

Executive Federalism: A Comparative Analysis

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PREFACE

This paper is a somewhat expanded and developed version of a paper, entitled "Executive Federalism: The Comparative Context", which was originally presented at a conference in honour of Donald Smiley, "Federalism and the Quest for Political Community", held at York University, Toronto, 6 to 8 May 1988. The original paper will be published in David Shugarman and Reg Whitaker, (eds.), *Federalism and Political Community: Essays in Honour of Donald Smiley* (Peterborough: Broadview Press, forthcoming).

This paper attempts to identify significant patterns and tentative conclusions, and also to suggest a research agenda for more detailed analysis of the characteristics of executive federalism which is a significant feature not only of Canadian federalism but of other parliamentary federations.

I am particularly grateful to the participants at the York University conference and to my colleagues John Meisel and Hugh Thorburn for their comments on earlier versions of this paper. I should also like to thank Patti Candido and Valerie Jarus at the Institute of Intergovernmental Relations for word processing and preparation of the text in camera-ready form so superbly.

The term "executive federalism", widely accepted now in discourse about Canadian federalism, was coined by Donald Smiley who has been an inspiration to so many Canadian political scientists. I have been fortunate, indeed, to be able to count him a close friend, and this paper is dedicated to him.

Ronald L. Watts

SOMMAIRE

Les ouvrages sur le fédéralisme canadien ont énormément mis l'accent sur le concept de "fédéralisme exécutif"; en fait celui-ci sous-tend les mécanismes de la négociation intergouvernementale contrôlée de manière prépondérante par les représentants du pouvoir exécutif au sein des divers gouvernements composant le système fédéral. Le fédéralisme exécutif, tel qu'il apparaît au Canada, pourrait être défini comme le fruit naturel d'une dynamique interactive entre des institutions fédérales et parlementaires. Le Canada fut la première fédération à faire l'expérience d'un mariage entre ces deux types d'institutions. Une analyse comparative des autres fédérations révèle que les fédérations parlementaires, comparativement à celles fondées sur la séparation des pouvoirs, présentent toutes les attributs du fédéralisme exécutif.

Les relations intergouvernementales propres aux deux grandes catégories de fédérations existantes—en l'occurrence parlementaires et non-parlementaires—possèdent une dynamique distincte à maints égards: 1) sur le plan de la consultation et de la négociation intergouvernementales 2) relativement à l'organisation intragouvernementale afférente à chaque gouvernement participant à ces relations intergouvernementales 3) en ce qui a trait au rôle respectif des partis politiques et des groupes de pression 4) à propos de l'ampleur de l'interaction gouvernementale 5) en ce qui regarde la nature intrinsèque des relations intergouvernementales et 6) touchant le niveau de la confrontation et de la coopération intergouvernementales.

Sont également analysées quatre autres variables influant directement sur la nature des relations intergouvernementales à savoir a) le poids numérique des provinces ou des états constituants b) les conséquences du partage des compétences entre les gouvernements nationaux d'une part et les gouvernements provinciaux ou fédérés d'autre part c) le degré de la représentation régionale au sein de la chambre haute de la législature centrale et d) la portée de l'inclusion, dans la constitution, d'une série de droits individuels et collectifs fondamentaux.

Cette étude comparative, qui souligne comment le "fédéralisme exécutif" a conditionné toutes les fédérations dotées d'institutions à la fois parlementaires et fédérales, suggère en conclusion deux scénarios possibles quant à l'évolution du fédéralisme canadien. D'abord, il appert que la réforme éventuelle du Sénat affecterait relativement peu la dynamique du fédéralisme exécutif. Ensuite, le maintien au Canada d'une structure institutionnelle mixte à caractères parlementaire et fédéral n'est pas sans conforter le phénomène du fédéralisme exécutif; partant, il conviendra dorénavant de composer avec cette réalité de manière à en tirer profit du mieux possible.

ABSTRACT

In the literature about Canadian federalism considerable critical attention has been given to "executive federalism" referring to the processes of intergovernmental negotiation which have been dominated by the executives of the different governments within the federal system. "Executive federalism" as it has developed in Canada can best be understood as a logical dynamic resulting from the marriage of federal and parliamentary institutions. Canada was the first federation to make the innovation of combining federal and parliamentary federations. A comparative examination of other federations indicates that subsequent parliamentary federations, by contrast with those incorporating the separation of powers, have all exhibited the characteristics of "executive federalism".

The differing dynamic of intergovernmental relations in the two broad categories of parliamentary and non-parliamentary federations is characterized by differences in a number of respects: the locus of intergovernmental consultation and negotiation; the intragovernmental organization within each government of intergovernmental relations; the role of political parties; the role of interest groups; the scope of intergovernmental interaction; the character of intergovernmental relations; the degree of intergovernmental confrontation or cooperation.

Four other variables which affect the character of intergovernmental relations are also examined: the impact of the number of constituent provinces or states; the effect of the particular form of the division of powers between the national and provincial or state governments; the extent and character of regional representation in the second chamber of the central legislature; the effect of the inclusion in the constitution of a set of fundamental individual and group rights.

The conclusion from this comparative survey, which indicates that "executive federalism" has been typical of all federations combining federal and parliamentary institutions, points to two implications regarding the future development of Canadian federalism. First, Senate reform is likely to have only a moderate impact on "executive federalism" and will not eliminate it. Second, as long as Canada continues to combine parliamentary and federal institutions, it will be difficult to eliminate "executive federalism" and therefore, the focus should be on harnessing "executive federalism" in order to make it more workable.

EXECUTIVE FEDERALISM: A COMPARATIVE ANALYSIS

I — INTRODUCTION: EXECUTIVE FEDERALISM AS THE LOGICAL DYNAMIC OF PARLIAMENTARY FEDERALISM

A feature of Canadian federalism has been the extent to which "executive federalism" has been elevated to predominance in the processes of decision-making. A considerable body of literature on this phenomenon has been produced in Canada in recent years. Except for the occasional comparison with intergovernmental relations in the United States, there has been little analysis of it in terms of comparisons with intergovernmental processes in other federations, however. It is the purpose of this study, therefore, to undertake a comparative analysis for the light that this might shed upon executive federalism in Canada. The study gives particular attention to the degree to which executive federalism can best be understood as a logical dynamic resulting from the marriage of federal and parliamentary institutions.

