
INTRODUCTION

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In 2015, Canada's "natural governing party" (e.g., Carty 2015) returned to power after a nearly ten-year hiatus. The Liberals had campaigned on an ambitious platform that included a number of proposed changes to Canada's federal and democratic institutions. The centrepiece of this agenda was a promise (famously broken) to replace the first-past-the-post electoral system. But the proposals did not end here. The Liberals also promised to revitalize intergovernmental relations with provinces; renew relations with Indigenous peoples; transform intergovernmental relations with municipalities; and change the way the federal government appoints senators and Supreme Court justices. It was an ambitious agenda to say the least and while it was a long way from the transformative efforts of the mega-constitutional period, it was a significant departure from the "open" federalism practiced by the Harper Conservatives. It also reflected the presumption of a growing disconnect between our political and federal institutions and the country's increasingly complex, diverse, and democratically demanding society.

By the summer of 2017, we had an opportunity to assess the Liberals' mid-term performance. We also had the opportunity to do so in the context of Canada's sesquicentennial year, a moment that challenged us to look beyond the policies and priorities of the day and to reflect on the legacy and future of Canada's federal and democratic institutions.

It was against this backdrop that the Queen's Institute of Intergovernmental Relations (IIGR) invited a distinguished group of panellists to our biennial State of the Federation conference entitled *Canada at 150: Federalism and Democratic Renewal*. When preparing their chapters, participants were asked to keep three questions in mind. First, what criteria (democratic and otherwise) should we use to evaluate the quality of Canada's political institutions and practices, particularly as they relate to the federal and intergovernmental landscape? Second, how do existing institutional arrangements perform according to these standards? And

finally, how are recent and proposed reforms likely to fare? The authors applied these questions to a wide range of topics, including Indigenous relations, Supreme Court of Canada (SCC) appointments, electoral reform, and intergovernmental relations. Some also commented on the overall state of the federation. Naturally, not all topics relevant to Canadian federalism and democracy were covered, but many of the most important and enduring themes were.

Because of the general nature of the questions, it is not possible to encapsulate the volume's many and varied answers in a single introduction. We have, however, highlighted what we see as the volume's most pervasive concern. Nearly all of our contributors spoke to the need to adapt Canada's rigid democratic and federal architecture to the needs of an increasingly diverse society. Canada's political institutions have done a reasonably good job of promoting, protecting, and recognizing the diversity of Canada's provincial and regional societies. But they have a long way to go in terms of reconciling and recognizing the identities and interests of the original federal partners; letting other groups and levels of government in; and giving ordinary citizens and groups, particularly historically marginalized ones, a say in the democratic process.

As the chapters also indicate, reform will not be easy. Canada's formal constitutional arrangements are notoriously path-dependent and incremental and non-constitutional change is often glacial and challenging in its own right. Accordingly, we also highlight contributors' strategies and thoughts on breaking the institutional and political deadlock and realizing a more diverse, democratic, and accommodating future.

The remainder of the introduction proceeds as follows. Section one assesses the performance of Canada's federal and democratic institutions as tools for recognizing and reconciling diversity. Section two identifies potential and evolving reform agendas. Section three summarizes the individual chapters, which address a number of topics under four broad headings: general assessments; democratic institutions; federalism for diversity; and venues of intergovernmental relations

ACCOMMODATING DIVERSITY

Accommodating diversity is one of the most common motivations for adopting federal or multilevel institutions, particularly in multinational or federal societies such as Canada's (Livingston 1956). Federal institutions provide territorially based groups with partial and constitutionally protected opportunities to express, develop and protect their distinct cultures. They also provide representatives of these groups opportunities to promote and reconcile group interests and identities in national legislatures or intergovernmental forums. This dual feature of federal systems—shared and self-rule (Elazar 1987)—has tremendous appeal in many modern societies. As Watts notes in his classic comparative federalism text, "More and more peoples have come to see some form of federalism...as...the closest

institutional approximation to the complex multicultural and multidimensional economic, social and political reality of the contemporary world” (2008, 5).¹

Accommodating diversity was the central reason the founders adopted Canada’s federal form of government and it remains central to the functioning and evolution of Canadian federalism today. Among federal regions, the provinces enjoy unusually high levels of fiscal and policy autonomy. They, along with the federal government, have also developed elaborate, if highly informal, systems of intergovernmental relations to work out their differences, coordinate their policies and advance common goals. The nature of intergovernmental relations varies significantly across time and policy area, but its defining characteristic has been closed-door discussions and negotiations among federal and provincial executives (e.g., Simeon 1972).

