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Welcome to Federalism-e

Federalism-E is a peer reviewed undergraduate journal that encourages scholarly debate and research in the area of federalism by exploring topics such as political theory, multi-level governance, and intergovernmental relations. Papers were submitted from across the country and abroad and then sent out undergraduate students who volunteered to be a part of our peer review board. After extensive evaluation, this year's papers were selected and returned to the authors according to a double blind review process before being polished into a publishable product. The result is this, our 16th consecutive year of publication.

It is with great pleasure that we present this year's collection of essays. We hope to encourage undergraduate students to contribute to the community of academic studies, create a forum for better understanding the topic of federalism, and to offer high-performing students the experience of participating in the process of academic publication. We hope you enjoy this year's edition.

Bienvenue à *Federalism-E*

Federalism-E est un journal universitaire de premier cycle également révisé par des universitaires, qui encourage les débats pédagogiques dans le domaine du fédéralisme et explore des sujets tels que les théories politiques, le gouvernement à plusieurs échelons ainsi que les relations intergouvernementales. Ces dissertations ont été soumises des quatre coins du pays et même de l'étranger, et ensuite envoyées aux élèves de premier cycle qui se sont portés volontaires pour notre comité de rédaction. Après plusieurs évaluations, les essais qui vous seront présentés ont été retournés aux auteurs afin de permettre à ceux-ci de faire les corrections pour la publication. Le résultat vous est donc présenté ici, dans la 16^{ème} publication consécutive du journal.

C'est avec grand plaisir que nous présentons le fruit de cette collaboration. Nous espérons encourager les étudiants de premier cycle à contribuer plus à la communauté universitaire et à créer un forum pour améliorer la compréhension sur le sujet du fédéralisme. tout en offrant une opportunité pour participer dans la publication d'un journal. Bonne lecture!

Alexandra LaPlante and Alex Manderson
Co-Editors, *Federalism-e*

Urban Governance and the Future of Canadian Federalism

Conor Lewis

Dalhousie University

The Canadian federation is constantly being reconfigured. Throughout our 147 years of nationhood Canada has evolved from a quasi-federal¹ state to arguably one of the most decentralized federations in the world. However, for all the change that has occurred as we approach our sesquicentennial anniversary urban city centers are still treated as if they are the colonial holdings of their provincial masters. The rigidity in which the constitutional division of powers is interpreted in regards to municipal affairs allows for the continued suppression of urban governance. By not allowing the full participation of urban local government within the federation, Canada has turned a blind eye to the economic realities of the globalized Knowledge Based Economy (KBE)² and the essential role that "Global City Regions (GCRs)" will play as the economic "motors of the information era."³ Through the systematic underfunding of our regional economic hubs,⁴ the country is limiting the cultural creativity and fiscal growth of our urban municipalities. In order for Canadian urban centers, and thereby Canada, to thrive municipalities and urban citizens need to apply pressure on the federal and provincial governments to establish a legal framework that if

not entrenches, then conventionalizes the processes of multi-level governance between all three levels of the Canadian federation. This analysis leads to the conclusion that the Canadian federation has not adapted sufficiently to the reality of urbanization.

The division of powers between federal and provincial jurisdiction was entrenched in s.91 and s.92 of the *British North America Act of 1867*. The constitution delineates that the provinces have jurisdiction over municipal institutions and control over generally all matters of a merely local or private nature.⁵ The decision to give the provinces jurisdiction over municipal government was compatible with the demographics of nineteenth century Canada. In 1861 the total urban population of Canada was 527 220, this accounted for only 16% of the total population.⁶ With the vast majority of the citizenry living in the rural hinterlands urban affairs was not an issue of pressing substance. However, at the time of the last census in 2011 Statistics Canada reported that 81% of Canadians and 86% of Ontarians were now a part of the urban population.⁷ Although the overwhelming majority of Canadians now live in cities, municipal governments policymaking

¹ Gregory Inwood, *Understanding Canadian Federalism: An Introduction to Theory and Practice* (Toronto: Pearson Canada, 2013), 58. Quasi-Federal: coined by K.C. Wheare, it is a model in which provincial governments are seen as subordinate to the federal government.

² Thomas J Courchene, "Global Futures for Canada's Global Cities," IRPP Policy Matters 8, no. 2 (2007): 27.

³ Ibid., 1.

⁴ Ibid., 1. There are 9 economic hubs (Vancouver, Edmonton, Calgary, Regina and Saskatoon, Winnipeg, Toronto, Montreal, Halifax).

⁵ Department of Justice Canada, "The Constitution Acts 1867 to 1982," January 1, 2013, Accessed November 1, 2014, http://laws-lois.justice.gc.ca/PDF/CONST_E.pdf. The Constitution Acts 1867 to 1982, pg.29. s.92(8) & s.92(16) of the constitution are referenced here.

⁶ "Population, Urban and Rural, by Province and Territory (Ontario)." Government of Canada, Statistics Canada. February 4, 2011. Accessed November 1, 2014. <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo62g-eng.htm>

⁷ Ibid.

powers remain significantly circumscribed by the provincial government⁸.

Municipalities, constitutionally speaking are creatures⁹ of the provinces. Provincial governments are able to create, eliminate, and regulate municipalities.¹⁰ The jurisdictional rights provided to the provinces allow them to control all aspects of urban development.¹¹ The trend towards amalgamation showcases the supremacy of the provinces and the relative weakness of municipalities. The amalgamation of municipalities, argues Caroline Andrew, is “not so much for [the] better capacity [of the municipality] to act but for less expensive city government.”¹² The act of amalgamation makes the territorial boundaries of a municipality larger. Increasing the size of a city, however, diminishes the ability of neighborhoods and individual citizens to influence local decision-making,¹³ by expanding further away from the city center suburban voices are allowed to have an influence on urban decision making.

In January 2001 the five municipalities surrounding Hamilton (Ancaster, Dundas, Flamborough, Glanbrook, and Stoney Creek) were amalgamated to form the City of Hamilton.¹⁴ The

⁸ Patrick Smith and Kennedy Stewart, "Local Whole-of-Government Policymaking in Vancouver: Beavers, Cats, and the Mushy Middle Thesis," In *Canada: The State of the Federation 2004 : Municipal-federal-provincial Relations in Canada*. Montréal, Quebec: McGill-Queen's University Press ; 2006, 258.

⁹ Courchene, *Global Futures of Canada's Global Cities*, 1.

¹⁰ Robert Young, "Multilevel Governance and Public Policy in Canadian Municipalities: Reflections on Research Results," CPSA/ACSP, June 6, 2013, Accessed November 1, 2014, 1.

¹¹ Caroline Andrew, "The Shame of Ignoring the Cities," *Journal of Canadian Studies* 7, no. 4 (2001): 105.

¹² *Ibid.*, 108.

¹³ Andrew Sancton, "Beyond the Municipal: Governance for Canadian Cities," February, 2004, Accessed November 1, 2014, <http://policyoptions.irpp.org/issues/canadas-cities/beyond-the-municipal-governance-for-canadian-cities/>, 29.

¹⁴ "Hamilton at a Glance," City of Hamilton – 2014, Accessed November 1, 2014, <http://www.hamilton.ca/CityDepartments/CorporateServices/AccessEquity/HamiltonAtAGlance.htm>.

former suburbs were given an equal place at Hamilton City Hall, but the issues that the suburban citizen wants addressed are drastically different then the issues that are plaguing the inner city. [See Table 1];

Hamilton 2005: Average Household Income		
Ward	Average Household Income	Total Number of Private Household
Ward 2	\$41,307	19,430
Ward 3	\$45,481	16,730
Ward 12 (Formally Ancaster)	\$126,715	10,070
Ward 14 (Formally Flamborough)	\$96,633	8,375
City of Hamilton	\$70,025	194,455

[Table 1]

<http://www.investinhamilton.ca/wp-content/uploads/2013/10/SSSP-WardProfiles-Ward2.pdf> (Ward 2)

<http://www.investinhamilton.ca/wp-content/uploads/2013/10/SSSP-WardProfiles-Ward3.pdf> (Ward 3)

<http://www.investinhamilton.ca/wp-content/uploads/2013/10/SSSP-WardProfiles-Ward12.pdf> (Ward 12)

<http://www.investinhamilton.ca/wp-content/uploads/2013/10/SSSP-WardProfiles-Ward14.pdf> (Ward 14)

<http://www.hamilton.ca/CityDepartments/CorporateServices/AccessEquity/HamiltonAtAGlance.htm>

A quick glance at the above table reveals apparent economic disparity between wards. The mean household income in suburban Ward 12 is three times greater than the mean income in inner city Ward 2. The above data begs the question: how can coherent plans for social action be devised when trying to administer a local government that appeases the desires of the very wealthy and at the same time provides a fair standard of living for the urban poor? The simple

answer is that without increased jurisdictional and fiscal powers municipalities do not have the resources to solve these problems.

Provinces have simultaneously been amalgamating municipalities while downloading programs that deal with the management of social diversity onto the shoulders of urban cities. This increase in jurisdictional powers, however, has come without an increase in financial resources.¹⁵ The result, Caroline Andrew, finds “has been for local governments to think more of cost-cutting than of increased service.”¹⁶ If urban cities were given the monetary tools as well as the jurisdictional powers to create social policy, “cities would approach their newfound responsibilities in myriads of creative ways.”¹⁷ There would be a reimagining of the competitive era of federalism and creative asymmetry would create novel programs, the best of which presumably would be replicated in other cities.¹⁸

A major reason for which the evolution of urban governance has stagnated over the past decade is because of the Harper Government’s approach to federalism. The Prime Minister’s policy of open federalism advocates for the provinces to “exercise their full jurisdictional responsibilities without federal interference.”¹⁹ Harper’s decision to embrace a neo-classical version of federalism is characteristic of the myopathy of senior levels of government in regards to urban issues²⁰. By affirming the provinces jurisdiction over municipal institutions, the Prime Minister willfully elected to discount the importance of the fact that over half the population of Canada now resides in 10 Census

Metropolitan Areas (CMA)²¹[See Table 2]. Now more than ever “what goes on in our cities is more crucial to the economic well being of Canada than what goes on in our mines, farms and fishing boats.”²²

[Table 2]

Most Populous Census Metropolitan Areas 2011			
Census Metropolitan Areas	Population (in thousands)		
Toronto	5,769.8		
Montreal	3,885.7		
Vancouver	2,373.0		
Ottawa	1,270.2		
Calgary	1,264.5		
Edmonton	1,206.0		
Quebec City	776.8		
Winnipeg	746.1		
Hamilton	742.5		
Kitchener-Cambridge-Waterloo	493.0		
Total	18,527.6		
Canada	34,342.8		
Percentage of the Population living Top Ten most Populous CMA	53.9%		

<http://www.statcan.gc.ca/tables-tableaux/sum-som/I01/cst01/demo02a-eng.htm> (Canada)

<http://www.statcan.gc.ca/tables-tableaux/sum-som/I01/cst01/demo05a-eng.htm> (CMAs)

“In an increasingly borderless world, local communities everywhere are less protected by national governments.”²³ “The global forces and the imperatives of economic competition make

¹⁵ Andrew, “The Shame of Ignoring the Cities”, 102.

¹⁶ Andrew, “The Shame of Ignoring the Cities”, 107.

¹⁷ Courchene, “Global Futures for Canada’s Global Cities”, 26.

¹⁸ Ibid.

¹⁹ Inwood, *Understanding Canadian Federalism*, 164.

²⁰ Loleen. “The Federal Urban Role and Federal-Municipal Relation In Canada.” *The State of the Federal 2004: Municipal-federal-provincial Relations in Canada*, 2006, 36. Senior Level of government refers to federal and provincial governments.

²¹ Statistic Canada Defines a Census Metropolitan Area as: Area consisting of one or more neighbouring municipalities situated around a core. A census metropolitan area must have a total population of at least 100,000 of which 50,000 or more live in the core (<http://www12.statcan.gc.ca/census-recensement/2011/ref/dict/geo009-eng.cfm>).

²² Sancton, “Beyond the Municipal”, 30.

²³ Christopher Leo. “Deep Federalism: Respecting Community Difference in National Policy.” *Canadian Journal of Political Science/Revue Canadienne De Science Politique* 39, no. 3 (2006): 482.

municipal evolution inevitable.”²⁴ Our future relies on the critical role our Global City Regions will play in the near future to increase the potential of the Canadian economy.²⁵ They must attract the best talent have access to the best technology and they need to provide a tolerant atmosphere for all forms of creativity to thrive²⁶. As of right now urban governments have not been given the tools they need to excel in the world marketplace. Courchene suggests that in order for Global City Regions to achieve meaningful revenue autonomy, cities need access to broader bases of taxation.²⁷

Currently the majority of municipalities’ revenue comes in the form of property taxes. This single tax is by no means expansive enough to encourage the development of local governance. In order for our Global cities to emerge as world leaders, they need to establish multi-lateral agreements with the federal and provincial governments that would ensure a sharing of the transfer of tax based upon what was actually collected from the municipality in the first place.²⁸ It would be through a tax transfer program based on proportional redistribution of tax revenue that the emergence of our global cities would be ensured. Since GCRs are hubs for immigration and resettlement, their growing tax base will ensure their future prosperity and autonomy.²⁹

The issue as it is now exists, however, is that all the aforementioned powers do not exist for municipal governments. Restrictions on revenue sources make it impossible for the city to maintain, let alone improve, existing infrastructure and service delivery.³⁰ The limited ability to implement change in our urban neighbourhoods because of the lack of municipal autonomy keeps innovative individuals away from participating in

local government. It is those very people that we need, however, to secure economic success of our future.

In Courchene’s paper *Global Futures for Canada’s Global Cities*, he makes detailed reference to the Hancourt Report and its call for a double devolution in powers. If a double devolution were to occur it would consist of the “federal government [shifting] responsibilities and resources onto the provinces and they in turn would move those powers to the local level.”³¹ The double devolution, according to the Hancourt Report would “ensure that choices about how to raise and use resources, including tax choices, move to the most appropriate local levels, where accountability to citizens is most direct.”³² For real change in the federal stance towards municipalities to occur there would need to be intense lobbying effort conducted horizontally by large urban city leaders.³³ If a larger role for municipalities in federalism was to be won there would be not only a larger role for the cities, but also a further devolution of power to individual neighbourhoods. The chance to bring Canadian federalism down to the local level is an exhilarating thought about the possible evolution of our democracy. By broadening the tax revenue that municipalities can draw upon through tax transfer programs, local participatory budgeting initiatives can become more commonplace and elaborate, bringing more people into local government. When we deprive our global cities of the ability to self determine, it is to the detriment of the city and to local democracy, and on a larger scale, to the detriment of the national economy. Canadian federalism needs to recognize the emerging role of cities as the pistons of the economic engine that will drive the economy into the information age.³⁴

²⁴ Young, “Multilevel Governance and Public Policy in Canadian Municipalities”, 14.

²⁵ Kiel & Young, *A Charter for the People*, 88.

²⁶ Courchene, “Global Futures for Canada’s Global Cities”, 5.

²⁷ *Ibid.*, 12.

²⁸ *Ibid.*, 17.

²⁹ Courchene, “Global Futures for Canada’s Global Cities”, 24-25.

³⁰ Kiel, “A Charter for the People?”, 88.

³¹ Courchene, “Global Futures for Canada’s Global Cities”, 22.

³² *Ibid.*

³³ Young, “Multilevel Governance and Public Policy in Canadian Municipalities”, 2.

³⁴ Courchene, “Global Futures for Canada’s Global Cities”, 5.

In order for cities to emerge in the globalized world as economic and cultural powerhouses, they need to be given the authority to communicate with the federal and provincial governments with some level of jurisdictional authority. The way that more power will be won by municipal governments is through intergovernmental agreements enshrined into law. Courchene reminds us that our “Global City Regions have the critical civil-servant mass for effective policy design.”³⁵ By communicating within the multi-level governance framework municipalities can lobby their way into conventionalized autonomy. Issues occur about establishing lasting dialogues regarding municipal autonomy, “namely the sheer turnover of political leadership.”³⁶ Compounding the problem of political turnover are the complex relationships that already exist between federal and provincial governments and make embracing a third member a challenging task. The provinces' complete jurisdiction over municipalities means that even if a federal government was elected on the platform of municipal autonomy provinces could constitutionally challenge any purposed law that would restrict their sweeping jurisdiction over urban affairs. The greatest chance for the urbanization of Canadian federalism comes in the strengthening of intrastate institutions.

As it stands, “Ottawa has no central institutions for liaison with the municipal sector as a whole.”³⁷ Loleen Berdahl advocates for institutionalizing urban affairs at the federal level. Some form of “federal consultation mechanism such as the establishment of a federal standing committee on urban affairs”, argues Berdahl, would “institutionalize federal consultation with provincial and municipal government.”³⁸ While this reform does not seem likely under the Harper

³⁵ Ibid., 35.

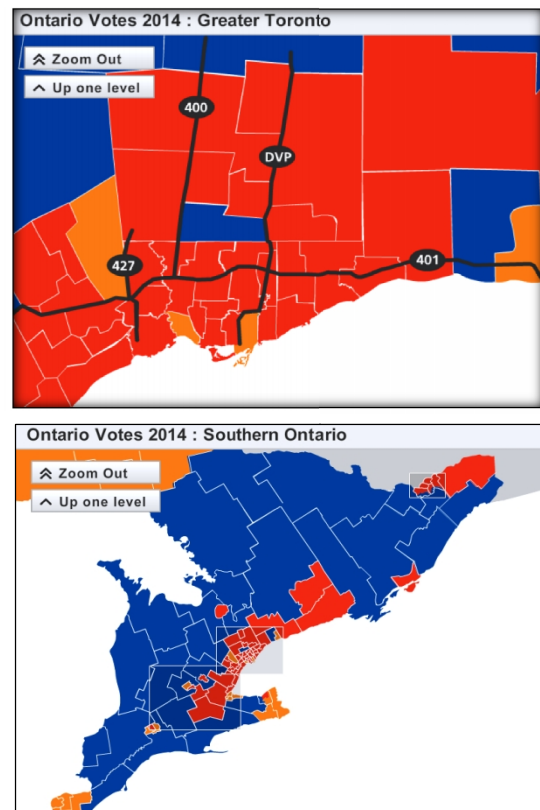
³⁶ Young, “Multilevel Governance and Public Policy in Canadian Municipalities”, 5.

³⁷ Young, “Multilevel Governance and Public Policy in Canadian Municipalities”, 5.