At the current time two of the sharpest current political controversies in Canada relate to the appropriate political processes for dealing with the Meech Lake Accord, which critics have disparaged as the undemocratic product of 11 males meeting behind closed doors, and to the use by Robert Bourassa of the "notwithstanding" clause in the Charter of Rights and Freedoms to enable the Quebec National Assembly to assert its language policy. Both controversies grow out of a fundamental characteristic of the Canadian political structure created in 1867: the attempt to create a hybrid combining the institutions of parliamentary responsible government and of federalism. At the time, this combination was a unique innovation. As the Macdonald Commission put it, the two pillars of the constitutional structure established in 1867 were parliamentary government and federalism, and to these in 1982 we added a third pillar in the form of the Charter of Rights and Freedoms. Thus, Canadians have attempted to combine a British inheritance with an American model, each based on fundamentally different premises, apparently contradictory to each other. The tradition of British parliamentary institutions is based on the notion that power should be tamed by concentrating it under the control of a majority of the electorate's representatives in an elected parliament where executive and legislative power is fused. The United States Constitution was based on very different premises: that power is to be tamed by dispersing it among multiple decision-making centres, no one of which should dominate. Power was to be dispersed territorially through a federal system and dispersed within each government by the separation of powers between executive, legislature and

judiciary, each locus of power being limited in the scope of its authority and subject to checks and balances by other bodies. Limited and dispersed power was seen as fundamental and hence the concepts of federalism and the separation of executive, legislative and judicial power were seen as inherently bound together. The Canadian innovation in 1867 was to try to combine these two apparently contradictory principles for controlling power by establishing a parliamentary federation. Power was divided between federal and provincial governments, but within each constituent government executive and legislative power were fused within parliamentary institutions.

Because this hybrid was arrived at pragmatically and with very little attempt to provide a theoretical rationale, Canadians have often not been fully aware of the implications of their innovative combination. Indeed, Frank Underhill suggested that in spite of the clearness of our northern climate, the pragmatic political hybrid combining contradictory British and American traditions had left Canadians living politically in a constant mental haze.¹ Whether that is a fair assessment or not, we should not underestimate the significance of the Canadian innovation of 1867. Not only did it represent a departure from the previous precedents of modern federalism in the United States (1787) and Switzerland (1848), where the separation of powers within each constituent government was regarded as an inherent feature of federalism, but the Canadian example of parliamentary federalism has also provided an example that a number of countries have subsequently attempted to follow. Notable examples have been Australia, the Federal Republic of Germany, and a host of successful and unsuccessful new federations established in former British colonies since World War II. An examination of these examples of federations which also adopted the Canadian innovation and of those which did not should provide useful insights into the inherent characteristics of combining parliamentary with federal institutions.

The theme of this study is that such a comparative analysis indicates that the logical dynamic of combining parliamentary and federal institutions is a form of intergovernmental relations which may be described as "executive federalism". A comparative examination of other federations indicates that executive federalism is a dynamic peculiar to, but common to, all parliamentary federations. This study suggests that Canadian critics of executive federalism who have tended to look upon this as a uniquely Canadian aberration, which should in the interests of more participatory democracy be replaced, have failed to recognize the extent to which executive federalism is an inherent characteristic arising from the hybrid Canadians created in 1867, and that to eliminate executive federalism would require abandoning the underlying combination of parliamentary and federal institutions.

II — THE CONCEPT OF "EXECUTIVE FEDERALISM"

The concept of "executive federalism", as developed by Canadian political scientists, refers to the processes of intergovernmental negotiation that are dominated by the executives of the different governments within the federal system. The importance of this aspect of intergovernmental relations in Canada was first identified by Donald Smiley in the late 1960s in a study for the Royal Commission on Bilingualism and Biculturalism and developed and elaborated in the successive editions of *Canada in Question* which appeared between 1972 and 1980, each devoting a full chapter to the subject.² Its most recent iteration is in *The Federal Condition in Canada* published in 1987.³

In the meantime, the concept has gained wide currency within the political science literature on Canadian federalism. Indeed, a catalogue of references to "executive federalism" would itself require a full paper, but one might just note extensive references to it by such writers as Richard Simeon, Hugh Thorburn, Alan Cairns, Timothy Woolstencroft, Garth Stevenson, Reginald Whitaker, Michael Jenkin, Milton Esman, Mark Sproule-Jones, Jonathan Lemco and Peter Regenstreif, Roger Gibbins and Stefan Dupré.⁴ Nor is the term limited to the academic realm. It has been frequently commented upon in such commission reports as those of the Pépin-Robarts Commission and of the Macdonald Commission.⁵ It has even been referred to specifically by Prime Ministers, as, for instance, when Mr. Trudeau, at a Liberal Party of Canada fund-raising dinner in Vancouver, 12 November 1981, disparagingly argued: "Executive federalism is characterized by the idea that the role of Parliament in governing the country should diminish while premiers should acquire more influence over national public policy. In effect, this theory means that Canada's national government would be a council of first ministers"⁶ Furthermore, the appropriateness of the processes of executive federalism and the degree to which these processes have bypassed deliberation in the legislatures and by the public on major constitutional issues, has been one of the major issues in the debate on the Meech Lake Accord. The concept of "executive federalism" which Donald Smiley identified nearly two decades ago clearly now permeates our discourse about Canadian federalism.

Donald Smiley himself has defined "executive federalism" as "the relations between elected and appointed officials of the two orders of government in federal-provincial interactions and among the executives of the provinces in interprovincial interactions."⁷ Among the influences leading to the predominance of executive federalism in Canada have been, first, the growing interdependence of governments, which has made it increasingly difficult for governments within the federation to fulfil their responsibilities in isolation from each other,⁸ and second, the dynamic created by the marriage of federal and parliamentary institutions and by the evolution of cabinet dominance within each government in Canada. The unavoidable interdependence of the respon-

sibilities assigned to the two constitutionally ordained orders of government within the federal system has meant that they cannot operate in watertight compartments. This requires a continuous process of federal-provincial consultation and negotiation. Equally important have been our parliamentary conventions that have made the cabinet the "key engine of the state" within each of the governments.⁹ Thus our parliamentary practices have led to the prominence of the executives in each government and federal-provincial interdependence has required their interaction.

The result has been the pattern of executive federalism in Canada that Donald Smiley and other Canadian political scientists have portrayed. This pattern has been marked in recent decades by (1) the proliferation of federal-provincial conferences, committees and liaison agencies, (2) the prominence of intergovernmental summitry as exemplified by the First Ministers' Conference (and the increasing frequency of First Ministers' lunches and dinners), and (3) the concentration within each government of responsibility for intergovernmental relations in the hands of coordinating agencies and specialists. The importance of this pattern of executive federalism has stemmed not only from the frequency with which first ministers, ministers and senior officials have interacted, but also from the critical role that this interaction has played: first, in the range of programs and services provided by Canadian governments to their citizens, second, in the discussion of economic policy including trade relations with the United States, and third, in the revision of the Constitution itself, most notably in the period leading up to the *Constitution Act, 1982*, and again in producing the Constitutional Accord of 1987.

