'.

xxxviii 'Les juges refusent toutefois de dire si cette convention exige l'assentiment d'un nombre donné de provinces. C'est aux « acteurs politiques » de fixer ce nombre dit-on, mais on considère, dans le cas qui occupe actuellement la scène, que le nombre d'opposants au projet Trudeau est amplement suffisant pour lui nier cet assentiment'.

xxxix 'Le jugement reconnaît donc que le premier ministre est bel et bien sur la voie de renouvellement du fédéralisme, mais qu'il l'infléchit dans un sens inégalitaire, qui instaure un ordre hiérarchique entre les niveaux de gouvernement, donnant nettement le haut du pavé à Ottawa. Voilà ce que les omissions mentales de M. Trudeau ont tenté de cacher aux tenants du NON en 1980, et pour cause'.

xl 'Le Parti conservateur offre en ce moment les meilleures garanties que le point de vue du Québec sera entendu, respecté, et pris en considération dans les affaires de la fédération.'

xli 'Ils [les colombes péquistes] sont disposées à faire un bout de route sur la voie d'un fédéralisme moins centralisateur et plus sain . . . et veulent . . . faire la preuve que, dans un grand nombre de dossiers sectoriels, ce n'est pas le Québec «séparatiste» qui créait les embâcles comme à loisir, mais bien l'obstination et l'intransigeance de M. Trudeau et de ses sbires . . .'

xlii 'Doivent-ils relancer ce mouvement autour de la question nationale telle qu'elle était formulée à la fin des années 60 par M. René Lévesque ?'

xliii 'M. Rémillard a pour la première fois hier levé officiellement le voile sur les grands objectifs de la négociation constitutionnelle que le gouvernement québécois veut entreprendre avec Ottawa et les autres provinces. . . . La reconnaissance explicite du Québec comme société distincte constitue par ailleurs la première revendication du Québec. Elle est même, a dit M. Rémillard « une condition préalable à toute négociation susceptible d'amener le Québec à adhérer à la loi constitutionnelle de 1982'.

xliiv 'Depuis cette époque [la révolution tranquille] nous sommes passés d'une refonte constitutionnelle sans l'accord du Québec aux échecs de Meech et Charlottetown. Ces événements ont conduit à la quasi-victoire du mouvement souverainiste au référendum de 1995. Depuis ce moment capital de l'histoire canadienne, nous n'avons vu aucun effort sérieux pour accommoder la question nationale Québécoise au sein de la fédération'.