

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

Intergovernmental Councils in Federations

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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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Introduction: Canadian Proposals

At the Annual Premiers Conference in Charlottetown, July 9-11, 2003, at the urging of Premier Charest and as a first step, the premiers announced the formation of a new formal inter-provincial Council of the Federation. This is to be comprised of the 13 premiers of the ten provinces and three territories, and will meet on a regular basis. The first meeting will occur this month on October 24, 2003, in Quebec City. At that time, the Premiers will finalize the mandate and the structure of the Council. Earlier, the Liberal Party of Quebec, now governing in that province, had included in its program, *Un plan d'action*, first published in October 2001, a proposal for facilitating both vertical and horizontal intergovernmental co-operation by the establishment of a formal permanent federal-provincial Council of the Federation with its own secretariat. Unlike the original Quebec proposal for a federal-provincial council, the primary focus of this new council will be to serve as a provincial-territorial co-ordinating body. However, in announcing its formation, it should be noted that the premiers did agree upon the need for annual first ministers' meetings, co-chaired by the Prime Minister and the chair of the Council of the Federation, with agendas jointly determined on such standing items as health, trade, finance, justice and the economy.

Is this new initiative to institutionalize relations among the governments within the Canadian federation a desirable development? It is not, of course, the first time a formal

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intergovernmental council has been proposed. The Pepin-Robarts report in 1979 advanced some proposals.¹ In 1991 the Government of Canada's formal proposals which triggered off the discussion and negotiations leading eventually to the Charlottetown Agreement, included a federal-provincial Council of the Federation, although this was not included in the final Charlottetown Agreement 1992.² Is the Council of the Federation then an idea whose time has now come?

The purpose of my article is to examine the experience of other federations to see what may be learned from them on this issue. Among the approximately 180 politically sovereign states in the world today there are some two dozen federations containing approximately two billion people or about 40 percent of the world's population, and encompassing some 480 federated states or provinces. There are many variations among these federations in their institutional design, the character of the diversity within their societies, their degree of economic development, and their policy agendas. Nevertheless a common feature among them has been the need for effective internal intergovernmental arrangements. Thus, while there is no single federal model or example that is applicable everywhere, there is much to be gained from examining the similarities and differences in their approaches to facilitating federal-provincial and inter-provincial co-operation and co-ordination. Since many of the problems we face in Canada are common to virtually all federations, examining the experience of other federations in institutionalizing intergovernmental relations may provide us with both positive and negative lessons, i.e. with both effective examples and cautionary tales.

Given the array of federal examples that might be examined, it is necessary for a brief article such as this to select the most relevant and

¹ The Task Force on Canadian Unity (Pepin-Robarts), *A Future Together: Observations and Recommendations* (Ottawa: Ministry of Supply and Services, 1979), pp. 97-9.

² *Shaping Canada's Future Together: Proposals*, 1991, pp. 41-2, 47, and *Responsive Institutions for a Modern Canada*, 1991, pp. 23-6.

significant examples from among the two dozen contemporary federations. For this purpose I have chosen to focus upon six particular examples. Australia represents a mature federation established in 1901, which like Canada combines federal and parliamentary institutions, and which a decade ago established a Council of Australian Governments (COAG). Germany is a federation, which operating under its constitution of 1949, has highly institutionalized intergovernmental arrangements. A key feature is a federal second chamber, the Bundesrat, composed of delegates, including the Minister-President, from each of the Land governments. In addition there is a Conference of Ministers-President including the Federal Chancellor which meets regularly. India, whose independence constitution of 1950 was to some extent based on the earlier Indian proposals of 1935, themselves modelled on the *British North American Act, 1867*, is like Canada a parliamentary federation and contains a diverse multilingual and multicultural society. South Africa's constitution of 1996 is a very recent example. Although possessing some particularly centralized features, South Africa is included because it has attempted to take the experience of earlier federations, particularly Germany, and improve upon them. Switzerland, which first became a federation in 1848, possesses a distinctively unique collegial form of fixed term executive at the federal level. Its new constitution of 1999 is of interest because it puts a strong emphasis upon intergovernmental consultation and co-operation. Furthermore, the Conference of the Cantonal Governments plays a major role not only in intercantonal co-operation but also in co-ordinating cantonal negotiations with the federal government. The United States differs from Canada in having presidential-congressional institutions. These have led to a pattern of intergovernmental relations considerably less institutionalized than in most other federations.