³⁸ Berdahl, “The Federal Urban Role and Federal-Municipal Relations”, 37.

administration the citizenry in the upcoming federal election will have the ability to choose a new vision of how municipalities fit into the federalist scheme. Viewing the recent electoral results in the Ontario provincial election we can see how the urban centers are voting with the party that is advocating a more city centered agenda. [See Image 1]

[Image 1] 2014 Ontario Election Results



<http://www.cbc.ca/elections/ontariovotes2014/> (CBC)

There are 107 total seats in the Ontario Provincial Legislature. In order to obtain a majority, a single party must win 54 ridings. The current Liberal government won 19 out of a possible 22 within the City of Toronto³⁹. What is even more interesting, however, is the fact that the liberals were able to decimate the

³⁹ Alcoba, Natalie. "Ontario Election Results: Liberals Ride to Majority on Strength of Toronto's 416." National Post Ontario Election Results Liberals Ride to Majority on Strength of Torontos416 Comments. June 12, 2014. Accessed November 1, 2014. <http://news.nationalpost.com/2014/06/12/ontario-election-results-liberals-ride-to-majority-on-strength-of-torontos-416/>

Conservatives in the suburbs of the Greater Toronto Area. When we broaden our view, we see that the Grits took 37 of the 47 seats that were up for grabs in the Greater Toronto Area. In *The Shame of Ignoring the Cities*, Caroline Andrews states that “without public intervention, there will be a growing tendency at the provincial level for cleavages to widen between the metropolitan centers and the rest of the provincial population.”⁴⁰ The most recent Ontario election does a fantastic job of illustrating the growing cleavage in political ideology that exists between the metropolitan centers and the surrounding rural areas, since what urban cities need and desire is fundamentally different than the needs and wants of rural ridings. If citizens of cities want more say in and more power for their local government they need to say so with their feet. Through provincial elections and the process of intrastate federalism, cities can vote for provincial parties that are the most likely to be open to sharing certain jurisdictional responsibilities. As Courchene reminds us, real breakthrough will probably have to come from the provinces⁴¹. Dialogue is essential but it will only be through legislation that cities will better be able to set their local agenda to deal with their local needs.

Canada was established on the principles of tradition and loyalty. These principles, although essential for maintaining peace, order, and good governance do not lend themselves well to reform. Although Canada is not prone to implementing reforms dealing with the jurisdictional separation of powers, the current circumstances call for a devolution of powers accompanied by a transference of the financial tools to the urban Global Cities to ensure limited self-autonomous government. The strict legalistic reading of the constitution has kept the principle motors of our economy chained to their provincial master for too long. The economic success of Canada, as we move into a more globally

competitive era relies on the emergence of institutionalized multi-level governance. It is the job of the urban citizen and rural citizen alike to become politically active in their local communities and to demand change through their vote. The division of powers found in the Canadian constitution is a relic of a colonial world. It is and will continue to be irresponsible for the federal and provincial governments to shackle the country to this agreement based on blind faith alone. The time is now to secure greater municipal autonomy.

⁴⁰ Andrew, “The Shame of Ignoring the Cities”, 102.

⁴¹ Courchene, “Global Futures for Canada’s Global Cities”, 27.

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A Collaborative Method to Overcome the Difficulty of Constitutional Amendment

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Constitutional politics hold a special place in Canadian political history. Demanding and difficult, the politics of the Constitution have been marked by disagreement and dissent for the entire brief history of this nation. Canada is both a multinational and territorially vast federation, thus it can only be expected that the views and demands of the diverse provinces and nations within will conflict. From this viewpoint, it seems a daunting task to unite this federation around a constitution meant to represent Canada as a harmonious and collective nation. This task has led to years of meetings concerning constitutional amendments that would properly represent and meet the demands of the provinces and Canadians as a whole, but the constitutional amendment process has proven to be extremely difficult and largely unsuccessful. In light of repeated failures, the question in discussion becomes: is constitutional reform necessary to tackle Canadians' concerns about the performance and legitimacy of the Canadian federation? Performance and legitimacy must first be defined to contextualize the argument ahead. Performance and legitimacy are concerned with how effective the Canadian government is in the eyes of the average Canadian citizen. Also, these two benchmarks are used to measure how accountable the government is to Canadians and thus properly meets their demands and concerns. A second question arises from this: is constitutional reform necessary to maintain this accountability, or can non-constitutional reforms act as a less formal but equally, if not more, effective means to achieve legitimacy and performance? A constitutional amendment is necessary to satisfy the recurring demand for Senate reform, but, due to the unsuccessful history of constitutional reform, non-constitutional means including collaborative federalism, asymmetrical federalism, and open federalism have proven to be effective alternatives which meet Canadians' expectations.

Before analyzing the issue of constitutional reform in Canadian politics, a brief historical overview of the difficulty of constitutional reform is necessary. Pierre Trudeau's patriation of the Canadian Constitution in 1982 failed to garner Quebec's support and signature, resulting in decades of Canadian politics focused on "bringing Quebec into the Constitution."¹ Quebec had several specific demands, including desires to control their own independent immigration policy and to be recognized as a distinct society, which had to be met in order to see Quebec sign the constitution.

The Meech Lake and Charlottetown Accords provide the best examples of why constitutional reform is so difficult in Canada. Both proposals failed and left Canadians with little or no appetite for constitutional politics; they also showcased that the problem is not that Quebec is not a part of the constitution, but that Canada is so large and diverse that provincial demands will never be harmonious nor unanimous. Canadian constitutional politics will continue to be deadlocked by virtue of Canada's diversity, not solely in Quebec but throughout all Canadian provinces, territories, and nations.

The Meech Lake Accord was a proposal negotiated by Prime Minister Brian Mulroney in 1987 with the premiers of the provinces. It was designed to have Quebec sign an amended Constitution in exchange for the federal government meeting Quebec's five specific demands. Mulroney sought to decentralize power to the provinces further, as evidenced by his willingness to meet Quebec's five demands, most notably recognizing Quebec as a distinct society within Canada.² The accord failed when both Manitoba and Newfoundland refused to ratify it by

¹ Peter Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* (Toronto: University of Toronto Press, 1993). 125.

² Russell, *Constitutional Odyssey*, 129-133.

the three-year deadline.³ In conclusion, the accord failed due to general public opposition to its terms and because it was written by “11 men in suits behind closed doors” without public dialogue and consultation.⁴ The result was that it discredited executive federalism as a legitimate form of negotiation and left a sour taste in the mouths of Canadians concerning constitutional reform. Meech Lake also taught politicians that Canadians have to be involved in the negotiations regarding the Constitution. The Meech Lake Accord tainted constitutional reform in Canada, opening the door for, and even necessitating, non-constitutional reforms in the coming decades.

The Charlottetown Accord was a package of constitutional amendments proposed in 1992 and was negotiated by the federal government, the provinces, the territories and Aboriginal peoples.⁵ Unlike the Meech Lake Accord, the Charlottetown Accord was conducted with broad public consultation, including seminars and meetings held within provinces; however, during the end of discussion concerning the Charlottetown accord, politicians reverted to the ways of Meech Lake by engaging in secretive processes and ignoring public consultation and the opinion that had been obtained. The Charlottetown Accord was defeated in a national referendum mostly because it was lengthy and most provinces found at least one proposal that they did not agree with, once again exhibiting the broad range of demands within Canada.⁶ Charlottetown was the last significant attempt at constitutional reform; it ended the era of executive federalism and opened the door for collaborative federalism.

Since his minority victory in the 2006 election, Stephen Harper has attempted to reform the Senate in order to make it a more effective and democratic body. Harper has specifically aimed to reform the Senate through legislation. Most intellectuals reject the Conservatives’ argument that the Senate can be reformed solely by parliament and without a constitutional amendment;⁷ however, Harper and the

Conservatives are clearly trying to avoid the difficult process of constitutional amendment. Legislative constitutional reform, although difficult, will be the only way to achieve Senate reform in Canada.

Bill C-7, the vehicle of Harper's attempted constitutional reform, was first read in Parliament in June 2011. The two main reforms it called for were a limit of nine years on senators' terms, and selection of senators through elections to be conducted by the provinces.⁸ Matthew Mendelsohn argues several points against Bill C-7's attempt at Senate reform in his essay, "A Viable Path to Senate Reform." First, under the Constitution, the Senate has power equal to that of the House of Commons; however, it does not exercise these powers because it has no legitimacy as it is an appointed, and not democratically elected, body. By creating an elected Senate, senators would gain legitimacy and an obligation to exercise their powers. This in turn could produce deadlock in government without a mechanism to address the equal nature of the two bodies. Second, the current distribution of Senate seats creates a power imbalance directed in favour of the small Atlantic Provinces, who have more seats than some of the larger provinces. For example, New Brunswick has ten seats while British Columbia has only six seats.⁹ Mendelsohn argues that not only is reforming the Senate through legislation unconstitutional, but, in order to avoid deadlock in government, reforming the powers of the Senate must be at the center of the proposed reform. Reform must also address the distribution of senators to the provinces.¹⁰

Based on the Supreme Court Reference Case on Senate Reform in April 2014 Senate reform must occur through constitutional reform. The Supreme Court ruled that constitutional amendment is required for all planned Senate reform, except for requirements of property and net worth, which the federal government may amend through legislation.¹¹ The important question is not whether or not Senate reform is

³ Ibid., 152

⁴ Gregory J. Inwood, *Understanding Canadian Federalism: An Introduction to Theory and Practice* (Toronto: Pearson Canada, 2013), 98.

⁵ Ibid., 99.

⁶ Russell, *Constitutional Odyssey*, 186.

⁷ Matthew Mendelsohn, “A Viable Path to Senate Reform?” *Mowat Centre for Policy Innovation University*

of Toronto (2013): http://mowatcentre.ca/wp-content/uploads/publications/64_a_viable_path_to_senate_reform.pdf accessed November 2014, 7.

⁸ Ibid., 3.

⁹ Ibid., 6.

¹⁰ Ibid., 9-10.

¹¹ Reference re Senate Reform, 2014 SCC 32, [2014] 1 S.C.R. 704 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13614/index.do>

necessary, but rather, whether or not it is possible. Senate reform has been at the forefront of Canadian politics in recent years, but the Supreme Court ruling that it must happen through constitutional amendment may deter the process. As exhibited by the failure of mega-constitutional politics in the 1970's through to the 1990's, provincial governments have a difficult time coming to mutually satisfactory conclusions. Therefore, it may be argued that Senate reform will never come about, as it requires the amending procedure of consent of seven of the ten provinces or 50% of the population.¹² Furthermore, the abolishment of the Senate altogether is unlikely, as the Supreme Court ruled that it requires consent from the Senate, House of Commons, and every province/territory.¹³ Senate reform may not be an attainable dream as it requires changing the Constitution. Canadians are not eager to engage in constitutional politics, nor is it likely that the provinces will ever come to a consensus concerning a political body designed to represent the regions. Despite the federal government's attempt to use non-constitutional means to reform the Senate, it is not possible; however, non-constitutional means do offer a solution to other concerns held by many Canadians.

Collaborative federalism emerged following the era of mega constitutional politics, which was dominated by executive federalism. An example of executive federalism is when provincial premiers take it upon themselves to be spokespeople for their provinces, without the aid of the provincial legislatures. Premiers advocate their causes directly with the prime minister and Cabinet, and most negotiations occur behind closed doors.¹⁴ Executive federalism was generally disapproved of following the failures of the Meech Lake and Charlottetown Accords due to its lack of citizen inclusion in political dialogue. Executive Federalism can be considered a reason why constitutional reform was not possible, as it did not include citizen input in affairs concerning Canadians. Executive Federalism promotes negotiation behind closed doors and generally deadlocked constitutional reform in Canada. Collaborative federalism emerged as a new form of Canadian federalism in response to the failure

of executive federalism. Collaborative Federalism brought to Canada non-constitutional reforms including The Social Union Framework Agreement (SUFA) and The Agreement on Internal Trade (AIT).

David Cameron and Richard Simeon define collaborative federalism in their article, "Intergovernmental Relations in Canada: The Emergence of Collaborative Federalism" as

the process by which national goals are achieved, not by the federal government acting alone or by the federal government shaping provincial behavior through the exercise of its spending power, but by some or all of the 11 governments and the territories acting collectively.¹⁵

Collaborative federalism allows for non-constitutional reform because it creates flexible agreements, such as the Agreement on Internal Trade, and the Social Union Framework Agreement. Agreement is the key word in collaborative federalism; agreements are not as constricting as constitutional changes. Constitutional changes are comprised of what Cameron and Simeon call "uncompromising language."¹⁶ Constitutional changes are entrenched in the constitution and the results are concrete and restricting, whereas agreements allow for compromise in their language, as they are not as formal as constitutional reforms.

The Agreement on Internal Affairs (AIT) is an agreement between the federal government and the provinces which reduced the restrictions on mobility of people and goods between the provinces. It was created following the failure of the Charlottetown Accord and the failure of the federal government to extend their powers concerning the economic union.¹⁷ It is restrictive in practice as it fails to allow public access, but it is a breakthrough in intergovernmental relations. It is also a non-constitutional reform that shows that it is possible for the provinces and the federal government to work in a collaborative method in order to achieve reform.

¹⁵ David Cameron and Richard Simeon, "Intergovernmental Relations in Canada: The Emergence of Collaborative Federalism" *The Journal of Federalism* (2002): <http://publius.oxfordjournals.org/content/32/2/49.full.pdf+html>, 54.

¹⁶ *Ibid.*, 55.

¹⁷ *Ibid.*, 55-56.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Inwood, *Understanding Canadian Federalism*, 84-86.

The Social Union Framework Agreement (SUFA) is concerned with the process of how governments (provincial and federal) relate to each other and their citizens concerning social policy. SUFA calls for joint federal-provincial planning in social policy and calls for a larger role for citizens in decision-making.¹⁸ It is an example of collaborative federalism because the provinces created it by working towards making common policies and proposals for the federal government. It showcased that, despite having different and conflicting interests, the provinces remained consistent to the federal government and proved they could achieve consensus. Both SUFA and AIT acted as broad frameworks that collaborative federalism could work within. They were general rules of conduct that showcased that reform was necessary but had to be done in loose, non-legal binding means and not through drastic constitutional changes. These reforms, however, were not perfect; they lacked public consensus and encountered a lack of commitment to their use in joint problem solving.¹⁹

Jennifer Smith defines asymmetry as: “the differential treatment of the units of the federation under the constitution or in national public policy.”²⁰ Canada is not only multinational but also a territorially large country; therefore, it is doubtful that there will be a consensus among the provinces concerning demands. Asymmetrical federalism offers a solution to accommodate the differences of multinational Canada without amending the Constitution. Asymmetry can be a major political instrument that can affectively accommodate the political desires of minority nations.

The strongest example of how asymmetrical federalism offers a solution for Canadian constitutional politics is by observing the demands of Quebec. Asymmetrical federalism can accommodate the political demands of the francophone minority nation because legislation and agreements can be constructed that meet Quebec's unique demands without imposing themselves upon other provinces. This process can be extended to other provinces but, for simplicity,

Quebec will be the only province observed in this example. Alain Gagnon argues that the provinces are fundamentally different and they occupy their jurisdictions in different ways. For example, Quebec has consistently demanded asymmetrical policies but has demanded them through constitutional change.²¹ There is a way of appeasing these demands by constructing asymmetrical policy, which can be modified while leaving room for change in the long term. Policy that is asymmetrical in Canada is what Jennifer Smith calls “asymmetrical in practice.”²² For example, the opting out mechanism allows provinces to opt out of federal programs and design their own. Quebec used the opting out mechanism to form their own pension plan: the Quebec Pension Plan.²³ Asymmetry in this means allows provinces to run programs that they feel can best represent their unique provincial concerns. The Quebec Pension Plan exhibits how asymmetrical federalism is flexible; it can be a means of accommodating the demands of Quebec by offering them a way to display and encourage their French culture. Quebec gaining control of areas of social policy demonstrates that asymmetry works. The most important argument to make is that provinces may be more able to meet demands of citizens because they are more accessible than the federal government due to the sheer size of Canada. This argument, combined with the fact that Quebec is predominantly francophone and the federal government hosts representatives from the other nine provinces, makes the most sense: to promote asymmetrical policies without reforming the constitution.

Open federalism offers another approach to meeting the demands of Canadians without constitutional reform. Inwood describes open federalism as an approach to intergovernmental relations articulated by Prime Minister Stephen Harper, which advocates a classical model of federalism in which each level of government restricts its activities to areas of its own jurisdiction. Harper also advocated limiting the use of federal spending power so as to not intrude

¹⁸ Ibid., 56-58.

¹⁹ Ibid., 58.

²⁰ Jennifer Smith, “The Case for Asymmetry in Canadian Federalism,” Working Paper. N.p.: Queens University School of Policy Studies (2005), <http://www.queensu.ca/iigr/WorkingPapers/asymmetricalfederalism/Smith2005.pdf>, 2.

²¹ Alan Gagnon, “Asymmetrical Federalism in an Era of Exacerbated Centralism,” in *Contemporary Canadian Federalism*, ed. Alan Gagnon (Toronto: University of Toronto Press, 2009.), 259.

²² Smith, “The Case for Asymmetry,” 2.

²³ Ibid., 2-3.

on provincial affairs.²⁴ Open federalism recognizes that provinces are most able to deal with provincial affairs due to their experience and proximity to the people, thus promoting asymmetrical federalism. As discussed above, asymmetrical federalism is an effective means of meeting the demands of the provinces as it puts the power into their hands. Frédéric Boily makes the argument that the “openness” of Harper’s federalism allows the provinces to strengthen their responsibilities within their constitutional jurisdictions.²⁵ One could argue that, since Stephen Harper’s open federalism promotes asymmetry, it is an effective means of remaining accountable to Canadians. Open federalism respects rather than amends the constitution, thus promoting asymmetrical agreements and legislation, which proves a more effective means of reform.

In November 2006, Stephen Harper proposed to recognize the Quebecois as a nation within Canada, thus recognizing the multinational character of the federation.²⁶ It was a symbolic but non-constitutional recognition, as it did not recognize Quebec as an independent state within Canada but rather recognized the people of Quebec as a nation. This is important because the Conservative government did not cede any differentiated powers to Quebec; however, it was the closest concession in the history of Quebec’s constitutional politics to the original demand by Quebec to be recognized as a distinct society as in the Meech Lake Accord. Jean-Francois Caron and Guy Laforest argue that this motion was simply an example of symbolic multinationalism and not an example of multinational policy, thus it does not change the way asymmetrical policies are implemented within Canada.²⁷ The argument could be made that open federalism simply promotes asymmetrical federalism symmetrically to all the provinces. This means that Quebec may get special concessions concerning policy, but they

are not recognized as significantly different than any other province. Asymmetrical policy is promoted through open federalism and allows the provinces to choose what they want to control. This argument could be defended by the fact that Quebec was symbolically recognized as a nation but not formally. Harper – like Prime Ministers before him – has refused to grant special status to Quebec within Canada in order, one may suppose, to avoid the slippery slope of Quebec secession; however, despite the lack of special concessions to Quebec, open federalism does promote asymmetrical federalism, thus allowing the diverse territories of Canada to provide policy to Canadians via the most effective means without amending the Constitution.

