

# Harper without Jeers, Trudeau without Cheers

*Assessing 10 Years of Intergovernmental Relations*

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## Summary

- Stephen Harper's approach to intergovernmental relations shifted somewhat from the "open federalism" that informed his initial years as prime minister toward greater multilateral engagement with provincial governments and certain unilateral moves.
- Harper left a legacy of smaller government and greater provincial self-reliance.
- Justin Trudeau focuses on collaboration and partnership, including with Indigenous peoples, but it is too early to assess results.

## Sommaire

- En matière de relations intergouvernementales, l'approche de Stephen Harper s'est progressivement éloignée du « fédéralisme ouvert » de ses premières années au pouvoir au profit d'un plus fort engagement multilatéral auprès des provinces, ponctué ici et là de poussées d'unilatéralisme.
- Gouvernement réduit et autonomie provinciale accrue sont deux éléments clés de l'héritage de Stephen Harper.
- Justin Trudeau privilégie la collaboration et les partenariats, y compris avec les peuples autochtones, mais il est encore trop tôt pour mesurer les résultats de sa démarche.

WHAT HAS HAPPENED TO INTERGOVERNMENTAL RELATIONS IN CANADA? Surprises. In October 2015, we had an election with a surprise ending. The Liberal Party, which had been third in the polls for months, won a clear majority. The new prime minister, Justin Trudeau, provided more surprises, engaging in a whirlwind of talks with first ministers as a group and with social partners that the previous government, led by Stephen Harper, had largely ignored. He promised a new covenant with Indigenous peoples, the extent of which surprised even them. Change was in the air. The biggest surprise is that this was a surprise. That may well be because we stopped paying attention to intergovernmental relations in Canada years ago. It is time to get back in the saddle.



The end of a prime minister's term in office often provokes calls for an assessment of what was achieved and predictions as to what the new government will do. Before the latter can be developed, we need an accurate and balanced account of what the Harper government stood for and accomplished. In general, Harper is said to have practised a strict constructionism: Ottawa and the provinces would keep to their own constitutionally defined areas. He was also said to prefer limiting his contacts with provinces to ad hoc bilateral (one-on-one) meetings with premiers.<sup>1</sup> The principles he outlined before and during his first mandate were said to indicate his enduring style: adherence to the distribution of powers, limited use of the spending power, granting Quebec participation in UNESCO, fixing the fiscal imbalance. In fact, as the first part of this article explains, it is more accurate to say that his approach to intergovernmental relations reflected three different sets of values at three different times.

Trudeau, for his part, has emphasized a return to multilateral processes (notably First Ministers' meetings), a willingness to work with the provinces on joint solutions and engagement with Indigenous leaders. In order to assess this approach, it is important to ask the right questions. With Trudeau, as with every other prime minister, one can use the following template: Where does he want to be? What is he doing about it? What is in his way? What are his chances of succeeding? These questions are the focus of the second part of this article.

It is a time for realism. A year after the 2015 election, we are at a point where partisan passions have calmed somewhat. Harper's effect on federalism can be more dispassionately considered without bitterness, and Trudeau's sunny ambitions for intergovernmental harmony assessed without undue optimism. It is a time, in brief, to consider Harper without jeers and Trudeau without cheers.

## Harper's Approach to Intergovernmental Relations

ALTHOUGH THERE IS AN ELEMENT OF TRUTH IN THE CLAIM that Harper stuck to the approach to federalism he outlined in the 2006 election, this was not entirely the case. In fact, he practised three versions of federalism, with the following broad characteristics:

- Evolutionary, not stationary: There was an evolution in the focus of Harper's approach to federalism, from domestic politics to the economy to legacy. There were also shifts in motivation.
- Contradictory: The early Harper was less recognizable in his later approach to federalism. Instead of fully respecting provincial jurisdiction, he would intrude on labour market, securities and Senate reform matters, among others.

- Impact: At least some aspects of Harper’s approach to federalism can be expected to have an enduring impact.

“Open federalism,” a description often applied to Harper’s approach throughout his time in office, provides only a partial explanation of what he did on the intergovernmental scene. In the face of turbulent economic and political forces, his approach to intergovernmental relations changed. Open federalism was the first phase, oriented to disentangling the federal and provincial orders of government. The second was what may be termed “recession federalism,” which entailed significant engagement with provinces in the face of the post-2008 economic crisis. The third was “deficit federalism,” a mixture of bilateralism and federal unilateralism, including in areas of provincial jurisdiction. These approaches coincided with the Harper minority governments of 2006-08 and 2008-11 and the majority government of 2011-15, respectively.

### Open federalism

The open federalism phase (2006-08) was foreshadowed in a 2004 op-ed piece by Harper, a speech to the 2005 Conservative policy convention, an appeal to Quebecers and the 2006 Conservative election platform.<sup>2</sup>

The Quebec aspects of open federalism were important. As outlined in a speech Harper gave in Quebec City on December 19, 2005,<sup>3</sup> a key objective was to strike a balance between federal Liberal centralism and the demands of Quebec sovereignists. The 2006 Conservative election platform promised “recognition of provincial autonomy and of the special cultural and institutional responsibilities of the Quebec government,” and a “Charter of Open Federalism” committing governments to “a more efficient and balanced federation” while facilitating “provincial involvement in areas of federal jurisdiction where provincial jurisdiction is affected.”<sup>4</sup>

The corresponding language in the 2007 budget<sup>5</sup> was less general and more operational:

- clarification of the respective roles and responsibilities of federal and provincial governments;
- using excess federal revenues primarily to reduce taxes rather than to launch new federal programs in areas that are primarily provincial and territorial responsibility;
- focusing new spending on areas of federal responsibility and, to the extent that new initiatives are introduced in areas of primary provincial and territorial responsibility, doing it in a respectful manner, at the request of provinces and territories;

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Several initiatives in the first two years of Harper's administration reflected open federalism at work. The first were Quebec-oriented.

- limiting the use of the federal spending power by ensuring (1) that new cost-shared programs in areas of provincial responsibility have the consent of the majority of provinces and (2) that provinces and territories have the right to opt out of cost-shared federal programs with compensation if they offer similar programs with comparable accountability structures; and
- aiding transparency by reporting, in all future budgets, on new investments (1) in areas of core federal and shared responsibility and (2) in transfers to support provinces and territories.