There have been considerable differences of opinion among Canadian political scientists about the impact of executive federalism and the degree to which it has been responsible for intergovernmental *cooperation* or *conflict*. Over nearly two decades of writing on the subject, as the character of executive federalism itself has evolved, Donald Smiley's own assessment has not remained constant. Writing at the beginning of the 1970s, he pointed to the not inconsiderable achievements of executive federalism in Canada. These included improved intergovernmental communication, the mitigating of regional disparities, the establishing of an integrated tax structure, and the reducing of barriers to mobility of Canadian citizens through the development of hospital and medical insurance plans and the Canada Pension Plan. At the same time, he drew attention to influences at work that were threatening to attenuate the levels of federal-provincial integration.¹⁰ By the end of the decade, Donald Smiley was much more critical. For example, in an article entitled "An Outsider's Observations of Federal-Provincial Relations Among Consenting Adults", he argued that the institutionalization of executive federalism through the shifting within each government of federal-provincial relations from line departments to more politicized specialist intergovernmental agencies, where

the symbolic jurisdictional and electoral stakes were much higher and where intergovernmental specialists were more concerned with their respective jurisdictional turfs, had served to intensify intergovernmental conflict.¹¹ The Task Force on Canadian Unity appeared to concur with this view when it went so far as to comment in 1979: "The spectacle of Canadian governments wrangling constantly among themselves has done nothing to reduce cynicism about public affairs and it has presented Canadians with the image of a country deeply divided against itself."¹²

Some commentators, such as Timothy Woolstencroft and John Warhurst, have argued that Donald Smiley overstated the impact of the intergovernmental relations specialists and the damage they had done.¹³ In his latest writing, Donald Smiley himself has taken a somewhat more mellow view.¹⁴ He has noted that the intensity and bitterness of conflict in Canadian federal-provincial relations between the 1960s and 1984 was the product of two interrelated sources. One was the polarization between supporters of the contradictory nation-centred and province-centred views of the nature of the Canadian political community, a polarization fostered by Pierre Trudeau's personal efforts to sharpen the disjunction. The other was the increasing integration of executive power within each government, focused on maximizing the scope of its own jurisdiction. With the considerable change in the cast of participants in intergovernmental relations since 1984, Smiley has seen some prospect for less intense conflict. Indeed, with that in mind he has suggested that making the structures and process of "executive federalism" more factored, more routine and more incremental might help, as would the wider acceptance as a norm in intergovernmental relations of competition as well as cooperation, points which Stefan Dupré and Albert Breton have also made.¹⁵

Nevertheless, executive federalism continues to be subjected to powerful and vigorous attack, especially by those opposed to both the process and outcome of the Meech Lake Accord. Richard Simeon has described the arguments of the critics: the Meech Lake "process took place largely in secret, public mobilization was carefully avoided, and the decisions were made by 11 first ministers, all men, making a deal, under extraordinary pressure, behind closed doors. The result, in turn, would further institutionalize executive federalism, enshrining annual first ministers conferences on the economy and the constitution, and requiring collaboration in development of shared cost programs and appointments to the Senate and the Supreme Court".¹⁶ The most vociferous critics have complained that the processes of executive federalism have placed the interests of governments, as governments, at the centre of the discussion and frozen out public participation by excluding from representation at the table any interests that are not directly linked to governmental actors. Furthermore, in their view, the reluctance to upset the delicate deals which have been negotiated has rendered legislative debate pointless. On these "democratic grounds" they have

challenged the legitimacy of the processes of executive federalism that produced the Meech Lake Accord. Given the extensiveness of these criticisms, an examination of executive federalism in a wider comparative context may be helpful.

III — THE COMPARATIVE CONTEXT

Most of the literature on "executive federalism" has focused on this as a particularly Canadian phenomenon. But if the two major factors contributing to the predominance of executive federalism in Canada have been the growing interdependence in the responsibilities of the two orders of government and the increasing dominance of the parliamentary executives within each order of government, one might note that these factors are not unique to Canada. Indeed, although the combination of federal and parliamentary institutions was a Canadian innovation in 1867 since then a number of other federations have followed Canada's example in this respect: Australia in 1901, the Federal Republic of Germany in 1949, and some of the newer Commonwealth federations including at the current time India (1950) and Malaysia (1963). The federal constitutions of independent India and Malaysia were in fact largely modelled on the *British North America Act, 1867*, by way of the *Government of India Act, 1935*. Furthermore, an examination of these parliamentary federations indicates that all of them have displayed the characteristics of executive federalism in their intergovernmental relations.

The few comparative studies that have already been made have concentrated upon the contrasting patterns of intergovernmental relations in Canada and the United States. At the root of these diverging patterns have lain the differences between the presidential-congressional system and the Westminster model for organizing power within the national governments and within the states and provinces. Thus, where intergovernmental conferences and committees and direct federal-provincial confrontation have characterized intergovernmental relations in Canada, in the United States it has been Congress and its committees and sub-committees that have been the central arena where matters affecting intergovernmental relations have been determined, and this appears to have inhibited direct confrontation of federal and state governments.¹⁷

If that contrast helps in a preliminary way to put executive federalism in Canada in perspective, there may be some utility in casting the comparative net wider. The growing interdependence of governments within federations has been common to virtually all federations in an era of increased governmental intervention within societies. Furthermore, with greater governmental activism in most societies has gone an increased importance in the role of the executive in most contemporary political systems. But there have been important variations among federations. Here we may identify as one of the most important

distinctions the contrast between parliamentary and non-parliamentary federations.¹⁸

Among the examples of parliamentary federations are Canada, Australia, the Federal Republic of Germany, India, Malaysia, Pakistan until 1958, and Nigeria until 1966. In these federations both the central and provincial or state governments have had prime ministers and ministers who were chosen from among the members of their own legislature and were continuously and collectively responsible to it. In practice this fusion of the executive with the legislature has meant that in these political systems cabinets having the support of a stable majority in the legislature, have become the key energizing element within that government, a position reinforced by the tight party discipline induced by the alternative prospect of dissolution.

The category of non-parliamentary federal systems is represented by those federations in which, within each order of government, the executive and legislature are separated. Examples are the presidential-congressional institutions in the United States and the collegial executive in Switzerland. In the central and cantonal governments in Switzerland, the executive is a council of five to nine members (seven in the Federal Council) usually elected by the legislature for a fixed term of office, in most cases four years, and with the chairmanship rotating annually. This arrangement was seen as an improvement on the American model because it avoided the concentration of executive authority in a single person and because a council enabled the representation of different geographical groups and parties within the executive council. But the fundamental point is that in both the United States and Switzerland, the executives within each level of government, whether individual (the President or Governors in the U.S.) or collegial (the Federal or Cantonal Councils in Switzerland), are elected for a fixed term, and the "separation of powers" makes the legislatures, legislative committees, executives, bureaucracies, judiciaries, and in the Swiss case the electorate through the invocation of the legislative referendum, into multiple distinct centres of political power. Furthermore, "the separation of powers" has provided limits upon the degree to which the executive within each government can dominate policy-making. This separation of powers within each constituent government contrasts with the fusion of legislative and executive powers in each constituent government within the parliamentary federations.

What have been the implications of these two different forms of executive organization within federations and can we identify patterns of intergovernmental relations common to each of the two broad categories? To illustrate the differing dynamic of intergovernmental relations in the two types of federation, one may examine the following aspects: (1) the locus of intergovernmental consultation and negotiation; (2) the intragovernmental organization of intergovernmental relations; (3) the role of political parties; (4) the role of interest

groups; (5) the scope of intergovernmental interaction; (6) the character of intergovernmental financial relations; (7) the degree of intergovernmental confrontation or cooperation; (8) the impact of the number of constituent provinces or states; (9) the effect of the particular form of the distribution of powers; (10) the extent and character of regional representation in the second chamber of the central legislature; and (11) the effect of the inclusion in the constitution of a set of fundamental individual and group rights.

