UNIVERSITY OF OTTAWA

# MULTIDIMENSIONAL FEDERALISM: A REVISION OF THE TWO-TIER FEDERAL STRUCTURE AS SEEN THROUGH THE CANADA WORKS INFRASTRUCTURE PROGRAM

By
Jeff Morrison

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UNIVERSITY OF OTTAWA

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# MULTIDIMENSIONAL FEDERALISM: A REVISION OF THE CONVENTIONAL TWO-TIER FEDERAL MODEL AS SEEN THROUGH THE CANADA WORKS INFRASTRUCTURE PROGRAM

**by**
**Jeff Morrison**

## Abstract

Conventional theories of Canadian federalism revolve around the notion of dualism - the federal system is comprised of two levels of government: the national and provincial governments. This thesis argues that due to the changing nature of the Canadian political landscape, a more realistic interpretation of the federal model is that of multidimensional federalism, a model which allows for other orders of government to be included within the federal system. Currently, these other orders of government include municipalities, regional governments, school boards, and aboriginal governments.

This paper examines from a theoretical standpoint why the conventional model of federalism no longer provides an accurate representative model, and why the multidimensional model is a more realistic interpretation. It then examines the legitimacy behind the inclusion of the four additional actors within the federal system. Finally, the Canada Works Infrastructure Program is used as a case study of multidimensional federalism in operation.

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*"...Above every general weal stands one more general, every lower end is at the same time a means to a higher end, the totality of this worldly ends is a means to an other-worldly end, the "felicitas" of every narrower community always depends on that of some wider community..."*

Johannes Althusius, Politics, 1603.[1]

It is a testament to the writings of Johannes Althusius that the political system he envisioned almost four hundred years ago has flourished in the era of the modern nation-state. What Althusius referred to as a "community of communities", and what we today refer to as federalism, is a political system which has been adopted by over 20 independent states and currently governs more than a billion people. Since the first time it was used as the foundation for a political system by the United States in 1783, the fundamental characteristics of federalism have remained largely the same - it is still viewed as a constitutional division of state powers between two independent, sovereign orders of government which co-exist within the same political territory. Though certain elements of this conception may have been challenged from time to time, the underlying idea of federalism as a system of two levels of government exercising prescribed state functions has been a constant in federalist literature. Nonetheless, the history of political science demonstrates that conventional notions must consistently be re-evaluated in the

[1] Althusius, and not Joe Clark, was the first to coin the phrase "community of communities". See Otto von Gierke, The Development of Political Theory. (New York: W.W. Norton & Company Inc., 1939), 277-280.

face of changing economic, political, and social pressures. That will be the underlying philosophy behind this thesis.

It is the intention of this thesis to argue that Canadian federalism has undergone a very substantial phase of evolution, and as a result, no longer conforms to the conventional two-tier, classical model of federalism. Political and social conditions in Canada have changed, and are continuing to change, such that federalism can be more accurately thought of as a multi-tier, multi-state system encompassing more political actors than that suggested by the classical model of dual federalism. This author prefers to term this idea "multidimensional federalism", for the simple reason that this model envisions a federal structure which incorporates several systemic state dimensions, yet dimensional in the sense that a hierarchical relationship does not necessarily exist between the various orders of government. From a visual standpoint, one may picture this idea as a web of complex relationships between several orders of government, as opposed to the more dualist nature of conventional federal-provincial federalism.

Using three different methodological approaches, this thesis will analyse why a multidimensional model of federalism better reflects the current state of the federal system in Canada. First, a theoretical analysis will examine why the conventional federal model no longer reflects the reality of modern-day federalism in Canada, followed by a similar analysis of why a multidimensional model is a more realistic interpretation of the current situation. Second, the legitimacy behind the existence of the four additional levels of government within the multidimensional framework (along with the federal and provincial levels) will be addressed. These four levels - municipalities, regional

governments, school boards, and aboriginal governments - will be analyzed so as to determine why they legitimately deserve to be considered members of the so-called "federalist club". Finally, an example of multidimensional federalism operating in a concrete situation will be demonstrated through the use of the Canada Works Infrastructure Program launched by the Chretien government in 1994. The Infrastructure Program provides an excellent case study of how the fundamental elements of multidimensional federalism can be used to carry out public policy in Canada.