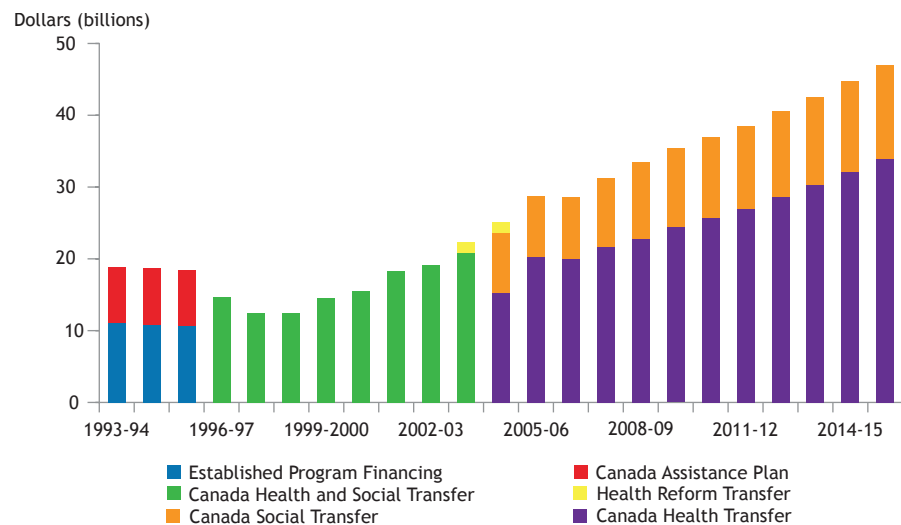
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- A May 5, 2006, agreement between the governments of Canada established the Quebec government representative as part of the Permanent Delegation of Canada to the United Nations Educational, Scientific and Cultural Organization (UNESCO). The representative was to “communicate and defend” Quebec's positions in the decision-making and advisory bodies of UNESCO.<sup>6</sup>
- On November 22, 2006, the Prime Minister moved the following motion, which was adopted by the House of Commons: “That this House recognize that the Québécois form a nation within a united Canada.”<sup>7</sup> He was quick to add that Québécois do not form an “independent nation.”

Then there were fiscal and economic manifestations of open federalism.

- Explicit attention to the fiscal imbalance was next. Provinces that had been complaining of a mismatch between federal and provincial revenues were relieved by a multiyear increase in the Canada Health Transfer (CHT) and the Canada Social Transfer (CST) (see figure 1), and by a boost in Equalization payments from \$12.9 billion in 2007-08 to \$16.7 billion in 2014-15.<sup>8</sup> These increases were due to escalator clauses in the transfers and a broadened basis for calculating revenues for the purpose of Equalization.
- Devolution of labour market policy, which had begun under the Chrétien Liberals with the labour market development agreements (LMDAs), was accelerated substantially by the introduction of labour market agreements (LMAs) in 2007. The latter covered non-LMDA-qualifying clienteles and the decentralization of funding and staff.<sup>9</sup> By 2008-09, provincial governments were responsible for more than three-quarters of workforce development programming in about 1,000 locations. The federal government had transferred over 2,600 of its staff to provincial governments.<sup>10</sup>

**FIGURE 1.**  
**Health and social cash transfers,**  
**1993-94 to 2014-15**



Source: Based on figure (Finance Canada) “Total Health and Social Cash Transfers,” at <https://www.fin.gc.ca/fedprov/his-eng.asp>.

Note: CHT includes protection payments (to ensure that a province’s total major transfers in one year are no lower than in the prior year) to Newfoundland and Labrador and Nunavut in 2014-15. For Ontario, includes separate payments made in respect of the CHT for 2009-10 (\$489 million) and 2010-11 (\$246 million) to ensure Ontario received the same CHT cash support as other Equalization-receiving provinces. CST does not include a one-time payment for the creation of child care spaces in 2007-08 (Budget 2007) and the associated Budget 2008 transition protection payments to Saskatchewan and Nunavut. CHT and CST include Budget 2007 protection payments.

- Although no initiatives specifically aimed at limiting the federal spending power<sup>11</sup> emerged during this first period, neither were significant new federal programs related to areas of provincial jurisdiction introduced. Graham Fox argued early in the Harper era that Harper was continuing the collaborative tenor of the previous decade, based on substantial continuing federal support in such areas as post-secondary education, health and infrastructure.<sup>12</sup>

### Recession federalism

The following period, recession federalism (2009-10), featured extensive multilateralism and joint programming in certain key fields. This approach was brought on by a serious worldwide recession and responded in part to calls from the opposition parties, who, as minority government continued, could exercise pressure.

- Federal-provincial-territorial (FPT) collaboration was evident on infrastructure matters. In 2007 the new Harper government decided to make the infrastructure file one of the mainstays in its policy arsenal and devoted \$33 billion over seven years to the Building Canada Plan (BCP).<sup>13</sup> This formed the base for later initiatives.

- In early 2009, Harper met all the premiers to discuss joint action to mitigate the effects of the recession. Most remember this session for its agreement on joint action to accelerate BCP infrastructure projects where provinces agreed to simplify associated federal regulatory and environmental processes in time for the 2009 and 2010 construction seasons. The meeting also pledged further federal-provincial consultation on the availability of credit, federally regulated pensions and the development of a common framework to facilitate the recognition of immigrants' foreign credentials.
- Harper further augmented the BCP in 2009 by launching Canada's Economic Action Plan. Under it, the federal government established the \$4-billion Infrastructure Stimulus Fund (ISF) to provide funding to provincial-territorial-municipal construction-ready infrastructure projects. The ISF complemented existing federal infrastructure funding by focusing on short-term spending. This brought total infrastructure funding to \$37 billion.
- The federal government engaged in close collaboration with the provinces in the negotiation of the Comprehensive Economic and Trade Agreement (CETA) with the European Union.<sup>14</sup> This entailed direct involvement by provinces and territories during the negotiations on topics falling within their jurisdiction.<sup>15</sup> European negotiators wanted provincial involvement in order to secure access to subnational procurement, which would broaden the scope of potential benefits of an agreement with Canada and help ensure its implementation.

