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**Can Asymmetrical Constitutional Arrangements
Provide an Alternative Answer for the Disputed?
Bringing Constitutional Asymmetries into Play in the
Middle East Peace Process**

by

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Abstract

Most traditional federal theory remains rooted in the notion that asymmetrical constitutional arrangements within a state structure are somewhat exceptional. According to contemporary federal theory, however, recent systems are multi-tiered and multinational, producing asymmetrical responses by default. In addition to suggesting that asymmetrical solutions are often required, this implies that some degree of constitutional asymmetry may provide grounds for the sustainability of the system. To this end, a more comprehensive approach is needed to investigate constitutional asymmetries as a mechanism for accommodating diversity in the Middle East peace process. It will require establishing a framework based on a notion of asymmetrical multi-tiered multinational systems, as well as exploring this framework to identify an alternative solution in the Israeli-Palestinian conflict.

Key-words

Middle East peace process, Israeli-Palestinian conflict, stability, constitutional asymmetry, multi-tiered systems, differences in identity



1. Introduction

The study of the Middle East peace process has become an important aspect of many scientific disciplines. It has advanced so far that computers have been employed to explore human behavior. The PeaceMaker game was invented as an electronic peace education instrument, in which participants on both sides commit achieving an acceptable proposal in the Israeli-Palestinian conflict (Kampf 2014: 9-14). The persistence of the dispute has evidently heightened the need for renewed proposals concerning the issue.

Long-established approaches for assessing the Middle East peace process have included two plans as a starting point. The ‘One-State Solution’¹ could be regarded as an egalitarian approach, as it revolves around balancing and safeguarding the interests of Israelis and Palestinians within a single state, regardless of its internal organization. The ‘Two-State Solution’ involves two groups in two separate states, projecting Palestine as an independent state alongside the Israeli border. The ‘Three-State Solution’ – which proposes restoring the territorial landscape to the one that existed before the Six-Day War in 1967, when the Gaza Strip was under the Egyptian and the West Bank under the Jordanian authority – has not received much attention. Not only these solutions were the starting point, but they remained relentless. In this light, the scientific community’s inability to move beyond the first two approaches suggests a deep entrenchment in long-standing proposals.

Given the points presented above, it is of palpable interest to address alternative theoretical routes in the study of the Middle East peace process. One possible approach would be to use contemporary rather than traditional constitutional law research in the area of federalism to address this issue in terms of ‘multi-tiered multinational systems’ with asymmetrical features. There are three reasons for this proposal. First, most traditional approaches fail to trace evolution in the internal structure of states. Second, for the most part, the arguments in these approaches are based on mono-nationalism. Finally, they propose symmetrical relationships as an essential integrative part of the states. Such constructions cannot be expected to address (at least not effectively) the current challenges with regard to changing the general understanding of claims to autonomy. This has been especially true of such systems like Bosnia and



Herzegovina, Belgium, Indonesia, Iraq, Italy, Malaysia, Myanmar, Spain, the United Kingdom, and many more. Threatened by autonomy claims from various sub-national entities, these systems accommodate these entities by employing asymmetrical solutions that are put into practice in order to hold the state together, thus bringing forth new types of state systems known as ‘multi-tiered multinational systems’. In this way, the findings suggest fresh opportunities for embracing alternative points of view with regard to the Middle East peace process.

The first aim of this article is to respond to these theoretical challenges by establishing a new theoretical framework based on a notion of multi-tiered multinational systems that experience constitutional asymmetries. The second aim of this article is to apply this framework to the identification of situations in which asymmetrical solutions may offer an alternative in disputed territories, as in the Palestinian-Israeli conflict.

The article begins by addressing two touchstone factors in the Middle East peace process. It then shifts to focus to traditional and contemporary federal theory, highlighting new systems known as multi-tiered multinational systems with constitutional asymmetries. This is followed by a short discussion on the assessment of constitutional asymmetries in light of an alternative for the disputed parties in the Middle East conflict. The article ends with concluding comments and remarks about further research.

2. Mint vs. stale approaches

To date, two factors have been identified as being significant for examining the Middle East peace process: sovereignty and identity (Tilley 2015: 425). Importantly, these two factors are used as a touchstone for new directions in further considerations. Assuming that the co-existence of Israelis and Palestinians is not manageable under the present scope of circumstances, the present article suggests that the approach incorporating constitutional asymmetries should be employed in order to reach a solution. Correspondingly, the article suggests that this approach is quite receptive and versatile in accommodating new contexts (Blindenbacher and Koller 2002: xiii). The present article nevertheless differs from previous



studies in several key ways. In contrast to previous studies, this article points out that sovereignty does not play a deciding role in the resolution of the Israeli-Palestinian conflict. This expectation is fostered by studies focusing on a dynamic approach to federalism. With regard to identity, the article underscores the significance of discussing it in greater detail. Nevertheless, in order to address the identity issue, the article uses the term multinationalism in the further elaboration of its importance.