Canada’s combination of decentralization and executive federalism has not, as Hueglin notes in his chapter, always resulted in harmonious relations, as recent conflicts over healthcare funding, pipelines and climate change clearly indicate. And intergovernmental bargaining is far too power-laden and unbalanced, he adds, to describe as consensual. But there is a “common predisposition for negotiation, cooperation and...as much as possible under the circumstances, agreement” in Canada and this predisposition distinguishes Canadian federalism from its more coercive and majoritarian American form.

This predisposition has arisen, in large part, of course, as an effort to manage relations between the country’s only majority French-speaking province (Quebec) and the rest of the Canada. Other intergovernmental cleavages have emerged and Quebec is not the only province that has pressed for decentralization or changes to national institutions or decision-making structures. But it is the only province in which these efforts have been rooted in a deep-seated desire for cultural-linguistic recognition and self-determination. As Russell’s chapter indicates, Quebec’s struggles have, in many ways, been successful. Much of Canada’s history, he explains, is a story of the English-speaking majority’s efforts to assimilate French-speaking Canada into a single ethnic state. But these efforts have failed and political elites have come to accept the country’s multinational character.

Even Jean-Marc Fournier—another contributor and Quebec’s Minister responsible for Canadian Relations and the Canadian Francophonie at the time of conference—sees significant merit in the Canadian model. For all its warts (and for any Quebec minister, there must be many) Canadian federalism has been “accommodating enough for Quebec to succeed in its nation building project,” he argues, and has thus provided a firm foundation for a plurinational state rooted in the “deep diversity” of its component parts.

But its successes notwithstanding, many of the traditional concerns about Quebec’s recognition and place remain. The province has yet to sign the Constitution

1. As the quote suggests, the advantages of federalism are not, according to Watts and others, limited to the accommodation of diversity.

Act, 1982 and many Quebecers still seek formal constitutional recognition of the province's distinct society. As Fournier's visit to the IIGR in 2017 (thirty-five years after patriation) suggests, these concerns are unlikely to disappear (even if their salience ebbs and flows over time).

But the quest for deep diversity does not end with Quebec and the rest of Canada or even the federal and provincial governments. As every chapter in the volume indicates, Canada needs to extend or strengthen the benefits of autonomy, recognition, and participation beyond constitutionally recognized orders of government.

The status of Canada's official-language minorities provides a telling example. Canadian federalism and the constitution provide Quebec significant opportunities for self- and shared-rule, but only limited non-territorial autonomy for the Francophone minority living outside of the province. Sections 16 to 23 of the Charter were supposed to help remedy this imbalance, which they have to some extent. But their interpretation is still constrained by the SCC's deference to the original federal compromise, as Chouinard's analysis of education and healthcare policy shows.

Perhaps the deepest failure of Canadian federalism, however, is the exclusion of Canada's Indigenous peoples from institutions of shared- and self-rule. Hueglin admits his mostly good news story about Canada's negotiated federalism has nothing to do with Indigenous peoples, who have been more or less excluded from the bargain. This failure is as old as Canadian federalism itself, but remedying it has acquired a greater sense of urgency in the wake of the Idle No More movement, the Truth and Reconciliation Commission's findings on the history and effects of the residential school system, and the federal Liberals' promise to renew relations with Indigenous peoples—Canada's most important relationship, as the prime minister has famously said.

Transforming this arrangement is, without a doubt, a long-term process, but one area where the Liberals could have made an immediate impact is with the appointment of the country's first Indigenous SCC justice. Two vacancies have come and gone, however, and the SCC is still without Indigenous representation, despite the Liberals' promise to make the bench's composition more reflective of Canadian society and despite the obvious importance of the SCC's rulings for Aboriginal treaty rights and the broader process of reconciliation. In the meantime, the federal government continues to uphold the convention of regional representation, despite suggestions that it would relax this convention to accommodate other forms of diversity. This decision, according to Crandall and Schertzer's chapter, reflects the enduring "structuring power" of regional representation—"one of the foundational narratives of Canadian federalism"—over the country's institutional design.

Wallner's chapter points to additional ideational obstacles—this time in the all-important arena of intergovernmental relations. Different intergovernmental forums reflect and refract competing federal narratives, but the central players in all of them are federal or provincial governments. Many would like to bring Indigenous peoples into the intergovernmental fold, but doing so requires a more

inclusive vision of federalism than the traditional executive model, a point that came to a head, Wallner notes, when the representatives of the three national Indigenous organizations decided to boycott meetings of the Council of the Federation (COF) in 2017 and 2018. (The leaders, who were offered separate meetings in the run-up to formal proceedings, wanted full standing in the body.)

