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***Communiqué***

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***Incremental approach to  
constitutional change won't work,  
warns political scientist***

Canada should declare a time-out and reassess decentralization and the incremental approach to constitutional reform before they take the country too far down the path to a destination that may neither keep Quebec in Canada nor serve Canadians well should Quebec leave, warns a *C.D. Howe Institute Commentary* released today.

The study, *Time Out: Assessing Incremental Strategies for Enhancing the Canadian Political Union*, was written by Roger Gibbins, a political scientist at the University of Calgary.

Since the demise of the Charlottetown Accord and the narrow federalist victory in the recent Quebec referendum, there is a growing consensus that the federal status quo cannot hold, that Quebec federalists must be able to offer concrete reforms if they are to have any chance of winning the next referendum. At the same time, there is growing pessimism about the prospects of formal constitutional change. Thus, incremental change pursued through conventional political processes has become the dominant constitutional reform strategy, Gibbins says.

Gibbins warns, however, that the marriage of decentralization and intergovernmentalism inherent in the incremental approach to change precludes public consultation, debate, and ratification and instead signals a retreat from open democratic government, with political power moving behind closed doors, to forums removed from democratic participation and accountability. Yet the accumulated changes favored by the incremental strategy will transform the country, Gibbins says — a transformation that should be held up for public debate, not simply imposed a step at a time.

Gibbins also argues that these new federal arrangements would make Canadian government more, not less, complex. Decentralization aims to change federal practice, not the formal constitutional division of powers. By maintaining that national standards need not be federal government standards, incrementalists hope to offset decentralization's potentially disintegrative effect. Most assume continued support for equalization, but the logic of decentralization works against that. By maximizing the influence of governments (especially those of the provinces and territories), incrementalism tips the playing field in favor of decentralization.

To argue for incremental change is to argue for decentralization; to choose this process, Gibbins says, is to choose its inevitable outcome.

This publication continues the C.D. Howe Institute's postreferendum research agenda, which comprises two *Commentary* series. The first series, "The Canadian Union Papers," focuses on ways to enhance Canada's political, economic, and social union. Papers already published in the series have examined some of Ottawa's legal and constitutional options for strengthening the economic union, and ways to enhance Canadians' common economic citizenship rights.

Complementing this effort is another *Commentary* series called "The Secession Papers," which examine issues relating to the following areas:

- the terms and conditions of a possible future referendum on Quebec sovereignty;
- the circumstances which the country might confront after a Yes vote, together with the processes by which the secession of Quebec might be addressed;
- the means by which a new Canada without Quebec might be established, should Quebec leave Confederation.

The papers are guided by the following principles: respect for democratic norms and the rule of law; the necessity for an authoritative decision and a stable outcome; and minimizing the social and economic costs of any transition. In the light of the results of the recent referendum in Quebec, "The Secession Papers" aim to assist Canadians to "think about the unthinkable."

Both series are being published under the supervision of David Cameron, a political scientist at the University of Toronto.

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- 30 -

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**Communiqué**

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Embargo : à diffuser le *mardi 25 février 1997*

## ***Une approche gradualiste envers le changement constitutionnel ne marchera pas, affirme un politicologue***

Le Canada devrait prendre le temps de réévaluer la décentralisation et l'approche gradualiste envers la réforme constitutionnelle, et ce avant que le pays ne se trouve irrémédiablement entraîné dans une voie qui pourrait bien ne pas parvenir à garder le Québec au sein du Canada, ni même s'avérer avantageuse pour les Canadiens en cas de sécession du Québec. C'est du moins ce que l'on affirme dans un *Commentaire de l'Institut C.D. Howe* publié aujourd'hui.

L'étude, intitulée *Time Out: Assessing Incremental Strategies for Enhancing the Canadian Political Union (Temps d'arrêt : l'évaluation des stratégies gradualistes visant à améliorer l'union politique du Canada)*, est rédigée par Roger Gibbins, un politicologue de l'Université de Calgary.

Depuis l'échec de l'Accord de Charlottetown et la victoire remportée de justesse par les fédéralistes lors du récent référendum québécois, l'opinion est de plus en plus répandue que le *statu quo* fédéral ne pourra être maintenu, et que les fédéralistes québécois doivent être en mesure d'avancer des réformes concrètes s'ils veulent avoir la moindre chance de gagner le prochain référendum. Par ailleurs, l'éventualité d'un changement constitutionnel officiel est empreinte de pessimisme; c'est pourquoi le changement graduel obtenu par le biais de processus politiques conventionnels est devenu la principale stratégie en matière de réforme constitutionnelle, explique M. Gibbins.

Toutefois, indique-t-il, l'union de la décentralisation et de l'intergouvernementalisme qui est inhérente à l'approche gradualiste envers le changement, écarte toute possibilité de consultation du public, de débat et de ratification; elle signale plutôt un abandon du gouvernement démocratique ouvert, en le dotant d'un pouvoir politique qui évolue à huis clos, vers des tribunes éloignées de la participation démocratique et de la responsabilisation. Et ces changements appuyés par la stratégie gradualiste vont de fait transformer le pays, affirme M. Gibbins — une transformation qui devrait être ouverte au débat public, et non simplement imposée étape par étape.

M. Gibbins soutient également que ces nouvelles dispositions fédérales compliqueraient plutôt qu'elles ne simplifieraient le gouvernement canadien. La décentralisation vise à modifier les pratiques fédérales et non le partage officiel et constitutionnel des pouvoirs. En affirmant que les normes nationales ne doivent pas forcément d'être des normes gouvernementales fédérales, les gradualistes espèrent neutraliser ainsi les effets potentiellement destructeurs de la décentralisation. La plupart présumant la préservation de la péréquation, mais en fait la logique de la décentralisation va à l'encontre de celle-ci. En maximisant l'influence dont

jouissent les gouvernements — et tout particulièrement ceux des provinces et des territoires — le gradualisme fait pencher la balance du côté de la décentralisation. En militant pour le changement graduel, on milite pour la décentralisation; le choix de ce procédé implique donc le choix de son dénouement inévitable, soutient M. Gibbins.

Ce document poursuit le programme de recherche post-référendaire de l'Institut C.D. Howe, qui englobe deux séries de *Commentaires*. La première série, intitulée « Les cahiers de l'union canadienne », porte sur les moyens d'améliorer l'union politique, sociale et économique du Canada. Parmi les documents déjà publiés, figurent ceux qui ont examiné certains des choix juridiques et constitutionnels dont disposerait Ottawa pour renforcer l'union économique, et des manières d'améliorer les droits de citoyenneté économique communs.

Parallèlement à cette série, en figure une autre intitulée « Les cahiers de la sécession », qui se penche sur les questions suivantes :

- les modalités d'un éventuel référendum sur la souveraineté du Québec;
- les circonstances dans lesquelles pourrait se retrouver le pays après un vote du Oui, ainsi que les processus qui permettraient de traiter de la sécession du Québec;
- les moyens par lesquels on pourrait établir un nouveau Canada sans le Québec, si ce dernier décidait de quitter la confédération.

Ces documents adhèrent aux principes suivants : le respect des normes démocratiques et la primauté du droit; le besoin d'une décision qui fasse autorité et d'un dénouement stable; et la minimisation des coûts sociaux et économiques de la transition. À la lumière des résultats du récent référendum québécois, « Les cahiers de la sécession » se veulent d'aider les Canadiens à « concevoir l'inconcevable ».

Les deux séries sont dirigées par David Cameron, un politologue de l'Université de Toronto.

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– 30 –

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*Time Out: Assessing Incremental Strategies for Enhancing the Canadian Political Union*, Commentaire n<sup>o</sup> 88 de l'Institut C.D. Howe, par Roger Gibbins, avec la collaboration de Katherine Harmsworth, Toronto, Institut C.D. Howe, février 1997, 28 p., 6,00 \$ (les commandes sont payables d'avance, et doivent comprendre les frais d'envoi, ainsi que la TPS — prière de communiquer avec l'Institut à cet effet). ISBN 0-88806-404-7.

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# Time Out:

## Assessing Incremental Strategies for Enhancing the Canadian Political Union

*by*

*Roger Gibbins*

*(with the assistance of  
Katherine Harmsworth)*

There is a growing consensus that the federal status quo cannot hold, that Quebec federalists must be able to offer concrete reforms if they are to have any chance of winning the next sovereignty referendum. At the same time, there is growing pessimism about the prospects of formal constitutional change. As a consequence, incremental change pursued through conventional political processes has become the dominant reform strategy.

Incrementalism, however, is more than a process; it is also a destination marked by increased decentralization and intergovernmentalism. Taken together, these two features

of the incremental strategy raise concerns about the nature of federal and democratic government in Canada. They foreshadow a future in which citizenship ties between individual Canadians and their federal government are weakened, government becomes more rather than less complex, democratic accountability is weakened, and many of the advantages of decentralization are lost.

Canada should therefore declare a time-out and reassess the incremental strategy before it takes the country too far down the path to a destination that may neither keep Quebec in Canada nor serve Canadians well should Quebec leave.

## *Main Findings of the Commentary*

- In the debate about renewing Canada's federation, belief in the need for change and pessimism about the possibility of change underpin a strategy of cautious incrementalism whose outcome is characterized by decentralization and intergovernmentalism.
- Decentralization (in the form of rebalancing) aims to change federal practice, not the formal constitutional division of powers. By maintaining that national standards need not be federal government standards, incrementalists hope to offset decentralization's potentially disintegrative effect. Most assume continued support for equalization, but the logic of decentralization works against that.
- Because constituent assemblies are incompatible with incremental reform, many incrementalists seek to contain the reform process within the more conventional channels of intergovernmentalism. Taken too far, however, intergovernmentalism could negate the advantages of decentralization.
- Current incrementalism builds on past failures (the content of the Meech Lake and Charlottetown Accords). For the most part, only the strategy has changed.
- By maximizing the influence of governments (especially provincial and territorial governments), incrementalism tips the playing field in favor of decentralization. To argue for incremental change is to argue for decentralization; to choose this process is to choose its inevitable outcome.
- Incrementalism assumes that all parties will be satisfied in the short run with changes to the practice of Canadian federalism rather than to its institutions, Constitution, and symbolic projections.
- Decentralization is an alternative to, not a facilitator of, institutional and constitutional reform.
- Incrementalism provides an effective veto to the party whose interests are addressed first. Thus, one must ask whether Canadians will be better off if just the first step is taken.
- Embedded within the incremental strategy lies a vision of Canada that is asymmetrical in result.
- The marriage of decentralization and intergovernmentalism means a retreat from open democratic government, with political power moving behind closed doors, to forums removed from democratic participation and accountability. And these new federal arrangements would make Canadian government more, not less, complex.
- Incrementalists assume that Canada must be decentralized to compete globally. But among the country's major competitors, economic success seems to be coupled with relatively strong national governments and relatively centralized federations. Decentralization may be better designed to improve the provinces' positions globally.
- Ironically, incrementalists' solution to Canada's unity crisis is similar to that advanced by Quebec nationalists. The strategy proposed by the former to save Canada is proposed by the latter to create an independent Quebec. But intergovernmentalism might not serve Quebec nationalists. The decentralization designed to keep Quebec in Canada could compromise Quebec sovereignty even more.
- The incremental strategy precludes public consultation, debate, and ratification. But the accumulated changes favored by the incremental strategy will transform Canada. This transformation should be held up for public debate, not simply imposed a step at a time. A number of questions should therefore be addressed before Canadians fully embrace the incremental strategy and its twin pillars, decentralization and intergovernmentalism.

