

## PUBLIC ADMINISTRATION AND CANADIAN FEDERALISM

*Donald V. Smiley*

An increasing number of students of the American and Canadian federal systems are coming to concern themselves with the inter-governmental administrative relationships which now appear as essential mechanisms in the functioning of the modern federal state. The Reports of the President's Committee on Intergovernmental Relations and the specialized studies undertaken under its direction in the 1950's are a rich mine of description and analysis. Professor Morton Grodzins of the University of Chicago has developed important insights into the inter-relationships between political parties and bureaucratic structures in sustaining the American federal system;<sup>1</sup> Grodzin's student, Daniel J. Elazar, has written a stimulating history of federal-state relationships from 1789 onward<sup>2</sup> around the hypothesis that "virtually all the activities of government in the nineteenth century United States were cooperative endeavors, shared by federal and state agencies in much the same manner as government programs are shared in the twentieth century."<sup>3</sup> F. J. C. Vile's recent book on American federalism gives more attention to inter-governmental administrative cooperation than is usual in such discussions.<sup>4</sup> The Canadian literature on cooperative federalism is much less adequate. Some of the most interesting analysis in this field has been done by the natural resource specialists in papers prepared for the federal-provincial Resources for Tomorrow Conference held in Montreal in 1960.<sup>5</sup> R. M. Burns<sup>6</sup> and Allen Kear<sup>7</sup> have written on the mechanisms

<sup>1</sup>See especially "American Political Parties and the American Federal System," Bobbs-Merrill Reprint Series, P.S. 111; "The Federal System" in *GOALS FOR AMERICANS*, (1960) and "Local Strength in the American Federal System" in *CONTINUING CRISIS IN AMERICAN POLITICS*, IRISH, Ed., (1963) pp. 132-152.

<sup>2</sup>*THE AMERICAN PARTNERSHIP*, (1962).

<sup>3</sup>p. 1.

<sup>4</sup>*THE STRUCTURE OF AMERICAN FEDERALISM*, (1961), particularly Chapter IX.

<sup>5</sup>*REPORTS*, Ottawa, 1961. See especially "Resource Adjustment in Agriculture, Effects of the Legislative and Administrative Framework" by D. W. Carr, pp. 123-139; "Administrative Framework for Water Management," by T. M. Patterson, pp. 227-279; and "Legislative and Administrative Limitations on Wildlife Management" by David A. Munro, pp. 867-879. See also the brilliant article by one of the major participants in the Conference: Morris Miller, "The Developmental Framework for Resource Policy and its Jurisdictional-Administrative Implication," 5 *Canadian Public Administration*, 133 (1962).

<sup>6</sup>"Cooperation in Government," *The Canadian Tax Journal*, January-February 1959.

<sup>7</sup>"Cooperative Federalism: A Study of the Federal-Provincial Continuing Committee on Fiscal and Economic Matters," 6 *Canadian Public Administration*, 43 (1963).

of federal-provincial fiscal relations. Donald V. Smiley's monograph<sup>8</sup> on federal grants-in-aid to the provinces published in 1963 analyzed the interrelationships between program specialists and financial officers from both levels of government in shared-cost programs. Professor Richard Leach has made a study of inter-provincial relationships, mostly of an informal and continuing nature,<sup>9</sup> and Professor J. H. Aitchison has examined the possibilities of formal institutions of inter-provincial cooperation in the light of American experiences with the Council of State Governors.<sup>10</sup> Finally, the federal Royal Commission Report on Governmental Organization discussed briefly "Federal-Provincial Cooperation in Joint and Allied Services,"<sup>11</sup> although it seems to me that its analysis was a superficial one. In general then, students of federalism have come to be less preoccupied than in the past with such matters of formal constitutional structure as constitutional amendment, judicial review, residual and concurrent powers and so on and have come increasingly to concern themselves with the kind of administrative arrangements which make for coordination and integration of public policies in political systems where the powers to enact legislation in relation to various classes of subjects are divided between two levels of government.

It is plausible to suggest that the increasing range of public activities and the growing interdependence of modern life bring about almost inevitably a growth in intergovernmental relations in a modern federation.<sup>12</sup> However, what might appear to the observer as the need for articulation between the two levels does not ensure that this need will be met. Indeed it is possible to postulate a federal system in which the powers, privileges and responsibilities of government are so distributed, that there is relatively little need for interjurisdictional collaboration, another in which most public activities are shared by the two levels. Among the critical factors which encourage the extension of joint federal-provincial action in Canada are the following:

1. The relative inflexibility of the system in effecting periodic redistributions of the powers and responsibilities of government between the two levels by constitutional amendment, judicial review or the delegation of legislative powers by one level on the other.

It can be taken for granted that as new circumstances arise within a federation the distribution of legislative powers made by the original constitutional document will, if unchanged, result in the frustration of

<sup>8</sup>"Conditional Grants and Canadian Federalism" *Canadian Tax Foundation Paper* No. 32, 1963, particularly Chapter III.

<sup>9</sup>"Interprovincial Cooperation," 2 *Canadian Public Administration*, 83 (1959).

<sup>10</sup>"Interprovincial Cooperation" in *THE POLITICAL PROCESS IN CANADA: ESSAYS IN HONOUR OF R. MACGREGOR DAWSON*, AITCHISON, Ed., Toronto, 1963, pp. 153-170.