### Deficit federalism

The last Harper period was deficit federalism (2011-15). Here the purpose was to eliminate the deficit and bring about long-term changes in institutional (Senate), social (pensions, medicare, crime) and economic (securities regulation, training) policies. The approach included fairly extensive bilateral relations with the provinces and unilateralism in certain priority areas, a good many of them involving provincial jurisdiction. This phase was marked by a certain impatience with provincial governments that would not align themselves with this vision and an increase in the number of non-Conservative governments.<sup>16</sup>

There were a number of high-profile unilateral moves during this period.

- The Canada Job Grant (CJG) took some distance from the hands-off approach to labour market programming enunciated in 2007 with the LMAs. Introduced in the 2012 budget, the CJG was a federally designed training program (announced without consultation), to be

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funded a third each by the federal government, the provinces and employers. The federal share would be financed by cutting \$300 million from the \$500 million allocated to the LMAs; provincial governments would have to come up with an additional \$300 million to fund their share. An impasse between the federal and provincial authorities ensued, but it was resolved a year later when Ottawa announced it would fund the provincial share.<sup>17</sup> Such unilateralism and involvement in a provincial jurisdiction was, needless to say, not in keeping with the spirit of Harper's open federalism phase.

- Rather than negotiating the next phase of key intergovernmental transfers through FPT summitry, Finance Minister James Flaherty simply announced the post-2014 arrangements to his fellow finance ministers on December 19, 2011.<sup>18</sup> Instead of the 6 percent annual escalator, which applied until 2016-17, starting in 2017-18 the CHT will grow in line with a three-year moving average of nominal gross domestic product (GDP) growth, with funding guaranteed to increase by at least 3 percent a year. The CST will continue to grow at 3 percent annually.
- Pension changes were also announced unilaterally. The federal government raised the age of eligibility for the Old Age Security pension and the Guaranteed Income Supplement from 65 to 67, beginning in April 2023, directly affecting those born after March 31, 1958. This change had implications for the provinces, which would be forced to pay two extra years of social assistance and related supports to certain clients.<sup>19</sup>
- The crime agenda was still another case of unilateralism. Approximately three-quarters of expenditures for the quasi-unitary Canadian criminal justice system are made by provinces and territories, and only a quarter by the federal government.<sup>20</sup> Consequently, broad federal changes proposed in the 2012 omnibus crime bill, C-10, had deep financial impacts. Quebec announced it would not implement some aspects of the bill because of the enormous ensuing costs (\$750 million for new prisons, and up to \$80 million in operating costs<sup>21</sup>). Similar complaints came from other provinces, notably Ontario.

One of the ironies of the Harper government was that, despite its aversion to using the courts as an instrument for social engineering, it resorted to references to the Supreme Court of Canada in the place of intergovernmental negotiation in two important cases. Although both were unsuccessful, they reflected a kind of unilateralism that created friction with provincial governments.

The Harper government planned to establish a single national securities regulator to replace the relatively uncoordinated system of provincial and

territorial regulators.<sup>22</sup> The legislation was opposed by Quebec, Alberta and Manitoba. The federal government's reference to the Supreme Court was informed by what Eric Spink calls "centralist constitutional rhetoric."<sup>23</sup> It refused to accept its defeat in the *Securities Act* reference and salvaged a secondary role for itself based on *obiter* in the case.<sup>24</sup> It moved to establish the Cooperative Capital Markets Regulatory System, which provinces and territories could opt into. British Columbia, Ontario, Saskatchewan, New Brunswick, Prince Edward Island and Yukon have agreed to do so, and a board of directors has been named.<sup>25</sup> The opposition of Alberta and Quebec to even a voluntary national system continue unabated.

Another reference instead of negotiation involved Senate reform. Harper was responsible for five bills that would have changed the tenure of senators and introduced consultative elections for candidates prior to appointment (S-4, 2006; C-19, 2007; S-7, 2009; C-10, 2010; and C-7, 2011). The legislation, particularly the plan to institute so-called Senate elections, was criticized as unconstitutional by a number of senators and constitutional experts<sup>26</sup> and by the Quebec government (which launched a legal challenge). The Senate initiative demonstrated unilateralism in two respects. First, it reflected a reluctance to engage with provincial governments on reform of an institution that was founded in part to protect regional interests. Second, when the Supreme Court concluded in 2014 that the proposed changes required amendments involving the provinces, Harper, instead of opening negotiations with them, refused to make further Senate appointments. The purpose, he said, was to "*force the provinces over time...to either come up with a plan of comprehensive reform or...[agree to] abolition*" (emphasis added).<sup>27</sup>

### Bilateralism and multilateralism

I noted earlier that Harper's approach to intergovernmental relations had been painted as primarily bilateral in nature. Bilateralism was in fact the dominant mode for relations with other first ministers. According to Harper's spokesman Andrew MacDougall, there were more than 250 bilateral meetings or calls between Harper and individual premiers between 2006 and 2012.<sup>28</sup> One senior provincial official listed a dozen programs or intergovernmental arrangements that had been agreed by the Prime Minister and the premier of the province in question.<sup>29</sup>

There was nevertheless significant multilateralism at the ministerial and deputy ministerial level, as table 1 shows. One should not be surprised that, at the level of ministers and senior officials, multilateral meetings were frequent. Multilateralism is so entrenched in Canadian federalism that one cannot conceive of the country operating without a certain degree of it.

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**TABLE 1.**  
**Meetings of federal-provincial-territorial ministers**  
**and deputy ministers while Stephen Harper**  
**was prime minister, 2006-15**

Year	Number of ministers' meetings	Number of departments involved	Number of deputy ministers' meetings	Number of departments involved
2006	31	21	31	21
2007	29	18	38	18
2008	22	14	23	15
2009	21	17	30	15
2010	22	18	30	16
2011	16	14	23	13
2012	24	19	27	16
2013	23	20	32	17
2014	21	14	42	20
2015	11	8	32	14

Source: Calculations by the author based on data from the Canadian Intergovernmental Conference Secretariat (CICS).  
 Note: Not all intergovernmental meetings are served by the CICS. Finance Canada, for example, provides secretariat services for meetings of FPT finance ministers and senior officials.