## *How do we define conventional federalism?*

If one is to reevaluate one commonly held set of beliefs about Canadian federalism and replace them with another set of beliefs, it is obvious that a thorough understanding of the concepts being discussed is essential. In other words, how can one define conventional federalism? The answer to this question can best be achieved by underlining the common themes that appear in the studies conducted in this area.

Upon reviewing the literature, one fundamental characteristic stands out as transcending differing interpretations of Canadian federalism - the concept of duality. Duality refers to the existence of two independent, autonomous, and sovereign orders of government existing within the same political space. It also takes on a sociological meaning of dual citizenship, defined by Edwin Black as the idea that "both sets of government have dealings with the people in respect of some important areas of life."[2] For the individual, the idea of government thus becomes conceptualized as an entity of two political systems, two political cultures, and something to which two sets of political

[2] Edwin Black, Divided Loyalties: Canadian Concepts of Federalism. (Montreal: McGill-Queen's University Press, 1975), 9.

allegiances are owed. As perhaps the only near-unanimous attribute of Canadian federalism to be found in academic literature, duality becomes a characteristic common to several competing interpretations of Canadian federalism.

For instance, one school of thought in Canada believes that the federal system is a product of the constitution, from where it gains its origins, its legitimacy, and its sovereignty. The idea of constitutionalism is perhaps most often associated with the writings of Alan C. Cairns, an author who endows the Canadian Constitution with an almost organic, living quality. Cairns states that the constitution "...is a living instrument of government...It is an evolving institution that has responded to pressures and flexibly accommodated itself to a variety of needs and changing demands."[3] Cairns and other constitutionalists consistently speak of the existence of only two orders of government - the federal and the provincial levels - since only these two levels are explicitly acknowledged in the constitution. Divergent interpretations not based on the principles of constitutional recognition are deemed unacceptable.

Another school of thought views conventional federalism from the perspective of federal society. Alain G. Gagnon, for example, uses a sociological analysis to explain the need for a federal system based on the dualist principle. For Gagnon, provincial governments act as a "shield" against the impositions of the national majority. As well, sub-national governments provide the means to manage and resolve conflict between competing national interests.[4] This is a point of view shared by several authors, and in

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[3] Alan C. Cairns, "The Living Canadian Constitution", in Constitution, Government, and Society in Canada: Selected Essays by Alan Cairns, ed. Douglas Williams. (Toronto: McClelland and Stewart, 1988), 31.

[4] Alain G. Gagnon, "The Political Uses of Federalism", in New Trends in Canadian Federalism, eds. Francois Rocher and Miriam Smith. (Peterborough: Broadview Press, 1995), 23-25.

particular, Quebec authors, who believe that the Quebec government has consistently played this role throughout Canadian history. For instance, Daniel Salee states that, "Le fédéralisme en tant qu'option constitutionnelle doit apparaître aux Québécois comme une arme de choix dans la défense de leurs intérêts propres et dans la préservation de leur intégrité culturelle et socialle...".[5] Salee cites other authors such as Pierre Trudeau, Gilles Lalande, and Hubert Guindon who have echoed these dualist arguments.[6]

There also exists a great deal of literature on the interaction between a dualist federal system and political economy. Proponents of this idea, such as Garth Stevenson, tend to downplay both the constitutional and the sociological characteristics of federalism, and instead, focus on the economic relationship between the federal and provincial orders of government. According to this point of view, economic classes come to be represented by the divergent number of governments found within the dual federal system, and that conflict between the federal and various provincial governments is merely a manifestation of the underlying class conflict inherent in the capitalist mode of production. Stevenson typifies federal-provincial conflict as "assuming the character of a class conflict between the bourgeoisie and the independent commodity producers."[7] This was also the interpretation expressed by John Porter in his valuable study, The Vertical

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[5] Daniel Salee, "L'analyse socio-politique de la societe quebecoise: bilan et perspectives", in Espace régional et nation: Pour un nouveau débat sur le Québec, eds. Gerard Boismenu et.al. (Montreal: Boreal Express, 1983), 23.