Penikett shifts the analysis to the provincial level and examines the glacial progress of the BC Treaty Commission (BCTC). Many had hoped the BCTC would usher in a new era of Indigenous self-governance, replete with quasi-provincial powers. But the federal and provincial governments have shown little interest in resolving the two questions most fundamental to the treaty-making process, namely who owns the land and how will it be governed—opting instead for a strategy of endless negotiation and transactional deals.

Finally, Ladner, whose chapter takes the broadest look at Indigenous-settler relations, argues that Indigenous and Canadian constitutional orders (including the Constitution Act, 1982) provide a potential foundation for a decolonized future, but that transformative reconciliation is impossible as long as the courts and other federal and provincial elites cling to colonial interpretations of Crown sovereignty. Most insidious, she argues, is the principle of *terra nullius*, the doctrine of discovery and the notion that Indigenous peoples have already merged or reconciled their sovereignty with that of the Crown.

But the struggle for recognition and representation does not lie exclusively with federal or multilevel arrangements nor, for that matter, did the federal Liberals' democratic reform agenda. Today's pluralists seek to accommodate a variety of territorial and non-territorial groups, including ones organized along gender, ethnic, and racial lines. Mockler and Rose are thusly critical of the Liberals' consultation process on electoral reform, which failed, they argue, to provide sufficient input from women, racial minorities, and certain Indigenous groups. And as Schertzer and Crandall's chapter notes, the SCC is still without an Indigenous or racial minority appointment (though effective gender balance was achieved and has been maintained, with the exception of a two-year period, since 2004).

PATHS FORWARD

How might we redesign Canada's federal and democratic institutions to deepen and broaden our commitment to diversity? For decades, the answer for many lay in constitutional reform. But the country has yet to recover from the scars and fatigue of two rounds of mega-constitutional debates, which ended in the failed Charlottetown Accord over twenty-five years ago.

But if we cannot adapt with a big constitutional bang, perhaps we can transform ourselves gradually through sustained and informal dialogue. This was the approach proposed by the Quebec Liberals' *Policy on Québec Affirmation and Canadian Relations*—a summary of which appears in Fournier's contribution to this volume

(written when he was Quebec's Minister of Canada Relations, before the Quebec Liberal government's defeat in October 2018). According to Fournier, the policy was an attempt to seize "the opportunity" of Canada's sesquicentennial to initiate a dialogue with Canada about Quebec's place in the federation. While the hope was that the discussion would result in formal recognition of Quebec's distinct society (as well as a number of other longstanding constitutional demands), the minister preached patience and the province's obligation to engage other groups—including the federal and provincial governments, First Nations and Inuit peoples, the Francophonie and civil society—in a process of mutual recognition and learning. The new Coalition Avenir Québec government has since replaced the Liberals, and the future of the affirmation policy (which attracted far more interest from academics than Canada's political elites) is in doubt. But Fournier's address and the policy from which it was derived were remarkable for both their tone and content. As Russell notes in this volume, "A Quebec that is moving to embrace diversity as part of Canada's and Quebec's national identity is a Quebec to which Canadians should respond."

One of the most common ways of protecting and reconciling diversity in federal systems is a territorially based upper chamber capable of checking the majoritarian tendencies of the lower house. Canada's Senate has never really played this role, however, given its unelected status. The Harper Conservatives had hoped to remedy this by appointing all new senators through consultative elections, but the SCC dashed these hopes in its 2014 Senate reference case, in which it ruled that the measure would require the support of seven provinces with at least 50 percent of the country's population. This set the stage for the Liberals' non-constitutional approach, which appoints senators through an informal, non-partisan and merit-based process. According to many, the democratic implications have been dire. The reform has not altered senators' unelected status, but it has emboldened them to challenge the democratic will of the House. Both of the volume's assessments of Senate reform, however, are positive. While it is too soon to tell what effects the reform will have, Macfarlane believes it has, if anything, brought the Senate more in line with its constitutional role as a deliberative and complementary legislative body. Smith, by contrast, believes the behavioural effects have been more profound, but nevertheless welcomes them. He sees tremendous potential in a parliamentary chamber unmoored from the constraints of electoral politics and now party discipline.

