

OPEN Federalism

INTERPRETATIONS,
SIGNIFICANCE



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Preface

Canada's new Conservative government has a short list of priority policies, and it is moving quickly to fulfil the campaign promises made about them. But another theme in the Conservative campaign of 2005/06, and in the party's pronouncements since its formation, is that of "open federalism." This attractive slogan may represent a new stance toward the other levels of government, and the provinces in particular. But much about open federalism is unclear. What does the concept mean? Is it distinctive, and if so, how is it different from previous models of Canadian federalism? What does it mean in theory, and what are its practical implications for Canadian public policy-making and the operation of intergovernmental relations?

To address these questions, the Institute of Intergovernmental Relations engaged several experts to bring different perspectives to bear in exploring the concept of open federalism. Our objectives were to define the term, or at least to explore it, to identify historical antecedents in Canada, to assess how the concept accords with the recent evolution of the federation, and to evaluate how well current intergovernmental institutions and mechanisms may fit with the new government's objectives.

I am grateful first to the scholars who accepted this task and who produced and revised papers with despatch. The project also owes much to its immediate organizer, Patti Candido, and to Mary Kennedy, both of the Institute. In the School of Policy Studies, Marilyn Banting and Valerie Jarus handled copyediting and layout respectively with their usual care and efficiency. The cover was designed by Mark Howes.

We hope that scholars, students of federalism, the engaged public, and ordinary Canadians will benefit from the work collected here.

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CHAPTER 1

Making Federalism Work

Richard Simeon

Almost every issue facing Canadians — from social and economic policy, to trade and the environment — is filtered through the lens of federalism and regionalism.

Our federalism has some very distinctive characteristics:

- We are one of the world’s most decentralized federations, by almost any measure.
- Our intergovernmental relations are often adversarial and competitive, yet coordination and collaboration are essential to getting many things done.
- Hence, the central role of intergovernmental relations in governing Canada.
- But in too many ways, these relations appear to be dysfunctional. Too often debate on substantive policy issues is side-tracked by governments’ concerns for their own power, status, turf, blame avoidance, and credit-claiming.
- Arguments over money too often trump debates over substance as the debate over the “fiscal imbalance” demonstrates.
- There is far too little parliamentary scrutiny and oversight of intergovernmental relations. Clarity and transparency are often lost behind the closed doors of executive federalism and incomprehensible fiscal relationships. Accountability is hopelessly confused. Openness and accountability are central to the new government’s agenda: this is one area in which it could accomplish a great deal.
- Open federalism means not only openness in the intergovernmental relationship, but openness of the intergovernmental system to Parliament and the public.

- For example, establish a Commons Committee on Intergovernmental Relations to monitor intergovernmental relations; table and debate intergovernmental accords and agreements in Parliament.

But before we write off the Canadian system as hopelessly dysfunctional, it is worth remembering its successes. Our federation has been able to adapt to changing policy agendas and changing needs. We built a welfare state together, we cooperate pretty well in areas such as trade, economic development, and the environment. We have created a sharing regime through equalization (though I worry that continual tinkering with the formula is starting to erode the consensus). Despite all the friction, we have found a rough and ever-changing balance between countrywide values and the concerns of regions and provinces.

Where necessary, federal and provincial governments have been able to collaborate successfully: the Agreement on Internal Trade, the Social Union Framework Agreement (SUFA), and the recent Health Accord are just a few examples. All these agreements have their flaws, especially the SUFA which has had virtually no impact on changing the federal-provincial relationship in social policy, but they are about making the federation work. And, we have successfully combined decentralization and much *de facto* asymmetry as well with the achievement of common purposes such as medicare and the Canada/Quebec pension plans.

We are, as Michael Ignatieff observed recently, the most successful and enduring multinational, bilingual, liberal democratic federation on earth. And it is worth remembering that this took federal leadership!

The lesson of the past is also that federalism is never static, it is always a work in progress. We have constantly reinvented ourselves. As indeed, we are called on to do today.

For many years we have not had a national party system; no party could claim to speak for the whole country. So, whoever was in power in Ottawa, it was increasingly difficult for the federal government to “speak for Canada,” or to accommodate differing regional interests. The 2006 election opens the possibility of changing this: all three federalist parties now have broad support in all regions. Holding the east-west, Ontario-Alberta-Quebec coalition together is the single most important challenge for the new government. This will not be an easy task. North American integration and globalization have turned the east-west economy envisaged by Sir John A. Macdonald into a set of regional economies linked less to each other than they are to the outside world.

Opinion surveys tell us that residents in most provinces feel that they are treated “unfairly” in the federal system; that they trust their provincial and local governments more than they do the government in Ottawa; but what they want above all is not any major shifts in authority, but rather to get governments to stop their wrangling and work together.

At the same time, Canadians — including Quebecers — identify strongly with both their provincial community as well as the Canadian community; and while they have strong regional concerns and grievances, they also share highly similar values with respect to the role of government and the policy agenda. Yes, Canadians want “national standards,” but they also want their provincial governments to respond to their own values and needs.

What are the implications of all this for the federal government and its public service today?

First, it is critical to have a clear understanding of the role of the federal government. What are its fundamental responsibilities? What can it do that provinces cannot do?

My basic message here is: “cobbler, stick to your last,” or, alternatively, “knitter, stick to your knitting.” And what is that? It is federal responsibility for the role of Canada in the world — for foreign policy, for aid and peace-keeping, for defence, for managing the North American relationship; it is for management of the macro-economy, through fiscal and monetary policy; it is for maintaining the basic social safety net through employment insurance, pensions, and the rest. Second, it is for interprovincial and international responsibilities in areas such as the environment. Third, it is, fundamentally, responsibility for sharing across the country through its constitutional mandate for equalization. This is a central part of the Confederation bargain. Manipulating it for short-term political gain is likely to erode the fundamental consensus that it currently enjoys.

But beyond these basic responsibilities, Ottawa should not get engaged in “buying” support in particular regions or provinces. That just gets it involved in fomenting regional grievances and charges of regional bias and unfairness. Federal dollars should be used for clear national purposes, and distributed according to clear national criteria. Where the federal government has clear constitutional authority, it should stand firm. It can, and should, consult on these issues with provinces, territories, and citizens. But it should be clear about its own authority. Ottawa should do what it is constitutionally mandated to do, and do those things really, really well.

The flip side of this is that despite all the political and bureaucratic incentives to use the federal power to spend to get involved in micro-managing in areas that are constitutionally primarily provincial and municipal, those tendencies must be resisted. Federal legitimacy will not be restored by regional deal-making, but by asserting a clear national interest.

It is important to get away from the rhetoric that says, “we are the government of Canada.” The federal government is one government, with specific responsibilities, in a system of multi-level governance. “Government” in Canada is the combined actions, individually and collectively, of federal, provincial, and increasingly municipal and aboriginal governments. We do not have the hierarchy implied by “levels” of government; we have equal “orders” of government.

Too often I hear provincial public servants talk of the federal public service as superior, or condescending. So, no more top-down, paternalistic, “parents know best,” or coercive federalism.

This is not just a matter of constitutional propriety. The fact is that provincial and increasingly municipal public servants are every bit as professional and competent as federal officials. They are very much closer to local interests and concerns. They are, above all, committed to effective delivery of public services, on the ground. This is not a strength of the federal public service.

And the idea that that decentralization inevitably leads to a “rush to the bottom” in terms of social justice or environmental standards, simply has no empirical support. The image that national standards must be defined and enforced by Ottawa, in Ottawa, to stave off provincial regression is not sustainable.

Federal officials should also be aware that provinces and territories are increasingly working effectively together — in a provincial/territorial Canada rather than a federal/provincial/territorial Canada. The Council of the Federation is not only a vehicle for coordinating provincial strategies against Ottawa; it is also an instrument for sharing information and expertise, and for resolving differences among provinces — arguably more effectively than Ottawa does. This confederal model may leave Ottawa on the sidelines.

But however much we try to keep governments working within their assigned areas of jurisdiction, there remains a vast area in which all orders of government must work together, cooperatively and collaboratively: immigration, the environment, the list goes on.

Here, the emphasis must be on equal partnership and a clear division of responsibilities. This means much discussion about shared goals, a commitment to sharing information, and agreed standards about transparency. And then wide discretion for provinces to achieve the common purposes in their own ways, building on the fundamental opportunity that federalism provides — for variety, discretion, and opportunities for innovation and experimentation. This is where asymmetry makes sense. Where asymmetry becomes a problem is not when provinces do things differently, in their own way; but when it symbolically raises one province above the others; or when federal actions are seen as unfairly benefiting one province over others.

Restoring federal legitimacy will not be about deeper federal involvement in areas of provincial responsibility. It will be about asserting the national interest in a few crucial areas, working in partnership with the provinces in other areas, and accepting that flexible arrangements will inevitably involve much variation and asymmetry.

It will be a deliberative federalism; a permissive federalism, not a top-down federalism.

National values and goals will not be handed down by Ottawa — rather they will result from a complex, messy dialogue among governments and citizens. This is likely to get messier as cities and aboriginal governments continue to press for seats at the table.

Intergovernmental relations must necessarily be fluid and flexible in order to respond to shifting governmental and public agendas. We do not want too much formalization and institutionalization of the process. But we also need to get away from ad hoc cheque-book federalism and toward a more principled and rule-governed system. This may require:

- annual meetings of first ministers,
- giving legal status to intergovernmental agreements,
- stronger and more effective dispute-settlement mechanisms, and
- some third-party advice on defining the principles and practices of equalization.

Federal leadership is critical. But I think its role is to be really clear about what only Ottawa can do, and build on that.

CHAPTER 2

Open Federalism and Canadian Municipalities

Robert Young

The point of this paper is to report on what the concept of “open federalism” may imply for federal policy toward municipalities, in the context of the fiscal imbalance issue.

In Canada, the core concept of federalism has been spun into slogans by politicians and analysts for over a hundred years, but open federalism (*féderalisme d'ouverture*) is new. Its imprecision is suggestive and powerful, as is shown in the first section below, and yet Conservatives use it to mean several concrete policy positions, as discussed in the second. The overall stance is reminiscent of a moment in Canadian history, the late 1960s, described briefly in the third part of the paper.

We then turn to municipalities, examining their evolving status in the intergovernmental matrix, and assessing how open federalism fits with current institutions and policies. It is clear that any new restructuring to address the fiscal imbalance will be determined by provincial priorities rather than municipal needs, and especially by the priorities of the Government of Quebec, but there are incentives not to entirely ignore municipalities.

Some concluding predictions close the paper.

Open Federalism

The concept of federalism refers to divided sovereignty between regional and general governments. The novelty in the current government's parlance is *Open*. Comprehensive analysis shows that the term is almost uniformly positive (see Appendix I). As a verb, it notably includes the sense of a fresh beginning. The

adjectival meanings imply that in intergovernmental relations, a Conservative government will be accessible, welcoming, receptive, candid, responsive, and accountable, inviting others to a process that is indeterminate and transparent. Apart from a couple of non-trivial negative connotations, “open” is so powerfully positive that its main drawback may be to raise expectations too high.

Another core meaning of open is “open to change.” And this is an important dimension of the concept: it is indeterminate enough that reinterpretation is always possible.

The Conservatives and Open Federalism

It is essential to parse carefully the expressed positions of the Conservative Party and the prime minister about the concept of open federalism. Words are the fundamental tools of all democratic politicians, and there is currently in Canada a premium on abiding by political promises. So to understand the intentions of the new government and its perceptions of how the system works and should work, and therefore how policy about municipalities will unfold, close attention to the use of the slogan is necessary. (The sources for the interpretation here are described much more fully in Appendix II.)

First, however, it must be stressed that policy about cities and municipalities more generally will be set within the new government’s five principal priorities: accountability, tax cuts, direct payments to parents for childcare, crime, and patient wait times. Prime Minister Harper will focus on these in the spring, and then will move in the autumn “into the wider agenda that was detailed in the platform”¹ before moving on to further plans, or platforms. It is in this strategic order that the issue of fiscal imbalance will be confronted, and with it, policy about municipalities. It is also worth noting at the outset, however, that priorities are subject to interpretation by the media and the public. For example, Michel Vastel recently listed 25 Conservative promises, of which the very first was “remédier au déséquilibre fiscal entre le fédéral et les provinces.”² Changing public expectations can alter both priorities and the meaning of open federalism.

To date, open federalism comprises six principal elements.

1. *Rectitude and order in the process of federal-provincial relations.* There should be mutual respect in negotiations, and “principled” commitments should be made for the long term, with few or no ad hoc arrangements.
2. *Strong provinces.* The provinces are legitimate governments with important fields of jurisdiction that they have a right to occupy in fulfilling the duty to serve their citizens.
3. *“Strict constructionism” in thinking about the constitution.* The respective roles of Ottawa and the provincial governments should be clarified, and in this the division of powers as laid out in the *Constitution Act* should be respected. The federal government should focus on its core functions, such as defence, foreign affairs, and the economic union. The spending power should

be used with restraint. When Ottawa must involve itself in areas of provincial jurisdiction, such as highways or higher education, cooperation with the provincial governments is essential: there should be no unilateralism. Conversely, where federal action implicates the provinces, as in international agreements on trade or greenhouse gases, the provincial governments must be consulted.

4. *Quebec is special.* The province should have a voice in international affairs where culture is involved, as in UNESCO. But fundamentally there is a broader recognition that Quebec's provincial government has "special cultural and institutional responsibilities." It is of the utmost importance that Quebecers perceive that federalism can work, and the governments of Stephen Harper and Jean Charest must work together to counter the sovereignists. Together, the two leaders must *livrer la marchandise*.

5. *Fix the fiscal imbalance.* This is critical for all provinces to discharge their functions adequately, and it is a symbolically charged issue in Quebec. It will be done through increasing equalization, boosting other transfers, reducing taxes to leave room for the provinces, transferring tax points, or some combination of these.

6. *Municipalities are provincial.* A strict reading of the constitution implies that provinces control municipalities, and across Canada this is acted upon, most firmly in Quebec. Municipalities might be consulted about securing stable and adequate revenues, which they require, but the provinces are the principal actors vis-à-vis municipal governments. On the other hand, Ottawa may devise policies to solve particular problems that occur within cities and municipalities, such as crime, immigrant settlement, affordable housing, and transit. The preferred vehicles are unobtrusive ones, involving tax incentives or voluntary associations. An important Conservative commitment is that the federal government will maintain existing arrangements to share the gas tax, and the infrastructure programs will continue.

In the short term, then, the federal-provincial file is not one of the new government's top priorities. Some federal impact will be felt in municipalities through other priorities, notably crime, and through continuing programs, especially in infrastructure. In the medium term, it is essential to achieve demonstrable progress on fixing the fiscal imbalance. It is within this framework of a federal-provincial agreement on financial arrangements that the core issue of concern to municipalities — funding — will be addressed.

Antecedents

There is no precise precedent for what the Conservative government seems to mean by open federalism. But there have been attempts in the past to "clarify" the respective responsibilities of the federal and provincial governments, to disentangle functions, and to reallocate fiscal resources and reform transfer flows. Ignoring the big efforts — the postwar Dominion-Provincial Conference on Reconstruction and the various constitutional rounds — along with the primarily financial shifts that occurred in 1972, 1977, and 1995/96, this

leaves one post-World War II parallel: the fiscal negotiations of the second half of the 1960s.

Cooperation in federations can be centralizing or decentralizing according to which order of government has the initiative and which is doing the accommodation. Apart from the cession to the provinces of fields of jurisdiction like manpower training and forestry after the 1995 Quebec referendum, the recent period has been centralizing, with Ottawa moving into new areas of provincial social policy (and, as Prime Minister Harper has noted, municipal responsibilities as well). This parallels the 1950s and early 1960s, when federal initiatives under the rubric of “cooperative federalism” (a term which appeared in the platforms of both the New Democratic Party and the federal Liberal Party in 1961) spread new social and economic-development programs across Canada. The quiescence, or impotence, of the provincial governments faded, however; and led by Quebec they pushed back, with the federal government on the defensive by 1964. It was decided by Ottawa to hold the line against provincial demands.³

At about the same time, political scientists were questioning cooperative federalism: it complicated planning, distorted priorities, blurred accountability, made administration more difficult, and restricted the autonomy of the central government; hence, a new distinction was made between “joint” and “consultative” styles of cooperation.⁴ The latter was preferable because it reaffirmed the division of powers and clearly allocated program responsibility to a single order of government, while maintaining the value of consultation and coordination. Ottawa’s new position was revealed at the 1966 Tax Structure Committee meeting by the minister of finance.⁵

The real architect of the approach, Al Johnson, outlined it and its underlying rationale very frankly.⁶ He called it “strong central-strong regional government.” It had these elements:

- The current division of powers is essentially adequate.
- There should be more respect for provincial jurisdiction.
- There should be a reversal of the “cumulative influence” that Ottawa has come to have over provincial government decisions.
- A provincial consensus should support new shared-cost programs, and fiscal responsibility for established programs should be transferred to the provinces
- The powers of the central government should be strengthened, and provincial “raids” on its jurisdiction resisted.
- Governments responsible for programs should finance them, and transfers should decline.
- Federal programs should be adapted to regional differences.

Johnson was also very concerned about Quebec; indeed, primarily so given that the new surge of nationalism there was underpinning the provincial charge on Ottawa. Hence, he also recommended bilingualism in the federal public service and in education across the country.

It was a different time. The sources of the pressures and tensions were different. But the solution of “strong central-strong regional government” bears many similarities to the core elements of open federalism. The new federal approach was implemented in part, financially, and the first Trudeau government was less adventurous than its predecessors in introducing shared-cost programs.⁷ Constitutional negotiations subsequently absorbed most intergovernmental energy in the 1970s and 1980s. But key aspects of open federalism have been seen as the solution to federal-provincial discord and imbalance in the past.

Open Federalism and the Recent Evolution of Intergovernmental Relations

Most recent trends in the federation run contrary to the tenets of open federalism. The new Conservative stance is a self-conscious rejection of them. Negotiations have been ad hoc and hurried; one-off deals have been made with all provinces or particular ones; there has been no orderly and dignified dialogue with provinces or the Council of the Federation; and federal interventions, according to Harper, have not only been “domineering” but also reveal the “unitary-state view” of the federal Liberal party.⁸

In the municipal area, interventions have multiplied. This was because of pressure from the Federation of Canadian Municipalities (FCM), think-tanks, the Big City Mayors (C5), and civic and business organizations.⁹ After the Harris government’s assault on the “urbane” elements of Toronto, pressure from Toronto members of Parliament produced the Prime Minister’s Caucus Task Force on Urban Issues.¹⁰ Its cautious final report focused only on affordable housing, transit, and sustainable infrastructure, reflecting Jean Chrétien’s own concerns about jurisdictional sensitivities, but a PCO task force was established to seek some horizontal integration of policy in cities. Paul Martin was much more aggressive, and it was his “New Deal” speech to the FCM that precipitated his exit from cabinet. Upon taking office, he established the Cities Secretariat in the PCO, appointed a parliamentary secretary with special emphasis on cities, and set up the External Advisory Committee on Cities and Communities. After the 2004 election, John Godfrey became minister of state (Infrastructure and Communities), acquiring the Cities Secretariat and the Office of Infrastructure of Canada from the minister of environment (PC 2004-844 and 2004-868). The 2004 budget provided for a full rebate of the goods and services tax (GST) paid by municipalities, and for transferring a share of the federal tax on gasoline to municipalities. The infrastructure programs were continued and expanded, and on 1 July 2005 another \$800 million was allocated for public transit. As well, the Liberals concluded some special tripartite agreements, notably with Winnipeg–Manitoba and Vancouver–British Columbia, and others were being negotiated, including one with Toronto, when the Martin government fell.

All of this fits uneasily, at best, with open federalism’s tenets. The gas-tax agreements vary widely in their allocational structures, project eligibility

criteria, and management structures (some of which are arcane). Cost-sharing arrangements under the infrastructure agreements differ. In some cases provincial governments have had to pass new laws to accommodate federal initiatives, and new bodies have been established, such as la Société de financement des infrastructures locales du Québec. Municipalities receiving funds, in most provinces, have to agree to particular standards and procedures. There are some common elements, such as the gas-tax agreements' stipulation that municipalities develop integrated community sustainability plans, but idiosyncrasy dominates commonality.

Municipalities lie clearly within provincial jurisdiction. With rare exceptions — such as the Ontario government's non-involvement in allocations under the public transit agreement — the provincial governments impose complex arrangements when permitting Ottawa to spend in this field. Moreover, municipalities are not a core area for federal-provincial cooperation. There is no reason from the open-federalism perspective for the federal government to sign off on the Town of Bonnyville, Alberta getting \$103,370 in the first year of the Canada-Alberta gas-tax agreement, or for it to support projects that “encourage downtown living” in Winnipeg under the Canada-Manitoba-Winnipeg Agreement. In this complex set of agreements, Quebec is special, but not really more so than other provinces. The sums of money involved are large, but not great enough to really attack the problem of fiscal imbalance.