IV — THE LOCUS OF INTERGOVERNMENTAL CONSULTATION AND NEGOTIATION

In *all* the parliamentary federations referred to above, the major instrument for the resolution of intergovernmental relations has been consultation and negotiation between the executives (and their representatives) of the different governments within these federations. Indeed, John Warhurst has applied the term "co-operative-executive federalism" to both Canada and Australia, and Nevil Johnson, in describing the primary characteristic of West German federalism, has expressly referred to "executive federalism".¹⁹ In my own earlier study of new federations in the Commonwealth, I included an analysis of the variety of formal institutions for intergovernmental consultation and negotiation established in the newer Commonwealth federations such as India, Malaysia, Pakistan up to 1958 and Nigeria up to 1966 that have also exemplified the characteristics of executive federalism.²⁰ It is clear that in all these parliamentary federations, the locus for intergovernmental consultation and negotiation has been a variety of intergovernmental conferences, committees and summitry, and these interactions have had a quasi-diplomatic character resembling those between sovereign powers.

In Australia these relations have been expressed (1) through a variety of formal and informal councils and conferences held annually or more frequently, (2) through numerous formal and informal agreements, policies and programs, often financed jointly by participating governments, resulting from these meetings, and (3) through extensive day-to-day contacts between officers and ministers in different governments. Surmounting all these relationships has been the Premiers' Conference (the Australian equivalent of the Canadian First Ministers' Conference). Interestingly, the Australians moved to institutionalize and constitutionalize these arrangements earlier than we did in Canada. As long ago as 1927 the Loans Council, composed of Commonwealth and state representatives and with powers to bind governments at both levels, was established by a formal constitutional amendment.²¹

In Germany, the form of the distribution of jurisdiction and the existence of the Bundesrat have provided powerful incentives for interaction between the executives of the federation and the Länder. This interaction was further

accentuated by the identification of "common tasks" in the constitutional reform of 1969. Intergovernmental relations have been characterized by the existence of several hundred Federation-Länder committees composed of specialists from Federal and Länder departments, by the "missions" of the Länder in Bonn, by councils for economic planning (e.g. the *Finanzplanungsrat* and the *Konjunkturrat*), and by meetings from time to time of the chancellor and the ministers-president of the Länder.²²

The newer parliamentary federations within the Commonwealth have also established a variety of institutions to facilitate consultation and cooperation between governments. Some of these have actually been specified in the federal constitutions, although more often they have been established simply by agreement as the need arose. To catalogue them all would require more space than is appropriate here, but one might note the way in which such bodies as the Planning Commission, the Finance Commission, the National Development Council, the National Integration Council, the Central Council of Health, the River Boards, the Inter-State Transport Commission, and the Drugs Consultative Committee have operated as federal-state bodies in India, and the National Finance Council, the Land Council, the Rural and Industrial Development Authority and the Tariff Advisory Board have operated in Malaysia.²³

By contrast to the predominance of executive federalism in these parliamentary federations, intergovernmental relations in the United States and Switzerland have been much more fragmented and executive coordination of these relationships has been more limited. In both federations intergovernmental interaction has been expressed through a variety of vertical and diagonal relationships between the many distinct centres of political decision-making at each level within each federation. Administrative agencies at one level of government have been freer to negotiate with the agencies or legislators at another level of government in order to work out specific functional schemes or projects. Furthermore, the national legislatures, where party discipline has been relatively weak, have played a more prominent role in resolving intergovernmental issues through the establishment of programs that are supported by grants-in-aid or subventions and that are administered by state or cantonal officials. The resulting administrative and political interlacing and interpenetration of governmental activities led Morton Grodzins to use the image of "marble cake" federalism in describing the United States, a description which is equally applicable to Switzerland, and which contrasts with the more characteristically "layer cake" character of federalism in the parliamentary federations.²⁴

V — THE INTRAGOVERNMENTAL ORGANIZATION OF INTERGOVERNMENTAL RELATIONS

Within parliamentary federations, as a group, an apparently common pattern has been the tendency for matters relating to intergovernmental relations to be placed within each participating government under the coordination or control of staff agencies and specialists exclusively concerned with intergovernmental affairs.

John Warhurst of the University of New England in Australia has recently examined the parallel trends in this respect in Australia and Canada.²⁵ He has tracked the growth in Canada over the past 25 years and in Australia over the same period of specialized agencies within their governments for managing intergovernmental relations. He has also analyzed the similar impact that intergovernmental relations specialists have had in both federations as an intergovernmental arm for first ministers, as agents for information collection and distribution, as agents intervening in the bilateral negotiations of other ministries, and as coordinators of diverse views within their own governments.

The German Länder have also developed bodies of intergovernmental specialists to staff their ministries for intergovernmental cooperation and to staff their "missions" in Bonn. Normally within each state there has been a specific minister heading the state ministry for cooperation with the central government. That individual also heads the state's mission in Bonn.²⁶ The federal government has also at certain periods included a Minister for the Bundesrat and the Affairs of the Länder, whose main duty was to look after relations with the second chamber and to encourage cooperation between the Federal government and the Länder.²⁷

Among the newer parliamentary federations the development of this pattern has been reinforced in India and Malaysia by the constitutional provision for a common higher civil service serving both levels of government, an arrangement derived from pre-independence days.²⁸ The existence of such a service whose members are regularly circulated between central and state governments has created a body of elite public servants who have the experience to play a key role in intergovernmental relations.

In the non-parliamentary federations, the diffusion of political power within each level of government has limited the ability of their executives to play a dominant coordinative role over the whole range of intergovernmental interactions. Participation in intergovernmental relations has been fragmented among a variety of functional administrative agencies and legislators within each level of government, each negotiating or lobbying in a relatively uncoordinated way administrators and legislators in other governments. The complex character of these interactions in the United States has been described by a number of American authors.²⁹ Furthermore, Samuel Beer has drawn attention to the influence of the intergovernmental lobby upon Congress.³⁰ In Switzerland too

the channels of communication between the cantons and the federal government take a variety of forms, facilitated not the least by the constitutional provision permitting members of cantonal legislatures and executive councils to sit concurrently in either house of the federal legislature. Normally something like a fifth of the members of each house in the Swiss Federal Parliament represent such an accumulation of roles.³¹

VI — THE ROLE OF POLITICAL PARTIES

In parliamentary federations tight party discipline has been encouraged by the fact that cabinet stability is dependent upon it. This has reinforced the cohesiveness and consolidation of cabinet control over administrative and political relations with other governments and has provided less room for individual administrators or legislators to lobby or seek support for their projects in other levels of government except with cabinet approval. In the case of Canada and Australia, it has also led to the federalization of the political parties themselves with the federal and provincial or state wings of the same party often taking distinctively different positions. Political parties have, therefore, had a limited capacity for effecting the resolution of intergovernmental conflicts through intraparty relations.³² Thus, it has been through inter-executive negotiations rather than intraparty deliberations that intergovernmental differences have most often been resolved.