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Canadians face a perplexing dilemma in coming to grips with the results of the 1995 sovereignty referendum in Quebec. Given the closeness of the result and the absence in subsequent polls of any signal of a significant decline in support for sovereignty,<sup>1</sup> there is a growing national consensus that the federal status quo must change. Bluntly put, the federalists will lose the next referendum unless they put something on the table other than the status quo and threats about the dire economic consequences of a “yes” vote.

Yet belief in the need for change is coupled with pessimism about the possibility of achieving change, or at least constitutional change. This pessimism springs in part from the failure of past efforts at what Peter Russell has called “mega-constitutional change.”<sup>2</sup> Here, the Meech Lake and Charlottetown Accords loom large, although the Constitution Act, 1982 counts among the failures for Quebec nationalists and Charter-skeptics in English Canada. These failures — particularly the referendum rejection of the Charlottetown Accord — cast serious doubts on Canadians’ ability to find common ground. They have also undermined public confidence in executive federalism as a vehicle for constitutional renewal, and thereby appear to have left Canada without a viable constitutional process.<sup>3</sup>

There is, then, a sense that Canada “can’t get there from here” because the constitutional process has broken down and nothing has been put in its place. As a consequence, the belief in the need for change, combined with pessimism about the possibility of change, has given birth to a renewal strategy based on cautious incrementalism. If mega-constitutional change is impossible and the status quo is unacceptable, the only option appears to be incrementalism pursued through conventional political processes. As a recent editorial in the *Calgary Herald* concluded, “[Canadians] need to seek smaller, more realistic compromises rather than attempting to take giant steps forward together into the unknown.”<sup>4</sup>

Within this incremental strategy are nestled two different, albeit complementary, options. The first option rests on the belief that, while substantive constitutional changes might be impossible if they are approached as a single package, they might be achievable through first taking a series of small incremental steps that, at least at the outset, would not entail formal amendment.<sup>5</sup> These steps would attempt to improve the country’s mood, perhaps by creating a pause for citizen initiatives.<sup>6</sup> As the Group of 22 has expressed it,

[w]e hope that progress along this path will recreate a climate of mutual trust and good will, in which constitutional issues can once more be approached with greater hope of agreement.<sup>7</sup>

Only then might it be possible to formalize incremental changes through constitutional amendment.

The second option rests on the belief that nonconstitutional changes may preclude the need for constitutional change. The assumption here is that nonconstitutional change by itself (that is, in the absence of any other changes) can forge a dramatically different Canada within which Quebec sovereigntists, alienated western Canadians, and others can find meaningful political space.

The two options share the assumption that incremental nonconstitutional change will suffice in the runup to the next Quebec referendum; they differ as to whether incrementalism is a precondition or a substitute for constitutional change. The short-term intention is to ensure that, should another sovereignty referendum be held, the “no” side will win by a comfortable majority. Success, then, means shifting a small portion of the soft nationalist vote in Quebec from “yes” to “no.” As a recent *Globe and Mail* editorial observed,

Full and due respect for provincial jurisdiction will not convert true separatists to the Canadian cause, but it will undermine the separatist argument with a good portion of “soft nationalists” in Quebec who are looking for a response to their demands for more autonomy within Canada.<sup>8</sup>

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Not incidentally, public opinion outside Quebec is irrelevant in this scenario. Other Canadians, although not necessarily their governments, are cast into a passive, bystander role. It is Quebec opinion, not Canadian opinion, that counts.

Given recent failures at mega-constitutional change and national anxiety in the wake of the Quebec referendum, the appeal of incrementalism is not surprising. It promises something for federalist forces in Quebec while not violating the English-Canadian taboo against asymmetrical responses to the national unity crisis. Many components of the incremental agenda can be packaged to appeal to all regions, not just to Quebec. Most important, incrementalism avoids hopeless causes such as trying to generate western Canadian support for a distinct society clause.<sup>9</sup>

Incrementalism, however, is more than a process for the renewal of the Canadian federal state. The dominant strategy of the day also privileges a particular outcome, one characterized by decentralization and intergovernmentalism. It is this vision of Canada, the vision embedded within incrementalism, that provides the focus for this Commentary.

Before turning to the core of our analysis, it is important to stress that the goal is not to produce another set of reform proposals. Rather, it is to provide a framework through which the incremental strategy for addressing the national unity crisis can be assessed. And, it should be clear, crisis is the appropriate word. Though Canadians are not rushing to the barricades, the Quebec referendum has brought into bold relief a fundamental schism within the Canadian political community — a schism that places the survival of that community in doubt. Thus, our focus on incrementalism should not suggest that we endorse a “business as usual” approach. Instead, we ask whether incrementalism and its concomitant federal vision will provide a durable solution to the nationalist challenge from Quebec — and if so, at what cost to the Canadian federal state as the country prepares to enter the next century.

## Principal Components of the Incremental Strategy

The results of the Quebec referendum have sparked another round in the ongoing debate on redesigning the Canadian federal state; from this round, a rough-and-ready consensus is emerging on the components of an incremental strategy. This consensus is anchored by a commitment to greater decentralization, including a respect for provincial legislative autonomy and the rollback of federal intrusions stemming from the spending power. The consensus is also anchored by a reliance on intergovernmentalism, by the faith that executive provincialism can replace many of the integrative functions performed in the past by the central government. While decentralization and intergovernmentalism are not always linked in the renewal debate, it is the thesis of this Commentary that they are yoked in the incremental strategy.

## Rebalancing the Federation

Decentralization is generally addressed under the rubric of rebalancing, which is seen as the means to create a new partnership between the provincial and federal governments. For example, taking an approach that is typical among proponents of decentralization, the participants at the Confederation 2000 conference observed that the purpose of rebalancing would be to provide greater clarity in the functions of the two orders of government and to reduce overlap and duplication, thereby allowing governments to focus more effectively on their respective roles and responsibilities.<sup>10</sup> The participants recommended that rebalancing be achieved through devolving powers to the provinces, curtailing the federal spending power, and increasing provincial input with regard to national standards, new national programs, and national economic management. In these respects, the Confederation 2000 participants were also typical of decentralization's proponents: with very few exceptions (discussed below), rebalancing is sought through a uni-



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directional shift in responsibility from Ottawa to the provinces. Overlap and duplication are to be pruned by cutting back on the activities of the federal government, not on those of the provinces.

Proponents of this approach usually call for greater decentralization in at least the following areas: labor market training; natural resources (such as forestry and mining); recreation; tourism; housing; and municipal and urban affairs. There is also moderate support among participants in the informal renewal debate for some measure of decentralization in other jurisdictional domains. Jean Chevrier, for instance, draws on 30 years of constitutional analysis to recommend that language, culture, and communications be managed concurrently, with federal or provincial paramountcy being stipulated.<sup>11</sup> Others support the expanded use of concurrent powers in a renewed federation, but with the specific intent of extending provincial influence.<sup>12</sup> A default legislative role for the federal government would be retained, albeit one tied to a more restricted spending power. In a similar vein are suggestions to curb the federal spending power by replacing transfer payments with tax points. For example, the Reform Party recommends that federal block grants to the provinces be replaced with tax points, established as a fixed percentage of federal tax revenue.<sup>13</sup> Thomas Courchene sees tax point replacements as an indispensable element of a reformed federal state.<sup>14</sup>

The rebalancing initiative was pulled into sharp focus by the August 1996 Premiers' Conference in Jasper. Though the premiers eventually drew back from the radical positions initially advanced by Ontario Premier Mike Harris and Alberta Premier Ralph Klein, nine of the ten expressed their determination to work with the federal government to strengthen provincial input into the determination of national standards (or guidelines, as Premier Klein prefers) for social programs, environmental protection, and interprovincial trade.<sup>15</sup> It is the premiers' quest for a reduced

federal role in social programs that captures the core of decentralization.

The proponents of rebalancing, such as Courchene, see greater decentralization as an inevitable reflection of fiscal realities in Ottawa, global economic changes, and the nationalist threat in Quebec. However, greater decentralization is also portrayed as a state of affairs toward which Canada should move.

The normative case for decentralization is advanced along two fronts. First is the recommendation that the federal government withdraw from provincial areas of responsibility, a recommendation reflected in the August 1996 Premiers' Conference and, more emphatically, in Courchene's working paper for the Ontario government that was released to coincide with that conference.<sup>16</sup> Here, the intention is to change federal practice rather than the formal constitutional division of powers. The call is for greater fidelity to the existing Constitution. In the words of Premier Klein:

It's not a matter of wresting away powers [from Ottawa]. It's a matter of restoration of constitution[al] authority, authority that was ours in the first place. I mean, this country is not a union. This country is a confederation. Right?<sup>17</sup>

Second is the recommendation that the exercise of federal powers be constrained by provincial consultation and consent: joint management of the economic and social union should replace unilateral federal management. Constraint, it is argued, should be exercised not only with respect to the spending power and areas of concurrent jurisdiction (such as environmental protection), but also within the federal government's constitutional domain as set forth in section 91 of the Constitution Act. Ottawa, in effect, would work in partnership with the provincial governments and eschew unilateral action in such fields as international trade agreements. Melvin H. Smith, for example, calls for a multilateral policy forum in which a new federal-provincial partnership would use intergovernmental agreements as an alternative to constitutional amendments.<sup>18</sup> Here again, the intention is to change federal

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practice rather than the division of powers; constitutional amendment could be avoided by Ottawa's legislated commitment not to act without provincial consent.<sup>19</sup>

Recommendations for the formal transfer of legislative responsibilities from the federal government to the provinces would entail a constitutional amendment, and would therefore have to overcome the new five-region parliamentary veto. Not surprisingly, proposals requiring constitutional amendment do not figure prominently in the incremental strategy; John Richards' suggestion that the division of powers with respect to language be rewritten to provide a more robust general authority for Quebec is an exception.<sup>20</sup> More informal arrangements, including intergovernmental agreements and delegated authority, are preferred. But in all cases, the end is clear: provincial governments would have greater flexibility in the design and administration of public policy, greater protection from federal intrusions, and a greater say in the federal government's residual legislative domain.