### Harper and the commentators

A number of commentators have defined Harper's intergovernmental approach as stationary and internally consistent. For example, certain Canadian politics textbooks have claimed that open federalism was Harper's enduring approach.<sup>30</sup> As for leading journalists, John Ibbitson stresses fiscal matters in his description of Harper's "three-pronged approach" aimed at "lowering the temperature" in intergovernmental relations: "reducing the federal fiscal footprint [federal revenues as a percentage of GDP], transferring funds to provinces without strings, and stripping equalization out of programs other than equalization."<sup>31</sup> Paul Wells makes only passing reference to open federalism, emphasizing adjustments to the fiscal imbalance (notably increasing transfers to provincial governments) and allowing direct Quebec participation in UNESCO.<sup>32</sup>

For Harper advisers Ken Boessenkool and Sean Speer, open federalism was classical federalism in action. It consisted of four steps: establishing stable, predictable long-term transfer payments with no new conditions; equal per capita funding to provinces, especially for the CST and CHT; not negotiating the successor to the 2004-14 Health Accord but simply announcing the federal contribution with no new conditions; and a deficit elimination plan that concentrated on federal discretionary spending while leaving major federal transfer payments untouched.<sup>33</sup> Bruce Carson, an early senior adviser in the Harper

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Prime Minister's Office, is one of the rare commentators to focus on post-2011 "Harper federalism" (a term he uses instead of "open federalism"). He identifies only two elements of it: addressing the fiscal imbalance and Budget 2012's strict respect for the division of powers, for example in health care.<sup>34</sup>

After an initial burst of attention to open federalism, most academics and commentators lost interest. For example, two edited volumes on centralization and decentralization in Canada published in 2010 scarcely mentioned the concept, with the exception of one article.<sup>35</sup> The same year, James Bickerton wrote that, in light of contemporary policy challenges, "new federalisms" that preach disentanglement are unrealistic; the trend instead is toward shared policy-making and multilevel governance.<sup>36</sup>

By the 2011 election, even the Conservatives hardly spoke about open federalism: it merited only one line in the platform. One Conservative insider said this was because the expected electoral advances in Quebec, for whom it was largely designed, had failed to materialize.

Clearly there was no simple or consistent definition of Harper's open federalism. As well, several of the generalizations commentators have made about his vision of federalism need to be highly qualified.

## Assessing Harper as Prime Minister

WHAT GENERAL POINTS CAN BE MADE about intergovernmental relations during the Harper decade?

First, we are reminded that governments at each level have power resources that allow them to pursue their aims in isolation from, as well as in cooperation with, one another. The ease with which Harper could switch strategies reflects this flexibility.

Second, perhaps it is time to question the textbook characterizations of eras of federalism. A typical textbook tends to paint each prime minister as exemplifying one or another school of federalism (such as open federalism); sometimes even two PMs will be said to be exemplars of a certain intergovernmental approach (Chrétien and Martin and collaborative federalism, for example).<sup>37</sup> We should instead be alert to shifts that take place in the life of a premiership, as events and environmental forces dictate.

Third — probably the most important — is that in intergovernmental relations, prime ministers seldom end up where they intended. Harper is only the latest

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in a long list of prime ministers to experience this. Analysts of federalism can dress up the terms, but basically the intergovernmental challenges are similar for most prime ministers: Where do they want to be? What are they doing about it? What is in their way? What are their chances of succeeding? The dynamics may not in fact unfold in this order due to the weight of circumstances and events — such as, for the present discussion, the post-2008 recession. Sometimes one stage will affect another: what is in the way can force a reevaluation of where the prime minister wants to be.

In some respects, Harper did not end up where he expected to be. A key element of his approach to intergovernmental relations was that governments should stick to the responsibilities they are assigned under the Constitution. This principle was initially respected — for example, in the avoidance of new programs based on the federal spending power. This was consistent with Harper's strategy of avoiding measures that would antagonize the Quebec government or revive support for sovereignty. However, as we saw, he ended up acting counter to classical federalism in some key areas and selectively coerced provincial governments in others. He is not the first prime minister to experience such reversals, nor will he be the last.<sup>38</sup>

## The Trudeau Vision

JUSTIN TRUDEAU'S LANGUAGE ON THE ELECTION TRAIL and early in office promises substantial change from the Conservative government's intergovernmental approach. What we have so far are the first two stages: where he wants to be, and what he is doing about it. Since this paper aims to be realistic about intergovernmental relations, after outlining the vision I will examine constraints Trudeau faces and discuss the likelihood of overcoming them.

The Trudeau vision is simultaneously general and specific, and both aspects have intergovernmental implications. The general vision rejects the Harper intellectual framework in favour of collaboration with the other orders of government and key partners. Trudeau also represents the spirit of the age, while embracing Liberal traditions — grand narratives of the party that demand to be honoured.

In a June 2016 interview with Paul Wells, Trudeau talked about “the intricacies of rebuilding a working relationship between the federal government, the provinces and municipalities.” Trudeau said he is working on a wholesale change in relations among levels of government in Canada, after several years when

**TABLE 2.**  
**Language used in the 2015 Liberal election platform, ministers' mandate letters and Budget 2016 describing the federal government's approach to intergovernmental relations**

Language	Platform	Mandate letters	Budget 2016
work with, working with	15	34	3
in partnership with, partner with, partners	5	7	7
collaborate with, in collaboration with, collaboratively	5	8	6
support, supportive of provinces and municipalities	4	16	10
co-manage (oceans)	1	1	0
leadership	2	0	1

Source: Calculations by the author.

Harper met rarely with the provincial premiers and preferred not to meet directly with municipal governments.<sup>39</sup>

Trudeau uses a variety of phrases to describe how his government will relate to provinces, municipalities and Indigenous communities: “working with,” “partnering with,” “collaborating with,” “supporting.” Liberal electoral and public policy documents are filled with cooperative language, as table 2 demonstrates. This partly reflects the basic fact that in health and social policy areas, provinces are the policy and infrastructure leaders. The government commits to “work with provinces and territories” on labour market training, post-secondary education infrastructure, health care, early childhood education and daycare, law and order, and housing.