2.1 Non-essential sovereignty

The arguments in this article imply that sovereignty loses its importance under the dynamic notion of federalism. Unlike the traditional approaches, the dynamic notion of federalism centers on the identification of federalism with a process (Friedrich 1968, 7). It involves the idea of a federalism that is dynamic rather than of a static design (Friedrich 1968: 7, 173). With this in mind, federalism is a process in which a number of different political communities create arrangements in order to accommodate differences. It is also the process in which a unitary political community may transform into a federal community (Friedrich 1968: 7, 173). Given that a static model of federalism cannot outline new tiers between the central and local levels (Duchacek 1970: 279), a dynamic model offers certain advantages. They can be analyzed in line with two key points.

A first key point under the dynamic notion of federalism is that there is a wide scale of different systems (Friedrich 1968: 7, 173) (Popelier 2012: 43-44), which tend to expand the traditional classification of states according to federal theory. Recent scholarship points out that the 'Hamilton tradition', which classifies forms of the state as unitary, federal or confederate, based on their institutional features, offers the advantage of clarity, although it is not in tune with a variety of political systems in the contemporary constitutional sphere (Popelier and Lemmens 2015: 72) (Popelier 2014: E-3-E-4). Given that a state's institutional structure does not always reveal the true nature of the state, a state may be established as unitary but act as federal, and *vice versa* (Livingston 1952: 84, 87) (Palermo 2009: 14-15). In addition, the scope of difference fluctuates both between systems and within the same system in a different time frame, thus producing extreme varieties (Duchacek 1970: 5). That being the



case, some authors have suggested the term ‘federal arrangements’ to imply the existence of multiple ways to apply federal principles (Elazar 2006: 6).¹¹ Importantly, contemporary federal arrangements are detectable in federal-like or quasi-federal systems (e.g. India), regionalized unitary systems (e.g. Indonesia, Italy, the United Kingdom), even within transnational formations (e.g. the European Union) (Delmartino 2009: 38) (Palermo 2009: 17-18). For these reasons, the following sections address these new systems as a multi-tiered. In addition to eliminating the necessity of delineating federal systems (Popelier 2012: 43), this approach even excludes the possibility of doing so (Popelier 2014: 6). In the present circumstances, it is a case that the notion of the state itself is transformed (Keating 2001: 55). This is consistent with the view that traditional federal theory has neglected the fact that federal relations are dynamic and vibrant, due to the very nature of federalism, in addition to neglecting the fact that such relations take effect at several levels within the federal arrangement (Geys and Konrad 2012: 32-33).

A second key point under the dynamic notion of federalism is that contemporary federal states divulge lively processes under the dynamic approach to federalism. They thus entail a constant search for the autonomy of sub-national levels and/or groups, along with an ongoing quest to balance tensions. As an illustration, beginning in the second half of the 20th century (Máiz and Requejo 2004: 2), some unitary systems have reshaped their internal settings by bringing into existence tiers of government between the central and local levels (Liesbet Hooghe and Marks 2012: 17). Markedly, territorially based differences are likely to urge political groups to establish their own political authority and even to set up new states (Stepan 2004: 39).

Evidence of this tendency can be observed in several systems. After the ethno-territorial conflict, the Dayton Peace Agreement transformed unitary Bosnia and Herzegovina into a multi-tiered system composed of three constituent peoples, two entities, and one district (Sahadžić 2011: 18-23). Pressured by identity differences, Belgium has also transformed from unitary into a multi-tiered system based on regions and language communities (Popelier and Lemmens 2015: 2, 7). Indonesian provinces of Aceh and Papua received a special autonomy status after violent separatist claims (McGibbon 2004: 1). In Italy, identity differences caused a



process of regionalization (Palermo 2015: 227-228). Before joining Malaysia, Sabah and Sarawak proposed a list of conditions to safeguard their distinctive interests (Ongkili 1992: 155-156). Myanmar, as a deeply divided society, has been in a permanent state of constitutional reform while it attempts to apply federal principles to set a basis for peaceful coexistence of distinct groups (Breen and He 2020: 95-97). The relationship between Israelis and Palestinians has always been burdened with intense territorial claims. The relations have evolved along with joint and competitive systems of control including a center-periphery model, competing functional centers, and one community domination (Sandler 1988: 48-59). This proves that there had been some dynamic in balancing tensions whilst the relationship became ossified only recently.