There are also general problems with the current approach. Provincial governments are often resistant to Ottawa's priorities. The multitude of players with vetoes opens the possibility of “joint decision traps,” where immobilism results. The institutions created for co-management are very complex. Even ignoring the costs of administering agreements, the transactions costs of negotiating them are very high, especially when local stakeholders must be mobilized and consulted, as in the Downtown East Side components of the Vancouver Agreement. Ottawa also has “incomplete institutions” for generating and managing agreements. Agencies like ACOA, the Economic Development Agency of Canada for the Regions of Quebec, and especially Western Economic Diversification have supplemented the expertise of Infrastructure Canada, but such bodies do not cover the whole country. Possible ancillaries, the Provincial Councils of Senior Federal Officials, have no dedicated funds and a mixed record of efficacy. As Roger Gibbins opined, “while the infrastructure programs may make sense on many levels, they are not to be confused with a coherent and comprehensive urban engagement strategy on the part of the Government of Canada.”¹¹ And, in contrast to the New Deal for Cities, does open federalism even countenance such a strategy?

Conclusion

The objective of government in democracies is re-election, and the objective of the federal Conservative government is to be re-elected with a majority.

These goals are laudable. The drive for re-election is one critical mechanism in a democracy to ensure that state policy corresponds with citizen preferences.

The Conservatives' immediate route ahead is to proceed with their five priorities. In the mid-term, though, there must be a solution to the fiscal imbalance. This is essential for electoral progress in Quebec, and for pressing the sovereignists back. Further, though, the Conservatives need to find more support in the major cities. Their future majority lies in Montreal, Toronto, and Vancouver.

Hence there is a tension. Ideology expressed through open federalism suggests a strict constructionist approach, within which Ottawa should draw back from the "cities agenda." New arrangements to right the fiscal imbalance should be concluded, with the provincial and territorial governments being the interlocutors. It may be that the municipalities' responsibilities now exceed their fiscal capacity, and so there is an argument for transfers. But as Gibbins puts it, "if the responsibilities the cities are shouldering fall primarily within the legislative jurisdiction of the provinces, then the transfer argument applies first and foremost to municipal-provincial fiscal relations."¹² In short, while acknowledging that fiscal pressure on municipalities does exist, leave their financial woes to the provincial governments to solve: not municipal problems as such but problems of municipal *governments* fall within provincial jurisdiction. Clarify responsibilities. Disentangle.

On the other hand, in tension with this line of reasoning are structural arguments suggesting that the health of cities and especially of Global City Regions is essential for national competitiveness and prosperity.¹³ More important are the electoral incentives in Quebec and the cities. The opening in Quebec is obvious, and it is tempting to address the municipalities' demands. These incentives are somewhat contradictory, however, for Quebec governments guard their municipal jurisdiction most jealously.

The mid-term equilibrium position is to focus on the fiscal imbalance in cooperation with the governments of the provinces and territories. It must be solved, or demonstrable progress must be achieved by increasing transfers, ceding tax room, or transferring tax points. At the same time, funds flowing through the gas-tax agreements and the infrastructure programs can maintain federal visibility and meet some of the needs of residents in the big cities. Other purely federal initiatives like the attack on crime can help here too.

The cleanest fix from the open federalism perspective is to cut federal taxes. This would leave room for the provincial governments to augment their revenues. Federal-provincial transfers would be cut proportionately to the negotiated size of the fiscal imbalance. The revamped equalization system would be the means to smooth the horizontal imbalances between provinces resulting from a unilateral federal tax cut. Then provincial governments could increase transfers to municipalities, if they so chose.

One final possibility is to label some portion of the fiscal imbalance fix as "municipally dedicated." For instance, another GST point or one point of a

personal income tax transfer could be dedicated to municipalities. Of course, this money would flow to the provincial treasuries, and the restriction would be unenforceable. It could also irritate provincial governments by constraining them and increasing municipal demands upon them. But the political calculus could find labelling to be beneficial on balance.

APPENDIX I

The Senses of Open

Open is one of the most amazing words in English. It is positive in almost all of its senses and connotations.

As a *verb*, its various meanings are instructive. They include:

1. To remove anything that obstructs access
2. To create a space allowing access or view
3. To become responsive or sympathetic — *to open up*
4. To cause to begin or commence
5. To begin to admit customers
6. To make (a shop, a restaurant and so on) available for business again after a period of being closed.

The last usage is quite suggestive when federal-provincial relations are contemplated. The only negative verbal connotation of the verb is “to initiate betting.”

As a *noun*, its meanings of a “gap” or an “opening” are both obsolete, but they remain suggestive. More poignant is the connotation cited in the *Oxford English Dictionary* as used by Owen Wister in his classic 1902 cowboy novel, *The Virginian*. “We gained the rim of the basin. It lay below us, a great cup of country — rocks, woods, opens, and streams. The tall peaks rose like spires around it, magnificent and bare in the last of the sun; and we surveyed this upper world, letting our animals get breath.”¹⁴ Here, an open is a clearing, and abstracted from its western context (which is nonetheless perhaps not irrelevant now in Canadian government) the word suggests not just a clearing but a “space.” Of course, opening up “political space” for dialogue is a highly laudable exercise.

Open is used most often as an *adjective*. Here, the numerous senses can be categorized according to other terms.

1. Accessible
 - affording unrestricted access or entry
 - a space to which there is ready access or passage from all or nearly all sides
2. Welcoming
 - not restricted to a few, generally accessible or available; such that anyone may use it, share it, or take part in it
 - with open arms
3. Receptive
 - receptive to new ideas or arguments

4. Candid

- not given to concealing thoughts or feelings; free in conversation; unreserved, frank, candid

5. Responsive

- free in giving or communicating; liberal, generous

6. Indeterminate

- a matter not finally settled or determined

7. Transparent

- existing, performed or carried on without concealment or so that all may see or hear

8. Accountable

- of government or public administration: welcoming discussion, criticism, and enquiry; involving no concealment, restraint, or deception

The only negative adjectival senses are those of an open wound and of an open city (with unregulated gambling, prostitution, and so on). As well, perhaps more relevant to open federalism, there is the sense of over-openness, as in “rendering vulnerable” or “making exposed to.” (This sense might resonate particularly with women.) Some gambit, for example, might leave a government or an army “open to attack.” In this light, the store is not only open for business but open for looting.

APPENDIX II

Federalism and Municipalities in Conservative Discourse

The Policy Declaration, 19 March 2005

The Declaration was adopted by delegates at the Conservative Party of Canada's 2005 National Policy Convention. It begins with the "Founding Principles" of the party, of which there are 19. Overall, the principles envisage a limited role for government, emphasizing individual rights and responsibilities, a competitive market economy, and a government that is responsible, ethical, accountable, and fiscally prudent. Federalism is mentioned once, as the party affirms a "belief in the federal system of government as the best expression of the diversity of our country, and in the desirability of strong provincial and territorial governments."¹⁵

There are 23 sections in the Declaration. Section D is about open federalism. The general thrust is that the central government should intrude less in areas of provincial jurisdiction, and restore a respectful balance between the two orders of government. Open federalism involves:

- A commitment to "restore the constitutional balance between the federal and provincial and territorial governments."
- A commitment to "the federal principle" and to "the notion of strong provinces within Canada."
- A promise to work cooperatively with the provinces "while respecting the division of power and responsibilities outlined in the Constitution."
- A promise to limit the federal spending power (much along the lines of the Social Union Framework Agreement, though this is not mentioned).
- A promise to consider deeper reform to address (i) Quebec's non-signature of the *Constitution Act*, (ii) western alienation, and (iii) the need to build a long-term "partnership" with Aboriginal peoples.
- A commitment to the Council of the Federation and to improving inter-provincial information-sharing.
- A commitment to "fix," in collaboration with the provinces, "the problem of fiscal imbalance," by "increasing the amounts allocated to provincial transfers, by reducing taxes, or by transferring tax points to the provinces."

The general impression is of "strict constructionism"; that is, attentiveness to the original distribution of powers in the *Constitution Act* and support for disentangling the activities of the orders of government. The major exceptions to a clear division of powers are two fields where Ottawa can claim some jurisdiction or a long tradition of involvement: housing (where the promise is to assist directly in the provision of shelters) and higher education (where a dedicated Canada Education Transfer to the provinces would separate this envelope from the Canada Social Transfer).

Cities and municipalities generally receive scant treatment in the document. Of the 23 sections, none is devoted to municipalities, despite the coverage of Diversity, Heritage and Culture, Health, and Immigration, let alone Agriculture, Fisheries and even Rural Canada. When municipalities are mentioned, it is always in conjunction with provincial and territorial authorities. The most substantial policy position is to reduce the federal gas tax, “conditional on an agreement with the provinces and territories that they will use this tax room to fund infrastructure in provincial, territorial and municipal jurisdictions.”¹⁶ Other areas of possible tripartite cooperation include contaminated sites, housing, homelessness and “social infrastructure,” affordable housing, and settlement support for immigrants. This is a short list of policy fields. Given the very long list of other initiatives to which commitments were made, the lack of mention of urban problems and of relations with municipal governments is striking. A strict constructionist approach would, of course, shrink the range of federal-provincial joint action.

As for municipalities, infrastructure spending through the gas tax would be continued, but it is noteworthy that the commitment to address the fiscal imbalance makes no mention of municipalities and their needs.

The Campaign Platform 2006: *Stand up for Canada*

Similar themes are found in the party’s 2006 platform. There are changes of emphasis, and sharpening of policies. As well, Stephen Harper’s opening message in the document laid out the Conservatives’ five major priorities: clean up government, cut the GST, help parents with childcare, reduce patient wait times, and crack down on crime. In the policy document, there are six sections, four of which are devoted to these priorities. Another, “Stand Up for Canada,” is a mixed bag, but here are the commitments about open federalism, and here too is espoused a principle for the promotion of unity and pride: working “to unite the country by respecting provincial and cultural differences.”¹⁷

Along this line, open federalism involves, first, “clarifying the roles of both levels of government within the division of powers of the Constitution.” Not only is the central government to restrain itself and respect jurisdiction, but through a commitment to a new “Charter of Open Federalism” the party pledged to “facilitate provincial involvement in areas of federal jurisdiction where provincial jurisdiction is affected,”¹⁸ including UNESCO, trade agreements, trade promotion and the work of the Council of the Federation. The second platform plank involved the fiscal imbalance. There was a call for a “comprehensive agreement” to address the issue in a “permanent fashion,” but no modalities were spelled out.

The sixth section of the platform was titled “Stand up for our Communities,” a significant shift from the Declaration at least in terms of rhetoric. This section covered several policies connected to municipalities, though not explicitly here except by the section’s title — the environment, immigration, Aboriginals, arts and culture, competitive sport and charities. There were three

planks specifically involving municipalities. The first concerned “national infrastructure.” It included a commitment to maintain the funding for the New Deal for Cities and Communities (a term used here for the first time), transferring five cents per litre of the federal gas tax by 2009/10. However, it expanded the spending parameters to allow all municipalities to use the money for roads and bridges (as opposed to making larger cities spend on urban transit). The party also promised to maintain the existing federal infrastructure agreements. A Conservative government would support the Pacific Gateway Initiative. It would allow Ottawa’s partners more freedom in choosing priorities. It would study road congestion to assess the effects of infrastructure spending. A new Highways and Border Infrastructure Fund would commit \$2 billion over five years, with a priority being “to work with the provinces to improve Canada’s National Highways System.” Two less comprehensive platform planks were to work with “the provinces and municipalities” to provide tax incentives for private builders to construct affordable housing, and to give tax credits to commuters for their monthly transit passes.

The platform narrowed the focus of the party’s policy toward the five central priorities stressed during the campaign. Open federalism remained part of the package, however, with the same tone of respect for provincial jurisdiction and the same commitment to provide more funding so that provinces could fulfil their responsibilities. Municipalities, or “communities,” crept into the campaign document, with commitments that money would continue to flow, and that the recipients would have greater leeway to spend. The instrument chosen to bolster affordable housing and public transit, which are big urban issues, was an unobtrusive one, tax expenditures, indicating once more, perhaps, a respect for provincial jurisdiction.

The Conservative Party’s Quebec Platform: *For Real Change*

During the 2006 election campaign, the Conservative Party issued a short document outlining its “commitment to Quebecers.”¹⁹ There were four sections. The first was “cleaning up Ottawa.” The second section concerned open federalism [*féderalisme d’ouverture*]. This “new” federalism would stand in contrast both to the Liberals’ “old paternalistic and arrogant attitude toward Quebec” and to “the blind and pointless obstructionism” of the Bloc Québécois. Four promises were familiar from the general platform. New were these three:

- “recognition of provincial autonomy and of the special cultural and institutional responsibilities of the Quebec government”
- “respect of federal and provincial areas of responsibility as defined in the Canadian constitution”
- “on-going consultation between the federal government and the provinces.”

As well, the party promised “an open attitude” toward general constitutional discussions and the integration of Quebec “into the constitutional family” when

circumstances were favourable. Finally, the promised Charter of Open Federalism would demonstrate the commitment to “a more efficient and balanced federation.” The important provisions here were the explicit recognition of provincial autonomy (especially for the special case of Quebec), the clear pledge to respect the constitutional division of powers, and the implicit recognition that the federation had become unbalanced.

The other two sections included two promises that concerned municipalities. First was to fight “organized crime and street gangs.” The second was a commitment, “in consultation with the provinces,” to provide “large and small municipalities with adequate and predictable revenues to help them renew infrastructure, build affordable housing, protect the environment, and develop public transit.” There was no departure here from the general platform.

Stephen Harper’s Speeches, Writing and Interviews

Harper addressed open federalism, perhaps for the first time, in an article in the *National Post* on 27 October 2004. There were two basic elements. Harking back to the populist tradition of western Canada, he favourably mentioned (among other items like the equality of the provinces) a “renewed respect for the division of powers between the federal and provincial governments.” Amplifying this, he stated that the Conservatives would “re-establish a strong central government that focuses on genuine national priorities like national defence and the economic union, while fully respecting the exclusive jurisdiction of the provinces.” At the same time, though, it was essential to supplement this strand of thought with “new ideas that address Quebec’s unique demands.” Much of the article was a defence of the notion of non-territorial linguistic communities (following the Belgian example) which of course did not become part of official Conservative Party policy. But there was a telling criticism of the Liberal government, which “veers from naysaying all proposals to embarking on ad hoc arrangements after chaotic intergovernmental meetings.” Here then, in addition to the themes of disentangling the levels of government and recognizing the special place of Quebec, is another — conducting intergovernmental relations in an orderly and principled fashion, with well-crafted, long-term solutions.

During the 2005/06 election campaign, Stephen Harper replied to a letter from Ralph Klein, the Chair of the Council of the Federation. Klein posed five questions that Harper answered, but before doing so, the Conservative leader wrote about open federalism. He contrasted it to “federal attacks” on provinces and premiers and the resort to “one-off deals” rather than working at a “common table.” What open federalism involved was “working more closely and collaboratively with the provinces and the Council of the Federation” to “clarify appropriate federal and provincial responsibilities” and to resolve the fiscal imbalance “between the federal and provincial-territorial governments.” There was no mention of municipalities in this prologue about open federalism. But in answering the question about postsecondary education,

Harper returned to the fiscal imbalance, which now involved the municipal governments too. The priority is to “meet with the premiers and municipal representatives to resolve the overarching issue of fiscal imbalance.” On transportation and international activities, Harper was accommodating, anticipating “further dialogue” and looking forward to Council of Federation proposals about cooperation. The final question was explicitly about fiscal imbalance and a Conservative government’s willingness to work with “provinces and territories.” Harper’s answer was that he would seek consultations immediately “with the provinces and municipal representatives” to reach a “long-term, comprehensive agreement.” Fiscal imbalance is a problem that has “allowed federal mismanagement” of taxpayers’ money. Federal surpluses accrue through “over-taxation.” The “imbalances” are “not fair and not right, and are incompatible with the healthy evolution of our federation.” Again, we find the themes here of being open to proposals, of seeking a comprehensive and permanent solution, of Ottawa being overgrown at the cost of injustice and dysfunctionality, and of the municipalities facing problems of “fiscal pressure” just as the provincial governments do.

The Conservative Party’s Quebec platform was announced in a campaign speech by Stephen Harper to the Quebec City Chamber of Commerce on 19 December 2005. This stuck closely to the platform as outlined above, including the stress on open federalism. He did, though, include a pledge to “monitor” the federal spending power, which had become “outrageous” under the Liberal government and which “gave rise to domineering and paternalistic federalism.” As for municipalities, it is noteworthy that after introducing his team of local candidates he made three concrete promises: to expand Quebec’s airport, to get the *Pont du Québec* painted, and to provide a “generous federal contribution” to the celebration of the 400th anniversary of the founding of Quebec. On the ground, the Conservative leader appreciated the power of promising concrete deliverables to municipalities.

Right after this speech, Harper wrote an op-ed letter addressed to Paul Martin (and the editorialists of *The Globe & Mail*) about a “better approach to federalism.” This elaborated on his concept of open federalism. He distinguished his approach from the alternatives. Open federalism, his “complete departure,” would stand between the “old paternalistic and arrogant attitude of the federal Liberals” and “the blind and sterile obstructionism of the Bloc.” There were three central elements. First, the Conservatives would not transfer federal powers to the provinces, but would cooperate “with the provinces in the exercise of their legitimate constitutional jurisdiction.” Now it is possible that this cooperation could mean coordinating federal action in the central government’s spheres of jurisdiction with provincial action in provincial spheres; or, it could mean cooperating to help the provinces in their fields of jurisdiction. Second, a Harper government would “establish a new relationship with the provinces” in the course of “clarifying the roles of both levels of government within the division of powers of the Constitution.” This commitment argues for the first interpretation above of the meaning of cooperation.

Finally, the Conservatives, he wrote, have *openly* “acknowledged that a fiscal imbalance exists in this federation.”

In March 2006, the new prime minister did an interview with Linda Frum of *Maclean's*. There was nothing here about open federalism. But Harper did dodge a pointed question about municipalities: “How are you going to hold onto your western base, when you seem to be making decisions designed to make your party more appealing to urban Toronto, Montreal, and Vancouver?” The prime minister simply dismissed the premise “that a decision has to be for one region and against another region,” and spoke not at all about municipalities or what Paul Wells has called the “MTV cities” (Montreal, Toronto, Vancouver). Harper did stress, though, that the government’s strategy was to proceed immediately with a “short agenda that reflects our top priorities,” before moving into the wider platform agenda in the autumn of 2006. Of course, municipalities were not on that five-item list, though the prominence of the fiscal imbalance has been rising, and it is acknowledged to concern them as well as the provinces and territories.

A much longer interview with L. Ian MacDonald in the March 2006 *Policy Options* was more revealing about open federalism (though the term was not used).²⁰ Harper clearly favoured forward-looking, incremental change on federal-provincial matters — “finding individual steps we can proceed with that everybody can agree on.” Second, he preferred that Ottawa concentrate on its core responsibilities. He wanted to “see Ottawa do what the federal government is supposed to do.” The federal government is over-extended: it “has gotten into everything in recent years, not just provincial jurisdiction but now municipal jurisdiction.” So Ottawa should work on matters like defence, the economic union, and foreign relations. The complement to this withdrawal and renewed focus on Ottawa’s business is to address the fiscal imbalance, “to make sure that lower levels [emphasis added] of government have the capacity to deal more effectively with their matters.” Finally, there is the special position of Quebec and of Premier Charest. The prime minister was very frank about the opening available to his party in Quebec, between Liberal corruption and Bloc impotence. And he was frank about Charest being an ally. As a pair of leaders, “nous avons maintenant un opposant commun au Québec, le mouvement souverainiste, et deux principaux véhicules fédéralistes, moi au niveau fédérale et lui au palier provincial.” So they should work successfully together on at least some dossiers. Moreover, this task is urgent and important: “en ce qui concerne les relations intergouvernementales, et surtout les relations avec le Québec, il est nécessaire que Harper et Charest livrent la marchandise.”

The Speech from the Throne

This remarkably short document provides some useful insights into open federalism and municipalities. It first commits the government to a “clear and focused agenda” through which the new administration will “work diligently

to build a record of results.” Along with brief sections devoted to the five priorities of the government: accountability, tax cuts, crime, childcare, and health-care wait times, there are two other sections, one of which is about foreign policy. The other is about “a Canada that works for all of us,” and here is found the commitment to a federation in which “governments come together” to help Canadians realize their potential. The pledge is made to “respond to concerns about fiscal imbalance,” and to “ensure fiscal arrangements in which all governments have access to the resources they need to meet their responsibilities.” The phrase “open federalism” is used, but only in reference to Quebec: an open federalism is one that “recognizes the unique place of a strong, vibrant Quebec in a united Canada,” and that involves working with the Quebec government “in a spirit of mutual respect and collaboration.” As for municipalities, the only possible reference is through the commitment to assure adequate resources for “all governments.” There is no specific mention of urban problems, despite a reference in the conclusion of the speech to resource and agricultural industries.