<sup>11</sup>Vol. 3, pp. 124-131.

<sup>12</sup>Maurice Lamontagne asserts that because "la politique économique et sociale est devenue quasi indivisible," that "la participation de tous les gouvernements aux principales fonctions de l'État . . . doit devenir la règle générale." *LE FÉDÉRALISME CANADIEN*, Quebec, 1954, pp. 245-248.

important public objectives. There are two alternatives. The first is a re-allocation of powers through constitutional amendment, changing patterns of judicial review or intergovernmental agreement. The second alternative is to attempt to overcome the difficulties by piecemeal collaborative arrangements between the two levels of government. In Canada, the major vehicle of constitutional adjustment has been the latter kind of procedure.

2. The increasingly powerful pressures for federal action to equalize the range and quality of public services available to citizens throughout Canada.

If we assume a relatively stable distribution of legislative powers between the two levels, the need for intergovernmental collaboration increases as the expectations as to what constitutes acceptable standards of public services become more homogeneous. The interplay between nationalism and regional inequalities in per capita fiscal capacity has propelled the federal government into an equalizing role and has created the circumstances for a very large number of federal-provincial joint arrangements.

3. The will and the ability of the executives of the two levels of government to devise and implement collaboration arrangements.

Again, the need for collaboration does not ensure that it will take place. Effective federal-provincial relations involve interactions where the participants are not organized within a common pattern of hierarchical authority as in situations involving a single jurisdiction. This kind of collaborative arrangement can be successful only if the participants share a bureaucratic ethic which provides for the resolution of difficulties by other means than the exercise of hierarchical authority.<sup>13</sup> Later in this essay I shall argue that the professionalization of the federal and provincial public services has been the strategic factor in this process.

The term "cooperative federalism" has had a wide although somewhat uncritical acceptance in Canada<sup>14</sup> and the United States as being the distinctive characteristic of the contemporary federal systems of these countries. Within the framework of executive collaboration there are two patterns of interaction which I shall call "joint federalism" and "consultative federalism" respectively.

"Joint federalism" is distinguished by the sharing of decision-making powers and financial responsibilities for particular programs or projects between the two levels of government. Its typical device is the grant-in-aid made by the federal authorities to one or more of the state or provincial jurisdictions.

<sup>13</sup>For a stimulating analysis of bureaucracy in terms of the clash between hierarchical authority and functional competence see Victor A. Thompson, "Hierarchy, Specialization and Organizational Conflict," 5 *Administrative Science Quarterly* 485 (1961).

<sup>14</sup>The term appears in the national programs of both the Liberal Party and the New Democratic Party adopted in 1961.

In "consultative federalism" the exclusive financial and administrative responsibility for particular matters rests with one level or the other with formal and informal devices to communicate the values and objectives of each level to the other where the interests of both are involved. Federal-state or federal-provincial relations thus proceed by mechanisms akin to those of effective international diplomacy.

To anticipate the analysis of this essay, between 1945 and about 1960 the Canadian system developed along a direction in which joint federalism was dominant. However, toward the end of this period these arrangements began to show signs of strain which could be effectively lessened only by more effective devices of consultative federalism. We have as yet made little progress in moving toward these.

### *A Critique of "Joint Federalism"*

There is almost no literature available on federal-provincial administrative relationships prior to the 1930's. Vernon Fowke's brief account of these relations in the concurrent fields of agriculture and immigration points up the fact that relations were not constructive ones in the period after Confederation.<sup>15</sup> The Depression crisis of the 1930's resulted in three analyses of particular aspects of the Canadian experience of inter-governmental sharing of administrative functions. The studies of both J. A. Maxwell<sup>16</sup> and Luella Gettys<sup>17</sup> came to the conclusion that the major defect of the existing shared-cost arrangements was that the federal authorities had failed to impose standards of performance on the provinces with sufficient vigor. The Royal Commission on Dominion-Provincial Relations which reported to the Government of Canada in 1940<sup>18</sup> made a straightforward attack on what I have called "joint federalism" and recommended a master-solution of redistributing functional responsibilities and revenue sources between the Dominion and the provinces so that each province could provide as it chose an average level of services without subjecting its citizens to taxation above the national average.<sup>19</sup> Its general conclusion about collaborative arrangements was this: "The experience with conditional grants leads us to doubt whether the joint administration of activities by the Dominion and a province is ever a practical way of surmounting constitutional difficulties. Where legislative power over a particular subject is divided, it is ordinarily desirable that these powers should be pooled under the control of a single government in order to secure unified effort in administration."<sup>20</sup> To this end the Commission recommended that there be established, by

<sup>15</sup>CANADIAN AGRICULTURAL POLICY, Toronto, 1946.

<sup>16</sup>FEDERAL SUBSIDIES TO THE PROVINCIAL GOVERNMENTS IN CANADA, Cambridge, Mass., 1937.

<sup>17</sup>THE ADMINISTRATION OF CANADIAN CONDITIONAL GRANTS, New York, 1938.

<sup>18</sup>REPORT, Ottawa.

<sup>19</sup>BOOK II, ABSTRACT OF THE LEADING RECOMMENDATIONS, pp. 269-276.

