

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

**The End of a Model?
Quebec and the Council of the Federation**
Alain Noël*

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.

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Harvey Lazar
Hugh Segal
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On October 24, 2003, in Quebec City, the premiers of the provinces and territories will start establishing the mandate and the structure of a new intergovernmental institution, the Council of the Federation. The stated objectives of this exercise are ambitious. The proposed Council is indeed understood as the centerpiece of what the premiers have presented in Charlottetown, at their Annual Conference in July 2003, as "a plan to revitalize the Canadian federation and build a new era of constructive and cooperative federalism."

So far, in light of these objectives, the proposed Council appears rather modest an innovation. The model now envisioned is that of a new provincial-territorial co-ordination instrument, that would mandate regular meetings among the Premiers, integrate existing sector-specific councils, provide secretarial and technical support, and prepare the agenda for an annual meeting with the federal prime minister. As such, this Council appears to be little more than a light institutionalization of existing intergovernmental practices. At most, it would be only a first step toward the premiers' idea of a "new era of constructive and cooperative federalism." Much more would need to be done and achieved to open up a "new era," in a context still defined by fiscal imbalance, federal unilateralism, and recurrent intergovernmental conflicts.

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In the end, the fate and the impact of the new Council will depend less on its precise shape and structure than on the decisions and actions of the different governments. In this respect, the numerous changes that have taken place or have started in the last year appear truly remarkable. In Ottawa the prime minister is about to leave and is gradually displaced by Paul Martin, who will undoubtedly form a renewed cabinet and call an election not long afterward. In the opposition, the right is uniting and will have a new party and a new leader by the spring of 2004, while the left also has a new leader. Quebec, Ontario, and Newfoundland and Labrador have new governments, each after many years with the same party in power. Manitoba, New Brunswick, and Nova Scotia have governments that have just been re-elected, albeit with difficulty in the Maritimes. Saskatchewan will have contested elections in the beginning of November.

While it is still early to speculate on the future relationships between these different governments, some conclusions can already be reached about Quebec, always a critical player in intergovernmental relations. Indeed, the new Quebec government has clearly stated that it wanted to assume a new role in the federation, and it has outlined its main orientations in a Liberal Party policy document released in October 2001.¹ This document and the new approach pursued by the Quebec government since its election in April 2003 give priority to co-decision and collaboration in the federation. Apparently innocuous, these priorities break with a deeply rooted policy stance. Indeed, for decades the Quebec government has always favored recognition and autonomy over cooperation and integration. This change in orientation, which is presented by Jean Charest as an intended break with the past, is in itself extremely significant because over time the foundations of Quebec's intergovernmental policies have been very stable and largely non-partisan. If this new orientation is sustained, it could have major impacts on both Quebec and Canadian politics. Many uncertainties remain,

¹ Quebec Liberal Party, *A Project for Quebec: Affirmation, Autonomy and Leadership; Final Report of the Special Committee on the Political and Constitutional Future of Quebec Society*, Montreal, October 2001 (www.plq.org).

however, on the depth and sustainability on this political shift. Is the Charest government truly committed to redefine in this way Quebec's place in the federation? Will the other governments in the federation collaborate and push in the same or in compatible directions? Will Quebec's various social and political actors accept the transformation envisioned by the new Liberal government, and allow it to happen?

A short commentary written as events unfold cannot answer all these questions. They are worth considering carefully, however, to better understand the politics behind the new Council of the Federation. Indeed, the Council was first conceived in the context of Quebec partisan politics, and whether it will live or die (or merely limp along) will depend as well on the political context, in and outside Quebec.

The first part of this commentary probes the depth of this announced shift in priorities. It contrasts the new approach of the Charest government with past Quebec policies in intergovernmental relations and argues that, indeed, the Council proposal breaks in significant ways with long-standing governmental orientations. The second part considers the sustainability of such a shift, in Quebec and in Canada. It suggests that the Charest government is likely to resist pressures that have proven effective in the past, because it is animated by a broader policy agenda, aimed at changing Quebec society. Over time, however, pressures are likely to mount, especially if collaborative federalism fails to bring significant gains on objectives that will remain central to Quebec society, namely recognition and autonomy.

