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FROM INTERSTATE TO INTRASTATE FEDERALISM IN CANADA

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Old Certainties and New Certainties

In a rather perverse way this is a comforting time for this generation of students of Canadian politics. The ancient certainties, the taken-for-granted of our predecessors, have been shattered by the political realities they were meant to describe. This is especially so for students of federalism and, related, for students of nationalism. Federalism, according to the depression generation of social scientists on whose teachings most of us were reared, was an anachronistic governmental framework for societies and economies which were being inexorably driven in a centralist direction by the combined forces of capitalism, class and modern technology. In those not so distant days students of provincial governments were viewed more as anthropologists preserving for posterity the customs of a disappearing focus of political life, than as investigators of living, growing systems of government.

In a similar fashion, any English Canadian student of the Canadian polity who, before 1960, based his interest in the nationalism of Francophone Quebecers -- there were no Québécois in those days -- on the premise that here was a vital force, potentially capable of destroying that old, durable political system known as Canada, would have been treated, if lucky, with the indulgence that academics sometimes accord those colleagues privately designated as cranks.

From the vantage point of the late 1970s however, our certainties are precisely the reverse of those held by our predecessors. A gentle shaking of heads and a quizzical smile are now reserved for those who obstinately deny the existence of strong decentralist pressures in Canadian federalism emanating from provincial governments, or who are misguidedly scornful of the power behind Québécois nationalism. The rise of minority nationalism and ethnic consciousness in Canada and elsewhere repudiates the relevance of social science theories predicated on their progressive elimination as key factors in political life.

This generation of Canadian social scientists has been forcibly liberated from allegiance to the models of its elders, and has no alternative but to think again the relationships between the governments

FOREWORD

In this Discussion Paper, Alan Cairns carefully dissects the concept of "intrastate federalism" and shows how a great many current proposals for change are rooted in one or another variant of the intrastate view. The intrastate federalist viewpoint starts from the presumption that regional/territorial interests, loyalties and cleavages are the most important in Canadian politics. It also suggests that there has been a loss of legitimacy at the centre. The question then becomes: where and how to accommodate these regional divisions: through emphasizing regional representation within federal institutions (the centralist version), or through giving the provincial governments a direct voice in national decision making (the decentralist version). In both versions, it is assumed that territorial predominance will persist, though it could be argued that at least some proponents of integration at the centre look, in the long-run, to the mobilization of interests along lines which will transcend region. This intrastate view tends to reject a "division of labour" view, in which functions are clearly allocated to one or other level of government - i.e. interstate federalism.

Cairns provides the most comprehensive public analysis to date of the various proposals for intrastate federalism, and in so doing, raises some important questions about the developing "conventional wisdom" of the constitutional debate.

This essay is a slightly revised version of a paper first published in the British Bulletin of Canadian Studies. We are grateful to its Editor, Professor Philip Wigley, of the University of Edinburgh for permission to reprint it here.

The Bulletin is the journal of the British Association of Canadian Studies. It provides a twice yearly forum for analysis of all aspects of Canadian politics and society by both British and non-British contributors. Subscriptions are available from Gordon Adams, Department of Town and Regional Planning, University of Glasgow.

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Richard Simeon.

and societies of Canadian federalism. The modernity which was to make us one, which was to reduce provincial governments to an inconspicuous insignificance, and which was to level out those ethnic differences that had kept us politically divided, has backfired. We are left with dualism, regionalism, the wreckage of yesterday's theories and the obligation to make our own sense of a world that no one predicted. The feelings of generational freedom and exhilaration thus elicited are accompanied by the nagging fear that we too will be victimized by the passing years and the shortsightedness of our panaceas which the future will reveal. Recognition of the flux of human affairs in which we struggle to find a footing is particularly sobering when the mantle of nation-savers, partly self-chosen and partly imposed, has been assumed by many of our colleagues. The devising of new constitutions is in danger of becoming the political scientists' raison d'être as conferences on Whither Canada? proliferate to the detriment of thought. One is tempted to cry halt, as Innis did half a century ago, and to assert that we are cursed with too much discussion and too little thought.

As this conference indicates, however, opting out is difficult, almost impossible. I have decided to play my participatory role today from the vantage point of an analyst of one particular category of proposals for constitutional revision which is acquiring growing credibility, which indeed has almost become a new conventional wisdom.

The gist of the argument I wish to explore begins from a recognition of the undisputed fact that Canadian federalism is now characterized by strong provincial governments, quite independent of the stimulus given by nationalist pressures to the drive of the Quebec government for sovereignty-association. The perceived corollary is an apparent decline in the legitimacy and effectiveness of the central government. Academics and politicians routinely report, using contemporary jargon, that a widespread sense of alienation from Ottawa is present in much of the country.

It is also evident that the incidence of policy clashes between the provinces and Ottawa is on the increase, and that the federal system lacks adequate mechanisms for their resolution to the satisfaction of the competing governments and/or the creation of effective policy.

The question, What is to be done? is on the agenda. There is widespread belief among political actors and academic analysts that the existing system lacks the capacity for its own regeneration. Accordingly, the necessity for major institutional change is considered self-evident.

The intrastate proposals examined below constitute one category of response to the crisis in intergovernmental relations, and to the perception that the central government has lost contact with the primal territorial diversities of Canada.

Interstate versus Intrastate Federalism.

Contemporary mainstream thinking about Canadian federalism proceeds from a general assumption that a federal system can be organized in one of two ways, respectively labelled, following the late Karl Loewenstein, interstate or intrastate federalism.⁽¹⁾ The latter, as noted below, can be approached either as a strategy for increasing the impact of provincial governments on national politics, or as a strategy for weakening provincial governments by enhancing the capacity of Ottawa to represent territorial diversities that otherwise constitute the social base of provincial power.