Importantly, neither Macfarlane nor Smith discusses the reforms as a means of ushering in a more robust form of intrastate federalism, where the Senate defends and advances the interests of provinces. The Senate's real potential, according to Smith, lies in the representation of minority groups. Macfarlane (2018) makes a similar point elsewhere with respect to Indigenous groups. The Senate has become an important site of Aboriginal activism, as Indigenous and other groups gravitate toward independent senators, who have growing power to propose amendments and speak their minds, powers backbench MPs lack.

This is a promising development for Indigenous peoples, but as several chapters indicate, it is just the tip of the iceberg. Meaningful self-government cannot occur, argues Russell, without adequate fiscal resources, and that means granting First Nations communities two privileges Canadian provinces already enjoy: the capacity to raise own-source revenues and access to equalization payments. Reform must also come in the area of shared rule, argues Russell, preferably with the creation of an Aboriginal parliament (as recommended by the Royal Commission on Aboriginal Peoples), which could advise the House of Commons and the Senate as a third parliamentary house.

Penikett observes the frustration of Indigenous peoples with the BCTC process and the consequent turn of many communities to the courts. Litigation has yielded some success, but it is no panacea, especially for under-resourced communities. Far-reaching reconciliation can only take place at the negotiating table and in a post-*Tsilhqot'in* world, argues Penikett, this means negotiations among provincial leaders and the representatives of pre-colonial tribes, not Indian Act bands. Given the former's limited resources, early talks should be exploratory—focused on the broad implications of *Tsilhqot'in* for Aboriginal title and tribal governance. And if the premier or the relevant senior minister wants to foster a true nation-to-nation relationship, they should dispense with their lawyers, advisers, and consultants and meet with chiefs head-to-head. If the federal government is called upon to participate, it should embrace Aboriginal title and acknowledge “the co-existence of Crown and Indigenous title,” which would build goodwill and “help Canadians understand their own history as residents of Indigenous territories, help them recognize a debt to Indigenous Nations, and also, the bounty Indigenous lands and resources provided generations of settlers.”

For Ladner, the path to reconciliation lies in a framework of treaty federalism—a model that honours the treaties in their original spirit and intent and rejects the colonial notion that Indigenous peoples have somehow merged or surrendered their sovereignty to the Crown. The bad news, she argues, is that Canadian elites, including SCC justices, continue to adhere to these colonial doctrines. The good news is that Indigenous and Canadian constitutional orders contain the “transformative potential” to rebuild governance and embrace Indigenous peoples as co-autonomous partners in a generative constitutional order. While most Indigenous groups opposed patriation, it did have the benefit of constitutionalizing Aboriginal and treaty rights under sections 25 and 35. These sections have yet to transform the court's conception of sovereignty. But the interpretative principles of reconciliation and honour of the Crown (both of which have been applied in relation to section 35) may provide the transformative material treaty federalists seek. Reconciliation can only occur, however, if Crown elites see section 35 for what it is: a veritable fourth pillar (alongside parliamentary governance, federalism, and the Charter) of Canada's political system.

CHAPTER SUMMARIES AND ORGANIZATION OF THE BOOK

As noted above, we have organized the contributors' chapters under four broad categories: general assessments; democratic institutions; federalism for diversity; and intergovernmental relations.

General Assessments

The first section—with chapters from Peter Russell and Thomas Hueglin—provides a broad and historical overview of the state of Canada's democratic federal institutions. Drawing on the framework of his recent book, Russell argues that the central dynamic of Canadian history is the changing relationship between its three main pillars: Aboriginal, French-speaking and English-speaking Canada. The most important development in this relationship, according to Russell, is the English majority's embrace of the country's multinational character. Its political elites no longer seek to assimilate the other two pillars into a single ethnic state. This development is part of the evolution of what Russell calls the fourth pillar of Canadian federalism—a shared civic culture rooted in parliamentary democracy, constitutionalism, the monarchy and more recently, the recognition of diversity. This last pillar is essential, according to Russell, to holding a country of such deep diversity together. Despite the country's significant accomplishments, however, the multinational project is far from complete. Our biggest failing, according to Russell (and several other contributors), concerns our treatment of Indigenous peoples. While we have started to answer Indigenous calls for self-governance, negotiations have been painfully slow. Most Indigenous communities lack the requisite financial resources for self-government. They also lack representation in national decision-making bodies. Accordingly, he recommends equalization payments for Indigenous communities and a directly elected Indigenous parliament, which could play an advisory role to the House of Commons and the Senate.

