

**Alternate Routes:  
The Dynamic of Intergovernmental Relations in Canada and Australia**

by

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## **Abstract**

This Master's Thesis compares the dynamics of intergovernmental relations (IGR) in Canada and Australia. In particular, the study explores how two such similar countries have developed such distinct sets of intergovernmental institutions. In Australia, the Commonwealth has increasingly dominated IGR since the 1930s, a process which culminated with the creation of the Council of Australian Government, a "vertical" (Commonwealth-state) institution. In Canada, federal-provincial-territorial relations have been far less institutionalized. Instead, "horizontal" (provincial-territorial) relations have evolved slowly into the Council of the Federation, the most regularized forum for IGR in Canadian history. By examining the historical development of federalism more generally and IGR specifically, this study uncovers a mutually-reinforcing relationship between centralization and the verticality of IGR in Australia, and a corresponding bond between decentralization and horizontality in Canada. Based on original interviews with key intergovernmental officials in each country, the study attributes these relationships to a number of factors, including the presence of multi-nationalism, the strength of intrastate federalism, the nature of judicial interpretation, the structure of fiscal federalism, and the personal style of political figures. The thesis concludes that verticality in Canada and horizontality in Australia are functions of the same factors which made one decentralized and the other centralized, and that institutions of IGR are both cause and effect of the prevailing dynamic in either federation.

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## Chapter 1- Introduction

It is telling that the most important recent institutional development in Canadian federalism is an interprovincial body. The history of intergovernmental relations (IGR) in Canada has revolved around strong, independent Premiers almost immediately since Confederation. From Oliver Mowat in the late nineteenth century to Brad Wall today, the strength of premiers and by extension the provinces, has defined federalism in Canada. In 2003, the premiers formed the Council of the Federation (COF), arguably the most important development in the recent history of Canadian federalism (Brown 2003).

This can be contrasted to the Council of Australian Government (COAG). Created in the early 1990s, COAG is an intergovernmental body comprised of not only the state and territorial governments, but also the federal (Commonwealth) government and local governments. Given the similarities of political structures in Canada and Australia, the divergence in the institutional structure of IGR is curious.

This study compares the institutional dynamic of COAG and COF. The question posed is the following:

What are the differences between COF and COAG and what explains them?

In other words, why has the peak institution of Australian federalism taken the form of a vertical institution while Canada's peak institution is based on horizontality? Why are relations between sub-national units in Canada more institutionalized than they are in Australia, and why has the Australian federation developed a vertical institution for intergovernmental relations? The answer to these questions requires considerable historical understanding. Intergovernmental relations developed over time in response to a set of key variables in each federation. If we are

to understand the structure of COAG and COF, we must delve into the structure of federalism in both Canada and Australia.

On the surface, Canada and Australia are very similar. Both countries are former British colonies spanning enormous, sparsely populated landmasses with indigenous populations; both are federations; and both are parliamentary democracies in the Westminster tradition. Despite the similarities, however, the two countries have developed very different styles of federalism. As Uhr (1989: 130) has noted, “the past is not always a reliable guide as to what will develop in the future”. Ironically, while Canada was created as a highly centralized federation and Australia a highly decentralized federation, each country has followed the opposite course.

These different courses have allowed for the evolution of different dynamics in each federation. Centralization in Australia has been linked to verticality, whereas decentralization has been linked to horizontality in Canada. While Australian intergovernmental relations have been based on Commonwealth-state relations from early on, in Canada, both federal-provincial-territorial relations (FPT) and provincial-territorial relations (PT) developed gradually. In the former, this has culminated in a regularized, well developed forum for vertical Commonwealth-state relations, the Council of Australian Government. The predominance of vertical relations has meant that although horizontal institutions have existed (such as the Council for the Australian Federation, modeled after the Canadian Council of the Federation), they have generally been short-lived partisan manifestations. In Canada, the ad-hoc nature of FPT relations has meant few regular meetings. This has encouraged the creation of the horizontal Council of the Federation. Each institution is the result of a long historical development in intergovernmental relations.

There is a reciprocal relationship between centralization and verticality in Australia and between decentralization and horizontality in Canada. The same factors which make Canada decentralized, for instance, also make IGR horizontal, while that horizontality feeds back into the decentralization evident in Canada today. Decentralization is one result of the variables identified in this study, horizontality is another. In sum, there is a simultaneous and mutually reinforcing relationship between centralization/decentralization and verticality/horizontality in Canada and Australia.

William Riker (1964: xii) noted the difficulty of studying federalism: "...each instance of a federalism, ancient or modern is imbedded in a set of unique local institutions, which themselves must be appreciated and understood". It is with this warning in mind that this study was designed. Numerous and varied factors influence the culture of federalism in any country: party system structure, cultural homogeneity, constitutional division of power, geography, legislative representation, and so on. The influence of these factors is both structural and ideational. For instance, Québec's French population has had a profound effect on the path *and* on the conceptions of Canadian federalism.

In order to study the development of intergovernmental institutions in each country, the federations in which they operate need to be compared. This study is based on five variables: the strength of intrastate federalism, the presence of multi-nationalism, the nature of judicial interpretation, the structure of fiscal federalism, and the personal style of key political figures. This is not an exhaustive list, as the choice of variables is specific to this study. These variables are not expected to hold true for any federation. They were chosen because they represent contrasting points between Canada and Australia while enabling a comprehensive historical comparison. There are other variables which could be used to analyze either federation

(geography or settlement patterns, for instance). For the purposes of this research, however, the five variables mentioned are sufficient to give a thorough comparative understanding. More broadly, since this is a comparative study of Canada and Australia, it is not expected that the findings will be generalizable. While certain factors are likely applicable in other countries, this study makes no claim that the findings hold true for all federations. The findings of this study hold true only insofar as they concern Canada and Australia.

The strength of intrastate federalism is taken to include several factors, namely: the integration of the party system and the effectiveness of the Senate and Cabinet in representing regional interests within the institutions of the central government. In Australia (as opposed to in most Canadian provinces), the state political parties are more closely connected with their national counterparts. The influence of this integration is large, since, for instance, Australian "...Prime Ministers can use party mechanisms to bring such state premiers into line" (Weller 1989:156). The place of the Senate is also related to this partisan integration, since "...although designated as a States House, the Senate has only infrequently acted as a protector of states' rights or interests" (Uhr 1989: 141). The representation of the sub-national governments in the federal structure affects their power in intergovernmental relations, since in cases of strong intrastate federalism, premiers cannot presume to be the only voice for their polity. This clearly is not the case in Canada, where provincial governments and provincial societies have relatively little representation in federal institutions, leaving the premiers as the primary spokespersons for their provinces.

The presence or absence of multi-nationalism is arguably the most important element in any federal system. Multi-nationalism is a term which evokes some controversy. One need only think of the reaction in 'English Canada' when Prime Minister Harper declared in 2006 that

Québec was a nation within Canada. Yet the term is a precise one. A multi-national state is one in which there is more than one national group (or a geographically concentrated group with different linguistic, religious, cultural and legal traditions than the majority). The most obvious and common expression of this is through language, although there are a number of other characteristics which can define a nation. A multi-national state is not the same thing as a multi-ethnic state. The major settler societies (North America, Australia and New Zealand) are all multi-ethnic states. Yet among those, Canada stands out as a multi-national state because of the presence of a major minority group which is concentrated in one province, speaks a different language than the majority and is culturally distinct. More broadly, Canada is subject to greater regionalism than Australia, forces such as 'western alienation' have also played important parts in intergovernmental relations and federalism more generally. This of course sets aside the issue of indigenous nations, which are deserving of a much more complex treatment than this study can provide.

As Alan Fenna (2007: 302) argues when comparing Canada and Switzerland, for instance: "The most salient and most important diversity is that between their different language communities". Thus, the presence of a large French speaking minority who constitute the majority in one province has helped make Canada one of the world's most decentralized federations (Dufour 2002: 15). In turn, this has created room for the politically strong provinces to collaborate with each other intergovernmentally. This process tends to be lead by the Québec Liberal party, which seeks to engage on national issues without necessarily involving the federal government. By contrast, the relative cultural homogeneity of Australia has allowed for a centralized federation, since states have less claim over the loyalty of their citizens. This removes a crucial pillar of strength which exists in Canada. It also makes the states less willing

to engage in a public relations battle with the Commonwealth government, and more willing to engage with the Commonwealth, even if the terms of engagement are unfavourable.

Judicial interpretation of the constitution has been quite different in Canada and Australia as well. As such, the fact that the Canadian provinces have exclusive jurisdiction over social policy and the very limited interpretation of the federal government's "Peace, Order and Good Government" power has meant that the provinces can be quite assertive. This has meant that the provinces resist federal intrusion on their areas of jurisdiction, to the point of working together on a purely horizontal basis. Provincial jurisdiction has been asserted in a number of areas, and the provinces have demonstrated ability and willingness to cooperate independently of the federal government. In Australia, the High Court's liberal interpretation of section 96 of the constitution has put very few restrictions on the ability of the commonwealth government to spend in any area. When combined with the states' fiscal dependence on the Commonwealth, this has created the conditions necessary for strong, vertical intergovernmental relations, which have existed since the early 1930s.

Additionally, the fiscal position of a sub-national unit is a key factor in its autonomy and willingness to oppose the federal government. This, in turn, affects the nature of inter-state relations, as the dependent nature of the Australian states makes it difficult for them to be too critical of the Commonwealth. The same is not the case in Canada. The Alberta government, for example, is perennially richer than the other provinces (by a considerable margin); if the Alberta government feels it can do without federal health transfers, it is under no legal obligation to follow the Canada Health Act, considered a cornerstone of the social welfare system in Canada.

The final factor, the personal style of first ministers, is a difficult one to operationalize. Without resorting to a biography of each first minister, there are few historical trends to follow.

First ministers are powerful individuals in parliamentary governments, however, and it is unsurprising that this has an impact on intergovernmental relations. This has meant that intergovernmental relations can take unexpected turns as new political figures enter the scene.

Canada and Australia have been affected by these variables. As we shall see, they have made Canada decentralized and Australia centralized. The same factors which affected centralization/decentralization also affected the dynamic of IGR in each federation, tending towards vertical relations in Australia and horizontal relations in Canada. This has created a further dynamic in which centralization/verticality and decentralization/horizontality create a feedback loop, reinforcing each other.

This thesis will take the following form. The remainder of the present chapter will be used to explore methodology, define terms, and define the theoretical framework that has been used in this study. Chapter two will examine the history of federalism in Canada and Australia with an eye to five particular factors. The first four factors, intrastate federalism, multi-nationalism, judicial interpretation, fiscal federalism are taken as relatively static and enduring. This is not to say that all future court cases will be interpreted in the same way, or that the fiscal framework will remain the same, only that the impacts of those factors is not likely to change suddenly. They are representative of the slow evolution of intergovernmental relations in Canada and Australia. The fifth factor, personal style, is more dynamic. It is less predictable, and the personality of first ministers can have an enormous impact on the practice of intergovernmental relations. It cannot be predicted with any degree of accuracy, since even the same politician can change his or her position over a period of time (John Howard's move to 'aspirational nationalism' being a prime example).

Having established a general historical understanding of federalism, Chapter three will explore the development of IGR in Canada, covering the early period, and the slow development of PT relations beginning with the creation of the Annual Premiers' Conference (APC). It will also explore the mega-constitutional period and the factors which led to the creation of the Council of the Federation. COF and its impact will also be assessed, with reference to interviews with key intergovernmental officials. Chapter four will explore the same process in Australia, focusing on the various court judgements which led Australia away from its decentralized roots and culminating in the creation of the Council of Australian Government. It will also assess the generally abortive attempts at creating independent inter-state institutions in Australia, drawing on existing literature and in depth interviews with IGR officials. Chapter five will conclude the thesis by applying historical institutionalist methods to IGR in Canada and Australia, noting general trends and areas for further research.

## **Methodology**

The study of IGR in Canada has not only been focused largely on Federal-Provincial-Territorial (FPT) relations, but on summitry (high profile meetings of first ministers). Intergovernmental relations have generally not been studied from the perspective of civil servants, let alone provincial and territorial officials. This study seeks to rectify that imbalance.

Manheim et al. (2002: 320) note that "Many important research questions in political science can be answered only if we can learn how certain individuals or types of individuals think and act". Given the fact that the everyday interactions of intergovernmental officials constitute an important part of intergovernmental relations more generally, this point bears remembering. Assessing COF and COAG requires more than an analysis of communiqués. This



is especially true for a study which seeks to understand why each institution exists in its present form. An important part of the answer involves speaking with practitioners of IGR to find out their personal assessment of the institutions in which they participate.

Research for this study has involved personal interviews with ten provincial and territorial intergovernmental officials from across Canada and twelve state and Commonwealth officials in Australia. Repeated attempts were made to contact officials in both federal governments, in all provinces and in one territory, and in all Australian states. Interviews, ranging from thirty to sixty minutes, were conducted in person or over the telephone between December 2010 and April 2011. The interview process received ethics approval from the University of Manitoba. In the interest of preserving anonymity, all citations have been translated. Interview data was analyzed qualitatively for themes and patterns of discourse (Manheim et al. 2002: 318).

Interviews were unstructured. Although a set of basic questions formed the script for each interview, those questions were open-ended, and different questions arose in different interviews. This resulted in a wide variety of responses, even from within the same government. Certain themes recurred, and have been identified, but there was also a good deal of variance. Thus, when this study identifies that ‘all’ or ‘several’ respondents agreed on a certain point, this is to highlight the rarity of agreement.

## **Defining Terms**

This section defines several key terms, all of which figure prominently in the following chapters.

## Interstate Federalism

Richard Simeon's (1972, 2006) landmark contribution to the study of federalism was to use the language of international relations to describe intergovernmental relations in Canada. In intergovernmental negotiations, the premiers argue from a position of strength on matters within their own jurisdiction because of the authority of their role. Even Donald Savoie (1999: 105), in his oft-quoted book on the concentration of power in the hands of the prime minister, admits that: "The only time the prime minister is still *primus inter pares* is when he chairs a First Minister's Conference. Premiers are not his political equals, but they shape the discussion at the conference and advance whatever position they wish, even when it is in sharp opposition to the prime minister's position..."

The use of the imagery of international relations to describe intergovernmental relations in Canada is thus an enduring way to study Canadian federalism (see Sayers and Banfield 2010). Moreover, it is useful in describing the functioning of intergovernmental relations in both Canada and Australia, where 'summitry' often takes all of the media attention. Summits of first ministers come to represent intergovernmental relations and, indeed, federalism itself. Simeon's analysis is not limited to federal-provincial-territorial relations, either. Much of the analysis can be applied to interprovincial meetings like COF, in which premiers deal with each other as heads of governments.

Ultimately, interstate federalism refers to a situation in which the relations between governments in a federation are comparable to those between states on the international stage. This is common to parliamentary federations.

## **Intrastate federalism**

*Intrastate* federalism is quite different from *interstate* federalism. Intrastate federalism refers to the representation of sub-national units in the institutions of the central government. In particular, this study will focus on the following three mechanisms of intrastate federalism: the party system, the cabinet, and the Senate.

The party system can provide a means for sub-national communities to have a voice in the federal government. The noted scholar of federalism William Riker (1964: 129) hypothesized that “The federal relationship is centralized according to the degree to which the parties organized to operate the central government control the parties organized to operate the constituent governments.” In other words, federations with highly integrated party systems should exhibit greater centralization. The cabinet can also serve as a venue of regional conciliation, since in federations the federal cabinet often features representatives from sub-national societies (Anderson 2008b: 49). Finally, in many federations the Senate acts as a ‘states’ house’, representing the interests of either the sub-national governments (as in the German case) or sub-national societies (as in the American case) in the federal government.

In states with highly developed mechanisms of intrastate federalism, there tends to be fewer and weaker interstate institutions. American state governors, for example, are not the sole (or even the primary) representative of their states, since the US Senate is a genuine states’ house, representing the interest of state societies. Canadian premiers, by contrast, are such prominent figures because neither provincial governments or provincial societies have significant representation federally. The presence (or absence) of intrastate federalism in a federation is thus an important factor in shaping intergovernmental relations.

## **Executive Federalism**

Like the idea of treating intergovernmental relations as international relations, the concept of ‘executive federalism’ is now anchored in the study of Canadian politics. However, it originated with Donald Smiley, who wrote extensively on the subject of federalism (Brock 2003: 68). Executive federalism is the interaction of the executive branches of federal and/or sub-national governments. Brock defines it as the interaction between elected and appointed officials of various orders of government (Ibid). Johns, O’Reilly and Inwood (2007: 31) point out that the bulk of intergovernmental interactions take place between civil servants. That said, the process tends to be thought of more in terms of first ministers.

Executive federalism is a common occurrence in parliamentary federations, where power tends to be concentrated in the hands of first ministers (Watts 1989). Moreover, as Monahan (1991) notes, the Canadian constitution requires the assent of the provincial legislatures for amendment, which means that even after citizen consultations occur, a workable document that all ten provinces can sign and pass in their legislatures must emerge. This consigns Canadian federalism to a degree of closed door negotiation regardless of rhetorical commitments to transparency and accountability.

Brock (2003) believes that executive federalism is entering a new phase, but does not label interprovincial negotiations “executive federalism”, preferring the term “executive interprovincialism”. Strictly speaking, this is semantically accurate: one cannot properly speak of ‘federalism’ if only one order of government is present. Yet this is an unsatisfying distinction. When the premiers meet to discuss matters of national concern, such as energy policy or climate change, this surely goes beyond the confines of ‘provincialism’. Thus, this study will consider interprovincial relations to be part of executive federalism in Canada, particularly if, as one

provincial official believes, the dynamic of IGR in Canada is now an interprovincial, rather than federal-provincial one (Anonymous Interview 2010b).

## **Centralization**

One of the most common ways of analyzing federalism is through centralization. Simply put, a centralized federation is one in which the central government has more power than the sub-national governments. There are a number of ways of measuring centralization in a federation.

The first is through the constitutional division of power. The federal government may have a variety of reserve powers which can be used to override sub-national governments. This is not typically the case: Canada is exceptional in this regard (and the reserve powers have fallen into disuse in any case). If the federal government has the constitutional jurisdiction over a large number of areas, the federation will tend towards centralization. Strict jurisdiction over matters like health and education is uncommon, however. More common is for the federal government to have a constitutional power to spend in all policy areas, regardless of jurisdiction. This can be an explicit spending power, as in section 96 of the Australian constitution, or an implied spending power, as in the Canadian constitution. This is closely linked to the second measure of centralization, fiscal power.

Probably the most frequently used measure of centralization in a federation is the ability of sub-national units to collect their own revenue. A federation where the federal government collects the majority of revenue (through various taxes and duties) is considered centralized. In many of these cases, the federal government often collects more revenue than it spends, creating a vertical fiscal imbalance (VFI). By contrast, the ability of sub-national units to account for

their own budgets from own-source revenue is linked to decentralization. This distinction is not as tidy as some of the literature might suggest. In Québec, for instance, there is a tendency to see any move by the federal government as inherently centralizing. In the words of Pelletier (2008: 53), “...there have no periods of decentralization, only halts to periods of centralization.” Moreover, the fact that a sub-national unit is heavily reliant on federal grants is not necessarily an indication of the policy dominance of the federal government. As Parkin (2003: 107) notes, the conditions attached to Commonwealth grants in Australia can be “quite general”, leaving the states “wide discretion” about how the funds are to be spent. Despite these reservations, as a general guide, the fiscal independence of a sub-national unit is a good indication of centralization or decentralization.

Another measure of centralization that is less frequently used and difficult to quantify is political culture. In the context of a comparative study of Canada and Australia, however, political culture stands out as a major point of contrast. In Canada, regionalism plays an important role in political culture. In a 2003 survey, 81 per cent of Canadians claimed to have a somewhat or very strong sense of belonging to their province (compared with an 88 per cent sense of belonging to Canada) (Canada 2003). In two provinces, Québec and Newfoundland and Labrador, the sense of belonging was stronger for the province than for the country as a whole. In Australia, 39 per cent of those surveyed in 2010 were in favour of abolishing the states (Brown 2010: 11). The importance of provinces in Canadian political culture, although difficult to measure, serves as a source of strength for premiers when dealing with the federal government.

## **Conditional/ Unconditional Grants**

Transfers from the federal to sub-national governments exist in virtually all federations in the world (Anderson 2008b: 40). Conditional ('tied') grants are those which have conditions attached to their dispersal. These conditions can be general, like those attached to the Canada Health Act (which outlines five criteria), or they can be quite specific, like the Australian Howard government's insistence on schools having a working flag pole. Unconditional grants are those which are transferred to the sub-national units without specific policy prescriptions. Horizontal equalization grants typically fall into this category. In Canada, the pattern has been towards fewer conditional grants since the 1970s (although the Harper government's focus on accountability frameworks may slow this trend). In Australia, this has also been the case, though with some complicating factors. As mentioned above, the number of grants which are conditional is an imperfect indicator of centralization in a federation.

## **Horizontality/Verticality**

When addressing the nature of intergovernmental relations, two terms will be used. Horizontal IGR refers to relations between sub-national units of government (this is also referred to as inter-state or provincial-territorial relations). Vertical relations refers to IGR between the federal and sub-national orders of governments (commonwealth-state or federal-provincial territorial relations).

The next section will elaborate the theoretical framework which will be used to analyze intergovernmental institutional development in Canada and Australia.

## **Theoretical Framework**

As a theoretical framework, this study employs a historical-institutionalist (HI) approach. A branch of neo-institutionalism, HI holds that “history matters” and that understanding the evolution of cultures and institutions must entail a systematic examination of path dependency, sequencing and timing (Thelen 1999). This is crucial for understanding the evolution of intergovernmental relations in Canada and Australia. Although the thesis is centered on COAG and COF, a simple analysis of either institution in its present form would do little to answer the broader question. As Pierson (2004: 140) notes: “Snapshots hive off important aspects of the problem of institutional development, yielding misleading conclusions.” Each institution is the result of a long process and carries with it the historical baggage of preceding developments. Thus, for instance, one could not realistically explain the Council of the Federation without referring to its origins in the Annual Premiers Conference in the 1960s. The purpose of this study is as much to explore the differing dynamics of IGR in each country as it is to explain how various intergovernmental institutions came into existence. COAG and COF are part of a broader, unfolding narrative. It is that narrative which this thesis seeks to understand.

According to HI, institutions must be placed in their historical context, since “the various institutional arrangements that make up a polity emerge at different times and out of different historical configurations” (Thelen 1999: 382). HI is much less focused on heuristic ‘rational actors’ to explain matters, preferring to go directly to case studies to explain matters. This comes at the cost of generalizability. HI tends to focus on the processes which make specific institutions emerge over time. This process is particularly useful when studying federalism. This is done through a particular set of methods.



The first is path dependency. Path dependency is a theory which holds that in understanding historical development, certain major moments (branching points) produce outcomes which set an institution on a certain path. That path then becomes locked in, making it difficult to overcome. For instance, the classic example used is the QWERTY keyboard. Although it is not the most efficient layout, it became the standard for typewriters because it prevented the keys from jamming (Thelen 1999: 385). This is no longer a concern, but replacing that particular keyboard configuration would be very difficult, since it has become the international standard. Thus, certain apparently insignificant events take place which put institutions on a path that can be difficult to change. As Pierson (2000: 251) notes, this stands in contrast to a traditional understanding of political science, "...which attribute 'large' outcomes to 'large' causes and emphasize the prevalence of unique, predictable political outcomes, the irrelevance of timing and sequence, and the capacity of rational actors to design and implement optimal solutions (given their resources and constraints) to the problems." Path dependency has been accused of being overly contingent and deterministic: too open at the outset and too closed after the critical juncture (Thelen 1999: 385). Yet Pierson (2004: 52) notes that "Nothing in path-dependent analyses implies that a particular alternative is permanently 'locked in' following the move onto a self-reinforcing path." In sum, in a path-dependent scenario, "...we can expect periods of relative (but not total) openness, followed by periods of relative (but not total or permanent) stability" (Ibid: 53).

The concept of path dependency is often closely linked to that of feedback loops (or self-reinforcing dynamics) the basic premise of which is that over time, events reinforce the initial reason for following the particular path, making it more entrenched (Pierson 2000: 252). In other words: "Each step along a particular path produces consequences which make that path

more attractive for the next round” (Ibid: 253). This will be used to demonstrate how centralization/decentralization and verticality/horizontality affect each other. Another closely linked concept is that of sequencing, that is the importance of when in the process an event happened: “*When* things happen within a sequence affects *how* things happen” (Pierson 2004: 54, emphasis in original). As an example, the existence of a national healthcare system is dependent on whether or not the institution was established before the wide-spread availability of private health insurance. In Britain, for instance, the national health care system was created before private health insurance became widely available, whereas in the United States widely available private health insurance came first and created a large vested interest against the creation of a universal healthcare system (Boychuk 1998). Events which occur earlier in a sequence may have a better chance of altering the path of an institution than those which occur later, when the institution’s path is more ‘locked in’.

A key concept that will be used is that of critical junctures. In path dependent analyses, critical junctures are points after which a path is locked in. As noted above, this implies both a good deal of contingency and a good deal of determinism. As such, the concept as used in this study will be modified to include major turning points in the history of intergovernmental relations. They need not be the sole turning point which altered the path of history. This study will use the term more generally, referring to key events which impacted the path of the given federation.

The final term which will be used is structured agency, which will be discussed in reference to the impact of the personal style of first ministers in IGR. In keeping with HI, the actions of agents are not removed from their context, but considered with an eye to history. Agents act within historical structures, and first ministers are no different.

## Summary

Both COAG and COF are the result of long historical trajectories. In Australia, the absence of a national linguistic minority and the way in which the constitution was interpreted made the Commonwealth dominant virtually from its inception. Subsequent developments in fiscal federalism greatly reinforced that dominance, particularly after the Second World War. Inter-state relations, which might have countered the influence of the Commonwealth, were generally little more than partisan manifestations. Thus, inter-state relations in Australia have been limited to meetings of the premiers the day before a major Commonwealth-state conference. This has been the case under different names, most recently the Council for the Australian Federation.

In Canada, the federal government's anticipated dominance was undercut by various judgements of the Judicial Committee of the Privy Council (JCPC), which reinforced provincial jurisdiction while limiting the usefulness of the federal reserve powers. Post-war, provinces reclaimed a large part of their fiscal autonomy, and at the instigation of Québec, began holding the Annual Premiers' Conference (APC). The APC slowly developed over the course of the next 40 years, and its regularity stood in marked contrast to the ad-hoc nature of FPT relations. When FPT relations were marred by mistrust and betrayal after the 1995 federal budget cuts, the APC and subsequently COF were able to step up collaboration between provinces and territories. The dynamic of IGR in Canada has at least temporarily shifted to one that is dominated by PT, not FPT relations. The following chapter explores the distinct evolution of federalism away from the intent of the founders in both Canada and Australia.



## Chapter 2- Alternate Routes

Speaking on the administration of health in Australia, Andrew Podger considers the possibility of adopting the Canadian model but concludes that “...the fact is that, given our history, we are not like Canada” (Podger 2007: 142). This simple statement effectively summarizes the conclusions of dozens of studies of Canada and Australia: the two are different.

At a glance, however, Canada and Australia are quite similar. Both are former British colonies which still have ties to the monarchy. Both are federations that span enormous landmasses. Both have pre-colonial cultures that survive to this day. More specifically, parliamentary democracy in both Canada and Australia is grounded in the Westminster tradition. These similarities, though noteworthy, hide the significant differences between Canada and Australia. Even before the creation of either state, Canada and Australia adapted to their different circumstances in different ways.

This chapter will examine the evolutions of the Canadian and Australian federations. Although this is a study of intergovernmental relations (IGR), the way that a country practices IGR cannot be isolated from its basic political structure, since the nature and the form of the discussion will be shaped by the nature of the federation. The initial conditions of federalism in Australia and Canada will be outlined, followed by a specific analysis of the influence of the variables: multi-nationalism, intra-state federalism, judicial interpretation and fiscal federalism. The specifics of IGR in each country will be covered in later chapters. The final variable, personal style, is mentioned throughout and addressed specifically in the concluding chapter.

## Initial Conditions

### Canada

Figure 1- Canada 2011



The 1867 creation of the Canadian federation is somewhat erroneously referred to as ‘Confederation’. The term is misleading because, in fact, confederation is defined in political science literature as a loosely allied group of states that retain much of their independence (Van Loon and Whittington 1987: 244). The United States from 1776-1789 or the European Union

today can be considered confederations, but Canada in 1867 could not. Nonetheless, the term has stuck.

Whereas Australian politics were characterized by extreme isolation when its states federated, Canadian politics have always, to a degree, been defined by geographic proximity to the United States. As Pierre Trudeau once commented to the Washington Press Club, “Living next to you is in some ways like sleeping with an elephant. No matter how friendly and even-tempered is the beast, if I can call it that, one is affected by every twitch and grunt.” This influence was a major part of the motivation behind Confederation. Concern over America’s westward expansion, Fenian raids as well as the increasing British reluctance to pay the defence costs of British North America contributed to the desire to create a unified country (Francis and Riddoch 1985: 137). The termination of the reciprocity agreement (effectively a free trade agreement) with the United States in the 1860s also put pressure on the British North American colonies to unify for economic reasons. This led to the promise to create an intercontinental railway. Furthermore, the growing demographic prominence of Canada West (Ontario) led to calls to separate the United Province of Canada into two separate units.

The 1864 Charlottetown conference which would eventually lead to Confederation was held at the instigation of Arthur Gordon, the lieutenant-governor of New Brunswick, with the intention of uniting the Maritime colonies (Prince Edward Island, Nova Scotia and New Brunswick [Moore 1997: 37]). Delegates from the Canadas invited themselves to the conference, and over a week, negotiated the basis of Confederation. A month later a wider group met at Québec City and debated the form that federalism would take in the new Canada (Ibid: 102). Despite the opposition of a number of delegates, the centralist view of John A. Macdonald would dominate the conference and was reflected in the final document.

Canada became a federation only with the reluctant consent of a number of its key architects, notably first Prime Minister John A. Macdonald. As textbooks on Canadian politics invariably note, "...there is some evidence that Macdonald viewed federalism as a temporary arrangement to secure initial unity, and that he fully expected provincial governments to wither away from lack of exercise, leaving a basically unitary system in Canada" (Van Loon and Whittington 1989: 245). The intent of the framers of the constitution can perhaps best be understood through the plethora of powers left to the federal government. These include the power of the Governor General or any provincial Lieutenant-Governor General to reserve any piece of legislation; the power of the Governor General (on behalf of the federal government) to disallow any legislation; the power to declare any project in the national interest; the "Peace, Order and Good Government" (POGG) clause; and the fact that any power not explicitly enumerated in the constitution is the preserve of the federal government (Jackson and Jackson 2006: 148). Indeed, so tilted towards the federal government was the BNA Act that the scholar K.C. Wheare categorized Canada as a quasi-federation (although he noted that in practice Canada operated as a true federation [Verney 1995: 84]).