<sup>20</sup>BOOK I, p. 259.

constitutional amendment if necessary, a procedure whereby the Dominion or the provinces might delegate particular legislative powers to the other either permanently or for a limited period.

The Rowell-Sirois Commission appears to have been very much influenced in its appraisal of "joint federalism" by a study undertaken at its direction by Professor J. A. Corry of Queen's University and entitled "Difficulties of Divided Jurisdiction." Corry studied four areas of regulatory activity where formal federal-provincial arrangements had been established—related to the marketing of agricultural products, insurance, fisheries and industrial disputes—and also the federal conditional grant programs to the provinces. His conclusion was: "... Canadian experience so far seems to indicate that administrative performance in these joint activities . . . falls short of the standards of reasonably good administration."<sup>21</sup> Corry admitted that there were other criteria than "administrative efficiency" by which "a final assessment of the distribution of powers in a federal state" might reasonably be measured.<sup>22</sup> However, by the efficiency standard alone, not only had the existing collaborative arrangements fallen short but it was almost inevitable that they should do so; "there are some good reasons for thinking that two bureaucracies so placed tend to be 'rival centres of power' rather than eager cooperators for the fulfilment of a grand national purpose."<sup>23</sup> Corry advanced a somewhat deterministic account of bureaucratic behaviour to explain why this should be so:

1. Officials of different bureaucracies find both their desire to express themselves through their work and their career prospects inhibited by entering into constructive intergovernmental relations.<sup>24</sup> The capable and ambitious official will try to "master the uncertainties which interfere with his control of the situation." One of these "uncertainties" will be the actions of the other jurisdiction and he will thus try to extend his influence to all aspects of the shared activity. Further, if the provincial official shows himself to be relatively passive in the face of his federal collaborators, he is demonstrating to his superiors that he has lost his originality. Conflicts thus cannot be attributed to the "perversity of civil servants" but rather to factors inherent in the situation and are more likely than otherwise to occur when able and zealous people are involved.

2. It is almost inevitable that federal and provincial officials will disagree on the objectives of particular public policies and the most appropriate means by which they may be attained. In speaking of conditional grants Corry asserts: "Hope for harmonious and efficient cooperation depends largely on the discovery of clear-cut objective

<sup>21</sup>P. 8.

<sup>22</sup>*Id.*

<sup>23</sup>P. 9.

<sup>24</sup>*Id.*

criteria for measuring the activity—criteria which command agreement by their clarity. Such criteria are almost impossible to find.”<sup>25</sup>

3. When administrative conflict between two independent bureaucracies occurs there is no hierarchical superior by which the dispute may be expeditiously resolved. “The real advantage of unified administration is that it provides a single authority which can break a deadlock and whose very existence is a deterrent to prolonged bickering.”<sup>26</sup>

### *“Joint Federalism” from 1945 Onward*

The recommendations of the Rowell-Sirois Commission were accepted by the federal Government as a basis for discussion at the Dominion-Provincial Conference called in 1941.<sup>27</sup> No agreement with the provinces was possible along these lines. During the last months of the European War the energies of a very large number of officials in Ottawa were marshalled to devise a comprehensive series of inter-related measures looking forward to fundamental changes in Canadian federalism in the post-war period. These emerged as the so-called “Green Book” proposals presented by the federal Cabinet at the Dominion-Provincial Conference which opened in Ottawa in May 1945.<sup>28</sup>

The Green Book proposals showed none of the hostility to federal-provincial joint arrangements which characterized the approach of the Rowell-Sirois Commission. Although the 1945 recommendations suggested, as had the Commission, that the federal government have exclusive occupancy of the individual and corporate income tax and succession duty fields, there was no provision for inter-provincial equalization through federal unconditional subventions; the final offer of Ottawa was that the provinces in return for refraining from entering the three direct taxation fields would receive annual subsidies of \$15 per capita based on either their 1941 or 1942 populations with provisions for future per capita increases proportionate to the growth of the Gross National Product. Whatever inter-provincial equalization was contemplated was in provisions for exclusive federal responsibility for pensions to those over 70, extensions of federal activities to ensure full employment and to assist the unemployed and in a very large number of collaborative activities to be carried out by the two levels of government. Among the most important of the latter were:

1. The establishment by stages of a comprehensive system of health insurance.
2. The construction of a Trans-Canada Highway and access roads to undeveloped mining and forest resources.
3. The establishment of a system of non-contributory pensions to

<sup>25</sup>P. 30.

<sup>26</sup>P. 10.

<sup>27</sup>PROCEEDINGS, Ottawa, 1941.

<sup>28</sup>DOMINION-PROVINCIAL CONFERENCE (1945), DOMINION AND PROVINCIAL SUBMISSIONS AND PLENARY CONFERENCE DISCUSSIONS, Ottawa, 1946, pp. 55-118.

persons in the 65-69 year group who met requirements of Canadian residence and a means-test.

4. A program for the occupational rehabilitation of the physically-handicapped.

5. Expansion of federal-provincial cooperation in vocational training.

6. The establishment of new collaborative arrangements in natural resource development.

7. Payments to provinces and municipalities to encourage them to undertake particular capital developments when the federal government decided that this was appropriate for anti-cyclical considerations.