Federal leadership is mentioned only twice in the 2015 Liberal platform, and both mentions are qualified. “Federal leadership” in the health sector is book-ended by a comment about “collaborative federal leadership that has been missing during the Harper decade.”<sup>40</sup> Although the promise to “provide national leadership” is linked to action on climate change, it is immediately followed by a litany of “work with,” “partner with” and similar phrases. Both the platform and the mandate letters mention “targeted federal funding” for addressing climate change, but with no further details. Budget 2016 states that “the Government has committed to provide leadership” in greenhouse gas reduction but qualifies this commitment by “recognition” of the importance of “a collaborative approach between provincial, territorial and federal governments.”<sup>41</sup>

Almost all the specific “priorities” announced in the 2016 budget have significant implications for intergovernmental relations help for the middle

class, growth for the middle class, a better future for Indigenous peoples, a clean-growth economy and an inclusive and fair Canada. Middle-class growth involves intergovernmental collaboration in infrastructure and innovation, Indigenous peoples need significant FPT cooperation and nation-to-nation relationships, clean economic growth involves an intergovernmental climate change agenda, and inclusion involves governments cooperating on social transfers. There are other broad intellectual differences between Trudeau's approach and Harper's, two of which are almost certain to affect future intergovernmental agreements: unlike Harper, Trudeau favours a commitment to evidence-based policy and a results orientation.

The 2015 Liberal Party election platform makes several references to “evidence” and “evidence-based decision making,” as opposed to “ideology” and science in the service of economic growth — a clear swipe at the Harper years. Budget 2016 reflects this approach, notably in science policy, the role of universities, air pollution, oceans, environmental assessment, the North, the impact of cultural policy, public sector advice and women's issues.

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The Liberal platform and mandate letters were apparently heavily influenced by a “results approach” to policy, based on the work of Michael Barber, the first head (2001-05) of British Prime Minister Tony Blair's Delivery Unit.<sup>42</sup> This orientation, in turn, influenced the Dalton McGuinty Liberal government in Ontario and was brought to the federal level by senior Ontario public servants, including the former deputy minister of intergovernmental relations, Matthew Mendelsohn.<sup>43</sup> The Trudeau administration now has the Cabinet Committee on Agenda, Results and Communications (formerly the Priorities and Planning Committee), chaired by the Prime Minister himself.<sup>44</sup> However, the impact of this move is not yet clear.

It is unlikely that future intergovernmental agreements will ignore such a results orientation. For example, Health Minister Jane Philpott has asked aloud “whether it's appropriate for some of the [federal] funding to be tied to...outcomes.”<sup>45</sup>

Justin Trudeau represents the zeitgeist — the spirit of the times. So do a number of the rookies named to his cabinet, most of whom are about the same age (in their 40s).<sup>46</sup>

Trudeau's experience includes high school teaching (1999-2002) and chairing Katimavik, a youth volunteer program (2002-06). In 2006, he was recruited as chair of the federal Liberal Task Force on Youth Renewal,<sup>47</sup> which recommended that a future Liberal prime minister also serve as minister of youth; Trudeau now does. Engaging with university audiences is his forte.

It would have been surprising if the concerns of the newer generation had not been absorbed: feminism, environmentalism, indigeneity, inclusion, youth and an expansively defined rights-based society. Indeed, a number of these concepts help structure his intergovernmental priorities. Environmental/infrastructure and Indigenous initiatives were the two major intergovernmental elements of the 2016 budget. (I consider nation-to-nation relationships a form of intergovernmental relations.)

Liberal Party traditions also figure in the Trudeau vision. The Liberal Party eschews ideology in favour of grand political narratives. Indeed, it has been said that the Liberal Party reinvents itself from generation to generation to reconcile the tensions that beset the country — reinventions that often have implications for federalism and intergovernmental relations.

The Pearson and Pierre Trudeau governments were oriented to balanced and equitable “place prosperity,” some of it achieved through regional development agencies.<sup>48</sup> Provincial governments were often enlisted to support this vision. Provinces were also essential parts of the iconic social programs the Liberals initiated during this period, such as medicare and the Canada Pension Plan.

### Liberal Party traditions also figure in the Trudeau vision.

The Chrétien and Martin governments somewhat downplayed their relations with provinces and cultivated a network of other subnational contacts. This was in pursuit of what might be called the “innovation agenda,” which saw the globalizing world more in terms of “clusters” and less in terms of specific geographical areas. There was a need for institutional adaptation, knowledge creation and sharing, networks, partnerships, alliances and institutional learning.

The Chrétien/Martin focus on clusters meant that relationships were struck not only with cities and metropolitan areas but also with other regional and local actors such as universities, community economic development agencies, industry associations, research institutes and so forth. This meant that federal resources went where the clusters and economic payback were most significant, not to provinces equally.<sup>49</sup> It was intergovernmental relations of a different sort: provinces if necessary, but not necessarily provinces. During this time, despite the fact that the Royal Commission on Aboriginal Peoples reported, Chrétien did not take major initiatives on Indigenous issues (or engage directly with Indigenous leaders), a stance reversed by Martin during the negotiation of the short-lived Kelowna Accord.

## What is Trudeau Doing to Act on His Vision?

TRUDEAU'S MULTILEVEL STYLE OF INTERGOVERNMENTAL RELATIONS stresses inclusion. Multilevel federalism is the enlisting of other levels and forms of government — and I include Indigenous communities in this designation — in a social and economic vision (environmentalism, feminism, indigeneity, youth). With Trudeau's multilevel federalism, the mechanisms of intergovernmental relations are dramatically different than Harper's. It is the difference between narrowcasting and broadband.

Within the Trudeau vision, an intergovernmental agenda is particularly central in two areas: the environment and climate change, and Indigenous affairs.