Canadian constitutional politics of the past three decades have been defined by the difficulty in achieving constitutional amendment. The Meech Lake and Charlottetown Accords left no spirit for constitutional politics in the average Canadian; citizens began to associate amendment with the unsuccessful accords. Senate reform is a recent political issue in Canada defined by the government’s inability to accomplish reform that will properly meet the expectations of Canadians. As discussed, this is at the heart of constitutional amendments: expectations of Canadians must be met. Canada, however, has had a difficult experience with achieving strong multilateral consensus no matter the issue at hand. For this reason, it is unlikely that constitutional amendment will be a reliable and successful way to meet expectations of Canada. The impossibility of constitutional amendment opens the doors for a more collaborative system, comprised of non-constitutional amendments, for the Canadian federal government. Under the umbrella of collaborative federalism, asymmetrical policies and open federalism have evolved as a means to maintain the performance, legitimacy and effectiveness of the Canadian federation. One may confidently say that this collaborative model of federalism, along with asymmetrical policies, is the most effective means of meeting the conflicting demands of the people in a multinational and territorially diverse Canada.

²⁴ Inwood, *Understanding Canadian Federalism*, 100-101.

²⁵ Frédéric Boily, “Federalism and the Federation According to Conservatives 1975-2011.” *The Federal Idea: A Quebec Think Tank on Federalism*, (2014), http://ideefederale.ca/documents/Boily_ang.pdf, 19.

²⁶ *Ibid.*, 19.

²⁷ Jean-Francois Caron and Guy Laforest, “Canada and Multinational Federalism: From the Spirit of 1982 to Stephen Harper’s Open Federalism.” *Nationalism and Ethnic Politics* (2009), DOI: 10.1080/13537110802672370, 45.

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The European Union: Towards a United States of Europe

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The European Union (EU), a contested “European” political construct, is contemporarily positioned at a critical juncture that presents three options that may determine its status as a supranational actor: stagnation, dissolution, or deeper and wider integration. The myriad pressures antagonizing the European Union and its structural foundations parallel those that the project sought to address following World War II. The unprecedented level of devastation caused by advanced military technologies and totalitarian ideologies in the war provided the impetus for increased cooperation amongst independent nation-states. Institutional cooperation encourages the deconstruction of destructive socio-political forces including racism, nationalism, and primordial cultural identities. These essentialist forces emerge in the absence of effective governance and encourage internal and external hostilities. The EU is intended to provide a structural framework for liberal-democratic countries to make collective decisions to increase economic prosperity, freedom, security, and justice. Although the EU’s framework has the potential to achieve gains for all members, recent events such as the ongoing Sovereign Debt Crisis appear to provide Euro-skeptics with convincing empirical data that bolsters their calls for the dissolution or halting of further integration. Assuming that deeper and wider integration is the most likely scenario, this paper will examine the merits of the liberal intergovernmentalist and federalist perspectives in predicting the future course of EU integration.

The EU is an 'emergent' project forged out of conflict and was a solution to overcome nationalistic hostilities and to expedite the post-war reconstruction of Europe. The regional project initially drew logical parallels to that of the failed League of Nations for its diplomatic inclinations; however, it differed in its proposed

solution to the recurring 'German Question.' While the League of Nations, the Treaty of Versailles, and the resentful French state sought to economically repress Germany in the post-WWI period through crippling reparations and demilitarization, the predecessor to the European Union, the European Coal and Steel Community (ECSC), subscribed to a broader plan of peaceful West German re-integration through Western institutional involvement. Since the repression of post-war Germany proved ineffective, cooperation within the unfolding Cold War context was the most feasible course of action as it was supportive of Western cultivation and communist containment; however, there was significant hesitation on behalf of the French in accepting a solution that would include their historic enemy of the preceding two centuries. This hesitation would become a portent of future tension.¹

Although the French state had legitimate grievances with Germany, it was French Foreign Minister Robert Schuman, along with Konrad Adenauer of West Germany, who advanced the Schuman Plan which would initiate the multi-sovereign amalgamation of coal and steel resources in 1951.² The Schuman Plan was the proposed institutional design of the ECSC which was drafted by Jean Monnet and agreed upon in the Treaty of Paris by Belgium, Italy, Luxembourg, France, Germany, and Nederland.³ Monnet’s theoretical insights, gained from his experience with French national economic planning in the period following the war, “confirmed his long-held view that economic development and prosperity

¹ Derek W. Urwin, “The European Community: From 1945 to 1985,” in *European Union Politics* 4th ed, ed. Cini,

Michelle, and Nieves Perez-Solorzano Borrigan (Oxford: Oxford University Press, 2013), 17.

² Ibid., 16.

³ Ibid.

could be best achieved at a European, rather than a national, level, and ... the route to political integration was a long road that inevitably lay through economics.”⁴ Monnet, when drafting the Schuman Plan, believed that the path to European stability would be one of gradual integration. The Treaty’s teleological discourse positioned the ECSC as the opening move of a continuous process of deepening and widening European solidarity.

While the theoretical debate regarding the reasons for the project’s naissance is dominated by intergovernmentalism and neo-functionalism, the debate over the EU’s future course is best explained through liberal intergovernmentalism and federalism. Federalism is a multi-level political structure bound together by a central constitution that qualifies the levels of sovereignty between superior and subordinate actors.⁵ Federations consist of national and provincial governments elected in accordance with democratic practices.

Federalism has existed since the days of the Roman Empire and has been adopted by various states several times in the years since. One particularly well known European enlightenment thinker, Immanuel Kant, described a form of federalism in his *Perpetual Peace*. Kant wrote extensively about ethics, reason, and political philosophy during a tumultuous period of European uncertainty and inquiry. Kant describes a Federation of Free States as the highest form of political rationality in which each individual nation has its own legal order in addition to an international constitution.⁶ He states that each “nation ... for the sake of its own security can and ought to demand to others that they should enter along with it into a constitution.”⁷ An international constitution, however, could only occur in Europe after legal and political institutions spread through colonialism and expansion.

Kant theorizes that sovereign entities are in the state of nature entitling them to absolute

power through their original right. He asserts that “peoples who have grouped themselves into nation-states may be judged in the same way as individual men living in a state of nature ... they are a standing offence to one another by the very fact that they are neighbors.”⁸ His paradigmatic statement is reflective of the political instability during his period. He firmly believed that through constitutional solidarity, warfare could be avoided, as opposed to the inevitability of violence in the anarchic system for individual entities. This form of solidarity requires mutual recognition through the acquiescence of original right, signalling a departure from the state of nature. Kant’s support for a system of political and legal homogeneity is rooted in the notion that “in the state of nature, the right to make war is permitted ... thus if a state believes that it has been injured by another state, it is entitled to resort to violence, for it cannot in the state of nature gain satisfaction through legal proceedings, the only means of settling disputes in a state governed by right.”⁹ Although the EU’s contemporary structure vastly differs from the federal system that Kant describes, the absence of war between member states supports his assertions.

Altiero Spinelli, who is regarded as one of the “founding fathers of the European Union,” spent several years in prison for his membership in the Italian communist party prior to gaining notoriety for his federalist partisanship.¹⁰ Spinelli attempted to resist Mussolini’s fascism through leftist activity prior to the outbreak of WWII; however, during his incarceration, his belief in the ideology began to falter and he became increasingly alienated from the communist movement and embraced federalism after reading the works of Einaud, Beveridge, and Robbins.¹¹ Spinelli was motivated by Robbins’ work, which “concluded that nation-states would need a common government to deal with their mutual

⁴ Ibid.

⁵ Eugene W. Hickok, “Understanding Federalism,” *Perspectives on Political Science* 19, no. 4 (1990): 216.

⁶ H.S. Reiss, eds., *Kant: Political Writings* (New York: Cambridge University Press, 2013), 102.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid., 167.

¹⁰ John Pinder, “Altiero Spinelli’s European Federal Odyssey,” *The International Spectator: Italian Journal of International Affairs* 42, no.4 (2007): 573.

¹¹ Ibid., 572.

interdependence in the fields of both the economy and security; and among democratic states it was federal government that would be required.”¹²

In 1941, Spinelli co-authored the Venetian Manifesto with Ernesto Rossi, which proposed a federation of European states to prevent war, provided a framework for economic prosperity, and began a new chapter of European history.¹³ The Manifesto became a founding document of the Movimento Federalista Europeo in 1943; in addition, he delivered an important speech at the first Congress of the European Union of Federalists stating that martial aid provided by the United States of America should play an instrumental role in creating a federal union.¹⁴ He warned that failure to organize into such a political structure would result in the “Americans ... be[coming] more and more tempted to move from the liberal alternative to that of imperialism.”¹⁵ His political leadership was well received within the Italian *polis*, and he was able to use that to acquire half a million signatures for a petition urging the development of a European federal state.¹⁶ Spinelli, in concert with the other European federalists, played a pivotal role in the post-war period by raising support for their vision of a new political direction and identity.

Europeanization, the process by which civilians in sovereign nation-states increasingly adopt a supranational identity over that of their own nation-states, has helped the region flourish politically and economically. Although the EU has experienced recent economic downturn and seen the implementation of severe austerity measures in several member states, its efficacy has been empirically validated by its ability to overcome post-WWII obstacles, increase European autonomy and influence within the global system, and its resiliency for its part in economic assistance keeping Portugal, Italy, Greece, and Spain afloat. The current crisis is part of a series that presents an opportunity to deepen and widen

integration of member states, guided by the principles of federalism. As Jean Monnet reflected, “Europe will be forged in crises, and will be the sum of the solutions adopted for those crises.”¹⁷ The teleology of sectoral integration and spillover into other areas exemplifies the “interconnected nature of modern economies and snowballing institutional delegations of power [that] would gradually propel Europe towards a true political union.”¹⁸

Following the trajectory of integration beginning post-WWII, today’s EU economically rivals established superpowers such as the United States and emerging powers such as China. Through treaty agreements, the EU now consists of 28 member states representing 500 million citizens and exceeds the population and GDP of the United States of America, which currently has 316 million citizens. The EU is the sum, which through the process of enlargement as well as deeper and wider integration, has greater political and economic leverage in the global system than its parts. Without membership in the EU, nations that are comparatively small geographically and in terms of population such as Cyprus (population 0.8 million) and Malta (0.4 million) would suffer economically as they would face immense trade difficulties due to their lesser buying power and limited domestic economies. The combination of the EU’s member states’ domestic comparative advantages allows for greater diversification of risk in the global economic system as opposed to individual states, which suffer relatively more as a result of market fluctuations.

In addition to greater vitality in the face of capitalist market downturns, a political structure that has a clear delineation of power, responsibilities, and duties that function in conjunction with each other has greater agency to resist and condition the outcomes of globalization. This comprehensive federal system ensures the survival of the state through self-help to a greater success than smaller independent nations that are

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid., 573.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Craig Parsons and Matthias Mattijs, *Future of the Euro* (publication dated 2015), 2.

¹⁸ Ibid., 6.

less equipped to respond to the current market logic of privatization, liberalization, and deregulation. The supranational apparatus is instrumental in creating a system that transcends local, municipal, and provincial differences through a stable federal identity. Having interconnected systems of governance that are nearly uniform in structure over a vast geographic area has similar logic to that of Kant's belief that states that are not in a "Federation of Free States" are in the state of nature and when injured are without legal recourse and must resort to war.¹⁹

The EU, a system of linked economic, legal, and political systems increases efficiency in external markets as it is the sum of its parts rather than a single entity, thus ensuring the greatest degree of peace, as understood through the democratic peace theory. Although the democratic peace theory is critiqued for many reasons, including its resting upon an ambiguous definition of democracy, its subjective classification of war, and its tendency towards tautologies, some scholars argue that "liberal ideas cause liberal democracies to tend away from war with one another, and that the same ideas prod these states into war with illiberal states."²⁰ Owen states that "all individuals share an interest in peace, and should want war only as an instrument to bring about peace."²¹ With supranational directives establishing important shared policies, the EU creates new norms based upon best practices; however, the principle of subsidiarity remains.

Switzerland's federation, containing 26 partially autonomous cantons, is illustrative of the benefits that constitutional delineation of powers can reap for the collective. Switzerland "has been one of the world's most successful federal states" and can provide lessons for the future of EU integration.²² The unification of the independent Swiss cantons and establishment of common

political preferences took several centuries as it was "respectful of the autonomy of the cantons, which were never anxious to hand over competencies."²³ The move towards a United States of Europe should be an incremental process, involving high democratic input from member states. In addition, the current project needs to undergo a "coordinated program of European structural reform" and "international competitiveness of the EU states must be strengthened further."²⁴

Some areas in proximity to the EU's external borders are experiencing a re-ignition of hostilities and conflict. The immensely complex ongoing conflict between Russia and Ukraine, the jihadis from the Islamic State of Iraq and Syria marching closer to EU applicant Turkey, and the grievances and antagonism between the nations that formerly comprised Yugoslavia exemplify the need for solidarity. With a federation, the central government would be better able to respond to military threats through the creation of a European defense force, ending the EU's dependence upon NATO. In the near future, the EU must further harmonize economic and monetary policy in order to be better equipped to deal with economic downturns, just as the recent Million Mask March sought to highlight with regards to the shortcomings of the eurozone.

David Cameron's dissatisfaction with the EU and consideration of a referendum to leave it is symptomatic of the intergovernmentalist approach to the EU's future. According to Cini & Borragan, liberal intergovernmentalism is a grand theory that "deal[s] explicitly with the interface between domestic and international politics" by "emphasizing the importance of both the preferences and the power of states."²⁵ Liberal intergovernmentalism's state-centric approach to proposed policies and treaties may be viewed as a hindrance to the integration project. Liberal intergovernmentalism, which includes elements of

¹⁹ H.S. Reiss, *Kant: Political Writings*, 167.

²⁰ John M. Owen, "How Liberalism Produces Democratic Peace," *International Security* 19, no.2 (2007): 88.

²¹ *Ibid.*, 89.

²² Peter Sutherland et al., "Europe's Next Steps," *New Perspective Quarterly* 29, no.3 (2012): 12.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Michelle Cini and Nieves Perez-Solorzano Borrigan, *European Union Politics*, 4th ed. (Oxford: Oxford University Press, 2013), 78.

the realist perspective, is concerned with its preferences first; although intergovernmentalism does acknowledge the utility of institutional cooperation, it is skeptical of supranational competency which it views as undermining its sovereign authority. The Council of Ministers, which is represented by the EU members' heads of state, "must give up powers and should be transformed into an upper chamber."²⁶

The EU is situated at a critical junction that may lead to stagnation, dissolution, or a deeper and wider integration. The project has thus far proven that supranationalism mitigates the effects of nationalism and provides a framework for cooperation and stability, which leads to increases in economic productivity. Kant, in concert with other federalists, understood that through material interdependence, the chances of warfare would be reduced. The Sovereign Debt Crisis presents an opportunity for the EU to deepen and widen integration towards a United States of Europe. Switzerland's success with federalism teaches that the move towards a federal structure should be gradual to allow for acculturation and for the process of harmonizing policies. The intergovernmentalist perspective is dominated by state-centrism that threatens the future of the EU. Within the global system, a federal structure with unified systems is better able to handle market fluctuations as well as shape the outcomes of globalization. If the process of integration is halted, the EU may dissolve, signaling a return once again to the state of nature. This regressive move, the realists would argue, would unleash nationalist fervor, which may lead to the re-ignition of war and totalitarianism.

²⁶ Sutherland et al., "Europe's Next Steps," 13.

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Deferential Federalism: The Politics and Policy Implications of 'Collaborative' Federalism Since 1994

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The topic of this essay is Canada's evolving federalism. It will examine the development of "collaborative federalism"¹ in Canada since the mid-1990s, analysing the politics operating behind it in order to i) detail the stances taken by recent federal governments in their dealings with the provinces and ii) show the consequences of these stances on national policy objectives and social programs. It is this author's contention that federal governments over the last two decades have intermittently engaged in convenient deference toward their provincial counterparts and that, when this has been done, it has been detrimental to pan-Canadian policy objectives generally and social programs in particular. First of all, the Agreement on Internal Trade (AIT) of 1994 showcases the weaknesses of framework-oriented policy initiatives that characterize collaborative arrangements. Next, the Canada Health and Social Transfer (CHST) created in the 1995 federal budget highlights how easily the federal government can defer greater authority onto the provinces and what this means for social programs. What is more, the Social Union Framework Agreement (SUFA) of 1999 and the attendant agreement on

health care funding show the potential for the exercise of federal spending power even within collaborative arrangements. Finally, the early interaction of the current Conservative government with the provinces under a stance known as 'open federalism' provides a few cases in point of how policy objectives may be pursued in the present and near future, and points to consequences for social programs in Canada.

Looking into the immediate background of federal-provincial relations prior to 1994 helps to put the marked changes of the mid-1990s into context. To begin, the country had just come out of two failed attempts at constitutional reform with the Meech Lake Accord of 1987 and the Charlottetown Accord of 1992, and the "upshot of these two events was the realization that fundamental constitutional change was not a feasible option."² That is to say, politicians in both levels of government were now likely to stay away from further constitutional bargaining; permanent and significant legal alteration was not popular with the public or the provincial governments concerned, nor was it easy. But there was also financial and ideological pressure to change. The federal government spent actively throughout the 1970's and weathered two major recessions so that "Canada experienced successive federal budget deficits."³ To be sure, there was an effort to limit government spending during this time as Trudeau's Liberal government cut \$963 million⁴ in

¹ Yulia Minaeva, "Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism," (Ph.D. thesis, University of Ottawa, 2012), 13. 'Collaborative federalism' used from here on in the essay as defined by Yulia Minaeva. Collaboration in the context of federal-provincial interaction entails a certain degree of qualification in key areas; namely, that there is "i) shared authority and power, ii) shared resources, iii) implementation of joint activities and provision of services to achieve collaborative results, and iv) information sharing." It should be noted here that the agreements and accords discussed in this paper, which have been called 'collaborative' by governments and in news articles, do not on Minaeva's examination fully satisfy her concept of true 'collaboration', though they may be considered attempts at collaboration.

² Minaeva, "Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism," 8.

