

Deconstructing the New Federalism

James Bickerton (St. Francis Xavier University)¹

Abstract

The appearance or imminent arrival of a 'new federalism' has been a repeated theme in the study of federal-provincial relations in Canada and in the pronouncements of Canadian governments. At the same time, there clearly is a strong path dependency effect that acts as a check or limitation on the scope of change that federal governments can accomplish, leaving Canadian history littered with the corpses of 'new federalisms' that have never been realized. While there is much that separates recent scholarly interventions on the new federalism, all recognize the need to restore a greater measure of political legitimacy and functionality in federal-provincial relations by building consensus on rules and norms of behavior. This paper surveys the history of 'the new federalism' as a political strategy and program, and analyzes the competing interpretations of the concept that are currently on offer. I conclude that policy challenges looming on the horizon will demand a coordinated and multilevel response from governments, making it likely that whatever new federalism emerges will continue the trend toward shared jurisdiction and policy-making, rather than disentanglement.

Collaborative, asymmetrical, bilateral, chequebook, checkerboard, open, messy, and networked: these are just some of the terms that have been used to describe Canadian federalism over the past decade. But which of these, if any, best describes the form of federalism likely to prevail in the second decade of the 21st century? There are a range of factors poised to test the effectiveness, adaptability and flexibility of the Canadian federation, and perhaps determine its future character. These include the impact of post-stimulus fiscal restraint and constraints on the future use of the federal spending power; an unsustainable rate of increase in health care costs; the demographic challenge posed by an aging population and workforce; the nexus of energy and environmental policies; the role of large city-regions as the engines of the new knowledge economy; concerns about Canadian productivity and competitiveness; and even such old, familiar issues as senate reform and the further use of asymmetry to accommodate Quebec.

Over the past several years, there have been a number of contributions to what has been an ongoing discussion about the form, content and character of intergovernmental and state-society relations in the Canadian federation. Canadian federalism is an area of study populated

¹ James Bickerton, Department of Political Science, St. Francis Xavier University, Antigonish, NS B2G2W5
jbickert@stfx.ca

by scholars who are, some might say, obsessed with marking even minor shifts in governmental relationships by devising new terms to better capture the altered forms of federal governance which they perceive to be the result of such shifts. This already extant tendency within the community of federalism-watchers was stimulated and augmented by the new Conservative government when it assumed office in 2006. In a key campaign speech in Quebec, party leader Stephen Harper had promised the dawning of a new era of Canadian federalism which he dubbed 'open federalism'(CPC, 2005). As well, there are longer term trends fueling scholarly musings about where Canadian federalism is headed next, including the higher degree of decentralization and regional differentiation thought by many observers to be the likely outcome of ongoing globalization processes, the most important of which for Canada is increasing economic integration within North America.

Old 'New Federalisms': Déjà vu all over again?

The appearance or imminent arrival of a 'new federalism' has been a repeated theme in the study of federal-provincial relations in Canada and in the pronouncements of Canadian governments. Indeed, the history of federal-provincial relations is usually cast as a series of distinct phases or eras, each demarcated by the onset of a 'new federalism' distinguished from its predecessor by a different pattern of intergovernmental relations, usually accompanied by a change in the substance of federal-provincial fiscal arrangements (Simeon and Robinson, 2009). Thus, in the postwar or modern era, the 'cooperative' federalism that prevailed during the quarter-century of growth and prosperity that followed the war was replaced by the more competitive 'executive' federalism of the 1970s and '80s, a seismic shift in federal-provincial relations first recorded by Black and Cairns in a seminal article in which they referred to 'the other crisis of Canadian federalism' (Quebec, of course, being the primary crisis) (Black and Cairns, 1966).

It was during the period of cooperative federalism that Canada's social welfare state was constructed under federal leadership, with provincial co-participants who were by times eager, resistant, or simply acquiescent. Of course, this general picture is complicated by the sometimes innovative and pressuring role played by particular provinces, such as Saskatchewan on health care, Atlantic Canada on regional policy, and Quebec on a range of fiscal, social, and constitutional issues. And certainly the impact of the Quiet Revolution was felt by all governments, as Quebec's restiveness with the postwar shape of the federation fueled its resistance to federal dominance and its increasingly strident demands for provincial autonomy and a new federal partnership between Quebec and Canada. Another notable aspect of the cooperative federalism period was the regional component that was built into Canada's expanding matrix of social programs, and the fiscal and intergovernmental arrangements that were devised to coordinate and implement these programs. This regional component – in essence the federal government's response to the specific economic and fiscal needs of Quebec and Atlantic Canada – included equalization payments, regional development policies, and regionally-calibrated social programs and fiscal transfers (such as 'regionalized' unemployment insurance and 'equalized' tax point transfers). By the 1970s this regional component was an institutionalized pillar of Canadian federalism, so much so that it was entrenched as a governance principle in section 36 of the 1982 Constitution.

It was during this latter period that the last government to be led by Pierre Trudeau made a determined bid to install its own preferred version of a 'new federalism' for Canada, one that

featured a much more centralist, nationalist, and unilateralist federal government (Milne, 1986). The political impetus and rationale for this bold initiative was the declared need for the federal government to combat the increasing balkanization of Canada by confronting and 'scaling back' the excessive provincialism and decentralization of the preceding decade (Milne, 1986). This political struggle against rampant provincialism, as posited by the Trudeau Liberals, had economic and social rationales as well. First, the global energy crisis precipitated by OPEC and the Iranian Revolution had made Canada a potential energy superpower, and given it the opportunity to overcome the stagflation and economic malaise of the latter 1970s, but only if the federal government assumed a strong leadership role in economic and industrial development (Clarkson, 1985). Secondly, federal leadership also was needed to protect and preserve the integrity of national social programs against the economizing and privatizing measures of provincial governments (Milne, 1986). In terms of policies, the National Energy Program, the mega-projects industrial strategy, the 1982 Constitution Act, and the Canada Health Act are examples of federal initiatives that attempted to give substance to Trudeau's 'new federalism'.