The case for rebalancing often draws on the concept of subsidiarity, which the Group of 22 defines as a process in which "decision-making should be as close as possible to citizens" and in which "[g]overnment powers should be assigned to the lowest level [at which] they can be effectively exercised."<sup>21</sup> As the European experience shows, subsidiarity does not automatically entail decentralization. In some cases, powers can be exercised more effectively by the senior level of government; thus, some upward migration in powers has been seen as the European Union has been constructed within the pre-existing European state system. Yet in the Canadian debate, subsidiarity means decentralization. Any upward shift of powers or responsibilities is entertained only when the destination is an intergovernmental authority, not the federal government alone.

Exceptions can be found, but they truly are exceptions. For example, the Reform Party recommends that the powers of the federal government be increased to enable it to effectively represent Canadian interests in negotia-

tions with the other parties to the North American Free Trade Agreement, with the European Union, with the countries of Asia Pacific Economic Cooperation, and with the World Trade Organization.<sup>22</sup> There has also been some support for the creation of a Canadian Securities Commission that would "reduce jurisdictional overlap, lower legal costs and eliminate gaps in enforcement."<sup>23</sup> However, it is difficult to avoid the conclusion that this idea has been advanced primarily as a foil to fend off critics of decentralization. Premier Klein, for example, has cited negotiations to create the Commission as evidence that the provinces are willing to have Ottawa take on additional responsibilities,<sup>24</sup> but British Columbia and Quebec were quick to dissociate themselves from the proposal, and the Alberta Stock Exchange has recommended that Alberta do the same.<sup>25</sup> A Canadian Securities Commission that did not include Quebec, British Columbia, or Alberta would be little more than the existing Ontario Securities Commission writ large.

Past proposals for mega-constitutional change have often begun by recommending that decentralization with respect to social programs be counterbalanced by a strengthened federal role in managing the economic union. For example, Ottawa's September 1991 constitutional reform initiative included a variety of measures aimed at strengthening the economic union.<sup>26</sup> Recent reform proposals, including Courchene's ACCESS model, begin in the same fashion. The Group of 22, for instance, notes that,

[t]o meet the global challenges of today, we need a strong economic union in which Canadians and their skills can move freely across the country in response to new opportunities in other provinces or to difficulties at home.<sup>27</sup>

In the past, however, provincial governments have been quick to endorse decentralization with respect to social programs while condemning any strengthened federal powers with respect to the economic union. Ottawa's 1991 proposals were rejected out of hand by provincial governments, and there is no rea-

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son to expect this pattern to change. The transfer of such responsibilities as labor market training to the exclusive control of the provinces makes provincial management of the economy even more important, and it is unlikely that the provinces would endorse federal government or constitutional constraints on that management. The primary test case, as always, is Quebec. If federalist forces in Quebec are unwilling to endorse strengthened federal powers with respect to national economic management, this change cannot be incorporated into an incremental national unity strategy. Since there is no indication that endorsement will be forthcoming from that group, any lack of enthusiasm by other provincial governments is beside the point.

The only proposals likely to remain in play are those that enhance the role of provincial governments in the management of the economic union. Strengthening the economic union could be achieved, for example, by building on the recent Agreement on Internal Trade (AIT). And indeed, there is considerable support for extending the AIT. Daniel Schwanen sees the AIT as a prototype for more general forms of intergovernmental collaboration, a success story to be emulated even as its economic application is strengthened.<sup>28</sup> Thus, joint management, not a strengthened federal role, is the primary feature of the incremental strategy.

It should be noted, however, that the AIT is not universally seen as a prototype to be emulated. A recent *Globe and Mail* editorial about the dispute between British Columbia and New Brunswick regarding location incentives for United Parcel Service was caustic in its assessment of the AIT:

[The dispute] illustrates again the weakness of the interprovincial trade agreement and the suspicion, indeed resentment, with which the provinces regard it. It remains vague in definition, narrow in scope and unenforceable in application....Our failure to make progress on an issue this fundamental devalues our citizenship, diminishes our nationhood and darkens our future....

The premiers have consistently fought every attempt to establish a full economic union, achieving notable success in resisting it at Charlottetown in 1992. That they cobbled together a clutch of flaccid half-measures last year and called it a victory was sadly predictable.<sup>29</sup>

The concern is that removal of interprovincial trade barriers is to be entrusted to the same governments that erected those barriers in the first place, but are now presumably driven by a different political logic. Thus, the entrails of the AIT can be read in different ways, only some of which support the AIT as a positive model for joint economic management.

Discussions of the economic union inevitably bring human capital into play. The Group of 22, for instance, stresses that the development of human capital will be essential in the twenty-first century, and therefore recommends better public schools, retraining for workers, training programs for employable Canadians on welfare, and vigorous programs aimed at enhancing employment opportunities for aboriginal peoples. Virtually all of these matters fall within the provincial field of jurisdiction, where a strong argument can be made for coordinating labor market training with provincial education and welfare services. At the same time, the Group recognizes that,

because of spillover effects, provincial governments might provide less training or education than is appropriate from the standpoint of the country as a whole.<sup>30</sup>

Here, the concern is not with precipitous reduction in provincial support, which is unlikely, but with the gradual erosion of support in those areas where spillover effects are most pronounced.

This is a classic example of a situation in which the logic of subsidiarity might call for a stronger role for the federal government in addressing spillover effects. Yet Canadians, locked in by Quebec's insistence on exclusive control over labor market training, have little alternative but to march resolutely in the opposite direction. Ensuring that Canada's posi-

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tion in the global economy remains competitive is increasingly entrusted to provincial governments, whose primary concern must be the health of their respective provincial economies, and not individual mobility across provincial boundaries.

## National Standards

All of the above feeds into the inevitable debate on national standards. As earlier constitutional debates were opened up to a wider range of participants, the protection of national standards and the role of the federal government in so doing provoked major controversy. However, in the more constrained intergovernmental environment that shapes the current debate, incremental reform proposals are pursuing a different theme: national standards need not be federal government standards. Indeed, in the more radical of the recent Courchene recommendations, the federal government would not even be involved in setting or enforcing national standards. Jim Gray, in line with the less radical of Courchene's proposals, has commented on the need to create minimum standards that would be mutually agreed on by Ottawa and the provinces. National standards unilaterally imposed by Ottawa, he argues, contribute to national disunity.<sup>31</sup>

The heart of the matter rests with who should set national standards, how restrictive they should be, and how such standards should be enforced. It is clear that Ottawa's ability to impose financial penalties is rapidly evaporating, particularly with respect to the wealthier provinces. What, then, if anything, might be substituted for such penalties? Will provincial governments willingly exchange federal government enforcement for intergovernmental enforcement? For example, would it be any less of an encroachment on Quebec sovereignty if enforcement passed from the federal government (where Quebec politicians play a dominant role) to provincial governments in Ontario and the West (where the Quebec electorate has no leverage)?

Here, some useful insight is provided by the discussions surrounding the August 1996 Premiers' Conference. In a Calgary speech delivered shortly before the Conference began, Premier Harris stressed that "national standards do not have to be federal government standards." He went on to say:

We are talking about leaving areas of provincial jurisdiction in the hands of provinces to set the standards. I think we can do a lot better than the federal government. The federal government is bankrupt. It has no dollars....It's time for provinces to step forward.<sup>32</sup>

Premier Klein also attacked federal enforcement, calling it (in politically correct fashion) "big brotherism or big sisterism at its worst."<sup>33</sup> However, the premier recoiled even from the idea of interprovincial enforcement:

I hate to use the word enforce. I don't think enforcement is a word we like to hear in Canada unless it applies to criminals. And none of us are criminals.<sup>34</sup>

Enforcement, he insisted, is simply a matter of governments' behaving themselves and playing by the rules they set. In this view, national standards or guidelines would be very loose indeed. As Robert Mason Lee concludes,

[t]here is no reason to believe the premiers are too criminal, too unpatriotic or even too dull to represent the national interest. It's just that they have no imperative to do so, being answerable only to their provinces. The whole idea is so destructive that even Lucien Bouchard liked it.<sup>35</sup>

An even softer approach to national standards is found in discussions of the Canadian political culture. Participants at the Confederation 2000 conference stated that Canadians need to foster mutual understanding and to know their own country, its history, and other Canadians better.<sup>36</sup> Participants in the March 1996 CBC television initiative 72 Hours to Remake Canada expressed a set of principles aimed at defining Canada's identity and providing the basis for the continued associa-

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tion between Quebec and the rest of Canada. David V.J. Bell writes that Canadians from the grass roots up should develop a sense of mission for their country,<sup>37</sup> and Ronald L. Watts wrote after the failure of the Charlottetown Accord that Canadians must develop a wider sense of shared values and common destiny.<sup>38</sup> The hope, then, is that the potentially disintegrative effect of decentralization will be offset by a stronger and more explicitly articulated collective vision. Common values, not the federal government, will hold interprovincial variance in social programs in check, or at least will do so for those provinces that are not culturally distinct.

## Equalization

Participants in the renewal debate generally assume that shared values will include a commitment to equalization and that decentralization is compatible with continued support for fiscal equalization. However, this latter assumption may reflect wishful thinking rather than hard-headed political analysis. Citizens' commitments to the national community may weaken as the federal government's influence on individuals' lives comes to be filtered more and more through intergovernmental agreements and forums. Political support for equalization may also weaken as a greater proportion of political space is filled by provincial programs and priorities. Increasing governmental and electoral unease are already being seen in Alberta, British Columbia, and Ontario with federal redistribution beyond the equalization formula itself. It is in this context that Saskatchewan Premier Roy Romanow described the emerging Alberta-Ontario alliance on decentralization as "elephants dancing among the chickens."<sup>39</sup>

It must be stressed that greater provincial asymmetry with respect to social programs and standards is not only the inevitable result of greater decentralization; it is the very goal of such a shift. As Courchene points out, "any notion of identical standards across all provinces is a non-starter."<sup>40</sup> Decentralization

makes sense if one recognizes that provinces are and should be significantly different with respect to social programs and economic management. Only then is federalism's potential for policy innovation and experimentation fully unleashed. Formal constitutional symmetry might be maintained in a more decentralized federation, but symmetry of result is incompatible with the logic of decentralization.

At some level, therefore, the logic of decentralization works against the logic of equalization: the former celebrates the interprovincial variation for which the latter tries to correct. While the provincial governments themselves cannot dismantle federal equalization programs, political support for those programs could erode among the federal electorates of the wealthier provinces (Alberta, British Columbia, and Ontario combined contain 59 percent of Canada's population). As "one top provincial official" quoted by Giles Gherson notes, "[t]he whole subtext of [the August 1996] premiers' conference was the rich provinces saying, 'We want to keep more of what we have; we want to keep our money at home.'"<sup>41</sup> Thus, while lip service to equalization may continue, the long-term tension between equalization and decentralization must be recognized.

