

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

**Expanding the Partnership:
The Proposed Council of the Federation and the
Challenge of Glocalization**

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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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Intergovernmental Relations.

Introduction

There is an old maxim that army generals are frequently well-prepared for the *last* war, but ill-prepared for the *next* war. For the purposes of this paper, I shall play devil's advocate and suggest that the council of the federation proposed by the provincial premiers is intended to resolve the sort of federal-provincial conflicts we have witnessed over the past few decades, but it may not be adequately designed to govern the federation in the decades to come. Peering into the future is by definition a speculative exercise, but it is important to contemplate future governance issues, if only to dismiss them, before a new institution is launched to govern the federation.

James Rosenau, one of the most prolific scholars of international relations, has suggested that politics is no longer happening exclusively in discrete spheres of governance B international and domestic. Rather, he argues that there are intense political contests happening in the space between these spheres of governance. In short, Rosenau suggests that politics is happening increasingly *along the domestic-foreign frontier*.¹ Rosenau's frontier metaphor can be extended to capture the emerging dynamics within the Canadian federation.

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¹ James Rosenau, *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World* (Cambridge: Cambridge University Press, 1997).

The simultaneous processes of globalization and localization B what Tom Courchene has termed *glocalization* B reveal that considerable political activity is happening along the multiple frontiers between the local, provincial, federal, Aboriginal and international spheres of governance.²

The emergence of frontier politics poses a serious challenge to our federal political system. Federalism is premised on the *compartmentalization* of politics. Frontier politics is characterized by social, political and economic *interdependence*. The various crises that confronted Canada in the summer of 2003 B SARS, mad-cow, West Nile virus, the electricity blackout in Ontario B all illustrate that contemporary political problems spill over multiple jurisdictional boundaries, and require for resolution the collaborative efforts of local, provincial, federal and international agencies. The processes of glocalization suggest that the Canadian federation is no longer just a partnership of the federal government and the provinces; local governments and Aboriginal governments are also quickly emerging as important partners in the governance of the federation.

The council of the federation proposed by the Quebec Liberal Party is based squarely on the old federal image of Canada as a partnership of the provinces and the federal government, and the council advanced by the premiers at their annual meeting in July 2003 is merely a partnership of the provinces and territories. If the council is going to be an effective institution, it will surely have to include the federal government, and if the processes of glocalization are as powerful as they appear, it may be necessary to incorporate local and Aboriginal governments as well. The creation of a governing council based on an expanded partnership would undoubtedly be challenging, but excluding the emerging partners of the federation may be even more problematic.

²Thomas Courchene, "Glocalization: The Regional/International Interface," *Canadian Journal of Regional Science* 18:1 (Spring 1995).

The Twin Processes of Globalization and Localization

International relations scholars are fond of saying that the international state system was created with the Treaty of Westphalia in 1648. Political realists argue that the Westphalian state system is characterized by anarchy, which means that there is no authority above states to govern their behaviour, as opposed to chaos and disorder. Classical realists, such as Hedley Bull, suggest that there is in fact a set of rules that provides a measure of governance in the international system without government.³ On the other hand, neo-realists, such as Kenneth Waltz, believe that the structure of the international system is governed solely by the interests and power of states and not by mutually accepted rules.⁴ Regardless, international realists, both old and new, are of the view that the international system of sovereign states has not fundamentally changed over the centuries.

In the 1970s, liberal internationalists rejected the realist assumption that states were autonomous actors in the international system, and began theorizing about international interdependence.⁵ After the fall of the Berlin Wall, many scholars moved beyond theories of interdependence and speculated that globalization would spell an end to the state and even the obsolescence of war.⁶ We might call this the post-Westphalian camp.

Both the neo-realist and the post-Westphalian paradigms seem over-stated. On the one hand, there is more cooperation in the world than can be

³ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977).

⁴ Kenneth Waltz, *Theory of International Politics* (New York: Random House, 1979).