Notes

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3. Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (Toronto: University of Toronto Press, 1972).
4. Donald V. Smiley, “Public Administration and Canadian Federalism,” *Canadian Public Administration* 7, 3 (1964):371-88.
5. H.W. Sharp, (Hon.), Minister of Finance of the Government of Canada, “Statement” to the Federal-Provincial Tax Structure Committee,” in *Federal-Provincial Tax Structure Committee* (Ottawa: Queen’s Printer, 14, 15 September 1966), pp. 11-30.
6. A.W. Johnson, “The Dynamics of Federalism in Canada,” *Canadian Journal of Political Science* 1, 1 (1968):18-39.
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10. Julie-Anne Boudreau, “Intergovernmental Relations and Polyscalar Social Mobilization: The Cases of Montreal and Toronto,” in *Canada: the State of the Federation 2004*, pp. 161-80.
11. Roger Gibbins, “The Missing Link: Policy Options for Engaging Ottawa in Canada’s Urban Centres,” in *Canada: The State of the Federation 2002 Reconsidering the Institutions of Canadian Federalism*, ed. J. Peter

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 13. Thomas J. Courchene, "Citistates and the State of Cities: Political-Economy and Fiscal-Federalism Dimensions," in *Canada: the State of the Federation 2004*, ed. Young and Leuprecht, pp. 83-115.
 14. Owen Wister, *The Virginian: A Horseman of the Plains* (New York: Macmillan, 1962), p. 407.
 15. Conservative Party of Canada, *Policy Declaration* (Ottawa, 2005), p. 1. Available at <http://www.conservative.ca/media/20050319-POLICY%20DECLARATION.pdf>.
 16. *Ibid.*, p. 12.
 17. Conservative Party of Canada, *Stand up for Canada: Federal Election Platform* (Ottawa, 2006), p. 42. Available at <http://media.conservative.ca/video/20060113-Platform.pdf>.
 18. *Ibid.*, p. 42.
 19. Conservative Party of Canada, "For Real Change: The Conservative Party of Canada's Commitment to Quebecers." (Ottawa, 2005). Available at <http://www.conservative.ca/media/2005129-Quebec-Platform.pdf>.
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CHAPTER 3

Il suffisait de presque rien: Promises and Pitfalls of Open Federalism

Alain Noël

In his December 2005 speech in Quebec City and in his January 2006 letter to the Chair of the Council of the Federation, Stephen Harper outlined his vision of “a new style of open federalism” for Canada. This vision, he acknowledged, was not a radical departure from Canadian tradition, but it offered a break with a “domineering and paternalistic federalism” and with “one-off deals with individual provinces.”¹ Harper proposed to respect the autonomy of the provinces and the division of powers established in the constitution, to work collaboratively with provincial and territorial governments, and to acknowledge the special institutional and cultural responsibilities of the Quebec government. Concretely, these principles entailed circumscribing the use of the federal “spending power,” initiating a collaborative process to eliminate the fiscal imbalance between Ottawa and the provinces, and creating new avenues for Quebec participation in international affairs.

As an electoral discourse, Harper’s approach worked. In Quebec, in particular, the open federalism speech triggered an ascendancy that brought the Conservative Party from about 10 percent of popular support in late December to 24 percent a month later, on the day of the election. Many commentators wondered at the impact of a speech that did not promise radical change and included few specific commitments. “Il suffisait de presque rien” wrote *La Presse* columnist Vincent Marissal, paraphrasing a 1968 love song by Serge Reggiani.² So little was needed. The newspaper’s chief editorialist also noted that the Quebec speech promised little that was new or path breaking.³ The absence of a strong reaction in the rest of Canada appeared to confirm,

indirectly, the merit of Harper's prudent opening. Health care, corruption, taxes, and a general desire for change prevailed in public opinion outside Quebec, and open federalism did not seem to matter, even though most Canadians saw national unity as a non-issue and opposed giving the Quebec government a greater role in international affairs.⁴

What happened then? One plausible interpretation is that, in style as well as in content, the Quebec speech responded to a deeply ingrained desire for symbolic recognition among francophone Quebecers.⁵ Focus groups also evoked a desire for respect in the wake of the sponsorship scandal, and an appreciation for Stephen Harper's efforts to address in Quebec and in French the concerns of Quebecers.⁶ These interpretations are consistent with what we know of Quebec public opinion. They may not be sufficient, however, to understand fully what was at stake with open federalism. The inherent appeal of recognition, reconciliation, and respect explains why Quebecers responded positively to Harper's new vision, but it offers few operational guidelines regarding the course of action that could be or should be pursued. The past 20 years have taught us how problematic, indeed perilous, the politics of recognition and reconciliation can be. Even limited symbolic gestures, like the 1997 Calgary Declaration, or relatively inane administrative agreements, such as the 1999 Social Union Framework Agreement (SUFA), stumbled upon this obstacle. For every promise held by open federalism, there are also significant pitfalls, both symbolic and institutional. Careful consideration is therefore warranted.

The positive reception of open federalism by francophone Quebecers makes sense in a broad perspective, but it leaves many questions open. Public opinion research teaches us that collectively citizens hold relatively coherent and stable views, anchored in shared values and attitudes, and there is no doubt that Quebecers have sought for a long time some form of recognition of their society within the Canadian constitutional order.⁷ But why did this particular speech in Quebec City, and not earlier or competing ones, work? What does this success suggest about the policies that should be implemented? And how much can the Conservatives accomplish in the short life span of a minority government?

This paper briefly addresses these three questions: Why exactly did open federalism appeal to Quebec voters? What policies does its implementation require? And how can such policies be initiated rapidly? I do not pretend to know the answer for each question, but I think some understanding can be gained from taking the idea of open federalism seriously, and probing its meaning in light of the country's political history. My general hypothesis is that the Quebec speech worked because it corresponded to an old and deeply anchored vision of the place of Quebec within the Canadian federation, a vision that still informs the attitudes of francophone Quebecers, even though they may have forgotten its origins or its exact formulation. If this hypothesis is true, it has implications for public policy. Symbolic gestures may have their importance, but they will not be sufficient, especially in the short time frame available

to the new government. At the same time, public expectations remain low. What matters most is consistency, in light of the objectives stated or implied by the prime minister's electoral statements on federalism.

Why Did Open Federalism Work?

Compared to most documents or speeches that were produced to discuss federalism in Canada, the speech and letter that outlined Stephen Harper's vision of the country were remarkably short and simple. These presentations put forward some basic principles and derived from them a few policy implications. In the Quebec speech, Harper started by acknowledging the place of Quebec "at the heart of Canada" and of the French language as "an undeniable component of the identity of all Canadians." He then denounced the corruption associated with the Liberal governments of Jean Chrétien and Paul Martin and evoked the memory of René Lévesque in support of his plans to improve accountability and trust in federal politics. The political centrality of Quebec, the old province and the new society, was thus recognized. Then, Stephen Harper presented open federalism as such, stressing the need to preserve the autonomy of the provinces, to accommodate the special cultural and institutional responsibilities of the Quebec government, and to respect the division of powers established in the constitution. To each of these principles corresponded a policy objective. Preserving the autonomy of the provinces required eliminating the fiscal imbalance in the federation, accommodating Quebec implied allowing its government to play a more significant role in international cultural affairs, and respecting the division of powers meant limiting the federal use of the "spending power."

In his letter to the Chair of the Council of the Federation, Harper followed the same approach but insisted more on the importance of working "closely and collaboratively with the provinces and the Council of the Federation to develop Canada's economic and social union." In addition to the policies presented in Quebec, he mentioned a new Canada Education and Training Transfer, a Highways and Border Infrastructure Fund, and a revised equalization formula that would "exclude non-renewable resource revenues for all provinces." The letter's emphasis on the economic and social union and its reference to intergovernmental collaboration counterbalanced, without contradicting it, the stress placed on autonomy and the division of powers in the Quebec speech. These intergovernmental considerations did not have as much political impact in Canada because they did not concern identity and long-held historical views, but in due course they will also matter.

In Quebec, citizens and observers alike were struck by the elements of recognition contained in the December speech. This speech, however, was not only about recognition. It also proposed an articulate vision of federalism, anchored in a respect for the division of powers and for provincial autonomy. This additional dimension was critical, in my opinion, to give content and credibility to Stephen Harper's gestures of recognition. More importantly, it

connected his new vision to the dual understanding of Canada that has long prevailed in Quebec.

Put simply, a majority of Quebecers thinks that their provincial government should seek both recognition, as the government of a nation within Canada, and autonomy — as a partly sovereign state within the Canadian federation. The simultaneous pursuit of these two objectives is sometimes seen as contradictory and self-defeating. Those who privilege the formal equality of the provinces or give precedence to individual equality, for instance, tend to reject recognition, or to see it as working against autonomy, because they can only envision provincial autonomy as symmetric. On the other side, many in Quebec who emphasize national identity dismiss the federal perspective implicit in the quest for autonomy. The combination of the two objectives, however, defines a position strongly rooted in Quebec history and institutions, and built on debatable but not illogical foundations.

Stephen Harper appealed to an old and well-established vision of Canada. In *The French-Canadian Idea of Confederation*, historian Arthur Silver showed how, from the beginning, French Canadians thought of “themselves as a nation and of Lower Canada as their country,” and sought to create an association within Canada that would allow them to strengthen this nation and keep it as autonomous and as sovereign as possible. The new federation would enable the provinces to work together on common projects, but it would also respect national identities inherited from the past.⁸ The province of Quebec would be both an autonomous province within Canada and a distinct nation.

Henri Bourassa later formalized this dual purpose by interpreting the *British North America Act* of 1867 as a double pact, one between autonomous provinces and one between two founding nations. Bourassa affirmed the dual character of the federation to stress in particular the binational nature of Canada, in a context where a single focus on provincial autonomy risked legitimizing the oppression of French Canadians outside Quebec. Bourassa’s thesis, however, had a more general relevance, because it defined Canada as a pact with two complementary dimensions, one federal and the other binational. This double pact could not be found in historical documents or in law, and it was probably not what the fathers of Confederation had in mind when they crafted a constitution that very imperfectly reflected this idea.⁹ This representation nevertheless became the dominant conception in Quebec. The adoption of the *British North America Act* was seen as the embodiment of a “partnership between peoples” and, at the same time, as the foundation for provincial governments that would be autonomous institutional frameworks within a decentralized federation.¹⁰

Guided by this understanding, the Quebec government has always sought both recognition and autonomy within the Canadian federation, emphasizing one or the other according to the circumstances. Until the 1960s, expectations and demands tended to be modest. Inspired by the conservative notion of “survival” and by a general distrust of state intervention, demands for recognition and autonomy were largely defensive, and sometimes contradictory. They could

be found, nevertheless, in the postwar debates over social policy and over the division of income and corporate taxes, as well as in the discourse of the Tremblay Commission. With the Quiet Revolution and the transformation of Quebec's state and society that followed, demands for recognition and autonomy became more ambitious. There is no point, here, in retracing a well-known history.¹¹ Suffice it to say that, from the debates on "contracting-out" social programs in the early 1960s to the current discussions on fiscal imbalance, the Quebec government has consistently promoted the two objectives, sometimes acting more as an autonomous province able to make common cause with other provinces, sometimes as a national state seeking recognition from the multiple representatives of another nation. Very often, the two stances co-existed and enriched each other. The pension plan debates of 1964, the Gang of Eight constitutional alliance of 1981, the 1987 Meech Lake consensus, and the 1998 Saskatoon agreement on the social union all saw the Quebec government fruitfully combine both purposes.

The evocation of past constitutional debates may not sound reassuring for the fate of open federalism. If the aim is to develop and implement a new vision for the federation, however, there is no escape from learning from the past. The lessons are not consistently negative. First, there were successes as well as failures in this long history of intergovernmental debates and negotiations. No satisfying resolution was reached on the broader constitutional or quasi-constitutional questions, but collaboration often worked, among provinces and between orders of governments. Second, the spirit of these exchanges usually was not one of stubbornness, blackmail, begging, or ever-increasing demands. Reasonable deliberation, compromise, and good faith negotiations were most of the time in evidence. Third, although difficult to satisfy, the Quebec government did not act capriciously. Beyond partisan affiliations and contextual factors, it followed a rather constant line of action, defined by its double quest for recognition and autonomy.

My aim is not to replace the predominant view of intergovernmental relations as mired in conflicts and stuck in a suboptimal equilibrium with a rosy picture of good faith collaboration and success. I have written critical accounts of federal-provincial relations in Canada.¹² The point is to recognize the principled character of the process, which is not just a power game.¹³ Once this is done, the foundations upon which open federalism may be built can become apparent and plausible.

To sum up, this first section asked why open federalism worked with Quebecers, helping to convince about one in four to vote for the Conservative Party and moving many more to give the new government a chance, without expecting miracles. The answer, in a nutshell, was that Harper's proposal for open federalism fitted rather well with Quebecers' historical understanding of Canada as a double pact. The notion of a double pact has vanished from public discourse, but the reading of the country it offered has remained, because it was institutionalized in the Quebec government's quest for autonomy and recognition within the Canadian federation. More, then, is at stake with open

federalism than respect and symbolic recognition. In turn, this implies that expectations, however modest, cannot be met solely with symbols. The task at hand is more demanding.

How Can Open Federalism Work?

Stephen Harper's discourse on open federalism touched upon the two main traditional intergovernmental objectives of the Quebec government: recognition and autonomy. In each case, the principle invoked was clear, but its policy implications remained allusive. On recognition, Harper mentioned primarily mechanisms to allow the Quebec government to participate in UNESCO activities. On autonomy, the key engagements were to initiate a process to address the current fiscal imbalance in the federation and to adopt a Charter of Open Federalism that would help circumscribe the use of the "spending power."

Consider, first, recognition. On 5 May 2006, Ottawa and Quebec reached an agreement to give the Quebec government a role in the Canadian delegation to UNESCO. As such, this was a positive development, especially given the rigidity of the previous government regarding Quebec's international representation. But it remained a limited and one-shot deal, on a matter that, for most Quebecers, was not a burning issue. To give meaning, and lasting power, to the recognition dimension of open federalism, the Harper government would have to go further and shift the course of Quebec-Canada relations in a consistent and durable way. This implies drawing the conclusion that follows logically from the acknowledgement that the Quebec government has special cultural and institutional responsibilities and that terms should be found to allow the province to reintegrate the Canadian constitutional family. The exact content of these terms is anything but clear, but there is no escaping some form of explicit recognition of the national character of Quebec society. To some, this may appear as a delicate, politically risky question. The mere mention of Quebec in the 2006 Speech from the Throne stirred hostile reactions among Ontario Liberals, and clearly there is a public in Canada for this type of reaction. Still, no government since the Mulroney years has been better placed to move the country ahead along the path of reconciliation.

The first step would be to find a new way of speaking about Quebec and Canada. In this respect, the language of nationhood appears hard to avoid. This is the language Quebecers use naturally, and it is also the language of Quebec institutions, starting with the National Assembly.¹⁴ It is as well the language chosen by the Aboriginal peoples of Canada to represent themselves and to make sense of their place in the country, and it poses little problems in other diverse countries, including some that are not even federations, such as Spain and the United Kingdom (where the English understanding of the word nation does not pose an obstacle either). Even Liberal leadership candidates Michael Ignatieff and Stéphane Dion now speak of Quebec as a nation, apparently without difficulty. Canadian philosophers have gained worldwide recognition for their success in establishing the possibility of unity in demo-

cratic multinational federations. More than 15 years after the death of the Meech Lake agreement, the country may be ready if not for a full discussion, at least for a new way of naming ourselves.

Another option would be to employ indirect terms such as distinct society. Many of these terms, however, have already been used and they raise more or less the same difficulties as the language of nationhood. Giving content and significance to open federalism requires addressing the question of recognition in a clear and frank way. Mere allusions to “special cultural and institutional responsibilities” will prove difficult to sustain over time, and they have little potential if the aim is to open the possibility of integrating Quebec within the Canadian constitutional family. The cabinet meeting held in Quebec on 23 June 2006 failed to achieve its public relations purpose precisely because the prime minister stumbled upon the national question. If Stephen Harper had just used the word, the event would have been a success and his idea of open federalism would have acquired some substance.

On the second objective, autonomy, the policy implications are more numerous and intricate, but not less difficult. Three files stand out: vertical fiscal imbalance, horizontal fiscal imbalance, and the use of the spending power.

Regarding vertical fiscal imbalance, the Harper government has recognized the existence of the problem and made a commitment to work with the provinces to find a solution. It would have been difficult, and unwise, to make a more specific commitment at the outset, given that two reports on the question were expected, one from the Council of the Federation’s Advisory Panel on Fiscal Imbalance, and the other from the federal Expert Panel on Equalization and Territorial Formula Financing.

These two reports have now been released, along with the government’s own statement on “fiscal balance,” presented with the budget on 2 May 2006.¹⁵ The advisory panel of the Council of the Federation defines some common ground for the provinces and the territories, even though there is no consensus on the solutions proposed. Ontario in particular is dissatisfied with the panel’s recommendations on equalization. Still, the different governments rally around the fiscal imbalance diagnostic and around the report’s call for more generous, stable and principled transfers. The same seems to be true for the report of the Expert Panel on Equalization and Territorial Formula Financing, which proposes a similar, albeit less generous, approach to equalization.

The government’s document on “fiscal balance,” however, appears ambiguous. First, contrary to Stephen Harper’s previous discourses, it does not talk explicitly of fiscal imbalance. Second, it remains rather vague on the approach privileged by the new government to restore fiscal balance, except in saying that the roles and responsibilities of the different governments should be clarified. Third, like the report from the Council of the Federation, it places more emphasis on improved transfers than on a new division of financial resources.

If, as was suggested in the Quebec speech, what is at stake is not merely budgets but the very spirit of the federation, a preference should be given to

solutions that redistribute revenues, as opposed to approaches based on improved transfers. In his classic work on federalism, British constitutionalist Kenneth C. Wheare explained that the autonomy principle inherent to federalism required, in fact as well as in law, that each order of government had “under its own independent control” the financial resources “sufficient to perform its exclusive functions.”¹⁶ The 1956 report of Quebec’s Tremblay Commission affirmed the same idea, and so did the 2002 report of the Commission on Fiscal Imbalance. Fiscal imbalance is caused by the existence of an excessive fiscal gap between the two orders of government, and it can best be solved by a reduction of this gap. To do so, however, provincial governments also have to raise their revenues, something they may not all be willing to do, as is suggested by the provincial reactions to the different reports. At the very least, the federal government should keep this avenue open for discussion.

In his letter to the Chair of the Council of the Federation, Stephen Harper addressed as well the issue of horizontal imbalance by proposing a reform of the equalization program. In this case, the report of the expert panel is certainly the most important in setting the agenda. Like the report of the advisory panel of the Council of the Federation, it recognizes that the program is in a bad state. The 2004 “new framework for equalization” disconnected the total amount of equalization from the workings of an established formula, to make it a simple budgetary decision of the federal government, and it did not specify a rule for the distribution of provincial entitlements. Bilateral accords with various provinces further reduced the rationality of the program, at the risk of undermining its legitimacy, which has always been high, even in the contributing provinces. The expert panel proposes a principled solution, which would bring back a formula based on a simplified representative tax system, with a ten-province standard and the inclusion of almost all revenues except user fees and half of the revenues from natural resources. The panel tries to present this latter exception as a compromise between two contradictory principles, the first one stating that a province’s true fiscal capacity should be considered to establish equalization rights and the other suggesting that as the owner of a resource a government should also benefit from its exploitation. The experts admit, however, that in the end the partial inclusion of resource revenues is based on their “best judgement,” and informed as well by a preoccupation for the “bottom line.” Whatever the case, the approach proposed by the panel appears superior to that offered in the Conservative program, where all resource revenues were to be excluded. In this case, a solution may be easier to reach since the decision belongs primarily to Ottawa, which has the sole responsibility for the equalization program. But the results will shape intergovernmental relations, and they will give meaning and substance, or fail to do so, to the idea of open federalism.

Finally, the federal use of the spending power should be limited. In this respect, the Conservative Party’s commitment to seek the agreement of a majority of provinces before introducing new shared-cost programs, which is

reiterated in the 2006 budget, does not go far enough. This commitment is similar to the clause found in the 1999 SUFA, which the Quebec government does not approve. The possibility of opting out with compensation is made more explicit and open, but the scope of the commitment remains very limited. Whereas the SUFA concerns both shared-cost programs and block-funded programs, the position of the Conservative Party limits consultations and opting-out to shared-cost programs, which have become an endangered if not extinct species in the Canadian public policy environment. Placing barriers to prevent new shared-cost programs is unlikely to be very effective. This is a rule designed to fight a war that ended many years ago. Limiting the federal spending power as it is exercised today requires refraining from imposing conditions on block transfers and, more importantly, making a commitment to reduce direct spending and fiscal expenditures in areas of provincial jurisdiction. I am not sure such a commitment can be institutionalized in a “fool-proof” way. It could nevertheless be made and reaffirmed regularly, at budget time for instance. The strong statement included in the prime minister’s 20 April 2006 speech in Montreal was a step in this direction. Many federal policy orientations, however, point in the opposite direction, as is the case for instance with childcare.