## Intergovernmentalism

If Canada is to move beyond its current crisis to a renewed federation, some mechanism must aid the transition. In this respect, considerable support exists for the creation of a constituent assembly to initiate discussion on changes to the federation. Chevrier, for example, states that governments should not bear total responsibility for creating policies of renewal and that constituent assemblies would allow Canadians to express their ideas on reform.<sup>42</sup> The Canada West Foundation agrees, and supports constituent assemblies as a vehicle for directly involving Canadians in the reform process.<sup>43</sup> (The Foundation also proposes a Reconfederation Council that would operate at arm's length from the federal and provincial governments in drawing up proposals for consideration by

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both.) In a similar vein, David Kilgour promotes a constitutional convention, made up of 100 representatives from across the country, to propose a new constitution capable of winning general approval.<sup>44</sup> Allan Tupper acknowledges a new “constitutional culture” that demands citizen participation and refuses to entrust constitutional discussions to elites.<sup>45</sup>

There is, however, a basic problem with the constituent assembly route: there is no guarantee that such assemblies would be constrained by the modest objectives of incremental change. Constituent assemblies are more likely than conventional bodies such as First Ministers’ Conferences to promote fundamental or radical reform, if only because they are less dominated by incumbents. Indeed, constituent assemblies are by their very nature incompatible with, even hostile to, incremental reform. It is not surprising, therefore, to encounter proposals that seek to contain the reform process within more conventional channels. The public may have rejected intergovernmentalism in the wake of the Meech Lake and Charlottetown Accords, but faith in intergovernmentalism remains the guiding light for the incremental strategy.

This shift to intergovernmentalism is startling when one considers that “only four years ago people were saying they did not want the fate of the country left in the hands of ‘the elites’.”<sup>46</sup> Evidence of the withering of the populist impulse is provided in a recent column by Gordon Gibson, long one of the most articulate populist voices in Western Canada. On the occasion of the August 1996 Premiers’ Conference, Gibson advanced a theme that would have warmed the hearts of the architects of the Meech Lake Accord:

If Canada should be reinvented, and the forces for change say the time is now, why should the premiers be our agents? Because they are our last, best hope in this great game....

There is always another tide, and in the long run Canada will do well, be it one country or five. But there is pain in the shallows, so why not seize this tide? Say a quiet prayer for our provincial captains.<sup>47</sup>

What is particularly important to note about the stress on intergovernmentalism is the emphasis on a strengthened permanent role for intergovernmental bodies in the management of the federal state. The general direction of reform proposals is to move the control of public policy from legislative bodies to new intergovernmental institutions and their bureaucratic extensions. This approach would give provincial governments enhanced leverage over the management of national affairs, but it would also further remove that management from legislative and electoral accountability. Thus, despite the public’s distaste for the Meech Lake and Charlottetown experiences, the integrating thread of the incremental reform strategy is to be found in the (growing) reliance on intergovernmentalism.

For example, the recommendations of the Confederation 2000 conference propose using the First Ministers’ Conference to make and enforce decisions reached between federal and provincial governments. They propose cochairing these conferences and giving the prime minister or provincial co-chair the right to call a meeting at any time.<sup>48</sup> The Group of 22 would use a Council of First Ministers to establish guidelines for the federal spending power, create a clearer definition of powers and responsibilities, and manage government interdependence.<sup>49</sup> Smith proposes a permanent Council of the Federation, comprising ministerial representatives from the federal and provincial governments, that would act as a ratifying body with respect to federal legislation that might impinge on the provincial domain.<sup>50</sup> Courchene proposes a new federal-provincial agency or group of ministers who would report to the first ministers.<sup>51</sup>

This move to increased intergovernmentalism is widely portrayed as both inevitable and positive. Canada, it is sometimes suggested, lags behind other federal states in the creation of institutional mechanisms to handle mutual interdependence. Chevrier therefore suggests that a Council of First Ministers would “spearhead a renewed sense of purpose and direction, make the system more accountable and

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give Canadians a better understanding of the inner workings of their federation.”<sup>52</sup> We would argue, however, that a greater reliance on intergovernmental mechanisms would erode the role of legislative assemblies and weaken democratic accountability. The result — if not necessarily the intention — of intergovernmentalism is to remove government from public forums rather than to increase democratic participation. We would also argue, although Chevrier disagrees, that intergovernmentalism will increase the complexity of government by imposing a new layer of government forums and their attendant bureaucracies between the federal and provincial governments.

Despite such concerns, there is no question that a greater reliance on intergovernmentalism forms one of the two principal anchors for the incremental strategy. Decentralization forms the other. What is interesting to note, however, is that some tension exists between the two. If intergovernmentalism is taken too far, if it includes decision rules that can force compliance on dissenting provinces, then intergovernmentalism may constitute a new variant of centralism that could negate the policy flexibility associated with decentralization. Thus, the gains accruing to the provinces through decentralization could be lost to new intergovernmental agreements and councils. It is not surprising, therefore, that strong proponents of decentralization like Premier Klein are uneasy about having compliance mechanisms attached to intergovernmental councils or agreements. But without compliance mechanisms, intergovernmentalism may prove to be a hollow shell rather than an effective means of governance for the next century.

## Public Support

As experience has shown, a consensus among political elites and constitutional aficionados should not be confused with one that would withstand popular ratification. It is useful, therefore, to check briefly the fit between the emergent elite consensus outlined above and the disposition of public opinion. Though the

incremental strategy relies on intergovernmental mechanisms and is designed to avoid popular ratification, public opinion may still exercise some degree of constraint through conventional electoral processes.

Survey findings support the incremental strategy in a number of ways. First, they show relatively high levels of public discontent with the state of the federation, thereby demonstrating, at least implicitly, an appetite for change.<sup>53</sup> Second, they show support for the principle of decentralization, provided that decentralization is symmetrical.<sup>54</sup> Third, they show a great deal of opposition outside Quebec to the big-ticket constitutional issues — the recognition of Quebec as a distinct society, the more general recognition of duality, and a constitutional veto for Quebec.<sup>55</sup> Given this opposition, the prospects for progress beyond modest incremental change appear slight; thus, the appeal of an incremental response to the national unity crisis is increased.

The disposition of public opinion takes us back to one of the most compelling attractions of the incremental strategy: the illusion that the reform agenda is not simply Quebec’s agenda, or the agenda of Quebec federalists in that province’s protracted family dispute. As Lysiane Gagnon explains,

[a]bove all, this massive decentralization... would not be Quebec-driven. Each province would have an equal chance of acquiring more powers. There would be no cries of “Me too!”, no hostility, no Quebec-bashing.<sup>56</sup>

Thus, the current federalist agenda in Quebec, like the initial Meech Lake agenda before it, has been universalized to all provinces. Perhaps the only difference this time around is that the provincial governments, and particularly their electorates, are in a more receptive mood.

## Path Dependency on Prior Constitutional Negotiations

It should not be surprising that the incremental strategy builds on what has been accomplished in the past; this is, after all, the

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essence of incrementalism. However, current incrementalism builds on the failures of the past. Although the Meech Lake and Charlottetown Accords were unsuccessful, their content continues to shape the agenda for incremental reform. The “substance of Meech” lies at the core of many reform proposals,<sup>57</sup> and the specifics of decentralization reflect the Charlottetown Accord. In this critical respect, the incremental strategy is path dependent on past failures. Yet, while many components of past failures are faithfully carried forward, the reform strategy has changed. Mega-packages have been broken up into more bite-sized pieces, and priority is given to those changes, such as decentralization, that can be accomplished without formal constitutional change. Of perhaps greatest importance, the intrastate reform of parliamentary institutions has been largely discarded in the incremental strategy.

Quebec’s status as a distinct society with respect to federal legislation and program administration has now won parliamentary recognition, and the federal government is actively pursuing constitutional recognition. Thus, a key component of the Meech Lake and Charlottetown Accords remains in play, complicating the incremental strategy. Many supporters of incrementalism hope that extensive decentralization will suffice to preserve Canadian unity, that within a sufficiently decentralized federal state, the Quebec National Assembly will have all the powers it needs to preserve a distinct society. This view is certainly the one advanced by the western premiers. However, the federal government, the Quebec Liberal Party, and the federal Progressive Conservatives have opted for asymmetrical symbolic recognition. Success with this latter option requires that public opinion outside Quebec be finessed: only if the popular ratification of constitutional amendments can be circumvented does it stand a chance. While it is not apparent how this circumvention can be achieved, the amending process is more malleable than the framers of the Constitution Act, 1982 could ever have imagined. The Liberal government may argue that its inevitable

win in the next federal election will be a proxy endorsement of distinct society, and therefore that the western premiers should set aside their provincial requirements for democratic participation in constitutional amendment. Western premiers are already under strong federal pressure to disengage their support for constitutional change from legislative commitments to democratic participation.

Other elements of the Meech Lake Accord also live on, albeit in somewhat different forms. Perhaps because parliamentary modification of the amending formula has already secured a Quebec veto on future constitutional change, there are few advocates of a more rigorously entrenched constitutional veto. The more immediate problem is that the new amending procedures make it difficult to secure any further constitutional amendments, including the constitutional recognition of Quebec as a distinct society. As Thomas Flanagan points out, the five-region veto effectively freezes the constitutional status quo.<sup>58</sup> As a consequence, the federal government may have locked itself into a nonconstitutional strategy. In modifying the amending formula by parliamentary decree, Ottawa has left itself only the incremental card to play.

There is broad support for constraints on the federal spending power such as those embedded in the two accords. Indeed, contemporary proposals for constraints on the federal spending power go well beyond Meech. For example, the Group of 22 advocates that shared-cost programs in areas of provincial jurisdiction should be implemented only with the consent of seven provinces representing 50 percent of the population. Further, provinces should be able to opt out with fair compensation.<sup>59</sup> Participants in the Confederation 2000 conference stated that, in any new national program in areas of provincial jurisdiction, nonparticipating provinces should be entitled to unconditional compensation that “should not be contingent on the establishment of any comparable initiatives.”<sup>60</sup> The decentralizing thrust of the contemporary reform agenda carries with it the understanding that



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the federal spending power will be constrained and will not be the source of financial penalties for nonparticipating provinces.