The Green Book proposals were presented as a "package deal" and as no agreement between Ottawa and the provinces could be reached in regard to them the last plenary session of the Dominion-Provincial Conference on Reconstruction adjourned *sine die* on May 3, 1946. However, almost from the day the Conference was finished federal officials began to seek limited and piece-meal agreements with the provinces on particular matters. The five-year tax-sharing arrangements which came into effect in 1947, 1952, and 1957 not only provided for more inter-provincial equalization than was contemplated by the Green Book proposals but also contained options to meet the circumstances of particular provinces. By 1960, too, a very large number of federal-provincial conditional grant programs had been established relating to the fields of hospitalization, general and categorical public assistance, public health, the development of agricultural and forestry resources and the Trans-Canada Highway. The federal government had also participated in shared-cost ventures with particular provinces through the Maritime Marshland Redevelopment Administration, the St. Mary Irrigation project (Alberta) and the South Saskatchewan development. In general then, federal-provincial relations were "factored" in the sense that agreement proved possible on a very large number of particular enterprises in the absence of agreement on a comprehensive redistribution of privileges and responsibilities between the two levels as recommended by the Rowell-Sirois Report and the Green Book proposals.

In the fifteen years or so after the end of World War Two relations between federal and provincial officials involved in shared-cost arrangements were very much more cordial and constructive than the somewhat deterministic theories about bureaucratic behaviour presented by Professor Corry believed they could be. The strategic factor in this developing pattern of cooperation was, I believe, the increasing influence of program specialists at both the federal and provincial levels. The Rowell-Sirois Commission saw the characteristic relation between officials in implementing joint programs as involving provincial personnel responsible for substantive activities confronted by federal financial officers whose major objective was to protect the national Treasury and on

this basis it was reasonable to believe that these relations would be characterized by conflict.<sup>29</sup> Although the activities of provincial civil servants engaged in shared-cost programs were of course subject to certain financial controls by federal officers in the period after 1945, a new and different kind of interaction became influential as the bureaucracies at both levels became more specialized and professionalized. The late Dr. Harry Cassidy of the University of Toronto School of Social Work made the point well in 1949 when contrasting the federal-provincial relations concerned with agriculture and forestry with those which involved old age pensions and unemployment relief he said of the former:

There you have a situation in administration where the professionally equipped and disposed person talks with his professional friend in Ottawa. They talk the same kind of language, they work from common premises, and they can reach certain common understandings about procedures fairly easily and they can settle many issues without the Ministers in the Provinces or in Ottawa intervening. Such negotiation is a quiet kind of thing, proposals seem sensible so they are accepted without fuss or fury. Hence the issue never comes up to the political level, with pressures from Alberta or from Nova Scotia or from Ontario coming up to influence the Federal Minister. It seems to me that this is a point of fundamental importance regarding programmes staffed with professional personnel which distinguishes them sharply from other programmes, such as unemployment relief and old age pensions.<sup>30</sup>

In general, federal-provincial relations in shared-cost arrangements have been harmonious and constructive to the extent that they have been dominated by program specialists from both levels of government. The following influences are at work to encourage this kind of collaboration and to inhibit conflict between officials of the two levels of government:

1. The attitudes, procedures and values common to particular groups of program specialists—foresters, social workers, civil engineers, experts in occupational therapy and so on—provide common standards to which officials from federal and provincial levels defer. Membership in such a group almost always involves not only the sharing of a body of knowledge and techniques but also adherence to a common set of standards and objectives related to the public policies with which the group is professionally concerned. What Seymour Lipset has said of bureaucracies generally applies to these federal-provincial complexes of specialists: "Inherent in bureaucratic structures is a tendency to reduce conflicts to administrative decisions by experts, and thus over time bureaucratization facilitates the removing of objects from the political arena. Constant emphasis on the need for objective criteria

<sup>29</sup>REPORT OF THE ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS, Ottawa, 1940, BOOK I, pp. 257-258.

<sup>30</sup>PROCEEDINGS, *First Annual Conference of the Institute of Public Administration of Canada* 1949, Toronto, 1950, pp. 164-165.



as a basis for the settlement of conflicts enables bureaucracies to play major mediating roles."<sup>31</sup>

2. Program officials know that if they do not resolve intergovernmental disputes "within the guild" these conflicts will be settled by outsiders who are motivated by different considerations than those which prevail within the specialized group—by senior departmental officials with more generalist perspectives, by treasury, officers, by politicians, perhaps in some cases by the courts of law. In the broadest of terms, shared-cost programs are subject to less effective political and treasury control than are those activities for which one jurisdiction assumes full responsibility and it is in the interest of the program specialists to maintain this relative independence.

3. Powerful factors of self-interest are at work to encourage federal and provincial officials involved in grant-in-aid functions to regard their respective roles as complementary rather than competitive. If Ottawa withdrew from some or all of the present arrangements, groups of federal officials would have to be assigned to new tasks, with possible losses in their power and status. Provincial program officials, along with their federal counterparts, usually believe that more financial resources are expended on their functions when shared-cost arrangements prevail than would be the case if the provinces had equivalent funds at their disposal with no strings attached.<sup>32</sup>

4. Professionalization leads to increased formal and informal contacts among those involved in the same kinds of work and strengthens "in-group" attitudes. Specialized journals are published, advisory committees are set up, *ad hoc* and regular conferences are held and so on. It is part of the contemporary ethic that much is to be gained by sharing experiences with those engaged in the same kind of work and modern developments in transportation and communication facilitate this kind of interaction.<sup>33</sup> It may also well be true, contrary to the Corry analysis, that officials in these specialized intergovernmental groupings do not look single-mindedly to their hierarchical superiors for rewards. Once such a community of interest and purpose is established officials may come to that community for influence and status. If and when this is so, the conduct that will result in the desired rewards being conferred will be based on the ability to establish and sustain cooperative relations with officials of other jurisdictions.