Concrete actions can therefore be taken to implement open federalism. Some of them are symbolic, others entail opening up avenues for deliberation and negotiation, and a few require immediate federal actions. With respect to recognition, it would be possible to take one important step toward symbolic reconciliation simply by changing the way we name ourselves as Quebecers and Canadians. In principle, this is very easy to do. In practice, as we saw on 23 June 2006 it seems to be more challenging. Regarding autonomy, the core issues concern the distribution of resources within the federation. They call for a reallocation of tax fields or tax revenues between the two orders of government, a restoration and improvement of the equalization formula, and a credible commitment to limit the use of the spending power. On these questions, time must be given for deliberation and negotiation, but early policy decisions will test the coherence of the idea of open federalism.

When Can Open Federalism Work?

As a minority government, the Harper government does not have many years to implement open federalism. Federal elections will soon be on the horizon, and some provincial elections of significance are also coming. At the same time, it would be self-defeating to rush for solutions. A quick-fix approach would either antagonize a significant number of provincial governments or generate incoherent policies trying to satisfy all sides at the same time. The best approach is to govern as if time were available. This means adopting a principled stance, taking the time to listen, debate and convince, and keeping an eye on the horizon so as to develop long-run, sustainable solutions. Concretely, this implies moving more rapidly on discourse and process than on

policies and results. If efforts were made to recast the Quebec recognition question in a new frame of reference and to launch a well-accepted process on fiscal imbalance and on equalization, a few successful initiatives on the international representation of provinces and on the spending power could be significant.

What about the coming Quebec elections? It is natural for Stephen Harper to see his fate as closely tied to that of Jean Charest, who heads the main federalist party in Quebec and is also close ideologically to the Conservative Party. In this perspective, rapid realizations may appear desirable. Pressures for such results will certainly come from Quebec City. Two considerations, however, are worth keeping in mind. First, the Quebec objectives that I have associated with open federalism — recognition and autonomy — are not the objectives of a party, and not even the objectives of Quebec federalists. They have guided all Quebec governments, sovereignists and federalists alike, for more than 50 years. Seeking recognition and autonomy within the Canadian federation is something like the foreign policy of Quebec. It has staying power, no matter who governs. Second, Quebecers have been dissatisfied for a long time and at record levels with the current Liberal government. This does not mean that Jean Charest or his party cannot win again. It simply means that finding a quick solution may generate suspicion. Indeed, one of the reasons for this high level of dissatisfaction is the perception that the government lacks a sense of direction and governs by improvisation, without taking the time to listen and deliberate. As for the Parti Québécois, it probably cannot win the next election without softening its stance on the immediate pursuit of sovereignty. Following an electoral victory, a sovereignist government would thus have to join the existing intergovernmental process, and public expectations would not be very different from those outlined here.

Conclusion

It is hard to believe that francophone Quebecers care so much about a voice at UNESCO or even about the intricacies of fiscal federalism. What they see in open federalism is probably a new, more receptive attitude toward their traditional search for collective recognition and autonomy within the Canadian federation. This quest is anchored in history and institutionalized in Quebec public policies; it is internally coherent but also compatible with the workings of a modern multinational federation; and it constitutes a set of expectations that is modest and easy to satisfy in principle, but also ambitious and difficult to realize in practice.

When he used the title of Serge Reggiani's song, "Il suffisait de presque rien," Vincent Marissal probably remembered the title but not the song itself. This is indeed a sad song. It tells the story of an older man's impossible love for a younger woman. Finding himself too old for this woman, who loves him and does not care about his age, the man concludes that the gap between them simply cannot be bridged, and he sadly deplores that so little, ten years less,

would have made their story possible. “Il suffisait de presque rien,” sings Reggiani, “pourtant personne tu le sais bien, ne repasse par sa jeunesse.”

Many have concluded likewise that this country cannot go back to its youth, and that, however narrow, the gap between Quebec and the rest of Canada cannot be bridged. The path toward reconciliation is indeed long and narrow. At the same time, public opinion on both sides seems receptive, and demands appear moderate. In the short run, three steps could be taken to foster accommodation. First, the federal government could openly recognize the multinational character of the country, and speak of Quebec as a nation. Recognition is the most enduring issue of Canadian debates, it has been acknowledged in the past, almost successfully, and it can best be addressed frankly and openly. If this is all there were to open federalism, it would already be significant. Second, a process must be initiated to deliberate and negotiate openly on vertical and horizontal fiscal imbalance. The possibility of reallocating revenues between the two orders of government and the restoration of the equalization program should be considered seriously, in a multilateral fashion and with a view for long-term sustainability. The reports of the two expert panels provide useful background for such a process and could help enrich the rather thin budgetary statement of the Harper government. Third, policy initiatives could demonstrate the immediate relevance of open federalism, regarding the international representation of provincial governments and the use of the federal spending power in particular.

On all sides, expectations remain modest, and not much needs to be accomplished within the next two years. What matters most is consistency and vision, the adoption of decisions and actions that indicate a clear sense of direction and make further change plausible and appealing. In Quebec, almost half the population remains favourable to sovereignty. This will not change rapidly, but a large proportion of sovereignists could find positive a course of action that indicates a willingness to bring recognition and foster autonomy. Progress on these two fronts could reduce as well dissatisfaction on other policy issues, where the preferences of Quebecers tend to differ from those of the Conservative Party (on crime control, social programs, or foreign affairs, for instance). Outside Quebec, there may be resistance to such an orientation, but a Conservative government faced with a Liberal opposition that needs to rebuild its party in Quebec is probably able to make progress along these lines. If open federalism is to have meaning as a new approach, it must indeed disturb established patterns of thought, and create new avenues for sharing and reconciliation in the country.

Notes

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 9. Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity* (Toronto: Oxford University Press, 1997), pp. 19-23.
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 13. Alain Noël, “Democratic Deliberation in a Multinational Federation,” *Critical Review of International Social and Political Philosophy* 9 (September 2006).
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CHAPTER 4

The Two Faces of Open Federalism

Peter Leslie

In the electoral platform of the Conservative Party, “open federalism” has two meanings: a relatively narrow and precise one, and a broader one that lacks clear definition. In its narrow sense, open federalism is about procedure or practice in the conduct of intergovernmental relations: a commitment to collaborative policy-making. In the broader sense, open federalism implies readiness to adjust federal and provincial/territorial policy roles, to develop or redesign the economic and social union, and to reallocate fiscal resources within the federation. Thus the open-federalism approach may lead to major innovations in the structure of federalism in Canada. This could contribute to a significant reshaping of Canada itself, and if so would imply reassessment of underlying values: the reasons for having a country.

This paper looks at both these faces of open federalism. The first section of the paper comments briefly on the institutions and operating rules that will be necessary to implement the promised new approach to the conduct of intergovernmental relations. In the second section, possible structural changes in the federal system will be reviewed. At the forefront of such changes would be clarification and partial reassignment of policy roles, which could have significant implications for the economic and social union. Reassignment would not require constitutional amendment (reallocation of legislative powers) but nonetheless would have a bearing on the constitution-in-practice (new conventional understandings of the responsibilities to be assumed by each order of government). Moreover, to reassign policy roles, and arguably even to support existing ones, it will be necessary to introduce complementary changes in what may be termed Canada’s “fiscal constitution,” addressing a

broad range of issues including that of fiscal balance or imbalance. These three subject-areas — policy roles, the economic and social union, and the fiscal constitution — are closely inter-related, and will be discussed together by setting out four distinct images of federalism in Canada (what is, what should be).

Open Federalism as Collaborative Policy-making

The Conservative Party's 2006 electoral platform, *Stand up for Canada* affirmed that a Conservative government would seek to strengthen national unity by working closely with the provinces.¹ The Liberals were criticized for making one-off deals with individual provinces, rather than dealing with federal-provincial relations at a common table. By contrast, the approach intended by party leader Stephen Harper — that of working with the provinces as a group — was described as open federalism. This was to take on a rather formal character. Thus, *Stand up for Canada* promised:

A Conservative government will support the creation of practical intergovernmental mechanisms to facilitate provincial involvement in areas of federal jurisdiction where provincial jurisdiction is affected, and enshrine these practices in a Charter of Open Federalism.²

In the same vein, and in a way that presented open federalism as willingness and intent to bring about structural change in the federation, Harper wrote to the Council of the Federation (13 January 2006), saying:

It is my hope as Prime Minister to initiate a new style of open federalism which would involve working more closely and collaboratively with the provinces and the Council of the Federation to develop Canada's economic and social union, to clarify appropriate federal and provincial responsibilities, and to resolve the fiscal imbalance between the federal and provincial-territorial governments.

With regard to open federalism in its narrower sense, as commitment to a more collaborative style of policy-making in the federation, the principal question to ask is whether the intended approach is to affect federal policy-making alone, or (conversely) is to affect equally the exercise of legislative powers at *both* levels, provincial as much as federal. During the election campaign, the Conservatives placed by far the greater emphasis on enhancing the policy role of the provinces; little if any attention was paid to seeking the collaboration and support of the provincial governments in a joint endeavour with Ottawa to achieve national goals in areas where federal powers are not, in themselves, adequate to the task. Thus, the electoral platform promised provincial involvement in federal policy-making "where provincial jurisdiction is affected," making specific mention of three policy fields: culture, environment, and trade. The platform also promised that Quebec would be invited to play a role at UNESCO (a promise that appears at time of writing

soon to be implemented); and a broader commitment was made in a statement by Harper on 19 December 2005, in the following terms: “we will develop mechanisms to allow the provinces a greater role in their own jurisdictions as they relate to the international arena.” On the same occasion, he promised to “recognize provincial autonomy,” to “respect federal and provincial jurisdictions,” and to curb abuses in the exercise of the federal spending power. (“This outrageous spending power gave rise to a domineering and paternalistic federalism...”)

The decentralist thrust of open federalism was underscored by references to “expanding” or “developing” the economic and social union in Canada. Here, it appeared that the lead role was to be played by the provinces through the Council of the Federation, whose actions the federal government would complement and support. Strikingly, it was the council that made the proposal “that the Government of Canada become a full partner with the provinces and territories in the implementation of a national transportation strategy that is multimodal and inclusive of all regions,” and asked each of the party leaders if they would support this objective. Harper affirmed that the Conservative Party would do so, and added: “We look forward to receiving proposals from the Council of the Federation setting forth mechanisms through which this cooperation can be achieved.”

Two thoughts come to mind. First, the Government of Canada will have to decide whether to cede leadership in the federation to the provinces, to the extent that seemingly is implied in the pre-election stance of the Conservative Party. Collaborative policy-making, as called for by the prime minister, appears to be primarily directed to welcoming provincial input and influence on federal decisions, to the extent that such decisions will affect the plans and activities of provincial governments. Identifying national objectives and trying to work together with the provinces to achieve them is something else again. Indeed, there are many policy areas — the promotion of economic development and growth, for example — in which the federal government bears a substantial degree of responsibility, but policy objectives can be achieved only with the active support of the provinces. Accordingly, a commitment to collaborative policy-making has, potentially, significance and purpose additional to that of meeting the provinces’ complaints that they are often sideswiped, or their policies undermined or deflected, by federal actions and initiatives.

A second observation is this: whatever the thrust and purpose of collaborative policy-making, it is the mindset, the approach, and the political agenda, that probably will be of primary importance. Putative new mechanisms for the conduct of intergovernmental relations — formal institutions and standardized practices — will not be irrelevant, but will function effectively only if the federal government and most or all of the provinces are ready to work toward shared goals. Thus, an important task for any new mechanisms relating to the working of the federation would probably be to identify subject-areas in which goals are indeed shared, or consensus could be built.

Implementation too would be important, but in logic and in time, comes second. Indeed, reflection on past events illustrates this generalization.

Outweighing in historic importance all other cases of federal-provincial cooperation was the negotiation of bilateral free trade with the United States (the FTA), 1988. Most provincial governments were advocates of free trade early on, and in fact helped the Macdonald Commission on the economy to shape its own, internal, consensus on the goal of free trade. The newly elected Mulroney government launched the process. During the negotiations the provinces were consulted on a regular basis at the level of first ministers, with supporting detailed work from relevant departments. Importantly, the inter-governmental process was complemented by the setting-up of sectoral consultative groups that also brought private sector players inside the tent. This dual consultation process — with the provinces, and with business groups — had a material influence on the conduct of negotiations leading up to the FTA. In part, the motive for involving the provinces was that the Government of Canada was aiming for an agreement that reached deep into areas of provincial jurisdiction, and thus needed their commitment, if the hoped-for agreement was to be implemented. It turned out, however, that the agreement that was eventually struck was more limited in scope than the one originally envisioned in Ottawa, and in this sense the regular meetings of first ministers were, in the end, unnecessary. However, the consultation process did probably result in an outcome that better served the national interest. Even more important (though the point is speculative) is this: the consultation process and the buy-in that was achieved to an FTA that fell short of the hoped-for “guaranteed access” to US markets, appears in retrospect to have helped deflect the momentum that briefly built up during the election campaign against free trade. It seems plausible to suggest that in the absence of the consultation process, the government would very likely have lost the election, and the FTA would have gone the way of the 1911 reciprocity treaty. The consultations thus, arguably, had an important political purpose and result. There were a lot of meetings, there was a great deal of informal consultation, and various working groups and consultative bodies were set up. But all were temporary; all were essentially ad hoc improvisations. Their effectiveness reflected the prior commitment of the governments — with the notable exception of Ontario, whose position was not, however, supported by large segments of the business community. The political agenda came first, and the process reflected it. In the end the process was very likely essential to generating sufficient public support to re-elect the government and ratify the agreement.

One should not generalize too sweepingly from a single, high-profile case of intergovernmental consultation such as the negotiation of the FTA, and there is no space here to undertake a broad review. It is worth observing, though, that there has existed for some time a bewildering array of intergovernmental bodies at the ministerial and official levels. Some of these bodies have been reasonably active on a sustained basis, others have been active intermittently as the political agenda requires, and others have been mainly a

shell. Overall, intergovernmental committees and councils tend to be most active and most effective when there arises interdependency between the federal government and the provinces (and, on some issues, also the territories), and policy innovation is on the agenda. It is a fairly safe generalization that when Ottawa and the provinces share objectives, but each order of government lacks adequate constitutional powers and/or the fiscal resources needed to achieve its goals on its own, they are induced to negotiate. In some cases, for example on many issues of development in the north, aboriginal organizations may also be active and quite powerful participants. In a sense they are, in respect of such issues, like provincial governments: they have some good bargaining chips, because Ottawa needs their support or at least acquiescence to move forward on its policy agenda. However, the Harper government's commitment to open federalism would, on the face of it, move into new territory. The electoral program expressed readiness to involve the provinces in federal policy-making, as it were without ulterior motive, to the extent that their interests too will be affected by federal decisions. Given that many government programs or initiatives have to be worked out among several interested departments, it seems surprising that the government should contemplate making an already complex process — marked by the *lourdeurs* and delays of negotiations internal to the government itself — all the more cumbersome by inviting additional players into the tent. Simply put, there is risk in setting up standardized procedures or complex machinery that would give external players real clout in the policy process even in situations where their acquiescence and support are not required.

There are further grounds as well for caution, or at least for lowering expectations as regards what may be accomplished through intergovernmental consultation and negotiation. It would seem prudent to reflect on the fact that in some instances the aims and objectives of the federal government will actually be in direct opposition to those of the provinces, or some of them. For example, if in 1995 Finance Minister Paul Martin had convoked his provincial colleagues to tell them he was preparing his budget, and was thinking of cutting their transfer payments so the federal deficit could be eliminated, the initiative would have been dubious for reasons additional to wanting to maintain pre-budget secrecy. Here was a case where the interests of the federal government were contrary to those of all provinces. Less dramatic than this, but in a sense more complex and probably more common, it can well happen that initiatives contemplated by the federal government are attractive to some provinces but anathema to others. This was the case, for instance, with the National Energy Program (NEP) of 1980. I do not wish to present the NEP as a wise response to the circumstances then prevailing on world oil markets. However, it is important to recognize that the federal initiative was an attempt (indeed, in its own terms a successful one) to reallocate the bargaining chips between Ottawa and the governments of the oil-surplus provinces. It paved the way for a series of bilateral negotiated settlements on price and other issues, first with Alberta and then with Saskatchewan and British

Columbia. Looking back on the whole period between 1974 and 1981, I have elsewhere described the evolution of Canada's energy policies in these years as an instance of intergovernmental policy-making by thrust-and-response.³ Outcomes were *jointly determined* by a series of actions at the federal and provincial levels, with governments throwing thunderbolts at each other for a while, at a distance, but eventually meeting at the negotiating table.

One might well be justified in arguing that the cases of the NEP and of the 1995 federal budget demonstrate that a federal government more heavily constrained in the exercise of its powers would have acted more responsibly, or with a better ultimate outcome, than the two governments actually did in those two cases. Constraints have indeed been put in place as regards the regulation of energy markets, partly by the terms of the *Constitution Act, 1982* (section 92A, the "Resources Clause"), and partly under the FTA and the North American Free Trade Agreement (NAFTA). By contrast, in fiscal transfers to provincial governments, Ottawa retains full control, untrammelled by contractual obligations. Observers will, in general, have their own views on whether the constraints that flow from free trade in the one case, and the absence of contractual constraints in the other, are a good thing or a bad thing. But "good" or "bad" is not what is at issue here. The point I wish to make is that whatever the constraints on Ottawa's freedom to manoeuvre, and regardless of the effect of constitutional limitations, fiscal limitations, and limitations deriving from the need to gain political support for its initiatives and policies (sometimes from specific groups and organized interests), the Government of Canada is likely to prefer the less-complicated life over the more-complicated one. To inform itself of relevant facts, and to avoid willfully and unnecessarily acting in ways that provoke the hostility of provincial governments and others, are prudent things to do. For these purposes, to maintain a good, well-knit intergovernmental network of officials is desirable: it serves the interests of the public and of the governments themselves. This means the governments have to be in regular contact, often informally. Governments, and the people of Canada, have a stake in seeing that civility and trust exist among officials; the holding of regular, routine meetings including at the ministerial level supports this objective. When spats occur, as they will, the existence of an intergovernmental network at the level of officials is a public good, one all the more important in light of the frequent reassignment of ministers among portfolios.

Collaborative policy-making involves nurturing regular contact at the official and ministerial levels, but goes far beyond. It implies a commitment *not to proceed* on policy initiatives within certain fields, except on the basis of consensus or near-consensus among relevant governments, created through negotiation. It is to be expected that all relevant governments will enter into the negotiation process having first taken stock of the strength of their respective bargaining positions. It is not reasonable to expect the Government of Canada to create hostages to fortune by subjecting itself to constraints that are not reciprocal, or do not arise from a need to bring the provinces and

territories onside, if federal goals are to be achieved. Indeed, an across-the-board commitment to collaborative policy-making would be imprudent, if for no other reason than that the federal government frequently finds itself having to make decisions on issues where, in the nature of the case, consensus among the provinces proves to be elusive. Let's put it this way: frequently, Ottawa finds itself having to act as arbiter of disputes among the provinces, each representing a specific regional interest or expressing a regional viewpoint on issues (think of same-sex marriages) on which attitudes vary noticeably across the country. The federal government cannot reasonably be expected to undercut its own role as arbiter in these circumstances, by promising to make the provincial governments integral players in the federal policy process. For the same reason, it must be careful about placing itself in a position where it cannot move forward except on the basis of requests or suggestions of the Council of the Federation — especially as the council, under present rules and norms, cannot be expected to take a strong position on any matter where consensus does not prevail among the thirteen provinces and territories.

The appropriate conclusions to draw, I believe, are modest but still important: (i) it may be counter-productive to create elaborate machinery of a formal kind — new institutions and obligatory practices — for the conduct of intergovernmental relations, and (ii) it would be wise to focus instead on informal practice and on building up appropriate norms, conducive to achieving comity within the federation. This means: to consult and inform whenever possible (which will depend on what's on the political agenda); to respect provincial jurisdictions and regional sensitivities, and the spirit of the constitution; but also to avoid commitments that would impair the federal government's capacity to use its constitutional powers and to deploy its fiscal resources as it may judge necessary in the national interest, as occasion may demand.

Open Federalism and Structural Change

The objectives of developing the economic and social union, clarifying and perhaps modifying policy roles, and addressing the issue of fiscal imbalance (or more broadly, and as I would prefer to put it, *reworking the fiscal constitution*) are closely interrelated. Such objectives not only call for a review of the conduct of intergovernmental relations, but also open up questions of broad-scale political design or structure. At stake is the kind of country that Canada is and should become.