Something Like a Foreign Policy

“[...] le ministre délégué aux Affaires intergouvernementales canadiennes et aux Affaires autochtones me secondera dans ce que nous pourrions appeler notre diplomatie intérieure.

Cette diplomatie repose sur l'évidence.

Le Québec existe pleinement. Il est maître de son destin. Nous avons la responsabilité de notre différence, de l'affirmer, de la promouvoir. Et je l'assumerai pleinement

We will reclaim Quebec's identity as a leader in the Canadian federation.”

Jean Charest, Swearing-in Speech, National Assembly, April 29, 2003.

Following the July 2003 Conference, in Charlottetown, after the premiers had agreed on the principle of a new Council, many observers stressed the role that the Quebec government had played in bringing this proposal to the meeting and in seeing that it was accepted and implemented. Quebec, it was said, was assuming a new role, one of leadership, in the federation. This was precisely the impression that the new Charest government wanted to leave, in and outside Quebec. But how significant was this development? Was Quebec's role so critical in bringing the premiers to a consensus? Was this consensus so meaningful?

As mentioned above, the Council of the Federation envisioned by the Premiers brings, for the time being, only minor institutional changes. Because this is the case, the leadership role of the Quebec government should not be exaggerated. The Charest government did not have a tough selling job in convincing the Premiers to accept a watered-down version of the Council proposed in the Liberal Party's program. In any case, it was not the first time in recent years that the Quebec government took the lead in defining the intergovernmental agenda. Just a year before, in May 2002, Quebec's Minister of Finance, Pauline Marois, convinced her colleagues to ask the Conference Board of Canada to extend to all provinces and territories the study it had prepared in February for Quebec's Commission on Fiscal Imbalance. Then, in July 2002 in Halifax, the premiers all joined the Quebec government in stressing the need to address the fiscal imbalance in the federation.

The key change in 2003, from the standpoint of the Quebec government, had to do not with leadership but with policy orientations. The Council proposal put forward by the Charest government was a major, indeed radical, departure from long-standing Quebec policies. The institutional outcome of this departure may well end up being a modest makeover of intergovernmental relations, but the starting point was not trivial, and it can be understood as a genuine break in Quebec's intergovernmental stance.

For decades, the Quebec government has pursued two basic objectives in intergovernmental relations: recognition and

autonomy. Issues have changed and policies and concepts have varied but, whatever the party in power, the Quebec government has sought a formal recognition of the distinct character of Quebec society and as much autonomy as possible within the Canadian federation. Constitutional debates, conflicts over the federal "spending power," disagreements on "national" standards, or disputes about fiscal imbalance were all driven by these two imperatives. These priorities did not prevent the Quebec government from making genuine efforts to improve interprovincial cooperation.² At times, the Quebec government even considered the possibility of closer federal-provincial collaboration, but movements in this direction were always subordinate to or conditional upon making progress on recognition or autonomy. The minimalist conditions that were put forward by the Bourassa government in 1986 to accept the 1982 Constitution, for instance, can all be read in light of these two objectives. Likewise, the Quebec government joined the provincial-territorial consensus on the social union in Saskatoon in 1998 only when the provinces accepted to integrate in their demands a provision allowing a province the right to opt out with compensation of a federal program. The general idea was to make progress on recognition and autonomy without preventing other governments from increasing collaboration if they wished.

