

# Intergovernmental Relations in Canada: The Emergence of Collaborative Federalism

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*"Executive federalism" or "federal-provincial diplomacy" has long been considered the defining characteristic of Canadian federalism, which combines federalism and Westminster-style cabinet government. However, these processes have come under increasing stress in recent years from a number of forces that have affected the nature and conduct of federalism and intergovernmental relations in Canada. Executive federalism has not been displaced, but has been increasingly informed by a set of practices that we call "collaborative federalism," characterized more by the principle of co-determination of broad national policies rather than by the more traditional pattern of federal leadership.*

The central objective of this article is to describe and explain recent changes in federalism and intergovernmental relations in Canada at the beginning of the twenty-first century. "Executive federalism" or "federal-provincial diplomacy" has long been considered the defining characteristic of Canadian intergovernmental relations, with its combination of federalism and Westminster-style cabinet government.

In recent years, there have been some important changes in the conduct of federalism and intergovernmental relations in Canada. Executive federalism has been increasingly informed by a set of practices that we call "collaborative federalism," characterized more by the principle of co-determination of broad national policies than by either the Ottawa-led cooperative federalism of the post-World War II period or the more competitive federalism of later periods. While co-determination in the Canadian context generally involves the two orders of government working together as equals, it can also entail provincial and territorial governments taking the initiative on their own—acting collectively in the absence of the federal government—to formulate national policy. Adherents of collaborative federalism (mostly provincial governments and their supporters) view the governance of Canada as a partnership between two equal, autonomous, and interdependent orders of government that jointly decide national policy.

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Although Ottawa does not generally share this view of the nature of the national policymaking process, in several of the cases cited below, the federal government has been drawn into a process that is premised on this assumption.<sup>1</sup>

After summarizing developments within Canadian federalism since World War II, we describe the emergent pattern and explain its origins, functions, and practices. We conclude with an assessment and evaluation. How does this pattern differ from past practice of intergovernmental relations; how robust is it; is it likely to be extended to additional policy areas; and what are its consequences for effective and democratic policy-making?

## TRENDS IN INTERGOVERNMENTAL RELATIONS

Several caveats should be made clear at the outset. We are not positing a dramatic break with the past; the distinctive pattern that we describe has its roots in what preceded it. There is much continuity in the evolving patterns of intergovernmental relations. The subject does not lend itself to analytically distinct ideal types, nor is there a single pattern of intergovernmental relations. It varies according to level (with first ministers' relationships most dominated by strategic and status concerns) and according to issue area. In some areas, a tradition of cooperation has developed; in others, mistrust dominates the relationship. The rhetoric of "trust" and "cooperation," found in modern intergovernmental agreements often reflects aspirations rather than reality. Furthermore, despite the growth of collaboration, the institutions of intergovernmental relations in Canada remain, compared with some other federations, relatively ad hoc and under institutionalized.

### *The Evolution of Intergovernmental Relations Since World War II*

As Canada has evolved, so have intergovernmental relations.<sup>2</sup> In the two decades after the end of World War II, the intergovernmental agenda was focused on the construction of the Canadian welfare state. This project deeply engaged federal institutions because, while most of its major elements lay within provincial jurisdiction, much of the policy design and funding came from Ottawa. Nevertheless, the system adapted to these new roles for government with few changes in the formal distribution of power. The key policy instrument was the federal spending power, exemplified by the proliferation of shared-cost programs. Governments were relatively decentralized, and close professional relationships developed among provincial and federal officials and ministers within specific policy areas.

<sup>1</sup>This was clearly the case, for example, with the Social Union Framework Agreement.

<sup>2</sup>See, for example, Stefan Dupré, "Reflections on the Workability of Executive Federalism," *Intergovernmental Relations*, ed. Richard Simeon (Toronto: University of Toronto Press, 1985), pp. 1-32; Donald V. Smiley, *Canada in Question: Federalism in the Eighties*, 3rd ed. (Toronto: McGraw-Hill Ryerson, 1980); Richard Simeon and Ian Robinson, *State, Society and the Development of Canadian Federalism* (Toronto: University of Toronto Press, 1990).



"Cooperative federalism" made the Canadian welfare state possible, while considerably influencing its timing and its design.<sup>3</sup>

During the 1960s, the country moved into a different phase. Quebec's Quiet Revolution unleashed a progressive nationalism that transformed Quebec and challenged traditional assumptions about Canadian federalism. This profoundly altered the intergovernmental agenda, placing the Constitution at its heart. The growth of the public sector at both levels meant that governments were increasingly likely to bump into one another in the execution of their mandates and in the pursuit of their political ambitions. Each order of government moved into new areas of public concern, with few constitutional constraints to hold them back. Moreover, by the 1970s, a growing regionalism, particularly in the West, and an increasing assertiveness in the English-speaking provinces as their budgets and bureaucracies grew relative to those of the federal government, added to the pressure. Pierre Trudeau's assumption of the prime ministership in 1968 sharpened the ideological conflict between Quebec City and Ottawa, and between Ottawa and several western capitals. Provinces were less and less prepared to defer to federal leadership. The cooperative federalism of the 1950s was supplanted by a more competitive dynamic.

Federal-provincial conflict came to a head in the early 1980s. On two key issues—the Constitution and energy policy—the federal government, led by Pierre Trudeau, challenged both Quebec nationalism and western regionalism. The federal government's National Energy Program (NEP) and its determination to patriate the Constitution with or without provincial consent had an explosive effect on intergovernmental relations.

These two initiatives forced fundamentally different visions of the country—Ottawa-centered, province-centered, and Quebec-centered—into painful public debate; they divided the country regionally, and posed difficult questions about the character of Canada's political communities and the role of governments in defining and shaping them. Moreover, these conflicts challenged the status and self-image of governments and political leaders, framing the issues in zero-sum terms in circumstances in which none of the participants could afford to lose. The public was drawn into these battles, at the beginning as a resource for the battling government actors and, later, as a participant in its own right.

By the mid-eighties, the intergovernmental agenda had changed once again. Building an electoral coalition that included all sections of the country, the Progressive Conservative government of Brian Mulroney promised a new era of federal-provincial harmony and cooperation. The NEP was dismantled; provinces were closely consulted in the government's major policy initiative, the negotiation of a free-trade agreement with the United States; and provincial governments were at first insulated from federal efforts at cutting national

<sup>3</sup>Keith Banting, *Federalism and the Welfare State in Canada*, 2nd ed. (Montreal: McGill-Queen's University Press, 1987).



spending. Mulroney's major achievement was to secure the agreement of all Canadian governments to the Meech Lake Constitutional Accord (1987), designed to bring Quebec back into the "constitutional family" by according recognition of its distinct status within Canada.