The Meech proposal that Quebec be given greater control over immigration policy has been carried forward to the contemporary reform agenda and generalized to all provinces. A communiqué from the 1996 Western Premiers' Conference, for instance, stated that the western provinces would be willing to enter into negotiations with the federal government for greater provincial control over immigration.<sup>61</sup> Given that most proposals for decentralization entail increased provincial responsibility for training and for labor market adjustment, and given that immigration policy is an essential component of labor market adjustment, it is perhaps inevitable that immigration will shift more and more into provincial hands. Moreover, if decentralization shifts the center of gravity of citizen loyalties to provincial communities, it will only be appropriate that new Canadians are assimilated through those communities.

The Meech proposal for provincial government input into the nomination of Quebec judges to the Supreme Court of Canada opened up a much broader discussion of national political institutions, the treatment of which was expanded in the Charlottetown Accord to include Senate reform, representation in the House of Commons, and aboriginal self-government. This debate continues today; thus, for example, the Group of 22 advocates that the centerpiece of institutional reform should be the method of selection for Supreme Court justices, senators, and directors of the Bank of Canada. The prime minister, the Group suggests, should make appointments from lists of nominees prepared by the provincial governments, with the current rules on regional and provincial compositions remaining the same.<sup>62</sup> The Reform Party still proposes modernizing central institutions to allow for greater democracy in the Senate and the House of Commons, although it has backed away from full-blown Triple-E Senate reform. Informal changes to the Senate, it suggests, should be

modeled on the 1989 Alberta Senate selection process, and members of Parliament should be given greater freedom of action.<sup>63</sup> Smith proposes the popular election of senators, the constitutionalization of the Supreme Court, and the ratification of appointments to the board of the Bank of Canada by a Council of the Federation.<sup>64</sup>

However, it is hard to escape the conclusion that most of the proposals for intrastate reform have been brought forward only to prop up the central pillars of decentralization and intergovernmentalism. They are peripheral and disposable elements of the incremental strategy; moreover, they tend to generate implacable opposition in Quebec. It is inconceivable, for instance, that Quebec will buy into the West's Senate reform agenda unless decentralization proceeds so far that the federal government comes to lack any relevance to Quebec. Thus, while the institutional reform debate lingers on, the new political reality is that substantive reform apart from decentralization and its accompanying institutional apparatus is not in the cards. Even aboriginal concerns have largely fallen from the agenda as the federal government pursues an incremental approach to the implementation of aboriginal self-government and as the political leadership of the aboriginal community continues to fragment.

Following its expansion between Meech Lake and Charlottetown, the reform agenda is now in a period of contraction. While in many ways the renewal debate is path dependent on the previous (and unsuccessful) accords, much of what has been carried forward is either window dressing (rhetorical appeals to strengthen the economic union) or unattainable (the constitutional recognition of Quebec as a distinct society). The hard core of the current reform agenda is extensive symmetrical decentralization.

## **Tipping the Playing Field**

It would be foolish to presume that the outcomes of any renewal process will be inde-

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pendent of the process adopted. How Canada gets from here to there determines where “there” will be, if for no other reason than that the choice of process determines what actors and interests will be brought to the table.

For example, the reform agenda expanded considerably as the constitutional process changed between the Meech Lake Accord and the October 1992 constitutional referendum. Aboriginal peoples were not at the Meech Lake table; not surprisingly, the resulting accord did not mention their concerns and aspirations. However, aboriginal peoples were centrally involved in the negotiations leading up to the Charlottetown Accord; again not surprisingly, their concerns and aspirations were woven into virtually every section of that accord. Thus, as Canada moved from the initial first-ministerial endorsement of the Meech Lake Accord to the national referendum on the Charlottetown Accord, the number of constitutional players expanded progressively and dramatically. The mythical “11 white men in suits” gave way to the almost 15 million Canadians who voted in the 1992 referendum. And the expansion was not just in numbers. As the concerns of first ministers began to be supplemented by those of aboriginal leaders, interest groups, and public forums, the constitutional agenda grew and became increasingly complex.

Incrementalism is designed to roll back the 1987–92 expansion and to limit the range of interests and players engaged in the renewal process. An incremental renewal strategy is first and foremost an intergovernmental strategy that removes debate from public forums and lodges it within intergovernmental forums such as premiers’ conferences. Such a strategy maximizes the influence of governments and minimizes the influence of nongovernmental players and interests. It also maximizes the influence of provincial and territorial governments, given their numerical dominance within the intergovernmental process. Thus incrementalism tips the playing field in favor of solutions based on decentralization and “rebalancing.” A process in which provincial governments debate how best to counter the

nationalist movement in Quebec could have no other outcome. To argue for incremental change is to argue for decentralization; to choose this process is also to choose its inevitable outcome.

Now, this conclusion may appear to give the provinces too much weight in the intergovernmental process and to assume that all provinces share an interest in greater decentralization. In the past, the federal government has been the major player in the intergovernmental process, and the Constitution Act, 1982 offers ample proof that neither the provinces nor decentralization will necessarily carry the day. In the current environment, however, the federal government is not prepared to defend the center. Driven by fiscal constraints and by the need to provide a credible alternative to the nationalist vision in Quebec, and egged on by the business community (which assumes that decentralized government is necessarily smaller government), Ottawa is unlikely to apply the brakes to decentralization. It may do so further down the road if deficit-elimination targets are met and the sovereigntist threat recedes; but in the near term, the imperatives of a Quebec-driven national unity strategy offer little room in which to maneuver.

But will provincial governments that question the need for greater decentralization be able to provide an effective brake? If the federal government, Quebec, Ontario, Alberta, and British Columbia now support decentralization, will Manitoba, Saskatchewan, and the Atlantic provinces be able to argue effectively in intergovernmental forums for some restraint? While this possibility should not be dismissed out of hand, its prospects are remote.

Much of the past resistance to decentralization came from those provinces (with the notable exception of Quebec) that have been beneficiaries of equalization, and particularly of equalization that is indirectly derived from federal fiscal support for social programs. It was feared that decentralization would undercut the commitment of taxpayers in wealthier provinces to sustaining an equivalent level of public services in less well-to-do provinces. As noted above, this fear has not been laid to rest

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by the proponents of decentralization. The logic of decentralization requires weakening the constraints of national programs and emphasizing the importance of provincial communities at the expense of the national community. To suggest, then, that political support for equalization would not be threatened by decentralization is Pollyannish. If Canada becomes less relevant to the economic and social lives of taxpayers in Alberta, British Columbia, and Ontario, if the locus of political life shifts more to the provinces, political support will be eroded. Though the spirit of decentralization will not redefine equalization as foreign aid, and equalization will not disappear as a feature of the Canadian federal state, current levels of equalization will be difficult to maintain. The issue, then, is whether an intergovernmental reform strategy will provide an effective opportunity for the supporters of equalization to make their case. While the outcome of the August 1996 Premiers' Conference shows that the decentralization juggernaut can be slowed, it is not at all clear that it can be stopped.

Of course, it is still an open question whether a governmental strategy yoked to decentralization and intergovernmentalism will be successful. Success requires that the public be supportive of decentralization and deferential with respect to intergovernmentalism. While support for decentralization appears to be in place, deference toward intergovernmentalism cannot be assumed.<sup>65</sup> Success also depends on a limited reform agenda: the more limited the agenda, the less likely governments are to encounter demands for public input. Finally, it is essential to avoid the need for formal constitutional change; any move in that direction would be met, at least in the western provinces, with the demand for public hearings and popular ratification. If public participation cannot be shut down, then the incremental strategy itself may fail. All these requirements suggest real limits on incremental change, for curtailing public involvement will be difficult if major institutional or constitutional change is envisioned.

A potential wild card in the incremental deck is the upcoming federal election, in which the national unity issue may play a significant role. Even if that proves to be the case, however, alternatives to government-driven decentralization are unlikely to be brought into play. The Liberals, the Bloc Québécois, and the Progressive Conservatives will be battling for the soft nationalist vote in Quebec; therefore, the competing partisan visions will be sovereignty on the one hand and a combination of decentralization and constitutional recognition on the other. Outside Quebec, the three primary contenders all share a core commitment to decentralization. Only the New Democratic Party provides a potential alternative for Canadians who are wary of decentralization, but there is little indication at this time that the NDP will be a significant factor. If the current incremental strategy tips the playing field to the advantage of decentralization and intergovernmentalism, the upcoming federal election is unlikely to provide any adjustment.

### **Limits on Incremental Reform**

An assessment of the incremental strategy must determine what the strategy's limits might be. Are there reforms that cannot be achieved incrementally? And are there normative limits that should be imposed on the incremental strategy? Should popular ratification be brought into play at some point in the renewal of the Canadian federal state?

### **The Empirical Question**

As noted above, proposals for fundamental change are still to be found in the contemporary renewal debate. But can fundamental change be realized incrementally? The answer to that question is to be found in the avoidance of formal constitutional change — an avoidance that lies at the heart of the incremental strategy. If constitutional change is to be avoided, the symbolic recognition of duality cannot be woven into Canada's Constitution. If constitutional change is to be avoided, the

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types of institutional reform western Canadians traditionally advocate cannot be realized. Neither can the constitutional recognition of the right to aboriginal self-government be achieved. Put somewhat differently, incrementalism assumes that all parties will be satisfied in the short run with changes to the practice of Canadian federalism and that changes to the institutions, the Constitution, and symbolic projections are of secondary concern.

The limitations of an incremental strategy can be illustrated by the issue of Senate reform. If Canadians reject the possibility of fundamental institutional reform — reform that would necessitate formal constitutional amendment — can the Senate still be reformed through incremental measures? In part, Alberta's Senatorial Selection Act, which called for the public approval of any senatorial nominations, was an attempt to do so. Under the act, senators would still be appointed by the federal government, for to do otherwise would require formal constitutional change and was therefore beyond the reach of the Alberta legislature, but the act sought to ensure that future appointees would first have to be successful in a province-wide election.

The Alberta initiative tried to set Senate reform in motion, but it raised a host of problems. The elected or "selected" senators would be in office until age 75 and would not, under the terms of the Alberta legislation, be subject to re-election or recall. Of greater importance, the Alberta legislation was designed to put into place an elected Senate without changing either the regional allocation of seats or the Senate's formal powers. Whether Albertans or Canadians at large would be well served by having elected senators who operate within the existing institutional environment was not clear.

This illustration shows how difficult it can be to reform institutions one step at a time. If senators are to be elected, the powers of the Senate and its relationship with the House of Commons become very important. If the power of senators and the role of the Senate are to change, as they inevitably would if senators were elected, the regional distribution of seats

would also have to be reassessed. In short, incremental change to the Senate is difficult if not impossible to achieve; the various aspects of Senate reform must be considered as a package. While the Group of 22 suggests that incremental change, such as appointing senators from provincial lists, might destabilize the Senate over the long run and thus foster more fundamental change,<sup>66</sup> there is no evidence that anyone is prepared to start this particular ball rolling. The prime minister, for example, has ignored the existing Alberta legislation in recent appointments, and it is unlikely that any Quebec-based prime minister would initiate Senate reform in the face of inevitable nationalist opposition from his or her own province.