In the summer of 2003, just a few months after it came to power, the new Quebec government put collaboration first, and it did not associate it with any conditions. The new Council of the Federation was indeed the cornerstone of Jean Charest's agenda in Charlottetown, and was put forward as a stand-alone project that was intrinsically valuable. In his contribution to this series of commentaries, André Burelle — himself a strong proponent of enhanced intergovernmental collaboration and co-decision — expresses his surprise at the approach adopted by Jean Charest. In proposing further collaboration without demanding anything in

² Claude Ryan, "Le Québec et la concertation inter-provinciale," in *Constructive and Co-operative Federalism? A Series of Commentaries on the Council of the Federation*, Kingston and Montreal, Institute of Intergovernmental Relations and Institute for Research on Public Policy, 2003.

terms of recognition or autonomy, notes Burelle, Jean Charest acted with imprudence, and even “temerity.”³ Burelle contrasts Charest’s approach to the Liberal Party report of October 2001, which established a series of other aims, more in line with traditional Quebec demands, including progress on formal recognition, on autonomy, and on fiscal imbalance. It should be noted, however, that this report did not link the different objectives, and did not make co-decision one dimension of a broader compromise, as Burelle had suggested in his 1995 book, *Le mal canadien*.⁴ On the contrary, the report states that the Liberal party’s “main concern is to improve intergovernmental relations in Canada, to streamline them and make them more effective.” To this end, new alliances with other governments and non-constitutional “improvements to Canadian federalism” are put forward as short-term priorities, whereas constitutional and more demanding objectives are left for an ill-defined “longer term.”⁵ In this light, Jean Charest did not act with “temerity” in Charlottetown. He simply applied his party’s new platform, a platform that is clearly at odds with past policies (and with Burelle’s preferences) in leaving aside, for an indeterminate future, Quebec’s traditional demands for recognition and autonomy. The primary aim of the Quebec government is no longer to promote greater recognition and autonomy for Quebec society; the “main concern” now “is to improve intergovernmental relations in Canada.” Previous goals remain on the agenda but only as a wish list for the “longer term,” or as a sort of mantra that the current leaders of the Liberal party have no interest in discarding too explicitly.

Jean Charest rightly noted in his April 29 swearing-in speech, quoted above, that federal-provincial “diplomacy” gives rise in Quebec to something akin to a foreign policy. He then went on to state that the key to this “foreign policy”

³ André Burelle, “Conseil de la fédération: du réflexe de défense à l’affirmation partenariale,” in *Constructive and Co-operative Federalism? A Series of Commentaries on the Council of the Federation*, Kingston and Montreal, Institute of Intergovernmental Relations and Institute for Research on Public Policy, 2003, p. 6.

⁴ André Burelle, *Le mal canadien: essai de diagnostic et esquisse de thérapie*, Montréal, Fides, 1995.

⁵ Quebec Liberal Party, *A Project for Quebec*, p. 13.

was the affirmation and promotion of difference and the necessity to “reclaim Quebec’s identity as a leader in the Canadian federation.” A country’s core foreign policy orientations, however, rarely change, and claiming or reclaiming leadership in the federation has never been a central Quebec priority.

When the Canadian federation was formed in 1867, the French Canadians of Lower Canada saw the new arrangement as a way to preserve the autonomy of a distinct nation in North America.⁶ For decades afterward, Quebec governments emphasized provincial autonomy, in a more or less coherent and ambitious fashion.⁷ Defined and shaped at the time by the conservative idea of “*survivance*,” by limited resources, and by a general distrust of state intervention, demands for autonomy were mostly defensive and prone to contradictions. With the Quiet Revolution in the early 1960s, this quest for autonomy was renewed and transformed. Thereafter, the Quebec government sought not only to protect its jurisdiction, but also to obtain some form of recognition or special status, as well as more powers and autonomy than ever before. From then on, federal policies and reform proposals were evaluated not so much for their possible infringements upon provincial jurisdictions, but rather as helpful or not to increase Quebec’s powers and autonomy.