Toward the end of this period, however, the Mulroney government made a series of decisions that contradicted its emphasis on regional equity and its commitment to intergovernmental collaboration, thus undermining federal-provincial harmony and accentuating inter-regional rivalries.<sup>4</sup>

Citizen opposition to executive federalism grew during this period. The passionate debates surrounding patriation and the adoption of a Charter of Rights and Freedoms in 1981-1982 had fundamentally changed attitudes toward the Constitution; no longer was it a matter of governments sorting out jurisdiction; now it was about citizens and their rights. If this was so, then what right did "eleven men in suits" have to shape the Canadian Constitution? However, the negotiation of the Meech Lake Accord exemplified the old pattern of executive federalism. It was developed in secret, among heads of government, with the public deliberately excluded. Only Robert Bourassa's federalist Quebec government referred the draft agreement to the legislature before it was signed in final form. Despite the support of virtually all Canadian elites, a ground swell of public opposition paved the way for its defeat in 1990.<sup>5</sup> Two years later, after a process that did attempt to engage citizens more directly, another intergovernmental agreement, the Charlottetown Constitutional Accord, was defeated in a national referendum.<sup>6</sup> Governments came under intense pressure to make their relationships more open, transparent, and participatory. Several provinces passed legislation to require popular approval of future constitutional changes. Citizen mobilization on day-to-day intergovernmental relations since then has been much more muted, but governments have had to take account of the demand for transparency and accountability as they have moved toward the more collaborative model.

A second consequence of the constitutional failures of this period was the realization that fundamental constitutional change was probably beyond reach. With the fatigue and frustration that followed yet another failure, political leaders and citizens turned away from such inherently divisive exercises to focus on "making the federation work," finding solutions through the informal adaptation of what had already proved a highly flexible

<sup>4</sup>Among the many examples we note just a few: a decision to award the maintenance contract for the Canada CF-18 military fighter to Montreal instead of Winnipeg; a cap placed on the growth of federal payments to the wealthier provinces under the Canada Assistance Plan, which entailed sharing of the costs of welfare; immigration, where Quebec reached an unusually advantageous agreement with Ottawa, and where provinces and municipalities were left to deal with the economic and social challenges of integrating new immigrants.

<sup>5</sup>See Ronald L. Watts' discussion: "Canadian Federalism in the 1990s: Once More in Question," *Publius: The Journal of Federalism* 21 (Summer 1991): 169-190.

<sup>6</sup>Robert C. Vipond, "Seeing Canada Through Referendum: Still a House Divided," *Publius: The Journal of Federalism* 23 (Summer 1993): 39-55.



regime, rather than through constitutional change.<sup>7</sup> This was a major impetus for the move toward a more collaborative model.

#### *Intergovernmental Relations After Charlottetown*

Changes in governments and political leadership along with fiscal pressures also contributed to the shift. In 1993, Jean Chrétien and the Liberals took office in Ottawa. Chrétien is a pragmatic politician who had been burned by the Constitution in the past and whose every instinct was to govern in a low-key, practical, step-by-step fashion, eschewing ideology or dramatic gestures. In 1994, the Parti Québécois (PQ) under Jacques Parizeau took power in Quebec City, displacing the federalist Liberals. This set the stage for the drama of the 1995 referendum on sovereignty and soured intergovernmental relations. The PQ had little interest in working with other governments. It would take whatever was available, and complain about the alleged injustices visited upon Quebec, but would decline to participate in the management of the affairs of the federation. While Lucien Bouchard, Parizeau's successor as Quebec premier, showed greater interest in working with his provincial colleagues, the basic posture of minimal participation was sustained, as it has been with the resignation of Bouchard and the accession to the Quebec premiership of Bernard Landry in 2000.

Change was also occurring in the other provinces. Alberta Premier Ralph Klein, elected in 1992, initiated the war against big government with his social democratic New Democratic Party peers in neighboring Saskatchewan not far behind. In 1995, a Conservative government, led by Mike Harris, took power in Ontario, committed to a "Common Sense Revolution"<sup>8</sup> with dramatic cutbacks, deregulation, and restructuring of government. Both Harris and Klein initially focused on a provincial agenda; they had little interest in developments elsewhere in Canada. Both soon discovered that no first minister can ignore intergovernmental concerns, and that citizens angered by policy change within the province could and would turn to Ottawa to protect their interests.<sup>9</sup> Success on their domestic agendas demanded some basic changes in how the federal system operated.

By the 1990s, the politics of fiscal deficits was also driving the shift to a new model of intergovernmental relations. There was now a broad public and governmental consensus that public sector debt was too high, that deficits had to be eliminated, and that the pain associated with bringing federal and provincial finances under control would have to be borne. All governments began to address these fiscal concerns, with some mix of cost-cutting, revenue generation, privatization, efficiency measures, and downloading.<sup>10</sup>

<sup>7</sup>See the essays in Harvey Lazar, ed., *Canada: The State of the Federation, 1997: Non-Constitutional Renewal* (Kingston: McGill-Queen's University Press, 1998).

<sup>8</sup>Modeled in large part on the United States Republican's "Contract with America."

<sup>9</sup>This, despite Ottawa's own aggressive deficit cutting that severely affected the provinces. It was most evident in the health care field.

<sup>10</sup>See Casey Vander Ploeg, *Red Ink IV: Back From the Brink?* (Calgary: Canada West Foundation, January 1998). This is the fourth in a series, which commenced in 1993.



Central to Ottawa's deficit-reduction strategy was what might be called the exercise of the federal spending power in reverse. Utilizing this "dispending power," the federal government in 1995 substantially reduced its transfers to the provinces for social programs (a reduction from \$18 billion to a floor of \$11 billion, later adjusted to \$12.5 billion, in federal support for health care, social assistance, and higher education). Federal transfers under these programs were rolled into the new Canada Health and Social Transfer (CHST), which promised greater freedom from federal conditions (though those under the Canada Health Act remained, as did the prohibition against restricting social assistance on the basis of residency).

The broad national consensus on the magnitude of the fiscal crisis meant that these actions did not occasion the intense intergovernmental conflict that might have been expected in other circumstances. The criticism were muted relative to the damage being inflicted on provincial budgets, though as deficit pressures eased in the late 1990s, demands intensified for a restoration of earlier funding levels. Second, Ottawa's power over the provinces, and certainly its legitimacy, were reduced along with the reduction in fiscal transfers. If Ottawa was no longer paying the piper, what right did it have to call the tune? Third, the federal cuts fostered a wave of "secondary downloading"—reductions in the transfers from provinces to their agencies (i.e., hospitals, municipalities, universities, colleges, social agencies, schools, and the like), and ultimately to citizens. The effects of federal-provincial relations thus reverberate throughout Canadian society. The net effect of this experience (i.e., federal cuts, downsizing the country's social, health, and educational systems, and coping with the full brunt of the public anxiety and opposition that this entailed) was to invest the provincial governments with a stronger sense of their autonomy, their responsibility, and their right to judge, within their spheres of jurisdiction, what the national as well as the provincial interest requires.<sup>11</sup>

### THE EMERGENCE OF COLLABORATIVE FEDERALISM

These developments set the stage for the strengthening of "collaborative federalism," the process by which national goals are achieved, not by the federal government acting alone or by the federal government shaping provincial behavior through the exercise of its spending power, but by some or all of the 11 governments and the territories acting collectively.