⁵ Robert Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown and Company, 1977).

⁶ Susan Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (Cambridge: Cambridge University Press, 1996); John Mueller, *Retreat from Doomsday: The Obsolescence of Major War* (New York: Basic Books, 1989).

explained in neo-realist terms, and on the other hand, states are not disappearing as rapidly as the post-Westphalians would lead us to believe. Mark Zacher has suggested that the story of globalization lies somewhere between the neo-realist and post-Westphalian paradigms. Zacher suggests that the pillars of the Westphalian Temple are decaying, but that states are still important actors in world affairs. Zacher argues that the present international transformation...involves the *enmeshment* of states in a network of explicit and implicit international regimes and interdependencies that are increasingly constraining their autonomy.⁷

While the processes of globalization have been eroding the external frontier of the state, there has been an equally powerful trend of localization within the state. Almost two-thirds of the Canadian population now lives in one of the country's census metropolitan areas, up from about 50 percent thirty years ago. And, in total, almost 80 percent of the Canadian population lives in urban areas. Some people have suggested that in the near-term future, cities, not nations, will become the principal identity for most people in the world.⁸

For Rosenau, the simultaneous processes of globalization and localization reveal a world in motion, an expanding and contracting blur of changing orientations, organizations, institutions, and patterns that transform the ways in which people conduct their affairs.⁹ Globalization presents enormous challenges in federal political systems. In short, contemporary political problems do not fit neatly into distinct jurisdictional boundaries, if they ever did, and the governments of Canada are increasingly enmeshed in a complex network of relationships.

⁷ Mark Zacher, 'The Decaying Pillars of the Westphalian Temple: Implications for International Order and Governance,' in James Rosenau and Ernst-Otto Czempiel (eds.), *Governance without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992), p.64.

⁸ Quoted in Rosenau, *Along the Domestic-Foreign Frontier*, p.163.

⁹ Rosenau, *Along the Domestic-Foreign Frontier*, p.85-6.

From Federalism to Multicentric Governance

The assumption of federalism, at least in the Anglo-American federations, is that the responsibilities of governance should be neatly divided between two orders of government. Kenneth Wheare famously defined the federal principle as 'the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.'¹⁰ This definition is sometimes referred to as classical or dual federalism. Dual federalism allows distinct communities to live independently from one another and preserve their cultural traditions while enjoying the benefits of living in a larger political union. While the Fathers of Confederation did not endorse the theory of dual federalism, the Judicial Committee of the Privy Council consistently interpreted the Canadian constitution in accordance with the principles of dual federalism in the first seventy-five years after confederation.

Dual federalism calls for a sharp demarcation between the international and domestic frontier. In this scenario, the federal government is responsible for dealings with governments and agencies external to Canada, while the provinces are solely responsible for local administration. In some respects, the federal-provincial frontier is still sharply demarcated. It is still widely accepted that the federal government engages international actors, while local governments are creatures of the provinces. The 'merger mania' that has swept through some provinces demonstrates that local governments are still at the mercy of provincial governments.¹¹ The federal government also demonstrated its desire to maintain its exclusive role in international affairs when it excluded Ontario from the joint Canada-U.S. inquiry concerning the electricity blackout in the summer of 2003.

While elements of dual federalism can still be witnessed in Canada, the practice of dual federalism

¹⁰ K. C. Wheare, *Federal Government*, 4th Edition (Oxford: Oxford University Press, 1963), p.10.

¹¹ Andrew Sancton, *Merger Mania: The Assault on Local Government* (Montreal: City of Westmount and McGill-Queen's University Press, 2000).

was seriously challenged by the Great Depression and the post-war construction of the welfare state. To make a long story short, the federal-provincial frontier expanded considerably in the period from the 1930s to the 1960s. Instead of a sharp line demarcating the two spheres of governance, considerable activity was happening in the space between the two orders of government, with few rules and modalities to regulate it. There were benefits and drawbacks to this process of federal-provincial enmeshment. On one hand, a reasonably comprehensive welfare state was created that might not otherwise exist. On the other hand, Canada has endured frosty federal-provincial relations, including a serious unity crisis with Quebec.