The high levels of confrontation and regional alienation this approach to federal-provincial relations generated, particularly with regard to Quebec and the West, and the unravelling of the aggressive economic and regional development strategies that underpinned Trudeau's new federalism, led to its undoing. In the wake of a sharp economic recession, Canadians were increasingly disaffected and seemingly ready for a 'channel change' in terms of federal leadership. The incoming Mulroney government in 1984 immediately scrapped several elements of Trudeau's legacy and proffered instead their own vision of a 'new federalism', one which they claimed would be more respectful of the provinces and cooperative in its dealings with them. The dismantling of the National Energy Program that so irked the West, a new, more regionalized development agency for Atlantic Canada (ACOA), and negotiations with Quebec leading to a new constitutional settlement (the Meech Lake Accord), were evidence of this new federalist attitude and philosophy (Blake, 2007). Even the decision to pursue a free trade agreement with the United States can be seen as connected to this new federalism, as it represented an economic-industrial policy congruent with provincial preferences for more autonomy and the redress of historic regional grievances related to national trade and transportation policies (Laxer, 1986; Hart, 2002).

As the historical record shows, despite the best of federal government intentions, whether for the reassertion of Ottawa's dominant role within the federation (as with Trudeau), or for more accommodative federal-provincial relations and a constitutional settlement with Quebec (as with Mulroney), political and economic forces beyond their control frustrated and ultimately derailed federal government plans and designs. Trudeau's nationalist economic policies were gutted by the collapse of world energy prices and by strident American, provincial and business opposition (Clarkson, 1985), while his vaunted 1982 constitutional settlement excluded Quebec and planted a "poison pill" at the heart of Quebec-Canada relations (Banting and Simeon, 1983). Mulroney's government, along with his more accommodative approach toward the provinces, eventually would collapse amidst the wreckage of two failed constitutional accords ('Meech' and Charlottetown), mounting federal deficits, and a recession in the early 1990s linked by his detractors to the implementation of the Canada-US Free Trade Agreement (Bickerton, Gagnon and Smith, 1999).

After the electoral earthquake of 1993, the reaction of the newly-installed Liberal government under Jean Chretien to the political turbulence generated by Mulroney's 'constitutional federalism' was to treat any further discussion of constitutional reform as the untouchable 'third rail' of Canadian politics, a sentiment shared by virtually all provincial governments outside Quebec. Still, avoidance as a federal strategy has its limits; and soon enough the realities, demands and exigencies of governing in a federal system required both the federal and provincial governments to adapt, engage with one another, and innovate new forms of intergovernmental relations. This involved both unilateral federal initiatives (the Canada Health and Social Transfer) and new federal-provincial agreements (the Social Union Framework Agreement and the Health Accords), but also, less expectedly, inter-provincial initiatives of various sorts (the Calgary Declaration, the Agreement on Internal Trade) and a new interprovincial agency (the Council of the Federation) (Simeon and Robinson, 2009). Though Chretien's decade in power produced a pragmatic and variegated approach toward management of the federation, developments during the latter half of this period (once deficit reduction was no longer the dominant preoccupation) did suggest to some observers the onset of a new phase of federal-provincial relations. At the heart of this new 'new federalism' was an approach based on a more equal partnership of governments who jointly seek non-constitutional solutions to nettlesome policy problems that refuse to remain neatly within jurisdictional lines. Termed 'collaborative federalism', the idea that a new era of federal-provincial cooperation was unfolding achieved some buoyancy thanks to the swelling tide of federal government revenues made available by sustained budgetary surpluses, and the revived use of the federal spending power that was the seemingly inevitable result (Cameron and Simeon, 2002).

Federalism in Flux?

While developments during the Chrétien years spawned use of the term 'collaborative' to describe the emerging if not dominant pattern of federal-provincial relations, the rather benign view of the operative principles and mechanisms of the new federalism that it suggests has not gone uncontested. At least one major problem was an act of federal unilateralism that seems now to have been seared into provincial memories: the sharp, unilateral reduction in federal transfer payments to the provinces in 1995-96 (the infamous CHST) which was designed to rid the federal government of its fiscal deficit, but left the provinces with the unpleasant task of dealing with the fiscal, political and social fallout, including painful cuts to social programs. Thereafter, trust within the federal system would be in short supply. For their part, provinces became wary of any new federal proposals for co-funding programs, desirous if not demanding of more autonomy and less federal interference in provincial jurisdictions, and adamant that a significant vertical fiscal imbalance (VFI) had been created by the federal spending cuts. This in turn required a substantial increase in federal transfers – or alternatively a transfer of revenue-raising capacity – to the provinces (Boessenkool and Wilson, 2007; St. Hilaire, 2006).