Here the Federal Republic of Germany provides a distinctive variant among parliamentary federations owing to the impact that its unique form of intrastate federalism, the Bundesrat, has had upon the interaction of parties at the federal and Land levels.³³ The fact that the Bundesrat consists of the Ministers-President and other delegates of the Land governments has meant that every Land election can potentially affect the party balance within the national second chamber and thus affect the national government's ability to have its legislation adopted by that second chamber. Consequently, national parties have taken a keen interest in Land elections. As a result, this unique federal second chamber has not only sensitized national governments to state interests, but has integrated closely the national and Land parties in the resolution of issues. The net effect has been to reinforce the role of political parties within the processes of executive federalism.

In the United States and Switzerland, the fixed executive has produced relatively undisciplined political parties, since the life of the executive is not dependent upon the continued support of a majority in the legislature. This has had a dual effect on the character of intergovernmental relations. First, the political parties have been in a weaker position to exert monolithic control over the operation of various administrative offices and agencies. Second, the administrators have had to lobby, that is play a political role themselves, in

seeking support not only within their own government, but within the legislatures of other governments, for the joint and shared-cost programs that they espouse.

VII — THE ROLE OF INTEREST GROUPS

The predominance of executive federalism in the parliamentary federations has constrained and affected the scope for interest group activity in relation to matters under intergovernmental negotiation. There is a considerable literature on this aspect of Canadian federalism.³⁴ A similar impact appears to have occurred in Australia. In Germany too the predominance of the executive has, as one commentator has noted, led interest groups to concentrate their main efforts upon influencing the executive.³⁵ But in Germany there is a major difference from the pattern in Canada and Australia. Because of the significantly different form that the constitutional distribution of authority between the Federal Government and the Länder takes, whereby for large areas of jurisdiction legislative authority is constitutionally assigned to the Federal Government and administrative responsibility for the same matters is constitutionally assigned to the Länder, there appears to have been a tendency for the interest groups to focus their attention upon the federal executive which drafts the federal legislation. This contrast should not be overdrawn, however, for the interest groups appear also to have been conscious of the role that the Länder executives play in the negotiations preceding the passage of legislation through both houses of the federal Parliament. The tendency for involvement of interest groups in policy-making in the Federal Republic of Germany has also been strongly reinforced by the corporatist emphasis within their political culture.

By contrast with the parliamentary federations, the "multiple crack" hypothesis, formulated by Morton Grodzins from his analysis of the operation of American federalism, would appear to have much greater applicability to the non-parliamentary federations.³⁶ In both the United States and Switzerland, federalism combined with the lack of executive dominance appears to have increased rather than reduced the opportunities for the involvement of interest groups at many points in policy-making.³⁷ In Switzerland, this has been further reinforced by the tradition of widespread governmental consultation prior to any policy action.

VIII — THE SCOPE OF INTERGOVERNMENTAL INTERACTION

The frequency of intergovernmental interactions has become extensive in both parliamentary and non-parliamentary federations. It is difficult, therefore, to argue that these interactions are more frequent in one form of federation than in another. No doubt this reflects the increased interdependence of governments

within all federations as governments have become more active within society. The picture of "classical federalism", in which each level of government performs the responsibilities assigned to it by the constitution in relative isolation from the other, if it ever was a reality, has long since disappeared. But the character and scope of the agreements and programs produced by this intergovernmental interaction has differed in the two types of federations.

By and large there has been a tendency in the parliamentary federations for individual projects for functional cooperation to be subsumed under more general arrangements or schemes for coordination. Furthermore, in the Federal Republic of Germany this has frequently taken the pattern of formal intergovernmental agreements, treaties and conventions. It has been estimated that in the first dozen years after the adoption of the Bonn Constitution, about 340 formal agreements were entered into between the Federal Government and the Länder and between the Länder themselves.³⁸ Indeed so extensive has intergovernmentalism become in the Federal Republic of Germany that an extensive literature has developed upon the problems of decision-making in the formulation of joint programs and particularly upon the pathological effects of the "joint-decision trap".³⁹

In the non-parliamentary federations, on the other hand, intergovernmental relations appear generally to have been factored into a much greater variety of distinct projects and programs often taking little account of other projects and programs. For instance, in the United States, governmental cooperative arrangements have tended primarily to be along distinct programmatic lines involving the interaction of congressional subcommittees, federal agencies, state bureaucrats and legislators, city officials and interest groups in a complex web of relationships for each specific program.⁴⁰ The pattern of intergovernmental relations in Switzerland appears also to be largely incremental in character and based on a complex variety of participants in the establishment of each specific program.⁴¹

IX — THE CHARACTER OF INTERGOVERNMENTAL FINANCIAL RELATIONS

The differences in the character of intergovernmental agreements and programs produced in the two types of federations are reflected also in the character of their internal financial relations. Two general features appear to mark off the parliamentary federations from the non-parliamentary ones. The first is the extent to which a substantial portion of federal transfers to the provinces, states or Länder are unconditional in nature. This contrasts particularly with the United States where, even when general and special revenue sharing were at their peak, at least 80 per cent of all federal transfers were conditional in form, and Switzerland, where a similar proportion would be in this category.⁴² The

second is the degree of emphasis put upon equalization arrangements in Canada, Australia and the Federal Republic of Germany, the last of these involving a substantial element of transfers directly between the *Länder*. By contrast in the United States there is no general system of equalization payments. What equalization is achieved is simply the cumulative effect of the variable matching grant formulae embodied in different programs.⁴³ In Switzerland a specific system of financial equalization has been developed, but this represents a comparatively small element in the total system of financial transfers.⁴⁴

These differences may be accounted for by two factors. First, there is the coordinated way in which governments in federations where executive federalism has predominated have pressed their cases in the negotiations over financial arrangements. The second relates to the notion that public accountability for the expenditure of unconditional transfers can in parliamentary federations be provided by the responsibility of cabinets to their own legislatures. By contrast, in the United States the emphasis on the principle of fiscal responsibility and accountability, i.e., that the governmental authority which raises the revenue should specify how it is to be spent, has led to Congress's continued insistence upon retaining control over how the transfers are spent by attaching specific conditions. This contrasts with the federations characterized by executive federalism, where the emphasis on provincial, state or land financial autonomy, and the assumption that expenditure accountability is achieved through the responsibility of their cabinets to their own legislatures and through them to their electorates, has resulted in a substantial portion of transfers being unconditional in form.

One further contrast is in the areas in which issues relating to fiscal arrangements have been fought out. In the United States, for example, the struggle over the allocation of funds for various grant-in-aid programs and for specific projects has been in Washington, i.e., within Congress. In the parliamentary federations, the battles have been fought out, not in Parliament, but within the intergovernmental mechanisms of executive federalism where the provincial, state and land governments have been major actors.