For the student of academic and political innovations the remarkably rapid diffusion of intrastate models of constitutional engineering is a case study deserving investigation. Although implicit intrastate thinking can be found in the original Confederation settlement, the explicit spelling out of an intrastate model only occurred in 1971.⁽²⁾ First introduced and subsequently elaborated by the leading student of Canadian federalism and a prolific writer, the intrastate version of federalism is now part of the conceptual apparatus of scholars and practitioners. It now bears all the attributes of an idea whose time has come. As a method of federalist organization it is, as a pure type, a logical antithesis to interstate federalism.

From the interstate perspective federalism is viewed primarily in terms of the division of powers between a central government and provincial or state governments. The division of jurisdictional authority is undertaken in accordance with the principle that matters of significant concern to those communities whose existence compelled the federal choice in the first place are given to provincial or state governments. The central government, by contrast, is accorded governing power over those matters on which citizens are unlikely to differ on a territorial basis, or on which they share a common interest in their effective, uniform administration from the centre. In an interstate system of federalism dispute concentrates on altering the distribution of powers, and the system tends to be assessed in terms of the degree of centralization or decentralization revealed by any given distribution.

The political corollary of interstate federalism as a pure type is that the key institutions of the central government do not have to be structured to reflect territorial particularisms but can operate essentially on the basis of national majorities. In other words, provincial or state majorities can handle matters of particular concern to their idiosyncracies, while a national majority can handle matters for which such idiosyncracies are largely irrelevant.

From the intrastate perspective, by contrast, territorial particularisms are given an outlet not only by the control of a government at the state or provincial level, but also in the key policy-making institutions of the central government. That government will not be viewed as a government for the resolution of problems for which regional inputs are irrelevant, nor as an instrument for expressing and fulfilling a set of national aspirations clearly differentiated from the more localized goals of the lesser communities and their governments. Instead it will tend to be viewed as an arena for the open clash of regional interests and their attempted harmonization within central institutions.

The political institutions of the centre, therefore, will not operate by simple majority rule based on representation by

population, but by policy compromises between the representatives of competing territorial interests whose capacity to bargain and block is not based entirely on the size of the electorates behind them. Therefore, the institutions and procedures of the central government must be such as to permit the territorial representatives not only to be present, but to act as territorial spokesmen.

These two categories of interstate and intrastate federalism are, of course, pure types, and any particular federal system will fall considerably short of purity. It should be noted in passing that while it is not impossible to visualize an intrastate system which operates without provincial or state governments at all, it is doubtful that such a system could properly be called federal.

Attrition of Intrastate Elements in Canadian Federalism

As originally introduced into Canadian thinking in Smiley's seminal 1971 article the concept of intrastate federalism was accompanied by an analysis which suggested that the political system created in 1867 had been an effective embodiment of intrastate principles superimposed on the interstate aspects of a federal-provincial distribution of powers which favoured Ottawa. Unfortunately, the argument proceeds, the development of political practices at the central government level effectively eroded the intrastate elements, left Canadians with a malfunctioning interstate federalism, and ultimately jeopardized the capacity of Ottawa to play a strong and leading role.

According to this thesis the confederation settlement of 1867 essentially eschewed brute majoritarianism in the central government by a variety of institutional devices and conventional practices dictated by the realities of the society the Fathers aspired to govern.

The Senate was not then viewed as the residual institution it has since become. Rather, it was an important body designed to allow regional/provincial interests an effective influence in the central government. This was particularly the case with the first batch of senators nominated by the provincial governments. However, as is well known, the development of democratic practice and values increasingly put an appointed chamber which lacked an aristocratic base, and

whose members were appointed by the federal government on the basis of party patronage, on the defensive. The responsibility of the Cabinet to the House of Commons also exerted pressure to push the Senate to the margins of federal politics. Whatever might have been in the minds of the Fathers or in the early practice of the new Dominion, it is irrefutably clear that the Senate as presently constituted is not an effective outlet or safeguard for provincial interests in the central government.

More important than the Senate was the composition and political practice of the federal Cabinet. Early Cabinets were collections of regional notables with independent political bases of their own who powerfully asserted the needs of their provinces at the highest political level in the land. The developing ascendancy of the office of Prime Minister, which has culminated in its alleged presidentialization under Trudeau, was much less visible in his predecessors. Regional spokesmen of the calibre and authority of Jimmy Gardner, Jack Pickersgill, and Ernest Lapointe continued into the middle decades of the twentieth century. Now, however, regional spokesmen of such power and authenticity are only memories. Although the regional basis of Cabinet appointment continues, the regional power brokers are gone.

The decline in the effective performance of this brokerage role is attributed not only to the enhancement of Prime Ministerial power but also to the increasingly technocratic nature of government and the heavy burden of departmental responsibilities which, with a few exceptions, are organized along functional lines. Accordingly, the capacity of the Cabinet to be the primary agent for reconciliation of regional interests has been eroded with a resultant decline in the sensitivity of federal government policy. This contributes to the alienation of provincial governments and regional interests, who feel that their opinions are given short shrift in the Cabinet, the policy making centre of a parliamentary system.

The development of rigid party discipline of a kind unknown in the early post Confederation years is also considered to have played its part in diminishing the sensitivity of Ottawa to regional perspectives. When party discipline was weak, and many MP's could fairly be

characterized as loose fish prepared to give their support only in return for policy bargains, the House of Commons itself had important intrastate elements. These had clearly been overridden by the end of the Macdonald era. The institutional bias of parliamentary government inexorably led to disciplined party majorities and thus undermined the possibility of the free-floating MP.