It is within this historical context that Canadian Prime Ministers in the post-Chretien era have attempted to concoct politically-viable federal strategies. The short-lived Martin government (2003-06) used its enviable fiscal position to continue the process already underway of ramping up federal spending on social programs, especially health. This was being done either in the form of direct federal spending (for example, the Millennium Scholarships and Child Tax Benefit) or by raising federal contributions to shared cost programs (for example, the Health Accords). However, the Martin government also used its budgetary surplus to go beyond these well-

trodden uses of the federal spending power to launch new initiatives in non-traditional areas. These included the Agenda for Cities, which featured both tri-lateral urban development agreements and the Gas Tax Transfer Agreements (OECD, 2007), and Early Childhood Development and Daycare, deemed by some as the first new national social program in thirty years (Friendly and White, 2008). These agreements were set in motion by engaging with individual provinces through a series of bilateral negotiations.

Martin also personally intervened (in the context of maneuvers to sustain his precarious minority government) to reach a settlement with two aggrieved provinces (Newfoundland and Labrador and Nova Scotia) in the politically-sensitive area of equalization and offshore resources (the so-called Atlantic Accords). This represented a major departure both in terms of the process used and the substance of the agreements, and both aspects triggered a spate of criticisms, recriminations, and general angst amongst observers, both political and scholarly. The main concern expressed was that Martin's bilateral or 'checkerboard' federalism lacked both a moral compass and a principled foundation, leading toward the further erosion of trust and the legitimacy of the federal system. The jurisdictional boundaries for government action were becoming more blurred, and with regard to the equalization program, what had been a formula-based and relatively de-politicized national arrangement had been replaced by 'ad hoc' improvisation that could undermine broad-based support for the program (Smith, 2008; Bickerton, 2008). Leaving aside legitimate political questions about the negotiation and substance of the Atlantic Accords, their subsequent unilateral alteration (or abrogation) by a new federal government led by Stephen Harper provoked bitter allegations of breach of trust from the affected provinces, reviving old grievances about centre-periphery relations and perceptions of the unfair treatment of small provinces within the federation. It also raised yet again a number of issues related to the dysfunctional mechanisms and pathologies of executive federalism in Canada (Bickerton, 2008).

The flip-side to the eventual outcome of the Accords controversy, at least as perceived by most close observers of the federation's inner workings, was that a key national program had been strengthened by its shift to a ten-province standard and a more principled foundation. Nova Scotia did manage to get a new deal that was generally well received, though the original federal intent to renege on a signed agreement left a distinctly bitter aftertaste to the subsequent renegotiated settlement (Bickerton, 2008; Jeffrey, 2008; Maher, 2008). Then again, Newfoundland nationalism with its sense of alienation from the federal government certainly was stoked by the whole episode, even if the province surged ahead regardless, leaving its 'have-less', equalization-recipient status behind.

When the Martin Liberals were defeated and replaced by Harper's Conservatives early in 2006, a new approach to the conduct of federal-provincial relations was high on the new Prime Minister's list of priorities. The pendulum was swinging once again as Stephen Harper stated his objections to the Chrétien-Martin regime's 'ad hoc' approach and, in his words, 'outrageous use of the federal spending power' giving rise to a 'domineering and paternalistic federalism' (CPC, 2005). Calling for a renewed respect for the division of powers, more orderly intergovernmental relationships, and a federal retreat to its core responsibilities, he introduced the notion of 'open federalism' with the following key elements: respect for the constitution and restoration of the balance between the two orders of government, support for strong provinces and the interprovincial Council of the Federation, limitations on the use of the federal spending power, and measures to fix the fiscal imbalance between the federal and provincial levels of

government (CPC, 2006). The 2006 Conservative election platform included the idea of a 'Charter of Open Federalism' and promised a comprehensive and permanent fixing of the 'fiscal imbalance', while the 2007 Speech from the Throne proposed legislated limits on the federal spending power (Canada, 2007). Three years later, neither of these had yet to materialize, nor were they mentioned again in subsequent Throne and Budget Speeches.

Who is Saying What About the New Federalism?

Clearly the collaborative federalism of the Chretien-Martin period – once hailed as the new federalism – was hampered if not undermined by a number of factors: a shortage of intergovernmental trust and federal comity, the federal government's tendency in its dealings with the provinces to revert to unilateralism or bilateralism, a discernible shift in priorities and governing ideology occasioned by a new Conservative government, and after 2008 a pinch of fairly major proportions on the federal purse. If collaborative federalism has been stalled or set aside, what of the rather vague and underdeveloped concept of 'open federalism'? Can it be seen as collaborative federalism's replacement as the new 'new federalism'? Some analysts, at least initially, seemed to think so, either approvingly or critically; others added significant qualifications; while still others saw little that was new about 'open federalism', or offered instead the prospect of yet other, contrasting models of the new federalism. This range of interpretation might usefully be divided into five main perspectives, with generous allowance for diversity within and overlap between each: 1) status quo skeptics, 2) Quebec autonomists, 3) progressive pan-Canadians, 4) collaborative disentanglers, and 5) networked globalists.ⁱ

Status Quo Skeptics

The status quo skeptics are those who cast doubt on the scale and scope of change being proffered under the banner of 'open federalism', arguing instead for the strong influence of path dependency on the federal government's relations with the provinces, and the prominence of political symbolism and short-term partisan objectives in the Harper government's pronouncements and policy initiatives concerning management of the federation. A number of federalism experts were quick to stake out this ground soon after the term 'open federalism' had appeared. They see the concept as mostly affirming existing tendencies with regard to intergovernmental relations on the social and economic union, and regard its purpose as primarily a partisan electoral strategy aimed squarely at Quebec (Banting, 2006: 78). Roger Gibbins argues that this is certainly the way 'open federalism' was viewed in the West, at least by the small minority which even took notice of it. Open federalism was a Quebec issue, not a national issue, and akin to a "Nixon to China" effect, western support for and trust in the Harper Conservatives provided his government some leeway to seek an accommodation with Quebec. However, if the Harper Conservatives did attempt to expand the constituency for a new model of federalism based on a more decentralized Canada, Gibbins thinks it would be unlikely to generate much popular appeal, support or interest in a region that remains strongly supportive of the idea of national standards and values, and highly ambivalent about greater decentralization (Gibbins, 2006: 73-4).