Adopting an incremental approach to the renewal of the federation effectively precludes Senate reform. It is, therefore, a strategic choice with significant implications. In this case it means that the long-standing, if not always intensely expressed, western Canadian desire for institutional reform is a nonstarter. The incremental approach is inherently hostile to traditional western Canadian aspirations unless those aspirations can be folded into decentralization.

But here is the nub of the issue: extensive decentralization may well preclude the need for institutional reforms such as Senate reform. The quest for more effective regional representation within parliamentary institutions is important only so long as those institutions themselves are important. However, if they become less important as a consequence of decentralization, the quality of regional representation also becomes less important. Moreover, if the federal government eschews unilateral action in such areas as social policy, environmental protection, and national economic management, and instead opts for joint federal-provincial management, then MPs and senators become less relevant. The important forms of regional representation will be inter-governmental. In a federal system designed to reflect a decentralized intergovernmental partnership, regional representation at the center

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fades as an issue. The critical issues of institutional design become, first, the decision rules that govern intergovernmental agreements and, second, the extent to which those rules reflect the competing principles of duality, provincial equality, and representation by population.

The incremental strategy, then, does not fail to meet long-standing western Canadian aspirations; instead, it rechannels those aspirations through decentralization. The traditional western vision of effective regional representation within a strong national government is displaced by a vision of strong provincial governments competing effectively with other provincial governments in loosely structured intergovernmental alliances. The key players are the western premiers and their executives. As MPs and senators drift even more toward the margins of regional political life, how well or how poorly they perform will become less and less of an issue. This new western vision certainly enjoys governmental support, and public support may also be in place.

The same logic can be applied to nationalist aspirations in Quebec, for at some point decentralization shades into the de facto recognition of Quebec sovereignty. The less Ottawa does and the more it acts with provincial consent, the more sovereignty passes to the provinces. Though this approach does not provide the symbolic recognition of duality that the distinct society clause would provide, it does provide instrumental recognition. The practical issues, then, are: How far must decentralization be pushed in order to draw Quebec nationalists back into the Canadian fold? And what will remain of the Canadian fold when decentralization has been pushed to that point? Also at issue is the willingness of Quebec nationalists, particularly those within the provincial Liberal Party, to trade off symbolic recognition for decentralized powers.

There is an interesting irony here. To the extent that decentralization and intergovernmentalism dominate the new federal state, Quebec may drop its traditional opposition to Senate reform. However, for the same reasons

that would cause Quebec to drop its opposition, Senate reform would be irrelevant to the West. Quebec has nothing to fear, and the West nothing to gain, from a reformed Senate in a federal state characterized by extensive decentralization and intergovernmentalism.

The basic point is that decentralization is an alternative to, not a facilitator of, institutional and constitutional reform. Such issues as Quebec's constitutional recognition as a distinct society or Senate reform will remain in play only if the country's embrace of decentralization is halfhearted. Those who oppose decentralization are thus trapped in their own box: they will have to tackle both the recognition of duality, which cannot be sold in the West, and the reform of central institutions, for which a significant Quebec audience cannot be found. It is little wonder, then, that the incremental strategy exerts such strong appeal.

Many Canadians would argue that they have been well served either by the status quo or by slow evolutionary change. The fact that incrementalism constrains change may thus be seen as a plus rather than as a minus. Not surprisingly, incrementalism is the preferred strategy of incumbent governments, sitting politicians, and the business community that has played an influential role in national political life. In the context of Alan Cairns's distinction between constitutional insiders and outsiders,<sup>67</sup> incrementalism is emphatically an insider strategy.

## The Normative Question

The normative question relates to the degree to which the nature of the Canadian federal state should be changed without public consultation, debate, and ratification. Here we return to an earlier point: an important feature of the incremental strategy is that it precludes public consultation, debate, and ratification. The incrementalists' goal is to use conventional political means to bridge divisions in the federation, to allow Canada to move forward while still accommodating Canadians' diverse views about their federation. Proponents of

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this approach argue that subjecting incremental changes to a national referendum, or insisting on immediate formal constitutional change, may further divide rather than renew Canada. In this context, Peter Russell subtitled his recent book (*Constitutional Odyssey*) “Can Canadians Become a Sovereign People?”<sup>68</sup> The answer, it seems, is no, or at least not so long as Canada relies on incremental change lodged within intergovernmental forums and processes.

If the incremental strategy does privilege particular outcomes, it may be appropriate to allow Canadians to express their views about such outcomes. If incrementalism is a process that leads to an identifiable end point, Canadians should be able to pass judgment on that end point. But the incremental nature of reform may be used as an excuse to avoid public debate or ratification. Any one reform will seem too minor to submit to a national referendum. Yet the accumulated changes favored by the incremental strategy will transform Canada into a very different political community. Perhaps, then, this new community should be identified and held up for public debate, not simply imposed one small step at a time.

Here we suspect that western Canadian governments and their electorates will play a critical role. There is little appetite in Ottawa for national referendums, and in any event the recent changes to the amending formula delegate parliamentary approval to provincial legislatures.<sup>69</sup> Quebec has been emphatically democratic in its approach to constitutional decisionmaking, but only with respect to the provincial community. Nowhere but in the West does one find a legislative commitment to popular ratification of constitutional amendment. This commitment may bring the public back into play, although only in the West — and only if formal changes to the Constitution are proposed. Incremental change brought about through intergovernmental negotiation and agreement is still possible without public involvement. There is, then, no guarantee that the public will be brought back into an increasingly intergovernmental renewal process.

## The Sequence of Reform

The queuing of steps has long been an important issue in Canadian constitutional politics, and it remains so within the context of the incremental strategy. The sequence of steps envisioned by the proponents of incrementalism may turn out to be much shorter than is often suggested. As each step is taken, the incentives for taking additional steps are reduced for those whose interests have been addressed. Western Canadians, for example, recognize that a strategy for addressing Quebec’s concerns first and their concerns second is a strategy for addressing Quebec’s concerns alone. Once Quebec’s concerns had been addressed, Quebecers would have no incentive to address western aspirations; indeed, the first stage of reform might give the Quebec government additional means by which to block those aspirations. (This has already happened with the recent creation of regional vetoes; the only intrastate reforms that can be pursued are those that can pass muster with the Quebec National Assembly.) Therefore, a strategy involving incremental steps may turn out to produce a very short dance. For western Canadians or aboriginal peoples to accept an incremental strategy would be a fool’s game unless it were conceded from the outset that only those reforms consistent with political opinion in Quebec would be pursued.

In short, the incremental strategy provides an effective veto to the party whose interests are addressed first. Incrementalism is a means of redistributing political power so that those at the start of the sequence have the most power, while those at the end have the least. It is not surprising, therefore, that everyone wants to be first. Incrementalism is not a neutral strategy with respect to the distribution of spoils — to pretend otherwise is to misread the political dynamics of renewal. In a similar vein, it would be a mistake to assume, when assessing the first steps, that later steps will follow. The more realistic question to ask is whether Canadians will be better off if just the first step — in this case, extensive decentralization cast within a framework of intergov-

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ernmentalism — is taken. To assume that subsequent steps will necessarily follow would be risky indeed.

The pace of incremental reform will ultimately depend on the federal government; the provinces can urge, but only Ottawa can act. Under most circumstances, one would not expect the federal government to be in any rush to hand over program responsibility to the provinces and to accept provincial constraints on its own authority. However, there is nothing normal about Canada's current circumstances. The electoral strength of the Parti Québécois and continuing public support for the sovereignty option provide great leverage for proponents of decentralization inside and outside Quebec. The alliance of soft nationalists in Quebec with the Ontario and Alberta governments will be difficult for the federal government to resist, even if it were inclined to do so. Unfortunately, there is little evidence that the federal government either wants to resist or has arguments in place on which resistance might be based. Apart from a rhetorical and largely empty (at least financially) commitment to medicare, the federal government has left itself no principled ground on which to stand.

### **Incremental Change and the New Canadian Vision**

The incremental strategy is more than a series of small, disjointed steps. Embedded within the strategy lies a new vision of Canada that has been pulled into focus by the Ontario government and the report prepared for that government by Courchene. The report recommends that the provinces assume sole responsibility for designing and delivering health, welfare, and education services, including the enforcement of national standards in those spheres. It also calls for a new intergovernmental partnership, one that would give provincial governments greater leverage on those responsibilities left in Ottawa's hands. In this vision, Ottawa's powers would be substantially curtailed and the federal government

would be placed under the watchful eyes of its provincial counterparts. Finally, the new vision is symmetrical in design, recognizing the constitutional equality of the provinces, but asymmetrical in result. Differences among provinces will increase and, incrementalists hope, Quebec will find enough flexibility and political space to defuse the quest for full sovereignty.

The combination of decentralization and intergovernmental partnership that is so central to this vision has interesting implications for democratic government. On the one hand, it would bring government "closer to the people." (Provincial and federal governments may in fact differ less in how close they are to the people and more in which people they are close to.) It would also simplify the complex financial arrangements of Canadian federalism, which at present weaken democratic accountability. However, being "close to the people" can be a mixed blessing. As democratic experience from the founding of the United States onward has shown, governments that are close to the people are sometimes (but not always) less attentive to human rights and more attentive to localized economic interests than are governments that remain more remote from the people. For this reason, Canada has opted for a judicial system that is remote from the people; judges are not elected but are instead appointed without definite term.

On the other hand, the combination of decentralization and intergovernmentalism would shrink the range of accountable, democratic government at the federal level. Decentralization would mean not only that Ottawa would do less, but also that what it would do would be accomplished through intergovernmental forums placed largely beyond the reach of electoral accountability. How, for example, could federal MPs be held accountable for programs and policies that were the product of intergovernmental agreements and that were policed through intergovernmental forums? And for the same reasons, how could provincial governments be held responsible or accountable? National programs or standards

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entrusted to intergovernmental management would be beyond the control of any one provincial government — unless, as Premier Klein envisions, such management had no powers of enforcement beyond moral suasion.

Extensive decentralization divorced from intergovernmentalism, decentralization that vests program control solely in individual provincial governments, has the virtue of retaining accountability. Indeed, the strict division of powers that accompanies extensive decentralization reinforces accountability by disentangling the two orders of government and by limiting the intrusion of the national government into provincial affairs.<sup>70</sup> Responsibility may shift from Parliament to provincial legislatures, but it need be neither lost nor diluted in the process. However, the marriage of decentralization and intergovernmentalism is a retreat from open democratic government. It moves political power behind the closed doors of intergovernmental forums: elected assemblies do less, and the executive arm of government does more. In this case, the promise of “bringing government closer to the people” is illusory, for the conduct of government comes to reside in those forums most removed from democratic participation and accountability. Thus, the most striking feature of the new vision of Canada embedded within the incremental strategy is its promotion of intergovernmentalism and its aversion to open legislative government. The new vision is a direct refutation of the populist impulse in Canadian politics.