In general, federal-provincial administrative relations in the post-1945 period developed in quite a different direction than the Rowell-Sirois Commission with its somewhat deterministic views of bureaucratic

<sup>31</sup>SOCIOLOGY TODAY, MERTON, BROWN AND COTTRELL, Eds., New York, 1959, p. 102.

<sup>32</sup>Smiley, *op. cit.*, p. 39.

<sup>33</sup>"... there may be and probably usually is more group consultation in modern bureaucratic organizations than the objective facts of interdependence warrant." Thompson, "Hierarchy, Specialization and Organizational Conflict," *Administrative Science Quarterly*, March 1961, p. 501.

behaviour believed possible. Adjustments to changing circumstances were made for the most part as highly particularistic responses to the demands of groups inside and outside governments for individual projects and programs. The formal constitution proved remarkably resistant to change through amendment or evolving patterns of judicial review. Further, the development of effective devices for intergovernmental articulation at the political-executive and treasury levels was retarded. Adjustments thus were made largely by officials involved in specific functions.

The dominance of highly particularistic considerations under joint federalism in the 1945-60 period cannot be over-emphasized. As we have seen, shared-cost functions attained a relatively high degree of independence of political and executive control. Elazar in his history of federal-state relations asserts that the functional relations between Washington and the Southern States went on very much as usual almost to the eve of the Civil War and that recent program relations have been very little disturbed by conflicts over the race issue.<sup>34</sup> Similarly, it is my observation that the joint programs involving British Columbia were not much affected by the vendetta between the Diefenbaker and Bennett governments relating to hydro-electric development. Also, the whole matter of the financial relations between Ottawa and the provinces hammered out in the tax-sharing agreements was done in almost complete isolation from the devising and implementing of shared-cost arrangements.

### *Joint Federalism under Stress*

From about 1960 onward there was a combination of circumstances signifying that the particularistic and program-dominated patterns of intergovernmental relations were failing to meet the interests of either level. The following seem to be the crucial factors giving rise to these new stresses:

First, several of the provincial administrations came to be administratively mature enough to commit themselves to comprehensive objectives and to allocate the resources at their disposal according to long-term plans. From the late 1950's onward, Alberta began to plan its capital expenditures on a five-year basis. The Quebec Government in office since 1960 is committed to economic planning. Ontario has drastically reformed its budgetary procedures in the direction of a more rational process of decision-making. The Manitoba Government has assumed a general commitment to the proposals of the Committee on Manitoba's Economic Future which reported early in 1963. The provinces have been increasingly successful in attracting able and aggressive officials in both their treasury and program departments and have increasingly guided their conduct in terms of long-term projections

<sup>34</sup>Elazar, *op. cit.*, p. 330-331.

of the needs for roads, schools, hospitals and other public amenities. Provincial commitment to budgetary and program planning gave rise to dissatisfaction with the inherent paternalism of the grant-in-aid device, particularly when Ottawa took action to sponsor new shared-cost programs or change the terms of existing ones without adequate prior consultation with the provinces. The complex of highly specific shared-cost arrangements was compatible with harmonious relations between the two levels only so long as provincial administration was somewhat haphazard and the "fifty-cent dollars" available from Ottawa looked attractive because the provinces were not committed to rational procedures of priority-allocation.

Second, there was a discernible increase in federal-provincial relations of the influence of officials who were not involved in particular programs. In 1954 the St. Laurent Government established a small Federal-Provincial Relations Division in the federal Department of Finance and provincial administrations have shown an increasing disposition to devolve the immediate responsibility for financial relations with Ottawa on particular officials or sections; a Federal-Provincial Relations Department was established in Quebec in 1961. As a result of the 1955 Dominion-Provincial Conference, the Continuing Committee on Fiscal and Economic Matters composed of senior appointed treasury officials was constituted and meets twice yearly.<sup>35</sup> The Institute of Public Administration of Canada which reflects the concerns and values of general administrators more than those of program specialists became more influential.<sup>36</sup> Legislation introduced into Parliament by the Pearson Government in the summer of 1963 provided for the establishment of the Economic Council of Canada to formulate national economic goals and to coordinate through persuasion the activities of public and private bodies toward these goals.<sup>37</sup> At the political level there have been annual meetings of the provincial Premiers since 1960<sup>38</sup> and the federal Government has established a Cabinet Committee to deal with federal-provincial relations. There are thus new kinds of interactions between Ottawa and the provinces in the making, interactions not directly related to particular programs and projects.

Third, the Lesage administration, with the support of some of the other provinces on particular issues, is making a more effective challenge to the extension of federal influence than did the Union Nationale leadership. In retrospect, it is surprising how little Mr. Duplessis's efforts on

<sup>35</sup>Kear, *op. cit.*

<sup>36</sup>The incumbent President and three immediate past Presidents of the Institute have been financial officials. The annual convention of the Institute held each September is scheduled just before the semi-annual meeting of the Federal-Provincial Continuing Committee on Fiscal and Economic Matters so that the same officials can conveniently attend both meetings in the same city.

