

OPEN Federalism

INTERPRETATIONS,
SIGNIFICANCE

Library and Archives Canada Cataloguing in Publication

Open federalism : interpretations, significance.

Includes bibliographical references.

ISBN-13: 978-1-55339-187-6

ISBN-10: 1-55339-187-X

1. Federal government—Canada. 2. Canada—Politics and government—21st century.

I. Queen's University (Kingston, Ont.). Institute of Intergovernmental Relations II. Title.

JL27.O64 2006

320.471

C2006-905478-9

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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

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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.

- 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

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

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.

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 fed-

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.

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.

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

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

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:

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 returned to the fiscal imbalance, which now involved the municipal

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

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

- Meekison, Hamish Telford and Harvey Lazar (Kingston and Montreal: Institute of Intergovernmental Relations and McGill-Queen's University Press), pp. 411-22.
12. Ibid., p. 414.
 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>.
 20. L. Ian Macdonald, "A Conversation with the Prime Minister," *Policy Options* 27, 3 (2006):5-8.

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

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

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.

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

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

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.

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

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

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

1. Stephen Harper, “Harper Announces Conservative Platform for Quebec.” Address to the Quebec City Chamber of Commerce, Quebec, 19 December 2005. At www.conservative.ca/media/20051219-Speech-Harper.pdf; Stephen Harper, “Letter from Conservative Leader Stephen Harper to

the Council of the Federation,” 15 January 2006. At www.conservative.ca/EN/1091/39077.

2. Vincent Marissal, “Il suffisait de presque rien,” *La Presse*, 19 January 2006, p. A8.

Achieving a National Purpose: Putting Equalization Back on Track (Ottawa: Department of Finance, May 2006). At www.eqttf-pfft.ca; Department of Finance, *Budget 2006: Restoring Fiscal Balance in Canada*

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*

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 Gov-

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

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

Canadian usage), and *normative* (what variant of federalism, or particular form

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	shared/overlapping federal and provincial roles, with substantial or pervasive policy coordination achieved through federal leadership, influence,	distinct federal and provincial roles, with strong emphasis on extensive and exclusive provincial powers (social + economic); perhaps	distinct but interlocking federal and provincial roles; substantial coordination both horizontally and vertically in economic and social policy,

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

1. 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 de-

- 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

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 exten-

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 ex-

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

- 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

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

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

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,

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

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

- 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

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

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

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

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

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.

* * * * *

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 com-

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 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 operations in

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,

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

UNESCO conventions or other legal instruments without ensuring that the obligations will be fulfilled by the provinces. As a result, provincial govern-

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 Mon-

12. In fairness, it should be pointed out that in ignoring this element of the