Addressing the volume's questions head on, Hueglin evaluates the democratic quality of Canadian federalism against the criteria he considers most appropriate for a multinational federal society. He makes three main points. First, it makes little sense to evaluate Canadian federalism according to the principles of majoritarian rule and popular sovereignty that pervade American democratic discourse. Even unitary countries, he argues, flounder under the practical demands of popular sovereignty and majoritarian rule is at fundamental odds with the heterogeneous and group-based preferences characteristic of most federal societies. Second, he identifies an alternative set of criteria (subsidiarity, solidarity, and consensus) more appropriate to Canada and other diverse federations (and perhaps democracies more generally). Finally, he argues that Canada performs reasonably well on these fronts.

Canada has achieved a relatively balanced allocation of powers through the principle of subsidiarity (aided, in large part, by the Judicial Committee of the Privy Council's and SCC's doctrine of pith and substance). It has also achieved a reasonably equitable distribution of resources (or solidarity) through the equalization system and other transfer programs. And while Canada is not a consensus democracy, it exhibits a deep and abiding commitment to intergovernmental negotiation and cooperation (albeit one that occurs within an opaque, elitist, informal, and power-laden framework prone to bouts of federal unilateralism). This "procedural" model of federalism is not perfect. But it allows for far more consensus and negotiation than we observe in the coercive American case.

Democratic Institutions

The next section deals with important dimensions of democratic institutions, including those related to federalism. The focus is on recent changes (or attempted changes) to specific institutions, new interpretations of existing arrangements as well as representational arguments for institutional change.

We open this section with Janet Hiebert's analysis of the much discussed notwithstanding clause or section 33 of the Charter. The Charter has attracted a lot of scholarly attention, but very little of this has focused on the Charter's relationship to federalism. Hiebert notes that the Charter is a nationalizing force that exists in some tension with the logic of federalism and provincial diversity—a tension exacerbated by the fact that the federal government appoints SCC justices without input from the provinces. She also notes that there has been very little analysis of the federal implications of the notwithstanding clause, despite the fact that it is the Charter's only distinctly federal element (though it was not originally intended to be). Hiebert takes up two pressing questions on this topic: first, can we distinguish between federalist and democratic uses of the notwithstanding clause, and second, should we draw inferences for federalism from the well-established political reticence to invoke the notwithstanding clause? This chapter concludes with an important point: the reluctance to use section 33 has allowed politicians and the courts to avoid answering the question at the heart of Hiebert's analysis: "are differentiated interpretations of Charter rights for federalist reasons justified and, if so, what principles should guide political or judicial judgments that diverge from judicial norms about the scope or meaning of protected rights?"

The next two chapters focus on the democratic implications of the new process for appointing senators. Both argue that the reform has enhanced the quality of parliamentary democracy, but for different reasons. The first chapter comes from Emmett Macfarlane—an architect, in some ways, of the new model (as Macfarlane notes, he "advised the government on the constitutionality of its proposals and authored, at the government's request, a draft proposal for what a 'non-partisan, merit-based' appointments process should look like.") He addresses two questions:

whether the change is constitutional and whether it has unduly emboldened senators to challenge the House of Commons' democratic will. Macfarlane sees nothing suspect about the reform's constitutionality. Provided the process is not legislated and does not fundamentally alter the Senate's constitutional role, it is difficult to imagine the SCC objecting to it. He also believes the Senate is behaving as a sober chamber of second thought should. It is amending legislation at a slightly higher rate, but the most obstructionist senators were appointed under the old patronage system, suggesting that partisan differences (rather than emboldened independents) are the real source of disharmony between the chambers. He also argues that the reform has brought the Senate's behaviour more in line with its constitutional role as a deliberative body and complementary chamber to the House. Far from adopting a competitive stance, the Senate has tended to focus on constitutional aspects of legislation and to defer to rejections of proposed amendments, both behaviours befitting a chamber of sober second thought.