Much of the subsequent twentieth century criticism of parliamentary government and the majority rule on which it rests has been based on implicit intrastate assumptions, specifically the assertion that party discipline and majority rule must be relaxed so that minority regions can exert greater weight in the determination of federal policies. The agrarian protest of the Progressives was directed against king caucus, and the institution of majority rule in the legislative party based on the instrumentality of party discipline. Hence such devices as the recall, the initiative and the referendum, and the relaxation of party discipline were all part of the reform suggestions of the agrarian spokesmen for the new prairie section which emerged following the massive immigration which peopled the west. From the perspective of agrarian political thought, party discipline in the Canadian parliamentary system was a device for the oppression of a sectional minority by the spokesmen for the economic interests of central Canada, whose numerical power carried the day when conflict was unavoidable. This litany of majority rule against the interests of the peripheries is reiterated in a recent volume written from the perspectives of the Atlantic and the prairie hinterlands. Majority rule, as these authors make clear, loses much of its glamour in those parts of the country demographically doomed to minority status in a system based on representation by population. (3)

The civil service is not without guilt in the evolution of Canadian federalism away from the intrastate version. The patronage system of early days, whatever its other defects, had the virtue of producing a more representative, if less narrowly technically efficient bureaucracy than its successor governed by the merit system. This is particularly striking with respect to French Canadian participation in

the federal bureaucracy which declined precipitously after the reform measures of the Borden administration in 1918-1919. More generally, a system based on recruitment according to professional criteria can only by accident provide regional representation proportionate to the population of the various regions of the country. As a result, it is argued, civil servants, not selected with regional criteria in mind, and located in bureaucracies in which regional considerations are largely irrelevant to departmental organization, have a tendency to view the world through technical eyes, with a resultant bias towards uniformity. A bureaucracy organized around the principle of technocratic efficiency is inherently hostile to representative criteria. Thus, for some students, partial responsibility for the failure of Ottawa to maintain its dominant position after WW II lay in a bureaucracy "technically competent, (which) was often grossly insensitive to regional needs and to the delicacies of federalism."⁽⁴⁾ In sympathy with this interpretation is an analysis of the 1957 defeat of the St. Laurent government which is partly attributed to the regional insensitivities of a Liberal Cabinet which had fallen too much under control of the centralist inclined policy advisers.⁽⁵⁾

Yet one more source of our discontents is located in the first-past-the-post electoral system which makes the parliamentary representation of political parties far less representative of the territorial particularisms of Canada than is their actual voter support. Thus the voter weakness of the Conservatives in Quebec, and the Liberals on the prairies, is exaggerated at the level of party representation. The Conservatives are pushed in the direction of being an English Canadian party and the Liberals in the direction of being a Quebec party with negligible prairie representation. The electoral system's contribution to the attachment of particular provinces/regions to particular parties is most serious on the government side of the House. The prairie provinces are effectively frozen out of any position of adequate influence in the governing councils of the Liberal party, while the province of Quebec is likely to be excessively weak in any Conservative government elected in the near future. Even when, as in

1958, Quebec finally gained extensive representation in the Diefenbaker Conservative government, the lack of party habituation to a strong French Canadian presence precluded effective French Canadian participation in the Cabinet. In the absence of effective representation on the government side of the federal House the provincial governments of the ignored areas rush in to fill the gap, centrifugal pressures are strengthened, and federal provincial conferences are given a further stimulus as the prime locus of federal provincial reconciliation. Hence the appearance of the Quiet Revolution in 1960, with its focus on the state of Quebec is in part a byproduct of ineffective Quebec federal representation in the Diefenbaker interlude in Ottawa. Equally explicable is the aggressiveness of the Lougheed Conservative government of Alberta in its confrontation with a Liberal government which has had only five elected MPs from Alberta in five general elections since 1963.

In sum, this historical analysis concludes that a combination of political practice and institutional pressures at the central government level has produced a federal government out of touch with the prevailing regionalism of Canada, and consequently politically and administratively insensitive to the territorial diversities its policies encounter. "National political institutions," the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada was recently told, "are unable to serve as the central arena for reconciling regional and national interests ... these failures ... are built into the system."⁽⁶⁾

This baldly presented overview of a century of the evolution of the Canadian polity is, by its very nature, incapable of the precise verification required to convince the cautious of its validity. Nevertheless, it exists as one of the big pictures hovering in the background which lends support to particular perspectives on constitutional change, and it is in that light that it is portrayed here. It can be challenged in terms of the accuracy of its portrayal of the original settlement, or of its attribution of consequences to particular institutional developments since 1867.

The intrastate 'solutions' to which it directs us, however, can be defended or attacked quite independently of our views of Canadian history.

From an interstate perspective the response to the contemporary aloofness and isolation of Ottawa is to decentralize power to provincial governments whose policy sensitivity develops naturally from the territorially delimited sphere of their operations. Power and frustrated regional interests flow in the same direction to the ten provincial capitals. As a result, "Canadian interests and attitudes which are territorially delimited have come to find an outlet exclusively through the provincial governments ... largely because federal institutions have inadequately represented these particularisms."⁽⁷⁾ The federal default gives the provinces "the almost exclusive franchise" as vehicles for the representation of interests that are "territorially demarcated."⁽⁸⁾

What is to be done? The Intrastate Solution

The dialectic between the evolving realities of the system, a constitutional crisis which puts fundamental reform on the agenda of politics, and the desire of many scholars and political activists to prevent a continuing erosion of central government power produces an intrastate prescription for our problems. This is variously described as "'federalizing' the central institutions of government,"⁽⁹⁾ or creating "national institutions which are truly federal, not just central."⁽¹⁰⁾ The purpose is to challenge the profound bias of existing institutions, recently described in the Canada West study as follows:

we ... have the most centralized structure of national government among the world's free federations, with the prime minister appointing the governor-general, lieutenant governors, the cabinet, members of the senate, and the supreme court: in fact, the entire structure of the central government with the sole exception of the House of Commons. (11)

