

Constructive and Co-operative Federalism?
A Series of Commentaries on the Council of the Federation

*Institute for
Research on
Public Policy*

*Institut de
recherche
en politiques
publiques*

**The Council of the Federation: Conflict and Complementarity
with Canada's Democratic Reform Agenda**
Roger Gibbins*

Foreword

Canada's Provincial and Territorial Premiers agreed in July 2003 to create a new Council of the Federation to better manage their relations and ultimately to build a more constructive and cooperative relationship with the federal government. The Council's first meeting takes place October 24, 2003 in Quebec hosted by Premier Jean Charest.

This initiative holds some significant promise of establishing a renewed basis for more extensive collaboration among governments in Canada, but many details have yet to be worked out and several important issues arise that merit wider attention.

The Institute of Intergovernmental Relations at Queen's University and the Institute for Research on Public Policy in Montreal are jointly publishing this series of commentaries to encourage wider knowledge and discussion of the proposed Council, and to provoke further thought about the general state of intergovernmental relations in Canada today.

This series is being edited by Douglas Brown at Queen's University in collaboration with France St-Hilaire at the IRPP.

Harvey Lazar
Hugh Segal

The objective of this short paper is to explore the potential impact of a new Council of the Federation (hereafter the Council) on Canada's democratic reform agenda. Given that the Council has yet to be created and the reform agenda itself is embryonic, there is necessarily a good deal of conjecture in the analysis that follows.

Nonetheless, the potential impact merits a careful look before we go too far down the path of embracing the new Council. Movement in this direction may be more attractive if it complements the movement for democratic reform, and less attractive if it will potentially weaken or derail that movement.

Let me begin, then, by sketching in the two sides of this relationship. First, the Council. At the time of writing, it is by no means clear what form the Council will take. For the sake of argument I will assume that the Council:

- ❑ will go ahead, taking on a modest range of functions beyond (but also including) serving as the ongoing secretariat for the Annual Premiers' Conference.
- ❑ will not have a decision-rule beyond unanimous consent, and therefore will not operate as a governance institution.
- ❑ will promote more frequent and formalized First Ministers' Conferences than we have seen under the Jean Chrétien governments.

* Roger Gibbins is President of the Canada West Foundation in Calgary, and former Professor of Political Science, University of Calgary.

- ❑ will be confined initially to the 13 provincial and territorial governments, although it will confront demands for representation from Aboriginal peoples and large urban centres.
- ❑ will slake but not quench the federal government's thirst for unilateral policy initiatives entailing both substantive and financial entanglement in provincial areas of jurisdiction.
- ❑ will face vigorous competition for political voice and influence from a variety of federally-created intergovernmental and consultative mechanisms, with the proposed Health Council playing a particularly significant role.

In short, I am assuming that a Council will be formed, that it will reduce some of the friction within intergovernmental relations, but that its impact on federal governance will be relatively modest. It will be an evolutionary rather than a revolutionary change in Canadian political life.

Now, others may assume a more robust Council, and indeed this may happen over time. However, given the limited constitutional space within which the Council can operate, the great difficulty in constructing a decision-rule other than unanimous consent, and the problems in operating effectively when constrained by the need for unanimous consent, it seems safer to assume that the Council will start small, and that its evolution into something more grandiose will be both slow and uncertain.

Next, what do I mean by the democratic reform agenda? At present there are at least three components to this agenda:

- ❑ The first is House of Commons reform, the need for which has been articulated through decades of academic research and, more recently, by Paul Martin. Reform proposals include strengthened parliamentary committees and some formalized reduction in party discipline; their intent is to empower individual MPs and thereby provide a more effective check on the powers of the cabinet and prime minister.
- ❑ The second is electoral reform. Here interest has been fanned by lobby organizations such

as Fair Vote Canada, and more specifically by the bold electoral reform initiative launched by the Government of British Columbia, one that finds more abstract expression in musings across a wide range of provincial governments and parties.