The choices and trade-offs that must be made if structural change is to occur can be most effectively mapped out by establishing a set of reference points, a grid consisting of various views or images of federalism. The present section of this paper, accordingly, surveys a set of four such images, which I call: (i) "classical-updated," (ii) "pan-Canadian," (iii) "provincial primacy," and (iv) "cooperation-with-diversity." Each one, as will be seen, is both *descriptive* (what "federalism" means, or has hitherto tended to mean in

Canadian usage), and *normative* (what variant of federalism, or particular form of federal system, would be best for Canada).

The four images are summarized in Table 1. While, as I describe each one, the emphasis is on the ways in which that particular image differs from the others, inevitably there are many hybrids that combine various features of two or more of them. In other words, my presentation simplifies considerably, perhaps oversimplifies. Nonetheless, the intent is to pick up on various key issues of federal design and to show how, in public and academic discourse though often only implicitly, various characteristics tend to cluster together in a distinctive way. Thus each image represents a “package” of choices under four headings, which are set out below.

Five Issues

The five issues that are the building blocks of various images of federalism in Canada are the following:

- *Policy roles.* One view is that distinct policy roles have been assigned by the constitution to the provinces and territories on the one hand, and to the federal government on the other, and that the original allocation should be respected and preserved; to the extent that coordination of policies within the provincial sphere is desirable, such coordination can and should be achieved horizontally, that is, among provinces and territories, with little if any involvement of the federal government. A contrary view is that many policy goals are properly regarded as “Canadian” or pan-Canadian, and therefore the federal government and the provinces/territories should work together to achieve them (that is, governments are jointly responsible for meeting public needs, and should cooperate to achieve goals that are important to Canadians); in this case, policy leadership/influence/control appropriately lies with the federal government, for example, through use of its spending power.
- *Asymmetry.* One view is that provinces should have uniform powers and policy roles (symmetrical federalism). A contrary view is that some provinces may appropriately come to exercise a wider set of powers and/or play a more extensive policy role than others (asymmetrical federalism).
- *Centralization/decentralization of the revenue system.* One view is that it is desirable (because arguably more efficient) to have a relatively centralized tax system but also, at the same time, a relatively decentralized allocation of policy responsibilities, some of which inevitably are costly. In this situation there arises a fiscal gap of some magnitude: federal revenues considerably outstrip federal expenditure requirements, while provincial/territorial governments struggle to fund public services, frequently incurring deficits. To fill such a fiscal gap there must be large federal fiscal transfers to provincial/territorial governments, whether on a conditional or an unconditional basis, or both. A contrary view is that taxing powers and/or revenue shares should be allocated to the provinces and territories to an extent that avoids the creation

Table 1: Images of Canadian federalism – What Is, What Should Be

	<i>Classical – Updated</i>	<i>Pan-Canadian</i>	<i>Provincial Primacy</i>	<i>Cooperation-with Diversity</i>
Policy roles	distinct federal and provincial roles, with substantial federal powers, especially in economic matters, and provincial primacy in social affairs; little need for policy coordination	shared/overlapping federal and provincial roles, with substantial or pervasive policy coordination achieved through federal leadership, influence, or control	distinct federal and provincial roles, with strong emphasis on extensive and exclusive provincial powers (social + economic); perhaps some horizontal policy coordination	distinct but interlocking federal and provincial roles; substantial coordination both horizontally and vertically in economic and social policy, allowing for federal leadership while respecting and perhaps enhancing provincial autonomy; benchmarking, especially in social policy
Symmetry/asymmetry	asymmetry issue is unlikely to arise	intolerant of asymmetry	may allow for asymmetry	negotiations on policy roles may lead to asymmetry
Revenue system: centralization/decentralization	federal government and provinces both have access to all major tax fields, but fiscal gap/imbalance may persist	centralized system, except for resource revenues; large fiscal gap	transfer of tax fields to the provinces; small fiscal gap; provincial activities financed out of own taxes	negotiated federal/provincial sharing of revenues from major tax fields; small fiscal gap; fiscal balance
Interprovincial redistribution – extent	not specified, but may imply <i>juste retour</i> ; except for equalization	heavily redistributive: provinces are enabled and induced to implement similar policies with similar standards	slight: for the most part, <i>juste retour</i> applies	heavily redistributive, to allow provinces to set comparable standards of public services if they choose to do so
Interprovincial redistribution – mechanisms	federal spending for economic development, plus unconditional transfers	federal program spending plus extensive transfers to provinces, conditional as well as unconditional	few if any transfers other than federal regional development grants and/or equalization	revenue-sharing has comprehensive equalizing effect; few transfers needed, except equalization

of any significant fiscal gap (provinces are able to finance their activities almost wholly from own-source revenues), thus keeping fiscal transfers to a minimum (mainly for equalization).

- *Extent of horizontal sharing, or interprovincial fiscal redistribution.* One view is that in some way each province should get back approximately (or nearly) the same amount of money as its residents contribute to the federal fisc in taxes, a principle described in the European Union as *juste retour*. A contrary view is that Canadians in all parts of Canada are entitled to similar levels or standards of public services, whether federally or provincially provided, and that to make this possible there should be substantial redistribution across provinces as well as to the territorial governments. At issue here is a set of entitlements available to all citizens, and responsibilities to be assumed by each; indeed, such entitlements and responsibilities are seen as essential attributes of citizenship. Such a concept of citizenship provides the rationale for the principle of equalization, which is constitutionally entrenched.

- *Mechanisms of redistribution.* One view is that the federal government should be the primary or sole agent of interregional or interprovincial redistribution, through some combination of direct federal spending (whether for economic development and other activities of the federal government, or for transfers to persons), federal specific-purpose transfers to provincial/territorial governments as under the Canada Health Transfer (CHT) and Canada Social Transfer (CST), and fiscal equalization. A contrary view, though much more rarely discussed in Canada, is that provinces should be directly involved, at least to some degree, in interprovincial redistribution (horizontal sharing).

Four Images

Open federalism, in the sense of willingness and intent to bring about structural change in the federation, may be an approach to forging consensus, or working toward consensus, on the five issues identified immediately above. It is useful to find a way of organizing one's thoughts on these matters. For this reason, in this section I construct four composite images of federalism in Canada, which are summarized in the accompanying table. Each image combines in some distinctive way sets of views on the five issues. In practice, reshaping Canadian federalism in a way that accords with any one of these images, or (very likely) creates some kind of hybrid, will occur only piecemeal and even, perhaps, by inadvertence. It's not as if everything has to be mapped out ahead of time. However, when in public debate, assertions are made about what federalism means, or a "true federation" looks like, or what kind of federation was envisioned in 1867 or how federalism must be reshaped in order to meet the needs of the twenty-first century, it is important to be aware also of other possible views on these matters. That is the reason for sketching out the four images of Canadian federalism that, I believe, are already implicit in much public discussion.

I. Classical-updated. The classical-updated image calls for clear differentiation of federal and provincial/territorial policy roles, in the spirit of the *Constitution Act, 1867*. It also proposes a transfer of fiscal resources to the provinces, such that each order of government will be fiscally enabled to fulfill its policy responsibilities independently of the other. An important contention is that there should be no fiscal gap larger than needed to finance the federal equalization program, and thus, all specific-purpose transfers to provincial and territorial governments should be phased out.

The phrase classical-updated is self-contradictory in the sense that if an image of federalism appropriately regarded as “classical” is updated as historical events unfold, to describe it still as classical (in the sense of “original”) is a misnomer. Nonetheless, some of the most articulate exponents and defenders of federalism in Canada today, many of them in Quebec, generally argue for a return to federal principles as implemented through the *Constitution Act, 1867*. Why then “updated”? Because the fiscal constitution of 1867, which was centralized, arguably contradicts or undermines the act’s assignment of legislative powers. If so, that could well justify changes to the allocation of policy roles and fiscal resources that would preserve or more faithfully implement the fundamental principles of the 1867 act, while complementing them with a commitment to equalization — a significant modification not only of the original design, but of the ideas underlying it.

The form of federalism in Canada that was created through the *Constitution Act, 1867*, and may in this sense be described as classical, had the following features:

- Both the Parliament of Canada and the provincial legislatures were allocated an exclusive list of legislative powers (and the residual power to Ottawa), with the intent of assigning distinctive, non-overlapping policy roles to the federal and the provincial governments respectively. Thus each order of government would be constitutionally enabled to operate in its own sphere, with little need for cooperation or coordination between them. In general, the federal government was assigned the dominant role in economic affairs, while the provinces had primacy in most areas that would directly affect future social and cultural development.
- Customs duties, the main source of revenue available to governments at the time, were assigned exclusively to the federal government, as were all indirect taxes, creating a fiscally centralized federation.
- The provinces were assigned exclusive legislative powers in relation to education, municipalities, hospitals, and other charitable or alms-supported institutions such as orphanages, and were implicitly made responsible for education, poor relief, and care of the sick. Since these matters, except for primary education, were mainly outside the public sphere, they were not expected to place an intolerable financial burden on the provincial treasuries.

- By contrast, the developmental activities of government, especially major (interprovincial and international) railway-building projects, were costly. Here, the federal government assumed responsibility, and this — plus the desire to ensure that provinces could not burden trade among themselves — was held to justify the provinces' being denied access to customs revenues and indirect taxes, even though these were the most lucrative sources of revenue for the former colonies.
- In compensation for the provinces' limited fiscal power, the federal government took responsibility for the accumulated debts of the pre-Confederation colonial governments. It also undertook to pay them, in perpetuity, an annual grant that included a per capita amount (eighty cents) “in full Settlement of all future Demands on Canada.”

The classical-updated image of fiscal federalism in Canada preserves the main features of the bargain that was struck at the Charlottetown and Quebec conferences, 1864 and 1865 respectively, though with two important changes (the updated part):

- The first is the commitment to equalization, which was given constitutional protection under section 36(2) of the *Constitution Act, 1982*. Equalization is a formula-based grant that aims for neutrality as regards provincial decisions on both taxing and spending, and insulates the provinces from federal fiscal pressure.
- The second is the idea that, apart from equalization grants, provinces should be made fiscally self-reliant or self-sufficient. There are two ways of bringing this about. One is by allocating them a larger-than-hitherto share of the income tax (or other shared taxes). The other is to confer upon the provinces exclusive “rights” to certain tax fields. Either way, most provincial expenditures would be financed out of own-source revenues, which would reinforce their policy autonomy in relation to matters lying within their jurisdiction, and hold out the prospect of future revenue increases as the economy grows.

There is substantial ambiguity within the classical-updated image of fiscal federalism, regarding the extent of desirable or aimed-for redistribution or sharing among provinces. One thing that is clear is that equalization should be an instrument of redistribution, but should it be *the only such instrument*? In 1867 and subsequently, each province entering Confederation sought to protect and advance its financial interests, and the early years of the new country were marked not only by recurrent demands (especially from Nova Scotia) for “better terms,” but by government-destroying controversies over railway-building and other federal projects having obviously differential effect on the various regions. However, development projects, taken together, supposedly balanced each other out. Thus it is possible to argue that “fairness” toward the various provinces meant, in the aggregate, fiscal neutrality or *juste retour* — a principle according to which each province should receive back from Ottawa

roughly what its residents contributed in taxes (or could be expected soon to do, as federally-supported economic development progressed). The idea that the wealthier provinces should contribute *in a general way* to the provision of public services in the fiscally weaker provinces did not arise in public debate until the 1930s or 1940s.

Against this background, it is possible to argue that the two main fiscal innovations of World War II and, even more so, of the earlier postwar years, were a commitment to equalization (though the term was first employed only in 1957), and federal-provincial cost-sharing (usually on a 50/50 basis) for major social programs.

Today, as has been noted, equalization is both constitutionally mandated and consensually supported. Indeed, it is now regarded as an essential feature of an updated but otherwise classical fiscal federalism. By contrast, 50/50 cost-sharing has been totally phased out (the first step away from percentage cost-sharing having been taken as early as 1977, with Established Programs Financing, or EPF). In general, arrangements that make the provinces heavily dependent on federal grants are regarded as inconsistent with the principles of federalism in the classical mode. An argument to this effect was, in fact, a central feature of the report of Quebec's Séguin Commission.⁴

A further note on equalization: fiscal equalization is a feature of all four images of Canadian fiscal federalism that are reviewed here. However, the magnitude of the funds that must be allocated to the equalization program, in order to achieve the objectives set out in the *Constitution Act, 1982*, vary considerably according to the design of Canada's fiscal constitution. Basically, the more decentralized the system — both revenue shares and spending responsibilities — the heavier the burden on the federal equalization program. Interprovincial redistribution achieved other than through equalization is arguably safer for the fiscally-weaker provinces, because they are thereby made less vulnerable to changes in the design of the equalization program (both the total amount allocated to it under the federal budget, and the formula that determines each province's share).

2. *Pan-Canadian.* The pan-Canadian image of Canadian federalism calls for a deepening of citizenship rights (broader entitlements to public services) across the whole of Canada. It proposes, in order to achieve this, that the federal government should have the fiscal means both to extend its own programs (direct spending) and to make large specific-purpose transfers to the provinces and territories, making vigorous use of the federal spending power.

The establishment of the Canadian welfare state illustrates the pan-Canadian image of fiscal federalism in action. Opinions will vary regarding the relevance of that image today, according to

- whether one thinks the federal government had any business getting as heavily involved as it actually was, in the building of the Canadian welfare state;
- whether one thinks that the federal government's withdrawal from its earlier financial commitments over the years 1977 to 1995 (and especially

the sharp contraction in federal cash transfers to provinces following the 1995 budget) has disqualified it from continued involvement in the field of social policy;

- whether one thinks that the federal government's fiscal involvement in social policy (including health care, income security/support, and postsecondary education) through the exercise of the spending power is as well adapted to the *redesign* of social programs, as to the initial building-up process;
- whether one thinks that there remain important building-blocks of a more comprehensive welfare state yet to put into place (e.g., pharmacare?), and whether this should be done under the impulsion of conditional funding.

Historically, the creation of the Canadian welfare state was a joint achievement of the federal and provincial governments. The two played complementary roles; different aspects of the welfare state were developed in different ways. For example, mothers' allowances and old-age pensions were federal programs paid for out of general federal revenues, with old-age pensions being introduced only after the government of Louis St. Laurent obtained provincial assent to a (probably unnecessary) constitutional amendment authorizing it. Unemployment insurance, also federal, was a "contributory scheme," and as such did explicitly require a constitutional amendment, as did the introduction of the Canada Pension Plan (alongside the Quebec Pension Plan). Through these programs the federal government assumed the larger part of the fiscal burden for income security and support. In other fields — social assistance or "welfare," hospital insurance and (later) medical insurance — the programs were provincial. However, the federal government undertook to pay half the cost and in this way (that is, through the exercise of the spending power) it created irresistible political pressure on the provincial governments to fall in behind the federal initiative. (In the case of medical insurance, though, the federal government, as is well known, played a copy-cat role, creating a federal shared-cost program modelled on an already-operational Saskatchewan program.) In the case of postsecondary education, the federal financial commitment was to pay half the running cost of universities and colleges, regardless of the size of the provincial subsidy, and in addition it contributed significantly to building up the university system through federal subsidies for research.

For some observers, the building of the Canadian welfare state through a combination of complementary federal and provincial programs, some of which were cost-shared, was the outstanding achievement of cooperative federalism during the latter twentieth century. It demonstrated that federal and provincial governments could work together to achieve goals of considerable importance to Canadians. For other observers, the use of the federal spending power was never legitimate, because it interfered with provincial management of and responsibility for programming in the social field. Specific complaints have been that the spending power distorted provincial priorities, and that it

introduced inefficiencies in the design of specific programs — for example, it paid half the operating costs of acute-care hospitals but did not similarly support care in nursing homes, thus inflating the cost of medical care. Arguably, federal involvement in social policy, even for programs wholly financed out of federal revenues, made it much more difficult for the provinces to create an integrated set of programs that complemented each other. Among the provinces, Quebec was the most emphatic to insist that a single manager would do better, and obviously the manager should be provincial. Provincial program responsibility in the social field is, according to Quebec and some other provinces, an inherent feature of the *Constitution Act, 1867*. Furthermore (the argument goes), provincial responsibility makes practical sense, now as in 1867, because needs and preferences varied across provinces, reflecting variations in physical conditions (dispersal of the population, etc.) and in value-systems.

The controversies that arose over the extent and the means of federal involvement in social policy during the phase of building-up of the welfare state have become more acute over time, for reasons already alluded to. Nonetheless, it can be argued and indeed is quite widely argued, that without continued federal involvement in social policy, in part through federal direct spending and in part through federal contributions to provincial programs through specific-purpose transfers (notably the CHT and the CST), the social safety net will become increasingly badly frayed. Programs have to be redesigned in order to meet changing conditions and new challenges, and in addition, some new initiatives or programs may be justified or desirable. Those who take a pan-Canadian image of Canadian fiscal federalism argue that to adapt and rebuild in the broad field of social policy, federal involvement is as important today as it was in the early postwar years.

The following features, then, characterize the pan-Canadian image:

- Federal and provincial policy roles necessarily overlap; an attempt to return to the original or classical conception of Canadian federalism, according to which the federal government and the provinces have distinct and discrete policy roles is unrealistic and undesirable. Substantial coordination of policies is needed in order to achieve and protect similar standards of public services — that is, to ensure that Canadians in every part of the country can count on having basic social entitlements, fully portable across provincial boundaries. The necessary degree of coordination cannot be achieved through uniquely horizontal (interprovincial) cooperation. Thus federal leadership in social policy, and federal influence on (and even, in some respects, control of) provincially-provided public services is justified. For this reason, the financial means of exercising such influence must remain in federal hands.
- Where there are specific-purpose or conditional grants, provinces should not be able to get the money without accounting for how it is spent, or without conditions. In other words, the asymmetry that arises when some

provinces adhere to conditions that do not apply to (or in) other provinces, is not acceptable. (Under asymmetrical federalism, some provinces have a larger set of powers or in any case a larger policy role than other provinces do; by implication, the policy role of the federal government is broader in some provinces than in others. One means of arriving at this result is through “opting out.”)

- To play the leadership role that is appropriate to it, and to redistribute across provinces, the federal government needs to have access to extensive fiscal resources. It should also be able, in order to increase the efficiency of the tax system, to exercise substantial control over major tax fields even when these are also being tapped by the provincial governments. For example, the federal government has been able to do this through tax-collection agreements. For a variety of reasons, then, it is desirable to have a relatively centralized revenue system. (Given constitutional provisions, this cannot be so as regards resource revenues: the provinces have unique authority to levy royalties on production from publicly-owned natural resources.) It should be noted that when the revenue system is centralized, but spending responsibilities are more decentralized, a fiscal gap is created. However, from a pan-Canadian perspective, a fiscal gap is not bad; in fact it is desirable. That is because the gap can be filled, and thus imbalance avoided, through a system of fiscal transfers to provincial governments. Those transfers are what enables the federal government to play the role appropriate to it in equalizing fiscal conditions across provinces, and also to play a coordinating and leadership role in the federation.
- A federal system that is shaped or structured according to the pan-Canadian image is one that is highly redistributive across provinces, in an equalizing sense. Redistribution may be brought about, and is brought about, through a mixture of direct federal spending and fiscal transfers to the provinces. Investing in infrastructure is one example of federal direct spending; transfers to persons (employment insurance, for example) are another. Transfers to provincial governments, by contrast, enable them to expand public services without having to raise all the necessary revenues. Transfers may be either conditional (i.e., directed to specific purposes, and perhaps imposing certain features of program design) or unconditional. The latter, especially if there is stability in the transfer system — which in practice there has not been — enhance provincial policy autonomy.

3. *Provincial primacy.* The provincial primacy image calls for the extension of provincial/territorial policy responsibilities, and in order to make this possible, it proposes significant increases in provincial/territorial revenues. The additional revenues are to come as much as possible through decentralization of the revenue system, by devolving control of certain tax fields to provincial governments.

The provincial primacy image came to prominence in Quebec during the decade, 1955 to 1965. The pre-1960 years led up to the cultural upheavals of the Quiet Revolution, while the early 1960s saw a remarkable transformation of Quebec society under the impulsion of the Quebec government. The goal was to transform a traditional culture through the agency of the provincial state (*l'état provincial*). Achievement of this goal required extensive and expensive policy initiatives in traditionally provincial, "social" matters such as education, health care, and income security, and much more. Another objective, also expensive because of the public investments it required, was to challenge the historic anglophone dominance of the Quebec economy — an objective well captured in the 1962 electoral slogan, *Maîtres chez Nous*. By contrast with the classical image of federalism, with its distinction between economic affairs (federal) and social/cultural matters (provincial), the provincial primacy image of federalism, which came to occupy centre-stage in the Quebec of the 1960s, views the economic-social distinction as illusory. Within the government of Jean Lesage, and far more broadly within the Quebec population as well, the conviction emerged, that if a francophone culture was to flourish in Quebec, Quebec francophones would have to control the main levers of economic power. To gain substantial control of the economy required not only more extensive use of provincial powers of economic regulation, but support for francophone capital through agencies empowered to invest public funds (notably pension funds) in state- and non-state enterprises promising industrial innovation and regionally balanced development.