The Canadian constitution is an oddity among federal constitutions. Most federal constitutions, like those of the United States or Australia, outline the powers of either the sub-national or the federal government, with all powers not explicitly mentioned going to the other order. The Canadian Constitution, by contrast, outlines the powers of both orders and also mentions the reserve powers of the federal government. The constitutional powers originally allocated to the provinces are also indicative of the intent of the Fathers of Confederation. The provinces were granted jurisdiction over matters such as education and health, which at the time were dealt with by religious institutions. The list of powers given to the provinces was designed



to assure Québec's cultural elite that it would be able to protect its specificity, but also to ensure that the provinces would be no more than "glorified municipalities"(Sabetti and Waller 1984: 5). However, by granting the provinces exclusive jurisdiction over their constitutional powers, the Fathers of Confederation unwittingly created a tool which future premiers would use to assert their independence.

The distaste for decentralization was also clear in the design of the Canadian Senate, which more closely reassembles the British House of Lords than the American Senate. The Canadian Senate is probably the least 'federal' upper chamber of any federation in the world. As opposed to most federations, where the upper chamber of the national legislature acts as a 'states house', the Canadian Senate was never intended to fill that role. It features regional representation, but then as now, Senators are named by the Governor General in Council (in reality by the prime minister). The Senate was therefore not designed for provincial but for regional representation, a function it did not even manage to accomplish over time, as it became a chamber of patronage appointments. An independent member of the legislative assembly of the Province of Canada called the proposed design of the Canadian Senate "a very near approach to the worst system which could be devised in legislation" (in Smith 1988: 458). This state of affairs was neither an accident nor the result of a lack of political development. In fact, this manner of choosing Senators was deliberate, since prior to 1867 the upper chamber of the united colony of Canada was elected (Ibid: 457). Further, although the Senate is a chamber of 'sober second thought', it has only rarely impeded the work of the House of Commons. Ultimately, the Senate is even less effective as a 'States House' than it is as a legislative body, and consequently a significant outlet for intrastate federalism is missing in Canada.

One cannot speak of the creation of the Canadian federation without mentioning Québec. Thomas Courchene calls federalism “Québec’s gift to Canada” (2004: 21). Curiously, however, Québec’s role in Confederation was somewhat muted. Québec delegates were hardly the most forceful except perhaps in a few matters related to culture and religion. For Québec’s politicians, led by George-Étienne Cartier, federalism was seen as the most realistic and preferred option. When Canada West and Canada East were united, each was given an equal number of representatives, to the advantage of Canada West, which had a smaller population. By 1867, however, the balance had shifted, and Canada East (Québec) had a disproportionate share of the seats in the legislative assembly of the Province of Canada (Van Loon and Whittington 1987: 240). If French-Canadians were to accept the application of representation by population, which the reformers from Canada West were advocating, it was only in exchange for a federal union. Christopher Moore (1997: 144) explains: “Cartier quickly calculated that the trade was worth making. In a federal state, the province would protect the powers then thought necessary to the survival and prospering of rural, Catholic, and agricultural French Canada- its legal code, the administration of property, and education, charities and health.”

Although the demands of French Canadians in 1867 may seem minimal by today’s standards, with Confederation, Québec (or at least its elite) got what it wanted in terms of cultural and linguistic protection. This includes a number of provisions, such as Québec’s civil law system, the fact that French is an official language, and the administration of hospitals and education by the church until the Quiet Revolution. The Catholic Church’s support for Confederation was a significant factor in its acceptance within Québec (Moore 1997: 157).

Given the confusion about the costs and benefits of Confederation in Québec, one can wonder why the province is considered so pivotal to Canada existence as a federation. After all,

a number of Maritime delegates were much more vocal in their opposition to Confederation. In 1867, Nova Scotia elected 18 of 19 anti-confederate members of parliament and 36 of 38 anti-confederate members of the legislative assembly (Moore 1997: 194). New Brunswick's confederates were soundly defeated in an 1865 election (though re-elected less than a year later) (Ibid: 185). From 1878 to 1896, Ontario Premier Oliver Mowat led the provincial rights movement and supported judicial challenges to the centralizing bent of John A Macdonald's federal government. A series of court battles greatly expanded provincial autonomy in the process (Ibid: 126). Only in the late 1880s did Québec Premier Honoré Mercier become a vocal proponent of provincial rights. The role of the Maritime provinces and Ontario in pressing for provincial autonomy is generally understated.

The reason Québec is considered so vital to federalism is that, without a large French minority which constituted the majority in one part of the country, it is far from clear that Canada would be a federation. The Maritime provinces were certainly very vocal in their desire for federation, but the strength of their feeling might have been overridden by the desires of the British government or the manoeuvring of the Canadian delegates. Alternately, the Maritime provinces might have formed their own union. With a Francophone Québec, however, federation became a virtual certainty. Under no circumstances would the delegates from Canada East have accepted a unitary polity in which they constituted a minority.

In the creation of the 1867 BNA Act, despite its clear centralist bias, we see the four basic foundations for the variables identified in the introduction. *Multi-nationalism*, represented by a large French population in Québec, ensured at least a basic form of federalism. Later *judicial interpretation* of the constitution by the British Judicial Committee of the Privy Council severely limited the federal government's power, and the ultimate exclusiveness of provincial jurisdiction

provided a powerful base from which the provinces would later challenge the federal government. *Fiscal federalism* has also increasingly favoured the provinces in Canada, at least relative to the Australian states. Finally, a relative lack of provincial representation in the institutions of federal governance (cabinet, political parties and most importantly the Senate) meant that *intrastate federalism* was relatively weak from the beginning in Canada, and has remained weak over time. In the vacuum, it is hardly surprising that the premiers took it upon themselves to ensure that the provinces were represented in the federal process. The following pages address each variable in turn.

## Australia

Figure 2- Australia 2011



Source: Wikipedia.org

By the time the first serious attempt was made at federating the “several states” of Australia in 1891, the concept of federalism was well understood. In fact, as early as 1847, over a half century before Australia federated, the British colonial secretary Sir Henry George Grey suggested that the Australian states might form some kind of federal union. The response was less than enthusiastic, with the Australians regarding the suggestion as “at best premature, and at worst misconceived, even mischievous” (Aroney 2009: 139). Over the next decades, however, the idea was periodically suggested by various colonial politicians like Henry Parkes, who helped form the Australian League in 1850, an organization with the objective of forming an Australian federation (Ibid: 141). The idea was successfully opposed until 1891 for a number of reasons.

The first reason was the intense regionalism of the Australian colonies. Some of the colonies, particularly Western Australia, were remote and had small populations. They feared that in the event of federation, they would be overwhelmed by the larger colonies of New South Wales (NSW) and Victoria (Aroney 2009: 140). Jealous rivalry also came into play: when NSW announced in 1878 that it was considering changing its name to Australia to reflect its status as the first state, a furious Victorian MP asked the Premier of his state if he intended to change Victoria’s name to Australasia. The Premier responded no, “...because then New South Wales might well call itself The Southern Hemisphere” (Knightley 2000: 54).

Second, the colonies had gradually been separated from NSW over the nineteenth century. The initial settlement of NSW had comprised almost the whole of the continent as well as New Zealand. Even Victoria, the second largest colony, had only been separated from NSW in 1850 (Aroney 2009: 140). The smaller colonies were not enthusiastic about the prospect of being in a federation with NSW. Queensland in particular “...was enjoying her new isolation, and looked

on federation as a kind of re-annexation” (Ibid: 144). Similarly, the various colonies had all fought hard for representative government and were not keen to relinquish sovereignty to a federal government.

Thus until the 1890s, the Australian colonies continued to grow and interact sporadically. While there was a general sentiment that federation was theoretically a good idea, even those in favour of the project could not agree on a form (Aroney 2009: 145). Indeed, as Bannon notes, “...Federation in the form and at the time it came was something of a political miracle” (1994: 2). Colonial rivalries meant that “...proposals from New South Wales... irritated the other colonies because New South Wales always seemed to allocate itself the pre-eminent place in its scheme. Victorian schemes were rejected by New South Wales because these did not sufficiently recognise that colony’s pre-eminence” (Knightley 2000: 144).

A key difference between the Canadian and Australian federations should be noted. Very obviously, the presence of a large French minority shaped Canada in a fundamental way. As a result, Canada is a less homogeneous country than Australia. There were of course regional sentiments in Australia before federation and they persist to this day (see Brown and Bellamy 2007). Indeed, as mentioned, those regional sentiments played a part in delaying federation. That said, Australia had nothing like the linguistic divide that existed between one Canadian province and the others, and while religious minorities in Australia were certainly present (Knightley 2000: 80), they were not concentrated in any one colony. Moreover, as Hirst (in Aroney 2009: 277) notes, unlike British North Americans in 1867, Australians in the 1890s already had a sense of nationhood. The cultural difference between Québec and Nova Scotia was therefore greater than that between Queensland and South Australia. This has manifestly weakened the political strength of the states in Australia.

Eventually, the Australian colonies were persuaded to attempt federation. Here again, however, the issue of what form the Australian federation should take was highly contested. Some delegates, like Henry Parkes, preferred the Canadian model, which, as designed, was a highly centralized form of federalism (Aroney 2009: 150). Just as many Canadian politicians had been wary of the American model, a number of delegates to the 1891 convention were wary of the Canadian template. Delegates from the smaller colonies in particular were highly critical of the Canadian constitution, believing that it was far too centralized and if adopted would give insufficient recognition to the fact that the Australian colonies were federating as quasi-sovereign entities (Ibid: 108). Indeed, the choice of the word *state* over *province* is reflective of the independence of the Australian colonies (Ibid: 152). As Peter Russell (1989: 59) mentions: “Australia’s founding fathers, it would seem, were more committed federalists than Canada’s. Certainly they knew more about federalism.” The American model of federalism was well understood and often cited by delegates to the 1891 convention. Although the American influence on Australian federalism is best seen in the structure of the Australian Senate, ideas based on American federalism were pervasive (Aroney 2009: 151).

The provisory constitution emerging from the 1891 convention of colonial delegates was abandoned when the various colonial parliaments failed to ratify it. Over the next few years, governments fell as a recession wracked the colonies (Bannon 1994: 4). As governments changed, federation was put on the back-burner and little progress occurred, though as Bannon (1994) notes, South Australian Premier Charles Kingston played an important and ongoing role in pressuring for federation. In the interim, Australian Premiers passed acts enabling them to negotiate federation and had an enabling act passed by the British parliament.

Aroney (2009) identifies two key principles that underlined the creation of the Commonwealth of Australia: federalism and popular representation. Both of these principles were evident at the 1897 Adelaide constitutional conference. As in the Canadian case, unitary government was never a realistic option. However, while the Canadian Fathers of Confederation accepted federalism reluctantly, their Australian equivalents did so without reservations (Aroney 2009: 191). Indeed, the acts of the British parliament which set out the parameters of the negotiations did not even allow for the creation of a unitary state (Ibid).

The commitment to federalism is most evident in the design of the Senate. If the Canadian Senate demonstrates the centralism of Confederation, the Australian Senate demonstrates the importance that decentralization had to the colonial delegates in Adelaide. As mentioned, the Canadian model was explicitly rejected. The delegates to the 1891 and 1897 conventions were “...virtually constrained to adopt the American principle that the Senate would be composed of an equal number of Senators from each state” (Aroney 2009: 200). There was tension between the principles of majoritarian democracy and federal equality in the Senate, but the condition for the participation of the smaller states was equal representation in the Senate. This imbalance gives disproportionate power to the smaller states in the Senate and infamously caused former Prime Minister Paul Keating to call Senators “...unrepresentative swill” (Uhr 1998: 111). Using the American model, the Australian Senate was designed to be a States House, although some delegates like future Prime Minister Alfred Deakin saw the possibility that party politics would undermine the federal principle in the Senate (Aroney 2009: 219). This would prove prescient, since as Uhr (1989: 141) notes “...although designated as a states house, the Senate has only infrequently acted as a protector of states’ rights or interests”. Notwithstanding later developments, the Senate at the time of federation was an important facet of intrastate



federalism in Australia. As a proper federal house, the Senate was expressly designed to represent the interests of the states *within* the Commonwealth government.

A further note on intrastate federalism is necessary. Even before federation, Australia had a partly integrated party system. The Australian Labor Party (ALP) emerged from the trade union movement in the 1890s and gradually acquired the characteristics that made it a successful mass party (Moon and Sharman 2003: 7). In fact, the organizational success of the ALP forced political opponents to react by forming the Liberal Party in 1910 and the Country Party (now National Party) in 1918 (Ibid: 8).

The tension between strict popular representation and the federal principle was also evident in the debate on the role of the Senate and selection of senators. Some delegates were loathe to see the legislative powers of the House of Representatives subject to Senatorial veto (Aroney 2009: 200). Here again, however, the federal principle was important enough to allow a compromise solution on the powers of the Senate. Although the Senate does not have the power to initiate or amend supply bills, it can defer or reject them (Ibid: 239). This important concession to the power of the Senate has been frequently used by that house to block legislation from the House of Representatives (Solomon 2007: 18). The nature of party politics in the Australian Senate means that the same party only rarely holds both houses and partisanship tends to prevail, as will be discussed later in greater detail. As mentioned, though, most delegates did not foresee the role that party politics would play, so the power of the Senate was seen as a concession to the power of the States. The method of selecting Senators was, however, recognition of the importance of popular representation. Some delegates preferred to have Senators elected by state legislatures, but populist principles won in the end, and it was decided that Senate would be directly elected (Aroney 2009: 217).

The distribution of power is another important indicator of the decentralizing intention of the delegates to the 1897 convention. As in the American model, a list of powers of the Australian federal government was enumerated while those of the states were unmentioned. The states were granted power over anything not exclusively enumerated (Solomon 2007: 29). The Canadian model was in fact deliberately avoided, since the reserve power was seen as trampling on the power of the Canadian provinces (Aroney 2009: 249). Over time, however, this has had the perverse effect of centralizing the Australian federation and decentralizing the Canadian federation. The Australian High Court later took the position that its judgements would only be based on the strict text of the constitution, and not the intention of its authors. Thus, because the Australian constitution is silent on the powers of the states, they have had less recourse to judicial interpretation in challenging the Commonwealth government. The Canadian provinces, by contrast, have had explicit descriptions of their powers over property rights, for instance, on which to base constitutional challenges (though this is an admittedly circumscribed discussion of constitutional provisions).

At the time of its creation the Australian federation, like its Canadian antipode, was considerably different than it is today. Again like the Canadian case, however, a close examination of initial conditions reveals the origins of the present state of affairs. With some cases, for example multi-nationalism, the tendency towards centralization was evident from the beginning. In the case of intrastate federalism, although it seems clear now that the choice to elect senators directly undercuts the power of state governments, this was not so obvious in 1897 (except perhaps to a few perceptive Australians). The role of party politics in intrastate federalism was not evident, and there was no reason to expect that political parties would be so integrated in the states and the Commonwealth, just as there was no reason to expect, in 1867,

that Canada would house such a variety of political parties in 2011. Finally, there is the place of the constitution. On the surface, the initial division of powers in Australia favoured the states. The intent of the Australian Fathers of Confederation was that the Commonwealth government be granted only what powers it absolutely required, and for the first twenty years of federation this was the interpretation that the High Court took (Craven 2007: 26). Beginning in the 1920s, however, the High Court began reading the constitution in strictly literal terms, and this set the course for centralization in Australia.

## **Multi-nationalism**

### **Canada**

The role of multi-nationalism has defined Canadian politics since before Confederation. It has been both praised and lamented by numerous commentators. Québec, merely by its presence, has simultaneously ensured that Canada would remain a federation while presenting the greatest challenge to Canada's very survival.

For the first twenty years after confederation, Québec premiers were muted in their assertion of Québec's rights. The situation changed, however, with the election of Honoré Mercier in 1887. Mercier suggested the first intergovernmental conference that year and worked closely with Oliver Mowat to challenge the federal government's centralizing actions. Resistance to the intervention of the federal government was also a significant part of the success of premier Maurice Duplessis (1936-39, 1944-59). This is reflected in Parti Québécois founder René Lévesque's statement that Duplessis "...may have had his faults, but he never let go [of provincial autonomy]..." (Lévesque 1980: 134). This autonomist spirit inspired the 1953

creation of Québec's Tremblay Royal Commission (Foisy-Geoffroy 2007: 258). The commission was a reaction to the centralization that occurred during the Second World War and continued during the reconstruction period. As a counter to federal interventionism, the Commission recommended a radical restructuring of federal-provincial fiscal relations. The Tremblay commission also recommended the creation of an interprovincial forum, stating that "At present, there is no organization which ensures co-ordination of provincial policies. Yet the provinces should discuss among themselves, without the federal government's participation, the problems which are properly within their resort" (in Meekison 2003: 3).

Québec's tumultuous relationship with the 'Rest of Canada' did not, therefore, suddenly begin in 1960 with the Quiet Revolution, but the Quiet Revolution did usher in a new era of Québec-Canada relations. Québec went from being a relatively passive participant in intergovernmental relations to taking the lead on many files and aggressively pushing the federal government on a number of matters. The success of this strategy has depended on the combination of political parties in power in Ottawa and Québec City, as well as the personalities involved.

Initially, Québec's demands were treated positively by the federal government. In 1962, the Lesage government in Québec indicated to the federal Pearson government that the province wished to create its own pension regime (Simeon 2006: 47). The federal government reacted with cautious approval. In a subsequent meeting, Québec's proposal to be able to 'opt out' of shared cost programs surprised the federal government, and "Quebec, with its strong demands, carefully designed proposals, and forceful presentation was effectively setting the agenda for federal-provincial discussions" (Ibid: 51). The forcefulness of the government of Québec was treated with trepidation by the other provinces and the federal government. The novelty of such

demands and the fear of what might happen meant that politicians in the rest of Canada were anxious to satisfy at least some of Québec's demands (Ibid: 54).

This period of increased demands from Québec was treated first with general goodwill from the federal government. This all changed, however, with Pierre Trudeau's ascension to the leadership of the federal Liberal Party in 1968. The man, his politics and his legacy have all been carefully dissected by Canadian academics, and with good reason. From 1968 to 1984, his presence shaped not only intergovernmental relations in Canada, but nearly every aspect of Canadian politics, and this is a legacy that continues today. Trudeau's approach towards Québec was to take a hard line in dealing with sovereignists, and his relationship with René Lévesque was one of the most tumultuous in Canadian political history. Although this is a complex issue, the principle reason is that Trudeau believed that the best way for French Quebecers to be included in the federation was by participating in the federal government, not by concentrating on the province of Québec (Laforest 1995: 128). Trudeau was thus vehemently opposed to moves that furthered Québec's (or any other province's) powers. During this period in Canadian history, the *issue* of Québec took center stage, but not the province itself. This is an important distinction. It was not so much Québec that was taking center stage in intergovernmental negotiations as it was the issue of 'What to do?' about Québec, particularly after the Parti Québécois (PQ) took office in 1976.

### **Mega-Constitutionalism**

The period of 1968-1992 has been called one of "mega-constitutionalism" by Canadian scholar Peter Russell. During that period, five attempts were made to change the constitution, only one successful. Although these constitutional negotiations dealt with a wide variety of

topics, they revolved around the central issue of Québec's place in Confederation. These negotiations were high-stakes, and tended to take all the attention of the first ministers, to the neglect of other issues. For instance, at the beginning of his first term, Brian Mulroney was expected to spend much of his energy on the recommendations of the 1984 Macdonald Royal Commission on the Canadian economy (Smiley 1987: 184-187). Even writing in 1986, Smiley did not expect anything like the Meech Lake Accord (Ibid).

Until 1982, the Canadian constitution could only be amended by an act of the British Parliament. Patriation (making the constitution amendable by only the Canadian government) had been suggested and debated a number of times since the 1930s, but had never succeeded. Québec's demands were generally far removed from those of the other provinces and the federal government, and those differences only grew over time. A number of constitutional negotiations foundered on the difference between what Québec expected and what the federal government was willing to concede. Prime Minister Trudeau, after a brief period out of power from June 1979 to March 1980, returned to Ottawa determined to patriate the constitution. This he did, but without Québec's support. To date, Québec has not yet signed the 1982 constitution. Trudeau's controversial move is still the cause of much division today, and Québec's relationship with the rest of Canada has never really recovered, in spite of the Mulroney government's attempts to bring Québec back into the constitutional fold with "honour and enthusiasm".

The Meech Lake and Charlottetown Accords consumed so much public and political attention from 1987 to 1992 that it is not unreasonable to reduce the period's intergovernmental dealings to those two items. Although the Charlottetown Accord was focused on pan-Canadian concerns, both Meech and Charlottetown were initiated by the desire to resolve Québec's concerns. The Meech Lake Accord was called the 'Québec round' of constitutional negotiations,

and revolved explicitly around the five demands of Premier Robert Bourassa. The five conditions were:

- Restoration of Québec's traditional veto in constitutional negotiations (which it had lost in 1982);
- Provincial say in Supreme Court and Senate appointments;
- Recognition of Québec's specificity (which led to the controversial distinct society clause);
- Provincial say in immigration;
- The right to opt-out of any future federal programs while receiving equivalent funding;

In the end, neither accord passed, and Québec's constitutional concerns remain formally unresolved although -as a number of authors have noted- unofficially nearly all of the agenda of the Meech Lake Accord has been accomplished through non-constitutional means (Hébert 2006: 211-224). The convincing failure of the Charlottetown Accord exhausted whatever energy was left for mega-constitutional negotiations, and ended the careers of many of the key participants. The country was struggling under massive deficits, and attention turned to the economy. Québec's place in the federation came back in the 1995 referendum, during which the federal Liberal government has been accused of being "asleep at the switch" (Dyck 2006: 71). Although the mega-constitutional period was one that was dominated by Québec's place in confederation, little was resolved on that front.

The mega-constitutional period also saw the entire country focus on Québec politics in two separate secession referenda, one in 1980 and the other in 1995. Although the no side won by 60 per cent in the 1980 referendum, it barely won the 1995 election, with only 50.5 per cent voting

against secession. Both referenda sent shock-waves across English Canada, though as noted the institutional ramifications of this were less significant than the psychological impact.

From 1995 to 2003, Québec was governed by a Parti Québécois government which was consistent in its refusal to sign on to national policymaking in intergovernmental negotiations. This led to the development of “federalism with a footnote” (Noël 2000) in which intergovernmental agreements like the Social Union Framework Agreement included a footnote which stated that although it shared essentially the same concerns as the other provinces, it did not support the specific terms of the agreement.

Since the Quiet Revolution, Québec has been an active force in intergovernmental negotiations. Its influence has waxed and waned, depending on the combination of forces in power in both Ottawa and Québec City, but the issue of Québec’s place in the federation has never been far from the intergovernmental agenda. How this affects the strength of the provinces is fairly clear. Québec has been a leader in pushing for its own rights, and to an extent all provincial rights (although there is a difference between the asymmetry advocated by subsequent Québec governments and the symmetrical federalism advocated by other provinces). It has strenuously and consistently resisted Ottawa’s intrusion on areas of provincial jurisdiction regardless of which party was in power. It has also sought to push its influence beyond constitutional jurisdiction, including international relations and pensions, which the federal government has at times ceded (Digiacommo 2009: 343). The impact of this has been to occasionally put Ottawa on the defensive and generally make the federal government wary of intervention in areas of provincial jurisdiction.

Along with the decentralizing force of Québec, Canada is also subject to a good deal of regionalism. This has most frequently manifested itself in federal politics, as regional protest



parties take their grievances to Ottawa with slogans like “The West wants in”; the most prominent recent federal regional protest party was the Reform Party. Canada has also seen other, provincially active regional parties, notably in Alberta, and nationalist sentiment can be said to exist in Newfoundland and Labrador (which was a separate British colony until 1949). Some regional parties, such as the Western Canada Concept and the Confederation of Regions Party have tended to be associated with extremist right-wing elements, however, and have existed on the political margins.

The preceding focus on Québec as a multinational force in Canada has ignored a vital part of Canadian politics: indigenous people. Canada’s indigenous people have played a growing role in Canadian politics over the past 50 years, but this has only recently begun to manifest itself in intergovernmental relations. Indigenous affairs are subject to a great deal of jurisdictional wrangling and blame avoidance, as neither the federal nor the provincial governments want to take responsibility. The provincial and territorial responsibility for social programs frequently overlaps with federal responsibility for “Indians and Indian Lands”. According to critics, neither order is living up to its obligations, as the socio-economic gap between Aboriginal and non-Aboriginal Canadians continues to grow (Wilson and Macdonald 2010). The exclusion of indigenous people in intergovernmental relations may be changing slightly, as indigenous leaders are invited to more intergovernmental forums, but historically, intergovernmental relations in Canada have rarely been focused on indigenous affairs.

## **Australia**

The absence of a major non-indigenous minority group in Australia is clearly one of the major differences between it and Canada. In fact, it would not be inaccurate to call it *the* most

important difference between the two federations. The presence of a large French-speaking population in one province has been a relatively constant force for decentralization in the history of Canada, whereas the absence of any such presence in Australia has had the opposite effect.

As mentioned, even before federation, there was a nascent sense of Pan-Australian nationalism; thus Henry Parkes' many speeches over his long career in politics emphasizing the American inspired concept of "...one people, one destiny" (Knightley 2000: 55). The various colonies, while not unimportant in the minds of their citizens, held nothing like the appeal of Québec as the home of a nation (Riker 1964: 113). Australia itself, not its states, was the home for the nation, best exemplified by the "...old Australian nationalist catch-cry 'a nation for a continent, a continent for a nation'" (Moran 2002: 695).

The meaning of Australian nationalism has been redefined a number of times, and has not gone unchallenged. The "White Australia" policy, which extended well into the 1970s, was the first expression of settler nationalism on the continent (Moran 2002: 678). This was representative of the idea of Australia as a 'British Island', and early Australian governments favoured British and Irish settlers. After World War II, the number of British settlers declined, to be replaced by southern Europeans and, eventually, Asians. However, close ties to Britain characterized Australian politics for quite a long time. Prime Minister Robert Menzies' "...publicly expressed devotion to the Queen was so extravagantly expressed that even she was embarrassed" (Knightley 2000: 167). Britain's 1971 Immigration Act which ended for Australians free entry into Britain was a "painful betrayal" and an "emotional blow" (Ibid: 301).

As in other settler societies, Australian nationalism first ignored the role of indigenous people, then saw them as disadvantaged and in need of assimilation into broader societies (indeed, there are close parallels between the Canadian and Australian approach to dealing with

indigenous peoples) (Moran 2002: 678-679). Gradually, indigenous Australia is being accepted as an integral part of Australian society, though (as in Canada) this process is by no means complete. That which makes the Australian situation unique, as Peter Russell argues, is that reconciliation between indigenous and non-indigenous Australians “...is *the* central contemporary political justice issue for Australians” (in Moran 2002: 669).

Australia today is a modern, multicultural society, the only country, according to Bill Clinton, that had managed to make multiculturalism work (Knightley 200: 324). In 1998, 23 per cent of Australia’s population was foreign born, so calling Australia’s population homogeneous would be erroneous. That said, there is a clear difference between a modern, multicultural society with a significant indigenous population, which can be said of both Canada and Australia, and one in which close to a quarter of the population speaks a different language from that of the majority.

More specifically, however, there is little evidence to suggest that Australians place particular emphasis on their home state as part of their identity. Indeed, the opposite seems to be the case. A 2007 survey in the *Sydney Morning Herald* revealed that 64 per cent of respondents were in favour of abolishing the states (Brown and Bellamy 2007: 34). The validity of this survey is corroborated by the thorough work of Gray and Brown (2007), who find considerable evidence of dissatisfaction with the current form and powers of states in Australia. A significant proportion of respondents were prepared to see the form of the states altered, a vision that is supported by some federal politicians (Ibid: 33).

Ultimately, Australia is a heterogeneous society, but not a multi-national one in the Canadian sense (which even Conservative Prime Minister Stephen Harper recognized in a 2006 resolution of the Canadian House of Commons). Importantly, no single ethnic or religious group

was concentrated in one state, and states in Australia never became conflated with nations. The Commonwealth itself became the focus for nationalism in Australia (Riker 1964: 113).

## **Strength of Intrastate Federalism**

### **Canada**

#### **Political Parties**

A stark difference between Canada and Australia is the lack of political party integration in the Canadian system. In the words of Bavkis (1994: 2) “...the Canadian party system has served to segregate and sharpen conflict between levels of government”. The Australian party system is far from being a straightforward means of agreement between different branches of the same party, but it at least provides a venue for intergovernmental collaboration that is simply not there in most Canadian provinces.

Using a typology created by Smiley to categorize party integration in federations, Dyck (1991) notes that the major parties in Canada are either integrated, confederal or truncated. An integrated party shares financing, membership and policy at the federal and provincial levels. It also features a good deal of collaboration between provincial and federal staff as well as between provincial branches, and does not engage in relationships with other parties (Ibid: 131). In a confederal party, each branch has separate membership, financing, staff, may have links with other parties and may have significant policy differences (Ibid). A truncated party simply has no counterpart in the other order of government (for instance the Saskatchewan Party). The New Democratic Party (NDP) is the only integrated party in Canada. The Liberal Party is semi-

integrated, semi-confederal, while the Progressive Conservative Party (PC) tended towards confederalism and the new Conservative Party of Canada has no provincial equivalent.

Canada has historically had no truly national party<sup>1</sup> (Sayers and Banfield 2010: 5). The federal Liberal Party has had difficulty winning seats west of Ontario. Considering the party's success in the rest of the country (it was in power federally for three-quarters of the 20<sup>th</sup> century), this has meant that the West has frequently been shut out of power at the federal level, with a few exceptions, notably under Diefenbaker (1957-1963) and to a lesser extent under Mulroney (1984-1992). This trend can no longer be said to be the case, as the recent election of a Conservative majority built on a strong base in the West and Ontario has shifted the federal dynamic. Historically, however, Mulroney's government was supported by a coalition of Western Conservatives and Québec nationalists, but the attention that was placed on Québec during that period led to disaffection among many western voters, which led to the creation of the Reform Party (Arseneau 1994: 112). As a result of the region's alienation from federal politics, the West has been the source of a number of regional protest parties, including the United Farmer's movement, Social Credit Party and Reform Party.