[6] See Pierre Trudeau, Le fédéralisme et la société canadienne-francaise. (Montreal: Éditions HMH, 1967); Gilles Lalande, "Le système politique québécois et la dynamique fédérale", in Le système politique québécois, eds. Edouard Cloutier and Daniel Latouche. (Montreal: Hurtubise HMH, 1979); and Hubert Guindon, "Social Unrest, Social Class and Quebec's Bureaucratic Revolution", Queen's Quarterly 71 (Summer 1964): 150-163.

[7] Garth Stevenson, "Federalism and the political economy of the Canadian state", in The Canadian State: Political Economy and Political Power, ed. Leo Panitch. (Toronto: University of Toronto Press, 1977), 75.

Mosaic in 1968, in which he spoke of the dualist federal system as acting as "an instrument for the entrenchment of economic power."[8]

The conclusion that can be drawn from this brief review of the principle schools of thought is that one central theme consistently re-emerges - the dualist nature of the conventional system of Canadian federalism. Having stated this observation, the logical question becomes, how does the conventional system compare with the system being proposed in this thesis? The short answer is that there exists a wide schism between the system just described and multidimensional federalism.

### *How do we define multidimensional federalism ?*

As just mentioned, proponents of conventional federalism believe that there exists only two autonomous, sovereign orders of government within the federal sphere; proponents of multidimensional federalism do not. The defining characteristic of the multidimensional model is that the federal system is composed of whichever orders of government can claim legitimate status as an order of government. Unlike conventional federalism, the multidimensional model is not restricted to a two-tier structure; on the contrary, there are no restrictions on the number of political actors that can be potentially involved within the system. However, in order to determine which orders of government are to be included, it is first necessary to define the characteristics of a legitimate order of government.

Professor B.C. Smith has stated that two conditions must be met in order to legitimately claim the status of an order of government within a federal system. He states

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[8] John Porter, The Vertical Mosiac. (Toronto: University of Toronto Press, 1968), 381.

that the political sub-divisions in question must have a certain measure of autonomy, and must be "self-governing through political institutions which have their roots within the territory for which they have jurisdiction."[9] The second requirement is that these political institutions must be democratically recruited, though the degree and manner in which democracy is practiced will depend on the unique historical and political heritage of the political society in question.[10] If we combine these two elements of governance provided by Smith with the idea that an order of government acts within the public realm (arising from the very definition of government), we arrive at a workable definition of a legitimate order of government as including the following: *a federal level must be democratically chosen, and through its political institutions, should formulate the best means available to undertake or deliver services of a public nature for the good of the individuals residing in an exclusive or non-exclusive political enclosure.* It is important to note that the inclusion of democracy is such for three basic reasons. One, democracy acts as an agent of legitimation for the political body in question vis a vis the corresponding political society, and therefore indicates that individuals will respect the authority of the order of government. Two, democracy acts as a source of accountability, marking the boundaries of distinct sets of decision-making apparatuses. Finally, democracy sets orders of government apart from other institutions which do not meet the provisions of accountability and legitimacy just described. Based on this definition,

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[9] B.C. Smith, Decentralization: The Territorial Dimension of the State. (London: George Allen & Unwin, 1985), 18.
[10] Ibid., 18-19.

which will be discussed in greater detail at a later point in this thesis. the rationale behind a two-tier federal system cannot be maintained.

It is important to note that before this point, the idea of sovereignty has not been raised. This is quite intentional. In short, conventional federalism requires sovereignty: multidimensional federalism, as evidenced by its absence in the definition of a level of government, does not. Sovereignty is more concerned with the legal and/or political status of a particular actor, and ignores the practical contributions which any one actor can bring to the federal system. In addition, as will also be discussed in greater detail later in this thesis, the influence of globalization has reduced the utility of sovereignty as a political tool, and as a result, has made it a historical spent force when applied to a discussion on practical federalism.

As for the Cairnsian argument linking the source of the power of a level of government in a federal state to its constitution, proponents of a multidimensional federal model argue that constitutionalism within the multidimensional model is an unnecessary component of the federal structure. Though constitutions play an important role in the expression of collective social values and beliefs in how a polity should be governed, they rarely modernize themselves and address the meticulous details inherent within a long-standing federal system. David Thomas, for instance, refers to constitutional ambiguities, imprecision, or even complete omissions as "abeyances", and demonstrates that the Canadian constitution is rife with them.[11] Instead, multidimensional federalism argues that the federal system does not arise from a written legal document, but is instead a more

[11] See David Thomas, "Turning a Blind Eye: Constitutional Abeyances and the Canadian Experience", International Journal of Canadian Studies 7-8 (Spring-Fall 1993): 64-66.

practical phenomenon which reflects the demands and needs of the society over which it governs.