Interdependence Within Federations

The traditional classical concept of federalism advanced by such authors as A.V. Dicey, the Judicial Committee of the Privy Council in its judgments on Canadian cases, and K.C. Wheare, is that federalism involves dual

sovereignties. In a federation federal and provincial (or state) governments exist side by side, each separate and virtually independent in its own sphere of constitutionally assigned authority. According to the traditional account, that was how the classical federations of the United States (1789), Switzerland (1848), Canada (1867) and Australia (1901) began, but developments in the 1930s and then following World War II led in each of these federations to the replacement of 'dual federalism' by 'co-operative federalism.' The latter involved interdependence and a variety of co-operative intergovernmental relations made necessary particularly by the growth of social programs and the financial arrangements to support them.

In truth, however, interdependence among governments as partners within federations has been a fact from their beginnings. Although the demarcation of the legal authority of federal and provincial powers is one essential aspect of federations, in practice the inevitability of overlaps in responsibilities and political, financial and administrative realities have meant that intergovernmental interrelations have always also been an inherent feature of federations. Studies of the United States by such authors as Daniel Elazar and Morton Grodzins have provided evidence that in the nineteenth century, as in the twentieth, administrative co-operation and political interdependence between federal and state governments was a dominant characteristic of the United States as a federation, despite formal legal pronouncements to the contrary. Similarly, in the case of Canada, Garth Stevenson, in his comprehensive account of federal-provincial relations in Canada during the period from Confederation to the formation of Wilfrid Laurier's government in 1896, found considerable intergovernmental interaction right from the beginning of the Canadian federation. This was particularly notable in immigration and agriculture, two areas of concurrent jurisdiction and of particular importance in the early decades of the Canadian federation. Between 1868 and 1874 six federal-provincial conferences were held dealing with these issues, and in 1872 the first shared-cost program was initiated in support of immigration. Thus, interdependence among the governments as partners has been a historic

feature of the Canadian federation, as of all federations.

What happened in the 1930s, the post World War II period and since has not been something new, but an intensification of what is an inherent characteristic feature of all federations. Three factors contributed to an intensification of this characteristic during the twentieth century: the general trend to increased activity of governments at all levels creating more overlaps, the development of new policy areas such as the environment and energy not contemplated at the time the older federations were designed, and the changing conditions affecting over time the allocations of taxing powers and expenditure responsibilities to different governments and creating vertical and horizontal imbalances. These required intergovernmental transfers and processes and institutions for the periodic adjustment of financial relations among governments. Now as federations move into the twenty-first century, the interdependence inherent within all federal systems is being further extended and complicated by its widened scope increasingly embracing the international and municipal spheres as well.

The inherent and inevitable interdependence among governments within federations often gives rise to ineffective governance or conflicts. Disputes may arise over constitutional jurisdiction, fiscal issues such as revenue-sharing and vertical and horizontal fiscal imbalances, the exercise of the federal spending power, regional development policies, control of natural resources, policies affecting linguistic, religious or cultural differences, lack of consultation and unilateral action by one of the governments, or even simply from a clash of personalities. Most federations have found that reliance simply on the courts to resolve such disputes is insufficient, and that in many instances bodies facilitating consultation and co-operation between governments are a desirable alternative for managing interdependence and fostering co-operation. These will not eliminate conflict which in a situation of interdependence will inevitably arise from time to time. But they do provide a means of managing conflict.

It should be noted that intergovernmental interdependence within federations has two important dimensions. First, there are the vertical relations between governments of different orders, i.e. federal-provincial relations and provincial-local relations. Increasingly such vertical relationships within federations may also involve supra-federation organizations or other countries. A second dimension is the horizontal relationships of different governments within the same sphere, such as inter-provincial or inter-local relations. Typically, in federations both kinds of intergovernmental relations have been important. Within each of these two dimensions, intergovernmental relations may involve all the governmental units within a federation, regional groupings of governments, or be bilateral.

In this context, all federations, both old and new, have had to come to terms with the changing scope, character and varied dimensions of interdependence among governments. An important instrument for this in most federations has been the establishment of both formal and informal councils, committees and conferences. These are usually held frequently enough to enable representatives of the different governments – first ministers, ministers, officials and legislators – to share information, discuss common problems, contemplate co-ordinated or even joint action and where appropriate establish joint bodies or agencies. In most federal polities such formal councils, committees, conferences and agencies have become numerous. Furthermore, recent decades have seen significant developments and reforms, including a number of innovations, in coming to terms with the changing and increasing demands of interdependence among governments within federations.