<sup>37</sup>For a lucid account of the rationale of the Council see the speech by Dr. Pauline Jewett, M.P., *House of Commons Debates* (unrevised), July 15, 1963, pp. 2206-2209.

<sup>38</sup>Aitchison, *id.*

behalf of provincial autonomy influenced the course of federal-provincial relations between 1944 and his death in 1959 and it is difficult to cite any major concession made by Ottawa to Quebec during that period apart from the increases in federal tax abatements after that province began to levy personal income taxes in 1954. The crucial new factor is that the Lesage administration, unlike its predecessor, is committed to the aggressive pursuit of social and economic goals through provincial action. There are thus more areas in which specific policy objectives of the federal and Quebec administrations clash. Further, the present Quebec Government is committed to costly programs and its demands for increased fiscal autonomy are less symbolic in nature than were those of the Union Nationale. The influences of a revitalized Quebec have contributed to other pressures on the centralized variant of Canadian federalism that developed in the period immediately after World War Two.

Fourth, relatively high levels of unemployment and unsatisfactory rates of economic growth since 1957 have given rise to the increased necessity of the articulation of federal and provincial activities, particularly fiscal policies. An essential part of the Green Book "package deal" of 1945 was a proposal that the provinces and municipalities would receive grants to plan shelves of public works and that Ottawa would pay twenty per cent of the costs of projects executed in a period designated by the federal authorities. However, the high levels of income and employment in the decade after World War Two did not encourage this kind of federal-provincial collaboration in capital investment and, at the 1955 Federal-Provincial Conference, Prime Minister St. Laurent formally announced that his Government would not act on the anti-cyclical proposal made ten years before and had decided that "... it would be better and more practical to make whatever cooperative arrangements are justified in specific fields. We think that the Federal Government should not suggest that it get involved in having to make judgments in regard to thousands of public projects of the normal type carried out by the Provinces and the municipalities."<sup>39</sup> The relatively high rates of unemployment combined with unsatisfactory economic growth which have prevailed since 1957 have led to renewed demands for the articulation of federal and provincial economic policies. There has also come the conviction that in part at least these circumstances have been due to structural defects in the economy rather than deficiencies in gross demand and that appropriate remedies can thus come only through federal-provincial collaboration. Further, the steadily increasing proportion of public expenditures made by provinces and local authorities combined have made more necessary than in the preceding period the coordination of the fiscal policies of all levels of government.

<sup>39</sup>PROCEEDINGS, Ottawa, 1956, p. 9.

The strains on the complex of highly specific adjustments effected through shared-cost agreements were shown in the attacks on the grant-in-aid device made by several of the provincial Premiers at the Federal-Provincial Conference held in July, 1960.<sup>40</sup> The arguments of Lesage of Quebec and Manning of Alberta were phrased in terms of a concern for provincial autonomy on somewhat dogmatic grounds. Robichaud of New Brunswick, Roblin of Manitoba and Shaw of Prince Edward Island made the criticism that the existing programs did not meet the needs of the less prosperous provinces. Douglas of Saskatchewan, the leader of a government more committed than most to long-term budgetary and program planning, was concerned with the "distortions" in provincial budgets induced by conditional grants and both Shaw and Roblin expressed similar concerns about the impact of these arrangements on provincial administrative procedures. For the first time since the 1930's, the grant-in-aid device had been strongly challenged by influential Canadian politicians other than those from Quebec.

The 1961 statement on conditional grants adopted by the federal Liberal Party constituted a further challenge to "joint federalism."<sup>41</sup> This statement asserted that the federal government should withdraw from continuing shared-cost functions once these were well established throughout the country. If new programs were begun requiring "permanent and fairly regular expenditures" they should be terminated after a period of not more than five years. Arrangements should also be made by which a province might opt out of particular shared-cost plan without suffering "financial discrimination" thereby; this was a new idea—it had been taken for granted previously in Canada as in other federations that a jurisdiction which decided not to accept a specific conditional grant would be subjected to the full financial penalties of its decision. In general terms, the Liberals showed a marked preference for dealing with the financial needs of the provinces through increased equalization payments made unconditionally and an increased provincial share of the income tax and succession duty fields rather than conditional grants.<sup>42</sup>

In spite of the circumstances I have described, the complex of functional relationships built up around the grant-in-aid device will no doubt continue as an important aspect of the Canadian federal structure in the foreseeable future. There are a very large number of interests both inside and outside government who will use their influence to perpetuate the existing system of grants-in-aid and to influence federal financial support for new provincial functions. The Pearson Government since coming to power has increased its contributions to vocational training

<sup>40</sup>PROCEEDINGS. See also Smiley, *op. cit.*, pp. 12-15.

<sup>41</sup>See also the Hon. Lester Pearson's speech made in Quebec City on Nov. 6, 1961, National Liberal Federation (mimeo.).