³ Simon Lee, "The Governance of Fiscal Policy in the United Kingdom and Canada," *Journal of Comparative Policy Analysis* 5, no. 2-3 (Jun 2003, 2003): 177.

⁴ Lee, "The Governance of Fiscal Policy in the United Kingdom and Canada," 177.

1975 and \$2.5 billion ⁵ in 1978 and the Conservatives under Mulroney saw an \$8.7⁶ billion drop in the deficit between 1984-88. Still “these attempts at retrenchment were not entirely successful.” ⁷ Moreover, major external developments, the “policies of Ronald Reagan and Margaret Thatcher...and globalization,” were also “putting pressure on Canada to make reforms.”⁸ Internally, business lobbies such as the Business Council on National Issues and neoliberal think tanks such as the Fraser Institute and C.D. Howe Institute started to push for market friendly reform, especially during the “Canada Round” of negotiations leading up to the Charlottetown Accord. ⁹ It followed that the “ideological persuasions, and the increasing salience of government deficits” were not yet satisfactorily addressed.¹⁰

This led into the negotiation of the AIT in 1994, the first major instance of a framework-oriented policy initiative and one that typifies the potential weakness of collaborative federalism. The AIT was a way for the two levels of government to “revive the economic union provisions of the Charlottetown Accord through non-constitutional means”¹¹ and therefore a fresh attempt to find new channels through which to reach consensus and work on the center-periphery relationship. The federal government had to avoid the hugely unpopular act of altering the Constitution or even invoking it in any renewed negotiations. In fact, in order to avoid aggravating

constitutional grievances, the Prime Minister and his Minister of Industry would not press the federal government’s constitutional power over trade and commerce in negotiating the agreement on interprovincial trade.¹² So the AIT depended on the success of negotiations and the commitment of the provinces without a coercive option for Chrétien’s Liberal government to fall back on. This proved a difficult endeavour. From the outset, the talks were burdened by the fact that some of the provinces were better equipped than others for deliberation on the “technical aspects of the barriers to trade.”¹³ The governments of “Ontario, Alberta and Quebec had the largest expert bureaucracies and the greatest trade policy capacity,” for example, so that the “various sectoral tables” were dominated by advisors from these provinces. ¹⁴ This meant that most technicalities were settled by these larger governments with the interests of smaller provinces figuring less prominently. This served to reduce the smaller province’s drive to complete the negotiations as they saw the larger provinces settling many of the technical aspects of the talks while their delegates were unable to contribute. To further complicate matters, not all delegates were from the same “policy communities;” they branched into three distinct areas of expertise: “trade policy, regional development and industry, and [...] intergovernmental relations.” ¹⁵ Such variation of ideas as to the ultimate goal of the

⁵ Ibid., 177.

⁶ Ibid., 177.

⁷ Ibid., 177.

⁸ Chris Edwards, “Canada’s Fiscal Reforms,” *Cato Journal* 33, no. 2 (Apr 2013, 2013): 300.

⁹ Adam Harmes, “The Political Economy of Open Federalism,” *Canadian Journal of Political Science* 40, no. 2 (Jun 2007, 2007): 429-430.

¹⁰ Steven Edgar, “The Implications of Open Federalism for Canadian Social Citizenship,” (M.A. thesis, Dalhousie University (Canada), 2008), 56.

¹¹ Harmes, “The Political Economy of Open Federalism,” 431. He feels that this was also in response to pressure from the business lobby which put out studies and position literature calling for the breaking down of barriers to capital and labor mobility between provinces.

¹² Minaeva, “Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism,” 80. John Manley was the Minister of Labour at this time, ‘grievances’ here referring to both the publics’ and the premiers’ weariness of constitutional dispute.

¹³ Edgar, “The Implications of Open Federalism for Canadian Social Citizenship,” 84. The larger governments would know, for instance, more accurately how much each ‘barrier’ (i.e. -restriction on capital and labour movement, or tax on certain goods) affected the overall balance of trade for their provinces. Which barriers were beneficial for themselves, or which barriers helped other provinces to their disadvantage.

¹⁴ Minaeva, “Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism,” 84.

¹⁵ Ibid., 84.

agreement—with trade policy pundits tending to emphasize reducing barriers to trade while those in regional development pulled for protection of certain industries in their jurisdiction—made it even more difficult to “build a comprehensive approach to trade negotiations.”¹⁶ In short the disparate backgrounds of provincial delegates led to miscommunication and fundamental disagreement as to the objectives of the trade agreement. Without the constitutional imperative to keep them focused on coming up with an agreement, the negotiations would inevitably be protracted. These negotiations are an example of ‘collaborative federalism’ and display the detrimental effects of the federal government deferring responsibility for policy to the provinces: nothing gets done.

Further, in these voluntary negotiations “involvement of elite actors ...was very selective,” these actors being incentivized to “see policies primarily in terms of their jurisdictional impact.”¹⁷ So the elite participated in the agreements only intermittently and when they did so they only had concern over what would impact their jurisdiction, they did not concern themselves with what would benefit Canada as a whole. Throughout this process the federal government was not using either its constitutional authority or penalization through the federal spending power and the agreement was legally non-binding. Its eventual signing was perhaps only due to “concerns over national unity,”¹⁸ which is to say that the premiers may have signed the agreement based on a perception that Canadians might appreciate the symbolism. By the time the agreement was concluded it was highly ineffective due to a prior “watering down of many of its more neoliberal provisions.”¹⁹ The provincial delegates had sought first and foremost to protect localized industries rather than expose them to more

liberalized trade. What obligations were set out in the agreement had little impact until, at the behest of the premiers in the Council of Federation, 2003.²⁰ Even after the signing of the SUFA in 1999 when the First Ministers reaffirmed the most important commitment of the AIT to “resolve all outstanding barriers to [labour] mobility by July 1, 2001,” this deadline was never met, there being “no mechanism to ensure the regulating bodies respected the obligations established by the AIT.”²¹ Again without a constitutional imperative to see that the negotiations materialized, there was no incentive for the premiers and provincial governments to implement the specifics of the agreement or to see that its goals were met, so the framework-oriented AIT itself had little impact on interprovincial trade policy. This seems to be the result of the federal government foregoing its constitutional authority and fiscal power in the spirit of ‘collaborative’²² federalism, which perhaps would have incentivized the provincial governments to conclude a more comprehensive agreement which they then would have abided by. Again, leaving the negotiations in the hands of the provinces and deferring responsibility led to an indecisive trade policy which had no impact on policy due to its lack of federally-backed incentive.

Shortly after the AIT the federal government created the CHST, addressing national deficits through unilateral cuts to shared-cost programs to the provinces. In doing so it displayed how easily the federal government could move financial burden and thus implicit authority to

¹⁶ Ibid., 86.

¹⁷ Minaeva, “Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism,” 86.

¹⁸ Harmes, “The Political Economy of Open Federalism,” 432.

¹⁹ Ibid., 432.

²⁰ Minaeva, “Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism,” 91. And here there was a proliferation of bilateral agreements between provinces as these were better poised to produce “tailored solutions to specific problems” so that it seems “the dynamic of collaboration has been replaced by the dynamic of bilateralism in the Internal Trade Agreement.” As Minaeva points out on page 103.

²¹ Ibid., 91-92.

²² The AIT itself failing on the third condition of collaboration, “(iii) implementation of joint activities and provision of services to achieve collaborative results” (see first citation).

provincial governments. And some consequences for social assistance programs also became apparent. The creation of the CHST transfers for social assistance under the 1966 Canada Assistance Plan were combined with transfers for post-secondary education and health care under the 1977 Established Program Financing Act “while reducing the cash portion of federal funding by about one third.”²³ This move has two important implications. First, the “vertical fiscal imbalance” it gave rise to, whereby the federal government accrues “large surpluses” while the provinces are “put in or near deficit (depending on the year),” quantifies the extent of federal disengagement.²⁴ That is the extent to which the federal government can shift its responsibilities onto the provinces. Canada’s federal debt as percentage of GDP had “declined from a peak of 71% in 1995-1996 to below 53% at the end of 200-2001”²⁵ while during the same period provinces “boosted spending on health and welfare by more than 30%, almost double the increase in their aggregate budgets.”²⁶ This has been properly referred to as “the exercise of federal spending power in reverse.”²⁷ And though it was in the direction of devolving responsibility to the provinces, it still indicates the capacity of the federal government to implement fiscal change from the top-down. Here the federal government blatantly used its spending power in reverse for political reasons, the large surpluses that it could lay claim to made it look efficient and frugal while under the table provinces were having to meet greater obligations. This showcases the federal government’s power or ability in exercising its spending power, regardless of the direction—

either spending more on social program to boost pan-Canadian objectives or spending less to improve its fiscal position vis-à-vis the provinces. The result is simply that the federal government maintains a great capacity to influence spending across Canada. Second, partly due to this new fiscal imbalance but also enabled by the dismantling of the CAP requirement that needs tests be the “sole criterion of welfare eligibility,” each of the provinces created stricter eligibility qualifications to cut program costs.²⁸ Such qualifications passed since the creation of the CHST include Ontario’s 1998 imposition of “mandatory employment...including unpaid community service work” and British Columbia’s 2002 cut-off of benefits to “recipients without children, save the disabled” after two years.²⁹ So the CHST provided both the incentive for and possibility of greater provincial limitations on welfare receipt. The provinces had to find ways to save money since there had been cutbacks in funding from the federal government and moreover the federal government made it easier for the provincial governments by suspending CAP requirements that welfare be provided on a needs basis. Hence, the shift in fiscal policy embodied in the CHST has shown the capacity of the federal government to defer programs, especially their costs, to the provinces while also highlighting some resulting retrenchment of social assistance programs. Although there was no collaboration this is an excellent example of unilateral deference as health and welfare policy was moved into the hands of provincial governments.

²³ Edgar, “The Implications of Open Federalism for Canadian Social Citizenship,” 31-32.

²⁴ *Ibid.*, 26-27.

²⁵ Lee, “The Governance of Fiscal Policy in the United Kingdom and Canada,” 175.

²⁶ John Harles and Jamie Davies, “Federalism Matters: Welfare Reform and the Intergovernmental Balance of Power in Canada and the United States,” *Canadian - American Public Policy*, no. 61 (Jan 2005, 2005): 29.

²⁷ Minaeva, “Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism,” 8.

²⁸ Harles and Davies, “Federalism Matters: Welfare Reform and the Intergovernmental Balance of Power in Canada and the United States,” 17.

²⁹ Harles and Davies, “Federalism Matters: Welfare Reform and the Intergovernmental Balance of Power in Canada and the United States,” 19. Apart from significant changes since the CHST, provinces have a wide variance in “basic cash assistance,” four provinces include the monthly supplement provided by the National Child Benefit in a “claw back” for calculating social assistance eligibility and Alberta requires that parents of children as young as six months “find paid work in return for assistance” see 17-19.

The next development in federal-provincial relations was the signing of the 1999 SUFA, another framework-oriented collaboration this time meant to prevent “conflicts over neoliberal approaches to social policy renewal.”³⁰ But unlike the AIT, by the end of this agreement the federal spending power was reasserted and gave the federal government some legitimacy over programs under provincial jurisdiction. The process was started in March of 1998 by a joint “Federal/ Provincial/ Territorial Council on Social Policy Renewal”³¹ but the provinces were the party with something to gain. After the cuts of 1995 the provinces began “temporarily lining up with the Quebec position,” the position that the federal spending power was illegitimate and in need of limitation.³² And early on, the Prime Minister told the provinces that i) the federal government would not use its spending power to establish any “Canada-wide shared-cost program” and ii) the provinces could opt-out of any such programs established in the future.³³ Chrétien also wanted the SUFA to “ensure that governments work collaboratively and are publicly accountable.”³⁴ So the provincial governments entered the negotiations assured of a change in the way federal spending power would be used. They thought that more collaboration on future programs and an opt-out capability would provide greater autonomy in future program development. So they entered the talks with the understanding that the federal government would curtail its unilateral powers, and, with the prospect of greater autonomy in program development, the provinces had an incentive to come to the table;

³⁰ Barbara Cameron, “The Social Union, Executive Power and Social Rights,” *Canadian Woman Studies* 23, no. 3/4 (Spring/Summer 2004, 2004): 53

³¹ Minaeva, “Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism,” 113.

³² Cameron, “The Social Union, Executive Power and Social Rights,” 50.

³³ Minaeva, “Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism,” 115-116. Provided that they established a similar provincial program.

³⁴ *Ibid.*, 117.

however, this changed in December of 1998 with a “federal proposal for a Health Accord”³⁵ that would increase the CHST. This put pressure on the provinces as it was “contingent on” conclusion “in advance of the 1999 federal budget.”³⁶ The provinces decided to conclude the SUFA on February 4th 1999 and while coming to “an informal understanding that the federal government would increase health-related transfers” they gave up on their previous “demand for the ability to opt-out”³⁷ of future pan-Canadian shared cost programs. As part of the attendant Health Accord the federal budget of 1999 promised \$11.5 billion³⁸ over five years, the provinces reaffirmed their commitment to the principles of the Canada Health Act and “agreed to make available information on their respective health care systems.”³⁹ Here the federal government shrewdly employed its spending power combined with time constraints to strong-arm the provinces into accepting its pan-Canadian objectives. It reinforced the ability of the federal government to use its spending power even after promises to avoid such an exercise by unilaterally increasing funding for health care. It also conferred greater legitimacy on the federal government as greater funds were made available for health care. Thus, by this increase in funding the federal government had not only bought some provincial cooperation⁴⁰ but had gained more political legitimacy via financial support over the provinces’ health programs. This is an instance in which the federal government took responsibility for pan-Canadian health policy and the results are evident in that the provinces each followed its direction.

³⁵ *Ibid.*, 118.

³⁶ *Ibid.*, 118.

³⁷ *Ibid.*, 119.

³⁸ Kumanan Wilson, “Health Care, Federalism and the New Social Union,” *Canadian Medical Association Journal* 162, no. 8 (Apr 18, 2000, 2000): 1173.

³⁹ *Ibid.*, 1173.

⁴⁰ The guarantee of commitment to the principles of CHA and of information sharing in exchange for increased funding was a clear exercise of the federal spending power.

More recently, the Conservative government of Prime Minister Stephen Harper has provided a few examples of its own version of 'collaborative federalism' under a stance referred to as 'open federalism' which points to a very limited role for the federal government in programs under provincial jurisdiction. To start, the Universal Child Care Benefit created in the 2006⁴¹ budget was a unilateral move which suggested an aversion for joint federal-provincial programs. Such a move hints at the capacity of the federal government to implement national programs without cooperation of the provinces. The UCCB replaced "bilateral agreements in principle (AIP)" signed between the Liberal government of Paul Martin and each of the provinces under the "Multilateral Framework Agreement on Early Learning and Child Care" or ELCC which dedicated a total of \$5 billion⁴² to be divided and paid out to the provinces for their respective five-year action plans.⁴³ The UCCB was "not a program per se, but rather a tax benefit" worth less than the face value of \$1200 per child under six years of age since this was taxable income.⁴⁴ Combined with their efforts to stimulate "the creation of up to 25,000 new child care spaces"⁴⁵ this was still "\$400 million less a year"⁴⁶ than the planned expenditure under the ELCC. The repudiation of the bilateral agreements of the previous government showcases the intent of Stephen Harper's so-called 'open federalism' as nothing more than another unilateral move to achieve the federal governments objectives of moving away from policy that involves the provinces, that means a scaling back of previous commitments in favour of a less-involved and cheaper scheme. It also displays the capacity once again of the federal government to impose its policy direction on the provinces without their consent. The way in which the Conservatives

dismantled the previous program, giving one-year's notice to the provinces without consultation,⁴⁷ indicates a one-sided approach to deciding changes in social policy. And using the tax system as opposed to funding provincial programs displays an inclination to avoid collaboration in implementation as well. 'Open federalism' then seems to entail a hands-off approach with minimal interaction with the provincial governments. With that being said, the UCCB was a prime example of the federal government taking the initiative and enforcing a pan-Canadian program with no deference to the provinces and no collaboration. Although this was a more modest program than the previous Liberal government had designed, it was still a step in the direction of more federal control; less collaboration in this instance meant a full program was effectively put into place.

The Conservatives did, however, launch a small initiative that may be considered an attempt at collaboration:⁴⁸ the Patient Wait Times Guarantee Trust created in the 2007⁴⁹ budget, which has been unambitious in scope and unsuccessful in its existing goals. The Trust was essentially a "pilot project fund" that put out \$612 million for the provinces to work on "implementation of wait time guarantees in at least one of the five priority areas."⁵⁰ Initially promising improvement in the wait times of all five priority areas in the 2006 budget pledge, guaranteeing a single area was in fact a large reduction in scope.⁵¹ And there was no provision for furthering the establishment of "nationally

⁴¹ Edgar, "The Implications of Open Federalism for Canadian Social Citizenship," 34.

⁴² Ibid., 33.

⁴³ Ibid., 33-34.

⁴⁴ Ibid., 35.

⁴⁵ Ibid., 37.

⁴⁶ Ibid., 36.

⁴⁷ Minaeva, "Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism," 136-137.

⁴⁸ Edgar, "The Implications of Open Federalism for Canadian Social Citizenship," 42. Since eligibility for a province depended on its conclusion of a written agreement with the federal government.

⁴⁹ Edgar, "The Implications of Open Federalism for Canadian Social Citizenship," 42.

⁵⁰ Minaeva, "Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism," 132. The priority areas being cancer, cardiac interventions, joint replacement, sight restoration and diagnostic imaging procedures.

⁵¹ Edgar, "The Implications of Open Federalism for Canadian Social Citizenship," 42.

comparable indicators and measurements systems” which has been on the national agenda since the 2003 Health Accord.⁵² In fact, even by 2008 the Canadian Institute for Health Information found that it was “impossible to compare and measure the progress on wait time reductions across the country,” so that even if improvements did result from the Trust, the Conservatives would have very little evidence.⁵³ Stemming partly from the fact that some of the “guarantees constitute either little improvement on current practices or promise wait improvements that fall short of the advice of medical professionals,” and partly from the lack of “method for enforcement,” the prospects for meaningful reduction in wait times seemed poor.⁵⁴ The fact that this attempt was never equipped with the tools to quantify its success shows a lack of effort on the part of the federal government. The Conservatives could have attached requirements to the Trust fund that stipulated measures of performance in decreasing waiting times so that they could quantify any improvements. Here ‘open federalism’ once again entailed a hands-off approach in which the federal government did not interact with the provincial governments, but merely allotted money to them and then left them alone to spend it as they would. The Trust is an excellent example of how the federal government can use the spending power to implement pan-Canadian objectives yet it was not in this instance used to its full effect as the government never pressured the provinces into action. So with its limited goals this attempt at collaboration is at best a retracted one that highlights a diminished federal role in the provincial health programs. The federal government mildly deferred to the provinces and the result was that no improvements in the health program could be shown.