All along, but especially in the 1960s and among Quebec federalists, some ambivalence remained with respect to these more ambitious objectives. Premier Jean Lesage, for instance, started his term in 1960 more or less like Jean Charest, with a professed interest in interdependence and collaborative federalism, and he promoted regular premiers’ conferences and, as well, the creation of a permanent council of the provinces. In 1960, he discussed the matter informally with Ontario conservative premier Leslie Frost, who responded, almost exactly as did Dalton McGuinty when he met Jean Charest in Toronto on October 20, 2003: “All right, Jean,

⁶ Arthur I. Silver, *The French-Canadian Idea of Confederation*, Second edition, Toronto, University of Toronto Press, 1997, pp. 218-19.

⁷ Alain-G. Gagnon and Mary Beth Montcalm, *Quebec Beyond the Quiet Revolution*, Scarborough, Nelson, 1990, pp. 135-46.

as long as we restrict our meetings to provincial matters...[but] there must not be any ganging up on Ottawa.”⁸ Soon, however, Lesage came to emphasize provincial autonomy, not in the name of “*survivance*,” which he considered no longer an issue, but as a means toward the “affirmation of our people” and the transformation of Quebec society.⁹ Increasingly, Lesage came to focus on recognition and autonomy, leaving collaborative federalism as a side concern. Subsequent Quebec premiers maintained this point of view.

Like Jean Lesage, Jean Charest was first a federal politician, and he brought into Quebec politics some of his former policy orientations. His party’s stance on co-decision, for instance, is very much like the position he put forward when he was leader of the Progressive-Conservative Party. Could Charest and his government change, with time, along the lines followed by Jean Lesage and the Liberal party in the early 1960s? Perhaps, but the context is quite different. Forty years later, the Quebec government is no longer associated with the same social forces, nor is it motivated by the same overall policy objectives.

Is Collaborative Federalism Sustainable?

“Québec is at a decisive crossroads. We have reached the end of the usefulness of a model created 40 years ago by a number of great Quebecers, a model that enabled us to move far ahead. It is now time to review that model to ensure that we can continue to go forward.”

Jean Charest, Inaugural Speech at the Opening of the 37th Legislature of the National Assembly, June 4, 2003.

⁸ Leslie Frost, quoted in Dale C. Thomson, *Jean Lesage and the Quiet Revolution*, Toronto, Macmillan, 1984, p. 335. Dalton McGuinty said that he would be willing to participate as long as the proposed Council of the Federation did not “become some kind of a formalized process to whine and complain” (McGuinty, quoted in Canadian Press, “McGuinty Offers Charest Conditional Support for New Provincial Council,” *The Globe and Mail*, October 19, 2003). Following a meeting in Toronto, Jean Charest agreed with him that the Council “must not be allowed to become a forum that serves only as a place where provinces can vent their complaints about the federal government” (Charest, quoted in Richard Mackie, “Charest, McGuinty Focus on Co-operation,” *The Globe and Mail*, October 21, 2003).

⁹ Jean Lesage, quoted in Gérard Boismenu, “La pensée constitutionnelle de Jean Lesage,” in Robert Comeau (ed.), *Jean Lesage et l’éveil d’une nation*, Sillery, Presses de l’Université du Québec, 1989, p. 87.

In October 1964, the federal justice minister, Guy Favreau, and his provincial colleagues agreed on an amending formula that could have allowed the patriation of the Canadian constitution. The “Fulton-Favreau” formula required, in particular, the consent of all provinces before any change could be made to the federal division of powers, a solution that effectively granted a veto to the Quebec government. At first, Jean Lesage agreed with this proposition and he actively promoted its adoption. In Quebec, however, criticism mounted, many intellectuals and political actors believing that such a rigid amending formula would make it impossible to reach reforms that would grant more powers and an explicit constitutional recognition to Quebec. In January 1966, Premier Lesage announced that his government could no longer support the project. A similar scenario unfolded, more rapidly this time, when Premier Robert Bourassa first accepted a more flexible amending formula in June 1971 in Victoria, only to reject it five days later, after having faced strong opposition from a broad range of voices within Quebec.¹⁰ Again, the idea was to avoid jeopardizing a new constitutional arrangement that would grant more autonomy to Quebec. “For me,” wrote Robert Bourassa years later, “what was important was that patriation be accompanied by a genuine restructuring of powers, particularly in the area of social policies.”¹¹