The council of the federation was proposed by the Quebec Liberal Party (QLP) to maintain the benefits of collaboration but ease federal-provincial tensions. According to the QLP, the council would be the focal point for the continuous dialogue and cooperation between the provinces and the federal government that would make it possible to redefine our economic and social relations, and develop them so that we may move towards a new Canadian vision founded on joint decision making.¹² In addition, the QLP proposed that the council be supported by a general secretariat, a secretariat for economic union and internal trade, a social union secretariat, and an international relations secretariat. At their annual conference in July 2003, the premiers agreed only to establish a Secretariat for Information and Cooperation on Fiscal Imbalance and to subsume the Premiers=Council on Canadian Health Awareness under the mandate of the council. While the QLP clearly envisioned a partnership of the federal, provincial and territorial governments, for the meantime the premiers only accepted a council of provincial and territorial governments.

It may be the case though that as the federal government and provinces have become locked in their jurisdictional and fiscal conflicts, the world has passed them by. The processes of glocalization are breaking down the remaining jurisdictional

frontiers in the federation. Terrorism and transnational crime, for example, demand that all orders of government work collaboratively. International terrorist and criminal organizations work assiduously to circumvent international borders and regulations. Local police have to work cooperatively with other forces within the province and the provincial attorney-general=s office, the RCMP and the Department of Foreign Affairs, as well as foreign state departments and police forces. The creation of the Department of Homeland Security in the United States and the implementation of the National Security Strategy have revealed as well the domestic intergovernmental complexities of fighting the global war on terrorism.

The shifting nature of the global economy also has profound local impacts. For example, the global economics of agriculture is straining many farming communities across the country. This is not just an economic problem. Economic hardship strains marriages, which burdens local social services; it affects the behaviour of children in school; it reinforces rural-urban migration, which erodes the social capacity of cities, while leaving rural localities languishing in anomie. The softwood lumber dispute with the United States has similar local repercussions, as does the collapse of the Atlantic fishing industry. Free trade, immigration, the Kyoto Environmental Protocol and other international treaties ultimately have the greatest impact on local communities. Who is responsible for the economic and social consequences of these global trends? Are local governments alone responsible for picking up the pieces? Or should the different orders of government work collaboratively to ameliorate the social and economic dislocation of globalization at the local level? While the provinces have frequently sought to be consulted by the federal government on immigration and international treaties, local governments arguably have an equal or greater claim to be consulted.

Aboriginal communities are probably more vulnerable to the forces of glocalization, but they are perhaps overlooked even more than local governments. Considerable attention has been devoted to the federal-Aboriginal relationship, and secondarily to the provincial-Aboriginal relationship, while the local-Aboriginal relationship is frequently neglected. All Aboriginal communities, however,

¹² Quebec Liberal Party, *A Project for Quebec: Affirmation, Autonomy and Leadership: Final Report* (October 2001).

live in reasonably close proximity to non-Aboriginal local communities. Conflicts over fishing rights in Atlantic Canada and along the Fraser River in British Columbia B let alone Oka and Gustafson Lake B demonstrate that the local-Aboriginal relationship is a critical link in the governance of the federation and needs to be incorporated in the country=s governing institutions.

Glocalization has blurred the jurisdictional boundaries between different spheres of governance in the federation. Modern politics has shifted in large measure from happening within neat jurisdictional boundaries to the expanding space of multiple jurisdictional frontiers. The various orders of government within the federation B local, provincial, federal and Aboriginal B are thus under pressure to cooperate and coordinate their responses to global challenges, often in conjunction with foreign governments and international organizations.