In conclusion, I have shown that federal governments over the past two decades have

intermittently engaged in deferring authority to provincial governments and that such action has tended to obstruct pan-Canadian policy objectives while also leading to retrenchment and retracted progress in provincial social programs. Collaborative arrangements have been used both to defer federal authority and to reassert it. The AIT, for one, was a deference in the shape of ‘collaboration,’ where the federal government would not use either its constitutional authority or its spending power to influence the consequently ineffective interprovincial trade agreement; pan-Canadian trade policy goals lost out. The Trust established for reducing wait times was another deferential collaboration as it put funding largely at provincial discretion resulting in the frustration of small improvements to provincial health care programs. The SUFA and its attendant Health Accord, on the other hand, was a collaboration which at least showed the capacity of the federal government to exercise its spending power, even if it only reaffirmed the principles of the CHA. Unilateral action, usually in connection with the federal spending power, has similarly been used to both pass authority to the provinces and take it away. The UCCB, for instance, was instigated by the Conservative government without any consultation with the provinces and it quickly effected a sort of national child care initiative without provincial involvement, albeit a limited one that replaced a more comprehensive plan. Inversely, the CHST was a unilateral cut that reversed the federal spending power, removing both federal conditions and some legitimacy over provincial programs that led to a retrenchment of social assistance. Ultimately, the federal government has the capacity to create and influence provincial programs to meet pan-Canadian policy objectives but this capacity depends on the government’s inclination to use its spending power.

⁵² Minaeva, "Canadian Federalism Uncovered: The Assumed, the Forgotten and the Unexamined in Collaborative Federalism," 133.

⁵³ Ibid., 133.

⁵⁴ Edgar, "The Implications of Open Federalism for Canadian Social Citizenship," 42-43.

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Open Federalism: A Balancing Act of Multiculturalist Concerns and Fiscal Imbalances

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In today's political economy, federalism plays a vital role in the function of Canadian politics and governance. Canadian federalism is a system of government that divides the legislative responsibilities of government between national and sub-national jurisdictions in accordance with the Canadian constitution.¹ Although limited throughout the world, federal states are unique in their multilevel governance approach, which allows for more active citizenship, and opportunities throughout the state. In recent years, prior to the 2006 election win of the Conservative Party of Canada, Stephen Harper proposed a unique approach to federalism, which he regarded as open federalism. Harper's decentralized approach to federalism was very persuasive in the beginning stages of its development because of the opportunities it proposed: however, a more thorough analysis of Harper's model suggests many errors in its application, including the extensive objectives it involves. Ultimately, the structure and components of Canadian federalism are based on the current prime minister's interpretation of federalism. Therefore, with regards to Harper's open federalism, it can be suggested that the intentions of the model may be too broad, which leads to asymmetrical relations with specific areas of the nation and repression of minority cultures. This idea will be emphasized by a thorough analysis of Harper's approach to federalism, including the critiques of several scholars, the model's effectiveness at solving contemporary federalist issues, and contrasting Harper's model

with the approaches of past prime ministers and current party leaders. Ultimately, this paper will argue that although each ideological approach to federalism has its weaknesses, the government of Justin Trudeau or Thomas Mulcair may represent a more effective method to solving contemporary challenges of today's federal society.

Open federalism is a system that is designed to restore the roots of classical federalism, which empowers a strong central government to focus on national economic priorities and defense, while respecting the jurisdictional responsibilities of the sub-units.² This otherwise decentralized approach to federalism derives from many ideas that serve as a basis for the model, including restrictions on the federal government's spending power and solving fiscal imbalances of the nation.³ Of these factors, a prominent objective of the system is to establish new ideas that address the unique situation of Québec, with the hopes of reinforcing its position in Canadian politics.⁴ Another significant aspect of the model is to remain traditional but open to new ideas regarding multiculturalism and its significance and the introduction of "...alternatives to the status quo."⁵ Harper proposes that, together, these features will help the country advance as a sole body through multicultural practices and coordination between the federal government and sub-units. To exemplify this idea, Harper uses the Belgium model, which represents

¹ Gregory Inwood, *Understanding Canadian Federalism: An Introduction to Theory and Practice* (Toronto: Pearson Canada, 2013), 7-8.

² Stephen Harper, "My Plan for 'Open Federalism'," *National Post* (2004): 1.

³ Adam Harmes, "The Political Economy of Open Federalism," *Canadian Journal of Political Science* 40, no. 2 (2007):422, <http://www.jstor.org/stable/25166105>.

⁴ Harper, "My Plan," 1.

⁵ Ibid.

a system that recognizes both the cultural groups of the Flemish and French along with geographical regions.⁶ According to Harper, this model would allow for both the cultural groups and regions of Canada to sustain formal government structures over their own affairs and serve as an alternative to debates and recurrence within the system.⁷

Ultimately, the concept of open federalism is rejected by political parties such as the Liberals and Bloc Québécois, which Harper deems as “...stuck in tradition” and as repetitions of old, drawn out arguments.⁸ Despite this opposition to the model, Harper suggests that in order for the nation to advance, a systematic application of democratic and institutional reform is required throughout all of Canada. Therefore, until reform happens, the nation will be susceptible to traditional debates of federalism and governance, and not progress as Harper intends.⁹ In regards to actions of former prime ministers, such as Brian Mulroney’s failed implementation of the Meech Lake Accord, sticking to traditional division of Canadian federalism may be a viable solution to maintaining a stable federal system.

Along with political party opposition, many scholars have published their own interpretation of Harper’s proposal for redefining federalism. Of these scholars, Jean-Francois Caron and Guy Laforest propose a critical analysis of Harper’s model. The scholarly pair argues that Harper’s open approach to federalism is similar to that of Trudeau’s monist form of government, which utilizes a strong central government.¹⁰ Furthermore, they discuss that in reaching out specifically to Québec’s interests, an intent of multinationalism is implied, but when thoroughly observed, a unilateral approach to federalism is

still present.¹¹ Together, Caron and Laforest’s proposals emphasize the idea that Harper’s broad intentions of multiculturalism and classical federalism lose their legitimacy when pursued together. Additionally, Caron and Laforest propose that Harper’s speech in Québec City and the proposal for the establishment of an independent role for Québec in UNESCO also promote the idea of multinationalism, but realistically serve as an ulterior motive for the Conservative Party to regain the respect of Québec.¹² Evidently, this represents an asymmetrical approach to Québec with little attention paid to the other provinces, despite the united and cooperative promises of Harper’s model. Furthermore, Caron and Laforest propose that Harper’s approach to federalism represents a symbolic interpretation of multinationalism that has evolved from collaborative federalism but “...is not revolutionary” or even genuine.¹³ Therefore, it can be suggested that the motive behind Harper’s open approach to federalism is broad but ultimately seeks only Québec’s support.

Another scholarly critique of Harper’s proposal for open federalism is that of Western University professor Adam Harmes. Harmes begins his analysis of the model by weighing the objectives that Harper plans to achieve. Through a systematic analysis of the model, Harmes concludes that although the backbone of Harper’s open federalism is to fix the fiscal imbalance and stabilize the economy, the model may be more appealing to Bay Street Conservatives, rather than the unions and activists who need the support.¹⁴ To support this claim, Harmes denotes that Harper’s plan for institutional reforms is nothing more than an opportunity to develop privatized market policies, which represents a neoliberal approach to federalism, rather than an open one.¹⁵ Furthermore, this emphasizes the idea that Harper’s intentions may

⁶ Ibid., 2.

⁷ Ibid.

⁸ Ibid., 1.

⁹ Ibid., 2.

¹⁰ Guy Laforest, and Jean-Francois Caron, “Canada and Multinational Federalism: From the Spirit of 1982 to Stephen Harper’s Open Federalism,” *Nationalism and Ethnic Politics* 15, no. 1 (2009): 27, DOI: 10.1080/13537110802672370.

¹¹ Ibid., 30.

¹² Ibid., 44-5.

¹³ Ibid., 45-6.

¹⁴ Harmes, “The Political Economy,” 418.

¹⁵ Ibid., 433.

lie with the central government too strictly at the cost of the sub-units that require economic policies to conquer fiscal imbalances at the provincial level. Similar to Harmes, Thomas J. Courchene regards Harper's federalism model as nothing but a "...market-preserving model".¹⁶ This idea is emphasized by the party's intent to direct the federal government's spending power to the national and international concerns of the economy and defense¹⁷. Therefore, Harper's plan to stabilize the economy comes at the expense of cooperation with the provinces, which represents symmetry at the federal level and little attention to the sub-units.

Together, the critiques of Harper's method of Canadian federalism support the idea that his intentions may be sincere, but are too broad to successfully implement. The open model appears to be a balancing act between securing multinationalism and accepting of Québec, while simultaneously tackling fiscal imbalance through economic policies and stabilizers. Along with the balancing act of multiculturalism and fiscal concerns that Harper presented as part of his platform back in 2004, other contemporary issues are now on the backburner. There are other two prominent issues that stand out alongside the current challenges of multiculturalism and fiscal concerns: the proposal of Senate reform and conflicts concerning aboriginal rights. In accordance with the on-going challenge involving Senate reform, questions have been raised about whether Harper's open federalism was the driving force behind this idea, and more significantly, whether the approach is "open". Scholar Nadia Verrelli argues that both Bill C-19, which proposes limiting the term of senators to eight years, and Bill C-20, which would allow senators to be appointed only after being elected in their region, represents a more democratic approach to the

current Senate situation;¹⁸ however, this proposal also reflects a contentious issue, as the provinces would be granted a direct say in selecting Senators at the cost of ignoring traditional principles of the Canadian Senate.¹⁹ Consequently, this approach to Senate reform neglects the traditional roots of the Senate, although Harper's approach allegedly relies on returning to classical model of the federation. Furthermore, it is suggested that these adjustments would provide legitimacy for incorporating the provinces in the federation, which serves as an important concept of intrastate federalism.²⁰ Therefore, this method of Senate reform is controversial because it would still focus on regionalism, rather than multiculturalism, and is comparable to the failed reform of Pierre Trudeau in 1978.²¹

A focus on regionalism would also invalidate the multicultural aspects that Harper's approach supposedly promotes, and consequently, would not be much of a reform. Additionally, Harper's proposed Senate reform would require legislation to be passed only through Parliament. This would lead to further alienation of the provinces, like with Trudeau's unilateral attempt at reform and patriation of the constitution.²² Together, responses to these proposals emphasize the idea that Harper's approach to Senate reform is a remarkably contentious issue that would further exclude representation of the provinces in the Senate through centralization. Furthermore, this method of reform does not reflect the multicultural aspect of Harper's open federalism but instead appears to involve a limited say for regions, as well as for the nation's minority groups.

Along with Senate reform, another contemporary federalist issue revolves around Aboriginal rights. In particular, education for Aboriginals on reserves has been very limited

¹⁶ Thomas J. Courchene, "Variations on the Federalism Theme," *Policy Options*, (2006): 46, <http://policyoptions.irpp.org/issues/the-fiscal-imbalance/variations-on-the-federalism-theme/>.

¹⁷ *Ibid.*, 52.

¹⁸ Natalie Verrelli, "Harper's Senate Reform: An Example of Open Federalism," *Institute of Intergovernmental Relations*, Queens University, (2008): 1.

¹⁹ *Ibid.*, 2.

²⁰ *Ibid.*

²¹ *Ibid.*, 5-6.

²² *Ibid.*, 7.

compared to other groups in Canada.²³ These limitations refer primarily to the lack of cultural material taught.²⁴ Due to the lacking cultural aspects within academics, a central issue of identification exists. It has been suggested that a disconnect with self-identity leads to instability of self-worth, and in turn, a decrease in the importance of education decreases for the individual.²⁵ Over the years, this decrease in the education of Aboriginal youth has sharply plummeted, and the absence of cultural factors such as language continues to contribute significantly to this crisis.²⁶ Although the administration of education is within provincial jurisdiction, the education crisis of Aboriginal youth has been an on-going issue that requires the federal government's assistance; however, Harper's current approach to federalism is focused on respecting the jurisdictional responsibilities of the provinces as dictated by the classical model of federalism. In addition to this classical stance on federalism, Harper's open approach also focuses on multiculturalism, but apparently only in regards to Québec, which has the effect of creating repression of the First Nations. Consequently, without further investigation into Aboriginal education, and as long as cultural activities with which students can identify are withheld in early education, the self-worth of Aboriginal students will continue to decrease, and academics will be liberally observed rather than practiced.²⁷ Therefore, through analysis of these contemporary issues of the federation, it is evident that Harper's broad approach to federalism does not solve the challenges that Canadian society is presently facing.

²³ Laura Sokal, Karen A. Duncan, and Cassandra R.M. Brade, "The Pathway to Education in a Canadian Aboriginal Context," *Canadian Journal of Native Education* 27, no. 2 (2003): 237, <http://ezproxy.library.dal.ca/login?url=http://search.proquest.com.ezproxy.library.dal.ca/docview/230303839?accountid=10406>.

²⁴ *Ibid.*

²⁵ *Ibid.*, 238.

²⁶ *Ibid.*, 240-1.

²⁷ *Ibid.*, 246.

In addition to weighing the effectiveness of Harper's approach to resolving contemporary challenges, it is helpful to examine practices of former prime ministers. In comparison to former Conservative prime minister Brian Mulroney, an advocate for collaborative federalism, Harper has developed a more reserved relationship with the provincial governments, which is reflected by his lack of participation in meetings with the provincial premiers.²⁸ This particular characteristic of Harper's stems from the early years of the millennium, when he advocated for provincialism for Alberta. This would have granted Alberta the same recognition that Québec had received; this initiative has since come to be known as the Firewall Letter.²⁹ Harper's participation in this initiative prior to the unveiling of his platform for open federalism in 2004 represents an interesting opposition between his stance on recognizing Québec as a nation within Canada and the resentment that he previously displayed towards the region. Moreover, this also suggests that Harper's approach to federalism strives to develop acceptance from regions that will benefit him at the time – in these cases, Québec and Alberta.

Québec has capitalized on asymmetrical treatment from Harper's model and has consequently received more regionalized and cultural attention than the rest of Canada. Furthermore, in contrast to the present model that Harper Conservatives are pursuing, Mulroney's government strived to re-develop good relations with Québec through constitutional agreement but did not intend to view Québec as a nation within Canada.³⁰ Mulroney was the driving force behind the Meech Lake Accord, which contained special recognition for Québec at the request of Robert Bourassa; however, his true intent was simply to establish cooperation between Québec and the rest of Canada. This idea further contrasts with Harper's open approach, which suggests

²⁸ Frédéric Boily, "Federalism and the Federation According to Conservatives (1957-2011), *The Federal Idea*, (2014): 17, <http://ideefederale.ca/wp/?p=2683>.

²⁹ *Ibid.* According to Boily, this became known as the "Albertan Quiet Revolution."

³⁰ *Ibid.*, 11.

cooperation between the federal and provincial jurisdictions through decentralization but often acts in a centralized fashion, particularly in the field of economic policies.³¹ A prime example of this is the Conservative climate change policy that was implemented in 2007. The policy was established without an exchange of ideas with the provincial governments and in turn proved to be less successful than it potentially would have been through coordination of the federal and provincial powers.³² Ultimately, through this comparison with former Prime Minister Mulroney, it is evident that past models of federalism have also been flawed: however, compared to Mulroney's multicultural initiatives, Harper's approach to federalist concerns is lacking.

In addition to contrasting the ideas of past prime ministers' approaches to federalism, it is important to examine the models of the current leaders of the opposition parties. In contrast to Harper's open model of federalism, both Justin Trudeau and Thomas Mulcair advocate different approaches to federation. Trudeau's approach indicates a desire for democratic reform of the Senate that would eliminate the appointment of senators and instead enable elected Members of Parliament to thoroughly represent public concerns.³³ Along with advocating for the elimination of senate partisanship, the Liberal Party stresses the importance of a strong federal government to administer social policies to minority groups, such as First Nations, who have been neglected in the past in the domains of education and housing.³⁴ This element of the Liberal platform is evidently in contrast to Harper's open federalism, which is focused on respecting the division of powers, with the exception of combating economic crises of instability.³⁵ Furthermore, it is helpful to draw similarities and differences between Justin Trudeau's federalist

views and those of his father, Pierre Trudeau. A significant similarity between the two Liberal leaders is their support for a strong, centralized government that allows for cooperation on economic and social policies throughout the nation.³⁶ Another characteristic that they share is their position in regards to Québec, and the necessity of the province's reconnection with the rest of Canada, but without receiving special treatment or status in the process.³⁷ Despite these similarities, Justin Trudeau voices a disapproving position on his father's implementation of the National Energy Program, which represented a decentralized approach to the redistribution of wealth – similar to Harper's model.³⁸ Therefore, it is suggested that the government of Justin Trudeau contrasts to Harper's current leadership, and would result in a more centralized federal government with a strong focus on implementing social programs.

Like Trudeau, Mulcair also offers a different approach to the federal system. In accordance with federalist tenets, Mulcair advocates a cooperative model that would supersede unilateral decision-making through regular First Ministers Conferences, and ensure the implementation of successful economic and social policies throughout both levels of government.³⁹ Unlike Harper's open model, which supports a distinct division of powers, Mulcair's model would offer a more hands-on approach to combating crises and fostering good relations within the federation.⁴⁰ The New Democratic Party proposes an approach to federalism that is similar to that of Harper's Conservatives by emphasizing

³¹ Ibid., 22.

³² Ibid.

³³ Liberal Party of Canada, "Democratic Reform," (2014), <http://www.liberal.ca/democratic-reform/>.

³⁴ Liberal Party of Canada, "Social Policy," (2014), <http://www.liberal.ca/social-policy/>.

³⁵ Harper, "My Plan," 1.

³⁶ Lee Berthiaume, "Like father, like son: A look at how closely Justin Trudeau treads in his father's footsteps," *National Post*, (2013), <http://news.nationalpost.com/2013/04/05/like-father-like-son-a-look-at-how-closely-justin-trudeau-treads-in-his-fathers-footsteps/>.

³⁷ Ibid.

³⁸ Ibid.

³⁹ New Democratic Party of Canada, "NDP Policy," (2013), http://xfer.ndp.ca/2013/policybook/2013-04-17-PolicyBook_E.pdf.