<sup>11</sup>Thomas Courchene, "ACCESS: A Convention on the Canadian Economic and Social Systems," *Assessing ACCESS: Towards a New Social Union*, ed. Institute of Intergovernmental Relations (Kingston, Ontario: Institute of Intergovernmental Relations, 1996), pp. 77-112 and André Burelle, *Le mal canadien* (Montreal: Fides, 1995), among others, added a powerful intellectual stimulus. Globalization and fiscal crisis, Courchene argued, were draining power from Ottawa downward to the provinces and upward to supranational institutions. Ottawa had neither the fiscal ability nor the political legitimacy to set and enforce national standards. If the Canadian "social union" was to be preserved, it could only be done through the provinces acting together. Provinces must be brought "more fully and formally into the key societal goal of preserving and promoting social Canada." André Burelle proposed a partnership based on interdependence and "non-subordination."



It can take two forms. The first is collaboration among federal, provincial, and territorial governments (FPT in the current Canadian intergovernmental jargon), seeking an appropriate balance between federal, provincial, and territorial roles and responsibilities. FPT is based on the premise that all these governments possess strong fiscal and jurisdictional tools and that as a result of this interdependence, effective policy depends on coordination among them. The second is collaboration among provincial and territorial governments (PT), with Ottawa on the sidelines. This is based on the view that under the constitution, health, welfare, and education are provincial jurisdictions. "National" policies and standards in these areas, therefore, are matters for provinces to decide together; the central government does not have to do it. This development of some aspects of national policy through agreements reached among autonomous but associated actors (provinces and territories) introduced an element of "confederalism" into the Canadian system.

The collaborative model is also an alternative to constitutional change. Many of the issues unresolved in the failures of Meech Lake and Charlottetown have re-emerged in the intergovernmental arena—the economic union, the social union, "who does what" jurisdictionally, and the spending power. Now, rather than being expressed in the uncompromising language of constitutional clauses, and enforced by the courts, they are to be expressed as intergovernmental "Accords," "Declarations," and "Framework Agreements."

The first concrete example of this was the Agreement on Internal Trade (AIT).<sup>12</sup> When Charlottetown was defeated, Ottawa's hopes to clarify and extend its powers with respect to the economic union went down with it. The federal government therefore initiated multilateral negotiations with the provincial governments designed to reduce internal barriers to the mobility of goods, capital, people, and services in Canada. First ministers signed the AIT in 1994, and it was implemented in July 1995. Although its structure and content mirror the approach of international agreements such as the North American Free Trade Agreement (NAFTA), it is a non-binding political arrangement; it contains, for example, a formal dispute-settlement mechanism, but its rulings do not have legal effect. A new Internal Trade Secretariat was established, but it has no significant authority and citizens do not have direct access to it. Many restrictive practices were grandfathered. Yet, considering the difficulty the country has had in achieving a more fully integrated economic union, and provincial resistance

<sup>12</sup>Plans to implement a functional consolidation of Canadian stock exchanges, announced in the Spring of 1999, offer an example of the extent to which transnational economic integration is imposing a discipline on domestic, non-governmental regulators, whether the governments will it or not. The consolidation planning was undertaken by the exchanges themselves, in recognition of the imperatives of world financial markets, and in several cases against the first preferences of the relevant Canadian governments themselves. See William D. Coleman, "Federalism and Financial Services," *Canadian Federalism*, eds. Herman Bakvis and Grace Skogstad (Toronto: Oxford University Press, 2001), pp. 179-196.



to any increase in federal power over the economy, the AIT is a notable intergovernmental accomplishment; while its substantive provisions are weak, it is a useful first step.<sup>13</sup> It was developed with virtually no public involvement. Few Canadians realized the agreement was being negotiated; few realize it is now in operation.

The AIT reflects some important dimensions of collaborative federalism. It demonstrates that despite its constitutional responsibility for interprovincial and international trade, Ottawa has neither the power nor the legitimacy to define and enforce the Canadian economic union on its own. An alternative approach—to define the rules in the constitution and make them judicially enforceable—is also impossible. Hence, negotiated intergovernmental collaboration became the only way to make progress.

Identical forces are at work with respect to the “social union,” which also figured in the agenda of Charlottetown. The social union, like the economic union, is predicated on the idea that a defining characteristic of a unified country is a shared and common set of aspirations, standards, and norms with respect to the basic elements of social citizenship. As with the economic union, two questions arise: how will common national standards be balanced against the variations that federalism encourages, and who is going to define and police the standards? In the case of the social union, a third question arises: how is the federal spending power—which lies at the base of Ottawa’s fiscal transfers to the provinces and which was a crucial instrument in constructing the welfare state—to be exercised and how is it to be controlled?

In the face of federal retreat, the provincial governments and territories took the initiative. First ministers commissioned their ministers responsible for social affairs to develop proposals, and an intensive period of ministerial and official meetings followed. Thus, as they came to terms with the new fiscal and policy realities, provinces began to work collaboratively to fashion common policy approaches and undertake joint initiatives, and to present coherent proposals to the federal government. Their evolving consensus, even when confronted with the indifference or opposition of the federal government, proved to be remarkably strong, considering the diversity of interests and circumstances represented around the table.

The intergovernmental discussions culminated in February 1999 when Ottawa and all the provinces except Quebec signed the Social Union Framework Agreement (SUFA). This agreement explicitly endorses Ottawa’s

<sup>13</sup>Such critics as Daniel Schwanen and Robert Howse, while applauding the AIT as a useful first step, argue that it needs to be strengthened. See Daniel Schwanen, *Drumming on Our Inner Strength* (C.D. Howe Institute Commentary, June 1996) and Robert Howse, *Securing the Canadian Economic Union* (C.D. Howe Commentary, June 1996). They recommend, for example, that the Secretariat should be empowered to analyze obstacles to implementation and to recommend solutions, that the member governments should vote by qualified majority rather than by the consensus system currently in place, that access to the dispute settlement mechanism should be extended to private parties, and that public education on the existence and purposes of the AIT should be undertaken. See also Mark R. MacDonald, “The Agreement on Internal Trade: Trade-offs for Economic Union and Federalism,” *Canadian Federalism*, eds. Bakvis and Skogstad, pp. 138-158.



power to spend in areas of provincial jurisdiction. But this power can no longer be exercised unilaterally. New joint programs will not be introduced, or existing ones changed, without due notice and substantial provincial consent. Provincial responsibility for program design and delivery is affirmed. SUFA contains the following elements: a statement of general principles; a mobility provision applying to the social-policy field; commitments respecting public accountability and transparency; notice provisions; rules governing the exercise of the federal government's spending power; and procedures for dispute avoidance and dispute resolution. The agreement is to be reviewed within the first three years. While this framework agreement is a considerable achievement of collaborative federalism, it should be noted that the document remains loose and general in character, and that the proof of the agreement will be found in the commitment and follow-through the participating governments bring to its implementation. The early indications are not encouraging. Intensive discussion on a wide variety of policy files continues, but there is little sense of a commitment to joint problem solving.