Examples of Intergovernmental Councils

Australia, like Canada combines federal and parliamentary institutions. Although with the exception of the Loan Council, intergovernmental relations are not referred to in the constitution as amended, Australia has established a number of major formal councils to deal with policy issues that have

intergovernmental implications. In this respect Australia has gone considerably further than Canada.

The Council of Australian Governments (COAG) is Australia's primary intergovernmental institution.³ It was established in 1992 in a movement to reform intergovernmental relations in Australia. COAG is chaired by the Prime Minister and includes all the State Premiers and Territory Chief Ministers and the President of the Australian Local Government Association. It generally meets at least once a year. The main purposes of COAG are to increase co-operation among governments and to oversee and co-ordinate the work of the Ministerial Councils.

There are some 30 intergovernmental ministerial councils dealing with sectoral responsibilities at which a minister of the Commonwealth and of each state and territory attends. A number of these ministerial councils have decision-making mandates assigned by legislation and have voting rules, thus making them genuine intergovernmental co-decision mechanisms. In 2001, COAG reviewed the operation of these ministerial councils and agreed to a number of measures to streamline their operation and improve their ability to make co-decisions.

In addition to COAG there is also a Treaties Council with the same membership as COAG. This body deals with significant treaty negotiations that have an impact on the states and territories, but to date it has met only infrequently.

A complementary institution to COAG is the Leaders' Forum consisting only of the State Premiers and Territory Chief Ministers. A primary function of this body is to allow the

³ D.M. Brown, *Market Rules, Economic Union Reform and Intergovernmental Policy-Making in Australia and Canada* (Montreal & Kingston: McGill-Queen's Press, 2002, pp. 162, 182, 186, 204, 208-11, 226, 259, 262; R. Wilkins & C. Saunders, "Intergovernmental Relations in Australia," in P. Meekison, ed., *Intergovernmental Relations in Federal Countries* (Ottawa: Forum of Federations, 2002), pp. 17-23.

states and territories to reach a consensus, if possible, on issues to be raised with the federal government.

Where issues take on major intergovernmental significance, these issues may be raised in COAG. Typically COAG, after setting out a strategy and action plan may return the particular issue to an appropriate ministerial council for implementation.

Among the major reforms that have been achieved under COAG auspices have been an agreement upon mutual recognition of the regulation of trade in goods and of occupations, an agreement on national gas pipeline access, establishing an intergovernmental process for treaties, introducing a federally collected Goods and Service Tax (GST) whose proceeds go to the states on an equalized basis, a national action plan for natural resource management, an agreement on terrorism and multi-jurisdictional crime, and a National Water Initiative. Key intergovernmental councils such as COAG and the ministerial councils have in Australia played a major role in fostering co-operative and flexible intergovernmental relations.

Germany also combines federal and parliamentary institutions. Its constitutional structure and the complementary institutions that have been established have created a much more highly integrated, indeed interlocking, set of intergovernmental relations than in most federations. A key constitutional factor is that in Germany most of the legislative power has been concentrated in the federal institutions, but most of this legislation is, by constitutional requirement, implemented and delivered by the Land governments. This requires a very high degree of co-ordination between the Federal and Land governments.

In this interlocking relationship, the Bundersrat is a key institution. Established by the constitution as a federal second chamber, its powers include an absolute veto over all federal legislation affecting the Länder (in practice about 60 percent of federal legislation). Its composition, consists of Land delegations each led by its Minister-President (Premier). This means that the Bundersrat and its many

committees also serve as a powerful intergovernmental institution for co-ordinating the Federal and Land governments and also the Länder with each other, albeit often along political party lines.

In addition to the Bundersrat and its committees, there have developed an extensive number of other extra-constitutional bodies and procedures for intergovernmental consultation and co-ordination. These include a Conference of Ministers-President (Premiers), in which the Federal Chancellor (Prime Minister) participates, and which meets at least twice a year. There are also numerous conferences of specialized ministers of the Federation and the Länder. Each meets at least once every six months, and each meeting is preceded the week before by a meeting of the relevant state secretaries. These ministerial meetings are significant because they make political decisions, generally on the basis of unanimity, which are considered binding on all parties.

The highly intertwined character of intergovernmental relations in Germany has not been without its critics. Some (e.g. Scharpf) have argued that requiring intergovernmental co-decisions on such a wide variety of matters has led to a “joint decision trap” stifling the initiative and freedom of action of governments at both levels.⁴ Indeed, in recent years there have been a number of proposals in Germany for demarcating governmental responsibilities more distinctly. Nevertheless, there is a general view that the extensively co-operative character of German intergovernmental relations has contributed to the performance and stability of the German federation.⁵

India, is a parliamentary federation whose constitution is more closely modelled on the Canadian example. Its institutions of

⁴ F. Scharpf, “The Joint Decision Trap: Lessons from German Federalism and European Integration,” *Public Administration*, 66(1988), pp. 238-78.