⁴⁰ Inwood, "Understanding Canadian Federalism," 100.

the significance of asymmetrical federalism.⁴¹ Mulcair emphasizes that asymmetrical relations with Québec are vital to preserving the unique identity of the province, which is reflected in the opportunity for the region to opt-out of national programs (with compensation) that could affect the preservation of their values.⁴² Another initiative that Mulcair would pursue if elected for office is the abolishment of the Senate.⁴³ Although this would make the Parliament more democratic, since it would be composed of only elected members, there has been much opposition to this idea. Scholar Jennifer Smith uses the NDP's proposal for a national day-care program to exemplify the significance of the Senate's role in a federal system.⁴⁴ Smith suggests that the program's enactment would be part of provincial jurisdiction, and therefore without the Senate, it would be difficult for provinces to express their concerns regarding the policy's implementation, which in turn could diminish the legitimacy of the policy.⁴⁵ In response to the proposal, Smith also suggests that Senate reform would be a more effective method for solving current federalist issues, as opposed to complete abolition of the institution. To illustrate her suggestion, Smith proposes that the abolition of the Senate would create further issues for the amendment process of constitutional change, as all decision-making would be left solely to the chamber of the House of Commons, thereby establishing a unilateral body of thought – a development that Mulcair is against;⁴⁶ however, Harper's intentions for Senate reform are also contentious, with regards to the focus of regionalism that they would impose.⁴⁷ Therefore, it is evident that whether the Conservatives are striving to reform the Senate or the NDP are attempting to abolish the institution,

the government will receive support and opposition no matter which leader is advocating change.

In conclusion, it is evident that Harper's open approach to federalism has its strengths and weaknesses. Although his interpretation of federalism represents a democratic and decentralized approach for the provinces, the model's intentions of addressing multicultural values are often neglected due to an emphasis on regionalism. Furthermore, Harper's approach to Québec's multinational values is symmetrical in comparison to his approach to the rest of the nation and consequently appears to ignore the rest of Canada. In regards to solving contemporary challenges within the federation, it is suggested that Harper's model does not represent a direct approach to solving multicultural concerns or financial imbalances. For these reasons, it can be suggested that a government led by either Trudeau or Mulcair would represent a positive alternative to solving these issues within today's federation. Both Trudeau and Mulcair's interpretations of federalism advocate for more collaboration between the central and provincial governments in implementing social programs to combat issues arising from contemporary challenges; however, like Harper, the opposition leaders propose the contentious idea of reforming, or even abolishing, the Senate. Therefore, it is suggested that the diverse interpretations of federalism are all bound to objection and support for different strengths and weaknesses of the platforms. By and large, it can be acknowledged that there is no perfect model for federalism that will resolve all of Canada's issues, however, the lacking actions of the Harper Conservatives demonstrate that the federalist model they are proposing as "open" may be better identified as closed, in that it is closed to cooperation with the sub-units to solve contemporary issues within the federation.

⁴¹ Ibid., 33.

⁴² New Democratic, "NDP Policy," 32.

⁴³ Ibid., 21.

⁴⁴ Jennifer Smith, "Abolishing the Senate: The NDP's bad idea," *The Federal Idea*, (2013): 10, <http://ideefederale.ca/wp/?p=2659&lang=ang>.

⁴⁵ Ibid.

⁴⁶ Ibid., 11-2.

⁴⁷ Verrelli, "Harper's Senate Reform," 5.

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La refonte du fédéralisme suisse: impacts sur l'autonomie cantonale et communale

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1. Introduction

Il est souvent dit que la Suisse, Etat fédéral constitué en 1848, n'est pas un pays comme les autres, qu'elle est unique, complexe et intrigante à plus d'un niveau. Plus précisément, trois. Le pouvoir politique est en effet partagé entre la Confédération, les cantons et les communes¹. Pour un pays comptant quatre régions linguistiques et autant de différences culturelles et géographiques, le fédéralisme est la garantie d'une cohésion sociale à terme (Ladner, 2013). La littérature sur le fédéralisme suisse est très étendue et fait état de deux principales dimensions fédérales dans lesquelles s'inscrivent la marge de manœuvre des différentes entités souveraines: les dimensions verticale et horizontale. La première implique une collaboration à tendance plus ou moins hiérarchique entre la Confédération, les cantons et les communes. La deuxième engage, elle, un ou plusieurs cantons ou communes qui collaborent de manière égale et non-hiérarchique, à l'aide, par exemple, de concordats, de conventions ou d'autres contrats. Cette étude considère essentiellement la dimension verticale, dont plusieurs principes fondamentaux forment le substrat du fédéralisme suisse : selon le principe de souveraineté inscrit à l'article 3 de la Constitution de 1999 tout d'abord, chaque niveau institutionnel possède sa propre législation, son gouvernement, son parlement (ou assemblée) et édicte ses propres lois qui doivent être compatibles avec les lois fédérales ; ensuite, le principe de subsidiarité développé à l'article 5a prévoit l'accomplissement des tâches étatiques par le niveau le plus inférieur si celui-ci est réalisable et non expressément attribué à l'échelon supérieur, gage de décentralisation ; par conséquent, enfin, les cantons et les communes possèdent une grande autonomie et indépendance à l'égard de l'Etat fédéral et connaissent différents moyens de participation aux processus décisionnels de l'échelon supérieur.

Si la Suisse est quelque peu singulière à de nombreux égards, elle n'est pas étrangère à certains blocages et dysfonctionnements internes relatifs à l'organisation des prestations étatiques, ayant légitimés la prise en considération de certains courants réformateurs du secteur public. Cette étude se construit autour de la plus importante réforme effectuée en Suisse (Vatter, 2006): la réforme de la répartition des tâches, votée en 2004 et mise en œuvre en 2008. Réorganisation fondamentale du fédéralisme, elle est surtout le produit de conflits divergents, de visions qui s'affrontent et de logiques qui se restructurent. Elle bouscule les rapports de pouvoirs entre la Confédération, les cantons et les communes, afin de revitaliser en profondeur le fédéralisme. Cet article s'intéresse donc, d'une part, à la manière dont la Suisse a fait évoluer son fédéralisme conformément à son contexte spécifique et, d'autre part, aux répercussions que ces évolutions ont eues sur l'autonomie des cantons et des communes. Pour ce faire, après avoir brièvement explicité la notion d'autonomie dans le cadre de l'approvisionnement des services publics, nous présentons la réforme de la répartition des tâches, sa genèse, ses spécificités, ses principes, ses influences et ses répercussions constitutionnelles. Ensuite, nous nous intéressons aux impacts de la réforme sur l'autonomie cantonale et communale respectivement. Nous mettons enfin les principales tendances en perspective, pour finalement en tirer des conclusions.

¹ Au premier janvier 2015, la Confédération est constituée de 26 cantons, états fédérés souverains et égaux, et de 2324 communes.

2. La réforme de la répartition des tâches

L'autonomie liée à l'accomplissement des tâches publiques

Légitimée par la Constitution, la notion d'autonomie peut directement être liée à la capacité pour une entité institutionnelle de définir les tâches à accomplir dans le cadre de sa compétence (art. 43) et, conformément à l'art. 47 al. 2, d'être reconnue juridiquement par l'entité supérieure : « La Confédération laisse aux cantons suffisamment de tâches propres et respecte leur autonomie d'organisation. Elle leur laisse des sources de financement suffisantes et contribue à ce qu'ils disposent des moyens financiers nécessaires pour accomplir leurs tâches ». De la souveraineté des 26 cantons qui constituent la Confédération helvétique relèvent les communes, institutions de droit cantonal qui forment l'échelon de base de l'organisation politique et territoriale suisse. Tous les cantons se composent de communes politiques et définissent ainsi leur organisation, leurs compétences et leurs ressources. Leur autonomie s'inscrit donc dans les limites fixées par le droit cantonal, comme en fait référence l'art. 50 de la Constitution fédérale². Il faut cependant souligner qu'en plus des tâches qui leur sont confiées par leur canton respectif ou par la Confédération, les communes déterminent leurs propres compétences dans plusieurs domaines relevant du niveau local en vertu de leurs compétences générales résiduelles et doivent être ainsi considérées comme des « collectivités publiques politiquement décentralisées » (Horber-Papazian et Jacot-Descombes, 2014, pp. 284-285).

Dans un Etat doté de structures fédérales comme la Suisse, la répartition des compétences et des tâches revêt une importance majeure, d'autant qu'elle implique une capacité décisionnelle, financière et opérationnelle plus ou moins étendue. Pour chaque domaine de tâches, il s'agit d'évaluer les avantages et inconvénients qui découleraient d'une centralisation ou, au contraire, d'une décentralisation, afin d'obtenir le degré de responsabilité optimal et la meilleure mise à disposition des prestations que possible. Le fédéralisme n'a donc nullement pour principe de décentraliser systématiquement tous les services publics, mais d'attribuer les différentes tâches aux échelons qui sont le mieux à même de les assumer (Wellstein, 2001).

Une réforme aussi radicale qu'inédite

Le 28 novembre 2004, le peuple suisse a adopté avec 64.4% des voix et 23 cantons pour une participation au vote de 36.85%, la plus importante réorganisation des responsabilités institutionnelles en Suisse, allant même jusqu'à redynamiser le fédéralisme en profondeur, à savoir la réforme de la répartition des tâches et de la péréquation financière (RPT)³. Entrée en vigueur le 1^{er} janvier 2008, cette réforme veut désenchevêtrer les compétences institutionnelles, donner plus de marge de manœuvre aux cantons et augmenter l'efficacité de la mise en œuvre des politiques publiques (Dafflon, 2004). Elle bouscule la tradition conservatrice de la Suisse puisqu'elle est la première depuis 1848 à vouloir remodeler le fédéralisme et restructurer les rapports institutionnels en privilégiant deux principes : la subsidiarité et l'équivalence fiscale. Dans ce dernier cas, il s'agit de la possibilité donnée aux bénéficiaires d'une prestation étatique de décider de cette prestation et d'en supporter également les coûts. La réforme est considérée comme la solution pour pallier les nombreuses difficultés qui se sont graduellement déclarées depuis les années 50 et surtout pour redonner du pouvoir aux cantons.

Pour mieux comprendre l'origine de cette réforme, il est nécessaire d'en présenter les grandes lignes. Déjà pendant la période des Trente Glorieuses (40-70) et avec l'effet de la globalisation, le nombre des tâches publiques augmente, ainsi que les exigences de la population quant à la qualité du service public (Jacot-

² Art. 50 : « 1. L'autonomie communale est garantie dans les limites fixées par le droit cantonal. 2. La Confédération tient compte des conséquences éventuelles de son activité pour les communes. 3. Ce faisant, elle prend en considération la situation particulière des villes, des agglomérations urbaines et des régions de montagne. » Par ailleurs, il convient d'ajouter que les constitutions cantonales garantissent souvent et explicitement l'autonomie communale.

³ Dans cet article, il est principalement question du premier axe de la RPT : la répartition des tâches.

Descombes, 2013). Dans le cadre de la relation entre la Confédération et les cantons, ces derniers, ne pouvant pas assumer la mise en œuvre ni les coûts de toutes ces nouvelles tâches publiques, donnent progressivement et volontairement des compétences à la Confédération qui se charge de lourds domaines publics tels que l'environnement, la prévoyance sociale ou encore l'aide au développement (Freiburghaus, 2005). Cependant, au fil du temps, la balance entre les dépenses et les recettes fédérales n'augmente pas aux mêmes proportions, ce qui oblige la Confédération à prendre de drastiques mesures d'économie. En 1980, le peuple suisse vote favorablement pour le « Programme d'économies 1980 », qui prévoit de diminuer ou de supprimer des quotes-parts des cantons sur certaines taxes ou même à diminuer de 10% les subventions fédérales versées aux cantons⁴. Ces pressions financières et de mise en œuvre de la Confédération sur les cantons s'ajoutent aux problèmes toujours croissants d'enchevêtrement des tâches et des responsabilités dans l'application des politiques publiques. Les cantons perdent graduellement leur autonomie et leurs compétences décisionnelles, en plus des difficultés financières et humaines dans la mise en œuvre des politiques publiques auxquelles ils font face.

Des tendances similaires se dessinent à la même période au niveau de la relation entre les cantons et les communes. A l'échelon inférieur, en effet, les communes suisses sont confrontées à un certain nombre de problèmes et enjeux émergeant dès la deuxième partie des années 90, tels que la complexification et la multiplication des tâches et des charges qui leur incombent quand bien même leurs capacités d'action et leur autonomie diminuent (Geser, 1997), l'exigence de plus en plus forte des citoyens⁵ vis-à-vis de l'efficacité et de l'efficacité de l'action publique, la forte imbrication des compétences d'exécution, de décision et de financement, ainsi que le manque de coordination entre les communes et « leur » canton (Ladner *et al.*, 2000), ou encore la remise en question de l'espace institutionnel communal (Leresche 1996). C'est dans un contexte caractérisé par la persistance – voire même l'intensification – de ces difficultés (Steiner et Ladner, 2006) que la réforme de la répartition des tâches s'inscrit au niveau local. Tout comme pour l'échelon supérieur, elle se fonde sur des critères tant économiques que politiques – les principes du décideur-payeur, de la subsidiarité, de la neutralité des coûts et de la qualité des prestations fournies – et vise à renforcer la transparence et l'efficacité des collaborations institutionnelles verticales et ainsi à concourir au renouvellement du fédéralisme local.

Influence du modèle de la Nouvelle Gestion Publiques (NGP)

Ce sont dès les années 80 que l'administration publique suisse a été la cible d'une nouvelle rationalité de gestion publique, mais également d'une nouvelle légitimité basée sur l'efficacité et la qualité des prestations fournies et des dépenses économes (Emery, 2000). Les problèmes financiers de la Confédération dès la fin des années 70, les nombreux doublons administratifs et la lenteur des procédures révélaient une faille de gestion publique. Cette dernière était condamnée à se moderniser. Les objectifs des différentes réformes qui ont eu lieu dans l'administration publique suisse peuvent se résumer en trois modèles (Giauque et Emery, 2008) :

1. Le modèle de l'efficacité, visant à rendre les organismes publics plus efficaces et efficaces en prenant les outils de gestion des entreprises privées. En termes d'efficacité, les objectifs sont définis et doivent être atteints dans une limite de temps. L'efficacité concerne l'utilisation rationnelle des ressources, le fonctionnement au moindre coût. Pour ce faire, l'administration devait évoluer d'une gestion basée sur ses ressources (*inputs*) à une administration gérée par prestations (*outputs*).

⁴ Les 3 modifications constitutionnelles suite à la votation du Programme d'économies 1980 sont les suivantes : 1. Suppression de la quote-part des cantons au produit net des droits de timbres 2. Réduction de la quote-part des cantons au bénéfice net de la Régie des alcools 3. Suppression de la subvention fédérale destinée à abaisser le prix du pain (Explication du Conseil fédéral de la votation populaire du 30 novembre 1980).

⁵ Afin de ne pas alourdir le texte, nous avons renoncé à une rédaction systématiquement épicienne. Toutefois, chaque fois que cela se justifie, un terme écrit au masculin s'entend aussi au féminin et vice versa

2. Le modèle de la décentralisation et de la flexibilité, voulant séparer l'opérationnel de la gestion stratégique, redistribuer les compétences décisionnelles aux niveaux les plus proches de la clientèle ou du terrain avec davantage de souplesse. Pour ce faire, le recours à des contrats de prestations est nécessaire.

3. Le modèle de la qualité, prévoyant de favoriser la formation continue et de recourir à des enquêtes pour mesurer la satisfaction des « clients » du service public.

Comme toutes les réformes qui ont eu lieu depuis les années 80 dans l'administration publique suisse, la réforme de la répartition des tâches emprunte ces modèles et s'inscrit au cœur du phénomène de la NGP (Cappelletti *et al.*, 2014). Si l'on se réfère aux arguments mis en exergue en 2008 par le Département fédéral des finances (DFF), elle permettrait d'améliorer l'efficacité et l'économicité des affaires publiques, tant au niveau du gouvernement que de l'administration. Elle éviterait ainsi le gaspillage des deniers publics en ciblant mieux les dépenses et en supprimant les incitations inopportunes en faveur de projets dispendieux. Enfin, elle use de moyens tirés directement du secteur privé puisqu'elle prévoit l'utilisation de contrats publics basée sur des objectifs et des indicateurs et recourt ponctuellement aux enquêtes de satisfaction, aux contrôles et aux évaluations afin de garantir la qualité de la gestion publique (Athias, 2013).

Une refonte constitutionnelle

L'importance de la réforme de la répartition des tâches en Suisse se traduit par la modification de 27 articles de la Constitution de 1999 qui en compte au total 196 (Fleiner, 2002). Elle oblige l'Etat, les cantons et les communes à optimiser leurs prestations et leurs responsabilités dans l'implémentation des politiques publiques. Cette refonte constitutionnelle représente un changement structurel et inédit de la manière de procéder. Elle bouleverse l'idée conservatrice selon laquelle le système helvétique est figé et rigide : « alors que l'Allemagne et l'Autriche, de leur propre aveu, ont eu beaucoup de peine à introduire des réformes minimales dans leur système fédéral, les électeurs et électrices suisses ont adopté la réforme en 2004 par scrutin populaire » (Frey *et al.*, 2005). Bien au contraire, cette réforme fait preuve de dynamisme et révèle une forte volonté de changement de la part des politiciens et des citoyens. Dans les années 60, le fédéralisme dit d'exécution (la Confédération décide – les cantons exécutent) était fortement critiqué car les cantons s'apparentaient davantage à des soldats soumis aux ordres des directives fédérales (Knapp, 1986 ; Wälti, 2007). Les médias parlaient même de crise de mise en œuvre suite aux non-respects récurrents des délais de la part des cantons et de leurs difficultés de financement. La réforme prévoyait de redéfinir le fédéralisme en allant vers un fédéralisme dual (claire séparation des compétences de mise en œuvre et fiscales entre les institutions) qui avait pour ambition d'augmenter radicalement le degré d'autonomie des cantons. La situation actuelle ne ressemble pourtant pas à ce modèle dualiste puisque les compétences exécutives et financières restent largement partagées. Il est aujourd'hui plutôt question d'un fédéralisme coopératif qui se renforce autour d'une gestion commune de tâches publiques. Suite à la réforme, dix tâches sont passées exclusivement sous responsabilité cantonale alors que sept tâches ont été attribuées à la Confédération. Cependant, il n'a pas été possible de diviser les compétences dans le cas de vingt-et-une tâches publiques. Ces tâches restantes, dites « communes », sont traitées par des contrats de droit public passés entre la Confédération et les cantons : les conventions-programmes. Cet instrument repose sur l'art. 46 al. 2 de la Constitution qui prévoit la participation de la Confédération et des cantons dans la mise en place de programmes destinés à l'accomplissement des tâches publiques. Valables pour des périodes de 4 ans (2008-11, 2012-15, 2016-19), les conventions-programmes permettent de passer d'un système de subventions spécifiques basées sur l'avancement et les coûts des travaux (*inputs*) à des subventions globales ou forfaitaires planifiées pour la période quadriennale (*outputs*). Elles conduisent la Confédération et les cantons à discuter des montants et des objectifs contractuels dans le cadre d'un processus de négociation. La collaboration verticale doit désormais tendre vers un partenariat non-hiérarchique et doit permettre

davantage d'autonomie aux cantons⁶. Plus encore, ces contrats poussent les cantons à contacter des prestataires de services tels que des associations ou des entreprises privées pour la réalisation de la mise en œuvre, ainsi qu'à consulter les communes. Les conventions-programmes, produits directs de la réforme de la répartition des tâches, appliquent donc strictement les modèles de la NGP. L'ambition prônée est qu'une véritable gouvernance multi-niveaux s'établisse entre les trois niveaux institutionnels grâce à cette nouvelle forme de collaboration institutionnelle dans laquelle il est plutôt question de procédures de coopération non-hiérarchiques entre les acteurs (Hooghe et Marks, 2001).