But is this really a new vision? Certainly the call for greater decentralization is not new, and a heavy reliance on executive federalism has been characteristic of the Canadian federal state for at least a generation. Nor, for that matter, is the retreat from democratic responsibility new; one could argue that support for executive federalism and suspicion toward legislative politics are deeply embedded within Canadian political culture, or at least within the elite culture. The vision is new, however, in a number of respects.

First, the groups that opposed decentralization in the past have drifted to the wings of the political stage. The New Democrats lack a significant federal presence; the Reform Party has picked up the torch of decentralization just as it has all but abandoned the quest for institutional reform; and both the federal Liberals and the federal Progressive Conservatives are committed to a Quebec platform premised on decentralization. As Jeffrey Simpson observes, “the perceived need to buy off secession with a transfer of power animates all federal political parties to varying degrees.”<sup>71</sup> As a consequence, there is no partisan voice left to speak for the center, and thus the center may not hold. The healthy tension Canada experienced in the past between centrifugal and centripetal forces has been lost in the battle for soft nationalist support in Quebec. Ironically, the most powerful voices one hears for the center today are those of the proponents of intergovernmentalism, who, in their own fashion, seek to strengthen the role played by central institutions, albeit intergovernmental institutions, in designing and implementing public policy.

Second, this vision reduces the role of the federal government to the point where it represents a qualitative change. Clearly, in the recommendations examined so far, the proponents of decentralization are not arguing that the federal government should become merely a headwaiter overseeing the work of the provincial premiers. But equally clearly, they are arguing that the federal government should have a reduced capacity for autonomous action. Ottawa, they maintain, should act in partnership with, or with the consent of, provincial governments. Few, unfortunately, offer clear suggestions on how to set up a workable process for determining whether or not provincial consent exists. If Canadians move to address this question, the issues of duality, provincial equality, and distinct society will undoubtedly rear their (not necessarily ugly) heads again. Nonetheless, a federal government capable of only limited autonomous action is clearly an essential part of the new vision. In



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the blunt words of the Group of 22 report, “partnership means an end to unilateralism.”<sup>72</sup>

These new federal arrangements would make Canadian government more, rather than less, cumbersome and complex. The federal and provincial governments would remain in place, albeit weakened in the former case and strengthened in the latter. However, a new layer of intergovernmental institutions and agreements would be added, along with the extensive bureaucracies that these additions would spawn. Councils of ministers would be wedged between the federal and provincial governments, accountable to neither but charged with designing public policy. If decentralization is combined with intergovernmentalism to police national standards and constrain the federal government, the size and complexity of government will increase in lockstep.

This chain of reasoning takes us back to the incrementalists’ emphasis on intergovernmentalism. While this approach is by no means a new feature of the Canadian federal state, it is being taken to new extremes by the proponents of incremental change and of the federal vision embedded within that strategy. They maintain that the consent needed by the federal government to act is not consent from the people, expressed through elected MPs, but rather merely the consent of provincial governments. If their strategy were to succeed, the operation of the federal government in Ottawa would boil down to a series of intergovernmental agreements. Elected federal politicians would still provide a negotiating mandate for representatives of the federal government, but the design and implementation of public policy would be the product of intergovernmental processes that were beyond the control of Parliament alone — and, for that matter, beyond the control of any single government. The insightful term used by Robert Mason Lee to describe this new approach is “executive provincialism.”<sup>73</sup> Not incidentally, this model of government is compatible with the partnership model being advanced by nationalists in Quebec.

Third, the vision is also new in, or at least is given a new gloss by, being linked to globalization. Incrementalists argue — indeed, they assume — that the federal state must be decentralized if Canadians are to be competitive in the new global economy.<sup>74</sup> Curiously, however, Canada’s major economic competitors have not embarked on extensive decentralization. In fact, economic success seems to be coupled with relatively strong national governments (albeit governments that themselves are constrained by new global realities) and with relatively centralized federations. Decentralization may be better designed to improve the provinces’ position, rather than that of Canada, on the global stage. Thus, the new vision of Canada is one in which provinces increasingly go head to head in economic competition with international trading blocs or the massive economies of the United States, Japan, and China. As Simpson notes, however, there is an irony in this drive to decentralization:

It responds to a growing sense that people are losing control of their lives in the face of far-away government and impersonal corporations, and it demands more control for weaker provincial and state governments that in most cases are less capable of influencing the very outside forces people dislike.<sup>75</sup>

In some respects the new vision would result in Quebec’s becoming increasingly uncoupled from the rest of Canada; the province’s remaining links would run not through Parliament but through intergovernmental agreements with other provincial governments and perhaps, although not necessarily, with the federal government. In the latest Courchene model, for instance, the federal government would fade from the scene, and Quebec’s intergovernmental ties with other provinces — and indeed the ties among those other provinces — would not differ in character from agreements among and between sovereign states. Simply put, the new vision would transfer effective sovereignty from Parliament, or from Parliament and the provincial legislatures combined, to the provinces alone. Thus,

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the incrementalists' solution to Canada's unity crisis is similar to that advanced by the nationalist movement in Quebec: both seek to remove any independent role for Parliament in the lives of Canadians. Ironically, the same strategy that is advanced by the former to save Canada is advanced by the latter to create an independent Quebec.

The catch for the nationalists, however, comes from the potential impact of the new provincialism on provincial sovereignty. If provincial sovereignty were recaptured from the federal government and then surrendered again to intergovernmental councils, Quebec nationalists would not necessarily be any further ahead. They might in fact lose ground unless intergovernmentalism were to provide for a distinct decisionmaking status for Quebec, something that does not seem to be in the cards. Hence the irony: the decentralization designed to keep Quebec in Canada could produce an intergovernmental morass within which Quebec sovereignty would be more fully compromised than ever.

## Conclusions

The heavy reliance on intergovernmentalism found in the federal vision that is embedded within the incremental strategy is not alien to Canadian political practice. Furthermore, the incremental strategy's symmetrical approach and its avoidance of formal constitutional change will appeal to many Canadians and to their governments. It must also be kept in mind, as the proponents of decentralization are quick to point out, that national standards and the internal common market might be sustained through interprovincial cooperation: intergovernmentalism might replace the heavy hand of Ottawa. While this latter scenario must be seen not as a conclusion well anchored in Canadian political experience but as an article of faith, it is not an unreasonable one.

For the reasons outlined in this Commentary, the incremental strategy may be the only game in town — particularly so long as

- the reform debate remains a relatively muted concern of governments that is not subjected to wide-ranging public scrutiny; and
- the debate remains directed toward the next referendum in Quebec and is therefore tightly constrained by the options palatable to federalist forces in Quebec.

Nonetheless, or perhaps as a consequence, a number of important questions should be addressed before Canadians fully embrace the incremental strategy and its twin pillars, decentralization and intergovernmentalism.

First, does the incremental strategy offer a stable solution with respect to Quebec, one that takes Canada past the upcoming federal election and even past the next sovereignty referendum? Can symmetrical decentralization go far enough to derail the sovereignty movement? More important, can intergovernmentalism be structured in a way that provides effective political space for Quebec sovereignty? If the answer to any of these questions is no, Canada may not be heading for a stable situation. If the incremental strategy does not offer some reasonable assurance of keeping Quebec in Canada, its outcomes must be assessed on another criterion: as an appropriate blueprint for a Canada without Quebec. Failure to assess decentralization and intergovernmentalism against this criterion would leave the rest of Canada ill-prepared should Quebec nationalists decide that they are not prepared to submerge their province in new intergovernmental forums within which they might exercise less influence than they do in Parliament today.

Second, can the combination of decentralization and intergovernmentalism sustain citizenship ties between individual Canadians and their federal government? If such ties are increasingly mediated through intergovernmental forums and agreements, with federal representatives exercising less autonomous and accountable political authority, will Canadians come to see the federal government and the national community for which it speaks as

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less relevant for their lives? In that case, will there also be a weakening of citizen support for the principle of equalization, for the protection of mobility rights, or for the reduction of interprovincial trade barriers?

Third, does the combination of decentralization and intergovernmentalism produce a significant democratic deficit? Does it move decisionmaking to those forums least open to public participation, thereby diluting electoral accountability with forums that answer to no single electorate? If the answer to each of these questions is yes, it might be wise to consider the advantages of decentralization without the encumbrances of intergovernmentalism. Maybe Premier Klein is right in arguing that decentralization should mean provincial control without the imposition of national standards. While this option would inevitably produce greater regional diversity, it would also maintain electoral accountability. If the destination of decentralization is government that is closer to the people, intergovernmentalism may be the wrong route to follow. A large dose of intergovernmentalism may be inevitable and essential in complex federal states, but intergovernmentalism must also be recognized as a new form of centralism that could potentially reduce democratic control while negating many of the advantages of decentralization.

Fourth, will the incremental strategy preclude rather than establish the preconditions for significant constitutional and institutional reform? If so, will the Canadian federal state be well equipped to handle the political challenges of the next century? The incremental strategy is likely to be an alternative to rather than a step toward intrastate reform. However, to assume that parliamentary institutions should remain untouched, that all Canada needs to do is impose an additional layer of intergovernmental institutions between the federal and provincial governments, seems unimaginative and premature.

Fifth, can a way be found to bring Canadians back into a renewal debate that is cast in incrementalist terms? If the renewal debate withdraws once again behind closed doors, if

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it becomes the fodder for intergovernmental discussions rather than public debate, there is some risk that the final product will face public repudiation should Canadians find the opportunity to express themselves.

Finally, will the incremental strategy enhance the political union? The answer to this last question depends on how one positions oneself on the contemporary political landscape. In many respects, incrementalism will reinforce more than threaten the status quo. It builds on constitutional principles rejected by the Canadian public but embraced as dogma by political elites; it enhances the influence of governments at the expense of citizens; and it retains federalist support in Quebec as the criterion against which the health of the Canadian political community is to be assessed. Some will equate these effects with enhancing the political union. However, those whose primary political identity is not to be

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found in provincial communities, who seek greater citizen leverage on Canada's constitutional evolution, and who desire to transcend rather than consolidate duality may be excused a good measure of skepticism. As in most situations, where one stands on incrementalism depends on where, and how comfortably, one sits.

None of this is to say that the products of the incremental strategy — decentralization

and intergovernmentalism — are ill conceived or necessarily pernicious in their effects. Indeed, they may simply be inevitable. Nonetheless, the questions posed above should be addressed before Canada moves too far and too quickly down the incremental path. Incrementalism is more than a process. It is also a destination that must be held up to careful public debate before Canada has gone too far down the path to change direction.