⁵ K-D. Schnapauff, “The Federal System of the Federal Republic of Germany,” in P. Meekison, ed., *Intergovernmental Relations in Federal Countries* (Ottawa: Forum of Federations, 2002), pp. 24-32.

intergovernmental relations have, however, been influenced more by Australian examples, particularly those relating to intergovernmental financial relations.

The constitution presupposes a functional interdependence between the two orders of government. Article 263 provides for an Inter-State Council (ISC) for harmonizing Union-State and interstate relations and for policy co-ordination. It was only in 1990, however, that this enabling constitutional provision was implemented. The ISC has, in practice, yet to come fully into its own.

On the other hand, an extensive number of extra-constitutional intergovernmental forums have been established such as the National Development Council (NDC) set up in 1952 for intergovernmental approval of the five-year plans. There are also several intergovernmental national councils in policy areas such as local government, health and population. As well, under the States Reorganization Act in 1956 Zonal Councils for regional groups of states were established, but except for the Northeastern Council these have not been very active. In the same year some interstate tribunals were established under the Inter-State River Water Disputes Act. In the domain of intergovernmental financial relations, the quinquennial Finance Commissions provided for by the constitution (article 280) have had a significant impact upon the allocation to the states of constitutionally mandated transfers.

All the formal or informal intergovernmental councils have shunned majority rule and have relied instead upon consensus processes with agendas set by the Union in consultation with the states. As a general pattern, Union governments have preferred the informality and flexibility of non-formal intergovernmental forums, finding them more convenient. Nonetheless, the Sarkaria Commission on Centre-State Relations, 1987-8, did recommend the constitutional entrenchment of the NDC as being, along with the ISC, one of the two major organizations of intergovernmental executive relations. It also recommended the streamlining of the Finance Commission and the

Planning Commission as the two staff agencies for executive federalism in India.⁶

South Africa differs from the preceding examples in having a hybrid presidential-parliamentary system. The highly centralized and integrated federal structure in the 1996 constitution was largely modelled on that of Germany. A notable feature of the 1996 constitution is Chapter 3 (articles 40-41) which is entitled "Co-operative Government." This explicitly enunciates that intergovernmental co-operation is to be the underlying philosophy for the conduct of government and the relations between the three spheres of government: national, provincial and local. Furthermore, to encourage intergovernmental co-operation the constitution empowers the Constitutional Court, if it is not satisfied that every reasonable effort to settle a dispute by intergovernmental negotiation has been taken, to refer a dispute back to the governments involved (article 41(4)).

As in Germany, the South African federal second chamber, the National Council of the Provinces (NCOP), consists of delegates of the provinces, who have an absolute veto on certain kinds of legislation and a suspensive veto on others. Unlike the German example, however, each provincial delegation consists not only of members drawn from the provincial executive, but a majority drawn from the provincial legislature based on a proportional representation of the political parties in the provincial legislature concerned. Including representatives from the legislature in this way was considered a democratic improvement on the German model, but in practice this mixed composition of provincial delegations has made it a less coherent and effective body for conducting

⁶ M.P. Singh, "Federal Division of Responsibilities in India," paper presented to a seminar on Distribution of Responsibilities in Federal Democracies, 20 September 2003, New Delhi, for the Joint IACFS/Forum of Federations Global Dialogue Project; R. Saxena, "Strengthening Federal Dialogue: Role of NDC and ISC," *Contemporary India*, Vol. 1, No. 3, July-September 2002, pp. 51-64; Government of India, *Commission on Centre-State Relations, Report* (Sarkaria), (Nasik: Government of India Press, 1987-8), 2 vols.

intergovernmental relations than is the case in Germany.

In addition to these constitutional provisions a host of other extra-constitutional bodies to facilitate intergovernmental co-operation has been established. A key body is the President's Co-ordinating Council (PCC), a non-statutory body consisting of the President in the chair, the nine provincial premiers and the national Minister for Provincial and Local Government. The PCC meets twice a year. Its functions include enhancing inputs by the provincial executives on the formulation of national policies, promoting inter-provincial dialogue, resolving national provincial and inter-provincial disputes, improving intergovernmental co-operation, and co-ordinating shared programs. It is, however, primarily a consultative body, its decisions not being formally binding or enforceable.