Ultimately, the absence of the necessity to delineate federal systems indicates that the concept of sovereignty is losing its importance in state systems (Popelier 2012: 43-44). With this in mind, the dynamic process implies the assumption that the federal system functions in two opposing directions: association and devolution (Friedrich 1968: 176-177).^{III}

2.2 Salient identity

A second important factor in the Israeli-Palestinian conflict concerns identity. Relationships of identity and conflict center on conceptualizations of how various groups claim their specific existence based on linguistic, religious, cultural, ethnic, and other characteristics. Understood as a reflection of individual benchmarks, groups appear to manifest a singularity of belonging to a distinct group (Gellner 1993)^{IV} along with a sentiment of territorial affiliation (Livingston 1952: 85).^V This is because identity and territory are difficult, if not impossible, to disconnect due to their close association (Nicolini 2016: 297). Groups tend to reserve their individuality within layers of different belongings, however, especially within contemporary state structures.^{VI} Against this background, different groups, then, demand accommodation of their identities, thereby producing intense relations (Watts 2008: 76) both, vertically and horizontally. Evidence of this interpretation can be observed in situations in such regions as discussed above. By default, the accommodation of identity includes changes in territorial arrangements meaning that the coexistence of distinct groups might be determined



by successful territorial adjustments (Nicolini 2015: 55, 81). Eventually, the success depends on 'how the legal geography applies the identity rule to constituent units' (Nicolini 2015: 71). This is one of the controversies in the Middle East peace process. For both sides, identity is deeply ingrained in the territory and control over territory determines not only the identity of the population but also the identity of the territory (Cristiani 2016: 316, 321). Not surprisingly, this can explain a failure behind the concept of the non-territorial interpretation of autonomy (Sandler 1988: 55) in the Israeli-Palestinian relations.

There is one point of similarity between systems that experience diversity, namely asymmetry, which is also important in the following sections. In many states, the intensity of demands based in identity ultimately results in the establishment of asymmetrical patterns within the internal state structures (Máiz 2004: 7).

3. Constitutional asymmetry: shaken not stirred

Having reflected on sovereignty and identity, the following sections move on to discuss a theoretical framework relating to multi-tiered multinational systems with constitutional asymmetries. As a prologue to this discussion, it is important to spell out arguments for bringing into a play this new theoretical framework.

One major problem with the traditional federal-theory approach is that researchers tend to remain largely within the confines of traditional contexts. As noted in the introduction, several federalism studies assume that the federal state is composed of identical constituent units, which are equal in their relationships to each other and to the central level (McGarry 2007: 105). Coupled with this, symmetry is treated as synonymous with equality, while asymmetry is treated as synonymous with inequality (O'Leary 2011: 184) (Tarlton 1965: 872) (Nicolini 2015: 56). That being the case, traditional federal theory treats symmetry as an integration mechanism (Tarlton 1965) (Palermo 2009: 15), thus identifying centralization as the essential feature of a system (Tarlton 1965: 871-873). Moreover, traditional federal theory links symmetry to mono-national entities and their processes of nation-building (Ferran Requejo 2001b: 12-13) while regarding asymmetry as a harbinger of disunity or even separation among



the constituent units (Palermo 2009: 13-15) (Tarlton 1965: 874) (Fossas 2001: 73). Symmetrization is thus perceived as a mechanism for dealing with differences in the federal state (Nagel and Requejo 2011: 249), as it is regarded as safeguarding the stability of the federal system. To this end, asymmetry is considered an exception (Tarlton 1965: 871-873) (Palermo 2009: 15) (Gagnon 2001: 323), while symmetry is naturally implied (Burgess 2006: 212).

With this in mind, the present study proposes a shift from traditional toward contemporary federal theory, which proposes the concept of multi-tiered systems that develop territorially based divisions tied to differences in identity, which accordingly produce diverse effects in relationships between and among the tiers (Stepan 2004: 40). The concept of multi-tiered multinational systems with constitutional asymmetries could offer one alternative approach to the Middle East peace process. This is because the dynamic approach to federalism allows the exploration of new (or existing) types of state systems in a less restrictive way while considering the implications of identity and exploring the ways in which constitutional asymmetries could be employed in overcoming differences. The following sections discuss the exploration and construction of a theoretical framework for the concept of multi-tiered multinational systems with constitutional asymmetries.

3.1 Multi-tieredness

This article raises the point that the oversimplified traditional division of the forms of states into unitary, federal, and confederate is no longer suitable. One of the main drawbacks of traditional federal theory is that it fails to recognize and follow recent developments concerning the internal structure of states. It relies heavily on reputed ‘model’ federations^{VII} (e.g., the United States of America, Australia, Switzerland, and Germany), while disregarding the contemporary diapason of states (Popelier 2014: 4) (Feran Requejo 2011: 7) (e.g., Belgium, Bosnia and Herzegovina, Indonesia, Iraq, Italy, Myanmar, Pakistan, Spain, and the United Kingdom). These federal systems are mainly fragmenting states (Obinger, Leibfried, and Castles 2005: 8) often referred to as ‘holding together’ states (Stepan 2004: 33-35). For example, fragmenting unitary states (e.g., Bosnia and Herzegovina and Belgium) appear to reflect the development of new federal forms (Blindenbacher and Watts 2002: 9) by attempting