X — THE DEGREE OF INTERGOVERNMENTAL CONFRONTATION OR COOPERATION

Critics of executive federalism in Canada have emphasized the degree to which these processes have exacerbated intergovernmental competition and confrontation.⁴⁵ On the other hand, one author, John Warhurst, examining both the Canadian and Australian experience, argues that this conventional wisdom about executive federalism exaggerates its negative effects and underestimates the positive contribution that intergovernmental specialists have made to the efficient management of these federations.⁴⁶ Be that as it may, a comparison of

these two federations with the non-parliamentary federations of the United States and Switzerland indicates that in general executive federalism in the parliamentary federations has been marked by a considerably higher degree of intergovernmental conflict and confrontation. Experience in the newer parliamentary federations in the Commonwealth, after the initial party solidarity of the independence movements had fragmented, points in the same direction.

The Federal Republic of Germany stands out, however, as a significant exception to this apparent pattern. How is this to be accounted for? One explanation may be in the greater socio-economic homogeneity of West German society. But there are also clear institutional factors. The administrative distribution of powers between Federal and Land governments, whereby something like 60 per cent of federal legislation falls into a category where administrative responsibility is constitutionally assigned to the Länder, provides strong pressure on both levels of government to be cooperative.⁴⁷ Furthermore, the particular form of central second chamber, the Bundesrat, composed of state delegations has created a dynamic encouraging federal and state executive cooperation and also encouraging an integration of the activities of the Federal and Land wings of the political parties because every Land election is in effect a mini-election for the national upper house.

This example of the Federal Republic of Germany raises a question about the possible impact of other variables than the existence of parliamentary institutions that might affect the character of intergovernmental relations in federations. Four variables which should not be overlooked are the number of constituent provinces or states in the federation, the form of the distribution of powers, the extent and character of regional representation in the central institutions, and the inclusion or not in the constitution of a set of fundamental individual or group rights.

XI — THE NUMBER AND RELATIVE SIZE OF CONSTITUENT PROVINCES OR STATES

One would expect the number and relative size of the constituent provinces or states to have some impact upon intergovernmental relations. A few large constituent units are likely to have more clout both in relation to the federal government and to each other than individual states in a federation composed of many units. But the impact of this factor as an independent variable is hard to measure. Nonetheless, it is perhaps not insignificant that Canada is composed of ten provinces, the Federal Republic of Germany of 11 Länder and Australia of six states, while the United States consists of 50 states and Switzerland of 26 cantons. Thus, the smaller number of units existing in each of the parliamentary federations would appear to have reinforced the strength of executive federalism in that group. In the Canadian case, this effect has been further

reinforced by the distinctive community-centred Quebec society which has looked to the Quebec government to represent through intergovernmental negotiations its special interests. The experience of India, with 21 states, or of Malaysia with 13 indicates the strength of executive federalism even in parliamentary federations with more states, and this suggests that a small number of states or their distinctiveness does not alone explain "executive federalism".

XII — THE FORM OF THE DISTRIBUTION OF POWERS

The form of the distribution of powers may also be a significant factor affecting intergovernmental relations. First, as we have already noted in section VII there is the difference between "legislative federalism" and "administrative federalism". The Federal Republic of Germany, a parliamentary federation, has a predominantly "administrative" distribution of authority between governments that results in about 60 per cent of federal legislation being administered by the Länder. Switzerland, a non-parliamentary federation, also has to a considerable degree a similarly "administrative" distribution of authority. In both federations this has produced an incentive for more intense intergovernmental collaboration and in the West German case has further accentuated the characteristics of executive federalism. The emphasis in the United States and Australia, like Canada, is more on a "legislative" distribution of powers whereby both legislative and executive authority for a particular matter are assigned to the same government. An exception in the Canadian case, however, is the "administrative" allocation to the provinces of responsibilities in relation to criminal law. Comparatively speaking the pressure for joint intergovernmental decision-making appears to have been accentuated in those federations where "administrative federalism" has been prevalent.

A second difference in the form of the distribution of powers relates to the restricted extent of exclusive federal authority and the extensive scope of concurrent jurisdiction set out in the constitutions of both the United States and Australia. This contrasts with the extensive constitutional allocations of exclusive federal and specific exclusive provincial powers and the very restricted scope of constitutionally concurrent jurisdiction in Canada. The very short list of concurrent jurisdiction in sections 94A and 95 of the Canadian Constitution contrasts with those of all the other federations, as does the degree to which the Canadian Constitution has attempted to assign exclusive jurisdiction on nearly all matters to one order of government or the other. This restricted constitutional provision for concurrent jurisdiction by comparison with nearly all other federations has at the very least done nothing to mitigate the competitive and conflictual aspect of executive federalism in Canada.

XIII — THE RELATION OF EXECUTIVE FEDERALISM TO INTRASTATE FEDERALISM

It has often been argued in Canada that a factor contributing to the strength of executive federalism has been the weakness of our institutions of "intrastate federalism", i.e., institutions ensuring the representation of distinctly regional or provincial views at the national level.⁴⁸ Indeed, the advocates of an elected senate, including Pierre Trudeau and the Macdonald Commission, have argued that such a body might provide an alternative to the premiers for expressing a regional voice in national affairs. Certainly, of all the contemporary federations, Canada does the least institutionally to provide an adequate regional expression of views in national affairs through the structure of its central institutions. But Australian experience suggests that even the existence of a "Triple E Senate", a title for which the Australian Senate would amply qualify, has done little there to blunt the dynamic of executive federalism which flows logically from the combination of parliamentary and federal institutions. There are good reasons for improving the representation of regional views in Canada's central institutions, but as a way of moderating executive federalism, if the Australian example is any guide, such reforms are likely to have very limited efficacy.⁴⁹

Ironically, in the light of Canadian concerns about the potential divisiveness if Senate reform were to be in the direction of a "house of the provinces", it is noteworthy that in the Federal Republic of Germany, where there is such a second chamber in the form of the Bundesrat, executive federalism has been harnessed into a more cooperative mode. This institution, combined with the "functional" form of the distribution of powers, has contributed to extensive consultation between governments and to an integration of the Federal and Land political parties in a way which has produced an emphasis on intergovernmental cooperation rather than confrontation.

XIV — THE IMPACT OF CONSTITUTIONAL FUNDAMENTAL RIGHTS

The Macdonald Commission, in its analysis of the Canadian constitutional system identified federalism and parliamentary government as the two "pillars of the constitutional system" created in 1867, but described the Canadian Charter of Rights and Freedoms added in 1982 as the third.⁵⁰ There has been much discussion in recent years about the impact of this third pillar upon the operation of the first two. Much of this discussion has focused upon the example of the United States which, since the early adoption of the first ten constitutional amendments, has for nearly two centuries lived with the impact of a constitutionally defined set of rights constraining both orders of government and with the concomitant prominence of litigation and the judiciary in defining those constraints. A more appropriate comparison, however, in terms of the likely

impact upon executive federalism may be with those other parliamentary federations that have constitutionally specified fundamental rights. The Federal Republic of Germany, India and Malaysia are just such examples.⁵¹ The Australian constitution, on the other hand, does not contain a list of fundamental rights.