Harper's approach reflected a tendency to negotiate separately, not jointly, with provincial premiers<sup>50</sup> and to avoid engagement with municipal and Indigenous leaders. In contrast, Trudeau moved quickly to restore multilateral First Ministers' Meetings while broadening the forums for engagement. The following meetings took place in his first three months in office:

- He met twice with all first ministers to discuss climate change (November 27, 2015, and March 3, 2016).
- He invited all provincial and territorial first ministers to the COP 21 environmental conference in Paris, November 30 to December 10, 2015. In addition to the 10 first ministers who attended, the Canadian delegation included representatives from national Indigenous organizations, youth, nongovernmental organizations and business.
- He met one-on-one with Premiers Wynne, Notley, Couillard, Ball, McNeil, MacLauchlan and Clark in Ottawa or their provincial capitals.
- He met the leaders of five national Indigenous organizations — the Assembly of First Nations (AFN), the Métis National Council (MNC), the Inuit Tapiriit Kanatami (ITK), the Congress of Aboriginal Peoples and the Native Women's Association of Canada — on December 16, 2015, to discuss how to implement the Truth and Reconciliation Commission's final report; then he met with the leaders of the AFN, the MNC and the ITK on March 2, 2016. (Although it was not explained why the second meeting involved only three organizations, one national leader suggested it was because Indigenous or treaty rights were involved and the three are the "rights and title holders."<sup>51</sup>)
- He held a meeting on February 5, 2016, with the Big City Mayors' Caucus — part of the Federation of Canadian Municipalities (FCM) — to discuss potentially greater federal-municipal institutionalization, a theme that had been foreshadowed in a pre-election speech to the FCM.<sup>52</sup>

Within the Trudeau vision, an intergovernmental agenda is particularly central in two areas: the environment and climate change, and Indigenous affairs. Both

In order to set a new tone and strengthen relationships, Trudeau is introducing new sectoral processes alongside existing intergovernmental machinery.

received significant new resources in the 2016 budget. The infrastructure plan will invest \$11.9 billion over five years to modernize public transit, water and wastewater systems; provide affordable housing; and protect infrastructure systems from the effects of climate change. Phase 1 of the infrastructure plan will focus on public transit, water and wastewater systems, and affordable housing. Together with the new \$2-billion Low Carbon Economy Fund, this phase marks the first step toward what Budget 2016 calls a clean-growth economy. There will also be “historic investments” for Indigenous peoples of \$8.4 billion over the next five years, almost half of them in education. Nearly \$2 billion will be invested in water and wastewater infrastructure and drinking water monitoring on First Nations reserves over the same period.<sup>53</sup>

In order to set a new tone and strengthen relationships, Trudeau is introducing new sectoral processes alongside existing intergovernmental machinery. This is evident in, among other areas, climate change, Indigenous affairs and relations with municipalities.

### Climate change

One of the notable results of the March 2016 Vancouver summit on climate change was the commitment of the first ministers to establish four working groups to address how to meet Canada’s COP 21 targets: on clean technology, innovation and jobs; on carbon pricing mechanisms; on specific mitigation opportunities; and on adaptation and climate resilience. The working groups have federal and provincial-territorial co-chairs, will be overseen by relevant ministerial tables, will commission research on reducing emissions while growing the economy and will report by September 2016 to ministers, who will then report to first ministers.

### Indigenous affairs

A new type of intergovernmental relationship is being established by the Trudeau government — a relationship with Indigenous peoples. The recommendations of the report of the Truth and Reconciliation Commission (TRC), all of which the Prime Minister has pledged to honour,<sup>54</sup> reaffirm the nation-to-nation relationship between Indigenous peoples and the Crown in Canada and call for various commitments to ensure that Indigenous peoples are full partners in Confederation. The need to institutionalize further the relationship between the federal government and Indigenous organizations is mentioned throughout the TRC recommendations.

The ministerial mandate letters and Budget 2016 give the impression that the new relationship will be built at the sectoral level as well as the national level. The mandate letters state that provinces and territories, municipalities and Indigenous peoples will be consulted, worked with or partnered with, to establish a national early learning and child care framework, “co-manage” the three oceans, design an



inquiry into murdered and missing Indigenous women and girls in Canada, design school criteria and amend environmental assessment legislation. The budget also commits Ottawa specifically to engage with Indigenous peoples on later iterations of infrastructure plans, a national housing strategy and the national early learning and child care framework. All this constitutes an ambitious program of sector-specific institutional and programmatic partnerships.

One sign of growing institutionalization came in June 2016 with the founding of the Federal, Provincial, Territorial and Indigenous Forum (FPTIF) composed of federal, provincial and territorial ministers responsible for Indigenous affairs and the leaders of the AFN, the MNC, the ITK, the Indigenous Peoples' Assembly of Canada and the Native Women's Association of Canada. In establishing the forum, ministers confirmed "a new approach in support of improving outcomes for Indigenous peoples and promoting reconciliation in Canada."<sup>55</sup>

### Federal-municipal relations

Some steps toward federal-municipal institutionalization could be coming. In his pre-election speech to the FCM, Trudeau promised regular meetings with municipal leaders; a renewed federal role in housing; more money for public transit and transportation, with "provincial and federal partners at the table"; and a federal government that would be a "strong partner" as municipalities prepare to be "smart cities."<sup>56</sup>

In February 2016, following his meeting with the Big City Mayors' Caucus, Trudeau said that "we are restarting a relationship that had been significantly neglected over the last 10 years."<sup>57</sup> Budget 2016 commits Ottawa to working in partnerships on developing an innovation agenda and on green infrastructure projects.

Ottawa will nevertheless walk a fine line in these ventures. Parliamentary Secretary for Intergovernmental Affairs Adam Vaughan notes that although the Liberals will be less reluctant than the Conservatives to engage with cities on a wide variety of measures, infrastructure money to municipalities will, as before, flow through provincial governments.<sup>58</sup> Moreover, this will involve not only the Prime Minister: so far the Finance Minister and the Ministers of Immigration and Environment have consulted with the big city mayors on matters within their portfolios.

## What Stands in Trudeau's Way?

THERE IS PLENTY IN PRIME MINISTER TRUDEAU'S way as he seeks to implement the vision and initial commitments reviewed above. Three factors in particular

substantially restrict his *marge de manoeuvre*: the Harper legacy, province building and the declining federal presence.