to accommodate emerging differences and holding the state together through federal arrangements (Stepan 2004: 33-35). Even though they are regarded as unitary systems, the United Kingdom (Laffin and Thomas 1999), Italy (Mangiameli 2014), and Spain are characterized by devolutionary processes that are difficult to ignore. These states have developed intermediary tiers of government between the central and municipal levels, in order to address intra-state differences, thus creating multi-tiered systems. With respect to the present territorial layout and divergent political orientation of the West Bank and the Gaza Strip in Israel, it is logical to wonder whether these divisions could constitute particular tiers. A multi-tiered system is thus defined as a system in which the central level is mixed with sub-national entities with the lawmaking power. Given that these levels are simultaneously divided and associated, the system could thus be described as multi-tiered for a reason: to support the idea of fluidity in the specification of state systems. Together, these findings support the assertion that, according to the dynamic approach, multi-tiered systems exceed the limits of the concept of sovereignty.

3.2 Multinationalism

A second, equally important disadvantage of traditional federal theory is that its arguments are based primarily on mono-national federal systems. For example, a research model in this scholarly research alludes to the premise that nation-states are the primary and lowest unit of comparison (Liesbeth Hooghe, Marks, and Schakel 2010: 2). Accordingly, traditional scholarship has paid little or no attention to the important role of diverse identities in the clarification of differences among sub-national entities. One possible explanation for this is that a uniform and symmetrical status for sub-national entities tends to be the norm within 'model' federations (Bird and Ebel 2007: 11). An alternative explanation is rooted in concealed ethnocentrism, which refuses to recognize distinct identities, as well as in states that are inspired by the federalism embodied in the purely territorial federal system of the United States of America (Kymlicka 2005: 128).



In contrast to these traditional interpretations, contemporary observations indicate that distinct groups tend to challenge the mono-national notion of the federal state with their constitutional agendas, which advance the accommodation of multinationalism (Tierney 2006: 9), particularly through different tiers of government. In other words, sub-state nationalisms have surfaced intending to give voice to distinct identities. This is especially true for the systems such as Belgium (Flemings and Francophones), Bosnia and Herzegovina (Bosniaks, Croats, and Serbs), Canada (the French-speaking community), Iraq (Kurds), Italy (the German and French-speaking communities), Malaysia (Bumiputeras of Sabah and Sarawak), and Spain (Basques and Catalans).^{VIII} Differences in identity markers between Israelis and Palestinians disable the idea of shared national identity (Sandler 1988:, 59). Their strong ties to the territory put into sharper perspective the identity of the majority (Israelis) and the identity of the occupied (Palestinians). Contrary to theoretical claims and practical examples, the majority identity does not seek to create the so-called ‘identity fiction’ (Marko 2006/7: 251-279). It does, however, seek to abolish the identity of the occupied through what Braverman (2010) calls a project of reterritorialization (268). This forces the opposite identity group to retort, sometimes even with violent means. Ultimately, both profoundly divided groups claim an important link to the territory while attempting to marginalize the importance of the opposite group (Nicolini 2016: 290).

In this context, multinationalism can be described in terms of territorially based differences built on linguistic, religious, cultural, ethnic, and other identities, in which significant groups with one or more distinct identities claim important political autonomy based on these differences (Stepan 2004: 39).^{IX} Interests and demands from distinct groups in multi-tiered systems rely on particular identity backgrounds. Thus, the most prominent characteristic of multi-tiered systems with multinational characteristics is that distinct groups rely on multinationalism to situate their demands.

3.3 Constitutional asymmetry

Finally, a third drawback of traditional federal theory is that it proposes symmetry as an essential integrative part of federal states. In contrast to traditional scholarship, the multi-tiered



system and multinational societies set out challenges that are usually more intricate than those in ‘model’ systems (Feran Requejo 2011: 8). One main premise is that systems with a considerable degree of internal diversity adopt asymmetrical solutions^x for the purpose of accommodating diverse ethno-territorial interests and in order to protect the rights of sub-national entities (Moreno 1999: 149). A second main premise is that systems with a high degree of internal diversity tend to be the most asymmetrical (Agranoff 1999b:, 14). These asymmetrical systems are then described as states, in which at least one part has the benefit of autonomy, although other parts have less or no autonomy at all (McGarry 2007: 105).

The differences thus produce either a divergent constitutional position or at least the desire for a divergent constitutional position for specific sub-national entities. This is supported by the fact that asymmetry in multi-tiered systems results from the challenges of diversity, in which the pluralistic nature of the system demands the design beyond the equal distribution of their governing capacities (Agranoff 1999b). It is important to note the wide range of possibilities in which constitutional asymmetries may be altered on behalf of one or a few sub-national entities.