The essential point we can note is that in those parliamentary federations with constitutionally stipulated individual and group rights, executive federalism has remained a vigorous phenomenon. The existence of these constitutional rights has indeed led to a prominent role for the judiciary. But while the arbitral function of the constitutional or supreme courts in defining the respective jurisdictions of governments has been of importance, by far the largest portion of the work of the courts in each of these federations has come to be in the interpretation of fundamental rights and in the exercise of their appellate jurisdiction. Nonetheless, the resulting prominence of the courts has not undercut the need in these federations for intergovernmental interaction nor the pressures to resolve intergovernmental conflicts by negotiation wherever possible rather than by resort to judicial review.

XV — CONCLUSIONS

This comparative survey of federations suggests that executive federalism has been a logical dynamic resulting from the combination of federal and parliamentary institutions wherever that hybrid has been adopted. It also suggests that, as long as this combination remains among "the pillars of our constitutional system", as the Macdonald Commission has put it,⁵² executive federalism will characterize Canadian intergovernmental relations.

This conclusion points to two implications. First, Senate reform may moderate its operation and impact but will not eliminate executive federalism. The Australian example is particularly instructive here.

Second, many of the criticisms of executive federalism and of the Meech Lake process and the contemporary pressures for participatory politics pose a more fundamental question: is the hybrid combination of parliamentary and federal institutions which lies at the root of executive federalism becoming so dysfunctional as to require abandonment or radical modification? But this in turn raises a further basic question: Would the abandonment or substantial modification of parliamentary institutions implicit in the demand for more participatory democracy remove the one most significant institutional characteristic that has justified Canada's distinctiveness from the United States? One might venture to suggest that, despite the concerns expressed about "executive federalism", Canadians at large are not ready to pursue these criticisms of our political institutions to such fundamental logical foundations. If then the marriage of parliamentary and federal institutions is to continue, efforts to eliminate

"executive federalism" will simply run counter to the logical dynamic of parliamentary federalism. If this is recognized, the task in Canada, as long as we have both parliamentary and federal institutions, should be not to eliminate but rather to harness "executive federalism" in order to make it more workable.⁵³

Notes

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2. D.V. Smiley, *Constitutional Adaptation and Canadian Federalism Since 1945*, Documents of the Royal Commission on Bilingualism and Biculturalism 4 (Ottawa: Queen's Printer for Canada, 1970), 3; D.V. Smiley, *Canada in Question: Federalism in the Seventies* (Toronto: McGraw-Hill Ryerson Limited, 1972), ch. 3; D.V. Smiley, *Canada in Question: Federalism in the Seventies* 2nd ed. (Toronto: McGraw-Hill Ryerson Limited, 1976), ch. 3; D.V. Smiley, *Canada in Question: Federalism in the Eighties* (Toronto: McGraw-Hill Ryerson Limited, 1980), ch. 4. See also Donald Smiley, "An Outsider's Observations of Federal-Provincial Relations Among Consenting Adults", in Richard Simeon, (ed.), *Confrontation and Collaboration: Intergovernmental Relations in Canada Today* (Toronto: The Institute of Public Administration of Canada, 1979), 105-113, and D.V. Smiley, "Public Sector Politics, Modernization and Federalism: The Canadian and American Experiences", *Publius: The Journal of Federalism* 14 (Winter, 1984), 39-59.
3. D.V. Smiley, *The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson Limited, 1987), ch. 4.
4. Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (Toronto: University of Toronto Press, 1972), esp. ch. 5; Alan Cairns, "The Other Crisis of Federalism", *Canadian Public Administration* 22 (1979), 175-195; Timothy Woolstencroft, *Organizing Intergovernmental Relations*, (Kingston: Institute of Intergovernmental Relations, Queen's University, 1982); Garth Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, revised ed. (Toronto: Gage Publishing Limited, 1982), 190-196, and 3rd ed. (1989), 223-229; Reginald Whitaker, *Federalism and Democratic Theory* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1983); Michael Jenkin, *The Challenge of Diversity: Industrial Policy in the Canadian Federation* (Ottawa: Supply and Services, 1983); Hugh Thorburn, *Planning and the Economy: Building Federal-Provincial Consensus* (Toronto: Canadian Institute for Economic Policy, 1984); Milton J. Esman, "Feder-

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5. Task Force on Canadian Unity, *A Future Together: Observations and Recommendations* (Ottawa: Supply and Services, 1979), esp. 94-99; Task Force on Canadian Unity, *Coming to Terms: The Words of the Debate* (Ottawa: Supply and Services, 1979), esp. 58-59, 64; *Report of the Royal Commission on the Economic Union and Development Prospects for Canada* (Ottawa: Supply and Services, 1985), e.g., vol. 3, 260-264.
 6. Quoted in Gibbins, *Conflict and Unity*, 252.
 7. Smiley, *Canada in Question*, (3rd ed.) (1980), 91.
 8. Smiley, *Canada in Question* (1972), 55-58.
 9. Thomas A. Hockin, *Government of Canada* (Toronto: McGraw-Hill Ryerson Limited, 1976), 7.
 10. Smiley, *Canada in Question* (1972), 66-72.
 11. Smiley, "An Outsider's Observations of Federal-Provincial Relations Among Consenting Adults" in Richard Simeon (ed.), *Confrontation and Collaboration* (1979), 105-113; see also Smiley, *Canada in Question*, 3rd ed. (1980), 111-116.
 12. Task Force on Canadian Unity, *A Future Together*, 95.
 13. Woolstencroft, *Organizing Intergovernmental Relations*, 79-80; John Warhurst, "Managing Intergovernmental Relations" in Bakvis and Chandler (eds.), *Federalism and the Role of the State*, 268.
 14. Smiley, *The Federal Condition in Canada* (1987), 97-99.
 15. Smiley, *The Federal Condition in Canada*, 97-99; Dupré, "Reflections on the Workability of Federalism"; Albert Breton, "Supplementary Statement" in *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*, (Ottawa: Supply and Services, 1985), vol. 3, 486-526.
 16. Richard Simeon, "National Reconciliation: The Mulroney Government and Federalism", in Andrew B. Gollner and Daniel Salée (eds.), *Canada Under Mulroney: An end of term report* (Montreal: Véhicule Press, 1988), 41. See also in *Canadian Public Policy* XIV Supplement (September