This discursus into the mid- or latter-twentieth century political and social history of Quebec aims to capture the essence of, and inspiration for, the provincial primacy image of fiscal federalism, and federalism in general. It is an image that, within Canada as a whole, is still most widely held in Quebec, but is not by any means limited to that province. There, it represents the federalist alternative to *indépendantisme*, at least among the francophone population. In other provinces it represents or reflects the provincial government's desire to counteract or counterbalance federal economic policies thought to be neglectful of or even inimical to provincial interests. Thus provincial primacy is an image or doctrine that has also made its appearance in various provinces besides Quebec, notably in Newfoundland and Labrador, Alberta, and British Columbia. Everywhere it has come forward, it has been an expression of dissent against federal policies that have been regarded as intrusive and meddling: policies inspired by central-Canadian urban elites and interests, and correspondingly insensitive to the needs and preferences of Canadians elsewhere.

The essence of the provincial primacy image is that each province has distinct economic interests as well as distinct social needs, preferences, and values, and that provincial governments are therefore appropriately the primary agents for the development of provincial societies, economically as well as socially. Their powers under the *Constitution Act, 1867* are broad, and give them a wide variety of instruments needed for social and also for economic

development. Ownership of resources and Crown lands are an essential instrument of economic control, and for some provinces a substantial or even more-than-substantial source of revenue. While it is in the Quebec Liberal Party's Beige Book of 1980 (Claude Ryan's answer to the Parti Québécois' program for sovereignty-association) that one reads:

The division of powers must recognize the importance and diversity of the different Canadian regions. To achieve this, it should grant the provinces those powers which will allow them to be the primary level of government responsible for the development of their own territories and human resources... (p. 63)

this statement could equally well have been voiced by the premiers of several other provinces, then or later.

The main features of the provincial primacy image, then, are the following:

- Provinces claim extensive and in some cases exclusive control over social policy (income security, health care, education, and other public services); they claim also a major role in supporting and directing economic development. Both areas of activity require very substantial revenues, and provinces demand complete independence of decision as to how the funds at their disposal will be spent.
- To the extent that common features of policy design and Canada-wide minimum standards in public services are desired, the preferred means of achieving these objectives is through horizontal (interprovincial/territorial) coordination.
- In order to enhance provincial autonomy or policy control, the revenue system is to be decentralized, making the provinces very nearly fiscally self-reliant (that is, minimally dependent on federal transfers). The preferred route to fiscal self-reliance is to gain full provincial control of certain tax fields (e.g., a provincial corporate income tax) and non-tax revenue sources (especially royalties and other income from natural resources). A second-best or complementary route is to obtain guaranteed allocation of a substantial share of joint tax fields such as the personal income tax ("tax points").
- For the territories, fiscal self-reliance is not under present conditions a realistic goal.
- Either approach to provincial fiscal self-reliance, involving decentralization of the revenue system, nearly eliminates any vertical fiscal gap and thus also any vertical fiscal imbalance, but it may exacerbate problems of horizontal imbalance.
- In provinces where the tax base is thin and there is no option but to rely on federal transfers, the transfers should be as nearly as possible formula-determined, tax-neutral (unaffected by provincial tax decisions), redistributive, predictable, and free of conditions. Fiscal equalization is in these respects the preferred model, although even equalization has fallen short by the criteria of predictability and tax-neutrality.

- In any case, the provincial primacy image demands that there be no federal special-purpose or conditional transfers. These are transfers that depend on provincial program design, and may set standards or impose certain administrative practices. In the nature of the case, they modify (or distort) provincial spending priorities. This is an essential feature or consequence of percentage cost-sharing, which necessarily applies to some categories or objects of expenditure but not to others.
- Arguably but contentiously (and most frequently put forward by Quebec), if there do exist, in violation of the above principle, any special-purpose transfers, provinces should have the right to opt out of the program with full fiscal compensation (i.e., without penalty). Opting out can be expected to lead to asymmetry in the structure of the federation.
- With full provincial control of social policy (implying some reduction of federal transfers to individuals), and with primary provincial responsibility for economic development initiatives, the whole fiscal system becomes minimally redistributive. The exception to this principle is fiscal equalization. This being the case, it is interesting to observe that the Allaire Commission, appointed by Premier Bourassa after the failure of the Meech Lake Accord, even called for an end to equalization in its traditional form, and proposed instead “a new form of equalization” under which “the focus of the support provided will shift from providing support for maintaining public services of comparable quality, to investment assistance in physical infrastructures, communications, transportation, etc.”⁵

4. Cooperation-with-diversity. The cooperation-with-diversity image of Canadian federalism is akin to the classical-updated one, in that it proposes a relatively clear distinction between federal and provincial policy responsibilities, each government being answerable to its own electorate. This image also leans somewhat toward a provincial primacy view of the federation. However, it is neither classical nor provincialist, in that it envisions regular, perhaps institutionalized cooperation among governments at all levels. It neither presumes nor aims for policy uniformity; the idea of establishing or imposing national (Canadian) standards in public services is foreign to it. Its goals are different: to improve performance in the provision of public services, and to increase the efficiency of governmental operations. Cooperation is both horizontal and vertical, but ultimately each government is responsible to its own voters for its own policies and their implementation. This approach, then, favours experimentation and, as the term suggests, presumes policy diversity.

An essential feature of the cooperation-with-diversity image of Canadian federalism is that it requires some form of revenue-sharing. In this regard the aim, which is essentially that of eliminating fiscal imbalance, is to see that each government has access to the fiscal resources it needs to fulfill its policy responsibilities. Thus the cooperation-with-diversity image or approach envisions a recasting of the fiscal constitution so that there is substantial similarity across the country in terms of the tax system, but deliberate avoidance of

practices that would make the provinces reliant or dependent upon the federal government as agent of interregional (interprovincial) redistribution. Under cooperation-with-diversity, matters of social and/or cultural significance, in particular, are presumed to be provincial; to the extent the federal government is involved, its role in these subject-areas is facilitative, aiming for non-coercive policy leadership.

Cooperation-with-diversity is open federalism in the same sense that, in the European Union, there is now emerging an open method of coordination (OMC). Under OMC, the policies and practices of the member states, especially those directed to improving economic performance, are subjected to review by the European Commission and by the states themselves through the Council of Ministers and its dense network of committees, many of which consult closely with relevant organized interests. Information-gathering, benchmarking, and publicity are endorsed as means for shaping public opinion within each of the member states. It is presumed that in this way, pressure will be brought to bear on policymakers at the level of the member states, while leaving national governments with full discretion about the extent to which, and the approach through which, they will respond to public demands. One expects substantial policy diversity, even when objectives are basically the same.

Cooperation-with-diversity is not a description of the way that federalism in Canada has worked in the past, and certainly is not a description of the principles or practices inherent in federalism, generically. On the contrary, cooperation-with-diversity is an image of federalism as it might desirably become. Perhaps it is wishful thinking, too good to be true, too idealistic to be practical. Implementing it would certainly take, particularly on the fiscal side, far-reaching reform.

While almost all major revenue sources in Canada today are shared between the federal government and the provinces — the exception is royalties and similar resource revenues, which are exclusively provincial — there exists neither a mechanism nor a formula for allocating shares. While policy diversity across provinces is constitutionally rooted, it tends to be undermined by certain features of today's fiscal arrangements (the use of the spending power), while being supported by others (equalization). Reform of the fiscal arrangements, or a restructuring of the fiscal constitution, with a view to supporting or implementing cooperation-with-diversity would have the following aims:

- to significantly reduce both vertical and horizontal fiscal imbalance, and to eliminate any vertical fiscal gap;
- to supply all provincial and territorial governments with own-source revenues proportionate to their program responsibilities, when compared with the program responsibilities of the federal government, on the basis of a formula-driven (stable, non-discretionary) allocation of public revenues among governments in the federation;

- to enhance provincial autonomy in those policy areas where the provinces are constitutionally empowered to act, and similarly to strengthen the policy role of territorial governments
- to ensure that the federal government is fiscally enabled to be the main governmental bearer of risk in the Canadian economy, whether deriving from structural change or from periodic downturns in economic conditions — both of which are likely to have uneven regional effects.

Essentially this is the combination of objectives that informed the recommendations of the Rowell-Sirois Report, 1940.⁶ The report did not, of course, use terms like fiscal imbalance or fiscal gap, and the commissioners took no note of the policy role of the territorial governments (which, at the time, were administrative agents of the federal government). In substance, though, the objectives formulated immediately above were what the commissioners aimed for. The fiscal constitution that they proposed, in order to achieve those goals, was unacceptable then and would not be acceptable today. But their recommendations nonetheless make a useful point of reference for thinking about arrangements that would fit in with the cooperation-with-diversity image of Canadian federalism.

Other reference points are the fiscal constitutions of Australia and of Germany, both of which are built on the sharing of revenue sources among governments in the system, and feature a strong commitment to regional equity. What those fiscal constitutions do not emphasize at all is policy diversity. On the contrary: in Germany, there is constitutional provision for “uniformity of living conditions” and, to achieve such uniformity, “joint tasks” or integrated policies of the *Länder* (states) and the federal government are constitutionally mandated. In Australia, while the fiscal arrangements in themselves would support the autonomy of the states, widespread policy coordination is sought and partially achieved through sectoral ministerial councils. Thus it would be entirely wrong to suggest that cooperation-with-diversity calls for the importation of either the German or the Australian fiscal constitutions, or indeed a cross between the two. There are points of similarity, not more.

Rowell-Sirois proposed radical centralization of the revenue system; specifically, that the provinces be induced to give up the power to levy either personal or corporate income taxes, and succession duties (“death taxes”). The rationale for such fiscal centralization was that it would enable the federal government (“the Dominion”) to play a balancing role in the federation — across regions, and over time — while also improving the financial position of every province. The improvement would come about if the federal government made the following set of commitments:

- Federal assumption of all provincial debts (in this sense, doing for a second time what had already been done at Confederation);
- Federal assumption of responsibility for “relief of the employable unemployed” under a program of unemployment insurance — a program

that would be stabilizing in terms of economic management, and regionally redistributive in substantial degree, given the regional differences that could be expected in rates of unemployment: this was an insurance scheme for provincial governments as well as for workers;

- Federal payment of a National Adjustment Grant to those provinces unable to provide public services at a national-average standard, without taxation above the national average — in today's language, an equalization program based on the principle of fiscal need, not fiscal capacity (a distinction explained below).

These proposals were rejected, even as a basis for discussion, by Ontario, Alberta, and British Columbia. It cannot have been a coincidence that these were the three provinces that would have received no National Adjustment Grant, but their complaint — that the reallocation of taxing powers as proposed by the commission would undermine the autonomy of the provinces, was justified. This appears not to have been the commissioners' intention. In effect, they sought to strengthen or extend national citizenship rights and obligations while also offering fiscal support for the continued vitality of regionally (provincially) distinctive communities. One might say that its program was both nation-building and province-strengthening. As the report stated: "The Commission's Plan seeks to ensure to every province a real and not an illusory autonomy by guaranteeing to it, free from conditions or control, the revenues necessary to perform those functions which relate closely to its social and cultural development."⁷

Unfortunately there was a disconnect between these goals and the means proposed to achieve them. First, the transfer of taxing powers to Ottawa would have meant that the provinces would have been restricted in perpetuity to approximately the level of expenditure which, at least as a percentage of gross domestic product (GDP), was then current. Had the recommendations of the report been adopted, the policy initiatives of the postwar period in education, health care, income support/security, and other fields, could not have been undertaken, unless by the federal government alone. Second, the means proposed for determining and allocating the National Adjustment Grant would have been highly intrusive. Though the commission did not say so, it proposed that Canada adopt the Australian system, with its powerful Commonwealth Grants Commission, which had been put into place in 1933. Rowell-Sirois recommended the creation of an independent Finance Commission which would calculate each province's entitlement (if any) to a National Adjustment Grant on the following basis:

First, the Finance Commission would estimate the cost of providing all public services within the province at the Canadian-average level. For example, provinces with a relatively young age-profile would have higher costs for primary education; provinces with mountainous terrain would have to pay more for building roads.

Second, the commission would estimate the revenues that the province would obtain, if it levied national-average taxes at national-average rates (in today's language, if it put forward the same fiscal effort as, on average, other provinces).

A National Adjustment Grant would be payable to any province in which the costs of providing services at national-average standards exceeded the revenues it would obtain on the basis of average fiscal effort.

This proceeding called for enormous discretionary authority to be conferred upon the Finance Commission, as in Australia it has been conferred upon the Commonwealth Grants Commission. Essentially it would have been necessary to review in detail the spending of all provinces, program by program, and to determine reasonable or necessary costs. Provinces would be forgiven for supposing that such scrutiny would severely limit, in practice, their autonomy. Most of them, as recipients of a National Adjustment Grant, would become pensioners of the federal government, while the others would become, involuntarily and indirectly, the paymasters.

Today, we would call the proposed National Adjustment Grant an equalization payment based on the principle of fiscal need. As noted, calculation of the grant would have taken into account the cost of providing public services, making allowance for interprovincial variations on two grounds: that necessary levels of certain public services will be higher in some provinces than in others, and that a single "unit" of a public service may be more costly in one province than in another. To illustrate, in the case of social assistance: in economically depressed regions or provinces, a higher percentage of the population will require income supplementation or support through social assistance (welfare); but conversely, in high-income areas with high density of population (metropolitan Toronto, Vancouver, etc.), rents are observably higher than in depressed rural areas, and thus social assistance payments per person will have to be, on average, correspondingly higher as well.

It is striking that in Canada, since the Rowell-Sirois proposals were taken off the table in 1941, the suggestion that there should be a form of equalization based on the principle of fiscal need has never been, at least not in a prominent way, on the public agenda. The equalization formula, as it evolved, became increasingly sophisticated in its calculations of provincial fiscal capacity but has never systematically addressed the question of fiscal need. (The issue of interprovincial variations in the cost of providing public services was, however, briefly considered, and then rejected, by a Senate committee chaired by Senator Lowell Murray, reporting in 2002.)

Because considerations of fiscal need, or expenditure requirements relative to fiscal capacity, have been excluded from the equalization program, such considerations have had to enter the picture in other ways, both informal and ad hoc. Fiscal need is necessarily at the base of Territorial Formula Financing. And when recently (2004) one-off deals were made, first with Newfoundland and Labrador and then with Nova Scotia, other provinces are

currently on the claimants' list, the only possible justification is fiscal need. And it is likely that as long as the issue of fiscal need is excluded from consideration in any formula-based system of federal-provincial fiscal arrangements — revenue-sharing, plus unconditional transfers — it will continue to pop up, unannounced and unwelcomed, in ad hoc settlements of special provincial claims. Should this occur, it will run directly counter to the basic principle of open federalism, that issues should be resolved between the federal government and the provinces (or provinces and territories) collectively, at a common table.

The issues brought forward in this discussion have to do with horizontal fiscal imbalance (HFI), and possible ways of addressing it. Even more basic, however, is vertical fiscal imbalance (VFI).

Rowell-Sirois would have reduced the then-existing vertical fiscal gap by transferring certain fiscal burdens or obligations to the federal government, notably: responsibility for servicing provincial debts, to a large extent accumulated during the depression years, and responsibility for relief of the employable unemployed. A fiscal gap would have remained, to the extent necessary to finance the system of National Adjustment Grants. Those grants would have filled the remaining fiscal gap, eliminating in one swoop both VFI and HFI. However, as previously noted, the fiscal constitution that the commission proposed would have created a rigid fiscal structure, incapable of adapting to the taking-on of new or more costly policy responsibilities at the provincial level, as happened during the postwar period.

The only way to preserve and indeed to enhance flexibility in this sense, while also reducing HFI to manageable proportions, would be to create a system of revenue-sharing that built in a substantial equalizing component. Such a form of revenue-sharing is, then, a precondition for making the cooperation-with-diversity image of Canadian federalism a reality. Indeed, it is scarcely an exaggeration to suggest that creating a new fiscal constitution is the very essence of cooperation-with-diversity.

Before describing possible revenue-sharing arrangements, it is necessary to refer to the idea of reallocating tax fields rather than sharing revenues from revenue sources such as the personal income tax. The reallocation of tax fields is a principal feature of the provincial primacy image, and indeed was put forward by Quebec's Séguin Report.⁸ Séguin proposed abolition of the goods and services tax (GST), a step that would allow provinces to increase consumption taxes correspondingly. (The report did not reject the possibility that there should be, in addition, a new sharing arrangement relating to the personal income tax.⁹) Implementing the report's recommendation to give the provinces total control of the field of consumption taxes (except perhaps for certain excise duties?) would ensure that the provincial governments had an assured, predictable, and unconditional source of financing. Since the provinces would be setting the rates as well as determining the base, they would gain some fiscal flexibility as well. However, adoption of this proposal would increase tax competition among the provinces, and the additional anticipated fiscal

flexibility might be illusory. It is also certain that variations in per capita yields, even with standardized rates, would do nothing to address questions of HFI.

These reflections make it useful to sketch out a different approach — not necessarily better, but certainly different — to the issues of fiscal federalism, with a view to reducing both VFI and HFI. This approach reflects the cooperation-with-diversity image of federalism in Canada, and has the following characteristics:

- allocation of policy roles between the federal government and the provinces and territories would necessarily be subject to constitutional limitations under the existing division of powers in sections 91 to 95 of the *Constitution Act, 1867*, but within those limits could and probably should be subject to negotiation such that the different orders of government play complementary roles;
- asymmetry of policy roles could be a subject of such negotiations, and perhaps an outcome;
- the classical distinction between federal primacy in economic affairs and provincial primacy in matters of social and cultural development could not be rigorously adhered to, but could nonetheless remain a guiding principle, with a provincial role in economic development complementary to the federal role, and a federal role in social policy complementary to and supportive of provincial objectives and initiatives while (as earlier emphasized) be entirely non-coercive, non-policing;
- the larger the scope of provincial powers and policy responsibilities, the greater the need for horizontal (necessarily voluntary) coordination, especially given current and prospective levels of continental economic integration;
- to support provincial autonomy while preserving flexibility in the allocation of revenues between orders of government, federal and provincial shares of major tax fields should be subject to negotiation and could be expected to shift over time, reflecting shifts in the relative cost of federal and provincial public services (such a shift occurred, for example, during the 1950s and 1960s and was accommodated through a series of transfers of tax points);
- shifts in the federal and provincial shares of revenue from major tax sources should have the effect of maintaining a fiscal gap no larger than needed to finance the equalization program out of federal revenues (and equalization would, in itself, fill in the gap, eliminating VFI);
- each province's share of the revenues obtained from the major tax fields could be determined on an "attribution" basis, as under the present tax-collection agreements, or on an "equal per capita" basis (as with the municipalities' shares of the federal gasoline tax), or on a basis that lay somewhere in between; but the closer to the "equal per capita" basis, which would be highly redistributive across provinces, the less the burden on the equalization program;

- other than equalization, few if any transfers to provincial governments (and to territories?) would be needed or justifiable;
- in its pure form, the fiscal features of cooperation-with-diversity would achieve the objective of equalization as formulated in section 36(2) of the *Constitution Act, 1982*; this would be brought about through differential allocation of tax revenues from shared fields, as occurs in different ways both in Germany and Australia; and
- the whole system of fiscal federalism represented in the cooperation-with-diversity image would require extensive and continuing intergovernmental negotiation, possibly supported by the work of an advisory group or groups; it is unlikely that any independent commission would be granted *de facto* executive powers to make the allocation on its own.

Conclusion

I conclude with two simple observations that link open federalism as commitment to collaborative policy-making, and open federalism as willingness and perhaps intent to restructure the federal system in Canada in fundamental ways.

First, new standardized procedures for the conduct of intergovernmental relations may require, or at least would be facilitated by, the creation of new joint institutions. Thus the distinction I have made between process and structure is, in a sense, too strong. The reasoning is as follows. Institutions, and the norms that may emerge regarding the conduct of intergovernmental relations, tend to affect policy (decisions and outcomes). In other words, the policies that emerge from processes of intergovernmental consultation and negotiation are likely to be affected by the new decision styles that come to prevail (if they aren't, then why bother consulting or negotiating?). Over time, new policies create a different form of federation. Thus open federalism in its narrower or more specific formulation shades off into open federalism as willingness or intent to bring about structural change.

Second, and of immediate practical concern, for the federal government it makes good sense to adapt the conduct of intergovernmental relations to the outcomes being aimed for, both in terms of specific policies and in terms of the desired evolution of the federal system. In thinking about this, it is useful again to evoke the four images of Canadian federalism that I sketched out in the previous section. A government that seeks to return to the classical model, though with an updated fiscal constitution, will want to conduct intergovernmental relations in a different mode than a government committed to pan-Canadianism, or that seeks cooperation-with-diversity, or that is willing to concede provincial primacy.