Instead of an emphasis on the legal, political processes inherent in a federal system, multidimensional federalism is more focused on the social factors at work within the system. To illustrate this point, it has already been mentioned that one of the principle characteristics of conventional federalism is the protection of minorities through sub-national states. Multidimensional federalism is much more complex than this by arguing that sub-national, i.e., provincial states have themselves become so heterogeneous that they are no longer able to provide the "shield" against the majority, since provinces themselves have a number of majority/minority conflicts which they themselves must face. Gibbons speaks of "intraprovincial territorial conflicts" as being of "critical importance in shaping the contours of provincial politics", even though territoriality is not the sole consideration in determining conflict between majorities and minorities in sub-national political enclosures.[12] The multidimensional model believes that in order for minorities to adequately protect their identity and cultural traits within an increasingly heterogenized and complex societal composition, they must be given the opportunity to turn to more representative forms of government within the federal system. The dualist system of federalism cannot fulfill this role.

One can extend this vision by examining the conventional notions of federalism as representing a pact between founding cultures and the idea of its representation as class and/or economic interests. Instead of the traditional idea of the "two founding nations"

[12] Roger Gibbons, Conflict & Unity. (Scarbororugh: Nelson Canada, 1990), 103.

conception of Canadian federalism. multidimensional federalism takes the more Rousseaunian view that individual social entities (as opposed to individual entities) agree on the formation of a civil society. though still retaining a degree of freedom and autonomy over their own affairs. i.e.. localized government structures.[13] The federalist pact becomes much more of a complex web of cultural relationships than the overly-simplified 'two founding nations' interpretation would have one believe.

The same argument can be made for the Marxian characteristics of conventional federalism. The multidimensional model does not view socioeconomic classes in the pure Marxian framework of the proletarian class and the capitalist class. It is a broader and again. more complex vision which sees the national society as being comprised of a patchwork of competing economic interests. sometimes based at the community level. sometimes at the sub-national or even at the sub-community level. Regardless of the exact nature of the economic conflict. it is the level of government which best corresponds to the economic actors involved which will be most affected by the conflict or situation. To use an empirical example. in the oil industry of Alberta, one could argue that the capitalist class possessed a large influence not only in the burgeoning growth in the provincial bureaucracy of Alberta, but also that of the Municipality of Calgary and its outlying areas as a result of head office location.

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[13] Rousseau took the individual as his principle subject, and not individual social groups. However, the argument in his theory of the social contract remains the same, only in a slightly modified version. For a more detailed discussion on Rousseau's social contract, see Allan Bloom, "Jean-Jacques Rousseau", in History of Political Philosophy, eds. Leo Strauss and Joseph Cropsey. (Chicago: University of Chicago Press, 1987): 559-580.

A reasonably clear idea has been presented as to *what* the difference is between conventional and multidimensional federalism. However, it has not yet been answered *why* we need to make the distinction, and *why* multidimensional federalism better represents the reality of Canadian federalism in the 1990s. The next two chapters attempt to accomplish this. The following section examines the question of why the conventional federal model is no longer an accurate portrayal of the existing political situation, whereas the third chapter attempts to analyse why multidimensional federalism presents a much more legitimate interpretation of modern Canadian federalism. These arguments will hope to establish the theoretical basis for the multidimensional concept.

## CHAPTER 2 - WHY NOT CONVENTIONAL FEDERALISM ?

Three principal reasons stand out to explain why the traditional, accepted model of federalism is no longer an accurate representation of the modern Canadian federal system. The first reason is that sociological factors have increasingly become the primary influences that provide the legitimacy, energy, and motivation behind Canadian federalism. Second, the concepts of sovereignty and the sovereign state have beccome much more flexible to the point that the claim to sovereignty by provincial and federal governments is no longer the exclusionary force against other orders of government that it once was. Finally, the traditional ideas of the public sector domain and the private sector domain are becoming more and more blurred in the Canadian polity. The rise of the so-called "third sector", a gray area lying somewhere between the public and private sectors, has undermined the myth that the two-tier state structure is capable of delivering

public policies on its own. The principal, though not exclusive, source of these changes lies in the impact of globalization.