This was not always the case. During Canada's first half-century, the party system of most Canadian provinces mirrored that of the federal government, and the parties were directly linked (Dyck 1991: 132). This began to crumble on the Canadian Prairies in the aftermath of World War I as socialist parties, such as the Cooperative Commonwealth Federation (CCF), (predecessor to the modern NDP) and rural interest parties (United Farmers of Alberta,

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<sup>1</sup> Although this is debatable today, given the success of both the NDP and the Conservative Party nationally.

Progressive Party and Social Credit) were formed to combat the traditional parties whose focus was seen as being concentrated on Central Canada (Arseneau 1994: 102).

The NDP has formal links to its provincial branches, while the federal Liberal party maintains separate branches except in Atlantic Canada. After World War II, provincial Liberal parties in the West gradually became politically irrelevant, making their formal links, where they still existed, a non-issue. In Québec, the party system has been characterized by its own unique features since the time of Mercier. The NDP's formal links with provincial parties are of relatively less importance in intergovernmental relations, since the party has never formed government federally.

To this convoluted mix can be added the various truncated provincial parties, like the Saskatchewan Party or the Parti Québécois, which have governed in their respective provinces over the course of Canadian history. Ultimately, "Canada has a federal political system because of the differences that have always characterized its political life. And the very existence of federal institutions helps to perpetuate such differences" (Carty 1994: 143).

The Canadian party system "...continues, as it always has, to reflect the parochial concerns of an extraordinarily varied, and federally organized, country" (Carty 1994: 151). As a result of the fact that federal parties are not nationally representative and lack provincial equivalents (except in a few places) along with the plethora of solely provincial parties, party politics have almost completely been eliminated as a means to conduct intrastate federalism in Canada<sup>2</sup>.

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<sup>2</sup> This has been compounded by new federal election finance laws which ban the sharing of resources (physical or monetary) between branches of the same party.

## The Senate

There is a remarkable consistency to the Canadian Senate: in nearly 150 years, it has not changed significantly. According to critics, this is not to its credit. As mentioned above, the Senate was conceived of as a sort of Canadian House of Lords, and was not seen as an effective body. It is worth remembering that the Senate is based on representation of *regions*, not *provinces* (although the practical application of this has been to give each province a certain, if unequal, number of senators) (Arseneau 1994: 101). Its main role has been as a house for patronage appointments that reward the party faithful.

The obvious template for federalism for the Fathers of Confederation was the American one. The relative novelty of federalism as a form of government meant that there were few other federations in the world. However, what the framers of the Canadian constitution saw did not inspire them. The American Civil War, fought largely over states rights, had ended just two years before Confederation. In the minds of the framers, the American example was a clear demonstration of the danger inherent in giving sub-national units too much power (Smith 1988: 444). This added to the convictions of those who were opposed to a federal dominion.

The *British North America Act, 1867* created a nominally federal country which left much power in the hands of the federal government and gave little representation to provincial societies and no representation to provincial governments in the federal institutions (the courts, Parliament and Cabinet). This satisfied those who feared a repeat of the conditions that led to the American Civil War. Ironically, as Smith (1988: 463) notes, in the long run this lack of representation was to *strengthen* the role of the provinces and their governments. Since local matters are not represented within the federal government, they are dealt with by the provinces; this has given provincial governments great leverage and legitimacy. Moreover, the low level of

provincial representation in federal politics has made the premiers key voices for sub-national concerns in intergovernmental negotiations.

The Canadian Senate is odd among global upper chambers, since it acts neither as a States' house (as in Germany and the United States), or as an effective legislative house (as in Australia). Although the Senate does considerable work on policy research, and individual senators may represent certain local concerns, it is not widely-perceived as a legitimate legislative body<sup>3</sup>. In the 1980s and early 1990s, there was much discussion on Senate reform. In fact, one of the Reform Party's main policy planks was the creation of a triple-E Senate (Elected, Effective, Equal). Since that time, however, the salience of Senate reform has faded, despite the 2006 election of the Conservative Party led by former Reform Party leader Stephen Harper. Informally agreed-upon term limits of 8 years have been added for all new appointees, and Prime Minister Harper has appointed an elected 'senator-in-waiting' from Alberta while pledging to nominate other senators in waiting where possible. However, the current government has also appointed many more Senators in the traditional manner (though this was likely done to prevent the opposition from filling the seats). Moreover, the Conservative government has also not hesitated to use the Senate in the ways that caused disenchantment in the first place, such as the un-debated defeat of a bill that had passed the House of Commons (CBC 2010). The torpor in which Senate reform is caught is also related to the strength of the provinces. As mentioned, in the absence of Senatorial representation of either provincial societies or governments, the provincial executives have become their own representatives, a role they will not easily give up.

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<sup>3</sup> In a 2011 survey, 73% of respondents claimed to want a new approach to the Senate (Angus Reid 2011).



Thus any effort to seriously reform the Senate, which would take the approval of provincial governments, is bound to encounter resistance.

In sum, the Canadian Senate is a largely ineffective forum for intrastate federalism, which “neither checks the legislative authority of the government, nor does it encourage the development of a unified national party system that might act as a conduit for intrastate representation” (Sayers and Banfield 2010: 6). With a majority as of May 2011, the Harper government has pledged reform to make the Senate more “democratic”, but it remains to be seen whether these reforms will take place.

## **Cabinet**

Since the Senate is not a states house and lacks legitimacy, and the party system is fractured, the role of representing regional concerns within the federal arena has fallen to the Cabinet. At least one Canadian politician warned against this possibility prior to Confederation, as noted in Smith (1988: 458) “...the cabinet was a parliamentary institution shaped by conventions that caused it to act as a unit in the interests of the nation as a whole, not as a coalition of individuals visibly championing local interests. It was an inappropriate vehicle for the expression of local interests.”

Inappropriate though it may be, the Cabinet has served as the key vehicle for regional representation in federal politics. The process of constructing a Cabinet is a difficult one (Prime Minister John A. Macdonald once famously listed ‘cabinet-maker’ as his occupation). A number of factors must be considered, including gender, religion (though this is less important today), rural/urban representation, and, of course, regional representation (Savoie 1999: 83). As much as possible, each province is usually represented by a minister (even if this requires filling cabinet positions from the Senate). In past cabinets, regional ministers like Lloyd Axworthy

(Manitoba) and C.D. Howe (Nova Scotia), have played key roles, and have at times been powerful enough in their own right to maintain a certain level of autonomy from the prime minister (Bavkis 1991). This pattern is less visible today, but still exists.

This influence, however, has been far from consistent. Even the most powerful regional minister can be brought into line by the prime minister, who wields authority from many sources. The power of the prime minister in Canada is such that the country has been described as a “friendly dictatorship” by journalist Jeffrey Simpson. This hypothesis has been popularized by the work of Donald Savoie, who exposed the concentration of power that has occurred on Parliament Hill since the time of Pierre Trudeau. While this understanding has a certain appeal, it misses part of the picture, and “...the problem with such a debate is that it is often fought anecdote by anecdote” (Weller 2007: 250). Power is undeniably concentrated in the prime minister’s hands, but this is a feature of all Westminster parliamentary systems: a party leader who has won consecutive majorities and enjoys personal popularity wields considerable influence. This does not mean that the office is monolithic, as Savoie contends. Prime ministers and premiers vary a great deal in their popularity, in the influence they wield within their party and among their peers, as well as in their approaches to governing. Savoie’s thesis is overstated in this regard. The power of a first minister is not a sure thing.

The Cabinet acts as a forum for intrastate federalism in Canada, but it is an inconsistent one. The premiers are representatives of their respective province’s interests, limiting the power of federal ministers. Whatever influence regionalism has in cabinet is not able to overcome the dominant stream in Canada, which is interstate federalism.

## **Australia**

### **Political Parties**

Political parties have played a much larger integrating role in Australian federalism. Even before federation, political parties played a role in Australia, although to varying degrees. Despite the fact that its origins are in the states, the Labor Party (ALP) was for a long time antithetical to federalism in Australia: “Until the 1960s, Labor was formally committed to the abolition of federalism and its replacement with a unitary system of government” (Galligan and Wright 2002: 156). While this understanding of the role of the national Labor Party is prevalent, the party’s “... position in practice was complicated by its electoral fortunes” (Hollander and Patapan 2007: 283). The ALP has held power nationally only rarely, and not at all from 1949 to 1972. This contrasts with its considerably more successful record in the States. It has spent more time in office at the state level than nationally in every state except Victoria, and has spent 74 of 119 years in office in Tasmania since federation. The success of the ALP in the states and the fact that during the 1950s and 1960s the national branch of the party was only “...of intermittent significance...” meant that the state branches of the party could force the national branch to soften and ultimately drop its objection to federalism (Parkin and Marshall 1994: 82).

That said, the links between the state and national branches of the party have allowed for more coordination than might otherwise be the case. This should not by any means be understood as subservience of state Labor parties to the national branch: “The state branches enjoy a kind of sovereignty over their own affairs, with intervention from the national level very infrequent...” (Parkin and Marshall 1994: 77). However, “In recent years, the central institutions of the ALP have become... more prone to intervene in the conduct of state party activities...”

(Ibid: 28). How do we reconcile these apparently contradictory assessments? The state branches are powerful and have historically been much more successful than the national branch. On certain issues, however, the national branch can impose its will, especially when it is in power. The process is one of give and take. Weller's (2006: 274) observation on prime ministers in Cabinet is equally applicable to party discipline in the ALP: "...prime ministers do what they can, consistent with their ability to maintain collective support". These private links have allowed for greater collaboration, as was undoubtedly the case with the creation of COAG: the fact that 6 of the 7 participating governments were Labor made the process smoother. Although Labor premiers were not all enthusiastic about the COAG process, pressure from ALP Prime Minister Bob Hawke convinced them to support the initiative (Painter 1998: 37).

The place of the Liberal-National coalition governments is more complicated. First, the two parties are separate, and have differing political significance in each state. Moreover, the National Party has seldom shown serious interest in federalism and is effectively confined to the three largest states (Sharman 1994: 123). Second, the Liberal Party of Australia is generally understood as being more favourable to federalism than the ALP, although in practice, the party's commitment to federalism has come as much from a desire to compete with the ALP as from any philosophical ideals (Ibid: 124). The relatively more positive approach to federalism has meant that national Liberal governments have not had as much conflict with state Liberal governments as an ALP government.

Although the ALP has led in terms of party integration, all the major parties in Australia are represented to various degrees in the states. This has two effects. The first is to make Australian federalism a more partisan affair than in Canada (where disparate parties collaborate in intergovernmental relations irrespective of partisan differences). The second is to give state

premiers and the prime ministers of the same party an opportunity to collaborate as well as an incentive not to make their disagreements too public. Using this medium, the “...Prime Ministers can use party mechanisms to bring such state premiers into line” (Weller 1988: 156). This has been the case with the ALP in particular, but this facet of Australian federalism should not be exaggerated, since as Parkin and Marshall (1994: 76; emphasis in original) mention, “The ALP is not simply- *or even primarily*- a ‘national’ entity...”; and as Davis (1998: 155) notes: “Close political contacts provided a private channel for political discussion... but did not remove those conflicts of political interest which arise between the state and national governments in a federation.” Nonetheless, party politics in Australia can give and have given various politicians opportunities to collaborate and air grievances within the same party, which can obviate the need for confrontational first ministers’ meetings.

## **The Senate**

As noted earlier, some of the delegates to the Australian convention were aware that party politics might come to dominate the Senate to the detriment of states’ interests. The situation today confirms that assessment: “...From 1980 to 2005... It was still largely party politics that determined the outcomes” (Weller 2007: 4).

The role of the Senate may be divided into pre- and post-1949 periods. Prior to 1949, the Senate was elected along the same lines as the House of Representatives, on a preferential block voting system. This had the effect of stacking the Senate with Senators from one party. “It was not uncommon for a government to possess a disproportionate majority in the Senate... For instance, the respective figures for government and opposition senators after the 1919, 1934 and 1946 elections are: 35-1, 32-3, 33-3” (Uhr 1988: 142).

Since 1949, Senatorial elections have been conducted on a single transferable vote (STV) basis. This has altered the balance of power considerably, resulting in a situation in which none of the major parties dominates the Senate. Smaller parties, such as the Green Party, control the balance of power and the party that rules the House of Representatives must contend with this influence. In 2005, the Howard government was the first in 25 years to control both houses of parliament (Solomon 2007: 18).

The Senate is considerably more powerful in Australia than in Canada. Most infamously, in 1975 the Senate occasioned the removal of a sitting Prime Minister. In a controversial move, Governor General John Kerr stripped Labor Prime Minister Gough Whitlam of power while he still commanded a majority in the House of Representatives. The Coalition controlled Senate consistently refused to pass the Whitlam government's supply bill, and when Whitlam went to ask the Governor General for a double dissolution of the House and the Senate, he was dismissed (Knightley 2000: 273).

As Senators in Australia are directly elected and not appointed by state premiers or legislatures, the Senate is in the interesting position of being powerful while not being particularly beholden to state governments. While the Australian Senate is undoubtedly a more relevant states house than its Canadian counterpart, it can only be considered part of the fabric of intrastate federalism in Australia with reservations. The Senate *does* act as a check on the power of the House of Representatives, which can benefit the states when the House is led by centralizing governments (Sayers and Banfield 2010: 7). In general, however, the states seem to lack power in the Senate without having gained anything in the intergovernmental arena, as opposed to their Canadian counterparts.

## **The Cabinet**

The role of Cabinet in Australia as a forum for intrastate federalism is somewhat limited, but regional representation in the federal executive does exist. As Weller notes, “Each state requires some representation and there is likely to be some balance between the larger states. It may be possible to ignore Tasmania for a time, but not the others” (Weller 2007: 199). In Australia, the ALP Cabinet is elected by caucus, and as all members of parliament are nominated by state branches, they “...often owe a much greater allegiance to state-based forces that control the pre-selection process than to the leader” (Sayers and Banfield 2010: 11). As such, “The prime minister must appoint a cabinet with an eye to respecting and balancing powerful state-based actors and factions.” (Ibid). The prime minister must respect *state-based* actors, not state governments. Thus, state governments are more or less sidestepped, and cabinet is no more representative of state interests than is the Senate.

In this respect, the Australian Cabinet is similar to that of the Canadian government. Although the Canadian Cabinet has tended to be more sensitive to regional representation, the dominance of the prime minister and the strength of the provinces as their own representatives has limited the power of regional ministers in recent years.

## **Judicial Interpretation and Fiscal Balance**

### **Canada**

#### **Judicial Interpretation**

The initial design of the Canadian federation was heavily weighted in favour of the federal government. This changed within decades, as judicial interpretation of the constitution

consistently favoured the provinces and restricted the scope of the federal government's various ancillary powers. Until 1949, the British Judicial Committee of the Privy Council (JCPC) was Canada's highest court. The Supreme Court of Canada, created in 1874, was outranked by the JCPC.

In a number of decisions, the JCPC consistently offered interpretations of the *British North America Act* that favoured provincial rights (Jackson and Jackson 2006: 159). It also sharply limited the ability of the federal government to apply the Peace, Order and Good Government (POGG) clause of the constitution. These early judgements were to set Canadian federalism on a course opposite to that which many of the founders, most obviously Macdonald, had intended.

This happened by the transformation of POGG from a residual clause to an emergency power. In early rulings of the JCPC, the federal government's ability to legislate in matters of alcohol regulation was established, but in the *Local Prohibition* case (1896), POGG was found to be relevant only where an issue was not listed in section 91 or 92, *and* could be considered a matter of national concern (Dyck 2000: 406). In later rulings, the JCPC limited what constituted an emergency. In *Toronto Electric Commissioners V. Snider* (1925), for instance, it ruled federal industrial legislation *ultra vires*, since the matter did not qualify as a national emergency. "No doubt there may be cases arising out of some extra-ordinary peril to the national life of Canada... where legislation is required of an order that passes beyond the heads of exclusive provincial competence... But instances of this... are highly exceptional" (Dawson 1933: 445-446).

The JCPC's rulings are not sufficient to explain the decentralization evident in Canada today, but they are certainly an important part of the equation, in that they proved to be critical junctures in the early evolution of Canadian federalism. This has not gone unnoticed by



Canadian scholars. Garth Stevenson (in Jackson and Jackson 2006: 203) is extremely critical of the JCPC's judgements:

This peculiar situation, which even the Australians had the foresight largely to avoid, had the effect that for almost a century the most influential concepts of Canadian federalism were largely defined by outsiders, men who had no practical knowledge of Canada, or of federalism, and who were not even required to live in the society that to a large degree was shaped by their opinions.

The decentralization in Canada today is not only related to the JCPC, however. Another source of provincial autonomy is provincial control over natural resources, granted by section 109 of the BNA Act. The Western provinces were not granted control over natural resources until 1930<sup>4</sup> and they have since become somewhat iconic, particularly in Alberta, where provincial control over natural resources is considered as sacred as the French language is in Québec (Boothe 2007). This control has given many provinces a significant (though volatile) economic base.

Finally, the federal powers of disallowance and reservation have fallen into disuse. In fact, their disuse has become convention. While they are still in the constitution, it is extremely unlikely that they will ever be used. Such an abuse of power by the federal government would likely cause a constitutional crisis.

## **Fiscal Balance**

In 1986, Donald Smiley wrote that he had "...nothing to say about fiscal federalism- a subject which I once tried to comprehend but which, I am now convinced, is so complicated that one should either cultivate it as a full-time specialty or leave it alone entirely" (Smiley 1987: xi).

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<sup>4</sup> When Manitoba joined Confederation in 1870, and subsequently when Saskatchewan and Alberta joined in 1905, the federal government withheld control over natural resources so that the federal government might better direct the settlement and development of the West (Dyck 2000: 51).

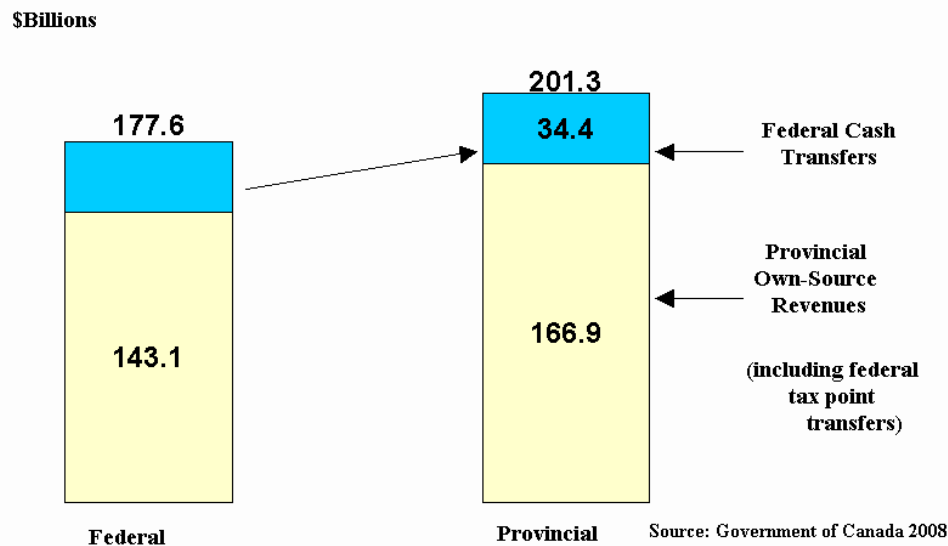
Fiscal federalism can certainly pose a challenge to those not familiar with the intricacies of budgets, but it is also one of the prime movers in intergovernmental relations in Canada as well as in Australia.

Since the Rowell-Sirois Commission first identified the gap between provincial expenditures and revenue raising capacity in 1939, fiscal negotiations have probably been the most consistently contentious issues of Canadian intergovernmental relations (Dafoe 1940: 647). Stevenson (2009: 36) argues that the various reoccurring issues in Canadian fiscal federalism were inherent in the BNA Act. The Fathers of Confederation could not have predicted the importance of social programs and the expense associated with them, and so the provinces were initially ill equipped to deal with increasingly expensive constitutional responsibilities. This state of affairs (provincial governments with greater expenses than revenues and a federal government in the opposite situation) is known today as the vertical fiscal imbalance (VFI), a situation that the federal government tries to remedy through a set of transfers to the provinces.

Fiscal matters also tend to underlie other issues. Fiscal wrangling has been at the core of much conflict between Ottawa and Québec City, and the right to opt-out with fiscal compensation has been a cornerstone of Québec's intergovernmental demands since 1960. Even before the Quiet Revolution, Québec premier Maurice Duplessis was extremely critical of the federal government's assumption of provincial taxation duties during the Second World War. In 1954 Québec ended the tax rental agreement which had seen the federal government collecting and redistributing taxes to the provinces (Stevenson 2009: 32). The increase in federal intervention in provincial jurisdiction via shared cost programs also entailed a good deal of argument between the federal and Québec governments.

This situation continued through to the 21<sup>st</sup> century. In 2001, partly as a result of cuts to federal transfers and partly as an attempt to give Québec’s PQ government some political salience in the latter part of its second mandate, a commission was called which identified a fiscal imbalance (Stevenson 2009: 38). The call to fix the fiscal imbalance fell on deaf ears in the federal government until the election of the Harper Conservatives in 2006. By adjusting some transfer payments, Harper claimed to have eliminated the fiscal imbalance, although according to Winer and Hettich (2008: 27), there is no existing framework appropriate to determine whether or not a vertical fiscal imbalance does exist, and “Provincial arguments about imbalance are often invalid...” Canada is now in the position of having a fiscal gap in *favour* of the provinces: the provinces collect over 50 per cent of government revenue even before federal transfers (see Figure 3). Relative to sub-national units in other federations, the Canadian provinces enjoy considerable fiscal independence (see Figure 4).

**Figure 3-Federal and Provincial Revenue**



Any discussion of fiscal federalism must also include equalization. In 1957, the federal government implemented one of the recommendations of the Rowell-Sirois Commission and created equalization. The equalization program is one of horizontal redistribution: ‘have less’ provinces are given equalization funding so that they might provide a comparable level of service to their citizens despite their lesser revenue raising capacity. Equalization is paid from the general revenues of the federal government, not from richer provinces to poorer ones. The formula used to calculate equalization has changed a number of times since the 1950s (Ruggeri 2009: 152-153). At times it has been calculated on the basis of a ten province average, while at other times it has been based on the median five provinces. Natural resources have alternately been included in the calculations, 50 per cent included or not included. All provinces have been recipients (though Alberta has not received equalization for many years), and some provinces (Manitoba, Québec and most of the Atlantic provinces) have been perennial recipients. The negotiation of the equalization formula is often a zero-sum game: the gains of one province often come at the expense of others. Given what is at stake, it is unsurprising that equalization negotiations are so contentious. Provincial consensus is often difficult to maintain in such circumstances. This was evident during the most recent equalization negotiations. Despite the fact that the Council of the Federation commissioned a report on equalization, according to one official “the commonality of interests began to split up” during negotiations (Anonymous interview 2011f). This seems likely to become an issue again when fiscal transfers and equalization are renegotiated in 2014.

Although fiscal issues have often caused division in intergovernmental negotiations, in federal cuts in the mid-1990s spurred the provincial governments to collaborate, notably on the Premier’s Council on Health Awareness (PCHA), which was a precursor to the Council of the

Federation. The PCHA, created in 2002, was a publicity campaign organized by the provinces; to draw attention to the cuts that the federal government had made to the Canada Health and Social Transfer (see Chapter three). The PCHA was subsumed in the Council of the Federation, and according to one official the premier's collaboration on that project led directly to COF (Anonymous interview 2010b).

## **Australia**

### **Judicial Interpretation and Fiscal Balance**

In Australia, fiscal federalism has played a major part in intergovernmental relations as well. In fact, given the lack of an ongoing debate on national identity in Australia, fiscal matters have played a relatively more prominent role in Australian intergovernmental relations than in Canada. The creation of the Council of Australian Government was predicated on dealing with fiscal federalism, as the states were quite keen that the VFI be dealt with. While in Canada an entire body of judicial interpretation deals with provincial rights, in Australia, judicial interpretation is so intertwined with fiscal federalism that it is nearly impossible to separate the two. Thus, this section will deal with both.

Possibly the single biggest cause of centralization in the Australian federation is the judicial interpretation of the constitutional power of the central government. This was certainly contrary to the intentions of the Founding Fathers, who, as mentioned, conferred on the central government only such powers as were absolutely necessary.

Zines (1989: 106) attributes the initial centralizing bent of the Commonwealth government to events surrounding the First World War. As in Canada, the Australian government assumed all the functions of government and made the states administrators. By 1920, a majority on the

Australian High Court agreed that the defence powers of the federal government could not be limited by the reserve power of the states, and this called into question the entire concept of reserve powers (Ibid). The key moment came with the 1920 *Engineers* case. The specifics of the case involved whether the states were subject to Commonwealth industrial arbitration legislation (Ibid). In the process, though, the High Court rejected the doctrine of state's reserve powers and removed the states' immunity from being affected by Commonwealth legislation (Ibid: 107).

Equally important to the concentration of power in the federal government is section 96 of the constitution, which states: "During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit" (Constitution of Australia Act). As Wiltshire (1989: 182) notes, "There is no direct equivalent of the infamous Section 96 of the Australian Constitution in the Canadian Constitution." Since the constitutionality of the 1926 Federal Aid Roads Act was upheld by the High Court, this provision has been frequently used by the Commonwealth government to justify intervention in areas of state jurisdiction (Zines 1989: 109).

In Canada, the weak fiscal position of the provinces occasioned the Rowell-Sirois Commission. Many of the Commission's recommendations were ignored, however, and judicial interpretation of the constitution had consistently maintained provincial autonomy. In Australia, however, "The High Court has sanctioned ever-increasing expansion of Commonwealth powers to the point where there are now few constitutional constraints of a federal nature" (Galligan and Wright 2002: 159). The strong fiscal position of the Commonwealth government led to the creation of the Australian Loan Council, which guaranteed the loans of the states (and has no Canadian equivalent) (Wiltshire 1989: 184). This provision strengthened the position of the

Commonwealth government by making the states dependent on it for fiscal certainty. This dependence was worsened by the creation of the Commonwealth Grants Commission

The Commonwealth Grants Commission was created in 1933 after a period in the 1920s during which the smaller states began receiving grants (Parkin 2003: 122). This was effectively a horizontal equalization program, and in fact served as a model for the Rowell-Sirois Commission's recommendations on the creation of a body for horizontal equalization (Wiltshire 1989: 187). As in Canada, some Australian states have fewer resources than others, and must therefore rely more heavily on the Commonwealth government for funding. This makes the poorer states more hesitant to criticize the Commonwealth government and in some respect turns states against one another in intergovernmental negotiations (the same can be said of certain Canadian provinces). The government of New South Wales, for instance, is critical of the present form of equalization in Australia (NSW 2010: 6). One of the main devices for horizontal equalization is the Goods and Services Tax (GST), introduced by the Commonwealth government in 1998. The introduction of the GST had the effect of worsening the VFI, since GST revenue was distributed to the states on the condition that they cease collecting certain taxes (Ibid 12).

The Commonwealth Grants Commission is now mandated to make calculations based on state revenues and expenditures. Whereas in Canada horizontal equalization is based on ensuring "...reasonably comparable levels of public service at reasonably comparable rates of taxation across provinces", Australia bases equalization on ensuring that each state has "...the fiscal capacity to provide services and the associated infrastructure at the same standard" (NSW 2010: 8). The key difference is that equalization in Canada is based on each province's revenue raising capacity, whereas in Australia it is based on revenue *and expenditures*. Thus poorer

jurisdictions are not only ‘raised’, richer jurisdictions are also ‘flattened’ (NSW 2010: 10). Concern over the unequal distribution of GST revenue has been high enough to prompt the federal government to order a review of the system (ABC News 2011).

As a result of these various factors, the Commonwealth government has been unencumbered by its lack of enumerated constitutional power. The mechanics of this development are worth exploring:

[The Commonwealth] relied on Section 96 of the Constitution (allowing it to make grants and attach conditions to them) to legislate to the effect that any state which returned to raising revenue from a separate income tax would be penalized by a cut in grants of the same amount, while the uniform Commonwealth tax would still be levied. This stratagem was upheld by the High Court as the correct literal reading of the powers of the Commonwealth, even though the result was to deny a state the effective enjoyment of its own constitutional powers (Painter 1998: 17).

The corollary to the Commonwealth’s *power* to spend is its *ability* to spend. Arguably the most crucial element of the Commonwealth’s power is its fiscal power. Three constitutional amendments, in 1927, 1946 and 1967 gave the Commonwealth government greater power over fiscal matters in addition to those it already had via S. 96 (Wiltshire 2007: 189). Further, a constitutional amendment in 1946 gave the Commonwealth the power to legislate in pensions, student benefits, medical and hospital insurance, and a number of other social programs (Grewal and Sheehan 2003: 2). As in Canada, the Australian Commonwealth government assumed all taxation during the Second World War. Unlike Canada, however, the Commonwealth government did not relinquish that power after the war. After the war, the Canadian provinces became increasingly independent financially, while the Australian states “...retained their dependence on national government largess” (Wiltshire 1989: 188). This state of affairs has left the states “...mendicant, embattled and suspicious of Commonwealth ambitions since the Second



World War” (Painter 1996: 103). Consequently, Australia has among the most severe vertical fiscal imbalances of any federation in the world: the Commonwealth government collects 80 per cent of tax revenues but only spends 50 per cent on strictly federal responsibilities (Painter 1998: 17). This has frustrated the states repeatedly, as they find their priorities skewed by the Commonwealth government (Ibid: 18). The drive to resolve the VFI was a major motivation for the states to participate in the special premier’s conferences that lead to the creation of the Council of Australian Government (Ibid: 20). However, the VFI remains a going concern today, and even the most fiscally independent state in Australia (Western Australia), depends on federal transfers for 42 per cent of its revenue (NSW 2010).

**Figure 4- Vertical Fiscal Imbalance in Federations As percent of sub-national revenue**



The impact of that kind of fiscal centralization on intergovernmental relations in Australia is evident. With the Commonwealth government having such leverage, the states are often in the positions of supplicants, having to accept the conditions imposed by the Commonwealth. Where some Prime Ministers have been more collaborative, others like Whitlam (1972-1975), were

considerably more overbearing in their treatment of the states. Indeed, Whitlam's time in office is so synonymous with centralization that Parkin and Anderson (2007: 306) refer to centralization in the latter part of the 1990s as "Whitlamesque". In sum, where Prime Ministers want to be centralizing, they generally can be. The fiscal levers in Australia are mostly in the hands of the Commonwealth government.