Like Jean Lesage, Robert Bourassa was ambivalent but, in the end, he put recognition and autonomy first. Jean Charest could follow a similar evolution and find that the single pursuit of co-decision and collaboration is not a sustainable policy for the Quebec government. The situation, however, is now very different. For one thing, the informal coalition of nationalists that pressed Lesage and Bourassa in the name of autonomy no longer exists. Many Quebec federalists have become convinced that major changes are not feasible within the Canadian federation and should not be sought. Many nationalists also share these views, even though

¹⁰ Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?*, Second edition, Toronto, University of Toronto Press, 1993, pp. 72-74 and 88-91.

¹¹ My translation. Robert Bourassa, *Gouverner le Québec*, Montréal, Fides, 1995, p. 136.

they draw different conclusions from them. In any case, Jean Charest would not be swayed by such a coalition. His aim is precisely to confront such social pressures, to break with the social and political model inherited from the Quiet Revolution, and to work toward “the reinvention of our society.”¹²

Jean Charest and his ministers have repeatedly made clear that they consider Quebec’s social and political model to be outdated and inefficient, the product of another era, when there were no computers, no globalization, and no population aging.¹³ They consider that they have a mandate to change this model, and need not be refrained by “objections from interest groups that benefit from the status quo.”¹⁴ And the objective is not to develop the Quebec state and make its intervention more distinctive, but rather to trim it down to size, to focus on essential governmental missions, and work so that for business “the rules of the game in Quebec are the same as elsewhere in North America.”¹⁵

Quebec’s new approach in favour of co-decision is compatible with this conservative project, insofar as it affirms in a different way that increasing the powers, capacities and distinctiveness of the Quebec state is no longer a priority. The policy shift of the Quebec government is thus less exposed to pressures such as those experienced by Lesage or Bourassa. In this sense, it could prove sustainable.

The Liberal project, however, also faces important difficulties. First, it is far from obvious that Quebec’s new found enthusiasm for collaborative federalism is shared across Canada. Other premiers have received politely the proposal for a Council of the Federation, but most

seem unlikely to go much beyond a light form of secretariat. Second, in due course the Quebec government’s new approach will have to bear some fruit, and prove successful in at least a few concrete ways. If Quebecers are to leave recognition and autonomy aside, for the longer term, they would need to see some clear advantages to collaboration. The very tangible and immediate problem of fiscal imbalance, in particular, should be addressed, a tall order judging by the reactions that have come from Ottawa — Paul Martin included — thus far. Third, a major social and political debate is now beginning in Quebec, on the fate of a Quebec model that is not as old and rusty as Jean Charest claims. That model continues to be popular and is sustained by a vast array of social forces and institutions. This debate will be a major test for the Charest government. Eventually, it will also bring forward, in one way or another, the perennial issues of recognition and autonomy. These issues remain deeply anchored. They evoke a long quest, which may have left Quebecers skeptical or wary but is still very much in tune with their collective understanding of their place in the Canadian federation.

¹² Jean Charest, Inaugural Speech at the Opening of the 37th Legislature of the National Assembly, Quebec, June 4, 2003 (www.premier.gouv.qc.ca).

¹³ Jean Charest, Allocution du Premier ministre du Québec à l’occasion de l’ouverture du débat sur les crédits 2003-2004, Québec, National Assembly, July 2, 2003 (www.premier.gouv.qc.ca).

¹⁴ Jean Charest, Open Letter to Quebecers, October 14, 2003 (www.premier.gouv.qc.ca).

¹⁵ Jean Charest, Speech by the Premier of Quebec to the Foreign Policy Association, New York, October 2, 2003 (www.premier.gouv.qc.ca).