The effect of the Harper legacy on Trudeau is not to be discounted. Harper left Trudeau with a smaller government. The corporate tax rate was cut by 6 percentage points and the GST by 2, leaving less money to fund the federal public sector and transfers. Direct program spending was also cut, and the intergovernmental capacity of the Privy Council Office severely constrained. In general, his policies fostered a growing sense of provincial self-reliance and interprovincialism. The Council of the Federation, although established shortly before Harper was elected, came into its own during his tenure by establishing a secretariat and providing useful policy alternatives.

The net effect of these factors – the Harper legacy, province building and declining federal presence – has been to deprive federal actors of the type of leadership role within the federation they used to assume routinely.

Another factor Trudeau will have to deal with is “province building.” For Matt Wilder and Michael Howlett, “the provinces are often the primary actors responsible for the formulation, implementation and financing of policy programs in Canada.”<sup>59</sup> They identify two measurable variables of government strength: policy capacity (measured by personnel numbers, bureaucratic professionalism and financial resources) and policy action (measured as targeted expenditures). Most of these metrics show that provinces are in fact the primary actors.

The declining federal presence is another constraint Trudeau will face. This is especially notable in matters of infrastructure, health and economic development. The Mowat Centre, using OECD data, reported that “subnational governments in Canada play a larger role relative to the federal government in public infrastructure investment than is the case in other peer federations in the OECD, such as Germany, Australia, and the US.”<sup>60</sup>

The federal share of total health care spending, according to a 2015 report by Hugh Mackenzie, declined from 37 percent in the 1970s to the 10 to 11 percent range in the wake of the Canada Health and Social Transfer under Chrétien and Martin.<sup>61</sup> The 2004 Health Accord and its 6 percent escalator advanced the federal share to around 23 percent.<sup>62</sup> Mackenzie, however, estimates that as a result of the 2011 changes, the federal government’s share of health care costs will drop from 23 percent to between 18 and 19 percent by 2024.<sup>63</sup> The net effect of these factors — the Harper legacy, province building and declining federal presence — has been to deprive federal actors of the type of leadership role within the federation they used to assume routinely. At a federal-provincial meeting I once attended, I was reminded of the “golden

rule”: the one who has the gold, rules. The federal government’s gold has been less and less in evidence; it consequently has less capacity to set national standards and a greater incentive to work in partnership with provincial and territorial governments.

## Trudeau’s Challenges and Options

BARRING A CHANGE IN STRATEGY, PRIME MINISTER TRUDEAU’S chances of reaching his proclaimed objectives for intergovernmental relations are mixed. The June 2016 federal-provincial agreement on reform of the Canada Pension Plan is a clear early success. All provinces except Quebec signed on to a 50th-anniversary reform of the plan, which garnered the praise of social policy experts for the federal leadership involved.<sup>64</sup> However, for the better part of Trudeau’s period in office there has been an impasse on climate change; provincial leadership has guided energy and pharmaceutical policy; and federal inaction is evident on some major intergovernmental files.

Climate change is one of the few areas where the Trudeau government uses the language of leadership. Trudeau entered the First Ministers’ Meeting on March 3, 2016, hinting at federal leadership, aiming in particular for a national carbon pricing minimum. (Carbon pricing is commonly understood to be a blanket term that includes both carbon taxes and cap-and-trade arrangements.) However, several first ministers balked, and Trudeau had to compromise. The ensuing Vancouver Declaration on Clean Growth and Climate Change<sup>65</sup> states that when an agreement is reached on carbon pricing it will be “adapted to each province’s specific circumstances and in particular the realities of Canada’s indigenous peoples and Arctic and sub-Arctic regions.”

Some provincial intergovernmental actors interpret the working group structure as a sign of impasse — an admission by Ottawa that a national carbon price was not acceptable, at least not so early in the mandate. Some provincial officials have also suggested that their federal counterparts could have taken greater account of the work on this issue done by the Council of the Federation over the past few years. By June 2016, the impasse was still evident in the carbon pricing working group, with Ottawa’s push for a federal carbon tax meeting particular resistance from Saskatchewan, Quebec and Nova Scotia, and Ontario not wanting a federal carbon price with its cap-and-trade system.<sup>66</sup>

There are also examples of the federal government following provincial leadership. This is evident with regard to the Canadian Energy Strategy (CES) and

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pharmaceuticals. The CES was first broached by Alberta Premier Alison Redford in 2012 and adopted by premiers at a Council of the Federation meeting in 2015. The Liberal platform used the same term in its commitment to work with provinces and territories in this field. The Vancouver Declaration on Clean Growth and Climate Change referred to “the leadership shown and actions taken by the provinces and territories.” Provincial energy ministers are working with the federal Minister of Natural Resources on implementation of certain elements of the CES (even though it remains a Council of the Federation initiative).

On pharmaceuticals, in January 2016, Health Minister Jane Philpott said the federal government would join the provincial and territorial pan-Canadian Pharmaceutical Alliance (pCPA) to negotiate lower prices on brand name and generic drugs for the drug plans it administers.<sup>67</sup> Ottawa was not part of discussions in 2010 when the alliance started, although apparently it was invited to participate.<sup>68</sup> (The pCPA is an example of the useful initiatives emanating from the Council of the Federation.)

Finally, there is inaction — or lack of stated intent — on some major intergovernmental files with big price tags. In this context, the Trudeau government’s first budget predicted a deficit of \$19.4 billion for 2016-17,<sup>69</sup> which leaves little room for major initiatives. For example, prior to the January 2016 meeting with her provincial and territorial counterparts, Philpott indicated her wish to discuss principles, not finances, with regard to the CHT, the opposite of the order that her provincial colleagues preferred.<sup>70</sup> She resisted accepting a provincial and territorial target of 25 percent federal funding for health care, instead committing the federal government to work collaboratively “toward a long-term funding arrangement which would include bilateral agreements.”<sup>71</sup> The Minister later indicated that any new federal spending on health would probably be allocated not to the CHT but to “specific domains” through agreements with individual provinces.<sup>72</sup> The federal government’s intent with regard to the CST, LMDAs and Equalization is also not yet clear (although with Equalization, the relevant legislation is in force until 2019).

Looking forward, Trudeau may turn to other intergovernmental strategies. Three alternatives, which stem from his own approach, are possible.