## **Summary Comparison**

The Australian federation is more centralized than its Canadian counterpart; indeed, by several measures, Australia is one of the most centralized federations in the world (Brown and Bellamy 2007: 16). There are several reasons for this. Although today Australia is culturally diverse, it has never had a concentration of one major ethno-linguistic group in any one state, as is the case in Québec. This means that Australians do not identify with their respective states, but with their country, and the Commonwealth government is the natural expression of the Australian nation. In the arena of intrastate federalism, the Australian states have a certain degree of representation via party politics, the cabinet, and the senate (certainly more so than in Canada) yet state governments are in the curious position of having a weak presence in intrastate federalism without having increased their interstate interactions. The same cannot be said of Canada, where weak intrastate federalism coincides with increased interstate federalism. Finally, the Australian constitution has been consistently interpreted in such a way as to give the Commonwealth government considerable fiscal control, effectively forcing the states to accept the dominance of Commonwealth objectives in their own areas of jurisdiction<sup>5</sup>. This is not the

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<sup>5</sup> This should be qualified. As Parkin (2003: 107) notes, the conditions attached to Commonwealth grants can be "quite general", leaving the states "wide discretion" about how the funds are to be spent.

case in Canada, where early court cases tipped the balance of judicial interpretation in favour of the provinces, and where in spite of a VFI, provinces enjoy a good deal of fiscal autonomy.

## **Chapter 3- Intergovernmental Relations in Canada**

The issue of federalism is never far from the minds of Canadian politicians and political scientists, and intergovernmental relations (IGR) are the means by which their approach to federalism is most frequently expressed. Although the interaction of the federal and provincial governments has been thoroughly dissected and analysed, provincial-territorial relations have been understudied in Canada. This is best demonstrated by the lack of academic work on the Council of the Federation (COF), described at the time of its creation as the most important development in Canadian federalism in years (Brown 2003).

Understanding the Council of the Federation means understanding the culmination of many years of development of horizontal provincial-territorial (PT) relations in Canada. COF is in keeping with the evolving dynamic of IGR in Canada. A confluence of events during the late 1990s, culminating in the election of the Québec Charest government in 2003, made the creation of COF possible. Since its creation, however, COF has become a forum for horizontal collaboration rather than a forum in which to deal with the federal government. It has also developed links and trust-ties between provincial civil-servants.

These findings will be demonstrated in two parts. The first section will be a literature review of the history of intergovernmental relations (IGR) in Canada, first from Confederation to the Rowell-Sirois Commission, and then from the Annual Premier's Conference (APC) to the Pelletier Report and COF. The second will assess the significance of COF by contrasting it with the Annual Premier's Conference and by considering the impact it has had on Canadian IGR.

## Early IGR

### 1867-1960

Intergovernmental relations in Canada date back to the creation of the federation. As noted in Chapter two, Canada became a federation only with the reluctant consent of a number of its key architects, most notably first Prime Minister John A. Macdonald. The various reserve powers in the constitution are an indication of the desired path of the Canadian federation.

Despite the clear centralist bias inherent in the constitution, however, in relatively short order, the supremacy of the federal government was challenged, most notably by Ontario Premier Oliver Mowatt. From 1878-1896, Mowatt was a key force in advancing provincial rights by supporting legal challenges. Until 1949, the British Judicial Committee of the Privy Council (JCPC) was Canada's court of final arbitration. In a number of decisions, the JCPC consistently favoured interpretations of the *British North America Act* that favoured provincial rights (Bavkis et al 2009: 91). It also sharply limited the ability of the federal government to apply the Peace, Order and Good Government (POGG) clause of the constitution. These early judgements were to set Canadian federalism on a course opposite to what many of the founders, most obviously Macdonald, had intended.

In 1887, Mowatt was joined in his efforts by Québec Premier Honoré Mercier. Mercier's election was to bring about a new dynamic in Canada, that of inter-provincialism. The first inter-provincial conference took place in 1887, although the absence of the governments of Prince Edward Island and British Columbia lessened the impact of the conference (Ryan 2003: 2). Over the next several decades, interprovincial<sup>6</sup> issues were not a major concern for provincial

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<sup>6</sup> The territories were not invited to interprovincial conferences until 1982 (CICS 2002).

governments, although the premiers met in 1902, 1906, 1910, 1913 and 1926 (CICS 2002). These meetings generally included the Prime Minister, although they were primarily a forum for provincial concerns. The premiers did not meet again until 1960 (Ibid).

Formal intergovernmental relations in general were not a major issue in Canada until the Great Depression. Because of the limited nature of government at the time, the period prior to the Great Depression was one in which the federal and provincial governments did not overlap into one another's jurisdiction (with the obvious exception of World War I). This is not to suggest that intergovernmental relations did not occur. A number of court cases challenging various aspects of federal law were advanced, and a few intergovernmental conferences were in fact held (CICS 2002). That said, there was altogether less need for the provincial and federal governments to meet than there would be in later years.

The Great Depression and the response to it had an impact on the climate of intergovernmental relations more generally. The provinces struggled under their debts while the federal government of R.B. Bennett steadfastly refused to intervene, opting instead to pursue a laissez-faire policy. After five years, the Bennett government announced an economic intervention plan, but this proved insufficient to keep the Conservatives in office, and Mackenzie King's Liberals won the 1935 federal election (Bavkis et al 2009: 31). In the interim, Bennett's new deal was challenged and was ultimately ruled *ultra vires* by the JCPC. The inability to deal effectively with the Great Depression resulted in the creation of the Rowell-Sirois Commission on Dominion-Provincial relations in 1937 (Ferguson and Wardhaugh 2003: 554). The Commission identified problems that had (and would) plague the provinces for a number of years. The issue has been well studied by Canadian scholars, and need not be recounted here. Briefly, the constitutional responsibilities of the provinces became increasingly onerous after

World War I, while the revenue generating capacities of the provinces were limited. The federal government was thus in the position of having the revenue to pay for the provision of services that were the constitutional preserve of the provinces. The severe imbalance between spending needs and fiscal capacity was identified as a major problem in the Canadian federation. In the short term, however, the Second World War took precedence over most of the Commission's recommendations (with the exception of unemployment insurance). It was not until 1956 that the Equalization program recommended by the Commission was put into place.

The Rowell-Sirois Commission had identified a structural problem with the federal order in Canada. While it did recommend some jurisdictional shifting, the commission did not expect or recommend the absorption of the vast majority of provincial responsibilities: "...mere importance of a service does not justify its assumption by the Dominion" (Smiley 1962: 62). Part of the Commission's legacy was therefore to sustain the relevance and capacity of the provinces to perform within most areas of their own jurisdiction. This part of the Commission's report has generally been ignored, and the Rowell-Sirois Commission has been seen as part of a centralizing trend in Canadian intergovernmental relations (Bavkis et al 2009: 32).

Finally, the Commission also recommended the formalization of intergovernmental meetings: "The Commission holds that Dominion-provincial conferences, which in the past have been *ad hoc* meetings, should take place at regular intervals and become a part of the machinery of the Canadian federal system with a permanent secretariat" (Dafoe 1940: 656).

In Québec, resistance to the intervention of the federal government was a significant part of the success of premier Maurice Duplessis. This autonomist spirit inspired the 1953 creation of Québec's Tremblay Royal Commission to Inquire Into Constitutional Problems (Foisy-Geoffroy 2007: 258). The commission was a reaction to the centralization that occurred during the Second

World War and continued during the reconstruction period. As a counter to federal interventionism, the Commission recommended a radical restructuring of federal-provincial fiscal relations, including an overhaul of the distribution of taxation responsibilities, the transfer of social security to the provinces, and the establishment of a maximum level of taxation. The Tremblay commission also recommended the creation of an interprovincial forum, stating that “At present, there is no organization which ensures co-ordination of provincial policies. Yet the provinces should discuss among themselves, without the federal government’s participation, the problems which are properly within their resort” (Meekison 2003: 3). This recommendation was not acted upon for several years. However, we can see in the Tremblay Commission’s recommendations the genesis of the Annual Premiers’ Conference and Council of the Federation as it exists today.

## **Modern IGR**

### **Québec and the APC**

Beginning in 1960, the tone of intergovernmental relations in Canada began to change. This change was reflected in federal-provincial relations, where Québec emerged as a key challenger of the federal government. Whereas the Duplessis government rebuffed federal ‘intrusions’ without offering alternative solutions, the Lesage government took a more pro-active role in social policy (Bavkis et al 2009: 36). The Quiet Revolution<sup>7</sup> ushered in a new era of Québec-Canada relations. Québec went from being a relatively passive participant in

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<sup>7</sup> A social revolution which saw Québec’s population move from a largely rural, conservative catholic culture to a modern, liberal urban one.



intergovernmental relations to taking the lead on many files and aggressively pushing the federal government on a number of matters (Ibid). The first Annual Premier's Conference (APC) was also hosted by Québec in 1960.

As one example, in 1962, the Lesage government in Québec indicated to the federal Liberal government that the province wished to create its own pension regime (Simeon 2006: 47). The federal government reacted with cautious approval. In a subsequent meeting, Québec's proposals to opt out of shared cost programs (with compensation) surprised the federal government, and "Quebec, with its strong demands, carefully designed proposals, and forceful presentation was effectively setting the agenda for federal-provincial discussions" (Ibid: 51).

Along these lines, Québec hosted the inaugural Annual Premiers' Conference (APC) in 1960. The APC was mainly a forum for building personal relationships between premiers through a variety of social activities, but it did establish a regular forum for interprovincial relations (Cameron and Simeon 2002: 61). Although the yearly APC rarely attracted much media attention, its constant presence and continual evolution as a horizontal body can be contrasted to the highly variable and generally ad-hoc nature of vertical (federal-provincial) relations in Canada both before and after the creation of the APC.

The 1960s began a pattern that continues to this day. When federalist Liberal governments are in power in Québec, that province tends to assume a leadership role in the federation. It is not surprising that both the APC and COF were created at the suggestion of Québec Liberals. When sovereignist Parti Québécois (PQ) governments have been in power in Québec, the province's participation in inter-provincialism has been much more limited (Ryan 2003: 6). It would be inaccurate to say that provincial-territorial relations in Canada turn on Québec, since the other provinces and territories are quite willing and able to collaborate amongst each other in

Québec's absence. Nevertheless, the process of PT relations is more active when the Québec government is an active participant.

The 1970s and 1980s saw the slow evolution of the APC, although frequent FPT meetings and the major constitutional negotiations tended to play a much more prominent role in IGR. The agreement of the premiers played a part in the Vancouver formula proposed by the 'gang of eight' as an alternative to Prime Minister Trudeau's plan in 1981. The Annual Premiers' Conference was also where the Edmonton Declaration, which set the stage for the Meech Lake Accord, was signed in 1986. PT relations during the 1970s and 1980s were focused on the significant proposals emerging from the federal government, either in opposition or in support.

The Annual Premier's Conference continued its evolution with the inclusion of the Territorial premiers in 1982, while federal-provincial relations were strained by federal budget cuts in the 1990s. Although the APC had been established primarily as a social venue, former Ontario Premier Bob Rae claims that: "By the time I got there in 1991, the institution had evolved. Families still came, but there was a formal agenda, and part of the meeting was televised. Extensive discussions were held among staff long before the meeting about the wording of the post-conference communiqué" (Rae 2003: 2).

Intergovernmental relations thus entered a strange period. The previously dominant trend of federal-provincial relations began to wane, and though the APC became increasingly formalized and policy oriented, its evolution was slow. Further, the end result was still focused on the federal government. The APC was less a forum for interprovincial collaboration on policy than it was a venue for establishing a common front for dealing with the federal government. In 1994, Québec Liberal leader Daniel Johnson suggested the formalization of the APC into a Council of the Federation with greater structure and weight (Rae 2003: 3). The

proposal was supported by the provincial premiers, but the Liberal's loss of the 1994 election put the idea on the backburner (Ibid). The election of PQ governments from 1994 to 2003 limited the role that the government of Québec was willing to take in intergovernmental relations generally, which limited the emphasis on interprovincial relations

## **Regional Meetings**

The 1970s saw the creation of two new organizations of PT relations. In Eastern Canada, the Deutsch Commission on Maritime Union led to the establishment of the Council of Maritime Premiers (renamed the Council of Atlantic Premiers in 2000 when Newfoundland and Labrador joined) [Bavkis et al 2009: 116]. CAP has a secretariat, and has enabled cooperation between the Atlantic provinces when the stakes are not too high (for instance in education and common procurement) (Ibid: 117). In high profile negotiations, however (like those over the Atlantic Accords), the Council of Atlantic Premiers has been unable to overcome the divergent interests of the various provinces.

The Western Premier's Conference (WPC) is similar to CAP except that it lacks a secretariat (Bavkis et al 2009: 117); instead, administrative and research tasks fall under the responsibility of the host province, an annually rotating chair. The WPC emerged from the 1973 Western Economic Opportunities Conference and includes the three territorial premiers as well as the four western premiers (Ibid). Some of its successes include a common water management strategy, and a common pharmaceutical purchasing agreement. Western Canadian provinces have seen increasing institutionalization in the past few years, through the Alberta-BC Trade, Investment and Labour Mobility Agreement (TILMA), which has expanded to include

Saskatchewan under the New West Partnership. Both the WPC and CAP have also held meetings with regional meetings of American governors since the 1970s.

Both the WPC and CAP act as regional filters. According to PT officials, agenda items are discussed at the regional meetings to work out any major disagreements before the item goes to COF. Regional meetings thus play a significant role in filtering concerns and establishing positions on issues of national concern before they reach a national forum like the Council of the Federation. For instance, the COF Water Charter (COF 2010a) emerged from the pre-existing Water Stewardship Council that existed in Western Canada<sup>8</sup>.

### **First Minister's Conferences**

Although the APC and the regional meetings represented a significant shift and remained a constant component of interprovincial relations in Canada from the 1960s through to the 1990s, these were a relatively minor part of Canadian IGR at the time. Intergovernmental relations were still very much predicated on federal-provincial relations. Post-World War II, shared-cost programs ensured the presence of federal and provincial first ministers (and their officials) at the bargaining table. The importance of this process diminished slightly under Liberal Prime Minister Pierre Trudeau before being revived under Conservative Prime Minister Brian Mulroney.

The nation-building policies of the Pearson government and the shared-cost programs they entailed ensured considerable federal involvement in areas of provincial jurisdiction. Throughout the 1960s, as detailed above, Québec took the lead on a number of issues, from

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<sup>8</sup> PT relations also include the increasing number of joint cabinet meetings held between provinces, for instance Québec-Ontario, Manitoba-Saskatchewan and Alberta-BC.

pensions to fiscal arrangements and the constitution. This last issue would consume federal politics in Canada for 25 years, and originated with Daniel Johnson's Union Nationale government in Québec (Simeon 2006: 89).

Canada's mega-constitutional period has been the subject of much consideration and debate. Although the issues involved are beyond the scope of this study, the tone of intergovernmental relations during the period must be understood. As Simeon (2006: 103) notes, Pierre Trudeau's assumption of the Liberal leadership in 1968 changed the federal government's way of dealing with Québec and the provinces more generally. Where Pearson had been rather conciliatory (for a number of reasons<sup>9</sup>), Trudeau was more aggressive in challenging the government of Québec. This point was made abundantly clear: at the Victoria Charter negotiations, after the election of the PQ in 1976, after the failure of the 1980 constitutional negotiations and during the 1981 negotiations. It was also made clear during the deliberations surrounding the Meech Lake and Charlottetown Accords, both several years after Trudeau retired from politics. Trudeau's approach to federalism was not limited to Québec, however, and he antagonized many in Western Canada through programs such as the National Energy Policy (NEP), which was seen as yet another manifestation of eastern interests trumping the economic wellbeing of the West, particularly Alberta<sup>10</sup>.

Although the constitution was the most prominent issue during Trudeau's time in office, it was of course not the only one. Intergovernmental relations cannot and should not be reduced to

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<sup>9</sup> Notably the presence of federal minority governments during his entire tenure, his background in international diplomacy and the fact that he was an English Canadian politician.

<sup>10</sup> Peter Leslie (in Smiley 1987: 91) describes the NEP as a policy "... that in effect imposed federal controls on provincial revenues from oil and gas production- presumably to be used in the interests of the consumers and industries of central Canada".

first minister's meetings. Federal and provincial officials were able to work to initiate programs like the 1978 immigration agreement with the government of Québec. Yet FMCs were rare that did not deal with the constitution, and the institutions of FPT relations remained formally unchanged during Trudeau's time in office.

The federal government's approach to IGR changed with the election of Brian Mulroney's Conservatives in 1984. Mulroney's relationship with the premiers was more cordial. As Cameron and Simeon (2002: 51) have described: "The NEP was dismantled; provinces were closely consulted in the government's major policy initiative, the negotiation of a free-trade agreement with the United States; and provincial governments were at first insulated from federal efforts at cutting national spending." Perhaps the best indicator of Mulroney's different approach to IGR was the negotiation of the Meech Lake Accord. Although it is primarily remembered for its failure, the very fact that the premiers were able to negotiate such a substantive series of constitutional amendments was a remarkable accomplishment of intergovernmental relations. Towards the end of its second term in office, however, the Mulroney government began taking actions that soured the relationship with the provinces. Perceived favouritism towards Québec increased feelings of western alienation, while budgetary constraints began to trickle down to the provinces (Cameron and Simeon 2002: 52).

Mulroney's tenure represents the high water-mark of formalized federal-provincial relations in Canada. The prime minister made frequent use of First Minister's Conferences, holding 13 in 1985, compared to 39 for the previous 25 years (Brock 2003: 73). An even greater amount of ministerial and sectoral meetings took place during the same period (Ibid: 74). Enshrining this institutionalized approach, the Meech Lake Accord would have made bi-annual First Ministers Conferences part of the constitution.

Toward the end of Mulroney's second term one can see the beginnings of conditions which would lead to the present state of affairs. Provincial bureaucratic capacity grew enormously, so that even the smallest provinces had dedicated intergovernmental staff. As the federal government's fiscal capacity diminished, the provinces had to increasingly fend for themselves, which made them more independent. While there was a federal government that was open to engagement, however, these trends did not affect the broader dynamic of intergovernmental relations in Canada. All of that was to change with the election of the Chrétien Liberals in 1993.

That election heralded a change in federal priorities. The failure of the Charlottetown Accord left both citizens and politicians with a sense "...that fundamental constitutional change was probably beyond reach" (Cameron and Simeon 2002: 52). Apart from a desire to focus on other matters, many of the participants in the Meech and Charlottetown rounds had staked their political careers on constitutional reform. The economy became the focus of governments throughout Canada, and while the federal government faced deep deficits, most of the provinces had their own difficulties as well, with budgetary shortfalls reaching record highs in many regions (Hale 2006: 393). This economic focus was reflected in intergovernmental relations.

The 1995 federal budget caught the provinces by surprise. Cuts were expected, even significant cuts, but the extent of the retrenchment- a 25 per cent reduction in federal transfers between 1995 and 1998- surprised many (Hale 2006: 388). This changed the relationship between the federal, provincial and territorial governments. Long established links between the federal and provincial governments were ruptured, and the 'trust ties' which had made intergovernmental cooperation effective were broken. Although then Ontario Premier Bob Rae describes Chrétien's first intergovernmental meeting as a success, the Prime Minister showed little enthusiasm for official First Ministers Conferences (FMCs) while in office (Rae 2003: 2).

This is not to suggest intergovernmental relations were non-existent. Interaction of FPT officials made incremental progress possible in a number of areas<sup>11</sup>, but the federal government was seen as an unreliable partner by the provinces (Noël 2000: 6). As Noël (Ibid: 13) notes, “This impression certainly was not dispelled when Jean Chrétien quipped, in the days preceding the social union agreement, that ‘sometimes on Monday I feel like giving the provinces more money, and then on Tuesday not.’”

While the signing of the Agreement on Internal Trade (AIT) in 1994 and other initiatives proved that the federal government was capable of reaching some agreement with the provinces, the long-term significance of the AIT and the later Social Union Framework Agreement (SUFA) is debatable. SUFA in particular is a target of criticism, described variously as “an empty shell”, a “missed opportunity”, and “a flop” (Rae 2003: 2; Noël 2000: 21; Lazar 2003: 4).

Thus in the 1990s, vertical interstate relations gradually diminished. The lack of formal FPT relations contrasted with the APC’s increasing formalization. The year 1994 saw the return to power of the PQ in Québec. As was noted above, this led to the 1995 referendum, which was barely won by the no side. After the referendum, however, the federation was in an odd position. The PQ government still had three years left in its mandate, and a large portion of Québec was evidently dissatisfied with the status quo. Unlike in 1980, however, constitutional negotiations could not be the solution. This began a period which lasted until the election of Jean Charest in 2003, and saw two major trends. In intergovernmental negotiations, the PQ would agree to general principles without signing agreements. This was called “federalism with a footnote” by Alain Noël, referring to the fact that agreements frequently featured a footnote indicating

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<sup>11</sup> These included progress on improving the lives of Aboriginal people and reducing barriers to internal trade (Lazar 1997).



Québec's abstention. Federally, the Chrétien Liberal government pursued its "Plan B" of non-constitutional renewal. The plan involved dealing with longstanding concerns federally where possible. Thus, the federal parliament passed a law indicating that it would not support constitutional amendment without the support of all of the regions (BC, Prairies, Ontario, Québec, Atlantic). It also passed the Clarity Act (to the irritation of many in Québec), which outlined the conditions necessary for successful secession from the Canadian federation.

These developments had a major impact on Canadian IGR. FPT relations were characterized by suspicion, and PT relations were strained by the presence of a sovereignist government in Québec. Provinces and territories were still reeling from the 1995 budget cuts, and were often able to agree with each other only until the federal government offered money. However, beginning in 2000, the premiers were able to focus their efforts on the Premiers' Council on Health Awareness, a public relations campaign that brought attention to federal budget cuts. According to one official, the experience showed certain premiers that if they worked together in a concerted way, they could achieve results (Anonymous Interview 2010b).

### **The Council of the Federation**

As has often been the case in Canadian history, the change of government in Québec ushered in a new period in intergovernmental relations. After nine years of PQ governance, the Charest Liberals were elected in April 2003. The Council of the Federation (proposed by a special committee of the Québec Liberal party in 2001) was an immediate priority for premier Charest and he began gauging the reaction from other premiers very soon after the election (Anonymous interview 2011c). Charest's first out of province visit was with Manitoba Premier Gary Doer to discuss the creation of the Council of the Federation (Thomas 2008: 42). At the

Charlottetown APC in July, Charest proposed the idea of a Council of the Federation to the premiers. They reached general consensus on the idea of creating COF, and on December 5, 2003, the COF founding agreement was signed.

The COF founding agreement outlines an institution that is in many ways quite similar to the APC. Indeed, the agreement outlines how: “The decisions of the Council will be reached by consensus, in accordance with the established practice of the Annual Premiers’ Conference” (COF Founding Agreement 2003: 4). Generally, COF’s objectives were:

- To strengthen interprovincial-territorial cooperation;
- Exercising leadership on issues of national importance;
- Promoting respect of the constitutional division of power and;
- Ensuring transparency and accountability in IGR (Ibid: 2)

COF was quite different from what the Québec Liberals had initially suggested. While in opposition, the Québec Liberal party released the 2001 Pelletier Report. Chaired by future Québec intergovernmental affairs Minister Benoit Pelletier, the Report was, among other things, a demonstration of the Liberal Party’s approach to intergovernmental relations. The Report suggested the creation of a Council of the Federation, which was to be a federal-provincial council that dealt with all manner of national concern. The Report envisaged COF, in its final form, as a quasi-constitutional body: “On pourrait chercher par la suite à lui donner un caractère vraiment constitutionnel, si cela devait s’avérer opportun” (Pelletier 2001: 104)<sup>12</sup>. Breaking with the APC, the voting structure proposed in the Report proposed a set of regional vetoes. On the matter of the Senate, the Pelletier Report imagined the Council of the Federation as doing

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<sup>12</sup> “We could at a later date try to give it a constitutional character if it proved opportune”.

complementary work, with the Senate focusing on the legislative and COF on the executive (Pelletier 2001: 105). A system of multiple secretariats was proposed, one each for the economic union, the social union, international relations, and a general secretariat.

According to one official, the reason that COF did not adopt many of the recommendations of the Pelletier Report was that the Charest government did not believe the other premiers would accept the idea of a quasi-constitutional, federal-provincial COF (Anonymous interview 2011c). Charest's proposal was therefore grounded in what was believed to be possible, with the option that it might evolve towards a federal-provincial organization. This development is worth highlighting: given the opportunity, the premiers chose to create a horizontal institution of IGR, rather than attempt to create a vertical one. This was due to a number of reasons. There was suspicion of the federal government, and according to several interview subject, the premiers made a deliberate choice to keep the federal government out of COF (Anonymous Interview 2011h). They also felt there was considerable room for coordination within their own areas of jurisdiction, and that they didn't want the federal government sitting in on those discussions (Anonymous Interview 2011f). The premiers may have to negotiate fiscal arrangements with the prime minister, but there is a general reluctance to negotiate policy, particularly in areas of provincial jurisdiction.

## **Significance**

## **COF and the APC**

At the time of its creation, Harvey Lazar wondered whether COF would be anything more than “...old wine in a new bottle?” (Lazar 2003: 1). In other words, what distinguished COF from the APC? This question was raised by a number of commentators in 2003, and if we take Bavkis et al’s (2009: 108) introduction to the topic as any indication, that assessment exists to this day: “The Council of the Federation, previously known as the Annual Premier’s Conference...” On the surface, therefore, the two organizations are very similar.

Asked the same question that Lazar had posed, interview respondents were unanimous in pointing to the founding agreement, which the APC did not have, as providing greater structure to COF’s work. The presence of a steering committee, a secretariat, and funding has also made COF more substantial than the APC. The secretariat has been useful in providing ongoing administrative support and corporate memory, according to one respondent (Anonymous Interview 2010a). Several officials commented that COF has made premiers more strategic by forcing them to focus on four or five key points: “They think about their communications messages, they think about what they’re going to ask for, and it’s not a laundry list, it’s shorter and snappier” (Anonymous Interview 2010b). This unanimity in agreement was not always the case. Indeed, it is because of the rarity of agreement that it is worth mentioning.

The APC was mainly a venue for socializing. Although there were official meetings, its primary purpose was to allow the premiers to get to know one another, often by an afternoon of golf. The social component, while still present, is much less prominent under COF. This is perhaps best demonstrated anecdotally: at the 2010 COF summer meeting in Winnipeg, only one premier, Darrell Dexter of Nova Scotia, attended the golf event.

The greatest difference between COF and the APC is the frequency of meetings and the depth of the relationships between provinces and territories (described in greater detail below). All officials identified that COF has had a significant impact on how and how frequently PT officials interact with each other. Another major contrast between the APC and COF is that the latter regulates relationships between PT civil servants as much as between premiers, which was not the case with the APC.

Although some officials reacted quite strongly against the implications of Lazar's questions, others agreed with some reservations. The outward similarities between COF and the APC should not, however, be seen as a condemnation. The Council of the Federation was an evolution in PT relations, not a revolution. The founding agreement and secretariat do represent greater formalization, and it has a level of funding that did not exist previously. Modest though the differences between COF and the APC may seem, COF is still the most highly institutionalized and regularized forum for intergovernmental relations in Canadian history. It is the historic high-point of PT relations thus far.

In the initial years after the creation of COF, the agenda was focused on establishing positions with which to negotiate with the federal government. The Premier's Council on Health Awareness, which Marchildon (2003: 5) called "...a fancy name for an advertising campaign decrying, in a manner that played fast and loose with the facts, Ottawa's reductions in health care transfers...", was subsumed into COF. Initially, therefore, COF made health a priority. In 2004, ongoing health-care negotiations figured prominently in the agenda of COF, with several communiqués directly dealing with the federal-provincial negotiations on health funding (COF 2004b, 2004c, 2004d, 2004e). The eventual success of this strategy, which culminated in the most lucrative health care funding accord in Canadian history, can be attributed as much to

Prime Minister Paul Martin's willingness to engage with the provinces on national issues as the creation of a strong, common front among premiers.

The issue of the vertical fiscal imbalance was also pushed by the premiers, with COF launching a panel to study the question (COF 2004a, 2005, 2006). Although the 2004 health agreement was a success, Bavkis et al (2009: 111) note that consensus foundered on the fiscal imbalance, and the premiers proved unable to collectively deal with that issue. After the 2006 elections, the focus of COF agendas became much more centered on provincial-territorial concerns, such as interprovincial trade, water management, and education.

To an extent, this can be explained by Stephen Harper's commitment to "open federalism". "Open federalism" is a policy based on allowing each order of government to exercise power over its own jurisdiction. It eschews major federal initiatives in areas of provincial jurisdiction (such as a national daycare program), while seeking to impose accountability frameworks on federal-provincial transfers. Elements of open federalism can also be found in John Howard's approach to intergovernmental relations (see chapter 4). In this regard, it is difficult to overstate how important the prime minister's personal approach to federalism has been in shaping COF. While it is a PT body, a major part of COF's initial agenda (formulating a common approach to dealing with the federal government) has essentially been stalled by the prime minister's refusal to deal with the premiers multilaterally. The provinces and territories can agree to common strategies for dealing with the federal government in theory, but when all of their dealings with the federal government take place bilaterally behind closed doors, these commitments are quickly forgotten. As one official noted: "...[Open federalism] does make some of the work that was originally envisaged by COF a little bit more difficult. So consequently, COF has adapted to the present operating environment" (Anonymous interview 2011b).

In part, the Harper government's decision not to hold FMCs is driven by the fact that the Conservative party is not interested in major policy innovations in areas of provincial jurisdiction, and has not yet had to face a major fiscal renegotiation since the equalization agreements of 2006. This could change. The renegotiations of federal health and social transfers and equalization will undoubtedly be contentious (these agreements expire in 2014-2015, just as the federal government plans to emerge from deficit spending). Pending the results of a Supreme Court case, the federal government may try to establish a national securities regulator, over the objections of some provinces. The Harper government has also committed to major reforms of the Canadian Senate. These changes will all put into question the role of the provinces in the federation, and will likely feature in provincial-territorial relations.

The federal government still figures in the agenda of the Council of the Federation. It is rare for a communiqué from COF not to feature a 'call on the federal government' (although these are far less frequent than in APC news releases). Given the nature of Canadian federalism, this is not surprising. As numerous scholars have noted, the jurisdictional division of power does not resemble the 'watertight compartment' theory that was envisaged by the Fathers of Confederation. There are, therefore, few issues on which the premiers could speak that do not involve the federal government in some way. The issues that COF has dealt with (the environment, international trade, health, fiscal issues) are all issues that involve the federal government. For the most part, however, the Council of the Federation's focus since 2006 has been on joint provincial-territorial action *without* the federal government. As examples of this, we can take the 2010 declaration on health-care which outlined a PT prescription drug purchasing strategy, or the previously mentioned water stewardship agreement (COF 2010a, 2010b). Indeed, on a number of files, the Council of the Federation has enabled agreements and

specific policy recommendations, including health, equalization, internal trade, energy, and international trade.