- ❑ The third is Senate reform, an issue that may be revitalized in western Canada as national party leaders pledge to address western discontent in the run-up to the 2004 general election.

Even when taken together, these three do not constitute a reform agenda that is particularly radical or sweeping. Nonetheless, it does address a growing discontent that Canadians appear to have with the political status quo, and particularly with the increasing concentration of power within the national government. Modest it may be, but it's the best we've got. The question, then, is what impact might the new Council of the Federation have on this agenda?

Potential effects

Perhaps the first point to stress is that a new Council is unlikely to have much *direct* impact on either regional discontent or more general public discontent with the state of democratic governance. Canadians have a limited appetite for intergovernmentalism, and are unlikely to storm the barricades shouting "give me more intergovernmentalism, or give me death!" (Indeed, they are more likely to equate more intergovernmentalism with death.) We can expect, therefore, that the Council will have a low public profile, and will stir little public interest much less excitement. In reaching this conclusion, I have drawn from the public's response to the Social Union Framework Agreement (SUFA), which was designed in part to demonstrate to Canadians that the federal system could be reformed without changing the constitution. It is fair to conclude, however, that SUFA has failed to build a public audience or constituency. While it may be reshaping the nature of intergovernmental relations in important ways (and I stress *may*), SUFA is off the radar screen for any but the most attentive publics.

It would thus be a mistake to see the Council as an alternative to the democratic reform of parliamentary institutions and electoral politics. It

would be a stretch indeed to argue that further inflating the place of intergovernmentalism in Canadian political life will strengthen the bonds between individual Canadians and their elected representatives. However, if the Council is not an alternative, the question is whether it will facilitate or impede the democratic reform agenda. If we assume that a new Council will have little if any public profile and interest, does this mean that it will leave the democratic reform agenda untouched? Here I would argue that some indirect effects may be significant if the Council changes the incentive structures for political elites relative to the democratic reform agenda. To explore this point, let's turn briefly to the specific components of the democratic reform agenda.

House of Commons reform

Former Prime Minister Pierre Trudeau's intemperate description of MPs as a bunch of nobodies once they left the Hill has not been fundamentally challenged in recent decades. In fact, their importance even within the House of Commons has been further eroded by the growing concentration of legislative and executive power in the hands of the prime minister and his office (the PMO), and by the sizable impact of the courts on Canadian public policy. In this context, the emergence of the Council can be seen as a further emasculation of the House. To the degree that the Council emerges as a policy player in its own right, something that remains to be seen, the House will emerge as the loser in the zero-sum game of political influence. Important decisions, or at least those saved from the courts, will move even more to the realm of intergovernmental relations, leaving the House with little to do apart from the formalities of ratification.

Will this threat provoke any defensive response? Here the best guess is that the Council will heighten the interest of MPs in reform of the House, for if they fail to move on a reform agenda both they and the House will slide even further towards political irrelevance. The Council can only be seen as a competitor, and MPs are likely to respond. It is less clear, however, whether the cabinet and prime minister will share this response. Will they also seek to shore up the reputation and role of the House,

seeking to make it an effective counterweight to the growing power of intergovernmentalism? Or will the political executive have enough on its plate dealing with the Council, and therefore lose interest in pursuing the complexities of parliamentary reform? Given that successful parliamentary reform will weaken cabinet and prime ministerial control, it may be seen as a problem by political executives dealing with more coordinated provincial government challenges coming through the Council.

On balance, the impact of the Council of the Federation on House of Commons reform may be a wash. While the proponents of parliamentary reform will have more ammunition for their case, the proponents of the status quo will also be able to argue that it is not appropriate to weaken the federal executive at a time of increased challenge from provincial governments. The tipping point will be established by how the future prime minister weighs the tradeoffs between reforming Parliament, on the one hand, and improving intergovernmental relations, on the other. Undoubtedly the Council itself will do everything possible to tip the balance towards the latter option.