<sup>42</sup>Opening Statement by the Prime Minister of Canada at the Federal-Provincial Conference, November 28, 1963 (mimeo.), pp. 10-11.

and has agreed to new forms of cooperation with the provinces in the field of welfare. The Prime Minister has also made clear that his Government would terminate existing shared-cost arrangements only after consultations with the provinces<sup>43</sup> and it is by no means certain whether forms of compensation, in the forms either of subsidies or of increased "tax room" can be agreed upon, particularly in respect to functions where there is an expectation that costs will increase. There are also possibilities of making the grant-in-aid procedure more palatable to the provinces. The Continuing Committee on Fiscal and Economic Matters has had some success in rationalizing the procedures by which the provinces are reimbursed by Ottawa.<sup>44</sup> It seems likely that the federal authorities will be less prone than in the past to announce their willingness to support new provincial and local functions or to alter existing arrangements without prior consultations with the provinces. There may be a tendency for Ottawa to support broader functions than in the past; the forestry agreements which came into effect in 1962 are a step in this direction, there has been some discussion of consolidating the categorical and general public assistance programs within one framework and the suggestion has from time to time been made that Ottawa support broadly-defined provincial activities like health, welfare and vocational training in place of its present assistance for specific programs and projects. The contracting out device may also encourage the federal government to undertake new shared-cost activities in the absence of agreement from one or more of the provinces to a greater extent than in the past. Joint federalism as I have defined the term will thus remain a central feature of federal-provincial relations.

#### *The Federal-Provincial Conference of November 1963 and Consultative Federalism*

The Federal-Provincial Conference held in November 1963 seems to have presaged a development toward consultative federalism. The events of the months immediately preceding made more obvious than before the necessity of more continuous consultation between the two levels of government. The newly-elected Liberal Government had in the summer of 1963 introduced legislation into Parliament providing for a municipal loan fund and a Canada Pension Plan. These measures had been introduced as a fulfilment of promises made by the Liberals prior to the general election of 1963. The provinces had not been consulted and the provincial reaction was so hostile that a Federal-Provincial Conference was hurriedly called in July at which the federal Government made very considerable changes in both proposals as a result of provincial pressure. The Government had also encountered some opposition from individual provinces in designating particular areas where the percentage of federal

<sup>43</sup>*Id.*

<sup>44</sup>DOMINION-PROVINCIAL CONFERENCE 1960, Ottawa, 1960, p. 13.

assistance paid for winter works would be higher than elsewhere and others where certain tax concessions would be made in respect to capital investment. The federal Cabinet had thus been made aware in a somewhat dramatic way of the results of unilateral action in respect to matters in which the provinces felt an interest.

The Pearson Government gave every indication prior to and during the November Conference of wanting to work towards more effective high-level consultation with the provinces. The meeting was regarded by the Government as the first of a series of such gatherings which were to be held more regularly than in the past. The agenda included as an item for discussion "federal-provincial liaison arrangements." The Prime Minister in his opening address to the Conference suggested new matters for federal-provincial consultation toward (1) defining the criteria for designating areas of slow economic growth, (2) making more effective the work of the newly-established Economic Council of Canada and Department of Industry, (3) terminating certain well-established joint programs.<sup>45</sup> Mr. Pearson, in a somewhat oblique way so as not to imply any federal interference in the affairs of the provinces, suggested more effective internal machinery for consultation.<sup>46</sup> The stage had thus been set for major new developments in federal-provincial relations.

Within the existing division of powers and responsibilities between the federal and provincial governments there are too many ways in which the activities of one level can vitally affect the interests and objectives of the other to make tolerable a situation in which policies are decided upon and implemented unilaterally. The strains on the federal system occasioned by the lack of effective procedures of inter-governmental articulation can be expected to become more severe as both levels commit themselves more explicitly to comprehensive and long-term goals than in the past; a case can be made that Canadian federalism has up until now been sustained through one or the other level being relatively immobilist in economic matters, a circumstance which now appears to be changing. The aim must be to work toward a set of political and administrative conventions by which neither Ottawa nor any province embarks on a major policy without taking the other into its confidence and being willing to consider the latter's assessment of the implications of this policy for its interests. To be more concrete, it would mean that no province would go ahead with a major program of hydro-electric development or of changing the terms under which municipalities might borrow in the domestic or international capital markets without prior consultations with the appropriate federal agencies. Further, there is no *a priori* reason why consultations should not include matters within the jurisdiction of the federal government—Premier Lesage at the November Conference suggested that the provinces "should

<sup>45</sup>*Id.*

<sup>46</sup>Pp. 17-18.

have their voice in determining tariff structures, transportation and even the monetary policies of Canada";<sup>47</sup> something can be said for the argument made by Jean-Marc Leger that what is now commonly understood as "cooperative federalism" relates almost exclusively to matters within the jurisdiction of the provinces and is therefore "the new face of centralization."<sup>48</sup>

Consultative relationships between sovereign governments are extraordinarily subtle and it is impossible to predict with any precision the kinds of devices by which they might be facilitated in Canada. What seems certain is that the establishment of new institutional machinery, however ingenious, will not of itself bring effective consultation about. The following general points can be made:

1. The new procedures for federal-provincial articulation should not be allowed to frustrate close and harmonious relations between functional agencies of the two levels. The relative success of joint federalism can be attributed in part to the highly specific nature of the interactions which developed; i.e., program agencies could work closely together because their collaboration did not depend on federal-provincial agreement on more comprehensive objectives. One can postulate a quasi-diplomatic pattern of relations in which Ottawa and each of the provinces designed a coherent policy toward the other and implemented this policy through an agency specifically charged with this responsibility. Such a development might well lead to situations in which federal-provincial cooperation on particular issues was inhibited by the lack of agreement about more fundamental concerns. Although this kind of circumstance is to be avoided there is room for Ottawa and the provinces to have the "presence" of officials whose concern is with broad public policies in the dealings between functional agencies.<sup>49</sup>