The vertical model of dual federalism, in which the federal government assumes responsibility for international affairs and the provinces look after local affairs, thus no longer seems tenable. We need to conceptualize a new, non-hierarchical model of governance that recognizes the multiple jurisdictional interdependencies at play in the federation, incorporates the inter-connectivity of issues, and builds modalities for intergovernmental collaboration among all the partners in the federation. In other words, we need to shift from our old conceptions of federalism to a broader

model of *multicentric* governance.¹³ So far, the

¹³ I have adopted the term *multicentric governance* in preference to the more common term *multilevel governance*. While the governments in a political union will surely have different capacities, and thus produce a variety of asymmetrical relations, the term multicentric governance supports a normative preference for *non-hierarchical governance*, whereas the term multilevel governance implies that the governments are and should be organized

model only incorporates governments, but there are many other sorts of organizations that provide governance in our society. While business/labour, interest groups, non-governmental organizations, and the non-profit sector have always existed, in this era of new public management these organizations have assumed a greater governance role in our society. In short, all orders of government in Canada have transferred, others might say abdicated, responsibility for some activities to non-government sectors. The model must also allow for the meaningful participation of citizens.

If a council of the federation had been established by the federal and provincial governments thirty years ago, it would likely be easier to incorporate local and Aboriginal governments at this time. But a council of the federation was not created when it was most needed, and now the governments of Canada are faced with the challenge of creating an infinitely more complex governing institution. While it would be easier for the federal government and the provinces to ignore the claims of local and Aboriginal governments, the realities of glocalization may not afford them that luxury.

The Challenges of Multicentric Governance

The governments of Canada are now tightly enmeshed in a complex multicentric network of intergovernmental relations. It would thus seem that the council of the federation needs to be based on the idea of multicentric governance rather than on the old federalism paradigm. The prospect of a multicentric governing council raises many challenging questions. How will the various orders of government be represented on the council? How can decisions be made effectively with an expanded partnership? How will the council ensure democratic accountability? In short, can the council really accommodate all the governing partners in the federation?

Expanding the council of the federation to include local and Aboriginal governments raises the thorny issue of representation. Assuming that the

hierarchically.

council of the federation could not accommodate representatives from each of the hundreds of municipal and band councils across the country, who would represent municipal and Aboriginal governments? If local and Aboriginal governments cannot represent themselves, what mandate would their emissaries have to negotiate with the other governments? Or would their role be purely consultative?

Even if the roles of local and Aboriginal government representatives were purely consultative, their participation would still be useful. Through consultation with local and Aboriginal representatives, the federal and provincial governments might advance policy prescriptions that better address local and Aboriginal concerns and thus stand a better chance of success when implemented. Local and Aboriginal governments therefore need to be formally incorporated in the governing council, if not at the bargaining table. At the very least, it would seem appropriate for the council of the federation to establish a secretariat for local and Aboriginal relations.

While it seems necessary to expand the partnership and incorporate local and Aboriginal governments in the council of the federation, it may not in fact be necessary to collaborate on all issues. In some areas, such as primary education or the Canadian Armed Forces, the governments of Canada govern adequately with little or no collaboration. In these instances, the water-tight compartmentalization of dual federalism appears to be serving Canada well (notwithstanding the depleted capacity of the Canadian Armed Forces).

When is collaboration necessary? With the sheer volume and complexity of modern governance, the goal should be no more collaboration than necessary. The question must be, do we need to collaborate? rather than, should we collaborate? At the very least, it would seem necessary to collaborate when it is not possible for one order of government alone to accomplish a policy objective. The more difficult issue is to determine when the spillover effects of a policy decision of one government affect the well-being of other jurisdictions, and as we have observed spillover effects appear to be multiplying exponentially under the steady pressure of glocalization.