David Smith's chapter explores the questions of how the newly invigorated upper chamber will and ought to function in relation to the lower house. This is not, Smith argues, a question that political scientists and other observers have taken seriously, at least not until recently. The tendency, he notes, has been to treat the Senate as a tangential body with little influence. This is quickly changing, he argues, with the severing of senators from the Liberal caucus and the new appointment process. Like Macfarlane, Smith believes it is too soon to tell what this non-partisan approach means for Canadian bicameralism. It is clear, however, that Smith regards the changes as potentially transformative. He notes that citizens have grown increasingly frustrated with hyper-party discipline in the House. They have also grown disillusioned with electoral politics and the traditional political parties. An independent Senate offers enormous appeal in this context. Its members are "less subject to party discipline, and increasingly likely to act assertively," which, according to Smith, sounds a lot like the legislature Canadians want. The Senate also represents a constituency both broader and more specialized than that of the House (and one that extends well beyond traditional regional interests). Finally, it is a far more deliberative body, a quality reflected in its recent and thoughtful review of the Charter implications of several pieces of legislation. For all these reasons, the Senate is "slowly (or not so slowly) promoting itself as an ally to the people," argues Smith, with the potential to transform the way Canadians conceptualize and relate to their democratic institutions.

Parallel with the changes to Senate appointments, the Trudeau government also set its sights on the judiciary upon taking office and announced a new procedure in 2016 for identifying and selecting Supreme Court justices. Erin Crandall and Robert Schertzer's chapter examines this new process. In addition to increasing the accountability and transparency of SCC appointments, the reform's purpose was to appoint functionally bilingual candidates capable of enhancing the court's diversity. The Liberals also indicated that they were willing to break with the convention of regional representation to achieve these goals (an important departure

from the Martin and Harper reforms, which also sought to enhance transparency and accountability but without the emphasis on diversity). According to Crandall and Schertzer, the reform opened up a fault line between two competing ideas about the court's role—one in which the court is seen as a pan-Canadian defender of the rights of a diverse and bilingual society and another in which it is seen as a defender of a more traditional and federal form of diversity defined by regional and provincial interests. The prime minister eventually upheld the convention of regional representation and appointed a white male, Malcolm Rowe, to replace a retiring Atlantic Canadian justice. This maintained the only distinctly federal feature of the appointments process, while missing an opportunity to appoint the SCC's first racial minority or Indigenous justice. The result confirms the power of the federal idea, argue the authors, but the opposition to Rowe's appointment (and the Sheila Martin appointment that followed it) suggests the struggle for a more diverse bench continues.

But the Liberals' most controversial attempt at institutional engineering (ultimately aborted) was electoral reform. The party campaigned on a promise that 2015 would be the last federal election under single-member plurality (SMP) electoral rules. Upon taking office, the House of Commons Special Committee on Electoral Reform (ERRE) was formed with a mandate to consult with stakeholders on the electoral system. The government also conducted a survey on the topic. There was a lot of public support for electoral reform, though there was no consensus, by most accounts, on what the problems with the existing system were or what alternative should replace it. In any case, in a controversial move, the government announced in February 2017 it was abandoning electoral reform. Electoral system change is a perennial topic of discussion in both federal and provincial politics, with no fewer than eight reports at the federal level since 1921 recommending some form of change, as well as various (failed) provincial referenda on the subject since the early 2000s.

This volume includes three chapters on electoral reform, focusing on various aspects of the issue. Patricia Mockler and Jonathan Rose start us off with an examination of the electoral reform consultation process, which they embed in a larger analysis of research on deliberative processes and democratic engagement. The analysis addresses a number of critical questions, including who participates, how meaningful is citizen involvement, and what are the implications of citizen participation for actual decisions? Given that criticisms of SMP typically focus on its assumed undemocratic nature (wasted votes, distortions between popular votes and seats), the onus was arguably on the Liberals to ensure an inclusive and participatory process. Mockler and Rose's chapter draws on survey data and an original content analysis of participant contributions to the ERRE to make the case that the consultations largely failed the norms of good deliberation. The descriptive representation of large portions of the Canadian public was low; those with specialized political knowledge were unduly privileged; the consultation did not

have a sufficient impact on the outcome; and the consultations failed to educate the public about the issues at hand.

Complementing Mockler and Rose's analysis of process, the volume has two chapters on electoral reform's substance: Anna Drake and Margaret Moore's analysis of the "equal voice" justification for reform, and Levick's federalist case for reform. Drake and Moore focus on the "equal voice" critique of the current system. Critics charge SMP or first-past-the-post (FPTP) with violating people's equal right to vote on at least two grounds: it does not count votes equally on account of regional discrepancies, and it creates a "winner-take-all" contest in which votes for losing candidates are "wasted." As such, the system violates the principles of proportionality and democratic equality, both of which require the equal representation of each individual in the electoral system. Critics then contrast SMP with other electoral systems, particularly proportional representation (PR), which is presented as "more democratic." Ultimately, the chapter makes a strong case that the meaning of democratic equality in the 2016 electoral reform debate was unclear. What does democratic equality mean, especially in a context with important regional considerations in terms of the vote? Where might we look for answers? Drake and Moore look at what the SCC has said about the relationship of the right to vote with democratic and regional equality—two values that require balancing in a federal context, and which inform understandings of political equality. Their conclusion points to mixed-member proportional (MMP) systems as the best embodiment of the Court's emphasis on "effective representation" and "meaningful participation" in the context of voter equality.