The guiding assumption of all the 'status quo skeptics' appears to be Keith Banting's claim that "federal governments seldom get the federalism they want" due to the constraints imposed by provinces, opposition parties, and Canadian public opinion. Banting argues that any change in

federal approach represented by the Harper Conservatives has been more one of degree than kind, with a slightly altered balance in the emphasis placed on federal-provincial agreements and shared-cost programs, on the one hand, versus direct federal payments to individuals and organizations, on the other. However, even this tilt toward a 'direct contact with citizens' approach is nothing new, nor is the Harper government's proclamation of what might be termed a 'SUFA-esque' approach toward shared cost programs.ⁱⁱ In short, the change promised by 'open federalism' is not significant. As Banting notes, that the Conservatives were able to embrace core features of federalism as currently practiced, while (for a time at least) creating a distinctive political appeal for themselves in Quebec, "is a testament to the importance of creative ambiguity in Canadian politics and the Canadian federation" (Banting, 2006: 81-2, 85).

Graham Fox also sees no clear break with the pattern of collaborative governance of the last decade, citing Harper's confirmation of a continuing substantial role for the federal government in health care, infrastructure and post-secondary education (Fox, 2007: 44-47). In a similar vein, after reviewing the first three federal budgets under Harper, Harvey Lazar finds more evidence of continuity than change. All major federal-provincial fiscal arrangements brokered by previous Liberal governments were renewed until 2013-14, while on the equalization program, the Harper government overturned its predecessor's unwelcome innovation in this area by reverting to past federal practice of balancing competing regional claims, accepting the advice of an expert appointed panel, and restoring the program's basic redistributive principles via a comprehensive, 10-province national standard. Nor has there been any announced change to other major areas of federal social spending, other than to cancel the Liberal child care initiative in favour of the Harper government's own direct subsidy option, as well as the Aboriginal Kelowna Accord, again with a promise that the government would introduce its own new initiatives in this area (Lazar, 2008: 134-36).

Quebec Autonomists

The jaundiced eye which status quo skeptics cast on the potential for change embodied in the concept of open federalism was shared by Quebec autonomists, but not surprisingly with a somewhat less benign attitude regarding this prospect. Jean-Francois Caron and Guy Laforest represent perhaps the most negative of assessments in their review of the concept of open federalism, which they characterized as weakly symbolic and essentially a continuation of the 'Trudeauist' model of federalism. Since this does not and cannot produce what they call a 'consequentialist multinationalism' – a change that would involve the differential and asymmetrical treatment of Quebec in the Canadian political arena, the only federal model congruent with Quebec's self-determination needs and historic demands – the authors believe it can neither overcome Quebec's constitutional alienation nor lay the groundwork for progress on this front (Caron and LaForest, 2009).

Alain Noel is less dismissive, but still reaches a negative conclusion. He reiterates the fundamental philosophical principles that always have guided Quebec's actions within the federation: that the Canadian federation is a dual purpose or 'double pact' federation of autonomous provinces and two nations, and that any new federalism – if it is to be aligned with Quebec's understanding of Canada – must further enable Quebec to act both as *an autonomous province* making common cause with other provinces, and as *a national state* seeking recognition as such from the representatives of the other nation with which it is partnered. In Noel's opinion, the tentative steps taken by the Harper government in this direction – as represented by the UNESCO initiative, the 'Quebecois nation' parliamentary resolution, and the

budgetary measures taken to repair the fiscal imbalance – fall well short of what is needed (Noel, 2006: 29-33).ⁱⁱⁱ Somewhat more optimistically, Eric Montpetit sees a glimmer of potential in ‘open federalism’ for easing Quebec’s dissatisfaction with Canadian federalism if it were to usher in an era of small, successive, fragmented policy changes at the margins of the status quo (an approach he labels ‘disjointed incrementalism’). Taken together, over time, such incremental changes could bring about a more radically asymmetrical federation without risking the explosion that would be the likely result of a direct clash of federal visions, as happened around the Meech Lake and Charlottetown Accords (Montpetit, 2008).

Progressive Pan-Canadians

Those most convinced that the concept of open federalism represents something dramatic and ‘nefariously new’ are those who perceive a coherent neo-liberal or conservative ideology at work behind the concept, along with evidence of its implementation by the Harper government. Adam Harmes sees in the enunciated principles of open federalism an explicitly right-wing, neo-liberal theory, with federal-provincial relations subordinated to the ‘greater good’ of liberalizing markets by constraining market-inhibiting government intervention in areas such as environmental, labour and social policy (Harmes, 2007).^{iv} The expected result, according to Harmes, is a “race to the bottom and a further shredding of the social safety net” as taxes, social spending and regulation is reduced in the competitive struggle to attract investment (Harmes, 2007: 434).