#### A “medicare approach”

In a 2015 speech in Calgary, Trudeau spoke about a “medicare approach”: provincial experimentation, with federal leadership at key moments. He referred in particular to climate change policy:

*So we will set a national standard in partnership with provinces and territories, one that gives them the flexibility to design their own*

*policies to achieve those targets, including their own carbon pricing policies. And we will provide targeted federal funding to help the provinces and territories achieve their goals, in the same way that federal funding through the Canada Health Transfer is designed to support provinces and territories in achieving the goals of the Canada Health Act.*<sup>73</sup>

According to University of British Columbia environmental expert Kathryn Harrison, this approach would involve Ottawa taking a more active leadership role. She believes the Vancouver model is flawed because, despite three decades of pledges of FPT “collaboration,” emissions have continued to increase. In her view, now is the time for the “medicare moment in Canadian climate policy.”<sup>74</sup> If successful, this approach could be applied in other areas. However, its broader applicability may be limited.

### Low-hanging-fruit option

Another option is to act on issues where provincial resistance is lower and federal involvement would be less controversial. These might include clarifying roles for innovation policy,<sup>75</sup> being an umpire in pipeline disputes, elaborating bilateral approaches to improve relations with Indigenous peoples (as opposed to more ambitious initiatives involving provincial and territorial governments)<sup>76</sup> and involving provincial governments in future international trade negotiations.

This option would see Ottawa acting less as a leader and more as a bridge or facilitator. It still involves federal activism and is reflected in certain commitments in the Liberal platform, such as re-establishing the federal government’s role in supporting affordable housing and creating a single online point of contact for all government services. On another more contentious issue, the expansion of pipelines, political commentator John Ivison has written that “Trudeau has made much of openness, evidence-based policy and acting as a referee, not a cheerleader.”<sup>77</sup>

### Collaborative consent

A third option involves following the logic of Liberal policy documents and deepening the collaborative model. The documents are not clear about what in fact “collaborating with,” “working with” and “partnering with” actually look like in practice. Some inspiration may come from processes involving Indigenous peoples, who are of course now more fully part of the intergovernmental universe.

The “collaborative consent” principle originated with the government of the NWT and has been mentioned by Trudeau as a promising approach for Canada’s implementation of the United Nations Declaration on the Rights of

Indigenous Peoples (UNDRIP).<sup>78</sup> It involves what Phil Fontaine, Merrell-Ann Phare and Michael Miltenberger called “consent through collaboration” at multiple stages of interaction between government and Indigenous peoples: development of legislation; development of policies and plans; negotiations regarding ownership and use of lands and waters; sector-specific agreements for resource management; and resource revenue-sharing agreements.<sup>79</sup> As Trudeau noted, “It shouldn’t ever even come to the decision, is it a veto or not a veto. We should be working together from the very beginning.”<sup>80</sup>

The collaborative consent principle, suitably modified, could be applied to a wider intergovernmental zone. Federal and provincial governments are no stranger to collaborative ventures, but are less associated with working toward consent at multiple stages of the policy process. Such an approach could help build support for policy change in stages rather than leaving most major decisions for a summit meeting of ministers or first ministers at which political (or partisan) considerations can derail an agreement that seemed close to approval.

## Conclusion

IN THEIR EFFORTS TO MANAGE THE CANADIAN FEDERATION, prime ministers seldom end up where they thought they would. Harper’s open federalism was motivated by his long-standing view that the federal and provincial governments should stick to their respective areas of jurisdiction and his assessment that Canada was ready for economic liberalism. With recession federalism, Harper found it necessary to join the international front of countries adopting a quasi-Keynesian recovery strategy, and in so doing he outflanked the opposition leaders who nearly toppled his government and focused public attention on “building Canada.” With deficit federalism, Harper was committed to proving (and leaving as a legacy) that small government and balanced budgets went together and to pursuing market-enabling federalism.

Trudeau has enunciated a view of intergovernmental relations centred on collaboration and partnership (including with Indigenous peoples). He has laid the groundwork for results- and evidence-based intergovernmental agreements. His approach also shows the imprint of a generational change.

The Harper legacy, ongoing province building and the smaller federal presence will weigh heavily upon the Trudeau government. Trudeau will also be mindful of the legacy of previous Liberal prime ministers and, not unlike them, will probably pursue an eclectic mix of multilateral, bilateral and federal-municipal

approaches. On relations with Indigenous peoples, he shows signs of going considerably beyond his predecessors. It is also realistic to expect that Trudeau's intergovernmental approach will change, as events dictate. Depending on the policy field, he may be galvanized into a "medicare moment," act as a bridge or facilitator, or practise collaboration at different phases of a particular policy process. Or he could, on certain key issues, adopt a more assertive approach, as did many of his predecessors.

When one examines Harper without jeers and Trudeau without cheers, new impressions emerge. Harper left a legacy of a less intrusive federal government while deviating in some respects from the classical federalism that was initially so central to his approach to intergovernmental relations. As for Trudeau, it is too early to know whether his harmonious relations with other governments will endure and, in particular, what concrete results will be achieved.

## Notes

I am deeply grateful to the persons I interviewed in the preparation of this article for providing valuable insights: the Parliamentary Secretary for Intergovernmental Affairs (Adam Vaughan, MP), one Harper insider, three present or former provincial deputy ministers of intergovernmental relations, four present or former Privy Council Office officials and two officials from the Canadian Intergovernmental Conference Secretariat. I also benefited from the considerable insights of IRPP research director Leslie Seidle. Any errors or misinterpretations are my responsibility.

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*IRPP Insight* is an occasional publication consisting of concise policy analyses or critiques on timely topics by experts in the field.

To cite this publication: Christopher Dunn, *Harper without Jeers, Trudeau without Cheers: Assessing 10 Years of Intergovernmental Relations*. IRPP Insight 8 (September 2016). Montreal: Institute for Research on Public Policy.

The opinions expressed in this publication are those of the author and do not necessarily reflect the views of the IRPP or its Board of Directors.

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Date of publication: September 2016  
ISSN 2291-7748 (Online)  
ISBN 978-0-88645-355-8 (Online)