To demonstrate, in Bosnia and Herzegovina, the territorial structure of the state overlaps with its ethnic composition and the principle of parity. Thus, two-thirds of representatives in the House of Representatives at the central level are elected from the Federation of Bosnia and Herzegovina (Bosniaks and Croats) and one-third from the Republic of Srpska (Serbs) (Sahadžić 2019: 61). In Belgium, the German-speaking community does not have the same powers as the Dutch-speaking and the French-speaking communities do, as it cannot exercise language competences beyond the use of language in education. It nevertheless exercises some regional competences, which the Walloon Region has transferred to it (Dumont et al. 2005: 48, 49) (Wouters, Van Kerckhoven, and Vidal 2014: 8-9). Because Quebec applies civil law three out of nine judges of the Canadian Supreme Court are from Quebec (Gagnon and Garon 2019: 94). In Ethiopia, ethnic communities that are territorially embedded enjoy more powers than ethnic communities without their own state (Fessha and Bezabih 2019: 149-150). The Kurdistan Region that controls oil and gas reserves in Iraq (Dirri 2019: E-92-E-121) receives broad fiscal powers (Bammarny 2019: 279-280). Aceh in Indonesia is authorized to apply



Islamic law (Butt 2019: 247). In Italy, regions with special status negotiate their competences and finance bilaterally with the central level, making them subject to different dynamics of competence or resource distribution (Palermo and Wilson 2014: 511). The seat allocation in the first chamber of the Malaysian parliament is based on the size of the population. However, there is a guaranteed minimum threshold for Sabah and Sarawak (Salleh, Puyok, and Bagang 2019: 328). The Spanish constitution provides for two main routes to regional autonomy – a fast track for historic regions and a slow track for other regions (Swenden 2006: 63) – thus creating an optional autonomy system for the regions (López Guerra 1995: 171 cited in: Almendral 2012: 91). Apart from various fiscal agreements that have been established for the Basque Country and Navarre (Watts 2008: 130), the Basque Country and Catalonia have the power to organize their own police forces and to regulate the use of language, while Catalonia has powers over its penitentiary system (Bossacoma Busquets and Sanjaume-Calvet 2019: 452). In the United Kingdom, even though tax regulations are under central control, Scotland can adjust the basic income tax. Northern Ireland can legislate employment, and Wales has executive powers to address the use of the Welsh language (Swenden 2006: 66-67) (Dickson 2019: 418).

In the face of autonomy claims, ‘asymmetric federalism is a powerful and strategic mechanism for the governance of divided societies’ (Nicolini 2015: 60). To address diversity, constitutional asymmetries need to involve institutionalized conflict resolution, competition, and cooperation (Burgess 2009: 21). This raises the problem of whether and how these aspects could be properly addressed. Observations of existing asymmetrical multi-tiered multinational states suggest that there are three main groups of constitutional asymmetries. Accordingly, asymmetrical solutions can be divided into three groups.^{x1}

- One group refers to the legally embedded differential *status* of one or more sub-national entities within multi-tiered systems. This dimension concerns whether the distinct status of the specific sub-national entity is formally recognized, as well as whether it is provided with institutional and procedural autonomy, guarantees of representation and decision-making authority in institutions at the central level,



involvement in constitutional reform procedures, veto powers, and specific safeguards for the protection of autonomy.

- A second group of asymmetrical solutions involves the *distribution of power and competences* among sub-national entities in the multi-tiered system. It concerns whether any specific sub-national entity enjoys a different set of competences, differences in techniques of allocation of powers, the existence of an ‘opt-in’ or ‘opt-out’ mechanism, an opportunity to begin exercising autonomy at a different speed, and the power to formulate certain measures enforced within the sub-national entity.
- Finally, a third group refers to the extent to which and level at which specific sub-national entity enjoys *fiscal autonomy*. It questions whether any specific sub-national entity has the power to raise taxes, the discretion to set bases and rates for major taxing powers, the power to raise revenues, responsibility for spending capacity, reliance on transfers, and budgetary control over its borrowing.

3.4 What makes a multi-tiered multinational asymmetrical system?

According to the framework described above, there are three main features of a multi-tiered multinational asymmetrical system: the multi-tiered character of the system, multinationalism, and constitutional asymmetry. The first feature implies the existence of at least two tiers of government, the presence of sub-national entities with law-making power, and evidence that the central government is mixed with sub-national entities. The second refers to territorial differences based on language, religion, culture, and ethnicity. Finally, constitutional asymmetry is embodied in any variation in status among sub-national entities identified in constitutional/legal texts.