The Canadian reality which this centralized structure confronts, however, displays the opposite bias of territorial particu-

larisms as Smiley calls them,⁽¹²⁾ or limited identities in the language of Careless.⁽¹³⁾ Since these territorially clustered foci of interest, attention, and purpose constitute the very essence of what Canada is, and since they have overwhelmingly aligned themselves behind provincial governments, the central government is literally rootless. It is deprived of the social supports necessary for effective survival in circumstances where power flows to the governments with the biggest battalions behind them.⁽¹⁴⁾

Ottawa, therefore, must be transformed into a more effective outlet for territorial particularisms. The reconstruction of Canadian federalism should proceed not by a further decentralization of power to enhance the jurisdictional responsibilities of provincial governments, but by opening up the central government to the regional diversities of Canada. This response is designed to overcome the lack of fit between central government institutions and the Canadian society they serve.

Concealed behind this surface agreement on the direction of change are two distinct options, either giving power and influence at the centre to provincial governments, or making the central government more responsive to territorial diversities in ways which bypass provincial governments. These two options, which represent very different versions of intrastate federalism, may be labelled respectively provincial intrastate federalism, and centralist intrastate federalism. The centralist intrastate version is clearly designed "to obstruct the growing power of the provinces."⁽¹⁵⁾ It is an attempt to weaken provincial governments by increasing the attractiveness of Ottawa to that complex regional/provincial network of interests, values, identities, and socio-economic power whose support is a crucial resource in intergovernmental competition. Accordingly, the appropriate constitutional engineering requires a rearrangement of the relations between social forces and governments to the advantage of Ottawa. The latter will

acquire a revived legitimacy and strength by rooting itself in the profound regionalism of Canadian existence.

Smiley's summary is a succinct and apposite presentation of the centralist version:

Canada cannot be effectively governed unless Ottawa is the focus of significant popular identifications and the political arena in which the interests of powerful groups are resolved. Yet territorialism is the dominant circumstance of our political life. The institutional imperative then is to so modify our political structures as to secure the more effective channelling of territorially-demarcated attitudes and interests through the central government rather than the provinces alone. (16)

The provincial intrastate perspective differs from the preceding in that it does not seek to weaken the provincial governments by undermining their support base. It accepts the power of provincial governments, and gives them additional outlets in the central government policy process. Typically, a reconstituted Senate is the centre piece of this provincial version of intrastate federalism. Such a Senate would be composed of provincial government appointees, acting as delegates for their masters, and endowed with delaying and blocking authority with respect to federal legislation in areas of special provincial concern.

In reality, of course, many proposals do not differentiate between the above two versions of the intrastate strategy. In addition, both versions, albeit in crucially different ways, share an opposition to the continued erosion of power from Ottawa. Nevertheless, as is observed below, the two versions are very much in competition. The fundamentally different futures they postulate are clear to the participants at the intergovernmental bargaining tables, although they have not attracted a great deal of academic attention.

A Catalogue of intrastate suggestions

An intrastate analysis is capable of generating a very extensive battery of reforms. They include a move in the direction of proportional representation to make each party more representative of the geographically diverse electorate which supports it, and

therefore of the country, than is now the case; a reform of the procedures by which party leaders are chosen so that they will have "to come to terms with attitudes and interests which are specifically provincial or regional";⁽¹⁷⁾ a move in the direction of a representative bureaucracy so that the development and the administration of federal programs will be more sensitive to regional considerations; in some versions of civil service reform not only is the personnel and composition of the federal bureaucracy to be altered, but its very organizational structures must balance regional and functional considerations more effectively than at present; a reconstruction of the federal Cabinet, according to one far-reaching proposal, so that some federal ministries are charged with the specific and primary responsibility for the expression of regional/provincial needs;⁽¹⁸⁾ a significant relaxation of party discipline in order to increase the opportunity for cross party voting in the House of Commons when members of opposed parties possess a common regional approach to a proposed policy; the transformation of the Senate into a body effectively linked with provincial societies or provincial governments to produce a more powerful provincial input into parliament itself; modifications to the Supreme Court in terms of personnel, decision-making procedures, and the appointing process to make it more aware of the diversities behind the provincial governments its constitutional judgements so profoundly affect; and finally, major changes in the appointing process, composition, and functions of various federal boards and commissions to enhance their sensitivity to provincial concerns.

This smorgasbord of options can be sampled lightly, as in the recent federal bill C-60,⁽¹⁹⁾ or the intent can be to produce profound changes as in a 1977 Smiley package which proposed many of the above. "The thrust of these proposals," he concluded, "is to weaken the simple-majority principle in the working of federal political institutions and to substitute decisional rules based on territorial concurrent majorities."⁽²⁰⁾

The disappearing past and the American example

Understanding of the evolution of thinking about Canadian federalism is facilitated by looking back to our past and south to our neighbours. The former confirms the wisdom of the statement that the past is another country, one in which it was possible to visualize a strong central government with the power to disallow provincial legislation and to appoint Lieutenant Governors with the authority to reserve provincial legislation for Ottawa's approval. Reservation and disallowance, historic instruments of federal control and influence, designed to inject a national outlook into decision-making at the provincial level, have now fallen into obsolescence. The disappearance of this intrastate federalism in reverse has taken with it the premise that the major intergovernmental thrust of a working Canadian federalism should be a central government capacity to make provincial governments more amenable to Ottawa's leadership. As the second century of Confederation unfolds the desired intergovernmental flow of influence has been reversed and proposed reforms are almost without exception designed to make Ottawa more sensitive to the pressures of provincial governments or societies. "National policy making," in the words of the British Columbia brief to the special Senate Committee on the Constitution, "ought not to be the private preserve of the national government."⁽²¹⁾ From the federal perspective it no longer is. The Secretary to the Cabinet for Federal-Provincial Relations, Gordon Robertson, recently spoke out against the greatly increased tendency for provincial Premiers and ministers to act as "regional spokesmen on national issues" that do not necessarily concern their governments as such, and that relate primarily or wholly to matters within federal jurisdiction.⁽²²⁾