The spillover problem leads to another challenge associated with multicentric collaboration: how is jurisdictional autonomy preserved? While maintaining jurisdictional autonomy is undoubtedly more challenging in the era of glocalization, it is essential to Quebec for the preservation of its cultural traditions. Some other provinces may share Quebec's concerns as well, and there is reason to believe that Aboriginal governments will view jurisdictional autonomy as fundamental. While there are no easy answers to this question, the first step is to accept the principle of jurisdictional autonomy as a governing principle. It should be noted though that jurisdictional autonomy will minimize duplication of governmental effort, and should thus be cheaper and more efficient.

Money is crucial for jurisdictional autonomy. If an order of government lacks the fiscal resources to implement collaborative decisions, it becomes dependent on other orders of government for financing, and is thus almost always obliged to accept the terms and conditions of the financial donor. Federal-provincial fiscal relations are already immensely complex, and one can only imagine that future fiscal arrangements with local and Aboriginal governments will exponentially increase the complexity of intergovernmental fiscal relations in Canada. All the more reason why local and Aboriginal governments should be included in a council of the federation.

The key to multicentric government is *collaborative decision-making*. Collaborative decision-making is made necessary by the interconnectivity of contemporary political issues. But our experience in Canada suggests that collaborative decisions are difficult to reach even when we are dealing with just two orders of government – federal and provincial. If more spheres of government are added to the decision-making process, it is likely to become more difficult to reach political decisions. Fritz Scharpf, in his analysis of the politics in Germany and the European Union, refers to this dilemma as the *joint-decision trap*. What are the remedies for the joint-decision trap?

One solution is to centralize power and implement decisions through a chain of command. This was how empires were governed. Alternatively, the idea of subsidiarity has been

proposed as a means of escaping the joint-decision trap. While subsidiarity is an attractive idea in theory, it is more problematic to operationalize in practice.

All too often subsidiarity becomes a fancy justification for a larger government to offload responsibilities to a smaller government, for the benefit of the former and to the detriment of the latter. Canadians are not likely to accept either of these solutions.

Scharpf looks for answers in decision-making theory. He identifies three types of decision-making: confrontational, bargaining, and problem-solving. Scharpf dismisses the confrontational approach (e.g. the threat of separation) as pathological. He thus focuses on the bargaining and problem-solving models. He suggests that the bargaining model is premised upon the assumption that participants will pursue their individual self-interest, while a problem solving in its pure form...is premised on the existence of a common utility function and the irrelevance of individual self-interest for the decision at hand. In terms of collective decision-making, the problem-solving model is preferable, but as Scharpf himself acknowledges the preconditions of problem-solving are the orientation towards common goals, values, and norms are difficult to create.¹⁴ For the council to operate as a governing partnership based on the problem-solving model, the members of the council need to accept that they are accountable to the people of Canada and not just the voters of their jurisdiction.

Accountability has proven to be a major problem in Canadian intergovernmental relations over the past sixty years. To date, intergovernmental relations have been exclusively an executive affair. Indeed, it is now often said that Canada is governed by *executive* federalism, which typically excludes the people and sidelines legislatures. In this fashion, executive federalism creates a democratic deficit. Canadians enjoy democracy at the local, provincial and federal levels. The problem of executive federalism is thus not so much about democracy *within* each of these orders

of government, but *between* these orders of government. In other words, the challenge of democratic accountability becomes an issue along the multiple frontiers of governance. The council of the federation, as proposed by the Quebec Liberal Party and as advanced by the premiers, is premised explicitly on the executive model. It would thus seem that the proposed council of the federation is destined to deepen the democratic deficit, unless specific measures are taken to remedy it. The challenge of democratic accountability would be even greater with a multicentric governing council.