4. An alternative for the Disputed?

Recent decades have seen a growing trend toward a common opinion among Israelis and Palestinians that the two-state solution has reached a point of no consensus (Thrall 2016: 432) (Sandler 1988: 59). In addition, an inclination to support the one-state solution in the Israeli-



Palestinian dispute remains encouraged only by Palestinians living outside of Palestine (Kelman 2011:, 28). This is further complicated by the fact that some parties advocate excluding the Gaza Strip from the one-state deal (Thrall 2016: 433).

The challenge of reaching a bargain carries a number of well-known limitations. First, Israelis and Palestinians are not evenly balanced in the state of affairs. This is largely because Israelis have a country, a strong military, and they encourage Jewish people from abroad to settle in Israel. In contrast, Palestinians have no country, no military, they live in two separated territories under the authority of Israel, and they are disconnected from their scattered population abroad (Mendel 2016). In addition, the Palestinian National Authority in the West Bank could be characterized as fragile and incapacitated, and it is losing support among Palestinians (Habib 2016: 198). Moreover, Hamas virtually controls the Gaza Strip, positioning itself as equivalent to the Palestinian National Authority (Habib 2016: 194, 196), thus effectively splitting the Palestinian government in two. This ultimately implies an initial objective of identifying other possible choices and alternative options for resolving the Israeli-Palestinian conflict (Habib 2016: 193), while also implying that future prospects should conform to the changing reality (Mendel 2016: 443).

One of the options includes the concept of constitutional asymmetries. This approach offers certain advantages for both sides. The concept of constitutional asymmetries shows that the *numerical balance*, highlighted in the concept of bicomunalism^{xii}, *is of little importance*. After all, the Israeli minority lives in the West Bank (14%) while the Palestinian minority lives on the Israeli territory (21%) and in Jerusalem (37%) (Reybrouck 2017). The concept offers *bargaining flexibility*. For Israelis, access to constitutional asymmetry would create flexibility in the institutional design process, including processes of sequential accommodation (Wolff 2011: 24). For Palestinians, the choice for constitutional asymmetries implies the rejection of coercive homogenization, thereby preserving the power to choose. It also prevents the system from falling into decay (McGarry and O'Leary 2012: 40). Constitutional asymmetries offer *adaptive solutions*. Solutions could be suited to reaching a turning point with regard to agreements concerning any future relationship, regardless of whether these solutions are transitional or permanent. The customized accommodation of diversity is a central element of



the concept of a multi-tiered multinational system with asymmetrical features.^{xiii} This should give both the Israeli and the Palestinian sides an incentive to engage in a dialogue. Finally, constitutional asymmetries offer a different approach to *stability* despite *complexity*. For both sides, the dynamic nature of multi-tiered multinational systems does not necessarily mean that they are unstable, although it would be advisable to strive for dynamic balance within the system (Benz and Broschek 2013: 382). This is because, in asymmetrical multi-tiered multinational systems, stability rests on the mutual relationship between a complex set of actors and processes (Zuber 2011: 548). Complexity can act as a shock absorber, as complex arrangements are likely to disperse tension throughout the network in different directions (Fitzmaurice 1999: 105 cited in: Bauböck 2001: 16) therefore transforming high-level concentrated tension into a set of low-level adaptive tensions that are less demanding to manage. Given the threat of a ‘slippery slope’, constitutional asymmetries are likely to pose a moderate threat to the stability of the system (Bauböck 2001: 19).

The present study does not concentrate on the backward focus question of why the previous proposals did not work. It concentrates on the forward focus question of what is needed to move forward. Therefore, it focuses on the present and future through the principles of constitutional asymmetries. This allows at least partial overcoming of what Nicolini (2016) calls ‘imbrications’ or common traits that generate flaws within the system (289). Usually, the flaws are settled in constitutions (Nicolini 2015: 76). However, historically, identity conflicts have also been settled through agreements, for example, the Dayton Peace Agreement for Bosnia and Herzegovina (which contains the Constitution of Bosnia and Herzegovina) and the Good Friday Agreement between the United Kingdom and Irish governments (which became a part of constitutional law of the United Kingdom).

One significant aspect that could play a decisive role in achieving common ground for the parties in the Israeli-Palestinian dispute is the foundation of the State of Palestine (Thrall 2016: 434). This could serve as a starting point in negotiating Palestine’s specific position within Israel. Important variables concern territorial and identity aspects and attempts to resolve them (Nicolini 2015: 72-73), namely territorial demarcation and mutual recognition.