In addition there are numerous councils consisting of the relevant national minister (MINs) and provincial executive council members (MECs), these councils being referred to generally as 'MINMECs.' These have supporting officials' committees referred to as 'Technical MINMECs' which meet frequently.

In 1999 an *Intergovernmental Relations Audit* recommended a redefinition of the role of the PCC and the MINMECs. It found that the proliferation of informal intergovernmental bodies had led to duplication and tangled linkages. The audit therefore recommended a clarification of roles with more formal co-ordination among the many existing instruments of intergovernmental relations.⁷

Switzerland, became a federation in 1848. Unlike the parliamentary federations, Switzerland has a distinctive form of federal executive. The Federal Council is a collegial body elected by the federal legislature for a fixed term and composed of seven councillors among whom the presidency

rotates annually. This form of executive is also paralleled at the cantonal level. This distinctive institutional arrangement, the tradition of representing all four of the major political parties in the Federal Council, the absence of a prohibition of dual membership in the cantonal and federal legislatures, and the constitutional provision making all federal legislation potentially vulnerable to a referendum challenge, have over the years contributed to a tradition of extensive federal-cantonal consultation and negotiation.

Under the new constitution adopted in 1999, no formal intergovernmental councils were established. Articles 44-49, however, set out principles of federal-cantonal collaboration, including provision for the cantons to participate in decision-making processes at the federal level including federal legislation (article 45(1)), and requiring federal consultation of the cantons (article 45(2)). The new constitution also specifically provides for the participation of cantons in federal decisions on foreign policy (article 55), and for cantonal treaties with foreign countries in areas within cantonal jurisdiction (article 56). To facilitate inter-cantonal co-operation, the new constitution also specifically permits cantons to enter into inter-cantonal treaties and to create common organizations and institutions (article 48). Also at numerous other points in the new constitution, there are specific references to the requirement of federal-cantonal consultation or collaboration.

As a result of these provisions federal-cantonal and inter-cantonal consultation and co-operation is very extensive in Switzerland. No formal federal-cantonal council has been created, but given the existence of 26 cantons, a body for their co-ordination has been considered desirable. The Conference of Cantonal Governments is intended both to facilitate inter-cantonal collaboration and, equally important, to serve as the primary channel for cantonal co-ordination in federal-cantonal consultation and negotiation.⁸

⁷ N. Oliver, "Intergovernmental Relations in South Africa: Conflict Resolution within the Executive and Legislative Branches of Government," in P. Meekison, ed., *Intergovernmental Relations in Federal Countries* (Ottawa: Forum of Federations, 2002), pp. 71-90.

⁸ *Federal Constitution of the Swiss Confederation*, 1999; W. Linder, *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies* (Basingstoke, UK: MacMillan, 1994), pp. 54-60, 71-3.

The **United States** is distinctive among the federations considered here because of its non-parliamentary character. Within each order of government the institutions are marked by a separation of powers: between the President and Congress, and between the Governors and the Legislatures. This diffusion of power within each level of government has given the character of intergovernmental relations within the United States a distinctive cast.

Intergovernmental relations have as a result involved a wide variety of channels between executives, administrators and legislators in different governments, often with the intervention of various interest groups, in a variety of crisscrossing patterns. This is further compounded by the fact that in a federation of 50 states there is such an enormous variety of state interests that it has been difficult to get agreement on specific matters.

There is nothing, therefore, directly comparable to the executive federalism and formal intergovernmental councils prevalent in the parliamentary federations described above. That is not to say that intergovernmental co-operation does not exist. Indeed, from the very beginning of the federation in 1789, federal, state, and local officials have recognized their interdependence and the need to co-operate in a variety of ways to achieve both their common and separate objectives.⁹ But while this co-operation has been extensive, it has involved a wide range of separate federal, state and local government offices and officials usually working directly with each other. Currently, there are no general governmental co-ordinating bodies. However, some co-operation of state and local officials occurs through their voluntary, non-profit, national organizations such as the National Governors' Association, the Council of State Governments, and the National Conference of State Legislatures. For a time, between 1959 and

⁹ J. Kincaid, "Intergovernmental Relations in the United States of America," in P. Meekison, ed., *Intergovernmental Relations in Federal Countries* (Ottawa: Forum of Federations, 2002), pp. 33-44; D. J. Elazar, *Federalism and the Way to Peace* (Kingston: Institute of Intergovernmental Relations, Queen's University 1994), pp. 133-58.