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17. For analyses of this contrast see in *Publius: The Journal of Federalism* 14 (Winter 1984) Esman, "Federalism and Modernization", 21-38 esp. 28-31, Smiley, "Public Sector Politics", 39-59 esp. 52-56, Lemco and Regenstrief, "The Fusion of Powers". See also Ronald L. Watts, "Divergence and Convergence: Canadian and U.S. Federalism" in Harry N. Scheiber (ed.), *Perspectives on Federalism: Papers from the First Berkeley Seminar in Federalism* (Berkeley, California: Institute of Governmental Studies, University of California, Berkeley, 1987), 179-213 esp. 187-191.
 18. For an earlier comparative analysis of the two types of federations see Ronald L. Watts, *Administration in Federal Systems* (London: Hutchinson Educational, 1970), 15-20.
 19. Warhurst, "Managing Intergovernmental Relations", 259-276 at 259; Nevil Johnson, *State and Government in the Federal Republic of Germany: The Executive at Work*, 2nd ed. (Oxford: Pergamon Press, 1983), 168.
 20. R.L. Watts, *New Federations: Experiments in the Commonwealth* (Oxford: Clarendon Press, 1966), 219-224 and 241-247.
 21. See R.S. Gilbert, *The Australian Loan Council in Federal Fiscal Adjustments 1890-1965* (Canberra: Australian National University Press, 1973), and Campbell Sharman, *The Premiers' Conference* (Canberra: Australian National University Press, 1973).
 22. Johnson, *State and Government in the Federal Republic of Germany* (2nd ed.), 136-141; Klaus von Beyme, *The Political System of the Republic of Germany* (Aldershot: Gower Publishing Company Limited, 1983), 167-169.
 23. Amal Ray, *Federal Politics and Government* (Delhi: The Macmillan Company of India Limited, 1979), 30-39; Watts, *New Federations*, 219-224; R. L. Watts, *Multicultural Societies and Federalism* (Ottawa: Information Canada, 1970), 51-60.
 24. Morton Grodzins, "The Federal System" in A. Wildavsky (ed.), *American Federalism in Perspective* (Boston: Little, Brown and Company, 1967), 257; Jurg Steiner, *Amicable Agreement versus Majority Rule: Conflict Resolution in Switzerland* (Chapel Hill: University of North Carolina Press, 1974), 126-127; Max Frenkel, "Swiss Federalism in the Twentieth Century", in J. Murray Luck (ed.), *Modern Switzerland* (Palo Alto, Calif:

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25. John Warhurst, "Managing Intergovernmental Relations", 259-276.
 26. Von Beyme, *The Political System of the Federal Republic of Germany*, 168-169.
 27. Johnson, *State and Government in the Federal Republic of Germany* (2nd ed.), 136.
 28. Watts, *New Federations*, 230-233; V. Subramanian, *Some Administrative Aspects of Federalism in India, Nigeria and Malaysia* (Canberra: Australian National University Press, 1981); R.K. Dar, *The All India Services in India with Special Reference to their Role in Promoting Intergovernment Co-operation* (Canberra: Australian National University Press, 1979).
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 30. Samuel Beer, "The Modernization of American Federalism", *Publius: The Journal of Federalism*, 3 (1973) 2, 49-96; Samuel Beer, "Federalism, Nationalism and Democracy in America", *American Political Science Review*, 72 (1978), 9-21.
 31. Steiner, *Amicable Agreement versus Majority Rule*, 126-127; Frenkel, "Swiss Federalism in the Twentieth Century", 333-334.
 32. Smiley, *Canada in Question* (3rd ed.), 146-148; Smiley, *The Federal Condition in Canada*, 101-124; Stevenson, *Unfulfilled Union* (3rd ed.), 216-219.
 33. William M. Chandler, "Federalism and Political Parties" in Bakvis and Chandler, *Federalism and the Role of the State*, (Toronto: University of Toronto Press, 1987), 149-170, esp. 155-156. See also section 10 below.
 34. See Donald Smiley's survey in *Canada in Question* (3rd ed.), 148-153.
 35. Von Beyme, *The Political System of the Federal Republic of Germany*, 89.
 36. Morton Grodzins, *The American System: A New View of Government in the United States* (Chicago: Rand, McNally and Company, 1966), 274-276.
 37. Steiner, *Amicable Agreement versus Majority Rule*, 110-127, and G.A. Coddling, *The Federal Government of Switzerland* (Boston: Houghton, Mifflin Company, 1961), 130-132.

38. Johnson, *State and Government in the Federal Republic of Germany* (2nd ed.), 138.
39. See Fritz W. Scharpf, Bernd Reissert and Fritz Schnabel, "Policy Effectiveness and Conflict Avoidance in Intergovernmental Policy Formation" in Kenneth Hanf (ed.), *Interorganizational Policy Making* (London: Sage, 1978); Bernd Reissert, "Responsibility Sharing and Joint Tasks in West German Federalism", in P. Bernd Spahn (ed.), *Principles of Federal Policy Co-ordination in the Federal Republic of Germany* (Canberra: Centre for Research on Federal Financial Relations, Australian National University, 1978); Hans-Jurgen Franz, "Interorganizational Arrangements and Coordination at the Policy Level", in F.X. Kaufmann, G. Majone and V. Ostrom (eds.) *Guidance, Control and Evaluation in the Public Sector* (Berlin and New York: Walter de Gruyter, 1986); and Fritz Scharpf, "The Joint-Decision Trap: Lessons from German Federalism and European Integration", *Public Administration* 66 (1988), 239-278.
40. Watts, "Divergence and Convergence: Canadian and U.S. Federalism", 188.
41. Steiner, *Amicable Agreement versus Majority Rule*, 128-225.
42. J.S.H. Hunter, *Federalism and Fiscal Balance: A Comparative Study* (Canberra: Australian National University Press, 1977), 86-91; R.J. May, *Federalism and Fiscal Adjustment* (Oxford: Oxford University Press, 1969), 104-106; Watts, "Divergence and Convergence", 206-207.
43. Hunter, *Federalism and Fiscal Balance*, 169.
44. May, *Federalism and Fiscal Adjustment*, 104.
45. Smiley, "An Outsider's Observations on Federal-Provincial Relations Among Consenting Adults", 109-110; see also Stevenson *Unfulfilled Union* (3rd ed.), 211-214, 223-229.
46. Warhurst, "Managing Intergovernmental Relations", 268.
47. D.V. Smiley and R.L. Watts, *Intrastate Federalism in Canada* (Toronto: University of Toronto Press, 1985), 45-47, distinguish between "legislative federalism", where the allocation of legislative and of administrative jurisdiction between governments largely coincide, and "administrative federalism", where for a substantial range of functions the administrative responsibility is assigned to an order of government other than that to which legislative jurisdiction is assigned. Chandler, "Federalism and Political Parties", 156-161, makes the same distinction using the terms "jurisdictional" and "functional" regarding the distribution of authority.
48. For the distinction between "centralist" and "provincialist" intrastate federalism see Alan C. Cairns, *From Interstate to Intrastate Federalism in Canada* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1979), 11-13, and Smiley and Watts, *Intrastate Federalism in Canada*, 17-22.

49. See Smiley and Watts, *Intrastate Federalism in Canada*, 50-59, 117-144.
50. *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*, vol. 1, 14-23.
51. For descriptions of the constitutional fundamental rights in these federations and their impact see C.C. Schweitzer, et al, *Politics and Governments in the Federal Republic of Germany: Basic Documents* (Leamington Spa: Berg Publishers Limited, 1984), ch. 5; Watts, *New Federations*, 156-157, 289, 297.
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