The sovereigntist government of Quebec joined the social-union negotiations in the summer of 1998, recognizing that in the pending provincial election campaign, it would have some political difficulty justifying its non-participation in the intergovernmental process. It declined, however, to sign the February 1999 agreement on the grounds that after heavy federal pressure, the final compromise failed to protect Quebec's right to opt out of new shared programs without financial penalty, as had been agreed in earlier provincial drafts. Quebec's absence means that it continues to march to a different drummer, *de facto* if not constitutionally.<sup>14</sup>

The Social Union Framework Agreement is purely the product of participating governments; it was negotiated at meetings held behind closed doors, and had a very low public profile.<sup>15</sup> It was not until the February 1999 meeting of first ministers, which concluded the agreement, that the matter was brought seriously to the attention of Canadians. The agreement is a classic example of elite accommodation. The massive public mobilization, so evident in Meech Lake and Charlottetown, had not been repeated. This

<sup>14</sup>Opinion on the French-speaking scholarly community in Quebec is arrayed strongly against the Social Union Framework Agreement. The Government of Quebec commissioned a number of academics to offer their assessments of the agreement; they were consistently negative. Alain Noël, a political scientist at the Université de Montréal, makes the critical argument very well in "Without Quebec: Collaborative Federalism with a Footnote?" (paper presented at the Saskatchewan Institute of Public Policy Conference, *Perspectives and Directions: The Social Union Framework Agreement*, Regina, 3-4 February 2000.)

<sup>15</sup>There is no question but that the social-union *process* was a provincially driven initiative until the last stage. There is debate, however, about whether the social-union *agreement* works more to the advantage of Ottawa or the provinces. The variety of ways in which it has been interpreted is one of its more striking features. See, for example, the debate between David Cameron, who argues that the federal spending power is subjected to regulation and control under SUFA and constitutes a good arrangement for Quebec, and Claude Ryan, who contends that SUFA sharply increases federal scope for action under the spending power and is unacceptable for Quebec. David Cameron, "The Social Union Agreement: A Backward Step for Quebec?" *Globe and Mail*, 9 February 1999; Claude Ryan, "The Agreement on the Canadian Social Union As Seen By a Quebec Federalist," *Annals* 8 (1999): 25-41.



suggests that the stakes are lower, and public engagement is less, when governments seek accommodation outside the constitutional arena.

Despite the elitist process, the agreement does seek to respond to democratic concerns by placing considerable emphasis on accountability, transparency, the need to report back to Canadians about the performance of their social programs, and the necessity of securing ongoing input and feedback from citizens and interested parties. Some observers regard the citizen dimension as one of the central pillars of the agreement.<sup>16</sup>

The AIT and the SUFA are the clearest examples of the collaborative approach. They constitute, in the words of one senior provincial official, "a work plan for cooperation and a rulebook for competition."<sup>17</sup> But it has been manifest in a wide variety of other areas as well.

### *Health Care*

The design and funding of health care in Canada has been described as a "political football game . . . a sophisticated one, played by professional state builders in a charged atmosphere in which the political and financial stakes are considerably higher than they were in the past."<sup>18</sup> Provinces were deeply angry at the federal cuts to the CHST (the bulk of which funds health care), while the conditions under the federal Canada Health Act remained in force, constraining provincial efforts to experiment with alternative forms of funding and service delivery, even as the federal share of costs was declining rapidly. In September 2000, a First Ministers' Meeting agreed on some common purposes, while Ottawa agreed to restore a total of \$23.4 billion in funding over the next five years. This additional funding was to be on an equal, per capita basis, alleviating one of the major grievances of the wealthier provinces.

In their communiqué,<sup>19</sup> the first ministers echoed the language of the SUFA. They agreed on a common "Vision" of providing publicly funded health care to Canadians "in a cost-effective and fair manner." They committed themselves to "collaborate" in promoting access to health care, wellness programs, primary health care, community care, and other areas. They also committed themselves to clear performance measurement, accountability, and reporting to Canadians using an agreed framework and comparable indicators. (Significantly, this is to be monitored not by the federal government, but by "independent, third party verification.") In addition, as with other agreements, a prefatory note asserts that "Nothing in this document shall be construed to derogate from the respective governments' jurisdictions."

<sup>16</sup>Matthew Mendelson and John McLean, "Getting Engaged: Strengthening SUFA Through Citizen Engagement," (paper presented at the Saskatchewan Institute of Public Policy Conference, *Perspectives and Directions: The Social Union Framework Agreement*, Regina, 3-4 February 2000).

<sup>17</sup>Quoted in Bakvis and Skogstad, eds., *Canadian Federalism*, p. 11.

<sup>18</sup>Antonia Maioni, "Health Care in the New Millennium," *Canadian Federalism*, eds. Bakvis and Skogstad, p. 101.

<sup>19</sup>Canadian Intergovernmental Conference Secretariat—News Release Ref: 800-038/004, 11 September 2000.



At the same September 2000 meeting, first ministers also agreed to work together to promote early childhood development, committing themselves to report annually to Canadians on their investments and programs, develop a shared framework for reporting results, and the like. The commitments were vague and open-ended, with no funding specified. The agreement had been prepared during extensive discussions among officials and ministers, but it received only brief discussion among the first ministers themselves. Quebec signed the health accord, but not the communiqué on early childhood development.<sup>20</sup>

### *Labor-Force Training*

In some policy areas, collaboration is closely associated with devolution of responsibilities to the provinces. The clearest example is in the field of labor-force training, an area of long-standing complexity because it merges the federal responsibility for overall economic policy with provincial jurisdiction over education. In 1996, Ottawa offered to withdraw from the field. It would phase out its purchase of training and apprenticeship programs, and provinces were offered responsibility for a wide set of "active labor market" programs, along with the funding related to them. Moreover, federal employees now involved in these programs would move to the provincial public services. The provinces were offered the choice of continued "co-management" or complete devolution. Bilateral negotiations followed, resulting in agreement with nine provinces and all three territories.

This time, the exception was Ontario. Agreement between it and Ottawa was frustrated by the bitter political, partisan, and ideological rivalry between the two governments, and the reluctance of the 101 Liberal members of Parliament from Ontario to concede money and power to their provincial arch-rivals in Toronto. Five provinces opted for co-management (largely because of their own weak capacity to absorb the new responsibilities) and four for full devolution. Ottawa initially sought to ensure that provinces would be accountable to it for the conduct of the devolved programs, but in the end, Ottawa agreed to allow joint federal-provincial committees to oversee reporting and assessment.