Electoral reform

The supporters of electoral reform are unlikely to see a new Council as an effective alternative to their own agenda. Indeed, the Council is at best irrelevant to those who are trying to strengthen the electoral voice of citizens. Fair Vote Canada, for instance, will not fold its tents and silently steal away once the Council takes hold. But, is there a chance that the successful establishment of the Council could diminish the interest of political elites in electoral reform? Might they conclude that improved intergovernmental relations weakens the case for electoral reform?

One might make this argument if there was any reason to believe that those same elites – federal and provincial governments, MPs and members of provincial legislatures – had any interest in the first place in electoral reform. Apart from the striking exception of the Government of British Columbia, there is little interest to weaken. Here it is also important to stress that virtually all of the action on the electoral reform front is taking

place in the provinces; there is no evidence of any enthusiasm for electoral reform among MPs or for that matter the national parties. The future of the movement for electoral reform will be determined largely by the British Columbia initiative, and this will not be derailed by the Council's creation. It would appear, then, that both the dynamics of and potential for electoral reform will not be significantly affected by the new Council.

Senate reform

Will individuals in western Canada, the current hotbed of the movement for Senate reform, see the new Council as an effective and/or desirable alternative to Senate reform? Here it is first important to note that western Canadians see their provincial premiers as their primary voice in national affairs; when a 2003 Canada West Foundation survey asked 3200 western Canadian respondents "who best speaks for your province in national politics," 40% cited their premier compared to 3% for the prime minister, 24% MPs from the province, and 12% for federal opposition parties (15% felt that no one spoke for their province in national affairs). However, even given this predisposition, it is unlikely that many western Canadians will see greater intergovernmentalism as an effective or appealing alternative to Senate reform. Such reform, after all, is targeted to strengthen the regional voice within Parliament. Thus the Senate reform debate is only loosely connected to steps that might be taken to improve intergovernmental relations.

At the same time, the interest of both the provincial and federal political executives in Senate reform may be weakened by the creation of the Council. Provincial governments may see the Council as the avenue they need to increase their voice in national affairs, and may see a revitalized Senate as both unnecessary and as a potential rival to the Council, which of course it would be. In fact, one might well argue that there is not enough room in Dodge City for both the Council and a revitalized Senate, that at root they represent conflicting models of federal governance. As for the federal executive, the Council itself will do more than enough to make life more difficult for the federal government, and thus there may be little interest in adding to

the difficulty by pursuing Senate reform. Federal officials may fear that with the Council they will be managing with one hand tied behind their back, and with Senate reform both hands would be tied.

Thus while the creation of the Council is unlikely to undercut public enthusiasm for Senate reform, it may well undercut the interest of political elites, a level of interest that has been tepid at best. Here I would suggest that the impact on political elites is by far the most worrying for the proponents of Senate reform.

Conclusion

How, then, do we make sense of the potential impact of the new Council of the Federation on the democratic reform agenda? On balance, the Council is unlikely to seriously erode public interest in democratic reform, although here we should also note that such interest currently stops well short of being incendiary. At the same time, the Council is likely to have greater impact on the incentive structures of political elites. My guess is that it will dampen enthusiasm across the board for Senate reform while providing modest additional impetus to House of Commons reform. If this latter reform does not occur, then the Council will contribute to the further marginalization of MPs and the House. Finally, the Council will be unlikely to have a significant impact on the electoral reform debate, which may be just as well given the exceptionally long odds that the proponents of electoral reform already face.

Do these effects, modest and uncertain as they are, argue against the creation of the Council of the Federation? The simple answer is no. They do suggest, however, that proponents of the democratic reform agenda should assess how the political terrain on which they operate will be affected by the Council. While the overall case for reform is not seriously weakened, arguments for reform must take into effect the likely impact of the Council. Nonetheless, supporters of the democratic reform agenda should not see the Council as a threat. At the margins, if only at the margins, it may even be an asset.