### *Political versus sociological forces: the great debate*

In 1956, Professor W.S. Livingston wrote a book entitled Federalism and Constitutional Change, in which he challenged the commonly held opinions that the analysis of federalism was one of "legal formalism and formal jurisprudence", and that questions with regard to federal government were "usually subordinated to the principles of constitutional law".[14] Livingston argued that federalism was not a function of constitutions but of societies, and that the institutions and processes within the federal system were merely a reflection of the relative degree of diversity within the society. In order to articulate the demands that the diverse composition of the society would make on the federal system, Livingston stated that society would produce a political means by which the expression of particular diverse qualities from within the social framework could be expressed; he terms these means "instrumentalities".[15] It was through these built-in instrumentalities that Livingston argued society has the ability to amend or modify the federal character to best meet the changing historical and evolutionary patterns within each society. Federalism was to be viewed in a manner that 'society dictates to the state', otherwise conceptualized in a 'bottom→top' fashion.

In 1977, in what has become a classical address in Canadian political science, Alan Cairns sought to counter Livingston's claims of the societal nature of federalism. As has already been mentioned, Cairns was a staunch believer in the role of institutions as an

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[14] W.S. Livingston, Federalism and Consitutional Change. (Oxford: Clarenden Press, 1956), 1.
[15] Ibid., 5-7.

influence on society within a federal system. The 1977 address went even further in this respect by stating that the growth in the reach of the federal and provincial governments, especially through their bureaucracies, had translated into an unmistakably large influence of government on society, or to use the previous terminology, a "state dictating to society" model, also referred to as the 'top→bottom' scenario.[16] Aside from the bureaucratization of government at the two traditional levels of government as the chief cause of state-centered federalism, Cairns also stated that the structure of pressure groups and political parties had come to parallel the governmental structure, in that they had become reactionary organizations, dependent on the policies of the two-tier government structure. This gives added weight to the influence of the state over society, and in particular, of provincial governments over provincial societies.

Though the literature on Canadian federalism since the time of the 1977 Cairns article has acknowledged that the two visions of federalism are not incompatible, are can co-exist within the same federal society, there is an active debate over which influence marks the point of initiation, in which the literature has been divided over the acceptance of a federal system dominated by institutional factors or sociological factors, even though several authors have stated that following the patriation of the Constitution in 1982, and the process leading to the failure of the Meech Lake Accord (and presumably the Charlottetown Accord as well), that the state-centered approach favoured by Cairns has become the more dominant trend in federalist writing.[17] What has changed the scope of

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[16] See Alan Cairns, "The Governments and Societies of Canadian Federalism", Canadian Journal of Political Science. 10 (December 1977): 695-725.

[17] For a description of the legacy of Cairns seminal article in 1977, see Donald Smiley, The Federal Condition in Canada (Toronto: McGraw-Hill Ryerson, 1987), and Richard Simeon, "We Are All Smiley's

the debate ? Even though both approaches can co-exist, how can one argue if the Canadian federal system of the 1990s is more weighted towards the model of one author over the other ? The answer lies in the effects of globalization upon the Canadian political community.

The idea of globalization is not entirely new; there are even those who suggest that it can be traced back to the nineteenth century.[18] However, for the majority of writers who view globalization as a relatively new phenomena and one that will mark the dawn of a new era in the understanding of political processes, they have focused on changes in three key areas - economics, political society, and nationality.

The economic sphere offers perhaps the most striking example of how globalization has affected traditional concepts of government. The rise of transnational corporations, the growth of free trade zones (the European Community, NAFTA, post-GATT international trade, etc.), and multilateral monitoring agencies have all contributed to the idea of a "borderless world", at least in an economic sense. As Thomas Courchene writes, "Thus, globalization in this sense decouples firms from the factor endowments of a single nation since raw materials, components, machinery and services are not available globally but can be realigned geographically quickly and easily."[19] National economies find it increasingly difficult to function within the confines of their political enclosure; they are now a part of the new international economic order.

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People: Some Observations on Donald Smiley and the Study of Federalism", in Federalism and Political Community: Essays in Honour of Donald Smiley, eds. David Shugarman and Reg Whitaker. (Peterborough: Broadview Press, 1989).