This case illustrates two important features of collaborative federalism. First, often overall agreements are followed up with a series of separately negotiated bilateral deals. Second, this allows for considerable asymmetry

<sup>20</sup>CJCS, News Release Ref: 8004038/005, 11 September 2000. An appended note says, "While sharing the same concerns on early childhood development, Quebec does not adhere to the present federal-provincial-territorial document because sections of it infringe on its constitutional jurisdiction on social matters. Quebec intends to preserve its sole responsibility for developing, planning, managing and delivering early childhood development programs. Consequently, Quebec expects to receive its share of any additional federal funding for early childhood development programs without new conditions." It is worth noting that Quebec is the only Canadian province to have a universal, publicly provided childcare program for all children aged 4 to 12, at a cost to parents of \$5 per day. See Linda White, "The Child Care Agenda and the Social Union," *Canadian Federalism*, pp. 107-109.



in the relationships that develop—"checkerboard federalism" as Herman Bakvis puts it.<sup>21</sup>

### *The Environment*

The environment is another area in which both orders of government exercise broad jurisdiction. Despite strong misgivings by a parliamentary committee, the opposition of leading environmental groups, and a Supreme Court ruling that strengthened Ottawa's ability to use its criminal-law power in environmental regulation, all governments (again except Quebec) signed the Canada-Wide Accord on Environmental Harmonization and a set of Sub-agreements on Canada-Wide Standards, Inspections and Environmental Assessment<sup>22</sup> in January 1998. The accord can be amended only with unanimous consent, although parties can withdraw with six-months notice. While expressing the commitment to "achieve the highest level of environmental quality within the context of sustainable development," the primary emphasis is on overcoming duplication and overlapping by creating a "one-window" set of delivery mechanisms by which any given service would be provided by only one order of government. The criteria for allocation of responsibilities were to be based on such criteria as proximity and the ability to meet client and local needs.<sup>23</sup> Thus, the federal government has delegated most (but not all) of its environmental regulation and assessment activities to the provinces. A similar "harmonized, collaborative intergovernmental approach" has been adopted for other environmental issues, such as implementing Canada's environmental commitments under the Kyoto Protocol regarding climate change (in which oil- and gas-producing provinces are deeply hostile to emissions standards that would affect these industries), and the development of national strategies to deal with smog and acid rain. As Mark Winfield suggests, these developments have sharply reduced intergovernmental conflict in the environmental field. "However, their positive effects on the actual protection of the environment have been far less clear,"<sup>24</sup> particularly in light of weak infrastructure in some small provinces and major cutbacks in environmental enforcement activities in others.

### *Trade Policy*

International trade policy—both in respect to the North American Free Trade Agreement and to global bodies such as the World Trade Organization—also engage both federal and provincial interests and policies. International commerce is a clear federal jurisdiction, but (unlike in the United States or Australia), the Constitution has been interpreted to mean

<sup>21</sup>For an excellent analysis of this case, see Herman Bakvis, "Checkerboard Federalism? Labour Market Development Policy in Canada," *Canadian Federalism*, eds. Bakvis and Skogstad, pp. 197-219.

<sup>22</sup>Canadian Council of Ministers of the Environment, 1998.

<sup>23</sup>This analysis is drawn from Mark S. Winfield, "Environmental Policy and Federalism," *Canadian Federalism*, eds. Bakvis and Skogstad, pp. 124-137.

<sup>24</sup>*Ibid.*, 131.



that the federal power does not extend to imposing the terms of international agreements on the provinces when they involve provincial jurisdiction. As international treaties have moved beyond tariffs to broader issues of subsidies, procurement, and regulation of businesses, the potential impacts on the provinces become wider. As a result, some provinces have called for direct participation in Canadian negotiating teams, most recently in possible discussion of a North American energy regime. Ottawa has refused to permit this. Nevertheless, Ottawa has taken considerable pains to involve the provinces fully in trade policy, and to consult closely with them (and with industry) as agreements are being negotiated. As Grace Skogstad concludes, "The extensive efforts to build a domestic, interprovincial consensus" has lent support and legitimacy to the outcomes, and has meant that individual provinces are "less inclined to take unilateral efforts to secure best possible outcomes for their province at the expense of a coherent national trade strategy."<sup>10</sup>

These and other examples demonstrate the variety of forms that collaboration can take, and the variability of its outcomes.

### THE INSTITUTIONS OF COLLABORATIVE FEDERALISM

The collaborative model has had an important impact on the institutions of intergovernmental relations. Perhaps the most obvious is in the role and position of the Annual Premiers Conference (APC). Initiated at the instigation of Quebec in the 1960s as little more than a summer retreat for premiers and their families, the APC has evolved into a significant intergovernmental institution. Long overshadowed by the federal-provincial *First Ministers' Conference* (FMC), it has become more prominent as the frequency and significance of the FMCs have declined. Held every August under a rotating chairmanship, this association of provinces has become a full-fledged intergovernmental institution, professionally supported by provincial civil servants. The APC prepares and receives position papers, issues communiqués, and launches projects to be undertaken by the relevant ministers; it also has an on-going agenda of work that connects one meeting to another. The chair has assumed a substantive role as the spokesperson for the premiers between meetings. It was at one of these meetings that the social-union initiative was begun.

In striking contrast to the growth of the APC is the declining importance of the FMC. The set-piece FMC, held in the National Conference Centre, with first ministers surrounded by phalanxes of ministers and officials, and with a combination of public and private meetings that were so prominent from the 1960s to the 1980s, have recently been absent, replaced by short working sessions.

<sup>10</sup>"International Trade Policy and Canadian Federalism: A Constructive Tension?" *Canadian Federalism*, eds. Bakvis and Skogstad, pp. 159-177.



Advocates of collaborative federalism have often seen the FMC as the pinnacle of the intergovernmental system, resolving conflicts at the highest level and providing direction to the network of lower level meetings, much like the Council of Ministers in the European Union. Numerous commentators have suggested that FMCs be made at least annual events, and perhaps even given constitutional status. However, few have been called since the election of the Liberal federal government in 1993. This reflects the federal government's suspicion that a fully developed collaborative model will undermine its "senior" status, that FMCs provide a platform for political attacks on Ottawa, and that they elevate premiers from provincial politicians to national decision-makers. The weak presence of the FMC is one reason why the APC has taken on such an important role.

Another institutional forum that is assuming much greater importance is the ministerial council, sometimes federal-provincial, sometimes purely provincial. Such councils have existed for many years. Recently, however, their numbers have increased, they have become more institutionalized, and have played a more formal role in carrying out mandates assigned by first ministers. They have become the workhorses of the system, assuming a central role in the policy process, including, in some cases, developing close relationships with related interest groups. Councils now exist for ministries concerned with social-policy renewal, forestry, transportation, education, and the environment. Other groupings of ministers go by names such as forums, committees, and meetings of "Ministers Responsible." Some meet regularly, others on an ad hoc basis.

The Provincial/Territorial Council on Social Policy Renewal has been particularly active. Acting under the instructions of the premiers, sectoral ministers and officials developed position papers and fashioned strategies for the consideration of the premiers and in preparation for federal-provincial discussion. The council was instrumental in developing SUFA, and it will play an important role in helping to make it work.

A key question in this process is the legal and political status of intergovernmental agreements. Many of the most important federal-provincial arrangements are not in fact formal contracts, though they may later be enshrined in federal and provincial legislation. The intergovernmental agreements themselves, however, are not legally binding or enforceable. This was made clear in a recent Supreme Court judgement that rejected a provincial appeal against a change in federal policy by asserting the supremacy of the government's accountability to Parliament. Taken to its limit, the logic of collaboration implies that governments should be legally bound by intergovernmental accords and that they should be accountable to each other. However, this is a major challenge in the Canadian constitutional system, which requires that each government be responsible to its own legislature and that governments cannot bind future



legislatures. Thus, there is a deep tension between the logic of collaborative intergovernmentalism and the logic of responsible parliamentary government.

### ASSESSING THE PATTERN OF COLLABORATIVE FEDERALISM

Although the content and specificity of intergovernmental processes and agreements vary widely, our review of several recent examples displays some common threads.