As the power of past example fades away, the attractiveness of American practices and institutions is enhanced. This is evident in many ways - the desire for an inspirational constitution, the pressures for a Bill of Rights and a more activist Supreme Court, a developing populism evident in various projected uses of referenda, and in the philosophy that rights inhere in the people. It is also

evident in a new appreciation of the openness of Washington to state and local pressures. Peter Regenstreif recently proposed the adoption of "some sort of mixed parliamentary-congressional system, something on the order of the institutional arrangements of the Fifth Republic of France or of the American congressional process." The resultant free play of regional forces at the centre would lead to the disappearance of "the kind of provinces we have now ... as those people who were fearful that their concerns could only be protected by a system of strong provinces would find national politics a congenial arena where their interests could be properly reflected and protected."⁽²³⁾ Smiley's intrastate proposals designed to save and strengthen Ottawa reflect his interpretation of American federalism which combines a high degree of centralization of national power in Washington with a "fragmented power system (which) ... allows geographical particularisms to play a more important role than is the case in Ottawa."⁽²⁴⁾

Intrastate Federalism: From Theory to Practice

As tools of analysis the core concepts of interstate and intrastate federalism are undeniably helpful. Each enlivens our understanding of the other by providing an alternative way of facilitating the expression of regional diversities in a federal system. The interstate perspective focusing on the distribution of powers remains crucial, and is of course central to the Quebec side of the Quebec-Ottawa struggle. Nevertheless, its centrality has been weakened by the profound effect which the intrastate perspective is having on constitutional debate in Canada. The speed and the extent of its diffusion from its first major Canadian expression in a journal article in 1971 to its present status of providing the major organizing framework for most of the pro-federal thinking in the country testifies to its political attractiveness. Its appeal to political actors and academic analysts is greatly aided by its capacity in its centralist version to strengthen Ottawa against the provinces, and in its provincial version to give provincial governments a more decisive impact on national policy-making.

In both of these versions it has the advantage of responding to the apparent growing strength of the provinces, and their demands for an ever more prominent place in the sun, in a manner that does not add to the decentralization of a federal system already considered too decentralized by many.

It is also possible that intrastate federalism derives part of its strength, especially in its provincial version, from an implicit democratic frame of reference. The participatory ethic of the past few years has consistently asserted the right to be present at those decisions which affect one's fate, a normative demand to which a provincial government dominated House of the Provinces appears as a clear response. More generally, the standard image of the federal system as a hierarchy with Ottawa on top stimulates its own democratic counter-attack to increase the power and influence of the provincial governments at the base.

Proposals for constitutional reform cannot be written on a clean slate. They must find acceptability in a political world of ten provincial governments, one powered by ethnic nationalism, and a central government unlikely to relinquish voluntarily its leading role in the polity. Inevitably, the competing versions of intrastate federalism proposed by governments and official actors are coloured by self-interest. Thus Simeon asserts, correctly I think, that the long run goal of the proposed House of the Federation in the federal proposal⁽²⁵⁾ is to "undermine (the provincial governments') capacity to claim to speak for their regions."⁽²⁶⁾ In more circumspect language the federal policy paper A Time for Action makes the same point.⁽²⁷⁾ The reaction of provincial premiers to such a body in which their influence would be minimal is highly predictable, opposition to its creation and to "its maturation as a significant institution of government."⁽²⁸⁾ In marked contrast to the federal proposals, those of the British Columbia government, the Ontario Advisory Committee on Confederation, the federal Conservative party, and Canada West transform the second chamber into a body directly controlled by and responsive to provincial governments.⁽²⁹⁾

These rival versions of intrastate federalism with respect to the second chamber reflect the characteristic intermingling and confusion of self-interest and public interest typical of political man in action. ✓

Provincial intrastate federalism, the giving to provincial governments of a direct role at the centre, is likely to achieve its objectives of making the overall working of Canadian federalism more sensitive to the interests of provincial executives. Although much depends on the precise nature and mechanisms of provincial government incorporation into central government institutions, the general tendency of this type of change is clearly to make Ottawa much less autonomous and freewheeling, and to diminish the federal capacity to take a purely national perspective on all those matters which will have to run the gauntlet of a provincial government dominated second chamber. To the pessimist, such as Senator Eugene Forsey, the House of Provinces, as proposed by the Ontario Advisory Committee, would be a "House of Obstruction." Its provincial government appointees would be "dedicated provincial hatchetmen and any of them who failed to fulfil that mandate would be promptly removed and replaced by a more perfect instrument of the provincial government's will."⁽³⁰⁾ While this may be an extreme reaction, the tendency of provincial governments to exaggerate their differences with Ottawa, and to emphasize a territorial dimension that is probably much less salient to their citizenry⁽³¹⁾ will not surprise students of Canadian federalism. The present P.Q. government provides us with the clearest example of this common provincial behaviour.

To the optimists, however, such appointees would develop a sympathy with and understanding of the central government's national purpose which, after suitable accommodation to legitimate provincial inputs, would be translated into policy and legislation sensitive to both country building and province building aspirations. The necessities for frequent interaction would stimulate cooperative behaviour on both sides, and reduce confrontationist tactics. ✓

Between these extremes of hope and fear the only certainty is that a provincial government controlled second chamber would increase the amount of intergovernmental bargaining, and would tend to advance its timing to the early stages of the federal policy process. In such a context the possibility of federal unilateralism would decrease, and the possibility of provincial obstruction would increase.