Similarly, Kenneth Whyte characterizes the Harper government’s vision of federalism as confusing ‘pure federalism’ with “mere fragmentation” that will prevent “Canada’s diverse communities from working towards a coherent and capable nation” (Whyte, 2008: 1). Like Harmes, he argues that the core idea of open federalism is a neo-liberal one that requires each level of government to stick to its (narrowly construed) constitutional mandate, thereby diminishing the role played by the federal government in social affairs, while encouraging greater diversity and asymmetry amongst provinces. If implemented, open federalism will constrain the federal government to carrying out what neo-liberals see as the prime duties of the nation-state: national security, public safety, trade regulation, and reducing as much as possible the tax burden on earners and consumers (Whyte, 2008: 25). Whyte worries that this reduced role for the federal government will make it less inclined and less able to “protect the vital interests of all citizens – the interests of economic security, equitable treatment, shared well-being and enjoyment of rights” (Whyte, 2008: 27).

While Tom Kent generally agrees with this assessment of the Harper government’s vision of federalism, as well as Harmes’s and Whyte’s concern about its implications for the role of the federal government, he is also of the opinion that the federal-provincial, shared-cost model of federalism created in the 1960s is now “broken”, “irreparably”. Citing the intergovernmental havoc and distrust caused by past federal behavior, in particular unilateral cuts to transfer payments, he concludes that any “[t]houghts of continuing transfers for new programs are ghosts from the past ... it is not in any event a sound base for an effective, steady program” (Kent, 2008: 420). His solution, however, is not a sharply reduced role for the federal government in social affairs, as some others have recommended. On the contrary, he advocates an expanded federal role through the exercise of its spending power directly: as he says, making use of the explicitly acknowledged federal right to make transfers to individuals and organizations (which under SUFA guidelines is subject only to a three month notice and offer to consult) (Kent, 2008: 421). In short, Kent argues that not only does the federal government have

the capacity to act on a progressive national agenda, but that there is both a need and an obligation for it to do so in a number of key areas: improved income security, skills upgrading, post-secondary education, child care, and health (Kent, 2008: 422-24).

Collaborative Disentanglers

Compared to the relative clarity of the other perspectives, the collaborative disentanglers are the most internally diverse and conflicted category of federalism scholars on this issue. The common denominator of this group is the argument that 'open federalism' harbours the potential to establish a new model of federalism, in large part because it is essentially congruent with longer term trends within the federation in terms of intergovernmental relations, as well as the functional need for further clarification and delineation of government roles and responsibilities, which is seen to be important for effective governance in the context of regional diversity and continental economic integration.

Roger Gibbins, in his guise as President of the Canada West Foundation, represents one end of the continuum based on his strong emphasis on the need for 'disengagement' over 'collaboration'. He characterizes the accumulating 'messiness' of Canadian federalism as growing 'chaos', and argues that the Canadian government should revive the values of federalism by restricting its focus to management of the shared economic space, while disentangling itself from the management of social space. Canada's provinces, regarded by Gibbins as "distinct societies", should be given "room to breathe and capacity to respond to their unique circumstances" (Gibbins, 2006: 65). The desired result of this disentanglement would be a federal government that acts with more focus and authority on fewer areas of activity, and a more internally-differentiated and internally competitive Canada, with more policy experimentation and innovation. To balance this greater decentralization in social affairs, the federal government must secure and reinforce the economic union and also increase its role in post-secondary education, due to the latter's increasing importance to national economic competitiveness.

Robert Young argues that at its core, the federal theory informing the concept of open federalism is that of 'strict constructionism', whereby the division of powers in the constitution is seen to be more or less sacrosanct, with each level of government adhering to its core responsibilities and staying out of the affairs of the other. At the same time, it recognizes Quebec as special, requiring at least a larger international role for that province related to its cultural responsibilities. This implies a bias in favour of strong provinces and a more classical, decentralist form of governance. Young avers that federal interference in provincial matters increases the likelihood of "joint decision traps", high transaction costs, and immobilism, all of which could be avoided or reduced by the federal government 'disentangling' from involvement in jurisdictions that are clearly provincial, such as municipalities. This requires and justifies an increase in federal transfers and/or tax room to the provinces to allow them to effectively meet their constitutional responsibilities for social affairs. At the same time, Young twins this recommendation for disentanglement with acknowledgement of the impossibility of any complete separation of governments in the modern context, and the continued need for federal and provincial governments to collaborate in key areas, but to do so with clearer rules of engagement, more respect for jurisdiction, and greater equality of treatment and partnership (Young, 2006: 8-13).

Richard Simeon generally agrees that the federal government should “stick to its knitting” in terms of jurisdictional responsibility by restricting its focus to foreign affairs and defense, fiscal and monetary policy, international and inter-regional issues such as the environment, and maintenance of the basic social safety net and inter-regional sharing. The new federalism, he argues, must be based on a principled and rule-governed system, featuring equal partnerships with a clear division of responsibilities, and wide discretion for provinces to achieve common purposes in their own way. At the same time, he recognizes that federalism involves a ‘messy dialogue’ on national values and goals, and that this is likely to get even messier “as cities and aboriginal governments continue to press for seats at the table” (Simeon, 2006: 4). He also warns against one-off deals or special treatment for any province, arguing instead for an ‘across the board’ asymmetry that allows maximum leeway to all provinces for experiment and innovation, an idea shared by others such as Kathy Brock (Brock, 2008:158).^v

Peter Leslie, at the other end of the spectrum from Gibbins, places more emphasis on both the need for, and continued likelihood of fairly wide-ranging intergovernmental collaboration, along with greater diversity. However, the collaboration he envisages for open federalism has a decentralist thrust, ceding the lead role to provinces through organizations such as the Council of the Federation and infrastructure initiatives such as the Atlantic and Pacific Gateways. In his estimation, “Cooperation with Diversity” best describes the model that fits the concept of open federalism (Leslie, 2006: 58).