- The equality between provinces and Ottawa is underlined by the fact that most councils and meetings are co-chaired by a *federal and a provincial minister*.
- The northern territories of Canada—Yukon, the North West Territory, and the newly established Nunavut—are now integrated with the provinces. Meetings are Federal/Provincial/Territorial or Provincial/Territorial despite the fact that the territories remain constitutional offspring of the federal government. This evolution toward provincial status has evoked remarkably little comment, even though it has some potential for changing the dynamic of intergovernmental relations because three more voices are added to the six smaller and poorer provinces.
- The *relative absence of Quebec*. Usually its representatives participate in meetings, but the Quebec government has disassociated itself from some of the agreements. Quebec's position is that fields like education, welfare, and health are exclusive areas of provincial jurisdiction, and that the ability of the federal government to spend money in such areas is illegitimate. For Quebec, national standards and norms emerging from intergovernmental consensus are little better in principle than federal unilateralism. It is remarkable, however, that successive *indépendantiste* premiers of Quebec have been able to develop effective working relationships with their fellow premiers despite the fundamental difference over Canada's future.
- Most agreements stress that the formal constitutional powers assigned to governments remain unchanged; the goal is to exercise these powers "in a coordinated manner."
- Minimizing duplication and overlapping in order to achieve greater efficiency and cost saving are universal themes.
- Consistent with the doctrine of the "New Public Management," agreements emphasize the need to share "best practices," to



develop performance indicators, and to monitor results. This is most evident in the text of SUFA.

- Framework agreements reached among all governments are often followed by individually negotiated bilateral agreements or by additional sub-agreements.
- All agreements pay lip service to the need for greater transparency and for clearer lines of citizen accountability in intergovernmental relations, but citizen access to the dispute-settlement mechanisms of the AIT and SUFA remain very limited.
- An increasing number of agreements explicitly acknowledge the need to “engage stake holders” and to “build linkages to other structures in the broad social and economic environment.”<sup>26</sup>

While these developments reflect a greater degree of institutionalization in Canadian intergovernmental relations, it is important not to exaggerate the change. Compared to Germany or the European Union, for example, Canadian intergovernmental relations remain highly fluid and ad hoc. The process has no constitutional or legislative base, little backup by bureaucrats linked to the success of the process rather than to individual governments, no formal decision-rules, and no capacity for authoritative decision-making. This means that the scope or extent of intergovernmental relations remains heavily dependent on whether the first ministers, especially the prime minister, find it advantageous or not. The system in this sense is fragile.<sup>27</sup>

It is far too early to judge the success of this new model. Indeed, different actors may define “success” very differently. For some, the process itself might constitute success if it leads to more cooperation and less intergovernmental conflict. There is strong public opinion evidence that suggests citizens want not more or less powers for any order of government, but “an end to the wrangling” between them.

For provinces, especially the more assertive ones, such as Ontario, Alberta, and British Columbia, success will be measured chiefly by their ability to wrestle the initiative from Ottawa, limit Ottawa’s ability to “intrude” on their programs and priorities, and increase their autonomy in shared jurisdictions. For smaller, poorer provinces, autonomy will be less important than ensuring the continued flow of federal dollars. Quebec, on the evidence, approaches the emerging pattern with deep reservations, seeing advantages to the extent that it provides allies in their bid to constrain the government of Canada, but fearful that the extension of collaborative federalism might simply replace

<sup>26</sup>See discussion in E. Leslie Seidle, “Executive Federalism and Public Involvement: Integrating Citizen’s Voices,” (paper presented to the Conference on *The Changing Nature of Democracy and Federalism in Canada*, Winnipeg, 14 April 2000).

<sup>27</sup>This is also the case in another parliamentary federation, Australia. There a highly promising exercise in intergovernmental collaboration, the COAG process, effectively came to a halt when the national government was changed in 1996.



Ottawa's oversight and direction with the collective oversight and direction of the English-speaking provinces. The SUFA is seen less as a provincial constraint on the federal spending power than as a re-affirmation of it.

Success for Ottawa lies in its ability to retain its influence and visibility, particularly in an era of budget surpluses. It seeks to maintain links to citizens by providing benefits directly to them rather than indirectly through the provinces. Indeed, some of the factors that initially led Ottawa to accept collaborative federalism have now changed. In the 1990s, Ottawa was faced with a fiscal crisis that forced it, like it or not, to withdraw massively from many policy areas, including the devolution of both costs and responsibility to the provinces. At the same time, in the aftermath of the "near-death" experience of the 1995 Quebec referendum, Ottawa was anxious to demonstrate its commitment to cooperation. By the new century, with large fiscal surpluses (at least for the moment), with successive election victories, with no viable opposition on the horizon, and with a slow but steady decline in support for Quebec sovereignty, Ottawa appears less prepared to take a back seat to the provinces and more concerned to reassert its presence in the lives of Canadians. Clearly, this activist impulse will be shaped by the fall out from the tragedy of 11 September 2001. On one hand, a slowing economy may be pushed farther toward recession, thus reducing Ottawa's scope for action; on the other hand, the rise of security issues to the top of the national agenda puts the focus squarely on matters falling clearly within federal jurisdiction.

In general, most governments take a pragmatic approach to collaboration. Most seek to maximize their freedom of action and to minimize external constraints, fiscal or regulatory; some—especially the fiscally weaker jurisdictions—will be prepared to trade off some autonomy in return for adequate and stable financial assistance. Both Ottawa and the provinces will continue to guard their turf and to exploit every opportunity to win credit and avoid blame. This historic dynamic of executive federalism has not changed, and it is a major reason why the collaborative model is so fluid and ad hoc. Successful collaboration depends on high levels of mutual trust among the participants and on their internalization of its implicit norms. Instead, there is some indication of considerable cynicism among officials at both levels with respect to the rhetorical promises of collaboration.

"Success" will be defined very differently by those groups and by citizens not concerned with federalism or the relative status of governments, but rather with substantive policy and its outcomes. They will ask: does this process enhance or impede the achievement of the policy objectives we are interested in? Answers will vary, of course, depending on the group in question. To the extent that governments can achieve together what none



could do separately, to the extent that they can coordinate into a single whole policies and programs at all levels, and to the extent that the costs and frustrations of overlap and duplication can be reduced, then collaborative federalism serves all Canadians. Moreover, it suggests a reasonable way to balance the inevitable tension between national norms and standards on the one hand, and the desire to respond to the specific needs, circumstances, and preferences of different provincial communities on the other.

However, there are many potential costs to the collaborative model that have been well described in the literature on the European Union. The "joint decision trap" emerges when autonomous, interdependent actors *committed to consensus decision-making* seek to make decisions. The time and cost of coordination can escalate; solutions may be avoided or simply express the lowest common denominator.<sup>28</sup> The political and institutional concerns of the actors—for status and recognition, to win credit and avoid blame—can dominate the substantive issues themselves. None of these dilemmas is resolved easily.<sup>29</sup>

Perhaps the most acute challenge confronting collaborative federalism, as with executive federalism in general,<sup>30</sup> is the need to meet the democratic expectations of citizens. These expectations appear to outpace the very limited advances that have been made to democratize the process, and there is nothing in the process of collaborative federalism that will make this task any easier. Keith Banting, noting that federalism values and democratic values are often in tension, claims that Canadian social-policy discussion since World War II is marked by "the strongest form of intergovernmentalism—the co-determination model." He warns that it is "worth remembering the democratic critique of such potent intergovernmentalism."<sup>31</sup> Another observer, Roger Gibbins, argues that collaborative models would, "at least at the margins, reduce the role and effectiveness of legislatures, of political parties, elections, interest groups and the public. They would promote government that is less accountable, and in that sense, less democratic." The combination of decentralization and intergovernmentalism "moves decisions out of legislatures and into fora relatively insulated from public pressure,

<sup>28</sup>See Fritz Scharpl, "The Joint Decision Trap: Lessons from German Federalism and European Integration," *Public Administration* 66 (Summer 1988): 236-278.