Questions remain as to whether this progress would have happened without COF. The Council of the Federation is a product of circumstance. Given the importance of timing in its creation, what changes can be attributed to it? COF has changed intergovernmental relations in a number of ways. The sheer number of meetings among premiers, ministers and their officials has increased. Premiers meet each other more than they did under the APC (the founding agreement envisaged twice yearly meetings, though this has fallen out of fashion). Combined with regional meetings, this means that some premiers are meeting face-to-face three or four times a year, and many more times on conference calls. The presence of a secretariat has also ensured continuity and given an institutional memory to PT relations. The symbolism of COF's creation may also have inspired greater PT collaboration, while the exponential increase in contact between officials has brought about increased collaboration.

The Council of the Federation receives relatively little attention. National media covers the annual summer meeting, but according to one official, "...if we're not fighting with Ottawa, they're not interested" (Anonymous Interview 2011c). This reflects the fact that the work done by COF is largely 'behind the scenes', by intergovernmental officials tasked by premiers through COF communiqués. The impact of COF cannot therefore be measured solely by media coverage. Indeed, its greatest impact may not be in major pronouncements, but in interprovincial collaboration and relationships. All respondents confirmed this assessment. "I think that it has opened the lines of communication between provinces and territories, it has helped precipitate increased communications between provinces and territories... which is an incredibly significant thing, given the broad range of jurisdiction, sectors and items that are within provincial



jurisdiction” (Anonymous Interview 2011e). One official spoke to the importance of the networks created by COF and the continuing pressure to advance on certain files, arguing that “...I don’t believe that would have been possible under the APC” (Anonymous interview 2011b).

COF has not only increased collaboration and communication between the provinces and territories on issues with which the Council deals explicitly. According to one respondent, where the APC was simply a one-time summer meeting, COF has increased the level of PT communication (Anonymous interview 2011f). The links established have created a more integrated federation, one in which officials in one province are able and willing to phone their colleagues in other provinces to discuss the issues of the day. One official described “the wealth of relationship building and cooperative work that was sparked by the establishment of COF” (Anonymous interview 2011f). This seems not to have been the case with the APC. Greater formal links also appear to have created greater informal links. COF is thus a richer institution than the APC, and PT relations have been given more depth. In the interim, FPT relations have remained inactive.

Every respondent identified the major increase in informal relations brought about by COF as the greatest change to intergovernmental relations since 2003. This is consistent with the premise of “trust ties”, the idea that negotiations are more effective when individuals from similar backgrounds work together on a repeated basis (Bavkis et al 2009: 125). The concept of trust ties is one that was adapted from economic literature to political science by Stefan Dupré. Describing the working of executive federalism, Dupré (1985: 7) identified the factors which led to trust ties: common professional backgrounds and training with increasing returns on long term relationships, all of which is aided and abetted by the provision of conditional grants. Dupré (Ibid: 22-23) argues that trust ties play a crucial role in making federalism work: “...the

formation and maintenance of networks (i.e., trust ties) between the appointed officials of the two orders of government play a fundamental role in the workability of federal-provincial interaction.”

Dupré’s analysis is interesting because it focuses on “functional” (everyday, bureaucratic) federalism rather than summitry. It is also notable because although it was published in 1985, its analysis is remarkably enduring. Thus, the results of the funding cuts of the mid-1990s -the severing of trust ties (Bavkis et al 2009: 127)- are predicted by Dupré’s analysis. Indeed, the impact of the cuts was so severe that one intergovernmental official argues that the dynamic of IGR has not returned to a pre-1995 position (Anonymous Interview 2010b).

If trust ties between the federal and PT governments were damaged, though, those between PT officials have been strengthened. The same cannot be necessarily said for the links between provincial-territorial and federal officials (although provincial officials noted good working relationships with federal officials as well).

The Council of the Federation is obviously not flawless, however. All respondents were aware of the limits of the organization and therefore did not expect a sudden realignment of provincial priorities. “COF is as strong as its weakest link... To the extent that [the premiers] want to participate, and cooperate and collaborate and work together, COF is successful. To the extent they don’t, COF is not. And there’s no way you can get around that” (Anonymous Interview 2010b). On the environment, for instance, positions across Canada are so different as to make any joint statement exceedingly weak, to the dismay of some officials (Anonymous interview 2011e). In this vein, Gordon and Macdonald (2011) point to the weakness of Canada’s response to climate change as being in part connected to the lack of strong FPT and PT links between institutions. It should be noted, however, that however weak the PT response to climate

change has been, it is no less weak than the federal government's response. Federally, response has been characterized by either ignoring the provinces (Chrétien's approach) or ignoring the issue (Harper's approach) (Ibid). COF not a radically different institution of IGR; it is limited by the same factors which have shaped Canadian federalism since Confederation, whether cultural, legal or economic. As one official noted: "The reality of the situation is that Canada is a federation for a reason" (Anonymous Interview 2011h).

## **The Future**

The future of the Council of the Federation is uncertain. We may see Canadian IGR revert to more traditional patterns of federal-provincial-territorial relations. In intergovernmental relations more generally, the personal predilections of first ministers play an indisputably important, but difficult to define role. As will be demonstrated in the following chapter, this is as true in Australia as in Canada. The importance of personality is a feature of executive federalism. Governments turn on the will of the first minister. As has been the case in the past, changes in government in Ottawa and around the country can have a major impact on IGR in Canada. Since the turn of the 21<sup>st</sup> century, a set of particularly engaged premiers (Charest, Doer and Williams to name three) and a disengaged prime minister have combined with circumstance to create a moment in which interprovincial collaboration is particularly strong. This could very easily change.

For one, the fact that the Conservative party now has a majority government could change Harper's approach to federalism. The upcoming equalization and federal transfer negotiations will be a litmus test in this regard. According to one provincial official, the federal government will try to play the provinces against each other: "They'll be looking to see who is where, how

strong they are, and how they can be picked off” (Anonymous Interview 2010b). The previous healthcare accord was signed at a time of fiscal surplus, making the negotiations easier. This will not be the case in the next round of negotiations. It is likely to be a zero sum game, with one province’s gains coming at another’s losses. Provincial consensus will be very difficult to develop and maintain in those circumstances, placing increased stress on COF as an institution.

The personality of the premiers can also play a large part in the importance of COF. Without Charest in 2003, it seems unlikely that it would have been created, for instance. Officials also pointed to Gary Doer’s experience in simultaneously chairing both the WPC and the APC at the time as having had an impact on the tone among premiers. One gets the sense when speaking to officials that the premiers in power at the time of the creation of COF were all strong leaders with a vision beyond the borders of their respective provinces. This could, of course, be mere nostalgia, but 2003 did see a group of experienced premiers who liked each other and worked together well. Over time, those premiers have gradually departed politics, and only two of the original premiers (Charest and McGuinty) are still in power. Four provincial elections will be held in the fall of 2011, which will further alter the dynamic. The influx of new premiers has changed the dynamic of COF. They have not had an extensive opportunity to get to know each other, and may not be as emotionally invested in COF as they would be if they had created it. This could also impact the relations between officials, since there is a limit to what officials can accomplish in the absence of agreement between premiers.

As usual, the role of Québec could be the deciding one for the future of COF. Since the initiative was clearly linked to Charest, at the time, the Parti Québécois was quick to denounce its creation. Then PQ leader Bernard Landry called the move one of submission, claiming that it sent the wrong message to the rest of Canada (Dutrisac, 2003). Seven years later this message

was still clear in the PQ's April 2010 calls for Québec to immediately withdraw from the Council of the Federation: "La création du Conseil de la fédération, il y a sept ans, n'a rien donné. Mise sur pied en 2003, cette « bebelle » à Jean Charest aura coûté aux contribuables québécois environ 5,5 millions de dollars - et n'aura donné aucun résultats !"<sup>13</sup> (PQ 2010). This is hardly surprising. As a sovereigntist party, the PQ cannot be expected to support a 'national' vision emanating from the provinces and territories collectively. Given Charest's present dismal approval ratings, serious questions surround the survival of COF should a PQ Québec government withdraw altogether.

The Parti Québécois still has to govern within a federation, however. It seems unlikely that it would shun the other provinces without cause. As one official noted: "They used to attend the APC" (Anonymous Interview 2010a). Another official was sceptical that the PQ would pull out of COF: "I remember an initiative from a few years ago that was focused on communicating about the increasing use of Crystal Meth, and keeping kids out of that... I don't see why they wouldn't participate in efforts like that" (Anonymous Interview 2011f). What seems more likely is a large reduction in the importance the Québec government places in COF, and little work on major pan-Canadian initiatives. This would mark the return of "federalism with a footnote" which characterized the 1990s. Alternatively, the PQ might wish to pursue certain actions inter-provincially in order to forestall federal action (on a national securities regulator, for instance). What is certain is that with a PQ government in Québec, COF would necessarily change.

The role of Alberta in IGR could also change. If Alberta were to adopt a more assertive position in health negotiations, this could sour the mood in interprovincial meetings. If Ted

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<sup>13</sup> "The Creation of the Council of the Federation seven years ago hasn't given us anything. Created in 2003, this 'trinket' of Jean Charest's will have cost Québec tax-payers roughly 5.5 million dollars- without any results to show for it!"

Morton were to become premier of Alberta, this could also change the dynamic of IGR in Canada. Morton is an Alberta provincial politician perhaps best known in the rest of Canada for an infamous letter in which he (and a number of other including Prime Minister Stephen Harper), argued that Alberta should set up a “firewall” to protect its position. Another possibility is the election of the far-right Wildrose Alliance, which would likely take much more assertive positions in equalization and health transfer negotiations.

That said, all provincial officials believed that their provinces and territories would remain committed to COF. With the exception of Québec and possibly Alberta, there is little reason to believe that a partisan change in any province would occasion a withdrawal from COF or even a reduction in the importance placed in it. Moreover, if, as claimed by intergovernmental officials, the most important part of the Council of the Federation’s creation is fostering collaboration between PT officials, the impact is likely to be lasting. It bears repeating that IGR is more than just relations between executives. Ultimately, however, the future of COF is uncertain. It seems unlikely to disappear, but – as with the APC– its importance and influence may wax and wane over time.

## **Summary**

Intergovernmental relations in Canada have been dominated by irregular vertical relations for most of Canadian history. Given the distribution of power and the fiscal leverage of the federal government, this is not surprising. A significant underlying trend, however, has been the institutionalization of horizontal relations. Since the 1960s, PT relations have evolved from a yearly social gathering of premiers to substantial and significant policy discussions among first

ministers and their officials. This process was continued with the creation of the Council of the Federation in 2003.

By reducing the extent of FPT collaboration, and by choosing bilateral rather than multilateral relationships, the Harper government's 'open federalism' has opened up a unique space for multilateral PT relations to come to the fore in intergovernmental relations via COF. This may be a fleeting moment. COF's significance, however, is greater than the present moment, and the relationships it has created will likely continue to influence intergovernmental relations in Canada for many years.

## Chapter 4- Intergovernmental Relations in Australia

Although founded as a highly decentralized federation, Australia is now one of the most centralized in the world. This change occurred gradually over the first half of the twentieth century, and more rapidly after the Second World War. Changes to the Australian federation have generally favoured the Commonwealth, both in terms of explicit constitutional power and in fiscal power. This dynamic is a remarkably consistent one. This has been accepted with unorganized discontent by the Australian states, which have little recourse. The centralizing actions of the Commonwealth are supported by the constitution, by the general public, and frequently by the High Court. Only when a majority of states have similar partisan interests is there organized state opposition to the federal government. This was the case briefly in 1975 and again in 2006 with the creation of the Council for the Australian Federation (CAF). These instances of horizontal relations are not in keeping with the major trend in Australian IGR, and have been short-lived.

The creation of the Council of Australian Government was in keeping with the trend of Commonwealth domination. Although it was created with the input of the states, Australia is no less centralized now than it was when COAG was created. Thus, the dominant trend in Australian IGR has been Commonwealth-state relations, almost to the exclusion of inter-state relations.

These findings will be demonstrated by analyzing the history of IGR in Australia and identifying major moments of change, from the 1920 *Engineers* case to the creation of the Commonwealth Grants Commission and the Commonwealth's increasing dominance post-World



War II. This chapter will conclude with an analysis of IGR since the creation of COAG and a look at the creation of a horizontal institution, the Council for the Australian Federation.

## **Early IGR**

### **1901-1939**

The history of early intergovernmental relations in Australia is similar to that of Canadian IGR. The initial division of power in Australia clearly favoured the states. Although the financial arrangements of the federation would later cause problems, for the first twenty-five years after federation, the two orders of government were sufficiently independent to avoid significant overlap and conflict.

That said, the first signs of tension between the Commonwealth and state governments were evident from early on, as reflected in court disputes such as the 1920 *Engineers* case. Since 1920, the tendency in Australia has been towards increasing power in the hands of the Commonwealth government. This has been the case not only in the Commonwealth government's financial power, but increasingly in the Commonwealth's areas of jurisdiction as well.

Throughout Australian history, fiscal issues have driven intergovernmental relations and federalism more generally. From federation, the states carried their own pre-federal debt obligations with them (as opposed to Canada where federal assumption of provincial debt was a condition of Confederation) (Attard 1989: 143). Moreover, state governments "...retained powers over crown land, railways and water supplies which gave them effective responsibility for national development and, through their public works, made them major employers of

labour.” (Ibid: 144). This, too, was contrary to the Canadian situation, where the Macdonald government’s national policy was a major *federal* initiative- one which was instrumental in expanding the federation.

These pre-existing liabilities and ‘nation building’ responsibilities meant that by 1913, the Australian states had major debts, 70 percent of which were owed on the London market (Attard, 1989: 143). The situation was not helped by the First World War, which put economic strains on both the states and the Commonwealth. This caused increased conflict between state premiers and Prime Minister Andrew Fisher (Ibid: 144). The tone and the practice of IGR changed notably when William Hughes became prime minister in 1915. The federal government negotiated an agreement with the states which coordinated borrowing, and granted some power to the Commonwealth (Ibid: 149). The sheer number of intergovernmental conferences held during the First World War, which increased from being held every few years to every few months, dwarfed the frequency of previous conferences (Bernie 1947: 416). Hughes might have been a more centralizing figure, but faced enormous division within his own party on the issue of conscription (Weller 2007: 37). In any case, conflicts between state premiers and the prime minister over economic matters frequently involved the British Colonial Office, and Attard (2989: 144) portrays the government of New South Wales as “...habitually jealous of its rights.” This jealous guarding of jurisdiction could be said to characterize intergovernmental relations in Australia for twenty years after federation. Commenting on transcripts of early intergovernmental conferences, one Australian official claimed that the focus was much more oriented to states’ rights: “...there’s a bit of pettiness that comes through in those pages” (Anonymous interview 2011r).

This is unsurprising, given the state-oriented focus of the constitution and politicians at the time. Hollander and Patapan (2007: 296) call the period one of 'co-ordinate federalism', in which each order of government was able to follow its constitutional obligations without the involvement of the other. The turning point came in the 1920s, when state debt obligations became unsustainable. States and the Commonwealth government felt that coordinated borrowing was necessary, since "...lending institutions were playing them off against one another, especially overseas" (Wiltshire 1989, 184). In 1927, a financial agreement was signed which provided for national assumption of state debt and the creation of the Australian Loans Council (Ibid). According to Wiltshire (Ibid), this move and the subsequent constitutional amendment which enshrined it gave the Commonwealth government the upper hand in fiscal matters.

Coming as it did on the heels of the conservative Nationalist government, the Scullin Labor government might have been expected to be more centralizing, but was occupied with the beginning of the Great Depression and fierce regionalism from Western Australia. Scullin's government was disorganized and "Managing caucus became a continuing nightmare" (Weller 2007: 56). It was defeated a short while later.

The necessity of further involving the Commonwealth in the fiscal affairs of the states changed the dynamic of the federation. As a result, the period from 1920-1940 was one of "co-operative federalism" (Wiltshire 1989: 186). Despite the success of conservative parties with little interest in the creation of a welfare state, the watertight division of powers was no longer adequate; and the states found themselves struggling to deal with the effects of the Great Depression, which hit Australia as hard as it did Canada. The fiscal framework established by the constitution was unsuited to the problems of the 1930s.

Along with the Loans Council, another major fiscal institution of was created, the Commonwealth Grants Commission. As mentioned in Chapter two, the Grants Commission is an instrument of horizontal fiscal equalization between the states, although as opposed to similar programs in most other federations, the Australian model counts “expenditure disabilities” as well as revenue raising capacity (Wiltshire 1989: 184).

The increasing centralization of the 1920s prompted the premier of New South Wales to comment that a regular meeting of the premiers without the prime minister would be a useful exercise (Bernie 1947: 417). This was more or less ignored, however, and Commonwealth-state meetings seemed “...to supersede Premier’s Conferences entirely” (Ibid). In its place, premiers began to have a separate meeting before any Commonwealth-state conference under various names (among them the ‘Leaders’ Forum), something which occurs to this day. Thus from the late 1920s on, the dynamic of intergovernmental relations became centered on the Commonwealth. Even though premiers still met prior to major conferences, this was done to discuss the upcoming discussions with the Commonwealth. In a significant way, the Commonwealth dictated the timing and the nature of what the premiers would discuss. These can still be considered inter-state relations, but there is an evident difference between these relations and those which were fostered in Canada from 1960 on.

The political circumstances surrounding the creation of the Grants Commission were similar to pressures in Canada at the time. The more developed states of the Australian south-east (Victoria and New South Wales) were driven by secondary industry, and the Commonwealth government put in place policies to nurture and protect the region’s economic activity; this came at the disadvantage of the “marginal” states (Western Australia, South Australia and Tasmania) (Maxwell 1938: 269). Like the Canadian Prairie provinces, the

“marginal” states were producers of primary products, and sought overseas markets, which Commonwealth trade policy did not encourage (Ibid). Dissatisfaction with this situation led to a referendum on secession in Western Australia, in which resulted in 68 per cent in favour (Hodgins et al. 1989: 23). However, the results were rejected by the British Parliament, which considered the matter to be internal to Australia.

Thus, the period from 1920 until the Second World War was one in which a gradual dilution of states’ independence occurred. Although major centralization occurred during the war, it was already beginning to occur through means such as the Loans Council and Grants Commission. The Commonwealth’s fiscal position was therefore strengthened, which was recognized by the High Court in its interpretation of the constitution. Intellectually, federalism was subject to increasing scepticism in the British colonial world, notably through the work of British political scientist Harold Laski, who characterized federalism as an impediment to good governance and predicted its decline. The same influence was present in Canada, but lacking the equivalent of Québec to provide a major counterweight, Australia had a much less obvious and less vocal defence of states’ rights.

As in Canada, however, intergovernmental relations in Australia were conducted in an ad-hoc manner before the war. Premier’s conferences occurred, though with little regularity or continuity, and fiscal matters dominated and occasioned conferences. As Bernie (1947: 410) notes: “It was not until 1908, after a number of conferences had been completed that any steps were taken to establish a permanent secretariat and the rather loose arrangements made then persisted only up to 1929.”

Although the initial conditions were quite different in Canada, there is substantial similarity to how both Canada and Australia conducted intergovernmental relations before and

during the Second World War. In both countries, the watertight compartment approach to federalism was taken, in which only as much interaction as was absolutely necessary took place (Warhurst 1983: 308). In both countries, the fiscal framework established by the constitution proved wholly inadequate to deal with the effects of the Great Depression. In Australia, however, the federal government was able to mount a more coordinated response (although the effects of the Great Depression were still quite severe). This can be contrasted to the initial lack of response in Canada by the federal Bennett government and the later lack of enthusiasm on the part of the King government. By the time the provinces and the federal government were in agreement, Bennett's New Deal was being challenged at the JCPC.

The interval prior to the First World War stands out when compared with later periods, particularly post-1972. Whereas later periods of federalism could be attributed to the prime minister of the day, the nature of federalism at the time was such that prime ministers were altogether less interested in matters of state jurisdiction.

## **Emergency and post-war federalism**

### **1939-1972**

Once again, the Second World War produced the same reaction in Canada as in Australia. Through the Emergency Measures Act, the Commonwealth government took over all areas of taxation and the country was highly centralized, in what has been called "emergency federalism" (Hollander and Patapan 2007: 296). At this critical juncture, the trajectories of the two federations began to differ significantly. In Canada, war-time taxation rental agreements were temporary, and were understood to be temporary: "Although the Rowell-Sirois Commission

(1940) had recommended that the federal government should take over the responsibility for personal and corporate taxes, this proposal was met with firm resistance by many of the provincial premiers...” (Hodgins et al. 1989: 26). Major opposition came from the larger provinces of Ontario and Québec, but also from smaller provinces like Nova Scotia as well (Ibid: 27). In Australia, the states never recovered their taxation abilities, leading to the present fiscal imbalance and greatly strengthening the Commonwealth’s bargaining position.

The position of the states was worsened by the actions of the federal Labor government of Ben Chifley in the latter half of the 1940s. A referendum in 1946 on increasing the Commonwealth’s jurisdiction was passed, and a number of major programs, like the creation of a massive hydro-electric dam and the Australian National University, strengthened the Commonwealth’s influence (Hodgins et al. 1989: 27). These moves towards the creation of a Commonwealth-directed welfare state continued under the Menzies Liberal government. The Menzies government also benefited from the fact that “...the fear of a possible communist invasion and a drive for a more prosperous and diversified export trade initially provided a natural centralizing thrust to government authority” (Ibid: 28). Despite Menzies’ rhetoric, the Commonwealth continued its pattern of centralization: “[Menzies] employed the Liberal rhetoric of free enterprise, law and order, and states’ rights, while in practice fostering high protectionism and a rather manipulated trend to centralism”[Ibid].

Intergovernmental conferences continued in the same pattern as had been set in the 1930s. Unlike in Canada, the process was highly institutionalized, with the Grants Commission and the Loans Council providing a high level of coordination. As one would expect, given the focus of those institutions, the process of intergovernmental relations was centered on fiscal issues. Of course, the same can be said of Canada- or any other federation, for that matter- but in Australia

IGR was based *explicitly* on fiscal federalism. Where Canadian IGR frequently dealt with national unity -especially after 1960- Australia never had a major unity crisis. The major difference between states was whether they were wealthy or marginal. This is not to suggest that other issues were not dealt with in the intergovernmental arena. Gradually, as the areas of government intervention grew, sectoral ministerial councils became a more important forum for intergovernmental coordination. However, the major focus of media and academic attention has been on fiscal federalism.

A second notable feature of Australian IGR developed in this early period: it's vertical nature, that is to say the fact that it has been dominated by Commonwealth-state relations. Indeed, unlike Canada, Australia has never developed a serious tradition of horizontal inter-state relations. Even prior to the 1930s, it was not uncommon for the Commonwealth to attend premiers' conferences, though it was not until after World War I that the Commonwealth began calling conferences of its own accord (Bernie 1947: 416). Australia therefore never developed a serious tradition of inter-state relations. In fact, the oddly named Premiers' Conferences actually featured the Commonwealth government as a full participant (Painter 1998: 104). This may be explained by the fact that in the early part of the 20<sup>th</sup> century, the term 'premier' was not only an office, but was used to denote a senior minister of the Crown (Bernie 1947: 410). These annual conferences were not a forum for significant decision making: as Sharman (1977: 46) notes: "Their prime functions are essentially political and educational, in the sense that they alert the participating governments to the implications of their own policies and those of other governments". As mentioned, while inter-state<sup>14</sup> relations did occur, they generally concerned

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<sup>14</sup> Between the states of Australia. Not to be confused with interstate federalism which deals with all of the governments in a federation.



relations with the Commonwealth and were held immediately before an intergovernmental conference (Ibid). Thus the post-war period up to the election of Labor in 1972 was one in which the Commonwealth used its financial and constitutional power to impose coordination upon the states. In a uniquely Australian situation, from 1949-1966, the Commonwealth government increasingly exerted its centralizing influence, even while Robert Menzies (considered to be a federalist in the Australian context) was in power (Hollander and Patapan 2007: 283).

Although the late 1960s saw greater centralization on the part of the federal Coalition (Liberal-National) government, federalism in Australia entered a notably different period with the election of Gough Whitlam's Labor government in 1972 (Hollander and Patapan 2007: 283).

## **Centralization and cooperative federalism**

### **1972-1983**

Gough Whitlam stands out in Australian history as a controversial but remarkable prime minister. His 1972 election brought Labor to power for the first time since 1949, and saw an immediate influx of changes on the part of the government, from social programs to the national anthem to relations with both the United Kingdom and the United States. "The government's transformation of the political scene was accompanied by basic changes in the traditional Australian way of life" (Knightley 2000: 262).

Whitlam's different approach to governing was also reflected in his dealings with the states. The Whitlam era is widely recognized as one of centralization (Warhurst 1983, Hollander and Patapan 2007). Many of the Whitlam government's policy innovations were in areas of state

jurisdiction (notably in health care). The Commonwealth accomplished its goals in these areas by greatly increasing the number of tied grants (Painter 1998: 96). Because these tied grants involved monitoring, the number of Commonwealth bureaucrats working in intergovernmental policy increased, as did the reporting requirements, which increased the workload for state bureaucrats (Warhurst 1983: 311). This was met with resistance by bureaucrats and politicians, not only from coalition controlled states, but also from the Labor governments in Tasmania and South Australia (Ibid).

The push-back from the states intensified during Whitlam's time in office and led to a rare occurrence of inter-state federalism, the creation of a Council of the States by the four non-Labor states (Warhurst 1983: 311). Although ostensibly created to improve communication and coordination between states, according to Warhurst (Ibid): "...it's main function was to coordinate partisan resistance to the federal Labor government." Deprived of its partisan *raison d'être*, the Council ceased to exist shortly after the defeat of the Whitlam government. Until the creation of the Council for the Australian Federation in 2006, it remained the sole example of a formalized inter-state organization. Although short lived and based in partisanship, the Council of the State demonstrated that the lack of inter-state interaction in Australia was the result of convention, not inability. It also served as a warning to future Commonwealth governments not to antagonize the states too much: towards the end of his time in office, Whitlam began taking a more cooperative approach to intergovernmental relations (Ibid).

The approach of the incoming Liberal-National government of Malcolm Fraser to federalism was expected to be different, and was. As a conservative party, the Liberal-National government was less interested in state intervention in the economy altogether. This is a dynamic which is recurrent in federal politics in Australia. As Fenna (2007: 303) notes, "The

reality is that the Coalition did not love federalism, they loved what it did for them, namely provide a barrier against the socialising objectives of the Labor party.” Thus Coalition governments tend to be federalists not because of an overarching philosophical commitment, but because their economic policies (like those of Stephen Harper) involved disengagement from state jurisdiction.

Hollander and Patapan (2007: 283) call the Fraser government’s time in office “...the high point of Liberal Party federalism.” The government’s approach to economics was focused on reducing taxes and small government, the reverse of what the Whitlam government had practiced. The timing of these reforms coincided with the trend towards neo-liberalism in Europe and North America. Yet Fraser’s time in office did not significantly alter the Commonwealth dominated dynamic of federalism in Australia. The emphasis on tied grants was reduced, but the Commonwealth retained its control of taxation power (Ibid).

Early in the tenure of the Fraser government, the first ministers of Australia agreed to the creation of an Advisory Council on Intergovernmental Relations (Warhurst 1983: 313). This coincided with an increase in the resources devoted to intergovernmental bureaucracy in the states and the Commonwealth (Ibid). A network of intergovernmental officials began to develop in Australia, based in central departments such as the Departments of Premier and Cabinet in each state. Indeed, many of these officials often found themselves more closely aligned to their intergovernmental counterparts in other states than to line-department officials in their own state (Ibid: 316). Similar developments would take place in Canada decades later with the creation of the Council of the Federation.

## **1983-1996**

The election of Bob Hawke's Labor government in 1983 marked another turning point in Australian federalism. Although the changes were not immediate, Hawke's approach was noticeably different from that of previous Labor governments. It was under the Hawke government that the Labor Party demonstrated its reconciliation with federalism.

Hawke's willingness to work with the states surprised some people, as it was not in keeping with his earlier rhetoric on centralization (Hollander and Patapan 2007: 284). However, Hawke's less centralizing approach is understandable in context. The Labor caucus, which had been unruly and de-stabilizing under Whitlam, was considerably more disciplined under Hawke, which helped him avoid pressure from centralizing factions within the Labor party (Weller 2007: 159). Moreover, Hawke had seen the consequences of antagonizing the states and wished to avoid that situation at all costs (Hollander and Patapan 2007: 284). Further, as Painter (1998: 35) points out, we cannot "...discount the significance... of Bob Hawke's personal predilection for a consensual style of politics." Hawke's history as a leader within the union movement also contributed to this preference for consensual politics (he is similar in this regard to Brian Mulroney) (Weller 2007: 171). Hawke was generally restrained in his use of court challenges. On only one major issue did the Hawke government resort to a High Court challenge: the Franklin dam case in Tasmania. The government of Tasmania was attempting to build a dam on the Franklin River in an area designated as a world heritage site. The Commonwealth used its external affairs power to prevent the construction of the dam, and this was upheld by the High Court (Galligan 1996: 80). Despite this victory, the Hawke government did not embark on a unilateral program of centralization, opting instead to work collaboratively with the states.

As in any other federation, economic issues drive federalism in Australia. This was very evident during Bob Hawke's tenure as prime minister. The effects of globalization were increasingly felt, particularly after the Australian dollar was floated in 1983 (Anderson 2008: 499). Within a few years, the Australian dollar was overvalued, which led to a significant deficit, leading then Commonwealth Treasurer Paul Keating to comment that Australia could become a "...banana republic" (Ryan 2005). Within a few years, Australia went from protectionism to wholeheartedly embracing globalization and economic liberalization (Galligan and Wright 2002: 149). According to one Commonwealth official, "That then led to a hell of a lot of thinking about our fiscal and other economic policies" (Anonymous interview 2011o). The Commonwealth government then went through a period of retrenchment, which eventually made its way to the states via cuts in federal transfers. As in Canada during the mi-1990s, the retrenchment pursued by the Hawke government was critiqued by the premiers as imposing an unfair burden (Painter 1998: 19).

In 1990, the Hawke government turned its attention to federal economic reform. According to one official, the reason for this was that "Hawke didn't have a fourth term agenda", and it was apparent that after 1992, Europe faced fewer internal trade barriers to trade than Australia (Anonymous Interview 2011o). With this, Hawke's focus turned to the barriers to internal trade in Australia. These had long been the subject of scathing critiques by certain constituencies in Australia, namely the business lobby (Painter 1998: 3). Part of the common understanding of federalism in Australia is "...the assumption that federalism is inherently inefficient" (Anderson 2008: 494). It is quite common in both academic literature, political documents and public discussion to find assumptions that federalism is a hindrance to economic performance in Australia (Smith 2007: 202).