1996, there was an Advisory Commission on Intergovernmental Relations, which consisted of three members of the President's cabinet, three members of the House of Representatives, three senators, four governors, three state legislators, three country commissioners, four mayors and three private citizens. During its existence, it did useful work in monitoring intergovernmental relations, but it was dissolved in 1996 when Congress withdrew its funding support in a period of financial constraint.

Conclusions: Lessons for Canada

From this review it is clear that interdependence among governments *as partners* has been inherent in federations. It is not surprising, therefore, that extensive intergovernmental institutions and processes have been a pervasive feature of most contemporary federations, although the precise form of these has varied from federation to federation depending on their particular circumstances. Indeed, Alen and Ergec, writing about the new Belgian federation, came to conclude that the *three fundamental requirements* for an effective federation are: (1) a distribution of jurisdiction ensuring autonomy for the federated units, (2) the formal participation of representatives of the federated units in the institutions of federal government, and (3) intergovernmental relations and co-operation.¹⁰ Most federations, especially parliamentary ones, have consequently found formal or informal federal-provincial and inter-provincial councils of considerable value for facilitating intergovernmental collaboration. It is also noteworthy that in a number of federations there have been recent reforms to make these bodies more formal and more effective as co-ordinating institutions.

While contemporary federations have ranged somewhere along the spectrum between interlocking intergovernmental relations and arm's length co-operation, most, it would appear, have developed intergovernmental collaboration to a much greater degree than Canada. Thus, in

¹⁰ A. Alen and R. Ergec, *La Belgique fédéral après la quatrième réforme de l'État de 1993*, 2nd ed. (Brussels, Ministère des Affaires étrangères, F/98/1, 1998), pp. 29-30.

comparative terms, it must be recognized that Canada has been less well-equipped to manage the contemporary challenges of interdependence than most federations. Federations elsewhere, therefore, illustrate possible improvements, including formal federal-provincial and inter-provincial councils, which Canadians would do well to consider carefully. At the same time, it must be emphasized that there are no universal solutions and that the particular social, economic, political and constitutional context of the Canadian federation must be taken into account.

In considering proposals for a Council of the Federation a number of issues will need to be taken into account. Should it be a federal-provincial or an inter-provincial council? Experience elsewhere suggests that both forms have a vital role. Indeed in some cases elsewhere, for example Switzerland, an inter-provincial council has facilitated federal-provincial negotiations by providing a forum for achieving a prior provincial consensus on federal-provincial issues. On the other hand, in Australia, India and South Africa the emphasis has been upon effective federal-provincial councils dealing with issues of both vertical and horizontal collaboration. In the current context, should the proposal for an interprovincial Council of Federation in Canada be regarded simply as a first step towards a fully federal-provincial Council, or should the long-term objective be two formal councils, one federal-provincial and the other inter-provincial? At least one or other of these further developments will be essential in the long-term.

Another issue is whether provision for a Council of the Federation should be inserted in the constitution or simply be an informal body? Experience elsewhere indicates that federations have often operated with a mixture of constitutional and extra-constitutional councils. As Australia has illustrated, constitutionalization is not essential, but extra-constitutional formal councils do have an advantage over merely *ad hoc* bodies.

Yet another issue, in view of the increasing importance of major cities, is whether there should be some representation of local governments, as occurs in the Australian COAG.

Although there are no obvious examples elsewhere, there is also the issue of whether there should be aboriginal representation as there was during the pre-Charlottetown process in 1992.

In establishing a co-ordinating council in Canada where should the balance between interlocking and arm's length intergovernmental relations be found? The traditional Canadian emphasis upon demarcating federal and provincial roles and autonomy makes the degree of interlocking interdependence adopted in Germany and South Africa inappropriate. Furthermore, the intergovernmental institutions will need to be genuinely collaborative in character, rather than instruments for intergovernmental imposition. But provision for some formal institutions to improve intergovernmental collaboration and reduce friction and conflict in Canada would appear to be overdue. At the same time, in establishing formal institutions to improve intergovernmental collaboration it will be essential to ensure that they are open, transparent, accessible and responsive in order to avoid any public sense that they will contribute to a 'democratic deficit.'

Ultimately, the design of intergovernmental co-ordinating councils will need to find a balance between shared goals, provincial autonomy, political stability, democratic transparency and accountability, equity, efficiency and innovative flexibility. Difficult choices and value trade-offs will therefore be unavoidable. But these choices must be addressed since the future effectiveness of the Canadian federation in a changing world is at stake.