Provincial intrastate federalism is a relatively straightforward strategy for rearranging the power relationships between central and provincial governments. Centralist intrastate federalism by contrast involves a much more complex strategy. It does not accept the existing power of provincial governments as a given which must be accommodated. It seeks first to refashion the relations between the governments and societies of Canadian federalism so that the subsequent intergovernmental power relationships will be more favourable to Ottawa. By its very nature this is a very delicate enterprise. It must operate by inducements, pressures, and a reshuffling of cues to a diversity of actors. Hence it is much less likely to produce major results as quickly as the organizationally much simpler version of giving provincial government appointees an enhanced role in old or new federal institutions, such as a House of Provinces. In areas such as Senate reform, where provincial consent is either constitutionally necessary or politically unavoidable, the provinces will not facilitate changes designed to weaken their power. Much of the agenda of relevant change, however, requires no provincial approval. The central government has clear and undisputed authority to change its electoral system in the direction of proportional representation, to move in the direction of a representative bureaucracy, to give more authority and discretion to its senior regional administrators, to provide for a greater expression of regional views in cabinet, to relax party discipline and facilitate cross party regional voting and lobbying and, in general, to rearrange many of its own internal workings as

it sees fit, to the end of enhancing its own capacity to reflect, contain, and placate those manifold regional interests now focused on ten provincial capitals.

Changes of this nature would not be easy to implement, even in the absence of a provincial right of veto. Further, in the short run the costs of disruption would almost certainly outweigh the gains in policy sensitivity, in image, and in the attractiveness of Ottawa as a home for territorial particularisms. These difficulties and short run costs perhaps explain the relative absence of a coherent extensive centralist intrastate strategy emanating from Ottawa. In the long run, with all costs of transition to the new federal regime paid, the central government would have a better fit with the territorially diversified society of Canada. The impact on federal provincial relations, and on the power base of provincial governments, however, is less easy to discern.

Contemporary provincial government power is more than a byproduct of Ottawa's insensitivity. It is based on their jurisdictional possession of the growth areas of government, the increasingly competent bureaucracies at their disposal, the extensive funds over the disbursement of which they preside, the ambitions of their political and bureaucratic elites to maintain and expand the provincial empires under their control, and generally by their extensive capacity to reward and punish the interests and forces their policies encounter. In brief, they are powerful because the working constitution of Canadian federalism has transformed them into decisive agencies for manipulating their environment.

As long as the provincial governments do not have their jurisdiction or resources diminished by explicit change in the BNA Act, their capacity to reward and punish, coerce and direct will not readily fade away. The alignment of particular interests behind the provinces is not independent of provincial legislative authority. The interests and organizations involved in education,

welfare, labour legislation, natural resource exploitation, highways, local government, and many others look to the provincial capitals not because of the insensitivity of Ottawa but because the provinces possess the major instruments of control over their affairs. A transfer of relevant jurisdiction to Ottawa would immediately transform the situation, but such a transfer is not visualized by the advocates of centralist intrastate federalism, nor is it politically practicable at the present time. Nevertheless, in the long run, any living constitution is flexible in its working. The practical meaning of any given distribution of powers will respond to the evolution of public support for the two levels of government. Wise government in a federal system should not forget the informal daily plebiscite which presides over their rise and fall.

A caution

Major moves in the direction of either version of intrastate federalism raise fundamental questions about the kind of future they would help to create. Constitutions not only reflect selected aspects of the present, they also confront the future with the bias inherent in everything we transmit to posterity. Thus the arbitrary creation of Saskatchewan and Alberta in 1905, in response to no pre-existing community of sentiment, evoked provincial identities that otherwise would not have been born. The introduction of an extensive version of intrastate federalism would give Canada a federal government with a heightened sensitivity to regional/provincial consideration, along with strong provincial governments aggressively representing provincial interests.

In the foreseeable future intrastate federalism will not replace the existing distribution of powers which gives the growth areas of government to the provinces. Intrastate federalism may be a substitute for, or alternative to, interstate federalism when a political system is first conceived, or when the provincial governments are weak and impotent. That is not our

situation.

Major constitutional change on intrastate lines, even if initially designed as a response, as a reflection of an existent regionalism, influences the future evolution of socio-political forces to the detriment of non-regional definitions of problems.⁽³²⁾ Intrastate versions of an appropriate constitutional future tend, to the extent of their permeation of central government institutions, to inhibit national perspectives, country-wide definitions of issues, egalitarianism, and the sense that Canada is more than the sum of its parts. We give an extra nudge, and institutional support to tendencies that are already strong.

An intrastate transformation of central government institutions will set in motion forces that will shape the relative significance of the provincial, linguistic, national, and ethnic identities of our individual and collective existences. We are unavoidably engaged in the process of refashioning who we are, of modifying the complex civic identities that any kind of federalism produces. Rearrangements of the constitution are simultaneously rearrangements of our psyche. An intrastate perspective inevitably tends to collapse the category of Canadian into nothing more than an aggregation of British Columbians, Albertans, Newfoundlanders and others. The significance of such a transformation should not be underestimated.

Even if the introduction of either version of intrastate federalism makes the federal government more sensitive to the governments and/or societies of the provinces, the workability of the political system may not be enhanced. Decisive moves in the direction of centralist intrastate federalism via reform of the Senate, the bureaucracy, the Cabinet, the Commons, and elsewhere, will not reduce the ferocity of intergovernmental competition. To the extent that Ottawa becomes by such institutional adjustments a more effective outlet for regional interests, the result may well be more intense conflict between competing spokes-

men in Ottawa and the provincial capitals with rival claims to be the legitimate defenders of the territorial particularisms they profess to represent. "French power" in Ottawa in the person of Mr. Trudeau and his Quebec colleagues has not produced intergovernmental harmony between Quebec and Ottawa. On the contrary, the fact that both Trudeau and Levesque can claim to speak for Quebec makes them bitter competitors, not allies working in a common cause. There is no single compelling definition of provincial needs or interests in Quebec or elsewhere that requires automatic acceptance.