In a 1990 speech, Hawke took aim at some of the economic barriers in Australia at the time:

...our railways remain burdened with the legacy of differences between our colonial engineers. A cargo container being sent by rail between Sydney and Perth may be subjected to: three non-integrated rail systems; four changes of locomotives; five different gauge working systems; six different sizes of loading gauge; ten different engineering standards of the basic standard gauge track; twelve or more hours at sidings or junctions for crew changes, refuelling, inspections (Painter 1998: 3).

In order to achieve the kind of microeconomic reform Hawke wished to address, he required the states' cooperation. Even where the Commonwealth had the constitutional power to act, it required the states to implement its decisions (Painter 1996: 103). Thus, Hawke invited the state premiers to a series of Special Premier's Conferences (SPC) to address these concerns. The same concerns were shared by many states, which had already embarked on a set of neo-liberal reforms to cut spending and privatize public enterprise (Painter 1998: 33). Many of the states were attracted by the prospect of significant reform to the taxation system, which Hawke hinted would be on the table (Ibid: 37). Although the initial SPC's went reasonably well, the process was derailed by internal fighting within the federal Labor Party. Prime Minister Hawke faced a leadership challenge from Treasurer Paul Keating, and while Hawke won his first challenge, the shuffling of Keating to the back-bench freed him from cabinet solidarity and put him on the offensive. In a 1991 speech, Keating warned the National Press Club that Hawke was putting the Commonwealth's fiscal position in jeopardy (Painter 1998: 40). Hawke was under pressure from factions within his party as well as the very vocal Keating, and retreated from his

earlier commitments to the states. The states reacted strongly against this and pulled out of the SPC that had been planned for later that year<sup>15</sup> (Ibid: 41).

Hawke was replaced as the leader of the federal Labor Party by Paul Keating in late 1991. Keating became prime minister during a severe recession, and faced election 15 months after his successful leadership bid (Painter 1998: 43). In order to turn the economic situation around, the Keating government put together a stimulus and reform package. The program, which required state cooperation, was ironically called the *One Nation* package (Ibid).

In order to get the states on his side, Keating was forced to consider their demand for a regularized forum for intergovernmental (particularly fiscal) discussions which would meet predictably and which would feature the first ministers. Both sides compromised in order to create the Council of Australian Government (COAG), which was founded May 11, 1992 (Painter 1998: 44).

At the time of the first SPC's, Bob Hawke faced five Labor premiers and one young reform-oriented Liberal premier. The partisan balance helped the prime minister in his economic reforms, since, as discussed in Chapter two, partisan channels help mitigate open conflict in Australia, particularly within the ALP. While common party allegiance can make intergovernmental relations conducive to cooperative federalism, however, the reverse can also be the case. It was this which led to the creation of the short-lived Council of the States in 1975, and would later lead to the creation of the Council for the Australian Federation. In 1992, shortly after the creation of COAG, partisanship began to disrupt its work.

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<sup>15</sup> A Commonwealth official claims that he believes this was a strategic error on the part of the states, and that Hawke would have conceded a good deal to the states in order to prove that he was a leader who could produce results (Anonymous Interview 2011o).

Paul Keating's personal leadership style was "...more abrasive and aggressive..." then Bob Hawke (Painter 1998: 44). "Nick Greiner, for example, recalled his amazement after the first meeting he attended as premier of New South Wales at the manner in which the premiers were treated, and the arrogance and peremptoriness with which their attempts to make serious contributions were dismissed [by Paul Keating]" (Ibid: 19). Thus, Keating faced some hostility even from the Labor premiers. The situation was worsened by the election of a number of Coalition premiers and changes in leadership in other states (Ibid: 45).

COAG's work on a number of microeconomic issues was slow because of the difficulty in implementing reforms. Disagreement was common and intergovernmental relations were subject to external pressures, among them the *Mabo* case which effected a sea-change in how Australia dealt with indigenous land claims. At the same time, fiscal difficulties and reforms to both the equalization grants system and the operation of the Loans Council caused discord between the states and the Commonwealth as well as between the states themselves (Painter 1998: 48-49).

A major initiative was a national competition policy, which sought to set national regulations for a number of industries and professions as well as breaking up public monopolies within the states. This was contentious, since the states stood to lose considerable revenue from their public corporations. Negotiations broke down over the issue, and the states accused the Commonwealth of "...acting the bully..." (Painter 1996: 110). All parties were eventually brought back to the table by the independent Industry Commission, which produced a report on the potential gains to all parties that could be expected from a National Competition Policy. In any case, the states were already interested in economic reform and the Commonwealth knew that unilateral action risked a constitutional challenge which it was not sure it could win (Ibid:



111). The National Competition Policy was signed in April 1995. This was (and still is) considered a major success for COAG: “The COAG processes provided a framework for finally reaching agreement even if, along the way, there were reversals, turmoil, and name-calling” (Ibid). The states and the Commonwealth were also able to agree, through COAG, to a Mutual Recognition Scheme for regulations and a National Training Authority (Ibid: 112). The COAG process created a situation that Anderson (2008: 497) calls one of regulatory federalism, in which “...the States resemble ‘regulated agencies operating with varying degrees of collaboration or friction within Commonwealth-dominated clusters of regulatory regimes’ that in effect impose national conditional regulations”.

Federalism is a much less ingrained part of Australian political culture than it is in Canada. Indeed, the opposite is the case, at least according to Davis, who argues that disparaging federalism is part of Australia’s political traditions (in Painter 1998: 3). This makes federalism a broad target, a frequent scapegoat for the ills that beset the Australian economy. As mentioned, criticism comes from all sides, often most vocally from various business interests (Smith 2007). For instance, when in 1994 the states objected to the National Competition Policy because they were not being sufficiently compensated, they were accused of ‘provincialism’ and ‘obstructionism’ and were subjected to pressure from the Business Council of Australia (Painter 1998: 52).

This led, in the early 1990s, to a situation in which government officials were particularly attuned to the necessity for economic reform. Federalism was considered a hindrance. One official commented on the perception at the time:

A lot of the state and territory people that came to work on Prime Minister Hawke’s new federalism initiative and its various aspects, at the bureaucratic level, always had that framework, that sense of urgency, that this is our last shot, we’ve got

one shot left in the locker. If we don't get it right this time, we're going to become the poor white trash of Asia. So there was great impetus and great urgency brought to the task, that we really need to work together better. (Anonymous Interview 2011o)

From late 1995 to mid-1996, Keating's Labor government was increasingly concerned with the upcoming federal election, which, after 13 years in power, it stood to lose. This turned out to be the case, and in March 1996, John Howard's Liberal-National Coalition formed government in Australia.

## **CAF, and the decline and rebirth of COAG**

### **1996-2007**

If Bob Hawke's government demonstrated the extent to which the Labor Party was reconciled with federalism in Australia, the government of John Howard demonstrated that the Liberal Party could be every bit as centralizing as the ALP. Parkin and Anderson (2007: 306) describe the Howard government's approach to federalism as "Whitlamesque". The direction taken by the Howard government was somewhat surprising, since few people expected, at the time, that significant alteration of the federal balance would be a priority for the Commonwealth (Ibid: 295). Indeed, the states initially expected that they might find some sympathy for their fiscal plight, based on previous statements by the Treasurer Peter Costello. At the first COAG meeting after the federal election, however, the states received a "rude awakening" from the Commonwealth government and there was much "drama and brawling over finance" (Painter 1998: 55).

The Howard government showed little interest in working within the confines of COAG in the first years of its mandate. It did not budge on fiscal issues, and pursued major policy

initiatives (such as new national firearms regulations) outside of COAG (Painter 1998: 57). COAG was largely perceived as a creation of the Labor Party in any case.

A 1997 ruling of the High Court struck down the states' ability to collect various taxes, leaving them in an untenable situation and forcing action by the Commonwealth. The Howard government won a federal election in 1998 on the creation of a Goods and Services Tax (GST), which was then entirely given to the states to alleviate the VFI<sup>16</sup> (Galligan and Wright 2002: 153). The GST has been called the most important change to the fiscal landscape of Australian federalism since the Commonwealth took over income tax during World War II (Parkin and Anderson 2007: 297). Howard in effect gave the states more control over their own fiscal destiny than they had enjoyed since WWII. None of this took place within COAG. Thus, in 2002 (155), Galligan and Wright were able to say that "Indeed, the Howard Liberal coalition government elected in 1996 has been unconcerned with federalism, showing little interest in, and giving no leadership to, COAG... COAG may have served its purpose for the present."

This situation did not last indefinitely. Although initially the Howard government seemed content to work within the previously established regulatory frameworks and strengthen them without putting much effort into COAG, as Howard's government stayed on, it became more focused on the federal division of power (Anderson 2008: 500). This was spurred in part by the terrorist attacks of September 11, 2001. A special COAG meeting was called in order to ensure a "...consistent and co-ordinated response by Commonwealth, State, Territory and local government at the onset of any national emergency" (Ibid). According to a Commonwealth official: "John Howard saw that COAG was useful to really developing our counter-terrorism

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<sup>16</sup> This has also been suggested in Canada by Boessenkool, and stand a chance of being put in place by the Harper Conservatives (Boessenkool 2010).

arrangements... so the latter part of John Howard's administration after 9/11 was really using COAG to build robust counter-terrorism arrangements in Australia" (Anonymous Interview 2011o).

In 2002, the election of Mike Rann's Labor government in South Australia meant that the Coalition federal government faced Labor governments in all of the states and territories. Contrary to expectations, however, this did not immediately lead to antagonism. In fact, COAG meetings were described as "love-ins" (Cooper 2006). Anderson (2010: 2) calls this period one of "cooperative *centralism*". On one level, as much as Howard would have preferred to work unilaterally, he realized -as Keating had- that in order to advance on certain files, he had to work with the states. Another reason for the cooperation was that the premiers and prime minister shared a common enemy in Treasurer Peter Costello, who was at the time mounting an (ultimately unsuccessful) leadership challenge to John Howard (Anderson 2008: 504). Yet another reason, according to Anderson, is that political summitry provides the opportunity to mask the blame for an unpopular move. This impression was shared by both Commonwealth and state officials:

"There's been times where it has been useful to have the Commonwealth impose something... to say 'look, we're really sorry but the Commonwealth made us do that'; "Who do citizens blame for health stuff ups? They're not sure. And it suits everyone for that to be a bit fudged, I think." (Anonymous Interview 2011n; 2011q)

The tone of intergovernmental relations began to change in 2005 when Howard, claiming to have "...little time for state parochialism" put forth his vision of the role of the Commonwealth government. This was followed by a set of similar statements which culminated in his declaration of a policy of 'aspirational nationalism', which he proclaimed quite openly might

bypass the states altogether where necessary (Anderson 2008: 498). By sidestepping the states, Howard was taking a further step away from the constitutional division of power and the premiers. This policy was not, however, a complete dismissal of the states; rather, it was characterized by targeted action. On particular issues, such as funding a hospital in Tasmania or funding a local plebiscite in Queensland, the government acted; according to Australian constitutional expert Cheryl Saunders: “I think [aspirational nationalism] means that the Commonwealth will do whatever it can, however it can, if it wishes to do so” (Mares 2007).

Premiers reacted accordingly. Although premiers had traditionally met prior to COAG meetings, these had been held only sporadically during the early years of the Howard government (Tiernan 2008: 123). It was therefore difficult to coordinate action. This difficulty has been exacerbated by the fact that states often do not have a commonality of interests, and find themselves in the position of having to agree with the Commonwealth in order to receive funding. Several of the Commonwealth officials interviewed described the Commonwealth’s approach to the states as a “carrot and stick approach” of bribing the states on the one hand and forcing the issue where necessary.

In any case, reaching horizontal agreement was made considerably easier by the fact that not only were the premiers all Labor premiers, but they knew each other, had similar backgrounds and experiences, and were of the same age (Tiernan 2008: 124). The premier of Victoria, Steve Bracks, had been able to negotiate the creation of a National Reform Agenda to alter the work of specific COAG working groups, but progress was slow (Ibid: 125).

An important catalyst for further horizontal collaboration came from overseas, when South Australia premier Mike Rann met Manitoba premier Gary Doer at a conference in the United States in 2005. There, Doer briefed Rann on the Council of the Federation. The idea resonated

with Rann, who returned to Australia and set out to create a similar inter-state forum in Australia (Tiernan 2008: 125). Despite some reservations, he managed to convince his fellow premiers of the merits of the idea, and in 2006 the Council for the Australian Federation (CAF) was created.

It had five objectives:

- To provide leadership on and promote innovative solutions to matters important to Australians.

- To promote constructive engagement with the Commonwealth Government and Parliament on matters of national interest.

- To promote and communicate to the Australian people the benefits of Australia's federal system in providing a diversity of policy options.

- To complement the work of the Council of Australian Government and facilitate COAG-based agreements with the Commonwealth by working towards a common position among the States and Territories.

- To reach, where appropriate, collaborative agreements on cross-jurisdictional issues where a Commonwealth imprimatur is unnecessary or has not been forthcoming. (CAF 2006)

In their assessment of CAF, both Commonwealth and state officials believe that its creation was the result of having a centralizing Liberal prime minister against eight Labor premiers. As discussed below, given the nature of electoral cycles and government turnover, the future of CAF is uncertain.

Howard's reaction to CAF was to ignore it, although a spokesperson for the prime minister was quoted as saying that CAF "...looks suspiciously like a cover to use taxpayers' money to pursue a political agenda" (Tiernan 2008: 128). CAF researched and put together a proposed

emissions trading scheme, reaching agreement despite some hesitation from Queensland and Western Australia, which have major mining sectors (Ibid: 129). This in effect forced the Howard government to react, which it did, declaring that it would set up a national emissions trading scheme. This was seen as a major success for CAF. Shortly after that victory, however, a federal election was held which saw Labor win under Kevin Rudd. For the first time in Australian history, the Labor party was in power in all of the state, territories and the Commonwealth government – a development that called into questions the necessity of CAF while reinvigorating hopes for active Commonwealth participation in COAG.

### **2007- present**

Kevin Rudd made federalism an issue in the lead up to the 2007 election. As a former state official from Queensland, he was attuned to the position of states. He spoke of the need for “cooperative federalism” and the need to “end the blame game” that perpetually saw the federal and state governments blaming each other (Tiernan 2008: 129). Rudd’s success in adopting this policy was likely aided by Howard’s refusal to give in to the states. In the words of one Commonwealth official: “John Howard could have neutralized that [CAF’s] agenda if he’d been half interested in it, but there was this well-developed, articulated agenda that Kevin Rudd just picked up and ran with.” (Anonymous Interview 2011o).

In short order Rudd, signalled his intention to make COAG “the working machinery of the Australian nation” (Tiernan 2008: 129). Within a month of the election the first COAG meeting was held. The renewed interest in COAG on the part of Kevin Rudd led some to wonder if CAF had run its course (Ibid: 131). This became particularly relevant as time went on, since the ascendancy of Labor was short lived, as the Coalition came to power in Western Australia in

2008, Victoria in 2010 and New South Wales in 2011. For the moment, CAF struggles to remain relevant.

In contrast to CAF's questionable pertinence, COAG became a good deal more active under Rudd. During Rudd's first two years in office, COAG met eight times, as compared to the 14 meetings during the 11 years of the Howard government (Anderson 2010: 9). Rudd came to power intent on taking advantage of the unique and never before seen confluence of Labor governments in every jurisdiction. One of his first actions was to alter the functioning of working groups by giving state officials direct access to Commonwealth ministers in working groups. Although the move was resented by state ministers, who were shut out of the process, it was appreciated by state officials: "If I was a state minister I might have felt disenfranchised too, but it was a really good model for driving through some changes without the politics getting in the way." (Anonymous Interview 2011r). The model, while an effective way to accomplish a good deal of work in a short period of time, was short lived, and previous operating procedures came back into effect in short order.

The Rudd government's second major initiative was a major change to the system of tied grants, or Special Purpose Payments (SPP), which had been a part of the Australian fiscal landscape since federation. Under the Howard government, SPP's had become extremely input focused, allowing the Commonwealth to impose stringent conditions on state acceptance of grants. For instance, the Howard government insisted that all schools receiving Commonwealth money have functional flag poles, and that state governments follow the Commonwealth's industrial relations legislation when putting contracts out to tender (Anderson 2010: 10).

Rudd's initiative was to switch the focus from inputs to outcomes via the "Intergovernmental Agreement on Federal Fiscal Arrangements". There was a quantitative shift



from over 90 SPP's to five (although there are still 40 National Partnership Agreements which are more Commonwealth directed) (Anderson 2010: 11). The Commonwealth's focus shifted from dictating 'how' to focusing on the end results: "What they've agreed to now with the new fiscal framework, it's still very much about agreements, about how much money is on the table, but it's much more about the outcomes and the outputs, so we won't tell you if you need a flagpole or not, but we want students who are resilient and doing well, and have good literacy and numeracy skills..." (Anonymous Interview 2011n).

Over time, however, the emphasis on input controls has proven difficult for the Commonwealth to avoid. According to one Commonwealth official: "I think now there's a move to get a bit more directed, because in a sense they may have gone from one extreme to the other" (Anonymous Interview 2011m). This shift away from pure outcome evaluation was also evident to state officials: "...there is a culture in the Commonwealth of continued monitoring of inputs, instead of focusing on objectives..." (Anonymous Interview 2011p). Anderson (2010: 10) believes his assessment of 'cooperative centralism' as equally applicable to Rudd as it was to Howard: "The process is significantly more cooperative under Kevin Rudd; however, there is little indication that the trend towards centralization will diminish".

Kevin Rudd's early reinvigoration of COAG declined over time. He began to face significant opposition not only from the states, but also from the Coalition opposition in parliament. Rudd was forced to back-pedal on a proposed Emission Trading Scheme, and faced opposition from the states over a proposed health reform plan which would have taken a third of the GST away from the states to fund (Anderson 2010: 15). Western Australia, where mining is a major economic driver, was extremely critical of a proposed Resource Super Profits Tax (Ibid).

Rudd stepped down as leader of the Labor Party in June 2010 in the face of heavy criticism and following a set of humiliating defeats. He was succeeded by Julia Gillard, who led Labor to a minority government following the August 2010 election. At the time of writing, so early in her mandate, it remains to be seen how Gillard will approach federalism. She chose to wait six months to call a COAG meeting, and one state official noted that “I observed a lot of nervousness around her holding her first COAG” (Anonymous Interview 2011r). Gillard’s first COAG meeting was held around health reform, and was considered a success (Massola 2011). Despite the fact that most officials felt it was too early to assess Gillard’s performance, one state official commented “I think she’s taken it to the next level by identifying five themes for COAG... it creates more clarity<sup>17</sup>” (Anonymous Interview 2011p).

## **COAG, CAF and the Future: Assessing IGR in Australia**

### **CAF**

Intergovernmental relations in Australia have been centered around Commonwealth-state relations almost since federation. Although premiers met and continue to meet, the multilateral relations of premiers have tended to revolve around dealing with the Commonwealth. Hence, premiers’ meetings take place immediately before a Commonwealth-state conference, whether it be a Financial Premier’s meeting or a COAG meeting. Historically, there has been very little in the way of sustained multilateral horizontal relations in Australia. Although bilateral relations between neighbouring states are an important feature of IGR (officials in South Australia, for

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<sup>17</sup> The five themes are: A long term strategy for economic and social participation; a national economy driven by competitive advantage; a more sustainable a liveable Australia; better health services and a more sustainable health system for all Australians; closing the gap on indigenous disadvantage (COAG 2011: 2)

instance, described an important relationship with Victoria over issues such as a common watershed), the focus of inter-state relations has been the Commonwealth.

This makes CAF a body which stands out in the context of Australian IGR. As mentioned, it is tied to the partisan circumstances of 2006. As states gradually changed government, the dominance of Labor was reduced. Moreover, the renewal of interest in COAG made CAF's work a return to the traditional focus of how to deal with the Commonwealth. CAF still meets; it did so before the March 2011 COAG meeting. However, as one official noted, there is some question as to whether the Coalition premiers have any serious interest in maintaining CAF, given that it was a creation of Labor (Anonymous Interview 2011r). "...State and territory premiers have always caucused before a COAG, so whether it's under the more formal auspices of CAF or whether they just get together in the hotel the night before, it will still happen" (Ibid).

None of the officials expected much of CAF beyond its continued existence. Commented one official: "I never expected much of CAF" (Anonymous Interview 2011q). Although some officials were more optimistic than the citation above, they too recognized that CAF tends towards lowest common denominator solutions and while the states could reach agreement on high level matters, they were often unable to come together on the details (Anonymous Interview 2011j). This trend has undoubtedly been exacerbated by the mixed partisanship of participating governments.

CAF is not likely to dissolve. The election of Coalition state governments has altered CAF, essentially making it a pre-COAG forum, the likes of which has existed for decades by a variety of names. In 2010, a review of the Council for the Australian Federation was conducted and it was found to be a "worthwhile" exercise (Anonymous Interview 2011j). Its objectives were reduced to two:

-Work toward common understanding of the States' and Territories' positions in relation to policy issues involving the Commonwealth Government

-Take a leadership role on key national policy issues, including the Federation, that are not addressed by the Commonwealth Government. (CAF 2011)

These objectives are not dissimilar to those of the Council of the Federation in Canada. The same factors that have influenced federalism in Australia, however, have influenced the working of CAF and its significance. CAF may continue to exist, but it will likely be the same premiers' caucus that has occurred before every major intergovernmental conference; it is simply under a different name.

## **COAG**

The Council of Australian Government was a development in keeping with the way intergovernmental relations are conducted in Australia. Although it was a more regularized forum than existed previously, the fundamental dynamic of federalism in Australia has not changed. The Commonwealth government still has most of the fiscal and constitutional power. State officials still feel as though the Commonwealth operates on a 'divide and conquer' strategy (Anonymous Interview 2011q). *All* Commonwealth officials interviewed were quite open in admitting to a "carrot and stick" approach to state relations.

This is not to suggest that the Commonwealth always gets its way. State officials recognized it does not (Anonymous Interview 2011r). However, there are very few areas in which the Commonwealth is unable or unwilling to get involved. As an example, one Commonwealth official spoke of the federal government's involvement in local zoning and planning laws. From the Canadian intergovernmental perspective, this would seem odd: one can

hardly imagine a more quintessentially local issue than zoning. Yet according to the official: “We’re interested in having efficient regulation, and there’s some evidence that the [zoning and planning] regulation isn’t particularly efficient” (Anonymous Interview 2011k).

How this plays into COAG is difficult to predict. In Australia as in Canada, the personal predilections of the prime minister (and to a lesser extent the premiers) play a large part in setting the tone of intergovernmental relations. Hawke was oriented towards cooperative federalism, while Keating and Howard tended towards unilateralism when they could. The importance of COAG waxes and wanes with the changing political landscape: “COAG in some ways often reflects the approach of the PM at the time” (Anonymous Interview 2011l). Partisanship also plays a role, as was demonstrated by the creation of CAF.

All officials expected COAG to continue as a robust and important part of intergovernmental relations in Australia. It sits at the summit of the various other ministerial and bureaucratic committees and working groups. It is a “cabinet of first ministers” (Anonymous interview 2011r). If COAG did not exist, it was felt there would be a need to create something like it (Ibid). Concerns raised by officials about the future of COAG tended to deal with the specific problems surrounding certain policy areas which were likely to come up in the near future, and not with its continued existence.

## **Federalism in Australia**

Intergovernmental relations cannot be separated from their context, neither the historical nor the current political context. Particularly since the Second World War, Australia has seen an increasing centralization both in the terms of fiscal arrangements and constitutional power. This is in keeping with a trend Fenna (2007) identifies in most of the established federations in the

world. According to Fenna (Ibid: 304): “It is not surprising that Australia is one of the most centralised of true federations, with centralisation a continuing dynamic”.

As mentioned above, one is struck when reading the literature on Australian federalism by the extent to which the federal system and the states are maligned. In his analysis of public discourse on federalism in Australia, Davis (in Painter 1998: 3) notes the negativity which often characterized discussions of federalism: “The constitution was the ‘worst’ in the world; it was a ‘misfit’, a ‘failure’... it promoted irresponsible government; it was wasteful; it was excessively costly...” Federalism in Australia is contested as a system, to the detriment of the states. This is supported by the ongoing work of A.J. Brown in polling public opinion on federalism in Australia. His March 2010 survey indicates that 35 per cent of respondents found the states to be the least effective order of government (slightly higher than local government at 30 per cent and considerably higher than the federal government at 17%) (Brown 2010: 7). He also finds that 39 per cent of respondents were in favour of abolishing the states in 2010, up from 30 per cent in 2008 (Ibid: 11). The whole of his work finds a good deal of dissatisfaction with federalism in Australia. All governments are contested to an extent (even the federal government, which 12 per cent of respondents would see abolished [Ibid]), but the state governments are the most lambasted order of government in Australia.

Brown (2007: 23) notes that “The idea that state governments were autonomous or sovereign has largely gone away”, while Brian Head (2007: 167) argues that the rhetoric of “archaic states’ rights” is one “whose time has truly passed”. Federalism in Australia is contested, but it is the states, not the Commonwealth, which face pressure. In Australia, it appears the onus is on the states to prove why they should remain in control of an area of jurisdiction, *even when the constitution seems to be on their side*. In Canada, the onus is on the

federal government to demonstrate why it should have a greater role in areas of provincial jurisdiction. Moreover, in Australia subsequent governments, Labor and Coalition, have shown no hesitation to act in areas of state jurisdiction, while in Canada the Harper government has publicly committed to returning to a watertight-compartment understanding of “open federalism”.

If the states continue in their present form, it will be the result of institutional inertia. As Brown and Bellamy (2007) note, while there is substantial agreement on the need for reform, there is little agreement about what form that should take. One trend to watch, however, is the move towards Regional Development Agreements (RDA). A state official worried that the Commonwealth might attempt to bypass state treasuries altogether by using RDA’s, which are granted to a consortium of local government, states and businesses (Anonymous Interview 2011r). This model has the potential to represent a significant change to Australian federalism.

## **Summary**

Australia was originally designed as a decentralized federation. Over the 20<sup>th</sup> century, various High Court decisions as well as structural factors and a supportive political culture, have strengthened the Commonwealth while calling into question the very existence of the states. This trend can be exaggerated, and significant constitutional change to the federation seems unlikely in the immediate future. Agreement in principle does not equal agreement on details. As such, the states are still important players in Australian governance and in intergovernmental relations. The Commonwealth may be centralizing, but as Howard, Keating and Whitlam learned, the prime minister ignores the states at his peril. The more common trend has been to deal with the states in vertical intergovernmental relations while maintaining centralizing

tendencies. This was the case even with Kevin Rudd, who, as a former state official, was quite enthusiastic about working with sub-national governments.

COAG is both a source and product of the trend for IGR in Australia to be centered on vertical relations. It is, therefore, likely to continue to exist, subject the whims of prime ministers and the flow of events. CAF could continue to exist, but unless partisan circumstances were to favour state coordination, it will likely be little more than a pre-COAG meeting forum.



## Chapter 5- Conclusion

<b>Figure 5- Intergovernmental variables in Canada and Australia</b>		
Variable	Canada	Australia
Multi-nationalism	Present from Confederation, ongoing influence (particularly post-1960)	Absent
Judicial Interpretation	Generally favoured provinces until 1949	Generally has favoured Commonwealth
Fiscal Federalism	Historically favoured the federal government, now less clear	Heavily favours the Commonwealth
Intrastate Federalism	Weak Senate and disintegrated party system, some provincial representation in federal cabinet	Stronger Senate, integrated party system and state representation in federal cabinet

As was demonstrated over the previous chapters, the practice of intergovernmental relations in Canada and Australia is steeped in history. To understand the creation of the Council of Australian Government and its subsequent development, one must understand why the states went from being the dominant players in early Australia to being the embattled entities they are today. To understand the significance of the Council of the Federation, one must understand the simultaneous evolution of Federal-Provincial-Territorial relations and Provincial-Territorial relations. This chapter will apply a historical institutional (HI) framework to what has been covered in the previous chapters, using three main tools of HI research: critical junctures, feedback loops and structured agency.

Ultimately, both the Council of the Federation and the Council of Australian Government are manifestations of the dominant trend in intergovernmental relations in each federation while simultaneously contributing to that trend. COAG is a well established forum in which the states

deal with the Commonwealth, although often on terms of the Commonwealth's choosing. It has kept the focus of IGR on vertical Commonwealth-state relations. COF, on the other hand, is a manifestation of the increased influence of the provinces and horizontal IGR in the Canadian federation. Moreover, it is partly a response to the *absence* of regular, formalized vertical (federal-provincial-territorial) relations, which has left room for the development of more institutionalized horizontal relations.

This chapter is divided into three sections. The first outlines a path dependent analysis and identifies critical junctures in both Canada and Australia. The second ties those critical junctures to institutional development by examining how centralization and verticality (like decentralization and horizontality) are reciprocally linked. The final section considers the influence of first ministers as structured agents in their respective federal systems.

### **Historical Institutionalism and Critical Junctures**

As noted in the introduction, this thesis adopts a historical institutionalist approach to the study of intergovernmental relations. Rather than simply 'bringing history back in', historical institutionalism provides systematic models that help to explain how history impacts today's political world. One of these models, path dependence, demonstrates how key events (critical junctures) move a system from a position of relative openness to one of being locked-in to certain paths.

In path dependence, a critical juncture is a point at which the options went from being fairly open to being quite limited. It occurs immediately prior to the lock in effects of a specific path. Early path dependent models implied a good deal of contingency prior and a good deal of determinism after the fact, and were critiqued for this very reason (Thelen 1999: 385). This level

of contingency and determinism were rarely reflected in case studies, however, and Canada and Australia are not exceptions. Critical junctures can be identified in both countries, but they do not emerge from a ‘wide open’ scenario, nor are they irreversible. Critical junctures are embedded in their context.

Yet despite these issues, the concept of critical junctures is still useful in pointing out how key events can influence institutions for years to follow. The concept will therefore be used with reference to more recent works of political science which note careful caveats about its use. Pierson (2000: 263) points out that critical juncture analysis is not especially useful unless it is used in relation to a particular path, “otherwise, it is not clear why the juncture is critical”. In this sense, identifying critical junctures in IGR does not contribute to our knowledge of IGR unless it can be linked to the trends which have been identified in Canada and Australia (horizontality and verticality respectively). This will be addressed in the further discussion on feedback loops. A critical juncture is thus a turning point which, without necessarily constituting a whole-scale change to the way institutions develop, represents a distinct shift from an earlier period.