[18] See William Watson, David Laidler, and Bryne Purchase, "The Need to Pay Attention to the Global Economy: Responses", in Toolkits and Building Blocks: Constructing A New Canada, eds. Richard Simeon and Mary Janigan. (Ottawa: Renouf Publishing Company Ltd., 1991), 30-32.

[19] Thomas Courchene, Rearrangements: The Courchene Papers. (Oakville: Mosiac Press, 1992), 110.

Increasingly, globalization is also changing the way in which economies are relating to one another. It is no longer accepted that the central state has the ability to control national economies with the same level of influence that it has in the past. As borders disappear in the face of transnational corporations and free trade areas, the state is becoming a more minor player in guiding and influencing national economies. At the same time, there has been a corresponding rise in the "international city" as one of the key political actors within national economies. Courchene notes that, "Nothing much has changed over the past decade in the relationship between Ottawa and Bonn (except that it is now Berlin!). But much has altered in the relationship between Toronto and Frankfurt."[20] These autonomous financial urban areas have begun the process of replacing the state as the chief institutional structure responsible for national economies.

However, economics alone cannot explain the heavier weight assigned to a federalism based on institutionalism to federalism based on sociological factors. It is also necessary to focus on changes within national societies and national identities, since one of the characteristics of globalization is that as the global economy undergoes a process of restructurization, so too does our notion of political societies. In his book, The Borderless World, Kenichi Ohmae speaks of "consumer sovereignty" and "citizen empowerment" as key features of globalization.[21] Ohmae states that advances in telecommunications and information technology has allowed the individual to become less dependent on government for acquiring and accessing information. Also, because

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[20] Thomas Courchene, "The Need to Pay Attention to the Global Economy", in Toolkits and Building Blocks: Constructing A New Canada, eds. Richard Simeon and Mary Janigan. (Ottawa: Renouf Publishing Company Ltd., 1991), 29.

[21] See Kenichi Ohmae, The Borderless World: Power and Strategy in the Interlinked Economy. (New York: Harper Business, 1990), 21.

individuals now have the capacity to determine their own information flows and content, which at one point in time was strictly a state-centered action, the relative power and influence of the state has decreased. Political society is thus becoming less state-centric and more focused on the social needs of the individual.

A small digression must be allowed here to point out that the decline of the state within political society cannot be fully attributed to the impact of globalization. Many writers have argued that in the case of Canada, this was a process that was greatly influenced by the introduction of the Charter of Rights and Freedoms in 1982. With its emphasis on the rights and freedoms of the individual over collective or community rights at the national level, the Charter diminished the role of the state in the everyday lives of citizens, and handed that power to the individual members of the political society. Linda Cardinal refers to this process as a "depolitisation des débats", and argues that the anxiety that Quebec felt over the decline of communitarian rights, which Quebec viewed as necessary to protect its minority culture in Canada, was one of the reasons for the rejection of the Charter in Quebec.[22]

This mix of the Charter and globalization reducing the role of the state in political society has also changed one other key area - nationality, also referred to earlier as political identity. On an international scale, the decline of overarching nationalism is evident, as is the accompanying rise in regionalism and local identity. The Bosnian conflict, the break-up of the Soviet Union, along with the wars for local autonomy in its former republics, the Chiapas revolt in Mexico, and the Quebec sovereignty movement,

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[22] Linda Cardinal, "Les mouvements sociaux et la Charte canadienne des droits et libertés", International Journal of Canadian Studies. 7-8 (Spring-Fall 1993), 143-145.

accompanied by its localized internal conflicts (such as with the aboriginals), are all evidence of the destabilization of national affiliation and national identity in the face of globalization. Regionalism and demands for local autonomy are surfacing at points around the world, putting into question exactly how one is to define nationality. This was the hypothesis of Gilles Breton and Jane Jenson in a 1992 article when they referred to citizenship and nationality as becoming "permeables et poreuses", and that traditional notions of national identity were being seriously challenged by globalization.[23] Breton and Jenson also state that political borders have lost a great deal of their meaning when speaking of particular nationalities.