Puisque ce passage d'un fédéralisme d'exécution à un fédéralisme réellement coopératif implique également le niveau inférieur de l'organisation territoriale et politique suisse, un article constitutionnel a été intégré pour reconnaître le rôle consultatif des communes en sus de celui d'agent de mise en œuvre. L'art. 50 de la Constitution, introduit en 1998, récompense les efforts de l'Association des communes suisses (ACS) et de l'Union des villes suisses (UVS) pour que soit reconnu l'échelon local dans la structure étatique suisse, dans la mesure où il « ancre et précise le statut des communes dans l'Etat fédéral ; [...] cette disposition doit être comprise avant tout comme une incitation à la coopération verticale. [...] En ce sens, [elle] s'inscrit dans le renforcement d'un fédéralisme participatif qui a largement inspiré la mise à jour de la Constitution fédérale et dont les cantons aussi ont bénéficié. »⁷ Si le Conseil fédéral accorde une attention particulière aux cantons, c'est que pendant de nombreuses années, ces derniers se sont montrés réticents à l'endroit d'un texte visant à rapprocher les exigences citoyennes avec les mesures prises pour répondre à celles-ci, mais qui, selon eux, amoindrait en même temps leur souveraineté : la Charte européenne de l'autonomie locale (Conseil de l'Europe, 1985). Elaboré en 1985 par le Conseil de l'Europe dans le but de protéger et renforcer l'autonomie locale en Europe, ce texte, ayant qualité de traité international, n'a été ratifié qu'en 2004 par la Suisse. Les réserves des cantons s'expliquent en grande partie par les spécificités du système suisse, à savoir plus précisément son système de milice, le fait que les compétences matérielles sont définies par le droit cantonal et enfin par la prépondérance des subventions liées à des projets spécifiques vis-à-vis des subventions à vocation générale. Quoi qu'il en soit, ces deux textes juridiques – l'article 50 et la Charte – ont pour ambition de contribuer à asseoir l'importance du niveau communal dans la collaboration intergouvernementale suisse (*Politikverflechtung*) s'opérant dans la délivrance des services publics (Scharpf, 1978), et devraient conduire à l'avenir à un renforcement des relations entre la Confédération et les communes (Meyer, 2010). La création de la Conférence tripartite sur les agglomérations (CTA), plateforme de dialogue permettant de prendre en considération la situation particulière des villes, des agglomérations urbaines et des communes, illustre par exemple une de leurs premières répercussions.

3. Autonomie cantonale

Les 26 cantons qui forment la Suisse sont souverains en tant que leur souveraineté n'est pas limitée par la Constitution fédérale et exercent tous les droits qui ne sont pas délégués à la Confédération. Chaque canton possède ainsi sa propre constitution, son gouvernement, son parlement (ou assemblée) et édicte ses propres lois, qui doivent être en adéquation avec le droit fédéral. Les cantons possèdent donc une grande autonomie et indépendance à l'égard de l'Etat fédéral. Ils ont de grandes compétences en matière d'éducation, d'environnement, de culture, de santé et dans d'autres domaines non-spécifiés dans la Constitution qui peuvent être fédérales ou conjointes : ce sont les « compétences résiduelles » (Ladner, 2013). Par exemple,

⁶ L'art. 46 al. 3 de la Constitution fédérale le dicte : « La Confédération laisse aux cantons une marge de manœuvre aussi large que possible en tenant compte de leurs particularités ».

⁷ Réponse du Conseil fédéral du 13.09.2000 à l'Interpellation 00.3404 déposée par Andreas Gross le 23.06.2000 au Conseil national « Interprétation de l'article 50 de la Constitution fédérale.

http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20003404# (consulté en janvier 2015).

l'immigration ou l'asile sont des compétences fédérales mais la citoyenneté a toujours été avant tout communale. Ils sont également très autonomes dans leurs systèmes de taxation, dans leurs procédures budgétaires et dans leurs modes d'élections. Cette marge de manœuvre est fondamentalement grande pour les cantons, ce qui crée des disparités importantes, rendant parfois une uniformisation des procédures impossible. Au niveau législatif, les cantons ont un pouvoir de veto contre les lois fédérales et peuvent également affecter la législation fédérale à travers des initiatives cantonales. Des représentants cantonaux sont encore impliqués dans plusieurs commissions fédérales et consultés. Enfin, les cantons ont créé la Conférence des gouvernements cantonaux (CdC) en 1993 pour se donner les moyens de préserver leur autonomie et avoir une assise importante dans les décisions qui se prennent à Berne.

L'autonomie cantonale en Suisse se révèle être très élevée en comparaison internationale, comme l'ont démontré Hooghe, Liesbet, Gary Marks, Arjan H. Schakel en 2010. Ces auteurs ont calculé le degré d'autonomie régionale dans 43 pays démocratiques entre 1950 à 2011 et ce, sur la base de 9 indicateurs, pour obtenir le *Regional Autonomy Index* (RAI). Nous avons traduit la description donnée pour la Suisse selon les différentes dimensions imaginées pour l'étude (Tableau 1). Les indicateurs sont divisés entre deux catégories: les règles exclusives (*self-rules*) et les règles communes (*shared-rules*). Les règles exclusives sont appliquées uniquement par l'autorité et se portent sur l'autonomie fiscale, la portée politique et le système de représentation, alors que les règles communes sont exécutées conjointement par différentes autorités et concernent l'élaboration des lois, les contrôles institutionnel et fiscal et les réformes constitutionnelles. L'application de ces deux types de règles est destinée à coordonner les acteurs étatiques de sorte à poursuivre un but commun tout en préservant l'intégration de chaque acteur. Les résultats de l'étude de Hooghe *et al.* (2010) révèlent que l'indice le plus élevé calculé en fonction des critères de « Self-rule » est attribué à la Suisse. Le RAI montre que l'autonomie régionale en Suisse est parmi les plus élevées, après l'Allemagne et le Canada.

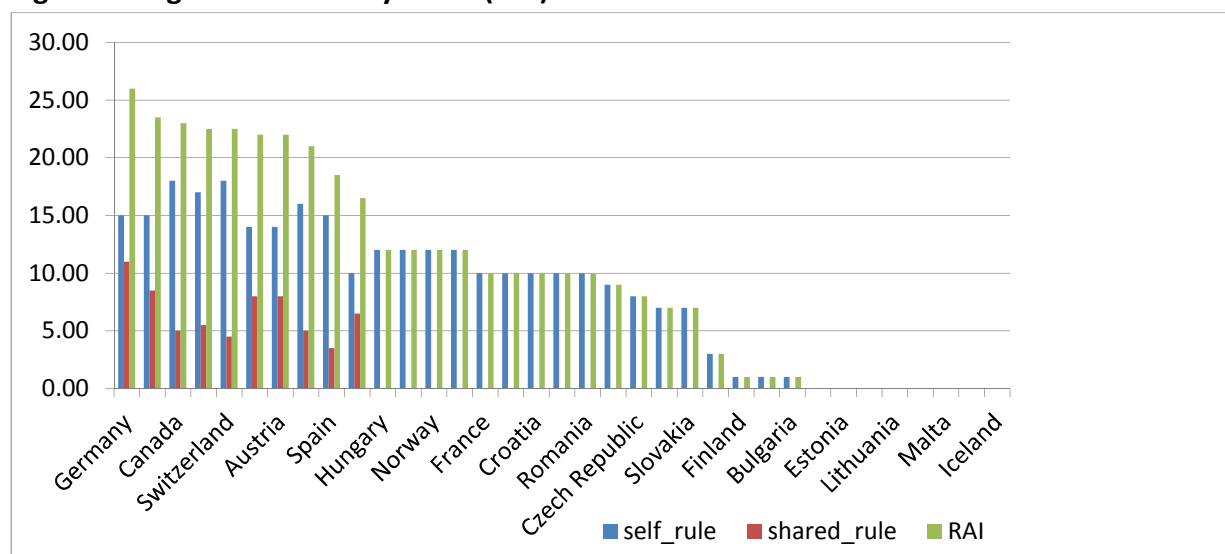
Tableau 1: portrait de l'autonomie cantonale suisse et le codage attribué par les auteurs de l'étude

Indicateurs	Description	Code
Self-Rule		
<i>Institutional Depth and Policy Scope</i>	Grandes compétences en matière d'éducation, d'environnement, de culture, de santé, dans le gouvernement local et autres compétences résiduelles.	<i>Depth: 3</i> <i>Scope: 4</i>
<i>Fiscal Autonomy</i>	Les cantons sont libres de structurer et former leur système de taxation.	4
<i>Borrowing Autonomy</i>	Parce que les gouvernements cantonaux sont par principe autonomes et indépendants dans leurs procédures budgétaires, ils peuvent emprunter au gouvernement fédéral sans aucunes restrictions (Conseil de l'Europe, 1997)	3
<i>Representation</i>	Les élections populaires pour les parlements cantonaux prennent place tous les 4 ans et chaque canton a son propre cycle électoral.	<i>Assembly : 2</i> <i>Executive : 2</i>
Shared Rule		
<i>Law Making</i>	Chaque canton a deux représentants et chaque demi-canton en a un dans la Chambre haute, soit le Conseil des Etats. Ils ont un pouvoir de veto sur les lois fédérales et les cantons peuvent également affecter la législation fédérale à travers des initiatives cantonales.	0.5 0 0.5 0.5
<i>Executive Control</i>	Consultation des cantons pour formuler et mettre en œuvre des politiques publiques. Ils sont impliqués dans les commissions fédérales et consultés durant le processus législatif. Cependant, le Conseil fédéral n'invite pas les cantons à participer, ni à suivre leurs conseils. La constitution de 1999 établit toutefois le droit aux cantons de participer aux décisions de politique étrangère. Au fil	1

	du temps, des concordats se sont mis en place ainsi que 16 conférences des directeurs cantonaux pour renforcer la participation cantonale dans les décisions de politiques publiques.	
<i>Fiscal Control</i>	Ils influencent les décisions fédérales sur la distribution des taxes sur les revenus.	1
<i>Borrowing Control</i>	La conférence des gouvernements cantonaux mise en œuvre en 1993 pour coordonner la politique étrangère et européenne a progressivement évolué vers une conférence intercantonale qui coordonne les transactions, mais les emprunts en sont exclus.	0
<i>Constitutional Reform</i>	Un changement constitutionnel demande un référendum remporté par la double majorité des cantons et des citoyens.	1

Source : adapté de Hooghe et al., 2010. Le codebook qu'utilisent les auteurs est élaboré avec un codage prédéfini, noté entre 0 (absence d'effet) à 4 (présence d'effet) qui représente une échelle d'intensité

Figure 1: Regional Autonomy Index (RAI)

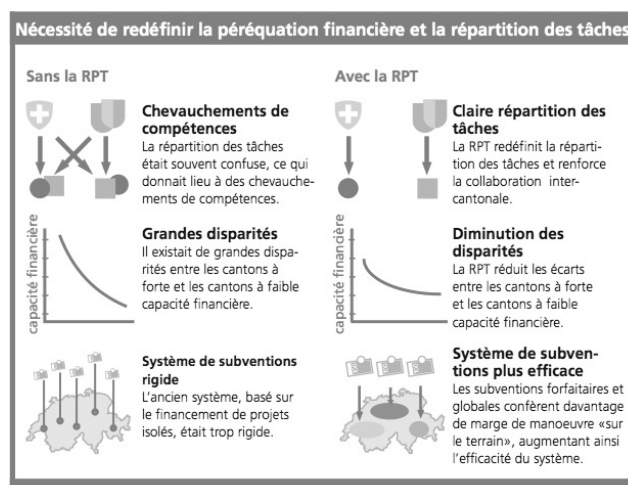


Source : adapté de Hooghe et al., 2010

Suite à la réforme et bien que l'autonomie régionale était déjà élevée en comparaison internationale (Figure 1), les cantons ont acquis davantage de marge de manœuvre dans l'élaboration et la mise en œuvre des politiques. L'introduction des conventions-programmes y joue un rôle majeur. En effet, le système de financement basé désormais sur des subventions forfaitaires ou globales confère davantage de marge de manœuvre aux cantons puisque ceux-ci peuvent gérer leurs dépenses de façon indépendante durant toute la période du contrat, c'est-à-dire quatre ans (Figure 2). De plus, les conventions-programmes impliquent un processus de négociation durant lequel les cantons discutent des montants des subventions et échangent leurs points de vue avec les responsables fédéraux. Par ce biais, les cantons peuvent davantage participer et prendre la parole. En plus d'une officialisation du rôle stratégique de la Confédération, les cantons se voient formellement attribuer un rôle opérationnel dans la mise en œuvre et le financement des politiques publiques, contrairement à la situation qui existait avant la réforme. En effet, les cantons devaient rendre des comptes à la Confédération qui finançait les démarches au cas par cas et avait un avis prononcé sur l'ensemble des opérations. Alors que désormais, les cantons gèrent directement le coût et les délais d'application des tâches sur le terrain, même si la Confédération s'autorise des contrôles pour assurer un suivi régulier. Avant la réforme, les cantons, possédant de nombreux pouvoirs résiduels, prenaient pour acquis la mise en œuvre de certaines politiques publiques, alors que celles-ci étaient déjà appliquées et gérées par la Confédération. Cette situation engendrait des doublons de compétences, des enchevêtrements opaques et des confusions malheureuses (Armingeon, 2000). Par conséquent, en plus d'une séparation de compétences,

le rôle stratégique donné à la Confédération permet d'orienter les procédures et éviter que cette situation ne réapparaisse.

Figure 2 : les trois objectifs principaux de la réforme



Source : CdC, « La RPT entre la Confédération et les cantons », septembre 2007

Limites à l'autonomie cantonale

En juin 2014, la Fondation pour la collaboration fédérale a publié un rapport intitulé « Monitoring du fédéralisme 2011-2013 ». Il reporte l'analyse réalisée par les cantons et les conférences intercantionales sur l'évolution du fédéralisme en Suisse. Les cantons y évoquent leur satisfaction quant à leur collaboration avec la Confédération, notamment concernant le domaine de la politique d'intégration⁸ : « la Confédération et les cantons ont pu s'accorder dans le cadre d'un processus de négociation sur des objectifs stratégiques communs et sur une clé de répartition du financement 1 :1 dans le domaine de l'intégration. » (Condensé, p. 4). De plus, le pilotage des tâches communes via les conventions-programmes leur laisse, selon eux, une grande marge de manœuvre. Ils félicitent également cette nouvelle collaboration verticale basée sur un partenariat. Malgré tout, il existe un risque que la Confédération ne reporte des charges sur les cantons suite à la prise de mesures d'économies (comme cela s'est produit en 1980) et le risque d'avoir de nouveaux enchevêtrements qui apparaissent, ce qui est clairement en contradiction avec les principes de la réforme. C'est le cas par exemple, du financement mixte des infrastructures ferroviaires. Avec le système des conventions-programmes, force est de constater qu'il existe toujours des problèmes de court-terme qui peuvent être assimilés à l'ensemble de la réforme de la répartition des tâches. Ceux-ci sont les suivants :

1. Une influence trop grande de la Confédération lors de la définition des objectifs (consignes toujours plus strictes) ;
2. Un manque de ressources financières et de personnel des cantons, qui finalement, négligent leurs propres domaines de compétences ;
3. Un manque d'orientation stratégique de la part de la Confédération dans certains domaines publics ;
4. Une faible communication de la Confédération avec les cantons.

Dans d'autres domaines politiques, les cantons dénoncent une centralisation pressante qui limite la souveraineté des cantons, comme dans le domaine de l'aménagement du territoire. Le Conseil fédéral a en outre changé le cap de sa politique énergétique « Stratégie énergétique 2050 » sans associer les cantons, bien que leurs intérêts et leurs compétences soient touchés en tout point de vue. Ces dernières années, la marge de manœuvre s'est vraisemblablement restreinte pour les cantons qui ont dû faire face à une pression

⁸ La Convention-programme pour l'encouragement spécifique à l'intégration cantonale des étrangers est par exemple entrée en vigueur le 1er janvier 2014.

toujours plus grande et certaines décisions de la Confédération n'y sont pas étrangères : « les cantons sont encore et toujours confrontés à un report de charges et à une augmentation des charges financières et en personnel liée à la mise en œuvre du droit fédéral. » (p.5). Il leur manque parfois des ressources financières et de la main d'œuvre pour l'accomplissement de tâches qui relèvent de leurs compétences. De plus, il est nécessaire d'associer encore plus les cantons aux processus de décisions de la Confédération et surtout en politique européenne car ceux-ci sont directement touchés par les mesures prises à ce niveau-là.