For fifty years, Canadians endured the democratic deficit associated with executive federalism, but with the Meech Lake and Charlottetown accords Canadians indicated that they would no longer tolerate elite accommodation, at least in relation to mega-constitutional reform. Matthew Mendelsohn has thus suggested Canada needs to move towards a process of *public brokerage* that strives not for elite accommodation, but for the accommodation of mass publics, that is, the creation of processes, spaces and institutions where members of the public can engage with elected officials and senior public servants in the forms of deliberation and bargaining that have traditionally been the purview of elites.¹⁵ Mendelsohn's notion of public brokerage may be viewed as a call for citizen engagement in intergovernmental relations.

The governments of Canada have made a few tepid attempts to engage citizens in matters of public policy, most notably in the process leading up to the Charlottetown Accord and Lloyd Axworthy's foreign policy summits. While these sorts of initiative are welcome, they are also problematic in some respects. One problem with these initiatives for citizen engagement is that they *increase* the demands placed on the citizen. With the steadily declining voter participation rates in Canada, it is not clear that the average citizen is willing to expend greater energy to engage the political process. Still it is possible that if more

¹⁴ Fritz Scharpf, 'The Joint-Decision Trap: Lessons From German Federalism and European Integration,' *Public Administration*, 66 (Autumn, 1988); p.260 and p.265.

¹⁵ Matthew Mendelsohn, 'Public Brokerage: Constitutional Reform and the Accommodation of Mass Publics,' *Canadian Journal of Political Science* 33:2 (June 2000), p.246.

rewarding avenues of participation were offered, citizens may well re-engage with the political process. This is the old >field of dreams= thesis: build it and they shall come. This may be true, but it is perhaps more likely that the new opportunities would be exploited by a few special interest groups.

Whether by design or default, the attempts to expand citizen engagement have been, to date, highly elitist in nature.

Does this mean that nothing can be done to democratize intergovernmental relations in Canada? Absolutely not. Legislatures, for example, could become more involved in intergovernmental relations, simply by creating standing committees for intergovernmental relations. The council of the federation could also accept submissions directly from the public and other groups. If, in fact, the council cannot provide direct representation for all of the local and Aboriginal governments in Canada, it should, as a matter of course, accept submissions from local and Aboriginal governments that might be directly affected by decisions of the council. Additionally, the first ministers could also hold an annual summit with local and Aboriginal governments.

Intergovernmental relations, furthermore, could be considerably more *transparent* than they have been in the past. Intergovernmental meetings in Canada have normally been a closed door affair. It is generally believed that real negotiations cannot be conducted in public, but perhaps that logic is flawed. When political leaders meet privately they may feel more free to defend narrow sectional interests and argue more vociferously with their counterparts. Canadians have indicated that they are tired of intergovernmental bickering. Collaboration frequently entails disagreement and a frank exchange of views, but if political negotiations took place in the open, political leaders might feel compelled to appear more cooperative and Canadians might see their politicians working to resolve national problems. In short, open sessions might induce the first ministers to shift away from the classic political bargaining mode of one-upmanship to the more productive problem-solving mode of decision-making, as outlined by Scharpf.

Conclusion

For more than half a century the governments of Canada have wrestled with the problem of intergovernmental relations. The council of the federation has been proposed by the new government of Quebec to facilitate better federal-provincial collaboration. As accepted by the premiers, the council is simply a partnership of the provinces. The federal government will presumably be included in due course, but with the processes of glocalization underway Canada may have moved beyond federalism to the brave new world of multicentric governance. If so, we can no longer afford to view Canada as a simple partnership of federal, provincial and territorial governments. Instead, we need to recognize that local and Aboriginal governments are emerging as partners in the federation. Many contemporary issues simply cannot be solved without their collaboration. Thus, if a new council of the federation is going to govern effectively in the long run, it will have to incorporate local and Aboriginal concerns. At the very least, the council should establish a secretariat for local and Aboriginal relations, or better yet a separate secretariat for each. While expanding the partnership will undoubtedly be challenging, excluding the emerging partners of the federation does not seem like a viable option. We cannot sweep local and Aboriginal governments under the table and pretend they do not exist.