Both Canadian and Australian IGR are well suited for path dependent analysis. While it has evolved in the direction of Commonwealth domination since at least the late-1920s, Australian IGR was still fundamentally shifted by certain key moments. Developments like the Council of States notwithstanding, the Commonwealth has long been the dominant player in Australian IGR, in spite of Australia’s decentralized constitution. Certain key turning points, like the 1920 *Engineers* case, put Australian federalism on the path of centralization, making the Commonwealth stronger, which impacted how IGR was conducted. Canadian IGR was equally changed by critical junctures, such as the *Toronto Electric Commissioners V. Snider* case, and

the election of Jean Lesage's Québec Liberal government in 1960. The analysis of critical junctures is best conducted using the variables that have formed the basis of this study (see Figure 6 and 7).

<b>Figure 6- Critical Junctures in Canada</b>		
Variable	Critical Juncture	Influence
Multinationalism	Election of Lesage	More forceful Québec, greater interprovincial collaboration
Personal style	Lesage, Trudeau, Mulroney, Charest, Harper	Varied depending on first minister in question
Fiscal Federalism	Post-war reconstruction	Provinces regain their taxation powers, autonomy
	Cuts of 1990s	Provinces left to their own resources, less trusting of federal government
Judicial Interpretation	A number of cases, notably <i>Toronto Electric Commissioners V Snider</i> (1925)	Limit power of federal reserve powers
Intrastate Federalism: Senate	None: was never a states' house	
Intrastate Federalism: Cabinet	None: Regional influence has remained an important factor in Cabinets since Confederation	
Intrastate Federalism: Party System	World War I	National party system begins to disintegrate

<b>Figure 7- Critical Junctures in Australia</b>		
Variable	Critical Juncture	Influence
Multi-nationalism	None	
Personal style	Whitlam, Hawke, Keating, Howard, Rudd	Varied depending on first minister in question
Fiscal Federalism	Creation of Loans Council and Grants Commission	Gives Commonwealth upper hand in fiscal negotiations
	Post-war	States lose their taxation powers, autonomy

Judicial Interpretation	1920 <i>Engineers Case</i>	Turned High Court interpretations from the intent of the founders to the strict word of the constitution.
Intrastate Federalism: Senate	None: was never a states' house	
Intrastate Federalism: Cabinet	None: Regional influence has remained a minor factor in Cabinet formation since 1901	
Intrastate Federalism: Party System	Formation of Liberal Party (1908)	Established left-right partisan divided nationally and in states

## Multi-nationalism

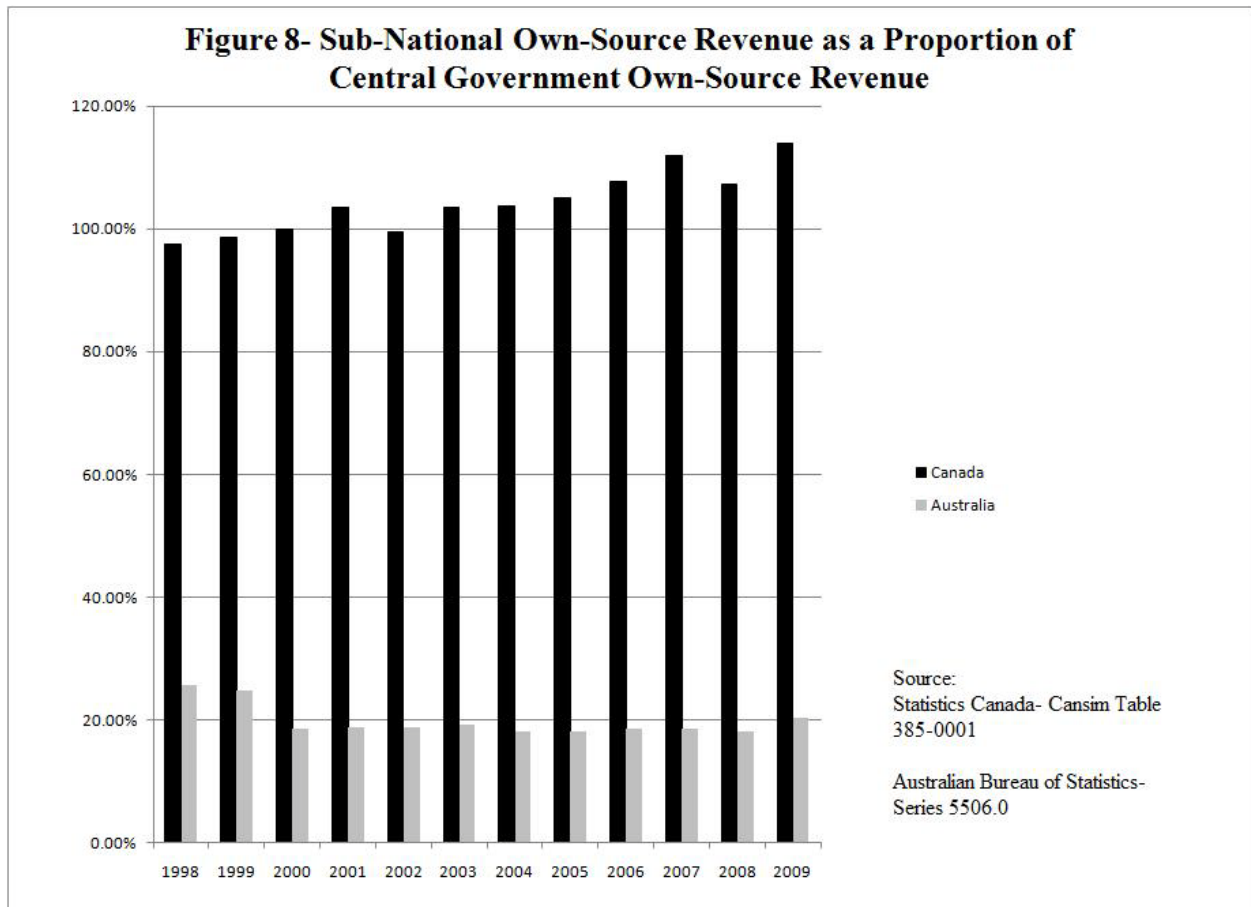
This variable evidently has little relevance to the history of Australian IGR (although its absence is as significant in its effects as its presence in Canada). In Canada, however, multi-nationalism has been a defining element of political life generally and intergovernmental relations more specifically. The history of Canada is the history of a distinct Québec. The election of the Lesage government in 1960 can be considered a critical juncture. It marked a turning point in both Québec-Canada relations, and in interprovincial relations. The election marks a key singular point after which the dynamic of intergovernmental relations was altered. Prior to 1960, Québec was insular in its approach to federalism, whereas the election of Lesage put Québec on a path which governments in that province still follow. That path is one of assertiveness in intergovernmental relations and engagement in horizontal PT relations. This assertiveness is more cooperative with Liberal governments, but if anything, this makes Québec a more influential participant in IGR. An additional effect of this dynamic is that the strength of PT and FPT relations change depending on who is in power in Québec, going through cycles since the PQ's first victory in 1976.

## **Fiscal Federalism**

In both Canada and Australia, fiscal federalism has represented some of the most significant shift in intergovernmental relations. This is particularly true in Australia, where fiscal issues have tended to make up much of the centralization debate without being overshadowed by fiery debates over national unity. The story of fiscal federalism in Australia is one of gradual centralization through various mechanisms (the Loans Council, the Grants Commission), but perhaps the single most important element in explaining Australia's high degree of fiscal centralization is the Commonwealth government's assumption of income tax during the Second World War. More than anything else, this changed the fiscal landscape in Australia in favour of the federal government, which put the states in an embattled position. This has not significantly changed in close to 65 years, despite the introduction of the GST.

Fiscal federalism has been subject to major turning points in Canada as well. As in Australia, a major turning point came immediately after World War II, when the larger provinces renounced the tax-rental agreements. This stands in obvious contrast to the Australian case. The second critical juncture came with the budget cuts of the mid-1990s, which considerably altered the tone of IGR and set the stage for COF.

Part of the reason for the importance of Canadian provinces is their fiscal independence relative to that of the Australian states. This is evident if we look at the following graph, which measures sub-national revenue as a proportion of central government revenue.



The chart demonstrates the fiscal autonomy of the provinces over the states. In Canada, the provinces collect as much (and more since 2003) in taxation revenue as the federal government does. In Australia, the states' share of taxation revenue constitutes less than 20 per cent of what the Commonwealth collects. While the policy implications of this are not necessarily centralizing, the Australian states are beholden to the Commonwealth on a level that is not the case in Canada.

### **Judicial Interpretation**

If there is one single critical juncture in the history of federalism in Australia, it is the 1920 *Engineers* case. Although there have been several cases since that time which have increased the

Commonwealth government's power (such as the *Tasmanian Dams* case), the *Engineers* case is critical because it shifted the way the High Court interpreted the constitution from one which considered the intent of the founders to one which was based on the strict word of the constitution: "In the field of judicial interpretation, while the First High Court was notably federalist in its approach to the Constitution, the complexion of the Court had so changed by 1920 that the *Engineers* decision permanently defined the tone of constitutional interpretation in Australia as ultra-literalist and hyper centralist." (Craven 2007: 26).

The *Engineers* case created precedent which informed subsequent cases. Because the High Court no longer considered the 'states first' intent of the founders in its subsequent judgement, the Commonwealth has tended to win, expanding its power. The Commonwealth's expanded spending power and external affairs power have allowed it to act in virtually any area of jurisdiction. All of this began with the *Engineers* case. The case represents a critical juncture not because anything was possible beforehand, but because it represented a significant shift in the course of federalism in Australia. Moreover, it also fits the case of a locked in path. The Commonwealth's domination of IGR in Australia has been more or less consistently reinforced by judicial interpretation.

The Canadian literature is not quite as clear on a single case. Where the Australian literature tends to point to the *Engineers* case as the groundbreaking one, the gradual weakening of the Peace, Order and Good Government (POGG) clause in Canada occurred over a number of years and a number of cases. Similarly, the strengthening of provincial jurisdiction also occurred over several different cases. If one were to choose a single case, however, it would be *Toronto Electric Commissioners v Snider* (1925). Whereas *Engineers* affirmed Commonwealth industrial legislation over that of the states, *Snider* affirmed provincial supremacy in matters of property



and civil rights, which extended to industrial legislation. The *Snider* case also restricted the applicability of POGG by limiting what constituted an emergency.

### **Intrastate Federalism**

Intrastate federalism does not provide much in the way of critical junctures in Canada or Australia. As noted, the Canadian Senate has remained virtually unchanged since Confederation (though this could change), and the Australian Senate, while powerful, has never been a states' house. Neither Senate has an impact on IGR. The same can be said of the central government's Cabinet, which has featured a degree of regional representation in both countries. The party system, however, does provide critical junctures. In Canada, the disintegration of the integrated national party system began to occur after the First World War. In Australia, the formation of a national party system began prior to federation, with the creation of the Labor Party. The critical juncture, however, came with the formation of the Liberal Party in 1908, which established the left-right divide in national *and* state politics. This has proven to be an important facet of Australian federation. Moreover, the impact is as much a positive one as it is negative. In other words, partisanship has both helped foster intergovernmental cooperation (as in the SPC process initiated by Hawke or the creation of CAF) and has hindered that cooperation (as tended to be the case with vertical relations under Howard, and happened with the Council of States).

Attempts by the states to create an alternative, multilateral inter-state organization have so far amounted to little. The Council of States was a reaction to Whitlam, and CAF was a reaction to Howard. The fact that CAF persists can likely be explained as a demonstration of institutional inertia. Sustained multilateral relations between the states have not been a feature of federalism

in Australia, as compared to in Canada, where a minimal though ever increasing level of inter-provincial relations were maintained from the 1960s on.

The power of the Commonwealth in Australia was the result of court decisions and fiscal centralization. The end result was that the Commonwealth dominated IGR in Australia. Yet in both Australia and Canada, the federal government played a key role in the creation of the welfare state after the war. The conditions which led to the creation of the welfare state were not altogether different in both federations. Why then did interprovincial relations develop as a feature of IGR in Canada while inter-state relations remained undeveloped in Australia? The answer lies in a number of factors.

Arguably the most important factor is the presence of Québec (or its absence). When the Australian states' loss of their fiscal and jurisdictional autonomy was accelerated after the war, there was little recourse. Without a substantial national minority to push states' rights, there was no major push for states to remain autonomous. As Alan Fenna (2011: 171) notes: "...the language difference provide[s] the key ballast for a federal system...". Without a national minority which linked its very survival with a strong province, there was nothing like the same kind of pressure in favour of states' rights. Moreover, the premiers may not have felt it was worth the effort. Through the various fiscal arrangements and meetings, the Commonwealth kept regular relations with the states, arguably mitigating the need for an inter-state forum. Further, no premier may have wanted to make the push for the creation of an Australian APC. Without Lesage to push for the creation of the APC (or Charest to push for COF), it might not have been created. The role of timing in the creation of both the APC and COF cannot be discounted. The combination of personalities and conditions were simply not present in Australia.

One must, however, note the existence of the Leaders' Forum, which was a meeting of the premiers prior to COAG meetings. In some ways this could be compared to the APC in Canada. Yet the Leaders' Forum was concentrated on the upcoming COAG meeting, and was focused on Commonwealth-state concerns, not inter-state concerns. Moreover, COAG meetings are called by the prime minister, which means that effectively, the premiers were meeting each other at the instigation of the prime minister. This stands in contrast to the regular yearly meetings of the Canadian premiers which existed independently of any FPT conference.

If the combination of personality and circumstance was all that was necessary, one might think that other periods might have yielded greater horizontal inter-state relations in Australia. A final mitigating factor in Australia, though, is partisanship. The creation of the Council of the States in 1975 is indicative of this broader trend in IGR. Partisan differences may have prevented the creation of an equivalent APC in Australia. Partisanship certainly played a role in both the Council of the States and CAF. This is as much a reflection of partisan loyalty as it is of partisan opposition. Whereas partisan opposition to the Commonwealth government may instigate inter-state action, partisan loyalty may also prevent it. Only the Coalition controlled states were involved in the 1975 effort; Labor states were hesitant to oppose the Labor Commonwealth government. Similarly, the period during which CAF was most active was while the states all had Labor government but the Commonwealth was Coalition controlled. This was noted by a state official: "...don't underestimate the party allegiances... there are cross cutting allegiances too... when you're looking at the intergovernmental relations context, you need to be aware of those" (Anonymous Interview 2011r). This suggests that the truncated party system of Canada has been instrumental in allowing FPT relations to develop, while the national party system in Australia has had the opposite effect.

Intergovernmental relations in Canada and Australia are influenced by the same variables which made them decentralized and centralized. Yet while it is influence, IGR itself also has an impact on the path of the federation. To explore the links between centralization/decentralization and verticality/horizontality, we must turn to the concept of feedback.

## **Feedback Loops**

As Pierson (2004: 51; emphasis added) notes: “The point in path-dependent analyses is that “causes” may often seem relatively small compared with their effects. *What makes a particular juncture “critical” is that it triggers a process of positive feedback.*” This is a key point. Identifying critical junctures, while useful, is not an end in itself. Those critical junctures must then be used to identify an underlying path. Pierson (Ibid: 46) cautions that “In such a process the crucial objects of study become the factors that set development along a particular path- and which lie in the past- and the mechanisms of reproduction of the current path...” In the case of Canada and Australia, the paths are decentralization and centralization respectively. The mechanisms for reproduction of the path are, in the first place, the variables identified in this study (multi-nationalism, fiscal federalism, judicial interpretation, intrastate federalism). Some of these variables are ever evolving (multi-nationalism), while others have not changed significantly in several years, but they have an effect on the path of federalism. They were instigators of centralization or decentralization, and they frequently continue to act in that capacity today.

There is more to this analysis, however. *Intergovernmental relations themselves are a mechanism of feedback.* This relationship is not linear: it would be incorrect to simply state that centralization begat COAG, or decentralization COF. That is a part of the story, but not the

whole of it. Stinchcombe (in Pierson 2004: 46; emphasis in original) argues that a “historicist explanation... is one in which an effect created by causes at some previous period *becomes a cause of that same effect in succeeding periods*”.

Let us return this discussion to Canada and Australia, noting critical junctures. This study suggests that there is a link between centralization and verticality on the one hand, and decentralization and horizontality on the other. Suppose that the initial factor is centralization/decentralization, which then leads to verticality/horizontality. Once an institution is created (at least in the specific context of Canada and Australia), it creates feedback to the path which created it.

The same variables which made Australia centralized also made IGR vertically oriented. The creation of the Commonwealth Grants Commission and the Loans Council centralized Australian federalism by putting important fiscal levers in the hands of the Commonwealth. It also made IGR in Australia highly vertical, since from that point on, there was a regular forum in which the states and the Commonwealth negotiated transfers. The Commonwealth assumption of income tax after World War II reinforces both centralization and verticality: the Commonwealth became more fiscally powerful, and the states had an even higher reliance on grants that were distributed via vertical IGR.

Here it is useful to point out how the initial variables come into play. The integrated party system in Australia which establishes ongoing links between governments has a paradoxical effect on horizontality in IGR. As much as common partisan links can be used to create a horizontal institution, once those links change (by election, for instance), *horizontality in Australia is crippled by the same force which created it, partisanship*.

The Council of Australian Government exists in large part because of the centralizing economic reform agenda of Bob Hawke and Paul Keating. This vertical institution then contributes to centralization in Australia; being used by the Commonwealth to impose national zoning standards, for instance. Centralization in Australia is thus linked to verticality.

The same feedback processes are present in the Canadian federation: decentralization is linked to horizontality. Vertical IGR has been an ad-hoc process in Canada. This is in large part linked to the refusal of various Québec premiers to commit to something like COAG without conditions that the rest of the first ministers were generally unwilling to grant (such as asymmetry). This is patently the case with the election of the Lesage Liberals in 1960. Vertical IGR continued to be characterized by ad-hoc relations, but in those relations, Québec was more assertive, demanding and receiving the right to opt-out of the Canada Pension Plan under Prime Minister Pearson. These types of actions were important developments in Canada's move towards decentralization. Simultaneously, Québec's assertiveness was crucial in creating the Annual Premiers' Conference, the model of horizontal IGR in Canada for the next forty years. Later, the transfer cuts of the mid-1990s further decentralized Canada, reducing both the fiscal influence and the trustworthiness of the federal governments (at least in the eyes of provincial governments). This same development was a direct predecessor to the Council of the Federation, through the intermediate of the Premiers' Council on Health Awareness. In that case, where decentralization occurred, horizontality flourished. The premiers recognized that there was a potential for successful horizontal intergovernmental collaboration, and that they could achieve more working together on select issues than working alone. Horizontality then has the potential to further decentralization, as in the case of the BC-Alberta-Saskatchewan New-West Partnership.

This study does not hold as a universal truth the link between centralization/decentralization and vertical/horizontal IGR. This link cannot be used to explain every instance. The fact that the Meech Lake Accord would have formalized a vertical institution stands out according to this analysis. So too does the significant work of CAF on the environment. There are anomalies, however, and they serve to reinforce the general 'rule'. Moreover, federalism, IGR and the institutions thereof are subject to the same variables which set them on their path in the first place. Canada is still a multi-national country, and the Australian High Court is likely to maintain its literalist interpretation of the constitution, which favours centralization. Intergovernmental relations are one mechanism of feedback among many, and they both influence those other variables and are influenced by them.

### **Structured agency**

The final issue which remains to be explored is that of structured agency. This study identified a fifth variable in IGR, the personal style of first ministers. As has been mentioned, the personal style of first ministers (especially prime ministers) plays a crucial role in shaping IGR in Canada and Australia. There was consistent and virtually unanimous agreement from interview subjects in both countries on the role of personality in shaping the workings of federalism. Moreover, personality is equally important in the functioning of other federations, according to O'Malley (2007). Important though personal style is, however, it is difficult to measure and even more difficult to analyze.

As a result, while it has been noted as a factor in a number of studies, these references are often in passing, without much depth. This study makes no claims of offering much in the way of new solutions to the problem of measuring personal influence. However, it is useful to again

cite the work of Fenna (2011: 178), who notes “...the value – perhaps indeed the necessity – of richly empirical comparative studies” in the study of federalism.

In large part, the influence of first ministers is inescapably tied to the importance of executive federalism in Canada and Australia<sup>18</sup>. One suspects that this would apply to all parliamentary federations; on this note, however, more work is required. In any case, the importance of personality is no great surprise. As Watts (1989) pointed out, it is a built in feature of Canada (and Australia’s) system of government.

To suggest that the personal style of first ministers is crucial is not to suggest that it is the only factor. First ministers are bound by the four factors which formed the basis of this analysis, as becomes apparent when all the variables are examined.

The presence of multi-nationalism puts constraints on the actions of both the prime minister of Canada and the premiers, particularly the premier of Québec. The prime minister cannot intrude on provincial jurisdiction too overtly without risking raising the ire of Québec. Pierre Trudeau stands out for his aggressiveness in dealing with the Québec government, but Trudeau was unique in this regard. Prime ministers have generally tended to tread carefully where provincial jurisdiction was concerned. The actions of the premiers in the rest of Canada are similarly constrained. Even if they wanted to advance on a particular issue, the premiers understand that certain items are off the table as far as Québec is concerned. Moreover, regionalism is such that other provinces (like Alberta or Newfoundland and Labrador) may have no interest in such discussions.

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<sup>18</sup> Curiously, according to a recent survey (O’Malley 2007: 17), Canadian experts were more likely than Australian experts to believe that their prime minister (in general) was highly powerful.



The premier of Québec, on the other hand, must not be seen to be giving up too much; this sentiment was the reason behind Québec premier Robert Bourassa's dramatic reversal of support for the 1971 Victoria constitutional charter (Noël 2003: 5). This is even the case (perhaps particularly the case) for Liberal premiers, who must be careful not to appear to concede too much to other governments.

In both Canada and Australia, there has been a common trend in fiscal federalism. Fiscal relations between the federal and sub-national governments are subject to externalities. Thus, when the federal government is in a surplus position, relations between the orders of government are less conflictual. When governments are in deficits, relations are likely to be more conflictual. This trend was noted by interview subjects. One Canadian official memorably described the situation prior to 1995 as the "...halcyon days of federal-provincial relations..." when the federal government was the "sugar daddy" of the Canadian federation (Anonymous Interview 2010b).

This trend is not always evident. Despite having faced deficits through his entire time in office, Brian Mulroney maintained good relationships with the premiers at least during the first part of his mandate (although fiscal pressure later began to impact federal-provincial relations). Trudeau also faced deficits for much of his time in office, but it would be a mistake to attribute his conflictual relationship with the premiers to this alone (though it likely played a part). Perhaps the most obvious manifestation of this trend was in the post-1995 era, when premiers lost trust in the federal government and began to increase the relationships between the provinces and territories.<sup>19</sup>

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<sup>19</sup> This likely has something to do with the fact that Trudeau and Mulroney, on the one hand, were more willing to engage in deficit spending, while Chrétien, on the other hand, was more willing to cut transfers.

Australia has also known changes to the dynamic of IGR as a result of fiscal circumstance. In the late 1980s to early 1990s, Australia found itself in a recession which limited the Commonwealth's ability to bribe the states to agree to Hawke's initiatives. This was even truer of Keating, who did not have Hawke's softer approach to intergovernmental relations. In order to get states on board with his *One Nation* plan, Keating had to agree to create COAG, which the states hoped would involve serious intergovernmental fiscal negotiation (this has not been the case in practice).

Put simply, when times are good, federal governments can be more generous in their offers to sub-national governments, in effect bribing them to accept certain conditions. When times are tough, the federal government cannot make those offers, which makes the sub-national governments reluctant or even unwilling to engage in intergovernmental negotiations. This is not a clean and simple rule, however. CAF was created during a time of Commonwealth surplus but neglect of COAG. The fiscal position of the federal government is one factor among many in shaping IGR in Canada and Australia. It is not always a consistent one. Surpluses do not equal good relations, just as deficits do not equal poor relations. If the federal government is consistently running deficits, however, this will eventually come to impact the sub-national government, and will make IGR more tense as a result.

The impact of judicial interpretation is not as evident as that of multi-nationalism or fiscal federalism, but it is present. First ministers must be aware that if they stray too far into one another's jurisdiction, they risk a court challenge they may not win. Even in Australia, where the High Court has generally favoured the Commonwealth government, the prime minister knows that victory is not necessarily assured: "[The Commonwealth government would] take a risk in challenging the states if it didn't get a favourable high court ruling, so there is a significant risk

there.” (Anonymous Interview 2011r). Moreover, court battles are often long, costly and paint both orders of government in a negative light. All of this constrains the willingness of a first minister to take a constitutional matter to the courts.

Finally, intrastate federalism can also play a role in the actions of first ministers. This is particularly evident in Australia, where partisanship plays a greater role in IGR. One need only think of the resistance Whitlam faced from the states, or the coordinated response by the states to John Howard’s disavowal of COAG.

Personal style is thus impacted by the other variables. The agency of the first minister is structured by external variables. However, the first minister, particularly the prime minister, can still play an enormous role in shaping IGR within the constraints identified above. The very fact that periods of IGR are known by the prime minister of the day (or prime minister-premier pairings<sup>20</sup>) is an indication of this. The general predictability of the preceding variables puts them in another category than the personal style of first ministers. In other words, the personal style is the “wild card” in federalism. Although political leaders generally put forward some vision of how they would approach federalism during an election, they can also be very coy about it. Take for instance the Meech Lake Accord. Writing in 1986, Donald Smiley (1987: 184-187) quite reasonably expected the Mulroney government to focus on the economy and the recommendations of the Macdonald Commission. Yet the very same year, the premiers emerged from the APC with the Edmonton Declaration, which laid the foundation for the Meech Lake Accord. Very few people expected (or recommended) a major constitutional negotiation, let alone two. In this instance, it is difficult to understate the importance of Mulroney and Bourassa

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<sup>20</sup> Trudeau-Lévesque; Mulroney-Bourassa...

in enabling and the Meech Lake Accord. Similar instances can be identified in Australia. Few people expected in 1996 that John Howard would prove to be as much of a centralizer as Paul Keating; indeed, the opposite was expected. A similar situation occurred with Bob Hawke, whose reconciliation of the Labor Party with federalism was unexpected.

It is difficult, perhaps even impossible, to deal with the influence of first ministers on federalism systematically. Each first minister approaches federalism differently, moreover, each first minister faces a different federation. The Canada that Stephen Harper governs is not Pierre Trudeau's Canada. Greg Selinger's Manitoba is not Dalton McGuinty's Ontario. One can identify the factors that will influence a first minister's decision making, as has been done above, but one can never predict with absolute certainty how a first minister will deal with a particular situation. These types of prediction may even be beside the point. If we cannot know what exactly the prime minister will do, we can at least know how circumstances and precedent constrain his or her actions.

Over the course of their histories, both Canada and Australia have moved away from the intent of their founders: Australia has become centralized while Canada has become decentralized. This is due to a number of factors. Australia's lack of a national minority removed an important obstacle to centralization, while the presence of Québec in Canada has acted as an impediment to the federal government's centralizing drives. Court verdicts in Australia since 1920 have favoured expanded Commonwealth jurisdiction and placed virtually no limits on the federal spending power, whereas until 1949, JCPC rulings consistently limited the federal government's various reserve powers while expanding provincial powers in matters such as taxation. Although the fiscal landscape in both countries was similar until the Second

World War, post-war, the Canadian provinces regained their taxation abilities while the Australian states did not. The lack of a national party system in Canada generally prevented partisanship from becoming an issue in intergovernmental negotiations, while in Australia partisanship has occasionally come into play. The personal style of first ministers has also played a key role in each federation, though it is a highly variable one.

All of this has established a dynamic of IGR that has linked vertical Commonwealth-state relations in Australia to the centralization of the Australian federation, while federal-provincial-territorial *and* provincial-territorial relations have developed in Canada, simultaneously influencing and influenced by the decentralization of the Canadian federation. The historic high-point of horizontal relations in Canada represented by COF may not last. As discussed in Chapter three, it is based in the circumstances of the day, and any number of factors could shift the balance back towards FPT relations. Even if COF were to disappear, however, it seems unlikely that PT relations would return to a pre-Annual Premiers' Conference state. Canada will therefore likely continue to see varying degrees of both FPT and PT relations. Australia, on the other hand, seems likely to remain focused on vertical, Commonwealth-state relations. Inter-state relations have generally been partisan manifestations. Premiers meet prior to major intergovernmental conferences (which are called by the prime minister) and generally discuss the upcoming agenda (which is mostly decided by the prime minister). Although there was a brief period during which the Council for the Australian Federation took the lead on certain files (notably the environment), that time has passed. If CAF continues to exist, it will likely be as a gathering of the premiers prior to a major conference, the kind which has existed since the creation of the Commonwealth Grants Commission.

A number of factors come into play when identifying why Canada is decentralized and Australia is centralized. The presence of multi-nationalism, the strength of intrastate federalism, the nature of judicial interpretation, the structure of fiscal federalism and the personal style of first ministers. These variables all influence the path that the federations have taken, and have been influenced by that path, creating a feedback loop. An important part of the explanation, however, rests in intergovernmental relations. A decentralized federation and horizontal IGR have influenced each other over the course of Canadian history. A centralized federation and vertical IGR have done the same over the course of Australian history. We cannot know how either federation will evolve in the future, but intergovernmental relations will undoubtedly play an important role as both cause and effect of that evolution.

## Bibliography

Angus Reid. 2011. “Seven in Ten Canadians Want to Directly Elect Their Senators”. Toronto. July 12.

[http://www.angus-reid.com/wp-content/uploads/2011/07/2011.07.12\\_Senate\\_CAN.pdf](http://www.angus-reid.com/wp-content/uploads/2011/07/2011.07.12_Senate_CAN.pdf)

Anonymous Interview. 2010a. With Canadian Intergovernmental Official. December 8, 2010.

\_\_\_\_\_. 2010b. With Canadian Intergovernmental Official. December 14, 2010

\_\_\_\_\_. 2011a. With Canadian Intergovernmental Official. January 5, 2011.

\_\_\_\_\_. 2011b. With Canadian Intergovernmental Official. January 5, 2011.

\_\_\_\_\_. 2011c. With Canadian Intergovernmental Official. January 5, 2011.

\_\_\_\_\_. 2011d. With Canadian Intergovernmental Official. January 6, 2011.

\_\_\_\_\_. 2011e. With Canadian Intergovernmental Official. January 13, 2011.

\_\_\_\_\_. 2011f. With Canadian Intergovernmental Official. January 14, 2011.

\_\_\_\_\_. 2011g. With Canadian Intergovernmental Official. February 13, 2011.