Whereas Drake and Moore take a federal perspective on democratic equality, Levick takes a federal perspective on electoral system choice and change. She argues that the 2016 electoral reform process ignored federalism, despite the important implications of electoral rules for federal representation. Making a federalist case for electoral reform in Canada, Levick argues that a move to a more proportional system would enhance provincial input into the federal legislative process, thereby taking pressure off Senate reform (and bypassing the need for constitutional change) to fulfill this role. Parliament's lower chamber has been an unusually poor venue for the representation of provincial interests compared to other federal systems, and this results mostly from Canada's strict party discipline and the geographic distortions in seat counts common under SMP. A more proportional system could address the latter concern, and likely lead to a loosening of party discipline as well if coalition governments became more common. The added bonus is that provincial representation would be enhanced without constitutional debate or change, thus continuing Canada's track record of extra-constitutional reform. Interestingly, Levick endorses a mixed system, arguing, like Drake and Moore, that MMP is particularly well suited to federal systems.

Federalism for Diversity: French and English Canada

The volume then proceeds to two sections on “Federalism and Diversity,” one focused on French and English Canada and the other on Indigenous governance. While these sections are separate, the conference’s most anticipated presentation (which came from then-Quebec minister, Jean-Marc Fournier) illustrates how intertwined the interests of French-speaking Quebec and Indigenous peoples have become. Fournier provided a summary of the Quebec government’s controversial *Policy on Québec Affirmation and Canadian Relations*. The policy was not, Fournier emphasized, about constitutional change—at least not first and foremost. Rather, it was an attempt to seize “the opportunity of the 150th anniversary of the Federation” to initiate a dialogue with civil society and the rest of Canada about Quebec’s place in the federation. The hope, of course, was that dialogue might ultimately result in formal recognition of Quebec’s distinct society (as well as a number of other longstanding constitutional demands). But Fournier and his government were in no hurry and the tone was not, as Peter Russell (this volume) notes, threatening: “We know [dialogue] will take patience,” notes Fournier. “Strengthening bonds of trust is a long and gradual process. We must first discuss, share our ideas, and improve our understanding and acknowledgement of each other.” This process of mutual recognition must not, Fournier emphasized, be limited to provincial and federal governments. It must also involve a much wider range of identities and interests, including those of First Nations and Inuits, the Canadian Francophonie, and the broader civil society.

Stéphanie Chouinard’s chapter examines the balance between French and English communities from the perspective of official-language minority rights, using it as a prism to examine the federal system in Canada and the place of national minorities that are not territorially concentrated. Chouinard argues that the system has been fairly successful in carving out non-territorial autonomy rights for official-language minorities, particularly since the 1982 constitutional repatriation and the strengthening of language rights that were ushered in with judicial mobilization around sections 16–23 of the Charter. What has resulted is a system that Chouinard calls “Federalism plus,” with the “plus” describing the accommodations, particularly in education and healthcare, that have been made for non-territorial autonomy, and especially for Francophone minorities. This combination of territorial and non-territorial autonomy for national minorities creates, Chouinard argues, a deeper recognition of the cultural aspect of the Canadian federation. In other words, the system seems to be functioning well in terms of accommodating official-language minorities, especially since the 1980s. Chouinard’s chapter also engages explicitly with other applications of “Federalism plus,” and the most natural extension would be to arrangements with Indigenous peoples to accommodate both territorial and non-territorial forms of autonomy.