4. Autonomie communale

La Charte européenne de l'autonomie locale définit non seulement ce concept, par « le droit et la capacité effective pour les collectivités locales de régler et de gérer, dans le cadre de la loi, sous leur propre responsabilité et au profit de leurs populations, une part importante des affaires publiques » (Conseil de l'Europe 1985 : 3, al. 1), mais propose également un certain nombre de critères pour apprécier tangiblement son étendue⁹. L'autonomie locale est donc d'une part encouragée normativement en tant que pierre angulaire d'une démocratie véritable capable de répondre aux exigences des citoyens et de contrebalancer le pouvoir des gouvernements situés aux échelons supérieurs et, d'autre part, elle est constituée de multiples facettes, ce qui la rend complexe à appréhender (Verhoest *et al*, 2004 ; Clark, 1984). Ainsi, la littérature scientifique ne s'accorde pas sur les dimensions objectives qui doivent être prises en compte pour mesurer empiriquement les différents degrés d'autonomie locale (Hansen et Klausen, 2002). On peut évoquer ici brièvement la distinction effectuée entre les aspects économiques et sociaux liés intrinsèquement au contexte local et les caractéristiques de la relation du gouvernement local avec ceux du ou des niveaux supérieurs (Gurr et King, 1987). Dans ce dernier cas de figure, il est aisé de relever les dimensions liées respectivement à la situation juridique, aux moyens – particulièrement financiers – à disposition des gouvernements locaux, leur marge de manœuvre décisionnelle (Page et Goldsmith, 1987), leurs leviers d'influence politique (Page, 1991), ou encore la perception subjective des acteurs concernés (Ladner, 1994), puisqu'elles ont servi de fondements au développement de diverses célèbres typologies (Goldsmith et Page, 2010 ; Hesse et Sharpe, 1991).

En Suisse, il est plus usuel d'utiliser le terme d'autonomie communale que celui d'autonomie locale (Conseil fédéral, 2003, p. 72). Les communes suisses sont actuellement au nombre de 2352 (OFS, 2014) et se caractérisent par une extrême diversité, non seulement en termes de taille, de structures socio-économiques et de nombre de communes existant au sein d'un même canton, mais également, puisqu'elles dépendent respectivement des lois cantonales, dans l'étendue de leur autonomie (Horber-Papazian, 2006). Une étude comparative récente, appliquant 7 dimensions de l'autonomie communale aux 26 cantons suisses¹⁰, a permis de mettre en exergue la primauté de la culture comme variable explicative de la différence d'autonomie locale entre les cantons, la Suisse-allemande étant clairement caractérisée par un degré d'autonomie plus élevée que la Suisse-romande (Ladner et Keuffer 2014 ; Figure 2). Il est important de préciser néanmoins que de manière globale, les communes suisses bénéficient d'un degré d'autonomie élevé¹¹, se concrétisant

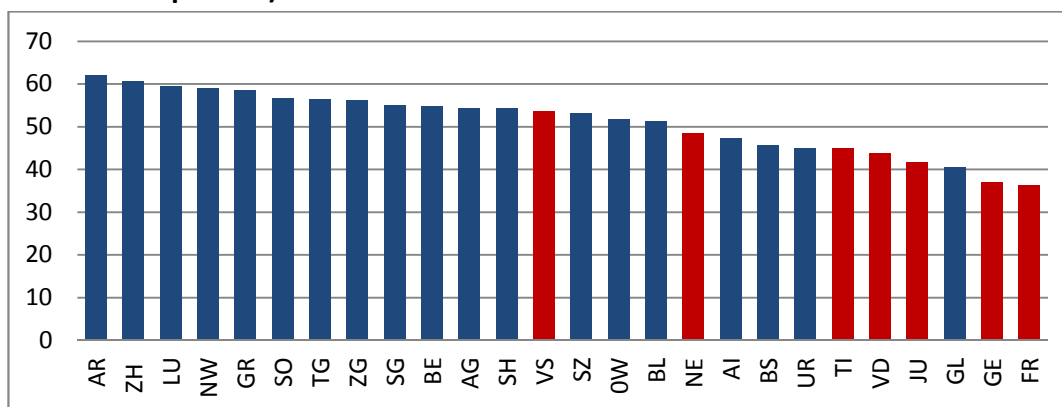
⁹ On peut ainsi mentionner la mesure selon laquelle le principe d'autonomie locale est ancré constitutionnellement et légalement (art. 2), l'étendue des compétences attribuées aux autorités les plus proches des citoyens (art. 4), la valeur de la consultation des collectivités locales dans le cadre du processus de décision (art. 4), ainsi que la portée de leurs capacités d'influence et des dispositions les protégeant (art. 5, 8 et 11), et enfin l'importance des ressources financières, administratives, fiscales et humaines dont elles disposent effectivement (art. 6 et 9).

¹⁰ Les sept dimensions prises en compte sont les suivantes : *Legal autonomy, Policy autonomy, Political autonomy, Fiscal autonomy, Social autonomy, Administrative autonomy et Vertical Influence* (Ladner et Keuffer, 2014).

¹¹ Une étude mandatée par la Commission européenne intitulée "Self-rule Index for local authorities in the EU 1990-2014" consistant à mesurer le degré d'autonomie locale des pays européens en s'inspirant de Hooghe *et al.* (2010) a été confiée en octobre 2014 au Prof. Ladner (Institut de Hautes études en administration publique, Université de Lausanne, Suisse) et est en cours au moment de la rédaction du présent article. Les premiers résultats qui s'en dégagent confirment

notamment par leur latitude unique au monde pour fixer de nouveaux impôts locaux et le taux auxquels les contributeurs sont assujettis (Ladner 2005).

Figure 2 : Degré total d'autonomie locale des différents cantons suisses (en rouge : les cantons francophones et italophones)



Source : adapté de Ladner et Keuffer, 2014

Il est difficile de rendre compte empiriquement des conséquences des réformes effectuées. D'une part, parce que la réforme de la répartition des tâches a été introduite au niveau fédéral et n'a qu'indirectement incité les cantons à entreprendre des réformes de leur propre répartition des tâches avec les communes. L'architecture fédéraliste suisse exigerait donc d'appréhender le régime de répartition des tâches entre les communes de chaque canton respectivement avant et après les réformes engagées afin d'en déceler les modifications. La proportion et le type de tâches attribuées par le canton par rapport à celles étant choisies par les communes varie en effet très fortement d'un canton à un autre. D'autre part, parce que les données récoltées auprès des communes suisses dans une ambition d'exhaustivité manquent. Le dernier questionnaire ayant été adressé à l'ensemble des communes, qui date de 2009¹², met clairement en évidence le fait que les secrétaires communaux estiment globalement que l'autonomie de leur propre commune a diminué au cours des dix dernières années. La perception de cette chute est généralisée mais est encore davantage prégnante dans les petites communes (Figure 3). Les villes profitent effectivement désormais des politiques d'agglomération et du système de compensation des charges, prévus à l'art. 50 de la nouvelle Constitution fédérale.

Bien que les évolutions prévues n'avaient certainement pas encore produit tous leurs effets, les réponses des secrétaires communaux relatives aux effets des réformes¹³ tracent une tendance relativement claire : ils estiment que leur commune dispose de davantage de compétences de mise en œuvre, mais moins de capacités de financement et de décision. En ce qui concerne la formation au niveau local (l'école primaire), par exemple, plus de la moitié des secrétaires ont jugé que les réformes de répartition des tâches entreprises avaient engendré lors de ces dix dernières années une décentralisation des compétences opérationnelles

le cas particulier de la Suisse (*Sonderfall*) en ce sens que l'index d'autonomie locale est parmi les plus élevés avec ceux des pays nordiques.

¹² Ce 5ème questionnaire adressé aux secrétaires municipaux de toutes les communes suisses a été conduit par l'IDHEAP (Université de Lausanne) et le KPM (*Kompetenzzentrum für Public Management* – Université de Bern) et a un taux de réponse de 57.7%. Sauf indication contraire, les résultats présentés ci-après en proviennent.

¹³ Question 20 : « Dans quels domaines y a-t-il eu, au cours des dix dernières années, un transfert de charges financières, de tâches à accomplir et/ou de compétences décisionnelles entre la commune et le canton ? » Question 22 : « De manière globale, avez-vous constaté les effets suivants suite aux transferts de charges/tâches et de compétences décisionnelles ? » ; Question 18b : « Le degré d'autonomie de votre commune a-t-il plutôt augmenté ou diminué au cours des dix dernières années ? »

(46%) et des charges financières y relatives (50.5%), alors que la perception d'une centralisation est plutôt faible (respectivement 19.8% et 20.3%). S'agissant des compétences stratégiques, la proportion s'élève à l'inverse à 16.6% pour un transfert du canton vers la commune et à 38.3% de la commune vers le canton¹⁴. Les communes se voient donc simultanément attribuer plus de responsabilités mais moins de ressources pour les assumer. La capacité décisionnelle, ou la possibilité de décider des tâches qu'il est nécessaire et prioritaire de mettre en œuvre pour répondre aux exigences dont les citoyens peuvent faire directement part au gouvernement local, est une composante cruciale de l'autonomie locale. Il n'est donc pas étonnant de constater que les secrétaires communaux ont, dans une très large majorité, décrété que les transferts de charges, de tâches et de compétences décisionnelles liées aux réformes ont globalement « pas du tout » conduit à un renforcement de l'autonomie communale (Figure 4). Selon les résultats de l'enquête, les réformes de répartition des tâches ont plutôt débouché sur un désenchevêtrement des tâches décisionnelles, opérationnelles et financières correspondantes (45.2%), ainsi que sur la création de structures régionales de mise en œuvre (45.8%). En outre, l'ambition prônée par la réforme de répartition des tâches de consulter davantage les communes – concrétisée notamment au travers de l'art. 19.2 de la Loi sur les Subventions (LSu, RO 616.6) – semble ne constituer qu'un effet d'annonce, dans la mesure où seules les villes de plus de 10'000 habitants considèrent à plus de 70% avoir une certaine influence sur le processus de décision relatif aux transferts de charges, de tâches et de compétences décisionnelles.

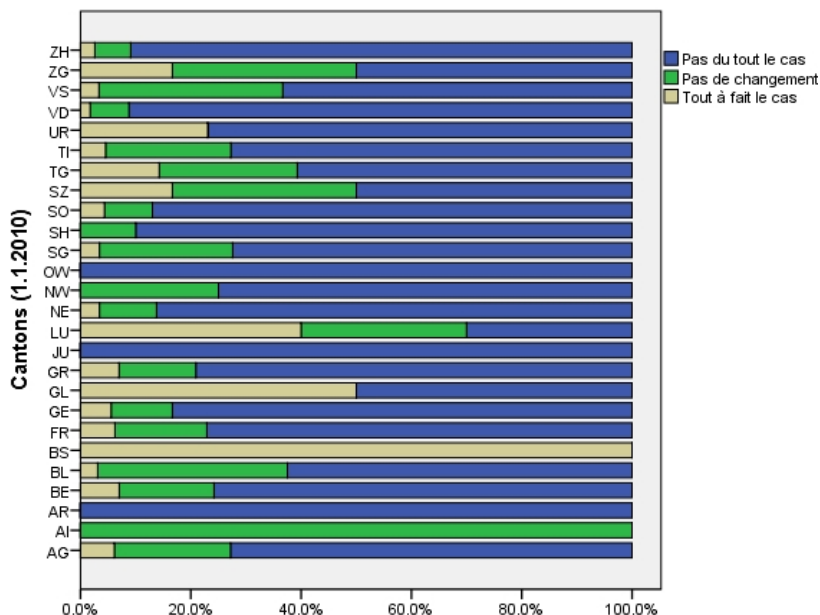
Figure 3 : Perception de l'évolution de l'autonomie communale de 1999 à 2009 en fonction de la population (en%)

	En augmentation	Pas d'évolution	En diminution	Sans réponse	Total
-499.00	4	24	68	5	314
500-999	5	23	69	3	266
1000-4999	6	24	68	2	620
5000-9999	12	27	59	1	115
10000+	10	28	63	0	80
Total	6	24	67	3	1395

Source : enquête nationale sur les secrétaires communaux, IDHEAP et KPM, 2009, question 18b.

¹⁴ Sur 574 retours, 29.2% des secrétaires communaux ont répondu « pas de transfert » de charges financières, 34.2% de tâches à mettre en œuvre et 45.1% de compétences stratégiques. Source : enquête nationale sur les secrétaires communaux, IDHEAP et KPM, 2009.

Figure 4 : Renforcement de l'autonomie communale au travers des réformes de répartition des tâches en fonction des cantons



Source : enquête nationale sur les secrétaires communaux, 2009, question 22 (N= 937 ; coefficient de contingence= .414)

5. Discussion

En Suisse, les niveaux d'autonomie cantonale et communale sont élevés en comparaison internationale. Ils s'expliquent par les différents événements historiques qui ont progressivement constitué le système politique suisse (*path dependency* : Page, 2006). En effet, la Suisse s'inscrit dans un processus traditionnel: elle poursuit une évolution définie par les événements et les décisions prises au préalable. Les cantons et les communes ont, dès l'origine de la constitution helvétique, acquis une forte autonomie et un grand pouvoir de décision. Contrairement à bien d'autres pays européens, la Suisse s'est construite dans un processus *bottom-up*, soit de bas vers le haut ; ce sont les cantons qui ont progressivement donné des compétences à la Confédération et non l'inverse, de même que les communes l'ont fait avec les cantons. Pour contrer cette tendance centralisatrice croissante face à la multiplication des tâches publiques et des coûts de mise en œuvre, le peuple suisse a voté la réforme de la répartition des tâches en 2008. La réforme a permis d'instaurer une collaboration verticale plus forte basée sur un partenariat non-hiérarchique et de diviser les responsabilités. Le désenchevêtrement a malgré tout atteint ses limites puisqu'il n'a pas été possible de le faire dans le cas de vingt-et-une tâches communes dont quinze sont traitées par les conventions-programmes. Même si l'évaluation de la réforme est aujourd'hui positive, il reste encore des problèmes de courts-terme à régler, tels que l'influence trop grande de la Confédération dans l'application de mise en œuvre, la fixation des objectifs dans les réglementations conjointes et le manque notable de communication entre cette dernière et les cantons.

L'incidence des réformes entre la Confédération et les cantons a poussé un grand nombre de cantons à lancer parallèlement des réformes de réallocation des tâches avec leurs communes¹⁵. Ces dernières ont été effectuées dans le même esprit que celles de l'échelon supérieur, soit dans une perspective générale de

¹⁵ Mentionnons, à titre d'exemple les cantons suivants: Argovie (1996-2010), Berne (1994-1998), Neuchâtel (1994-2004) ; Nidwald (1996-1998) ; Obwald (1998-2001) ; Vaud (1996-2002) ; Jura (1996-2004) ; Lucerne (1997-2002) ; Schaffhouse (1997-2003) ; Zoug (1994-2005) ; Bâle-Ville (2004-2007) ; Schwyz (1998-2001). Ceux-ci profitaient souvent d'une adaptation de leur constitution suite à l'entrée en vigueur en 2000 de la nouvelle constitution fédérale.

modernisation de l'Etat et dans la volonté d'améliorer l'efficacité allocutive et l'enchevêtrement des tâches. Il est vrai que les enjeux étaient comparables entre les deux niveaux. Ainsi, il est intéressant de constater que les mêmes principes fondamentaux sont présents : la subsidiarité, l'équivalence, et celui du décideur-payeur. Trois différences fondamentales peuvent néanmoins être relevées (Jacot-Descombes, 2013) : premièrement, le type d'instrument des conventions-programmes conclus entre la Confédération et les cantons n'a que très peu été introduit au niveau inférieur ; deuxièmement, la Confédération et les cantons bénéficiaient d'une marge de manœuvre plus étendue pour revoir la répartition des tâches entre eux, dans les limites du droit national, alors que les cantons étaient tenus d'appliquer le droit fédéral qui exige de plus en plus de tâches cantonalisées ; enfin, en rapport avec ce dernier point, les cantons, contrairement à la Confédération dans une certaine mesure, ont préféré une certaine centralisation des compétences pour éviter des mises en œuvre lacunaires des communes bénéficiant de moins de ressources.

Cette dernière dissemblance fait échos aux tendances se dessinant en termes d'impacts que provoque la mise en application des réformes sur les autonomies régionale et locale respectivement. En effet, l'indépendance des cantons vis-à-vis du pouvoir fédéral est grande à l'origine. Elle est de plus en voie de renforcement au travers de la réforme de la répartition des tâches puisque celle-ci ambitionne d'augmenter l'autonomie régionale en permettant aux cantons de participer davantage aux négociations et à l'élaboration des tâches publiques et à la prise de décision sur le terrain. Au niveau communal, la tendance générale consiste à un transfert de tâches. Mais, simultanément, la diminution de l'autonomie effective semble se maintenir au travers des réformes et au-delà par la restriction des ressources financières et des compétences décisionnelles. Il semblerait que les cantons, à qui l'on attribue la responsabilité de davantage de tâches, ont tendance à déléguer leur exécution à des agences semi-publiques ou privées ou aux communes, considérées de plus en plus comme des agents d'exécution comme des autres.

6. Conclusion

Bien que la RPT se soit déroulée il y a plus de six ans, il n'est pas encore possible de tirer des conclusions définitives en termes d'impacts sur l'autonomie cantonale et locale en Suisse. En effet, la grande variété des tâches publiques traitées par les conventions-programmes et les importantes disparités cantonales complexifient les évaluations mises en place par la Confédération et les cantons. Par exemple, il n'existe aucune grille de référence officielle émise par la Confédération concernant le nombre exact de conventions-programmes en vigueur et presque aucune évaluation cantonale sur les conséquences de la réforme au niveau des communes. Une thèse sur l'impact de la réforme de la répartition des tâches sur la collaboration entre la Confédération et les cantons à travers les conventions-programmes est d'ailleurs en cours à l'IDHEAP. Elle ambitionne de donner une vision plus large des conséquences de la réforme au niveau institutionnel et de contribuer à la réflexion qui découle de l'après-réforme.

Diverses recherches sont également prévues pour approfondir les connaissances des impacts des réformes au niveau local sur un plus long terme. Un questionnaire sera notamment adressé aux secrétaires communaux de l'ensemble des communes suisses en 2015. Parce que le système de répartition des tâches entre niveaux, constitutif de tout système fédéraliste, est en constante mutation. Suite à l'entrée de sa nouvelle constitution le 1er juin 2013, le canton de Genève a par exemple lancé en 2014 une large réforme de la répartition des tâches communes-canton, régie par les principes de « proximité, de subsidiarité, de transparence et d'efficacité » et qui vise notamment à « revaloriser le sens de l'autonomie communale »¹⁶. Il s'agit donc de voir comment se traduit concrètement cet objectif louable sur les différentes composantes de l'autonomie communale.

¹⁶ <http://ge.ch/communes-canton>, consulté en janvier 2015.

Ainsi, la réforme produit différents effets sur les niveaux institutionnels. S'ensuit un renforcement de la segmentation horizontale et verticale du fédéralisme suisse par l'attribution de tâches exclusives et conjointes aux institutions. Les tâches communes sont gérées par la Confédération et les cantons qui se consultent lors d'un processus de négociation et ces derniers, à leur tour, consultent les communes. Cette mixture de coopération, communication et négociation forme une véritable gouvernance multi-niveaux. Le paysage public suisse se transforme et s'élargi.

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