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## Notes

- 1 In a poll of 1,001 Quebec voters conducted by Groupe Léger & Léger between September 20 and 29, 1996, 49.4 percent of decided voters said they would vote "yes" in a referendum on sovereignty, while 50.6 percent would vote "no" (Richard Mackie, "Quebecers want votes delayed," *Globe and Mail* [Toronto], October 4, 1996, p. A1).
- 2 Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 2nd ed. (Toronto: University of Toronto Press, 1993).
- 3 This lack of confidence was symbolized at the June 1996 First Ministers' Conference by Alberta Premier Ralph Klein's refusal to address constitutional matters behind closed doors. Klein's resolve on this point was not severely tested, but there is little doubt that his refusal captured the public mood.
- 4 "Disunity train," *Calgary Herald*, August 23, 1996, p. A16.
- 5 Peter Leslie has aptly called this constitutional change "by stealth."
- 6 John Halstead, "A Vision for Canada," *Opinion* (Council for Canadian Unity) 4 (April 1996): 5.
- 7 Group of 22, *Making Canada Work Better* ([Toronto], May 1, 1996), p. 19.
- 8 "A case for the Constitution Act, 1867," *Globe and Mail* (Toronto), August 20, 1996, p. A16.
- 9 The combination of provincial legislation and parliamentary modifications to the amending formula means that any attempt to constitutionally recognize Quebec as a distinct society must pass a provincial referendum in both Alberta and British Columbia; the 7/50 formula no longer applies. Referendums in the two western provinces are not in the cards.
- 10 *Confederation 2000, Today and Tomorrow: An Agenda for Action* (May 3-4, 1996), p. 6.
- 11 Jean Chevrier, "What Commissions and Task Forces Have Said about Renewing Canada," *The New Federation* 5 (July/August 1996): 13.
- 12 Thomas Courchene, for example, has proposed that concurrent powers be associated with provincial paramountcy (*In Praise of Renewed Federalism, The Canada Round 2* [Toronto: C.D. Howe Institute, 1991], p. 89).
- 13 Reform Party of Canada, *Twenty Proposals for a New Confederation* (Calgary: Reform Party of Canada, 1996), p. 10.
- 14 Thomas J. Courchene, *ACCESS: A Convention on the Canadian Economic and Social Systems* (working paper prepared for the Ontario Ministry of Intergovernmental Affairs, August 1996), p. 18.
- 15 Quebec Premier Lucien Bouchard refused to participate in any such federal-provincial discussions, arguing that to do so "would be a formal recognition by Quebec that the federal government is entitled to step in our jurisdiction on social programs" (Larry Johnsruide, "Premiers will work with feds," *Calgary Herald*, August 23, 1996, p. A1).
- 16 Courchene, *ACCESS*.
- 17 Edward Greenspon, "Take charge, provinces urged," *Globe and Mail* (Toronto), August 21, 1996, p. A3.
- 18 Melvin H. Smith, *The Renewal of the Federation: A British Columbia Perspective* (Victoria, May 1991), p. 93.
- 19 There is a close parallel here with recent changes in the amending formula; there is no need for formal constitutional amendment so long as Parliament commits itself not to act without specified forms of provincial consent.
- 20 John Richards, *Language Matters: Ensuring That the Sugar Not Dissolve in the Coffee*, C.D. Howe Institute Commentary 84 (Toronto: C.D. Howe Institute, October 1996).
- 21 Group of 22, *Making Canada Work Better*, p. 5.
- 22 Reform Party, *Twenty Proposals*, p. 6.
- 23 Barrie McKenna and Alan Freeman, "Eight premiers endorse national securities commission," *Globe and Mail* (Toronto), June 22, 1996, p. B4.
- 24 Ashley Geddes, "ASE opposes national watchdog," *Calgary Herald*, August 21, 1996, p. C1. The same article quotes Alberta Treasurer Jim Dinning as having said that a national commission that was not "very, very responsive" to the needs of the Alberta market would be a "non-starter."
- 25 Geddes, "ASE opposes national watchdog," p. C8.
- 26 Canada, *Shaping Canada's Future Together: Proposals* (Ottawa: Supply and Services Canada, 1991), pp. 43-44.
- 27 Group of 22, *Making Canada Work Better*, p. 4. Internal barriers to trade continue to be identified as a problem.
- 28 Daniel Schwanen, *Drawing on Our Inner Strength: Canada's Economic Citizenship in an Era of Evolving Federalism*, C.D. Howe Commentary 82 (Toronto: C.D. Howe Institute, June 1996).
- 29 "Toward a true economic union," *Globe and Mail* (Toronto), September 21, 1996, p. D6. Recent journalistic commentary on the AIT has been even less flattering. Andrew Coyne refers to it as a "collective passing of wind in the direction of economic union that depends first, last and always on the goodwill of the selfsame governments that got us into this mess" ("Provincial barriers destroy Canadian nationhood," *Calgary Herald*, September 19, 1996, p. A15). Giles Gherson observes that "a ridiculously tortuous set of federally supervised interprovincial negotiations" produced an agreement "riddled with loopholes, exemptions and exclusions" ("It's harder to sell goods to Manitoba than Montana," *Calgary Herald*, September 13, 1996, p. A15).
- 30 Group of 22, *Making Canada Work Better*, p. 18.
- 31 Canada West Foundation, *Realizing Change '96-'97* (Calgary: Canada West Foundation, 1996), p. 4.

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- 32 Claire Hoy, "Hand social programs to provinces," *Calgary Herald*, August 26, 1996, p. A8.
- 33 Edward Greenspon and Brian Laghi, "Harris, Klein shake up federation," *Globe and Mail* (Toronto), August 24, 1996, p. A4.
- 34 Robert Mason Lee, "The plan to replace Momma Ottawa with executive provincialism," *Globe and Mail* (Toronto), August 24, 1996, p. D2.
- 35 *Ibid.*
- 36 *Confederation 2000, Today and Tomorrow*, p. 16.
- 37 David V.J. Bell, "Remaking Canada: The Role of the People," *Canada Watch* 4 (April/May 1996): 82-83.
- 38 Ronald L. Watts, "Canada in Question, Again," *Queen's Quarterly* 99 (Winter 1992): 804.
- 39 Don Martin, "Ontario report derails unity hopes," *Calgary Herald*, August 11, 1996, p. A12.
- 40 Courchene, *ACCESS*, p. 5.
- 41 Giles Gherson, "Canada drifts toward balkanization," *Calgary Herald*, September 25, 1996, p. A14.
- 42 Chevrier, "What Commissions and Task Forces Have Said," p. 14.
- 43 Canada West Foundation, *Realizing Change*, p. 3.
- 44 David Kilgour, *Quebec Nationalism, Western Alienation and National Reconciliation, Occasional Paper 7* (Plattsburgh, NY: State University of New York, Center for the Study of Canada, March 1996), p. 6.
- 45 Allan Tupper, "Reflections on the 1995 Quebec Referendum: Problems and Possibilities," *Constitutional Forum* 7 (Winter-Spring 1996): 30-32.
- 46 Mark Lisac, "Nation heads for decentralization," *Calgary Herald*, June 21, 1996, p. A18.
- 47 Gordon Gibson, "Memo to the premiers: seize the day," *Globe and Mail* (Toronto), August 20, 1996, p. A17.
- 48 *Confederation 2000, Today and Tomorrow*, pp. 12-13.
- 49 Group of 22, *Making Canada Work Better*, p. 15.
- 50 Smith, *Renewal*, pp. 88-89.
- 51 Courchene, *ACCESS*, p. 13.
- 52 Chevrier, "What Commissions and Task Forces Have Said," p. 13.
- 53 R. Gary Edwards and Jon Hughes, "Increased Dissatisfaction with Direction of Country," *The Gallup Poll* 56 (April 11, 1996): 1. Results based on 1,005 telephone interviews.
- 54 R. Gary Edwards and Jon Hughes, "Citizens Queried on the Fundamental Nature of Canadian Union," *The Gallup Poll* 55 (November 30, 1995): 1.
- 55 R. Gary Edwards and Jon Hughes, "Canadians Weigh Constitutional Options," *The Gallup Poll* 55 (November 27, 1995): 1.
- 56 Lysiane Gagnon, "Courchene plan crumbled before the unity train arrived in Jasper," *Globe and Mail* (Toronto), August 24, 1996, p. D3.
- 57 For example, see Group of 22, *Making Canada Work Better*; and André Burelle, "A Renewed Canada to Which Quebec Could Say 'Yes'," *Canada Opinion* 4 (February 1996).
- 58 Thomas Flanagan, "Amending the Canadian Constitution: A Mathematical Analysis," *Constitutional Forum* (Winter-Spring 1996): 101.
- 59 Group of 22, *Making Canada Work Better*, p. iv.
- 60 *Confederation 2000, Today and Tomorrow*, pp. 8-9.
- 61 Western Premiers' Conference, "Rebalancing Roles and Responsibilities," *Communiqué*, 1996, p. 1.
- 62 Group of 22, *Making Canada Work Better*, p. 12.
- 63 Reform Party, *Twenty Proposals*, p. 11.
- 64 Smith, *Renewal*, p. 92.
- 65 In many respects, the reform proposals advanced by the premiers in August 1996 were more radical than those embedded in the Meech Lake Accord, yet there was no public outcry about the closed nature of the premiers' meeting.
- 66 Group of 22, *Making Canada Work Better*, p. 13.
- 67 Alan C. Cairns, "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake," *Canadian Public Policy* 14 Supplement (September 1988): 139-140.
- 68 Russell, *Constitutional Odyssey*.
- 69 Although the new amending formula forbids Parliament to act without the consent of the five regions/provinces specified in the formula, it does not require Parliament to act in the event of regional consent. However, Parliament would have difficulty refusing to do so, given that the intent of the recent parliamentary amendment was to place the moral weight of constitutional amendment in the hands of provincial legislatures.
- 70 Currently, if Parliament intrudes into the legislative domain of, say, Saskatchewan's Legislative Assembly, the federal government can be held accountable for its action only to the extent that the Saskatchewan electorate can determine the outcome of the federal election.
- 71 Jeffrey Simpson, "Decentralization is the rage everywhere, despite its ironies," *Globe and Mail* (Toronto), August 21, 1996, p. A18.
- 72 Group of 22, *Making Canada Work Better*, p. 4. The Group refers here to unilateralism by either the federal government or a provincial government. If the capacity of provincial governments to act in a unilateral fashion is also to be constrained, the benefits of decentralization will be lost to a new form of intergovernmental centralism.
- 73 Lee, "The plan."
- 74 For example, see Courchene, *ACCESS*, p. 4.
- 75 Simpson, "Decentralization."
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