Territorial demarcation would prevent overused ‘random bordering’. Setting up random borders is not only a trend between the Israeli and Palestinian territories but also within the Palestinian territory (Braverman 2010: 264-265). It is closely associated with dual administration and the presence of Israelis in Areas B and C in the Palestinian territory (Cristiani 2016: 318, 335). The Palestinian territory could be demarcated either as a single sub-national entity or as two sub-national entities, taking into consideration who *de facto* controls the West Bank and the Gaza Strip. The competitive position between Hamas and the Palestinian National Authority implies the future of the Gaza Strip and the West Bank as two tiers. This might appear as an attempt to dilute the Palestinian position. However, it involves a degree of counterintuition. Palestinians fear of internal manipulation and fresh external influence (Sandler 1988: 61) while Israelis argue against a full-fledged Palestinian state (Sandler 1988: 59). A specific status protects Palestinians from future external influence and offers a new discourse to Israelis. The city of Jerusalem, a fundamental obstacle to Israelis and Palestinians, could be established as a capital region (Reybrouck 2017) or a city district in joint ownership.

What is striking is that Israelis and Palestinians have existed next to each other without mutual recognition. Refusal of mutual recognition has evolved into a dehumanized form of communication – bureaucratic on the side of Israelis (Braverman 2010: 275) and raging on the side of Palestinians. The multi-tiered approach offers opportunities beyond simple territorial demarcation. It concerns the territorial recognition of groups with distinct identities, in this case through asymmetrical constitutional solutions (Máiz 2004: 64) (Gagnon and Laforest 2012: 86). Mutual recognition allows recognition and protection of diversity which works against the centripetal forces within the system (Badia and Requejo 2012: 7).

Territorial and identity demarcation does not mean Israelis will disconnect from the West Bank (Braverman 2010: 266). On the contrary, it is not far-fetched to allege that that supporting different interests increases mutual respect and therefore becomes a stabilizing factor. Similarly, Palestinian appreciation can be poured into a legitimizing factor. This would mitigate the arguments that an agreement between the groups is not feasible (Sandler 1988:



60). On the other hand, failure to accommodate the claims of sub-national entities might stimulate centrifugal forces that would drive the system apart (McGarry 2007: 112).

Two tiers, the Gaza Strip and the West Bank, would receive the power to organize their legislative and executive bodies. Representation of Palestinians from the Gaza Strip and the West Bank in the central level legislature would be based on a guaranteed minimum threshold. A number of seats would be reserved for Israelis from the West Bank and Palestinians from the Israeli territory.^{xiv} Caucuses would be split into three, Israeli and two Palestinian (from the Gaza Strip and the West Bank). A decision-making process would be based on a majority voting. The Gaza Strip and the West Bank would receive specific locks for the protection of territorial autonomy. A veto for the protection of group rights would be an option for both, Israelis and Palestinians. The central level would be authorized to oversee the content of the decisions made by legislative and executive bodies in the Gaza Strip and the West Bank. The participation of Palestinians from the Gaza Strip and the West Bank in the central level executive body would be based on a guaranteed number of ministers and deputy ministers. A decision-making process would include a veto for the protection of group rights.

The division of powers and competences would include differences in the technique of allocation. The joint institutions at the central level would exercise usual powers and competences. A specific set of powers and competences, for example, with regards to language, culture, education, and religion would be allocated to the Gaza Strip and the West Bank. Regarding the (im)migration, police, and army, interim solutions would be applied. For Israelis, the right to return would still exist under mutual agreement, whilst for Palestinians, the right to enter the Israeli territory would be determined by sensible conditions. Police and armed forces could exist separately, with a strategy to incorporate them. An opt-in/opt-out rule would allow the central level and the tiers to allocate powers and competences differently. This would also help, for example, to the West Bank to move forward if the relationship between the central level and the Gaza Strip is strained.

Eventually, the Gaza Strip and the West Bank could earn elements of fiscal autonomy. For example, they could be in charge of rates and bases for major taxing powers. Because the



stability of the system is based on increasing economic development, putting Palestinians in charge of resources might weaken the support to Palestinian Liberation Organization.

Finally, Jerusalem would be governed through the elements of power-sharing and power dividing (Reybrouck 2017). In legislative and executive bodies, the Palestinian minority would have a guaranteed minimum threshold. Each group would be authorized to regulate matters of their exclusive interest (language, culture, education, and religion). Palestinians in Jerusalem would be given autonomy to choose between regulations applied in the Gaza Strip and the West Bank. Both sides would be authorized to exercise a veto if they would fear decisions would have identity-related effects.

It is important to recall that, on the whole, these institutionalized asymmetrical solutions represent a comprehensive set of constitutional asymmetries in states in which constitutional asymmetry is applied broadly with regard to sub-national entities. Should they aim for constitutional asymmetry, neither side (i.e., neither the Israelis nor the Palestinians) should aim for an immediate and/or entire bundle. Constitutional asymmetries do not come in neat packages; they are rather negotiated over time. For institutionalized asymmetrical solutions to work, Palestinians would first have to decide whether they would prefer to approach negotiation as a single sub-national entity or as two separate entities (i.e., the West Bank and the Gaza Strip). It is important to note that the latter option need not be detrimental. On the contrary, if no consensus can be reached, both entities could opt to negotiate with Israelis at their own pace, but obviously with the prospect of achieving the same goal. If these conditions are met, the various sides could agree to define particular asymmetries about which to negotiate, in addition to specifying instruments and mechanisms for doing so.