In thinking about possible future directions for the federal system, and for Canada — and therefore also in thinking about changes desirably to be introduced in the conduct of intergovernmental relations — it is necessary to be rather speculative. It is a challenge that I take up without reluctance, and

prompts the following comment: of the four images of Canada and its federal system, it appears that the last one, cooperation-with-diversity, most closely fits the Conservative Party's (Stephen Harper's) pre-election rhetoric and commitments. However, cooperation-with-diversity, can only come about through a set of negotiated outcomes in each of the three major structural aspects of the federal system: the respective policy roles of the federal government and the provinces and territories, the design or redesign of the economic and social union, and the allocation or reallocation of fiscal resources among governments. To move forward in these three areas will require not only substantial cooperation between the federal government on the one hand, and the provinces and territories on the other, but also a substantial degree of consensus among the provincial and territorial governments as a group. This is, to say the least, challenging, since Ottawa so often finds itself in the position of arbiter among provinces whose interests are only too obviously divergent. That is a situation, I believe, that not only allows for but also actually demands rather vigorous federal leadership. A too-acquiescent federal government would find itself rudderless in turbulent seas.

The point I am making here has less to do with the prerequisites of cooperation-with-diversity, in terms of the conduct of intergovernmental relations, than with another home truth about federalism, and about making federalism work. It is this: a federal government that does not know its mind on broad issues of substance — what to aim for in shaping or reshaping Canada and its federal system — will not know how to behave in its dealings with the provinces. It will not know on what issues to make concessions, and on what issues to hang tough. Or perhaps: on what matters to cede leadership to the provinces and territories, on what matters to build consensus with them if it can, in order to achieve or jointly implement national goals; and conversely, on what matters to proceed according to its own lights, and on the basis of the powers allocated to it under the constitution, whether most or all provincial governments applaud or oppose.

Notes

1. Conservative Party of Canada, *Stand up for Canada: Federal Election Platform* (Ottawa, 2006).
2. Ibid.
3. Peter Leslie, *Federal State, National Economy* (Toronto: University of Toronto Press, 1987).
4. Québec. Commission sur le déséquilibre fiscal, *Pour un nouveau partage des moyens financiers au Canada* (Séguin Report). (Québec, 2002).
5. Liberal Party of Quebec, Constitutional Committee, *A Québec Free to Choose: Report of the Constitutional Committee of the Québec Liberal Party* (Allaire Report). (Québec, 1991).
6. Canada. Royal Commission on Dominion-Provincial Relations, *Report* (Ottawa, King's Printer, 1940).

7. Ibid.
8. Québec. Commission sur le déséquilibre fiscal, *Pour un nouveau partage des moyens financiers au Canada*.
9. Ibid., p. xii.

CHAPTER 5

Open Federalism: Thoughts from Alberta

Roger Gibbins

The intent of this brief essay is to discuss how Prime Minister Stephen Harper's notion of "open federalism" is playing out in western Canada, and how it might play in the future. This task is complicated by the fact that to this point, the idea has not been fully articulated, and the prime minister's efforts to do so have been directed almost entirely at audiences in Quebec. Open federalism has not been the subject of much intellectual, media or popular discussion in the west generally, and in Alberta particularly. Conversations at the neighbourhood pub seldom drift from the upcoming hockey playoffs to discuss the pros and cons of open federalism, or how this notion might fit into or rub against a broader regional agenda.

What follows, therefore, is not a report on the regional response to open federalism, but rather speculation on what a response might be should the notion ever enter public and political forums. The underdeveloped nature of the open-federalism debate (even "debate" is far too strong a term) is something to which I will return repeatedly.

* * * * *

The core of open federalism is to be found in the Throne Speech reference to the recognition of "the unique place of a strong and vibrant Quebec in a united Canada." Wrapped around this are a number of complementary and supplementary commitments to:

- treat provincial governments and provincial jurisdictions with greater respect;

- allow provincial governments a greater role in their own jurisdictions as they relate to the international arena;
- address the vertical physical imbalance; and
- improve the tone of intergovernmental relations.

As a package, however, this is still pretty loose, and as a consequence it is hard to comment with any precision as to how open federalism will play out in this particular corner of the world. What follows, therefore, is an attempt to dissect the notion, fit the various components into the political landscape of western Canada, and discuss how they might be received by western Canadians.¹

Recognizing the Unique Place of a Strong and Vibrant Quebec in a United Canada

On the face of it, this tenet of open federalism sounds a lot like special status for Quebec (to quibble over the distinction between special status, distinct society or unique place seems pointless). Given this, historical experience would predict vigorous opposition in western Canada, for opposition to special status has deep roots within the region; it is embedded in the DNA of the region's political culture. Opposition goes back at least to the constitutional debates of the early 1980s, and to the successful campaign by the western premiers against an amending formula that might provide a constitutional veto for Quebec. Few denied the reality of Quebec's distinctiveness, but to provide any form of constitutional recognition for this distinctiveness was another matter altogether. Thus, the western premiers, led in this instance by Alberta's Peter Lougheed, crafted an amending formula that did not provide a veto for Quebec, other than that provided to all provinces through the unanimous consent provision. As far as the amending formula is concerned, Quebec is a province like the others, and the *Constitution Act, 1982* contains no recognition of a unique or special status for Quebec.

Regional opposition to the idea of special status was mobilized again in the 1992 debate over the Charlottetown Accord. In this instance, the draft constitutional revisions did include a specific recognition of Quebec as a distinct society, and this did not sit well with western Canadians. Although they were not alone in rejecting the Accord when it was put to a referendum, the regional rejection was emphatic and unambiguous. A stake had been driven through the heart of Quebec's recognition as a distinct society, a stake driven in large part by Preston Manning and his new Reform Party.

Given this background, given that special status has been an anathema to the region, one might expect western Canadians to recoil in horror at the open-federalism proposal to recognize "the unique place of a strong and vibrant Quebec in a united Canada." To date, however, there has been no such reaction. The explanation, I would suggest, comes from both an interlocking set of changes that have reshaped the political landscape in western Canada

since the last bout of constitutional discussions, and from the specific circumstances surrounding Prime Minister Harper's musings on open federalism.

- *Low profile.* As noted above, open federalism has generated very little public discussion or media coverage within the region. It is hard to discuss the public's reaction to something that is largely unknown, and it is difficult (although not impossible) for people to oppose something they know nothing about. The public's reaction remains hypothetical.

- *Lack of relevance.* I suspect that the few western Canadians who have encountered the notion of open federalism assume that it is of no relevance to them, their lives or their region. The concept has been pitched for and to Quebec, and no attempt has been made to suggest to western Canadians that the initiative should be of any interest or relevance to them. While it may be true that open federalism might eventually have consequences that will ripple outside Quebec, those consequences are not evident today.

- *Greater tactical sophistication.* Western Canadians have come to grips with the failure of the Reform Party to win national office. The lesson reflected in the death of Reform, the establishment of the Canadian Alliance, and then the rebirth of the no-longer "Progressive" Conservative party is that the route to national power must flow through a broader coalition, one that reaches beyond the west. Certainly, Conservative voters in the west understand that Prime Minister Harper and his party must expand their base in Quebec, that some appeal must be crafted for Quebec voters, and that open federalism is a central part of that appeal. In the wake of Harper's minority win in the 2006 election, the region has been gripped with a sense of political realism and tactical sophistication that was absent during the heyday of Reform. If the road to power, and to a majority government, means making compromises in order to build a governing coalition, then so be it. As the Liberals begin to retreat to a regional fortress in Toronto, Conservatives in the west see the opportunity for a long-standing hold on national power, but the ticket to national success is success in Quebec. Any lingering unease over the idea of a special status for Quebec is unlikely to derail either the Conservative party or its supporters in their quest for a national majority.

- *Nixon to China.* When President Richard Nixon became the first American president to visit what was then communist China, it was assumed that only a Republican president with impeccable anti-communist credentials could make the trip; a Democratic president would be crucified in the media. Well, although Stephen Harper is not Richard Nixon, the fact that he is from the west gives him greater freedom of action on the Quebec file than, say, a Liberal prime minister from Quebec would have. There is a fundamental difference arising from who handles the policy file; Harper will enjoy a much greater level of trust among western Canadian voters.

- *Change in the context of special status.* One of the things that frustrated many western Canadians during earlier constitutional debates about a special status for Quebec was that Quebec already seemed to have a special status in the province, effectively controlling Canada's national political leadership

through Pierre Trudeau, Brian Mulroney, Jean Chrétien, and Paul Martin. (True, there were also western Canadian prime ministers, but Joe Clark, John Turner, and Kim Campbell left somewhat less of a mark on national political life.) To ask for special status as a province when Quebec seemed to have an iron grip on Canada's national political leadership was a step too far. Well, that was then and this is now; Harper's national leadership takes the edge off the case for special status for the province of Quebec.

- *Quebec is "off the screen."* For most of the time during the "troubles" in Canada, during the time of national unity debates and crises from the early 1960s to the late 1990s, Quebec was a very important point of reference for western Canadians. There was constant vigilance to make sure that "they" were not getting "more" than "we" were getting. My sense, however, is that in recent years Quebec has fallen off the screen in western Canada. Comparisons with Quebec are seldom heard, little Quebec news is carried in the regional media, and Quebec has faded as a significant point of political reference. The west, with 30 percent of the national population and rising, is seen as tomorrow's Canada; Quebec, with 24 percent of the national population and falling, is seen as yesterday's Canada. (This perception is only reported here, and not endorsed!) For better or for worse, the previous angst has been replaced by indifference. If open federalism is seen or presented as a Quebec issue rather than a national issue, then it is unlikely to come onto the screen for most western Canadians.

- *Regional prosperity.* An important backdrop to all of the above is the general prosperity of the west, and the specific prosperity of Alberta. Things are going well; as a recent Canada West Foundation report on the Alberta economy headlined, "this is as good as it gets." The provinces with the lowest unemployment rates in the country are Manitoba, Alberta, British Columbia, and Saskatchewan. Public finances are in wonderful shape; three of the four western provinces are "have" provinces, three of the four are running surpluses, and growth is strong across the board. Alberta's case, of course, is an exception — no provincial debt, the country's lowest tax rates, oil prices at more than \$70 a barrel, and a provincial surplus likely to exceed \$10 billion in 2006/07. Is it any surprise, therefore, that western Canadians in general, and Albertans in particular, are not up in arms about a proposal (even if they knew about it) to recognize Quebec's unique place in Canada? In an important sense, the long-standing issue of Quebec and its place in Canada is yesterday's game; today's game is to be found in a booming regional economy. Fears in the past that the recognition of Quebec as a distinct society would cost western Canadian taxpayers more money have abated somewhat in the face of regional prosperity.

For all of these reasons, there is little indication that the trajectory of public response to open federalism will follow the earlier trajectories of public responses to the constitutional debates of the early 1980s and early 1990s. The world has moved on in quite a profound way.

Treating Provincial Governments and Provincial Jurisdictions with Greater Respect

One of the persistent themes of western alienation is that western Canadians (or the western provinces, or the west) are not treated with the respect they deserve. Harper's proposal, therefore, should be playing to a receptive regional audience, albeit a hypothetical audience in that open federalism has yet to be taken on the road in the west.

The Conservative win in the 2006 federal election nicely addresses the issue of regional respect. The question, then, is whether the pledge to treat provincial governments and provincial jurisdictions with greater respect will also strike a responsive chord among western Canadians. It is hard to see why it would not; if we still had motherhood statements, this would be one of them. And, as a general stance, I cannot see anyone in the west, or indeed anyone in Canada, arguing against this as a general proposition. Would anyone argue for less respect? (Well, they might, but it would be framed as a defence of national values and national standards.)

This plank of open federalism all boils down to how specific disputes might be handled, and here an early test came in Alberta with the new federal government wading in against some of the proposed health-care reforms embedded in Alberta's "Third Way." Prime Minister Harper wrote to Premier Ralph Klein to raise some of his concerns, and Tony Clement, the federal minister of health, came to Alberta to warn that transfer payments might be cut if reforms were to violate the terms of the *Canada Health Act* (a useless threat if there ever was one, given that Alberta could absorb the cuts without blinking). Now, how does this square with open federalism? Treating the provinces and their jurisdictions with greater respect does not necessarily mean agreeing with the provinces, nor does it necessarily mean backing away from federal policy. One could argue, for example, that the prime minister's very detailed letter to Premier Klein was a show of respect, for it signaled a willingness to treat Alberta's proposals seriously and to discuss them openly. In any event, the Alberta government has now folded on the controversial elements of its Third Way reforms, and the issue is now moot and dead. We'll have to look for another test case.

The bottom line? This tenet of open federalism will have some appeal, but it is so innocuous and so untested in the trench warfare of intergovernmental relations that it will not have western Canadians dancing in the streets.

Allowing Provincial Governments a Greater Role in their Own Jurisdictions as They Relate to the International Arena

Although this tenet of open federalism has been framed in universal terms, referring to provincial governments in the plural rather than to Quebec in the singular, it has been operationalized in the singular. The public framing of

open federalism refers specifically to Quebec's potentially greater role "in UNESCO-related competencies." So, how might western Canadians react to this?

Manitoba Premier Gary Doer neatly summed up the initial reaction when he was asked about the prime minister's pledge to give Quebec a more prominent role on the international stage. His reaction was: "We're not worried about that stuff. And you know what? Neither are the people at Tim Hortons" (*Western Standard*, 24 April 2006, p. 8). The issue here is that virtually no one has any idea what a "greater role in UNESCO-related competencies" might mean. General knowledge of UNESCO is low, and thus the implications of Quebec's greater role in its competencies are beyond most people's grasp; they are certainly beyond this writer's grasp.

The basic point is that this form of international engagement by Quebec will not ruffle any feathers because no one knows what it means, and no one can see any possible connection to their own lives or interests. Now, if the proposed form of international representation had been of higher profile, a public response would be more likely. For example, if open federalism had extended to a Quebec Olympic team, this would have caused an immediate backlash. However, UNESCO is as out-of-sight, out-of-mind as you can get. (Most western Canadians connect to UNESCO, if they do at all, through the donation boxes that kids bring to the door along with their candy sacks on Hallowe'en.)

The more interesting issue is whether this tenet of open federalism might be extended to other forms of international representation, and to forms that might have greater interest for western Canadians. At this point, however, there is no wish list, no favourite international agencies to which the UNESCO precedent might be extended. So, Premier Doer is correct; this is a non-issue. It will neither generate support for nor opposition to open federalism.

Addressing the Vertical Fiscal Imbalance

Premier Dalton McGinty has shown that the vertical fiscal imbalance issue has legs in Ontario, and he has been able to drive public engagement with the estimated \$23 billion shortfall that Ontario incurs. This sounds like a lot of money, even to an Albertan! However, I am not at all sure that the issue has achieved any public traction in western Canada. Certainly it is a non-issue for the public in Alberta; at a time when the provincial government is pulling in multi-billion dollar surpluses, it is hard to make an impassioned plea for an increase in fiscal transfers from Ottawa. The issue has greater potential traction in British Columbia, Saskatchewan, and Manitoba, but even in these provinces the issue has yet to take off. It is an intergovernmental issue, to be sure, but not yet a public issue, although in Saskatchewan the province's aberrant treatment under the existing equalization formula (particularly in the context of the side deals struck by the last federal government with Newfoundland and Nova Scotia) is an issue.

Thus, a couple of conclusions. Most people are unacquainted with the notion of open federalism, and are certainly unacquainted with the prime minister's pledge to address the vertical fiscal imbalance as a component of open federalism. Coupled with this is very limited knowledge about the vertical fiscal imbalance, and how this applies to the western Canadian case. Once again, then, it is hard to see the linkage as one that will generate public support for or opposition to either open federalism or the need to address the vertical fiscal imbalance. People with even the loosest grip on reality would rather watch hockey.

Improving the Tone of Intergovernmental Relations

Most Canadians, and undoubtedly most western Canadians, would like to see the tone of intergovernmental relations improved; in survey after survey respondents complain about intergovernmental conflict. At the same time, few would support having their own provincial interests gored in order to promote the greater good of improved intergovernmental relations. There is nothing new here that might come out of the notion of open federalism.

* * * * *

So, where does this leave us? Certainly the notion of open federalism has yet to set off any alarm bells. I would suggest, furthermore, that open federalism as articulated to date is unlikely to generate much attention, support or opposition in western Canada. This conclusion is speculative, of course, given that no attempt has been made to explain or sell open federalism outside Quebec. Thus, the spin that might be attached is unknown.

Is it possible, however, that some of the terms and concepts that might be associated with open federalism will generate more of a response, either positive or negative? Here I would like to conclude by considering two possibilities.

Decentralization

Taken as a whole, open federalism signals to some a cautious movement toward a more decentralized federalism. It is useful, therefore, to put aside the fuzziness of open federalism and ask about the potential appeal of greater decentralization in western Canada. In other words, if open federalism were to be communicated to western Canadians as greater decentralization, how might this be received?

The western Canadian position with respect to greater decentralization is complex and ambivalent. Historically, greater decentralization had little appeal in the region because the public policy issues that really mattered to western Canadians were unavoidably and intrinsically powers of the national government. Control over tariffs, the interprovincial rail system, freight rates,

and monetary policy could not logically be devolved to provincial governments. The imposition of national standards and values, which for the most part western Canadians share, has been much less problematic than has been Ottawa's management or mismanagement of the common economic space.² The western push, therefore, was for greater power within the national government — the west wants in! — rather than for decentralization. At least in the past, greater decentralization was rarely on the regional political agenda.

Well, now that the west is in through the election of the minority Conservative government and the installation of a western Canadian prime minister, will western Canadians be inclined to support greater decentralization? Intuitively this would seem unlikely, although it is worth mentioning that Ottawa's economic powers are increasingly irrelevant, and that Ottawa is increasingly engaged in provincial fields of jurisdiction (health, early childhood development, childcare, etc.). I suspect, however, that greater decentralization will not greatly increase in appeal, even though within Alberta the slogan "less Ottawa, more Alberta" is making the rounds. On the whole, decentralization continues to pack much less appeal in the west than it does in Quebec.

Constitutional Change

To this point, it is by no means clear that open federalism represents a new model for Canadian federalism. It is better seen as a combination of some specific appeals to Quebec and some general bromides for the rest of the country — more respect for the provinces, etc. In short, it is a package *for Quebec* that is likely to generate little appeal, interest, support or opposition in other parts of the country. This is not necessarily bad, for it might create the opportunity for progress in Quebec on the national unity file without engendering any pushback from other regions and provinces. Open federalism will be seen as a Quebec issue, and not as a national issue with any significant bearing on the lives of Canadians outside Quebec.

This could change, however, if the Harper government should move to constitutionalize the recognition of "the unique place of a strong and vibrant Quebec in a united Canada." Unlike his predecessor, Prime Minister Harper is not ruling out re-opening the constitution if the conditions are right. If he takes this fateful step, what might be the reaction in western Canada?

If past experience provides any guide, western Canadians will rise up in arms about a constitutionally defined special status for Quebec. While barricades will not be thrown up in the streets, history predicts a strong reaction. However, I'm not sure that history is a reliable guide because of the way in which the new prime minister has changed the game. Harper is not only talking about the possibility of opening up constitutional discussions on Quebec's place in Canada, but also on Senate reform, and it is the potential linkage between the two that is critically important. My guess is that western Canadians would be quite willing to enter into constitutional negotiations in which *both* special status and Senate reform were on the table. If constitutionalizing

special status for Quebec is the bullet that has to be bitten in order to achieve Senate reform, I suspect that western Canadians will bite. What is much less certain is whether Quebecers will be prepared to bite the bullet of Senate reform in order to achieve constitutional recognition of “the unique place of a strong and vibrant Quebec in a united Canada.”

Taken by itself, the notion of open federalism will have little if any effect on the political landscape in western Canada. However, the forecast is much less certain should it become linked with constitutional change and Senate reform.

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The introduction of open federalism is to be applauded for breaking open a stale and gridlocked federalism debate in Quebec. But is it a new model for Canadian federalism writ large? Not yet. Could it become so? Perhaps. To this point, however, while open federalism may be the dawn of a new federalism in Quebec, it is not yet the dawn of a new federalism outside Quebec. Or, if it is, Albertans might just choose to sleep in.

Notes

1. Readers should be aware that Alberta writers often refer to the west and Alberta interchangeably, a tendency that is not widely appreciated outside Alberta. I will try to be careful.
2. Indeed, one could argue that many national values spring from the western Canadian experience. Saskatchewan’s contribution to the Canadian public health-care system is widely acknowledged, Canada’s commitment to multiculturalism within a bilingual framework reflects western Canadian political pressure in the 1960s, and recent government commitments to deficit-free financing spring directly from the emergence of the Reform Party of Canada in the late 1980s.