Networked Globalists

The final group with an identifiably distinct perspective on the new federalism is the networked globalists. For those who hold this perspective, the dominant frame of reference is the emergence of a globalized, information society that ultimately will shape what governments need to do and how they need to do it. Canadian federalism will be forced to adapt to this new economic and social reality, though existing institutional geographies, cultures and practices will have an influence on both the pace and the form this adaptation will assume.

Janice Stein argues that federal governance is moving toward more overlap and shared policy space, not less, and that the dream of neatly matching responsibilities to revenues in the Canadian federation is doomed to failure, and the wrong paradigm for the future. The new paradigm is ‘the network embedded in a grid’, flexible and resilient with multiple points of intersection and no central hub; a form of multilevel governance that deploys resources, expertise and authority at all levels but in a coordinated way (Stein, 2006: 37). “What is needed is a federalism that is less defined, not more; less concerned with jurisdiction, not more” (Stein, 2006: 19). Stein argues that federalism can be a positive feature for governance in a networked society, but only if it blurs lines of division and by so doing creates opportunities for crossing divides and melding preferences, facilitates economic performance by making strategic investments (in infrastructure, education, training and research), and equalizes opportunities by ensuring good public services for all Canadians (Stein, 2006: 28-9).

Stein warns against the ‘easy way out’ represented by the aforementioned disentanglement strategies. To her way of thinking, this is simply an avoidance strategy that fails to come to terms with the policy challenges of today and tomorrow. In any event, clarifying jurisdictions and reinforcing hierarchy and policy silos will not work, and this is especially the case in Canada’s burgeoning city-regions, where the intermingling and overlapping of jurisdictions undermines disentanglement strategies as an option today, and even less so in the future. She

recognizes that there are many academics and bureaucrats who regard this vision of ‘messy federalism’ as a recipe for policy chaos, or “death by a thousand consultations” (Stein, 2006: 49). But she suggests that the reality of “shared policy space” will inevitably become more prominent as a feature of future governance, and transformative of existing institutions. Tellingly, Stein believes that the requirement to share policy space itself will compel institutional adaptation and change institutional functioning by fostering new norms that will reshape practices (Stein, 2006: 40).^{vi}

Another prominent scholar who can be situated in the ‘networked globalist’ camp is Thomas Courchene, who argues that the information age is definitively reshaping the emerging governance environment. Like Stein, Courchene argues that Canada’s 19th century constitutional structure and division of powers will have to be adapted to the environment-shaping factors of the 21st century if Canada is to meet the governance challenges of the future (Courchene, 2008: 115). His perspective shares at least two key points of agreement with Stein: first, that despite lacking the constitutional jurisdiction, Ottawa will play an important role in both cities and human capital development, simply because it will be so clearly in the national interest for it do so; secondly, that governance in a decentralized federation like Canada’s is no longer about disentangling jurisdictions – it is primarily about “adopting joint policies and making joint decisions on joint problems” (Courchene, 2008: 117).^{vii} The key problem to overcome in this scenario will be options for both enabling and limiting the federal spending power. Courchene recognizes the need for more restrictions – such as dispute resolution procedures – on the arbitrary use of the federal spending power than was the case for the open-ended agreements of the past, a change necessitated by provincial distrust regarding federal reliability. He also recognizes the distinctiveness of Quebec and believes that a ‘deux nations’ approach to shared cost programs will be required to allow the rest of Canada to petition Ottawa for new initiatives without this being subject to a Quebec veto (Courchene, 2008: 119). In effect, federal relations must be structured to shelter provinces from unwanted federal intrusion while allowing like-minded provinces to work with each other and Ottawa to develop pan-Canadian approaches to selected problems that fall within provincial jurisdiction. Finally, with regard to provincial concerns about future uses of Ottawa’s power to spend directly, Courchene believes that this will present a problem only for Quebec, and that some SUFA-like solution for this may be at hand. In general, it is important that future use of the spending power has “both a restraining and an enabling component” in order to increase not decrease the flexibility of the process dimension of Canadian federalism which has been so creative and adaptive in the past (Courchene, 2008: 120-21, 123).

New Federalisms Past, Present and Future

What is ‘seen’ when social and political phenomena are analyzed depends to a large extent on the conceptual framework of the analyst: the concepts, understandings, assumptions and expectations that filter and structure interpretations of social and political reality – past, present and future. As we have seen, one perspective shared to varying degrees by a number of analysts interprets the recent history of federal-provincial relations as predominantly a story of overlap, duplication, inefficiency, and conflict brought on by unprincipled federal actions and invasions of jurisdiction rooted in a disregard for constitutional propriety. To avoid more of the same of this behavior in the future, a strategy of disengagement is recommended, whereby government roles, responsibilities and jurisdictions are further delineated and clarified, with the general direction being a stronger federal role in areas related to the economic union, leaving the

provinces to preside unimpeded over most aspects of the social union. Still, this preference is qualified by the recognition that there will continue to be a need for collaboration between governments; the main difference in the projected new federalism being uncontested provincial primacy in social affairs, along with a greater role for interprovincial coordination through new national institutions such as the Council of the Federation.