Federalism for Diversity: Indigenous Governance

Two chapters focus explicitly on issues of Indigenous self-governance and reconciliation. Tony Penikett's chapter on the BCTC reveals just how glacial treaty making in British Columbia has been. Many had hoped that the BCTC, established in 1992, would result in the rapid conclusion of Yukon-style agreements endowing First Nations with quasi-provincial powers. Since that time, however, only five treaties with relatively small groups have been negotiated and the process remains mired in the same obstacles that Penikett observed in his 2006 book: a federal preference for endless negotiations over final settlements; rent seeking from consultants and lawyers; the extinguishment of Aboriginal title; and a federal and provincial preference for transactional deals (including Accommodation Agreements) over resolution of the central questions at the heart of the process, namely who owns the land and how it will be governed. Disillusioned with negotiations and emboldened by the courts (including the SCC's *Tsilhqot'in* ruling), many First Nations are abandoning the treaty-making process in favour of litigation. But legal rulings do not resolve a number of important details and many First Nations simply cannot afford it. He recommends a new approach. The province should create "Nation Tables" to explore the implications of *Tsilhqot'in* with Indigenous Nations rather than Indian Act bands. It should also arrive at the table without "fixed agendas, prescriptive mandates or settlement formulas" and see where this open-ended dialogue takes them.

In the spirit of our times and the volume, Kiera Ladner's chapter seeks to identify the foundation for meaningful reconciliation between Canada and Indigenous peoples. The starting point, she argues, is the recognition of the fact that Indigenous and Crown sovereignty have not, contrary to popular myth, been merged. The treaties and Canadian constitution recognize Indigenous sovereignty and rights and it is now up to the SCC and other Crown actors to do the same. Doing so would help lay the groundwork for a model of treaty federalism or treaty constitutionalism, in which treaties provide the foundations for renewing nation-to-nation relations. But the path to reconciliation will be long and hard. Canadians will have to figure out how to balance their political system on a fourth pillar (section 35); create space for constitutional pluralism; and allow constitutional supremacy to trump parliamentary supremacy. Indigenous nations, meanwhile, will have to pursue "transformative resurgence and reconciliation," while renewing their internal constitutions and exercising their sovereignty. More generally, she argues, all parties must engage in "imagining the creation of a post-colonial Canada. As Canada sets the course for the next 150 years, perhaps this could happen."

Intergovernmental Relations

Our final section examines recent and historical developments in intergovernmental relations. Jennifer Wallner focuses on relations involving federal and provincial governments, while Zachary Spicer shifts our attention to the neglected area of federal-municipal relations—another relationship the Trudeau Liberals promised to cultivate during the 2015 election campaign.

Wallner examines the ways in which competing visions of Canadian federalism reflect and refract the operation of intergovernmental relations. She also looks at how these narratives affect the perceived legitimacy of intergovernmental organizations, with an empirical focus on the Health Council of Canada (HCC) and the Council of Ministers of Education, Canada (CMEC). Wallner acknowledges that intergovernmental arrangements generally embody elements of more than one federal vision. That said, she argues that the HCC and CMEC conform, by and large, to two well-known narratives of Canadian federalism. The now defunct HCC was a prime example of a nationalizing vision: it was initiated by the federal government; involved non-government actors; sought to promote convergence of policies through dissemination of best practices; and perhaps because of the threat its experts posed to provincial autonomy, never secured the participation of Quebec. The CMEC, by contrast, is a prime example of a compact vision of federalism: it focuses on information sharing and facilitation of voluntary collaboration among provinces (with little emphasis on sharing best practices); involves all provinces and more recently, territories as equal members; explicitly upholds provincial jurisdiction in the educational field; and even represents Canada in important international forums. Wallner argues that these and other narratives help define and structure the intergovernmental landscape and inclusion of Indigenous and other groups will require alternative visions of Canadian federalism—particularly ones that emphasize the multinational character of Canadian society.

Spicer argues that the federal government has long shown an interest in municipal affairs, particularly since the 1960s. But this interest has rarely translated into an explicit policy agenda—not least because of federal fears of a provincial backlash. Federal governments have dabbled in municipal policy, particularly in the area of physical infrastructure, but have yet to develop a sustained, comprehensive, and collaborative agenda, despite the growing appreciation of cities' importance for the realization of federal economic, environmental, and social goals. The closest the federal government came to an explicit agenda in recent memory was Paul Martin's "New Deal for Cities," in which the Liberals provided municipalities with a share of the federal gas tax, increased federal funding for municipal infrastructure, and established the Ministry of State for Infrastructure and Communities (since merged with the federal Department of Transportation). But even the Martin government was careful to tread lightly in this sensitive area of provincial jurisdiction. The current Liberal government has promised a far more expansive and collaborative agenda than its Conservative predecessors and has been more explicit about

linking federal funding and priorities (including explicit commitments to public transit and green and social infrastructure). But it has shown the same reluctance to engage in formal policymaking and governance as past federal governments (the establishment of the Canada Infrastructure Bank notwithstanding) and has fallen well short, therefore, of its promise of transforming federal-municipal relations.

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