<sup>29</sup>For discussion of this in the Canadian context, see Albert Breton, "Supplementary Statement," *Royal Commission on the Economic Union and Canada's Development Prospects, Report*, Vol. III (Ottawa: Supply and Services, 1985); Steven Kenney, *Securing the Social Union: A Commentary on the Decentralized Approach* (Kingston: Institute of Intergovernmental Relations, 1998).

<sup>30</sup>In 1979, Donald Smiley, the dean of Canadian students of federalism, opened his critique of executive federalism this way: "My charges against executive federalism are these. First, it contributes to undue secrecy in the conduct of the public's business. Second, it contributes to an unduly low level of citizen participation in public affairs. Third, it weakens and dilutes the accountability of government to their legislatures and to the wider public." "An Outsider's Observations of Intergovernmental Relations Among Consenting Adults," *Confrontation or Collaboration: Intergovernmental Relations in Canada Today*, ed. Richard Simeon (Toronto: Institute of Public Administration of Canada, 1979).

<sup>31</sup>Keith Banting, "The Past Speaks to the Future: Lessons from the Postwar Social Union," *Canada: The State of the Federation, 1997*, ed. Lazar, pp. 39-69, 64.



partisan debate and electoral combat."<sup>32</sup> Many others, in Canada and elsewhere, express similar views.<sup>33</sup>

Many Canadian interest groups and movements—notably those associated with social policy and the environment<sup>34</sup>—have historically looked to federal leadership, believing the provinces lack either the resources or the political will to take a leading role. They worry about a possible “rush to the bottom.” Hence, they tend to be skeptical of the collaborative model, seeing it as inherently decentralizing. In a carefully argued rebuttal, Alain Noel disagrees. He notes that there are “conservative and progressive arguments on both sides of the centralization/decentralization debate” and that “The Canadian welfare state became better anchored than the American one, largely *because* Canada was a more decentralized federation.” He concludes: “Betting everything on elites and on central intervention is not only poor theory; it is also bad politics for the left.”<sup>35</sup>

A final line of criticism sees collaborative federalism as little more than a “cartel of elites,” in which federal and provincial governments manage the system in order to serve their own interests, while freezing out citizen and group interests. In this view, the danger is that some of the primary virtues of a federal system—innovation, experimentation, variety, and competition—will be lost in an over-zealous search for harmonization, consistency, and agreement.<sup>36</sup>

### COLLABORATIVE FEDERALISM: HOW DURABLE?

Is the pattern of collaborative federalism likely to be a durable feature of the Canadian federation? Some observers believe that it was at root simply a response to the growing fiscal incapacity of the federal government and that it will rapidly disappear with Ottawa’s return to financial health. Certainly, the Government of Canada’s budgets of 1999 and 2000—flush with new revenues—seemed to suggest a return to an earlier period in which Ottawa used its resources to impose conditions on transfers to the provinces

<sup>32</sup>“Democratic Reservations about the ACCESS Models,” *Assessing ACCESS: Towards a New Social Union* (Kingston: Institute of Intergovernmental Relations, 1997), pp. 43–44. See also Susan Phillips, “The Canada Health and Social Transfer,” *Canada: The State of the Federation, 1995*, eds. Douglas Brown and Jonathan Rose (Kingston: Institute of Intergovernmental Relations, 1996), pp. 65–96; and Margaret Biggs, *Building Blocks for the New Social Union* (Ottawa: Canadian Policy Research Network, 1996).

<sup>33</sup>In the European context, see Marcus Horeth, “The Trilemma of Legitimacy—Multilevel Governance in the EU and the Problem of Legitimacy,” (Discussion paper C 11, Center for European Integration Studies, Rheinische Friedrich-Wilhelms-Universität Bonn, 1998), pp. 6–7.

<sup>34</sup>See, for example, Patrick Fafard, “Groups, Government, and the Environment,” *Managing the Environmental Union: Intergovernmental Relations and Environmental Policy in Canada*, eds. Patrick Fafard and Kathryn Harrison (Kingston: Institute of Intergovernmental Relations and Saskatchewan Institute of Public Policy, 2000), pp. 81–104; and Robert Howse, “Federalism, Democracy and Regulatory Reform: A Skeptical View of the Case for Decentralization,” *Rethinking Federalism: Citizens, Markets and Governments in a Changing World*, eds. Karen Knop et al. (Vancouver: University of British Columbia Press, 1995), pp. 273–293.

<sup>35</sup>Alain Noel, “Is Decentralization Conservative?” *Stretching the Federation*, ed. Robert Young (Kingston: Institute of Intergovernmental Relations, 1999), pp. 195–218.

<sup>36</sup>This view is expressed most forcefully by Albert Breton. See his Supplementary Statement, *Royal Commission on the Economic Union and Canada’s Development Prospects, Report, Volume III* (Ottawa: Supply and Services Canada, 1985).



and to bolster its public visibility by transferring funds directly to citizens (as in its "Millennium Scholarship" program) rather than through provincial governments. Past experience has shown that the federalism of public affluence can be at least as conflictual as the federalism of fiscal restraint.

Moreover, there is some evidence that the emphasis on cooperation and collaboration may often be little more than rhetoric. It has not yet become fully internalized in the way federal and provincial politicians and officials think about each other. Indeed, even though the SUFA and other agreements are full of commitments to "consultation," "collaboration," "trust," and other such sentiments, the reality often seems to be high levels of mutual distrust and deep unwillingness to accept constraints on one's freedom of action. This is much more evident at the level of first ministers and their central agencies than it is among line ministers and officials, who are more likely to share policy goals and political constituencies. Intergovernmental relations have many of the characteristics of two-level games, in which the participants must respond to two audiences. Yes, there are often strong incentives to collaborate, but equally often, these are trumped by the more immediate incentives of winning support on one's home turf. The final barrier to a deeper institutionalization of collaborative federalism remains the logic of responsible government in a Westminster system. Governments must remain accountable to their legislatures; they cannot be accountable to others. Hence, governments may exchange information, bargain, cajole, persuade, threaten, and even agree at an intergovernmental conference, but they cannot bind each other.