CHAPTER 6

Open Federalism and Canada's Economic and Social Union: Back to the Future?

Keith G. Banting

During the 2006 federal election campaign, Prime Minister Harper promised a new approach to intergovernmental relations in Canada, which he described as “open federalism.” This commentary reflects on the potential meaning of this concept and its implications for intergovernmental relations in Canada. In keeping with the mandate of the broader project of which this paper is part, the specific questions before us include:

- What does the concept of open federalism mean?
- How different is it from previous models of federalism in theory and practice?
- What are the implications of open federalism for Canadian public policy-making and the operation of intergovernmental relations?

In seeking to answer these questions, this paper focuses particularly on Canada's economic and social union, leaving the issues of the fiscal imbalance and equalization to others. The appraisal of open federalism offered in this paper must therefore be considered a partial one, as a comprehensive assessment needs to incorporate both dimensions.

Inevitably, the interpretation offered here remains somewhat speculative. Understandably, the prime minister's comments on intergovernmental relations during the pre-election period had a Delphic quality, suggesting new approaches and styles while avoiding specific details that might constrain the future.¹ The treatment of federalism in the Conservative Party's federal election

platform fleshes out the idea a little more, promising a Charter of Open Federalism, and other parts of the platform shed additional light on the Conservative approach to the role of the federal government in the country.² More recent hints come from the Speech from the Throne, several speeches given by the prime minister after the election, and the budget delivered in May 2006.³ Even with these texts to hand, however, the concept of open federalism itself remains relatively open. The extent to which it represents a true break from the past will only become clear with time.

This paper is organized in four sections. The first section asks whether open federalism implies a shift in the models of federalism that have underpinned intergovernmental relations in Canada. The second section asks whether open federalism suggests a change in the formal rules governing intergovernmental decision-making within existing models. A third section discusses the implications of open federalism for the role of asymmetry in intergovernmental relations, and a fourth section explores whether the concept points to changes in more informal intergovernmental processes. A concluding section then seeks to pull the threads together.

The argument that unfolds in the following pages can be summarized simply. Many commentators believe that the Conservative Party is committed to a more decentralized Canada, and will strike out strongly in that direction. The assessment offered here, however, starts from the assumption that federal governments seldom get the federalism they want. Political parties may come to power with strong beliefs about how the Canadian federation should function, and those beliefs undoubtedly have some influence on the course they chart. But federal governments, especially minority federal governments, are also constrained by provincial governments, opposition parties in the House of Commons, and the expectations of Canadians about what their governments will do to help them in their daily lives

We should therefore not be surprised to hear the prime minister note that open federalism “is not entirely new.”⁴ Indeed, the Conservative Party’s thinking on federalism, at least as it relates to the management of the economic and social union, seems relatively consistent with the recent evolution of intergovernmental relations in Canada. New initiatives promise to extend and at times formalize lines of development that have been underway for some time. It is possible that open federalism will have a larger impact in the area of fiscal federalism, although even here the new government is seeking to deflate heady expectations. Certainly, if the Conservatives’ statements, election platform, and budget are reliable indicators, the prospects for the economic and social union are for further movement in existing directions.

This suggests that open federalism’s primary significance may lie elsewhere. Its real impact may be found, not so much in the realm of the economic and social union, but in the realm of party positioning and electoral competition. Open federalism laid to rest ideas associated with the Reform Party, especially its insistence on the formal equality of the provinces and its resistance to an asymmetrical position for Quebec in the federation. In addition,

open federalism was a brilliant instrument of electoral competition, in which the Conservatives simultaneously embraced central currents in intergovernmentalism, leaving no hostages to fortune in English Canada, and created a distinctive appeal in Quebec, conveying sensitivity to cultural difference and fiscal pressures. In this, the concept was tremendously effective. We return to this theme at the end.

Models of Federalism

Canada has never developed a single, integrated public philosophy of federalism, and our federal-provincial relations in the economic and social policy domains have tended to incorporate four models:

- *Classical federalism.* In this model, each level of government works within its own jurisdiction, raises its own revenues, delivers its own programs, and remains separately accountable to its own electorate. This model involves independent decisions by both levels of government, with limited efforts to secure the formal coordination of policies and programs across levels of government.

- *Shared-cost federalism.* Under this model, the federal government offers financial support to provincial governments on specific terms. Historically, the substance of such programs has tended to be hammered out in bargaining between the two levels. In formal terms, however, the model involves each government making separate decisions. The federal government decides when, what, and how to support provincial programs; and provincial governments decide whether to accept the money and the terms. As a result, this model contains the potential for unilateralism, as became clear when the federal government began to cut its financial commitments to provincial programs from the mid-1970s on.

- *Joint-decision federalism.* In this model, the formal agreement of both levels of government is required before any action is possible. Unilateralism is not an option here. The major Canadian example is the Canada Pension Plan (CPP). The joint decision-making process that governs changes in the CPP is analogous to the German federation. The institutions differ, since the provincial governments are not represented in the upper chamber of the national legislature, but the central dynamic is similar. Nothing happens unless formal approval is given by both levels of government.

- *Interprovincialism.* In this model, intergovernmental coordination is accomplished through a purely provincial compact, with the federal government playing at best an observer role. Historically, this model has played a minor role in Canadian intergovernmentalism, limited largely to areas of exclusive provincial jurisdiction such as education. With the weakening of the federal role in recent years, some analysts have seen interprovincial institutions as an increasingly important mechanism for pan-Canadian policy coordination, and the emergence of the Council of Federation has in part reflected such hopes.⁵

The balance among these four models of intergovernmental relations in Canada has evolved over time. Historically, the dominant interplay has been between classical and shared-cost models, and it is worth asking whether open federalism suggests a new balance between these two approaches.

Certainly, advocates of the classical model can find hopeful signals in the prime minister's comments. His *National Post* article states that "Conservatives seek to re-establish a strong central government that focuses on genuine national priorities like national defence and the economic union, while fully respecting the exclusive jurisdiction of the provinces."⁶ His speech to the Quebec Chamber of Commerce went further: "We will monitor the federal spending power, which has been so abused by the federal Liberals. This outrageous spending power gave rise to domineering and paternalistic federalism, which is a serious threat to the future of our federation." This is strong language, and might suggest a deep prime ministerial interest in structural change.

It is also clear that the Conservatives plan to pursue many of their social policy goals through direct transfers to citizens. The most symbolic case is the switch from federal-provincial agreements on childcare to a direct transfer to citizens, reinforced by support for employers and non-profit associations that create childcare spaces. Other commitments in the election platform involving transfers or tax credits for individuals include: an Apprenticeship Incentive Grant, a Tools Tax Deduction, an Apprenticeship Job Creation Tax Credit, and tax credits for spending on textbooks, registration fees for children's physical fitness programs, and the cost of monthly transit passes. The platform pursues other social goals through transfers to organizations, promising additional funding for the national granting councils, and support for community-based educational, sporting, cultural, and vocational opportunities for young people at risk.⁷

It would be premature, however, to conclude that open federalism is exclusively inclined toward a classical model. Certainly, the platform on which the Conservative Party stood in the 2006 election seems comfortable with shared-cost federalism. In the most contentious area, health care, the platform is broadly consistent with recent trends. The party supports "a mix of public and private health care delivery as long as health care remains publicly funded and universally accessible," a position consistent with most interpretations of the *Canada Health Act*. Further, the party says it will "push ahead" with the implementation of the September 2004 federal-provincial Health Accord, and it is apparently ready to pursue some of its highest profile campaign promises through such vehicles. Most importantly, the government is committed to working with the provinces to develop a patient wait times guarantee — one of the five key priorities — and to put in place a five-year Canadian Strategy for Cancer Control.⁸ Both of these pledges involve the federal government in the management and delivery of health care, paralleling the Liberals' interest in primary care reform. They can only be achieved through shared-cost instruments such as the recent Health Accords.

This willingness to maintain and work through shared-cost instruments extends to other program areas as well. In the area of postsecondary education, the platform proposes to remove federal support from the Canada Social Transfer (CST) and create an independent Canada Education and Training Transfer “to ensure that there is dedicated funding for postsecondary education and training.”⁹ And, perhaps most revealingly, the platform commits the Conservatives to creating a *new* cost-shared program jointly with provincial and municipal governments to put at least 2,500 more police on the beat in our cities and communities.¹⁰

The May budget confirmed an important role for shared-cost federalism. “There is,” we are told, “a clear consensus among Canadians on the importance of support for health care, postsecondary education and training, and infrastructure. Federal and provincial-territorial governments must continue to work together on these shared priorities.”¹¹ The budget commits the government to develop, in consultations with the provinces, proposals for long-term federal support in these areas, with particular emphasis on postsecondary education, training, and infrastructure.

As an interim conclusion, therefore, it appears that open federalism continues to reflect the diverse models of federalism that underpin intergovernmentalism in Canada. Undoubtedly, the Conservatives will find their own balance between classical and shared-cost approaches. It remains possible that they will tilt toward the classical approach, seeking to achieve their objectives as much as possible through direct contact with citizens. But this would hardly be breaking new ground.

New Decision Rules?

If the Conservatives are prepared to operate through shared-cost instruments, are they committed to changing the decision rules that govern the use of this instrument? During 30 years of federal-provincial negotiations over constitutional change, the rules governing the use of the federal spending power represented a constant feature of the agenda. Whether the list of issues was short or long, the spending power was there. Are there hints of moving forward on this file?

On this issue, there may be a significant difference between the short term and the longer term. In the short term, there is little evidence of a commitment to a more rules-based process. In the case of direct transfers to citizens, the Conservative government has not felt an obligation to engage in discussion with the provinces over its decision to shift course on childcare, despite both provincial objections and the terms of the Social Union Framework Agreement (SUFA).¹² In the case of shared-cost programs, the election platform does adopt a SUFA-esque position. A Conservative government, we are told, would “ensure that any new shared-cost programs in areas of provincial/territorial responsibility have the consent of a majority of provinces to proceed, and that provinces should be given the right to opt out of the federal program with compensation, so long as the

province offers a similar program with similar accountability structures.”¹³ This position is now well entrenched in federal-provincial practice, and the Conservatives are embracing the status quo here.

In the longer term, however, the prime minister has signalled an interest in reviving the debate about the rules governing the spending power. In his speech to the Montreal Chamber of Commerce, he signalled that “open federalism means limiting the use of the spending power.” Whether this would involve an effort to amend the constitution is unclear. In comments after his speech, the prime minister merely indicated that his approach would lie between the mega-constitutional approach of Brian Mulroney and the approach of Jean Chrétien and Paul Martin, whom he characterized as having “decided they would change nothing and reform nothing.”¹⁴ The process of constitutional change has been complicated in recent years, both by the Liberal government’s *Constitutional Amendments Act* of 1996 and by the requirement in some provinces that constitutional amendments be submitted to referenda. However, following the 1996 precedent, it would be possible for a federal government to enact legislation establishing rules that would govern its own use of the spending power. While such legislation would not legally bind successor governments, it might constrain them politically.

Asymmetry

The Conservative Party has endorsed the idea of asymmetry in the federation, leaving behind Reform’s insistence on the formal equality of the provinces, at least in official discourse. This evolution is clearest in the international domain where the Conservatives propose to “recognize the special cultural and institutional responsibilities of the Quebec government and to open the door for Quebec to participate in international institutions such as UNESCO, according to the model currently used for the Francophonie summit.”¹⁵

The Conservatives’ embrace of asymmetry represents an important partisan convergence in thinking about federalism. Canada became a member of the Francophonie in 1970, and the federal Liberal government of the day concluded an agreement with Quebec (1971) and later New Brunswick (1977) on their participation. These agreements were put in practice in 1986 at the *Sommet francophone* in Paris under Prime Minister Mulroney with Premiers Bourassa and Hatfield. Technically, Canada is the *pays member* and Quebec and New Brunswick are each a *gouvernement participant*. However, the distinction between the two types of participant is kept purposively vague, and Quebec has certainly taken distinctive initiatives in discussions at meetings.

The extension of this model to UNESCO will establish a formal role for Quebec in a major international organization, and will necessitate some adjustment in existing mechanisms of provincial representation. Quebec and other provinces have long been involved in debates at UNESCO. Canadian practice recognizes the centrality of provincial jurisdiction in the fields of education and cultural affairs, and the federal government does not sign

UNESCO conventions or other legal instruments without ensuring that the obligations will be fulfilled by the provinces. As a result, provincial governments have been involved in shaping Canada's role in UNESCO through different channels for some time. Provinces are active in the Canadian Commission for UNESCO, which was established in 1957 to bring together governments and stakeholders with an interest in the sector; and the Council of Ministers of Education of Canada (CMEC) coordinates provincial and territorial input into international discussion of educational policy issues, working through a formal agreement with DFAIT and the Canadian delegation to UNESCO.¹⁶ The decision to provide a formalized role for Quebec, but not other provinces, does represent an extension of asymmetry and will require interesting adjustments in these mechanisms of provincial representation. But, as the Conservatives themselves emphasize, it also builds on existing precedent. Moreover, the Liberal Party promised something similar in the 2006 election campaign.

The commitment to a formal role for the Government of Quebec at UNESCO appears to have displaced the prime minister's earlier musings about the creation of "francophone and anglophone cultural institutions to share responsibility" in areas like cultural affairs and international relations.¹⁷ The basic idea was to create institutions representing the two language communities on a pan-Canadian basis, with a francophone institution representing French-speakers inside and outside Quebec, and a parallel anglophone institution representing English-speakers from across the country, including the English-speaking minority from Quebec. In the case of UNESCO, for example, this proposal might have been accomplished by dividing the Canadian Commission for UNESCO into two separate commissions, one for each language community.

This idea did not survive long enough to appear in the Conservative election platform. In part, this may reflect the controversy with which the idea was engulfed when the prime minister pointed to the Belgian federation for inspiration. But there may have been other reasons for the idea's fall from grace. Such institutions might sit uncomfortably with the increasingly multicultural definition of the country, and with a symbolically asymmetrical role for the Government of Quebec in its own right (as opposed to a role as part of a larger pan-Canadian francophone community). Whatever the reason, the fading of the idea of linguistic community institutions eliminated the most novel element in recent Conservative thinking about intergovernmentalism in Canada.

New Intergovernmental Processes?

The prime minister's pre-electoral comments and the Conservative program are replete with commitments to work with the provinces and to create "practical intergovernmental mechanisms to facilitate provincial involvement in federal areas of jurisdiction where provincial jurisdiction is affected," which are to be enshrined in the Charter of Open Federalism. Three areas are identified

in the election platform: inviting the Government of Quebec to play a role in UNESCO, which has already been discussed; facilitating provincial participation in the development of the Canadian position in the negotiation of trade agreements where provincial jurisdiction is affected; and supporting the contribution of the Council of the Federation to intergovernmental cooperation, expanding the economic and social union, and advancing mutual recognition by all provinces.

Once again, the commitments are in line with existing intergovernmentalism in Canada. Provinces have participated in the development of the Canadian position in the negotiation of trade agreements since the Tokyo Round of the GATT negotiations first brought non-tariff barriers onto the international bargaining table.¹⁸ Consultations with and information flows to provincial governments are now routinized, and provincial ministers are regularly part of the Canadian delegation to trade meetings, most recently at the biennial Ministerial Conference of the World Trade Organization in Hong Kong in December 2005. In his Letter to the Council of the Federation, the prime minister indicated he is looking forward to receiving proposals from the council on mechanisms for provincial representation, and it is possible that we will see greater formalization of past practice here.

Similarly, previous federal governments have long encouraged interprovincial collaboration in reducing interprovincial barriers to trade and strengthening mutual recognition across the country. Given the importance of provincial jurisdiction, the federal government has had few levers to speed up action on the Agreement on Internal Trade. But encouragement has been standard.

Conclusions

As suggested at the outset, federal governments cannot always have the type of federation they might wish. It is therefore perhaps not surprising that the concept of open federalism builds on, extends and in some cases may formalize existing trajectories in the Canadian economic and social union. In the short term at least, open federalism does not seem a harbinger of radical departures. Of course, a full assessment of the meaning of open federalism must also incorporate fiscal federalism, which is being analyzed elsewhere in this project. It is also possible that the concept may take on broader significance in the longer term, especially if the government does seriously re-open the debate over the rules governing the exercise of the spending power. As noted earlier, this is an old, dusty file, thick with documents setting out proposals and debates from the constitutional debates of the last three decades of the twentieth century. Back to the future? One can only hope that our new future is more manageable than our old futures, which would require keeping the file focused tightly on the spending power. (Entrenching property rights in the constitution, anyone?¹⁹) Perhaps then we could reach agreement on a set of rules with which the governments and people of Canada are comfortable.

As anticipated at the outset of this paper, it is hard to escape the feeling that, in the short term at least, open federalism should be understood primarily in the context of the dynamics of the Canadian party system and electoral competition. The embrace of asymmetry repositioned the Conservative Party on one important dimension of public policy, leaving behind any traces of the Reform Party's insistence on the formal equality of the provinces. When married with a commitment to act on the fiscal imbalance, open federalism was also a remarkable instrument of electoral competition. The Conservatives simultaneously embraced core features of federalism as currently practised, leaving no hostages to fortune in English Canada, and created a distinctive appeal in Quebec, conveying sensitivity to cultural difference and fiscal pressures. In all of this, open federalism succeeded brilliantly in the election, and is continuing to prove its worth in the early months of the government's life. The fact that this twin agenda was accomplished on the basis of remarkably little real change, at least in the case of the economic and social union, is a testament to the importance of creative ambiguity in Canadian politics and the Canadian federation.

Notes

1. "My Plan for Open Federalism," *National Post*, 27 October 2004; Address to the Quebec City Chamber of Commerce, 19 December 2005; Letter to the Council of the Federation, 15 January 2006.
2. Conservative Party of Canada, *Stand Up for Canada: Federal Election Platform* (Ottawa, 2006).
3. See the prime minister's speech to the Chamber of Commerce of Montreal, 20 April 2006. On the approach taken in the budget, see the background paper, Department of Finance, *Restoring Fiscal Balance in Canada: Focusing on Priorities* (Ottawa: Department of Finance Canada, 2006).
4. "My Plan for Open Federalism," *National Post*.
5. For conflicting views of the possible effectiveness of such institutions, see Thomas Courchene, *ACCESS: A Convention on the Canadian Economic and Social Systems* (Toronto: Government of Ontario, Ministry of Intergovernmental Affairs, 1996); and Steven Kennett, *Securing the Social Union: A Commentary on the Decentralized Approach* (Kingston: Queen's University, Institute of Intergovernmental Relations, 1997).
6. "My Plan for Open Federalism," *National Post*.
7. Conservative Party, *Stand Up for Canada*, pp. 17, 18, 24, 31-33, 37.
8. *Ibid.*, pp. 30-31.
9. *Ibid.*, p. 32.
10. *Ibid.*
11. Department of Finance, *Restoring Fiscal Balance in Canada*, p. 27; see also pp. 55, 65, and 79.

12. In fairness, it should be pointed out that in ignoring this element of the SUFA agreement, the Conservatives are following in Liberal footsteps.
13. Conservative Party, *Stand Up for Canada*, p. 43. This language was repeated in the budget (*Restoring Fiscal Balance in Canada*, p. 56).
14. As quoted in "Harper Promises New Era in Canadian federalism," *The Globe and Mail*, 21 April 2006. The May budget committed the minister of intergovernmental affairs to consulting with the provincial and territorial governments on the fiscal imbalance, "including examining the merits of limiting the federal spending power in specific areas" (*Restoring Fiscal Balance in Canada*, p. 80).
15. Letter to the Council of the Federation.
16. The Canadian Commission for UNESCO is an independent division of the Canada Council for the Arts, an arm's length agency which fosters the development of the arts and reports to Parliament through the minister of Canadian heritage. For the role of the CMEC in education-related international activities and its agreement with DFAIT, see www.cemc.ca/international.
17. "My Plan for Open Federalism," *National Post*.
18. On the role of provinces in trade issues, see Douglas Brown, "The Federal-Provincial Consultation process," in *Canada: The State of the Federation 1987-88*, ed. Peter Leslie and Ronald Watts (Kingston: Institute for Intergovernmental Relations, 1988); Douglas Brown, "Canadian Federalism and Trade Policy: the Uruguay Round Agenda," in *Canada: The State of the Federation 1989*, ed. Ronald Watts and Douglas Brown (Kingston: Institute for Intergovernmental Relations, 1989); and Douglas Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," in *Canadian Federalism: Meeting Global Economic Challenges?*, ed. Douglas Brown and Murray Smith (Kingston: Institute of Intergovernmental Relations, 1991).
19. According to the 2006 election platform, "A Conservative government will propose an amendment to the Constitution to include the right to own property, as well as guarantee that no person shall be deprived of their just right without the due process of law and full, just and timely compensation" (*Stand Up for Canada*, p. 43).