5. Conclusion

One significant point raised in the previous sections is that alterations in favor of asymmetry are often constitutionally entrenched in multi-tiered multinational systems, ranging from basic to extreme demands. Where demands do emerge, it is fairly certain that the asymmetrical state design is enforced in response to multinationalism (Weller 2011: 1)



(McGarry 2011: 148). This is especially evident in the systems discussed above. Together, the arguments explored in this article support the assertion that, if a claim for the institutional accommodation of multinationalism is strong enough, one option would be to redesign the state in an asymmetrical model (Máiz 2004: 7). At the same time, the arguments confirm the notion that, given that all systems possess the potential for claims based on differences, constitutional asymmetries are unlikely to emerge only in federal systems. They may be disguised in any type of system (Palermo 2009: 17-18).

Another significant point raised in the previous sections is that this framework can be explored as a starting point for re-addressing the Middle East peace process. This article presents an evaluation of the relationship between multi-tiered systems, multinationalism, and constitutional asymmetries, with the objective of proposing an alternative concept for approaching the Middle East peace process. In addition, it explores pathways along which sub-national entities in multi-tiered systems build their claims to autonomy based on their distinctive identities, while simultaneously provoking asymmetrical constitutional patterns that could identify the conditions under which the alternative concept could be useful. The arguments presented here are obviously open to criticism, however, as they are intended solely to reflect a broad concept for further thinking additional feedback is most welcome.

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^I Often associated with the 'Bi-national Solution'.

^{II} Elazar is not alone in his attempt to consolidate exercising forms of federalism. For example, Delmartino refers to these forms as 'federal-type arrangements' (Delmartino 2009: 37).

^{III} Friedrich actually refers to these two directions as integration and differentiation (Friedrich 1968: 176-177). However, to avoid a link and therefore confusion with traditional federal theory that uses the term integration closely related to unitary systems, I use the term 'association'. While association tends to be equated with heterogeneity, integration involves homogenization. In addition, while devolution is linked to decentralization and delegation, differentiation refers to separation.

^{IV} Tierney also uses a number of terms refer to groups (Tierney 2006: 5).

^V This argument is open for discussion. While Livingston claims that this is absolutely the rule (Livingston 1952: 85), Burgess claims that interests may be pronounced by territorial and non-territorial actors (Burgess 2006: 143).

^{VI} For instance, Requejo states that members of these groups recognize themselves based on cultural patterns, the sense of historical distinctiveness, and their willingness to maintain their diverse positions within the political framework (Ferran Requejo 2001a: 41).

^{VII} Usually referred to as 'coming together' federations (Stepan 2004: 33-37).



^{VIII} Similar argument is offered by Piattoni (Piattoni 2010: 7).

^{IX} The author of the study acknowledges existence of other definitions of multinationalism and multinational states. However, they are of a restrictive matter to further research. For instance, the (Resnick 2004: 43) definition is limited to linguistic or cultural communities. McGarry and O'Leary fail to connect differences to significant groups that may use them to seek political autonomy (McGarry and O'Leary 2012: 22-23).

^X Asymmetries emerge in two different types. *De facto* or political asymmetry is defined as practices and relationships based on linguistic, religious, cultural, ethnic, social, economic, political, and other differences between sub-national entities, and between sub-national entities and the central level. *De iure*, constitutional, or formal asymmetries are differences embedded in constitutional and legal processes, producing an unequal positioning of sub national entities under the law. When *de facto* asymmetries are entrenched in the legal framework, they materialize as *de iure* asymmetries, formally treating subnational entities differently under the law (Watts 1999: 63-66) (Burgess 2006: 216-217) (Agranoff 1999a: 16) (Swenden 2006: 48, 63) (Popelier and Lemmens 2015: 80) (Weller 2011: 1) (McGarry 2011: 148) (Bermeo 2004: 263) (Basta Fleiner and Gaudreault-DesBiens 2013: 173) (Stepan 2004: 40).

^{XI} Sahadžić gives a comprehensive overview and explanation of the types of constitutional asymmetries and the indicators of constitutional asymmetry (Sahadžić 2017: 228-229).

^{XII} Schmitt (1988), for example, gives a comprehensive account of bicomunalism (33-35).

^{XIII} Burgess claims similar (Burgess 2009: 34).

^{XIV} Detailed solutions are beyond the scope of this study, however, guarantees of representation and participation reserved for national minorities should not be overlooked in comprehensive proposals.

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