2. If considerations more comprehensive than those related to particular programs and projects are to be more influential than before in federal-provincial relations, experience with conditional grants suggests the usefulness of establishing centres of bureaucratic power at both levels devoted to these considerations and of creating circumstances in which interactions between these centres can be continuous rather than sporadic. A first step in this direction would be for each jurisdiction to confer the responsibility for relations between the two levels on particular departments or agencies whether these are Departments of Federal-Provincial Affairs, branches of the Treasury or groups within

<sup>47</sup>*Address*, Nov. 25, 1963, mimeo., p. 38. I am not suggesting that I believe that these are the kinds of matters about which consultations would be appropriate.

<sup>48</sup>"Cooperative Federalism or the New Face of Centralization," *The Canadian Forum*, October 1963, pp. 155-156.

<sup>49</sup>In the conditional grant programs there has sometimes been the complaint that financial officials were not informed at an early enough stage of the negotiations between program officials from each level. See Smiley, pp. 37-42, for a discussion of the conflicts between treasury and program officers in shared-cost programs.



the Prime Minister's or Privy Council office.<sup>50</sup> However, the preconditions of success of consultations between such groups have not been met in some of the jurisdictions: (a) the consultative agency must be able to speak authoritatively for its government; (b) functional agencies must be under the effective control of agencies with more comprehensive goals. Even if these circumstances did exist it would be unrealistic to contemplate these federal-provincial organizations developing the kind of allegiance to common procedures and values which so much facilitates inter-governmental relations among program specialists as the concerns of the former relate to fundamental political choices about which consensus is more difficult to establish than in respect to more technical matters. However, it is tempting to speculate about the results of having these posts filled by a Canadian "administrative man" devoted to what has been called "the political economy tradition" and the rapidly developing profession of general administration. Perhaps the Institute of Public Administration of Canada will come to provide a focus for the concerns and values of this group or perhaps it might come to be recruited from among the graduates of a federal-provincial administrative staff college yet to be established.

It is prudent to realize the limits of consultative procedures. Consultations among governments having different responsibilities allow men to discover common ground where it exists; they do not provide any means of reconciling interests which are incompatible. If one believes that there are single values, such as full employment or economic growth or provincial autonomy or the equalization of public services throughout the nation which in any and all circumstances should over-ride conflicting considerations, he cannot reasonably defend federalism; war-time experience in Canada and elsewhere demonstrates that when a single national objective is to be pursued federalism must of necessity be in abeyance. There are several kinds of public policy situations in which there are likely to be differences of emphasis if not in ultimate aims between Ottawa and the provinces and it is in regard to these that more effective consultative procedures are desirable:

1. The federal authorities can be expected to be more concerned with the income and employment impact of provincial and local capital expenditures than are the provinces, which are likely to regard these expenditures in part at least in the light of service needs for roads, schools, hospitals and so on.

2. The objectives of some of the provinces are likely to lie in the direction of more differentiated and autonomous provincial economics than are compatible with national economic objectives.

<sup>50</sup>I am indebted to a letter from Dr. A. W. Johnson for a perceptive discussion of the significance of the administrative relations of these inter-governmental agencies in relation to their own Cabinets and Finance Departments.

3. In some cases provincial policies may inhibit the federal government's interest in maintaining the mobility of labour and capital within the national boundaries.

4. In respect to the capital expenditure policies of local authorities the provinces may be expected to emphasize local financial stability, Ottawa the impact of projected expenditures on employment and income.

5. In some circumstances individual provinces will press for a closer integration with contiguous areas in the United States than is compatible with national economic policies.

6. Ottawa may choose in some circumstances to achieve its purposes through grants-in-aid with some or all of the provinces preferring federal financial assistance through unconditional subventions or increased access to tax sources to cooperation in attaining federal objectives.

7. There can be expected to be permanent conflicts in the sharing of tax sources and the distribution of public revenues between the two levels.

When the Right Honourable Lester B. Pearson was Minister of External Affairs, he wrote about consultative procedures among the nations of the Western Alliance in terms which are almost directly applicable to the needs of federal-provincial relations in the mid-1960's:

. . . Consultation means the opportunity to participate in the give and take of ideas, the weighing of pros and cons; and the formulation of policy based on the highest common denominator of agreement. It is a method of harmonizing divergent interests, a process which makes it possible so to adjust and adapt measures which any one government may have in mind that are least likely to disturb, and most likely to consolidate, the unity of the greater . . . society to which we all belong.

This broader responsibility does not in any sense remove or weaken the direct constitutional responsibility of each democratic government to its own nation. It is something additional. It is less a matter of formal agreement between governments than an attitude which must be developed by men, a quality of outlook that must be achieved by politicians, editors, teachers and businessmen, by all those whose views and actions make up public opinion.<sup>51</sup>

<sup>51</sup>DEMOCRACY IN WORLD POLITICS, Toronto, 1955, pp. 50-51.