\_\_\_\_\_. 2011h. With Canadian Intergovernmental Official. March 16, 2011.

\_\_\_\_\_. 2011i. With Australian Intergovernmental Official. March 28, 2011.

\_\_\_\_\_. 2011j. With Australian Intergovernmental Official. March 28, 2011.

\_\_\_\_\_. 2011k. With Australian Intergovernmental Official. April 1, 2011.

\_\_\_\_\_. 2011l. With Australian Intergovernmental Official. April 1, 2011.

\_\_\_\_\_. 2011m. With Australian Intergovernmental Official. April 1, 2011.

\_\_\_\_\_. 2011n. With Australian Intergovernmental Official. April 1, 2011.

\_\_\_\_\_. 2011o. With Australian Intergovernmental Official. April 1, 2011.

\_\_\_\_\_. 2011p. With Australian Intergovernmental Official. April 4, 2011.

\_\_\_\_\_. 2011q. With Australian Intergovernmental Official. April 4, 2011.

\_\_\_\_\_. 2011r. With Australian Intergovernmental Official. April 4, 2011.

\_\_\_\_\_. 2011s. With Australian Intergovernmental Official. April 6, 2011.

\_\_\_\_\_. 2011t. With Australian Intergovernmental Official. April 6, 2011.

“Government Orders Review of GST”. ABC News. March 30, 2011.

<http://www.abc.net.au/news/stories/2011/03/30/3177933.htm?site=news>

Anderson, Geoff. 2008. “The Council of Australian Government: A New Institution of Governance For Australia’s Conditional Federalism”. *University of New South Wales Law Journal* 31(2): 493-508.

\_\_\_\_\_. 2010. “Whither the Federation? Federalism Under Rudd”. *Public Policy* 5(1): 1-22.

Anderson, George. 2008b. *Federalism: An Introduction*. Don Mills, Ontario: Oxford University Press.

Aroney, Nicholas. 2009. *The Constitution of a Federal Commonwealth- The Making and Meaning of the Australian Constitution*. Cambridge: Cambridge University Press.

Arseneau, Thérèse. 1994. “Federalism and ‘New’ Parties of the Right in Alberta: From Progressives to Reform” in *Parties and Federalism in Canada and Australia*, ed. Campbell Sharman. Canberra: Federalism Research Center, ANU. 99-119.

Attard, Bernard. 1989. “Australian Borrowing in London, 1914-1920”. *Australian Journal of Politics and History* 35(2). 142-163.

Australia. Australian Bureau of Statistics. *Series 5506.0- Taxation Revenue, Australia*. Canberra.

Australia. Ministry of Finance. *Budget 2007-2008- Appendix G*. Canberra, 2007.

[http://www.budget.gov.au/2007-08/bp1/html/bp1\\_bst5-10.htm](http://www.budget.gov.au/2007-08/bp1/html/bp1_bst5-10.htm)

Bannon, John. 1994. *The Crucial Colony: South Australia’s Role in Reviving Federation 1891-1897*. Canberra: Federalism Research Centre, Australian National University.

Bakvis, Herman, Gerald Baier and Brown, Douglas. 2009. *Contested Federalism: Certainty and Ambiguity in the Canadian Federation*. Toronto: OTP.

\_\_\_\_\_. 1994. “Political Parties, Party Government and Intrastate Federalism in Canada” in *Parties and Federalism in Canada and Australia*, ed. Campbell Sharman. Canberra: Federalism Research Center, ANU. 1-22.

\_\_\_\_\_. 1991. *Regional Ministers- Power and Influence in the Canadian Cabinet*. Toronto: University of Toronto Press.



- Bernie, K. 1947. "The Premier's Conferences- A Historical Sketch From the Beginnings to 1930". *Australian Journal of Public Administration* 6(8): 410-417
- Boessenkool, Kenneth J. 2010. "Fixing the fiscal imbalance: Turning the GST Over to the provinces in exchange for lower transfers". *University of Calgary School of Public Policy Research Paper* 3(10) December.
- Boothe, Paul. 2007. "Natural Resource Revenues and Fiscal Federalism: An Alberta Perspective" in *Canada: The State of the Federation 2006. Fiscal Federalism and The Future of Canada*. eds. Thomas Courchene & Christian Leuprecht. Montréal and Kingston, McGill-Queen's University Press. 276-299.
- Boychuck, Gerard. 1998. *Patchwork of Purposes: The Development of Provincial Social Assistance Regimes in Canada*. Kingston and Montreal: McGill-Queen's University Press.
- Brock, Kathy. 2003. "Executive Federalism: Beggar Thy Neighbour?" in *New Trends in Canadian Federalism*, 2<sup>nd</sup> ed., eds. François Rocher and Miriam Smith. Peterborough, Ontario: broadview. 67-83
- Broschek, Jörg. 2010. "Federalism and Political Change: Canada and Germany in Historical-Institutionalist Perspective". *Canadian Journal of Political Science* 43(1): 1-24.
- Brown, A.J. 2010. *Australian Constitutional Values Survey 2010- Results Paper 1*. April. [http://www.griffith.edu.au/\\_data/assets/pdf\\_file/0019/207064/Constitutional-Values-Survey-March-2010-Results-1.pdf](http://www.griffith.edu.au/_data/assets/pdf_file/0019/207064/Constitutional-Values-Survey-March-2010-Results-1.pdf)
- \_\_\_\_\_. 2007. "Federalism, Regionalism and the Reshaping of Australian Governance" in *Federalism and Regionalism in Australia*, eds. A.J. Brown and Jennifer Bellamy. Canberra: ANU E Press. 11-32.
- Brown, Douglas. 2003. "Getting Things Done in the Federation: Do We Need New Rules for an Old Game?" in *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, ed. Doug Brown. 1-8.
- Burelle, André. 2003. "The Council of the Federation: From a Defensive to a Partnership Approach" in *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, ed. Doug Brown. 1-7.
- Cairns, Alan C. 1997. "The Governments and Societies of Canadian Federalism." *Canadian Journal of Political Science*. 10(4): pp. 695-725.
- Cameron, David and Richard Simeon. 2002. Intergovernmental relations and democracy: An oxymoron if there ever was one? In *Canadian federalism: performance, effectiveness and legitimacy*, eds. Herman Bakvis and Grace Skogstad. Toronto: Oxford University Press 178-201.

- Cameron, David R. and Richard Simeon. 2002. "Intergovernmental Relations in Canada: The Emergence of Collaborative Federalism." *Publius*. 32(2): 49-72.
- Canada. Department of Finance. 2006. *Budget 2006*. Ottawa: Department of Finance.  
<http://www.fin.gc.ca/budget06/pdf/fp2006e.pdf>
- \_\_\_\_\_. 2004. *The Fiscal Balance in Canada: The Facts*. Ottawa: Department of Finance.  
<http://www.fin.gc.ca/facts-faits/fbcfacts8-eng.asp>
- Canada. Statistics Canada. *Cansim Table 385-0001- Consolidated federal, provincial, territorial and local government revenue and expenditures, annual (dollars)*. Ottawa Statistics Canada.
- Canada. Statistics Canada. *2003 General Social Survey on Social Engagement, Cycle 17: An Overview of Findings*. Ottawa, Statistics Canada, 2004 (Cat. No.89-598-XIE).  
[http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=71#M\\_1](http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=71#M_1)
- Canadian Intergovernmental Conference Secretariat (CICS). 2002. "Premier's Meetings: 1887-2002".
- Carty, R.K. 1994. "The Federal Face of Canadian Party Membership" in Campbell Sharman, ed. *Parties and Federalism in Canada and Australia*. Canberra: Federalism Research Center, ANU. 137-152.
- "Killed climate change bill flawed: Harper". CBC News. November 17, 2010.  
<http://www.cbc.ca/news/technology/story/2010/11/17/senate-climate-bill.html>
- Cooper, Hayden. 2006. "State leaders praise COAG cooperation as a success". *PM*. Australian Broadcasting Corporation. July 14.  
<http://www.abc.net.au/pm/content/2006/s1687251.htm>
- Council of Australian Government (COAG). 2011. "Communiqué". 13 February.  
[http://www.coag.gov.au/coag\\_meeting\\_outcomes/2011-02-13/index.cfm?CFID=894900&CFTOKEN=dd6c52ce13194d4-86CC3399-B52E-9A91-8AFE73859EDEBE4A](http://www.coag.gov.au/coag_meeting_outcomes/2011-02-13/index.cfm?CFID=894900&CFTOKEN=dd6c52ce13194d4-86CC3399-B52E-9A91-8AFE73859EDEBE4A)
- Council for the Australian Federation (CAF). 2006. "CAF Communiqué". 13 October.  
<http://www.caf.gov.au/Documents/CAF%20Communique%20-%202013%20Oct%202006.pdf>
- Council of the Federation (COF). 2004a. "A new study confirms the existence of fiscal imbalance". March 8.  
<http://www.councilofthefederation.ca/pdfs/NR-Panel-May27.pdf>
- \_\_\_\_\_. 2004b. "Canada's Premiers Seek Positions of Federal Party Leaders". May 31.

<http://www.councilofthefederation.ca/newsroom/seekpositions.html>

- \_\_\_\_\_. 2005. "Council of the Federation Launches Panel to Study Fiscal Imbalance". May 27.  
<http://www.councilofthefederation.ca/pdfs/NR-Panel-May27.pdf>
- \_\_\_\_\_. 2004c. "Council of the Federation Sets Course For First Minister's Health Summit".  
February 14.  
[http://www.councilofthefederation.ca/pdfs/cof\\_comm\\_e.pdf](http://www.councilofthefederation.ca/pdfs/cof_comm_e.pdf)
- \_\_\_\_\_. 2004d. "Premier's Action Plan for Better Health Care: Resolving Issues in the Spirit of  
True Federalism". July 30.  
<http://www.councilofthefederation.ca/pdfs/HealthEng.pdf>
- \_\_\_\_\_. 2006. "Premiers Agree Canada's Fiscal Arrangements Must be Fixed". April 11.  
[http://www.councilofthefederation.ca/pdfs/Communique\\_eng\\_apr11\\_06.pdf](http://www.councilofthefederation.ca/pdfs/Communique_eng_apr11_06.pdf)
- \_\_\_\_\_. 2010a. "Premiers Endorse Water Charter". August 6.  
<http://www.councilofthefederation.ca/pdfs/PremiersEndorseWaterCharter.pdf>
- \_\_\_\_\_. 2004e. "Premiers Propose Alternative to Prime Minister's Offer". September 14.  
[http://www.councilofthefederation.ca/pdfs/premiersrelease\\_sept14.pdf](http://www.councilofthefederation.ca/pdfs/premiersrelease_sept14.pdf)
- \_\_\_\_\_. 2010b. "Premiers Protecting Canada's Health Care Systems". August 6.  
[http://www.councilofthefederation.ca/pdfs/PremiersProtectingCanadasHealthCareSystem.p  
df](http://www.councilofthefederation.ca/pdfs/PremiersProtectingCanadasHealthCareSystem.pdf)
- Courchene, Thomas. 2004. "Pan-Canadian Provincialism: The New Federalism and the Old  
Constitution". *Policy Options*. Institute for Research on Public Policy.
- Craven, Greg. 2007. "Australia's Constitution: Where Less Change is More (or Less)".  
*Australian Quarterly* 79(3): 25-30.
- Dafoe, John W. 1940. "The Canadian Federal System Under Review". *Foreign Affairs* 18(4):  
646-658.
- Davis, Glyn. 1998. "Carving Out Policy Space for State Government". *Publius* 28(4): 147-164.
- Dawson, Robert MacGregor (ed). 1933. *Constitutional Issues in Canada 1900-1931*. London:  
Oxford University Press.
- DiGiacomo, Gordon. 2009. "Employment Insurance and Parental Benefits" in *Canada: The State  
of the Federation 2006/07- Transitions, Fiscal and Political Federalism in an Era of  
Change*, eds. John R. Allen, Thomas J. Courchene and Christian Leuprecht. Montreal and  
Kingston: McGill-Queen's University Press. 323-346.

- Dufour, Christian. 2002. Restoring the Federal Principle: The Place of Quebec in the Canadian Social Union. *Policy Matters* 3 (1).
- Dupré, J. Stefan. 1985. "Reflections on the Workability of Executive Federalism" in Richard Simeon, ed. *Intergovernmental Relations*. Vol. 63 of the research studies for the Royal Commission on the Economic Union and Development Prospects for Canada [Macdonald Commission]. Supply and Services Canada. Toronto: University of Toronto Press. 1-32.
- Dutrisac, Robert. 2003. "Conseil de la federation- Le Québec a besoin d'argent, pas de nouvelles structures, dit Landry". *Le Devoir*. October 24.  
<http://www.ledevoir.com/politique/quebec/39000/conseil-de-la-federation-le-quebec-a-besoin-d-argent-pas-de-nouvelles-structures-dit-landry>
- Dyck, Rand. 2000. *Canadian Politics: Critical Approaches* 3<sup>rd</sup> ed. Scarborough: Nelson Thomson Learning.
- \_\_\_\_\_. 1991. "Links Between Federal and Provincial Parties and Party Systems" in *Representation, Integration and Political Parties in Canada*, ed. Herman Bakvis. Vol. 14 of the research studies for the Royal Commission on Electoral Reform and Party Financing. Minister of Supply and Services Canada. Toronto: Dundurn Press. 87-113.
- \_\_\_\_\_. 2006. "Provincial Politics in the Modern Era" in *Provinces* 2<sup>nd</sup> ed, ed. Christopher Dunn. Peterborough: broadview press.
- Fenna, Alan. 2007. "The Malaise of Federalism: Comparative Reflections on Commonwealth-State Relations". *Australian Journal of Public Administration* 66(3): 298-306.
- \_\_\_\_\_. 2011. "Form and Function in Federal Systems". *Australian Journal of Political Science* 46(1): 167-179.
- Ferguson, Barry and Robert Wardhaugh. 2003. "Impossible Conditions of Inequality: John W. Dafoe, the Rowell-Sirois Royal Commission, and the interpretation of Canadian Federalism". *Canadian Historical Review* 84(4): 551-583.
- Foisy-Geoffroy, Dominique. 2007. "Le Rapport de la Commission Tremblay (1953-1956), testament politique de la pensée nationaliste Canadienne-française". *Revue d'histoire de l'Amérique française* 60(3) 257-294.
- Francis, Daniel and Sonia Riddoch. 1985. *Our Canada: A Social and Political History*. Toronto: McClelland and Stewart Ltd.
- Gagnon, Alain and Guy Lachapelle. 1996. "Québec Confronts Canada: Two Competing Societal Projects Competing for Legitimacy". *Publius* 26(3): 177-191.
- Gagnon, Alain and Raffaëla Iacovino. 2007. *Federalism, Citizenship and Québec*. Toronto: UTP.

- Galligan, Brian and John S.F. Wright. 2002. "Australian Federalism: A Prospective Assessment". *Publius* 32(2): 147-166.
- Galligan, Brian. 1996. "What is the Future of the Federation?". *Australian Journal of Public Administration* 55(3): 74-82.
- Gray, Ian and A.J. Brown. 2007. "The Political Viability of Federal Reform: Interpreting Public Attitudes" in *Federalism and Regionalism in Australia*, eds. A.J. Brown and Jennifer Bellamy. Canberra: ANU E Press. 33-56.
- Grewal, Bjahan and Peter Sheehan. 2003. "The Evolution of Constitutional Federalism in Australia: An Incomplete Contracts Approach". *Center for Strategic Economic Studies-Working Paper* 22.
- Gordon, David and Douglas Macdonald. 2011. "Institutions and Federal Climate Change Governance: A Comparison of Intergovernmental Coordination in Australia and Canada". Paper presented at the Annual Meeting of the Canadian Political Science Association, University of Waterloo, May 18.
- Hale, Geoffrey E. 2006. "Balancing Autonomy and Responsibility: The Politics of Provincial Fiscal and Tax Policies" in *Provinces* 2<sup>nd</sup> ed, ed. Christopher Dunn. Peterborough: Broadview. 373-412.
- Head, Brian. 2007. "Taking Subsidiarity Seriously: What Role for the States?" in *Federalism and Regionalism in Australia*, eds. A.J. Brown and Jennifer Bellamy. Canberra: ANU E Press. 155-170.
- Hébert, Chantal. 2006. *French Kiss- Steven Harper's Blind Date With Quebec*. Toronto: Vintage Canada.
- Hendy, Peter. 1996. "Intergovernmental Relations: Ensuring Informed Cooperation in Strategic Policy Development". *Australian Journal of Public Administration* 55(1): 111-117.
- Hodgins, Bruce W., John J. Eddy, Shelagh D. Grant and James Struthers. 1989. "Dynamic Federalism in Canada and Australia: Continuity and Change" in *Federalism in Canada & Australia- Historical Perspectives, 1920-1988*, eds. Bruce W. Hodgins, John J. Eddy, Shelagh D. Grant and James Struthers, eds.. Peterborough, Ontario: The Frost Center For Canadian Heritage and Development Studies. 19-58.
- Hollander, Robyn and Haig Patapan. 2007. "Pragmatic Federalism: Australian Federalism From Hawke to Howard". *The Australian Journal of Public Administration* 66(3): 280-297.
- Howard, John. 2005. "Reflections on Australian Federalism". Speech delivered to the Menzies Research Centre, April 11.

[http://www.mrcldt.org.au/research/economic-reports/australian\\_federalism\\_final.pdf](http://www.mrcldt.org.au/research/economic-reports/australian_federalism_final.pdf)

- Howlett, Michael and Jeremy Rayner. 2006. "Understanding the Historical Turn in the Policy Sciences: A Critique of Stochastic, Narrative, Path Dependency and Process Sequencing Models of Policy Making Over Time". *Policy Sciences* 39(1): 1-18.
- Jackson, Robert J. And Doreen Jackson. 2006. *Politics in Canada: Culture, Institution, Behaviour and Public Policy*, 6<sup>th</sup> ed. Toronto: Pearson Prentice Hall.
- Johns, Carolyn M., Patricia L. O'Reilly and Gregory J. Inwood. 2007. "Formal and informal dimensions of intergovernmental administrative relations in Canada". *Canadian Public Administration* 50(1): 21-41.
- Knight, K.W. 1980. "The Study of Australian Federalism". *Australian Journal of Public Administration* 39(3-4): 318-339.
- Knightley, Phillip. 2000. *Australia- Biography of a Nation*. London: Jonathan Cape.
- Laforest, Guy. 1995. *Trudeau and the End of a Canadian Dream*. Montreal. McGill-Queen's University Press.
- Lazar, Harvey. 2003. "Managing interdependencies in the Canadian Federation: Lessons from the Social Union Framework Agreement" in *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, ed. Doug Brown. 1-8.
- \_\_\_\_\_. 1997. *Non-Constitutional Renewal: Canada, the State of the Federation 1997*. Kingston: Institute of Intergovernmental Relations.
- Lazar, Harvey and Christian Leuprecht. 2007. *Spheres of Governance: Comparative Studies of Cities in Multilevel Governance Systems*. Montreal: McGill-Queen's University Press.
- Lévesque, René. 1980. *Oui*. Montréal. Les éditions de l'homme.
- Manheim, Jarol B., Richard C. Rich and Lars Willnat. 2002. *Empirical Political Analysis- Research Methods in Political Science* 5<sup>th</sup> ed. New York: Longman.
- Marchildon, Gregory P. 2003. "The Health Canada Proposal in light of the Council of the Federation" in *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, ed. Doug Brown. 1-6.
- Mares, Peter. 2007. "Aspirational Nationalism". *The National Interest*. ABC Radio National. August 26.  
<http://www.abc.net.au/rn/nationalinterest/stories/2007/2014610.htm>
- Massola, James. 2011. "Gillard resets health parameters". *The Australian*. February 14.

<http://www.theaustralian.com.au/national-affairs/capital-circle/gillard-resets-health-parameters/story-fn59nqgy-1226005484724>

- Maxwell, J. A. 1938. "Commonwealth Grants to the States in Australia". *The American Economic Review* 28(2): 267-274.
- Meekison, J. 2004. *Canada, the State of the Federation 2002: Reconsidering the Institutions of Canadian Federalism*. Kingston, Ont.: McGill-Queen's University Press.
- \_\_\_\_\_. 2003. "Council of the Federation: An Idea Whose Time Has Come" in *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, ed. Doug Brown. 1-14.
- Monahan, Patrick. 1991. *Meech Lake- The Inside Story*. Toronto: University of Toronto Press.
- Moon, Jeremy and Campbell Sharman. 2003. "Introduction" in *Australian Politics and Government- The Commonwealth, the States and the Territories*, eds. Jeremy Moon and Campbell Sharman. Cambridge: Cambridge University Press. 1-11
- Moore, Christopher. 1997. *1867: How the Fathers Made a Deal*. Toronto: McClelland and Stewart.
- Moran, Anthony. 2002. "The Psychodynamics of Australian Settler-Nationalism: Assimilating or Reconciling with the Aborigines?". *Political Psychology* 23(4): 667-701.
- Newman, Terry. 2003. "Tasmania and the Secret Ballot". *Australia Journal of Politics and History*: 49(1). 93.
- New South Wales (NSW). 2010. Government of New South Wales. *Submission to the Select Committee on the Reform of the Australian Federation*. Sydney.
- Noël, Alain. 2003. "The End of a Model? Québec and the Council of the Federation" in *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, ed. Doug Brown. 1-6.
- \_\_\_\_\_. 2000. "Without Québec: Collaborative Federalism with a Footnote?". *Institute for Research on Public Policy* working paper, Vol.1 No.2.
- O'Malley, Eoin. 2007. "The Power of Prime Ministers: Results of an Expert Survey". *International Political Science Review* 28(1): 7-27.
- Organization for Economic Cooperation and Development (OECD). 2006. "Economic Survey of Australia, 2006". *Policy Brief*, July 2006.

- Painter, Martin. 1996. "The Council of Australian Government and Intergovernmental Relations: A Case of Cooperative Federalism". *Publius* 26(2): 101-120.
- \_\_\_\_\_. 1998. *Collaborative Federalism*. Cambridge: Cambridge University Press.
- Parkin, Andrew. 2003. "The States, Federalism and Political Science: A Fifty Year Appraisal". *Australian Journal of Public Administration* 62(2): 101-112.
- Parkin, Andrew and Geoff Anderson. 2007. "The Howard Government, Regulatory Federalism and the Transformation of Commonwealth-State Relations". *Australian Journal of Political Science* 42(2): 295-314.
- Parkin, Andrew and Vern Marshall. 1994. "Federalism and the Australian Labor Party" in Campbell Sharman, ed. *Parties and Federalism in Canada and Australia*. Canberra: Federalism Research Center, ANU. 73-98.
- Parti Québécois (PQ). 2010. "Quittons maintenant le Conseil de la Fédération!". April 7. [http://pq.org/actualite/nouvelles/quittons\\_maintenant\\_le\\_conseil\\_de\\_la\\_federation](http://pq.org/actualite/nouvelles/quittons_maintenant_le_conseil_de_la_federation)
- Pelletier, Benoît. 2001. *Un projet pour le Québec- Affirmation, Autonomie et Leadership*. Report of the Liberal Party of Québec's special committee on the political and constitutional future of Québec society. October.
- Pelletier, Réjean. 2008. *Le Québec et le fédéralisme canadien : un regard critique*. Québec: Presse de l'Université Laval.
- Pierson, Paul. 2000. "Increasing Returns, Path Dependence, and the Study of Politics". *American Political Science Review*: 94(2) 251-267.
- \_\_\_\_\_. 2004. *Politics in Time: History, Institutions and Social Analysis*. Princeton: Princeton University Press.
- Podger, Andrew. 2007. "Reconceiving Federal-State-Regional Health Agreements in Health" in *Federalism and Regionalism in Australia*, eds. A.J. Brown and Jennifer Bellamy. Canberra: ANU E Press. 135-154.
- Rae, Bob. 2003. "Some Personal Reflections on the Council of the Federation" in *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, ed. Doug Brown. 1-3.
- Riker, William H. 1964. *Federalism: Origin, Operation, Significance*. Boston: Little, Brown and Company.
- Ruggeri, Joe. 2009. "Equalization Reform in Canada" in *Canada: The State of the Federation 2006/07- Transitions, Fiscal and Political Federalism in an Era of Change*, eds. John R.



- Allen, Thomas J. Courchene and Christian Leuprecht. Montreal and Kingston: McGill-Queen's University Press. 145-171.
- Russell, Peter H. 1989. "The Politics of Frustration: The Pursuit of Formal Constitutional Change in Australia and Canada" in *Federalism in Canada & Australia- Historical Perspectives, 1920-1988*, eds. Bruce W. Hodgins, John J. Eddy, Shelagh D. Grant and James Struthers. Peterborough, Ontario: The Frost Center For Canadian Heritage and Development Studies. 59-85.
- Ryan, Claude. 2003. "Québec and Interprovincial Discussion and Consultation" in *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, ed. Doug Brown. 1-6.
- Ryan, Paul. 2005. "Economists say trade imbalance needs correction". *PM*. Australian Broadcasting Corporation (ABC). March 1.  
<http://www.abc.net.au/pm/content/2005/s1313631.htm>
- Sabetti, Fillipo and Harold M. Waller. 1984. "Introduction: Crisis and Continuity in Canadian Federalism". *Publius*: 14(1).
- Savoie, Donald. 1999. *Governing From the Center: The Concentration of Power in Canadian Politics*. Toronto: University of Toronto Press.
- Sayers, Anthony and Andrew Banfield. 2010. "The Dispersal of Power in Federal State: Canada and Australia". Paper prepared for the Canadian Political Science Association Annual General Meeting, June 1-3, 2010, Concordia University, Montreal.
- Sharman, Campbell. 1977. *The Premiers' Conference: An Essay in Federal State Interaction*. Canberra: ANU Press.
- \_\_\_\_\_. 1984. "Survey- Grappling with Proteus: Intergovernmental Relations". *Australian Journal of Public Administration* 43(3): 287-295.
- Simeon, Richard. 2006. *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*, 2<sup>nd</sup> ed. Toronto: University of Toronto Press.
- Smiley, Donald. 1987. *The Federal Condition in Canada*. Toronto: McGraw-Hill Ryerson Limited.
- \_\_\_\_\_. 1962. "The Rowell-Sirois Report, Provincial Autonomy, and Post-War Canadian Federalism". *Canadian Journal of Economics and Political Science* 28(1): 54-69.
- Smith, Christine. 2007. "Quantifying the Costs and Benefits of Change: Towards a Methodology" in *Federalism and Regionalism in Australia*, eds. A.J. Brown and Jennifer Bellamy. Canberra: ANU E Press. 201-224.

- Smith, Jennifer. 1988. "Confederation and the Influence of American Federalism". *Canadian Journal of Political Science*: 35. 443-463.
- Solomon, David. 2007. *Pillars of Power- Australia's Institutions*. Sydney: The Federation Press.
- Stevenson, Garth. 2009. "Fiscal Federalism and the Burden of History" in *Canada: The State of the Federation 2006/07- Transitions, Fiscal and Political Federalism in an Era of Change*, eds. John R. Allen, Thomas J. Courchene and Christian Leuprecht. Montreal and Kingston: McGill-Queen's University Press. 27-52.
- Thelen, Kathleen. 1999. "Historical Institutionalism in Comparative Politics". *Annual Review of Political Science*. 2: 369-404
- Thomas, Paul. 2008. "Leading From the Middle: Manitoba's Role in Intergovernmental Relations". *Canadian Political Science Review* 2(3): 29-50.
- Tiernan, Anne. 2008. "The Council for the Australian Federation: A New Structure for Australian Federalism". *The Australian Journal of Public Administration* 67(2): 122-134.
- Uhr, John. 1998. *Deliberative Democracy in Australia- The Changing Place of Parliament*. Cambridge: Cambridge University Press.
- \_\_\_\_\_. 1989. "The Canadian and Australian Senates: Comparing Federal Institutions" in *Federalism in Canada & Australia- Historical Perspectives, 1920-1988*, eds. Bruce W. Hodgins, John J. Eddy, Shelagh D. Grant and James Struthers, eds.. Peterborough, Ontario: The Frost Center For Canadian Heritage and Development Studies. 130-146.
- Van Loon, Richard and Michael S. Whittington. 1987. *The Canadian Political System- Environment, Structure and Processes*, 4<sup>th</sup> ed. Toronto: McGraw-Hill Ryerson Ltd.
- Verney, Donald V. 1995. "Federalism, Federative Systems and Federations: The United States, Canada and India". *Publis* 25(2). 81-97
- Warhurst, J. 1983. "Intergovernmental Managers and Cooperative Federalism: The Australian Case". *Public Administration* 61: 308-317.
- Watts, Ronald. 1989. "Executive Federalism: The Comparative Perspective". In *Federalism and Political Community, Essays in Honour of D. V. Smiley*, eds. D. Schugarman and R. Whitaker. Toronto: Broadview. 439-460.
- \_\_\_\_\_. 1998. "Federalism, Federal Political Systems, and Federations". *Annual Review of Political Science* 1: 117-137.
- Weller, Patrick. 2007. *Cabinet Government in Australia, 1901-2006*. Sydney: NSWU Press.

- \_\_\_\_\_. 1989. "Federalism and the Office of the Prime Minister" in *Federalism in Canada & Australia- Historical Perspectives, 1920-1988*, eds. Bruce W. Hodgins, John J. Eddy, Shelagh D. Grant and James Struthers. Peterborough, Ontario: The Frost Center For Canadian Heritage and Development Studies. 147-157.
- Wilson, Daniel and David Macdonald. 2010. "The Income Gap Between Aboriginal Peoples and the Rest of Canada". *Canadian Center for Policy Alternatives*.
- Wiltshire, Kenneth. 1989. "Federal/State Provincial Financial Relations" in *Federalism in Canada & Australia- Historical Perspectives, 1920-1988*, eds. Bruce W. Hodgins, John J. Eddy, Shelagh D. Grant and James Struthers. Peterborough, Ontario: The Frost Center For Canadian Heritage and Development Studies. 181-199.
- Winer, Stanley L. And Walter Hettich. 2008. "Vertical Imbalance in the Canadian Federation" in *How Ottawa Spends 2008-2009- Towards a More Orderly Federalism?* Ed. Allan M. Maslove. Montreal: McGill-Queen's University Press. 11-32.
- Zines, Leslie. 1989. "Judicial Review in Australia and Canada" in *Federalism in Canada & Australia- Historical Perspectives, 1920-1988*, eds. Bruce W. Hodgins, John J. Eddy, Shelagh D. Grant and James Struthers, eds.. Peterborough, Ontario: The Frost Center For Canadian Heritage and Development Studies. 104-129.