Others disagree with this line of thinking about the new federalism, though for different reasons. From one perspective, predominantly though not exclusively social democratic in orientation, the idea of further decentralization of the Canadian federation is a strategy for intergovernmental peace and harmony that effectively disables the federal government. While perhaps suiting the purposes of neo-liberals or provincial autonomists, it will deprive Canadians of even the potential for an effective national government that can protect and pursue a shared national interest, and in particular to maintain and/or extend nation-binding and equity-promoting social programs and citizen rights. This is a concern and political agenda that in the past has enjoyed a wide appeal and resonance for Canadians (perhaps with the exception of francophone Quebecers).

While the networked globalists may or may not share this ideological-cum-political position, more importantly they see the continued intermingling of government roles and jurisdictions as a functional necessity in the future. Rather than disentanglement, this requires an expansion of the trend toward shared jurisdiction and policy-making, a trend that increasingly will incorporate both government and non-governmental actors in broad policy networks. It is the resiliency inherent in overlap and redundancy, the accretion of social capital that enables and promotes 'sticky networks', the virtuous messiness created by shared jurisdiction, and the 'iterative rounds of problem-solving' required by complex, inter-jurisdictional problems, that will define the new federalism.

While there is much that separates these visions of the new federalism, all recognize the need to restore to the federal government a greater measure of political legitimacy in federal-provincial matters by building consensus on rules and norms of behavior, such that trust levels amongst government actors will be significantly enhanced. This is seen to be the *sine qua non* for a functional federal culture, and an absolute necessity if the sustained messiness of the 'networked federalism' vision of the future is to be both politically viable and administratively workable. But any vision of the transformation of Canadian federalism also must take into account and incorporate path-dependent elements such as Canada's institutional heritage and the complications of national dualism. The further co-mingling and co-involvement of governments in policy problems that transcend jurisdictional boundaries will have to be both sensitive toward and adapted to the 'deux nations' reality of contemporary social Canada. In this connection, there are a number of suggestions on how this might be better accomplished, not all of which seem mutually compatible. These include the incremental and cumulative implementation of a Quebec-focused asymmetry, the 'equality-of-provinces-preserving' technique of a generalized asymmetry, measures to simultaneously enable and limit the use of the federal spending power, greater use of 'opting-out' and 'opting-in' procedures, new and strengthened intergovernmental machinery, and so on. While Senate reform is not championed anywhere in this literature as a prospective institutional change that could contribute to the emergence of a new federalism, an elected Senate (in the course of time) could conceivably contribute to higher levels of federal legitimacy, improved regional representation, and a new venue for inter-regional negotiation and compromise (Smith, 2009; Bickerton, 2007).

There are some other general observations that can be made about the new federalism. For those either hoping or fearing that open federalism was a harbinger of things to come, its actual implementation to date has borne out neither emotion. What were thought to be the first tentative steps in providing substance to the concept of open federalism have not been followed up, nor are there any immediate indications that they will be (for example, in the 2010 throne speech and budget). Open federalism seems to have burned brightly but briefly, only to be shunted aside by more pressing problems. Still, politics being what it is, it is not inconceivable that the concept could be revived at some future point.

Perhaps we should not be surprised at the apparent fate of open federalism. Canadian history is littered with the corpses of new federalisms, though some admittedly have enjoyed longer lives and certainly more long-lasting effects on federal institutions and practices than others, for good or ill. There clearly is a strong path dependency effect that acts as a check or limitation on the scope of change that federal governments can accomplish; rather, incremental adaptation and adjustment is the norm. The aspirations and designs of political leaders for more dramatic, grand, system-altering changes have tended to fall victim to forces beyond their control, as was the fate of the new federalisms proposed by Trudeau and Mulroney. Of course, on rare occasion there were dramatic initiatives that accomplished their objectives, either to permanently alter the parameters and institutions of Canadian federalism as with Trudeau's 1982 constitution, or to meet a daunting and immediate fiscal challenge as with the Chretien-Martin slashing of transfer payments to the provinces. But it is salutary to remember that both of these strategic 'successes' had longer-term negative consequences that greatly hindered the effective management and operation of the federation, and ultimately forced subsequent governments to take measures that acknowledged the necessity of a consensual federal partnership and the need to restore balance and equilibrium to federal-provincial relations. Still, the slate is never wiped clean, and mutual trust, understanding and compromise are slow to re-build, a challenge to sustain, and likely to dissolve in time if not somehow institutionalized.

What is apparent from even a cursory review of the history of Canadian federalism is that new policy challenges will arise that will alter political dynamics within the federation, and increase the incentives for cooperation on the part of governments. The looming problems on the horizon are both imposing and even more complex than those of the past, and it is probably safe to say that they will demand a coordinated and multilevel response from governments. These include, as mentioned at the outset, an unsustainable rate of increase in health care costs; the nexus of energy and environmental policies; the demographic challenge posed by an aging population and shrinking workforce; the role and needs of large urban agglomerations as magnets for immigration and engines of the knowledge economy; and the nagging question of Canada's relatively poor productivity performance. None of these are new problems, but they have been building over the past decade, largely without significant policy responses from government (the Health Care Accords being a stop-gap measure of sorts). Over the next decade, however, these challenges will become more pressing, and concerted and sustained policy action will no longer be avoidable. At a minimum, strategies to deal with health care, pensions, immigration, clean energy, education and human capital, innovation, and trade will have to be devised and implemented. This inevitably will bring federal-provincial relations to the fore once again, and a national leadership role will be forced upon even a reluctant federal government. Nor are Canada's older structural problems likely to disappear, like regional inequalities, the decline of rural areas, and Quebec's demand for national recognition and greater autonomy. And all these problems and challenges will have to be managed in the

context of straitened financial circumstances that likely will accompany an extended period of post-stimulus fiscal restraint.