An enhancement of federal sensitivity to all the small worlds in which we live may be one way of contributing to the survival of Ottawa. It is not however a sufficient condition for intergovernmental harmony, and may be a predisposing condition of greater acrimony, as well as diminishing our capacity to act in terms of whatever we are or hold in common.

A double hesitation

As indicated earlier the basic premises behind intra-state federalism are:

- (1) the provinces are growing in strength and assertiveness;
- (2) the federal government is weakened by its lack of vital contact with the limited identities and territorial particularisms which constitute the contemporary Canadian reality;
- (3) if further decentralization of powers to the provinces is to be avoided the central government must be "federalized."

The links in this chain of reasoning are not unbreakable. The assertion that the federal government is weak, and that its weakness springs from its isolation from the geographical diversities of the country has plausibility, but like all macro explanations is difficult to confirm or disconfirm.

Initially it can be suggested that the weakness of Ottawa, the fact requiring explanation, is much exaggerated. The impression and the reality of irresolute federal leadership

characteristic of the later Diefenbaker years and the Pearson era has been in part, if only intermittently, reversed in the Trudeau era. Trudeau and the federal government did act decisively with broad popular support in the FLQ crisis. Trudeau and the federal Liberals continue to receive strong support in Quebec in spite of their relative rigidity in matters of constitutional reform. Again, the federal government did act resolutely, with apparent popular backing, on prices and incomes policy. Further, Ottawa has recently successfully challenged what it viewed as provincial pretensions before the Supreme Court of Canada in the areas of cablevision and resource royalties. It is also to the point that regional protest parties in English Canada have been on the decline since the mid sixties. Social Credit seems possessed of little federal future outside of Quebec. Finally, it can be stated, albeit impressionistically, that there is strong support in English Canada for an effective central government.

So it is altogether possible that central government weakness and declining legitimacy have been somewhat exaggerated. At a minimum it is evident that Ottawa has strong vested interests attached to its cause. A large cadre of civil servants and other public personnel are found directly or indirectly on the federal payroll. The federal political elite is overwhelmingly committed to a strong central government. Further, in spite of the strong decentralist pressures in the country, and the self-interest of provincial political elites, no provincial government outside of Quebec is interested in the break-up of Canada. Finally, the four Atlantic provinces, while politically weak, have their own reasons for fearing a too great emasculation of Ottawa which might jeopardize the continuation of the massive equalization payments on which their public services depend. Thus, in spite of the relative weakening of its position since the war and post war years the federal government indisputably remains the strongest and most important government in the system.

These continuing indications of central government

authority and strength suggest that the balance of governmental power and support in Canadian federalism is not so overwhelmingly on the provincial side as is often suggested. In fact, it is almost certainly the case that the extent of provincialism, regionalism, and separatism is more likely to be exaggerated than underestimated in the 1970s. The overwhelmingly dominant journalistic and academic views of a battered Ottawa, reeling on the ropes, and requiring major assistance before time runs out are also one sided. These pessimistic assessments pay inadequate attention to the forces of inertia and the reservoir of interest and Canadian sentiment behind Ottawa.

The gap between myth and reality just suggested does not imply a state of bliss in Canadian federalism that has unaccountably gone undetected, but only that the reality assumptions behind intrastate federalism are only plausible, not incontrovertible.

The premises leading to an intrastate solution can also be challenged from a second perspective. The intrastate analysis presupposes a particular definition of the appropriate relation between a constitution and its society. A good constitution should fit society; there is to be harmony; a lack of congruence is a sign of failure. Behind this assumption, that the task of constitution makers is to reflect what is, there lies an accepting permissiveness, a species of democratic sociology which would have given a failing mark to the original Fathers of Confederation for their insensitivity to trying to create a country to be peopled by a new nationality. Their handiwork may now be crumbling, but their creative orientation to their task should not be ignored. The two layer political system they constructed provided separate outlets for our provincial and our national selves, the latter indeed not even existing as the Fathers journeyed to Charlottetown, Quebec, and London. The

constitutional system set in motion in 1867 was not designed as a tight container for the struggling colonial societies, nor as a photograph to capture the present for eternity, but as an expansive instrument for the new nation it was to help create. Thus tension between separate layers of our forefathers' existing provincial and prospective national identity was created, as was tension between the provincial and central governments which respectively represented the colonial societies of the past, and the national society of the future.

Even if our cues provided overwhelming evidence that provincialism, regionalism, and ethnic nationalism were the triumphant trends of our time, which they do not, the task of constitutional reconstruction would still leave us with choices. History is the graveyard of triumphant trends. More important, the act of constitutional choice can be an attempt to deflect our evolution in accordance with what we wish to become. The most striking aspect of the entire constitutional debate in English Canada is the almost total absence of even a modest vision to give a sense of direction to the makers and unmakers of our constitutional arrangements. Intrastate federalism is overwhelmingly presented as a defensive strategy, as a salvage operation to prevent something worse. In limited dosage it may help, in either its centralist or provincial version. As a wholesale strategy it pays inadequate attention to the Canadian dimension of our existence.

The restricted task of this paper has been to attempt a clarification of one influential orientation to our present constitutional dilemma. There are others. From the perspective of the P.Q. an intrastate perspective is essentially an irrelevancy. Indeed the thrust of either intrastate version

is the direct antithesis of the P.Q. goal. The centralist version will be correctly perceived as an attempt to undermine P.Q. support by enhancing the legitimacy of the central government. The provincialist version is unacceptable for it throws the two levels of government check by jowl into a common national arena, and thus is a further illustration of the "two scorpions in a bottle" problem that Lévesque attributes to the existing system. While the other nine provinces will prove more flexible than Quebec it is clear that they will insist on modifications in the division of powers to their advantage. However, that is a subject for another paper, and given the glacial speed of our progress towards a new constitution, there will be ample time to write it.