Yet there are reasons to believe that collaborative federalism will remain a feature of the scene in the future. One is that Canadians consistently rate cooperation among their governments as an important objective; collaborative federalism in Canada emerged in part in response to that demand. Another is that earlier approaches based on federal leadership and its use of the spending power are no longer as feasible as they once were. Indeed, Ottawa, recognizing that the game has changed, has made commitments sharply limiting its freedom to act in the old ways. A third is that the achievements of collaborative federalism—the AIT and the Social-Union Framework Agreement chief among them—make it more likely that the procedure will be followed in the future. There is now some momentum behind the approach. Federal and provincial officials report that SUFA is increasingly being factored into the calculations of public administrators and interest groups. A fourth reason is that the provinces and territories have learned that they can make significant progress by setting their own agenda and working among themselves. The inter-provincial dynamic is a counterpoint to the federal-provincial relationship that classically defined intergovernmentalism in Canada. The institutionalization of the Annual Premiers Conference and ministerial councils adds administrative muscle



to this development. A fifth reason is that governments have found that they can achieve accommodations through collaboration on substantive policy that are impossible to achieve in the constitutional forum.

More generally, the evolution of the Canadian federation over the last four decades has been substantially defined by two powerful forces: nation-building in Quebec and province-building elsewhere. Both forces have had a major impact on the government of Canada and its ability to call the intergovernmental shots. Although it has by no means been a zero-sum game, the maturing of provincial governments has altered the balance of power within Confederation and has redefined the manner in which Ottawa can seek to achieve its objectives. Collaborative federalism fits logically into the broad development of Confederation during the last four decades.

To say that collaborative federalism is likely to be a feature of intergovernmental relations in the future is not to say that it will be the only game in town. Many of the things that matter most to Canadians—and therefore to the federal government—fall broadly within provincial jurisdiction. Provinces often act quite independently of each other, and when there is coordination or parallel policy development, it may be a result of the need to respond to similar problems or pressures, or simply emulation of others' examples, rather than the result of explicit discussion and agreement. To the extent that Ottawa's freedom of action is constrained when it enters into collaboration with provinces, it will seek other approaches where its ability to act will be unimpeded. For example, in the future, Ottawa might exploit every opportunity to take initiatives in the social-policy field via the tax system or by means of direct grants to individuals and organizations. An example of the first, using the tax system, is the Child Tax Credit, although this initiative was the product of federal-provincial cooperation; an example of the direct grant approach is Ottawa's Millennium Scholarship Fund, a controversial undertaking, particularly in Quebec. While the pursuit of these alternatives does not, of course, permit Ottawa to avoid all political controversy, it puts it in a freer position in which its capacity to act is not subject to the will of the provinces. Ottawa will collaborate when it feels it has to; so will the provinces.

## CONCLUSION

*Collaborative federalism also needs to be set in the larger context of multilevel governance in Canada. It will become increasingly necessary to look to the role of local, territorial, and Aboriginal governments and their interface with provincial, national, and international institutions. This article has followed a standard Canadian pattern: municipalities have not figured greatly in our analysis. This is so not only because municipalities have no independent constitutional status, but also because provinces tend to control the structure and powers of local governments tightly, robbing the very*



governments that are closest to the citizen and the most involved with the quality of their daily lives of much of their potential dynamism and vitality. This has occurred at a time when cities and city regions are the centers of economic and cultural innovation, are increasingly multicultural, and, in many cases, are increasingly linked to national and international networks rather than to their provincial hinterlands. Enriching democratic multigovernance must involve them.

In addition, Canada is experimenting with yet other institutional forms outside the traditional federal-provincial-municipal framework. Canada's northern territories are acting more and more like provinces than federal protectorates. The creation of the new territory of Nunavut, its population made up largely of Inuit people, is Canada's first full *de facto* experiment with Aboriginal self-government. Aboriginal peoples elsewhere in Canada are also seeking to define their own models of self-government. They too will become players in a multigovernance world.

Finally, Quebec has been a relatively minor character in the development of collaborative federalism. With the sovereignist Parti Québécois in office for much of the period under review (from 1994 to the present), it has been a limited and reluctant participant. There are signs, however, of a transformation in politics and attitudes in Quebec. The sovereignty movement is currently in retreat. There appears to be a deep public fatigue with the perpetual debate on the national question, dominated by hard-line sovereignists on one hand and by hard-line federalists on the other. This is encouraging an as yet inchoate search in the province for a fresh political discourse.<sup>37</sup> Many thought that the federal government's 1996 reference of the question of Quebec secession to the Supreme Court of Canada<sup>38</sup> and the passage in 1999 of the federal "Clarity Act" outlining the federal government's approach to a possible secession bid would arouse nationalist sentiment, but this did not occur. Finally, in the federal election on 27 November 2000, the sovereignist Bloc Québécois (BQ) won fewer seats than it had in either of the other two previous electoral contests it had participated in (38 seats in 2000, as compared to 44 seats in 1997 and 54 seats in 1993). More significant, perhaps, was the fact that the federal Liberals in 2000 received a higher proportion of the popular vote in Quebec than did the BQ (44.2 percent as compared to 39.9 percent).

This raises the possibility that Quebec may re-engage in a federalist rather than a sovereignist discourse, particularly if the federalist Liberal Party of

<sup>37</sup>Alain Dubuc, a senior editorial writer for Montreal's largest daily newspaper, *La Presse*, wrote a series of eight editorials exploring this issue entitled "Réinventer notre avenir: Des idées pour sortir du cul-de-sac" ("Re-inventing our Future: Ideas for Getting Out of the Dead End"). Reprinted as "We Must Break This Vicious Circle," *Policy Options*, June 2000, pp. 8-28. See also Gilles Paquet, *Oublier la Révolution tranquille: Pour une Nouvelle Socialité* (Montreal: Liber, 1999); Jean-Luc Migué, *Etatisme et déclin du Québec: Bilan de la révolution tranquille* (Montreal: Editions Varia, 1999); Michel Venne, ed., *Penser la Nation québécoise* (Montreal: Editions Quebec-Amérique, 2000).

<sup>38</sup>*Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217. See also, Peter Leslie, "Canada: The Supreme Court Sets Rules for the Secession of Quebec," *Publius: The Journal of Federalism* 29 (Spring 1999): 135-151.



Quebec under Jean Charest wins the next provincial election, and if the federal Liberals can overcome their deep distrust of their provincial counterparts. If Quebecers do opt for the *beau risque* of full participation in the collaborative system, and if its provincial partners are prepared to accept that this may result in a substantial element of asymmetry or "variable geometry," then the collaborative model will take on added impulse.

Strong forces push for a further elaboration of the collaborative model—the relatively even balance of federal and provincial power and status, the high degree of interdependence among governments, the desire for administrative efficiency and clarity, and the interests of citizens in the collective ability of governments to meet their needs. Yet much of the logic of Canadian federalism stands in the way. The lack of a unifying national party system, the lack of mobility of officials and politicians between the two levels, the competition to gain credit and avoid blame, the importance of regional and ideological divisions among governments, and the inequality in wealth distribution among the provinces—all these push toward an adversarial relationship. As Canada enters the new millennium, these opposing forces remain in contention. Collaborative federalism does not have its own internal dynamic. It will grow, or not, only insofar as it meets the needs of federal and provincial elites, and their constituents, as they face the challenges of the new millennium. It is now part of what Donald Smiley described as the federal "condition" in Canada.<sup>39</sup>

<sup>39</sup>*The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson, 1987).



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