Faced with great challenges, Canadians in the past have demanded leadership and action from their governments. The more pressing and widely-shared the problems, the more this demand for leadership has fallen naturally to the federal government, to take at the very least a lead role in the orchestration of a coordinated governmental response. This has been supported by a widely-shared sentiment of Canadian nationalism and national identity which survey data indicates has been growing stronger over the past couple of decades (French-speaking Quebec excepted) (McRoberts, 1995: 16; CRIC, 2002; Iype, 2010). This national sentiment seems unlikely to recede in the future, and national institutions, which in any event have an ingrained interest and tendency to assume a nation-binding and building role, will be infused with energy and purpose. This popular pressure on the federal government to devise solutions to complex problems in concert with other governments will be augmented by the pressure that will come from Canada's international partners, with whom we are ever-more deeply enmeshed. And here again, the pre-eminent role and mandate of the federal government in coordinating an intergovernmental, multilevel response is difficult to deny or avoid, if not easily accomplished.

It is undoubtedly true that some of the above-mentioned factors and problems pull Canadian governance in one direction, some in another, and some merely confound in terms of their likely impact on federalism. And it may be that the current governing ideology, fiscal worries, and concerns about constitutional propriety all recommend a strategy of decentralization and disengagement. Just as likely, however, is that political and economic pressures, and perhaps also technological factors, will be pushing in the opposite direction. It may even transpire that the Rubicon of public deficit financing, definitively crossed after more than a decade as a 'no-go' zone for federal politicians, may fail to recover its mesmerizing power over Canada's political discourse and public policy choices, both because the federal deficit will seem modest when compared to other OECD countries, and because the challenges facing government will tend to overshadow shorter-term fiscal concerns.

The argument that future policy challenges will require Canadian governments at all levels to be more involved with each other, not less, is convincing. This need for collaboration will extend outward to other policy actors and societal interests as complex problems require more deliberative processes rather than 'authoritative allocation' by jurisdictionally-autonomous federal or provincial states. The new modes of governance, however, may more often have to occur at spatial scales and levels that are different than those of the past, requiring flexibility and adaptability, and a greater openness to various forms of regionalization of the policy process (Keating, 2001). Path dependency effects, as always, will loom large in determining the institutional and policy context within which political and functional considerations interact and play out.

Common sense and experience suggests that indeterminacy is the norm for social scientists when it comes to the interpretation of current events and prognostications about the political future, and given the range of opinion amongst acknowledged federalism experts, there is a higher-than-usual measure of uncertainty on this topic. Perhaps, after all, the best that can be achieved is to recognize the influences and factors that will have a bearing on Canada's emergent new federalism, whatever that ultimately may be.

Endnotes

- ⁱ As a disclaimer, this list is not meant to be inclusive of all academic interventions on this topic, but merely representative of the range of opinion and argument. What also should be apparent is that the various positions on Canadian federalism outlined below are very often far from mere descriptions of ‘what is’, but also contain elements of prescription and even aspiration for what should be.
- ⁱⁱ SUFA is the Social Union Framework Agreement signed in 1999 between Ottawa and the provinces (other than Quebec). Amongst other things, it sets out agreed-upon conditions for the use of the federal spending power in areas of provincial jurisdiction. For an analysis of various aspects of the SUFA, see Fortin, Noel and St. Hilaire, 2003.
- ⁱⁱⁱ This position is akin to the one adopted by the Quebec government (Canadian Press).
- ^{iv} The best way of preserving markets, according to right-wing American theorists such as Buchanan or Hayek, is to install a highly decentralized form of federalism which pits provinces against one another in economic competition for investment. So long as the central government takes a strong hand in protecting property rights and the common market at the heart of a common economic space, it should be left to the provinces to regulate their own societies in order to successfully compete with other jurisdictions.
- ^v Brock agrees on the desirability of the federal government retreating from provincial jurisdiction, but argues that to be fair, all provinces – not just Quebec – should be provided with the option of assuming a larger role for itself, even if that option is not exercised!
- ^{vi} The key to making this work, evidently, is the presence of a ‘social glue’ to make the emerging networks ‘sticky’. Stein sees that glue as trust networks based on “shared norms, shared values, and longstanding ties of friendship” among officials, policy experts and academics. But these essential trust networks have been eroded in Canada, due to the federal government’s past tendency to act unilaterally, to abrogate agreements, and to resist binding dispute resolution, thereby undermining the intergovernmental trust that is built on adherence to rules and norms of behavior. This has left intergovernmental relations “rigid and brittle”, so they will need to be re-built through establishing agreement on principles and rules, and forsaking unilateralism. This can happen through the ‘shared experience of working on a common problem, repeated rounds of engagement, the sharing of data and pooling of information all help to break down barriers and build the sticky relationships – the trust ties – that are essential to the functioning of any network.’ Most of all, a change of culture among governing elites is required; they will have to learn to make a virtue out of the necessity of messiness, overlap and linkage, as well as ‘iterated rounds of problem solving and some loss of control.’
- ^{vii} Courchene doesn’t worry that adapting our federalism to this new challenge is beyond our reach or capabilities, since Canadians are “masters at the art of federalism”, historically making use of a number of adaptive techniques and innovations: frequent alterations to the transfer regime, opting in and opting out arrangements, downward delegation, creative arrangements to secure the social and economic union, *de facto* asymmetry within *de jure* symmetry, and so on.

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