Footnotes

- 1) See for example First Report of the Ontario Advisory Committee on Confederation, April 1978, p.2; Flora MacDonald, Notes for Remarks to the Canadian Club, mimeo, March 13, 1978, p.2; David Elton, F.C. Engelmann and Peter McCormick, Alternatives: Towards the Development of an Effective Federal System for Canada, amended report, May 1978, pp. 8-9.
- 2) Donald V. Smiley, "The Structural Problem of Canadian Federalism," Canadian Public Administration 14 (Fall 1971). See Donald V. Smiley, "An Outsider's Observations of Federal-Provincial Relations among Consenting Adults," mimeo, prepared for a seminar of the Institute of Public Administration of Canada in Digby, Nova Scotia, October, 1978, p.12, for a justified claim to priority in introducing intrastate thinking to Canada.
- 3) David Jay Bercuson, ed., Canada and the Burden of Unity (Toronto 1977).
- 4) Richard Simeon, "Conflicts and Contradictions: Contemporary Strains in Canadian Federation," Keynote Address, Conference on Social Development in a Pluralist Society, Proceedings The Canadian Council on Social Development, 1978, p.9.
- 5) John Meisel, "The Formulation of Liberal and Conservative Programmes in the 1957 Canadian General Election," Canadian Journal of Economics and Political Science 26 (Nov. 1960).
- 6) Richard Simeon, "Opening Statement to the Special Committee on the Constitution," September 1978, Institute of Intergovernmental Relations, Queen's University, Kingston, Discussion Papers No. 4, p.6.
- 7) Smiley, "Structural Problem," p. 334.
- 8) Donald V. Smiley, "Territorialism and Canadian Political Institutions," Canadian Public Policy III (autumn 1977), p.452.
- 9) H. Ian MacDonald, "Where We Have Been and Where We Are Going," Final Report of Confederation '78, A Colloquium on the first report of the Ontario Advisory Committee on Confederation (June 1978, Toronto), p.41.
- 10) Progressive Conservative Party, "Discussion Paper No. 3: The Constitution and National Unity", mimeo, p.6.
- 11) Elton et al., Alternatives, pp. 4-5.
- 12) "Structural Problem," p.335.
- 13) J.M.S. Careless, "'Limited Identities' in Canada," Canadian Historical Review 50 (March 1969).
- 14) Smiley, indeed, attributes a double failure to Ottawa, "a failure, first, to aggregate and articulate territorially-bounded attitudes and interests and, second, to provide an effective outlet for attitudes

Footnotes (2)

and interests which are not so demarcated." "Territorialism and Canadian Political Institutions," p.451.

- 15) Smiley, "Structural Problem," p. 326.
- 16) "Territorialism and Canadian Political Institutions," p. 456.
- 17) Ibid., p. 454.
- 18) Donald Gow, "Rebuilding Canada's Bureaucracy," mimeo, edited with revisions by Edwin R. Black and Michael J. Prince (1976), chap. IX.
- 19) Government of Canada, The Constitutional Amendment Bill, Text and Explanatory Notes (June 1978).
- 20) "Territorialism and Canadian Political Institutions," p. 454.
- 21) "Notes for a Presentation by the Honourable K. Rafe Mair ... to the Special Committee of the Senate on the Constitution of Canada," mimeo, Sept. 28, 1978, p.23.
- 22) "The Role of Interministerial Conferences in the Decision-Making Process," mimeo, prepared for a seminar of the Institute of Public Administration of Canada in Digby, Nova Scotia, October, 1978, pp. 4-5 and passim.
- 23) "More decentralized Canada to keep Quebec is disputed," Toronto Star, March 24, 1977.
- 24) "Structural Problem," p. 339.
- 25) Fifty-eight of the 118 seats in the House of the Federation would be selected by provincial legislative assemblies to reflect proportionally the political preferences of voters at the previous provincial general election. Thus less than one quarter of the House would be, de facto, appointed by provincial premiers.
- 26) "Opening Statement to the Special Committee," p.6. Peter McCormick finds it "hard to escape the conclusion that the purpose of the House of Federation scheme is to provide regional representation in a manner that completely bypasses the provincial premiers." "The House of Federation - A Critical Review," mimeo, Aug. 19, 1978, p.6.
- 27) Pierre Elliott Trudeau, A Time for Action: Toward the Renewal of the Canadian Federation (Ottawa, 1978), p.16. See also Gordon Robertson, "Remarks to Confederation 1978 Conference," Final Report of Confederation '78, p.56, and Robertson, "Role of Interministerial Conferences," passim.
- 28) McCormick, "The House of Federation," p.17.

Footnotes (3)

- 29) British Columbia's Constitutional Proposals, Paper No. 3, Reform of the Canadian Senate (September 1978): First Report of the (Ontario) Advisory Committee on Confederation; "The Constitution and National Unity," p. 6 - "a small number of delegates to be appointed by Ottawa;" Elton et al., Alternatives, pp. 14-23.
- 30) Letter to the Editor, The Globe and Mail, May 22, 1978.
- 31) Richard Simeon, "Regionalism and Canadian Political Institutions," Queen's Quarterly 82 (Winter 1975), p.510.
- 32) This is not necessarily true of electoral system changes in the direction of proportional representation. The contemporary argument for proportional representation concentrates on its contribution to strengthening Conservative representation in Québec, and Liberal representation on the prairies, to the end of producing a better regional balance in the major parties. Earlier discussion was more concerned with its possible contribution to class politics, viewed as more integrative than regional politics.