In Canada, the Charter has also played a role in the decline of pan-national citizenship and nationality (in as far as Canada could be perceived to possess either). One of the enduring legacies of the Charter will be its creation of the so-called "Charter groups", namely aboriginals, visible minorities, linguistic minorities, multicultural groups, and other minority groups who gained added degrees of protection from the Charter. One of the effects of this "democratization" of the Charter, as Cairns refers to it, has been the re-enforcement of localized groups and localized communities based on these minoritarian differences, which has had the added effect of weakening the sense of a national community.[24] This process has been best demonstrated by the aboriginal people, who have come to discover a national identity based on their own distinct local communities and institutions.

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[23] Gilles Breton and Jane Jenson, "Globalisation et citoynneté: quelques enjeux actuels", in L'ethnicité à l'heure de la mondialisation, eds. Caroline Andrew et.al. (Ottawa: ACFAS-Outaouais, 1992), 49.

[24] See Alan Cairns, "Constitutional Minoritarianism", in Canada: The State of the Federation 1990, eds. Ronald Watts and Douglas Brown. (Kingston: Institute of Intergovernmental Relations, 1990), 73.

Let us now return to the original question posed at the outset of this section - is Canadian federalism a sociological phenomena as espoused by Livingston, or is it a political/institutional phenomena as put forward by Cairns? The preceding discussions on national economies, political society, and nationality have all demonstrated a decisive shift away from sovereign governments and towards a greater empowerment of society. In all three areas which were discussed, national and provincial governments at one point in time had relative degrees of influence, and as a result, the influence of the constitution within the federal system possessed a certain degree of validity. However, the argument that is being demonstrated is that despite the fact that both influences will co-exist within the political society, the prevalent pattern within Canadian federalism is towards a system increasingly motivated by sociological forces. In the great constitutional versus sociological debate, it appears as if the sociological approach has won out for the time being.

What of the Charter ? One must think back to the idea of instrumentalities introduced by Stevenson. He defines the idea by stating that, "...instrumentalities are produced in order to *express and protect* the diversities in the federal society."[25] (italics added). This definition expresses the intended role of the Charter - it expresses and protects the diversities within Canadian federal society. It is interesting to note that though the Charter is essentially a constitutional document, its impact as an instrumentality has been towards a shift to the sociological interpretation of federalism. This argument is strengthened by the idea that the Charter is also intended to be a reflection of the

[25] Stevenson, 6.

collective social values held by Canadians. In short, though the Charter may have been a constitutional *means*, it resulted in a sociological *ends*.

What conclusions can be drawn from these arguments ? The principal conclusion is that if federalism is more of a function of societies and not of constitutions, the idea that an order of government must be constitutionally entrenched in order for it to claim legitimacy can be dismissed. The constitution does not have to be the final arbitrator of which orders of government can claim such status. As a result, the idea espoused by proponents of conventional federalism that because the constitution recognizes only two orders of government that only two orders can therefore exist is false. A sociological interpretation, which has been argued to be more representative of the current federal system, leaves the door open to the existence of other orders of government not officially recognized by the constitution, but which do correspond to certain political realities. As already discussed, this is the major premise behind multidimensional federalism. Thus, the first answer to the question, "Why not conventional federalism ?", is that Canadian federalism is more of an expression of social realities and not constitutional realities, and as such, allows for the possibility of non-entrenched orders of government within the federal system.

### *The changing nature of sovereignty: the perception of power*

For proponents of conventional federalism, one of the most resilient arguments in their favour is the idea that only the federal and provincial governments can exist within a federal structure because they are the only orders of government which are sovereign. The source of that sovereignty, they argue, is the constitution. As has just been argued,

federalism is not necessarily a function of constitutions, and is thereby not bound by constitutional rules. However, even though the source of sovereignty may have been put into doubt, it is important and necessary to examine the notion of sovereignty as an independent concept. The goal is to demonstrate that just as constitutionalism and institutionalism have become more flexible in the face of rapidly changing economic, political, and social conditions, so too has the idea of sovereignty.

But first, how does one define the concept of classical sovereignty ? Almost all theorists admit that it is an ambiguous and unclear idea. Cynthia Weber, for instance, argues that even though sovereignty generally refers to the "absolute authority a state holds over a territory and people ... as well as recognition by other sovereign states as a sovereign state", that such a set definition ignores the historical and theoretical evolution of state sovereignty.[26] Oyvind Osterud echoes these sentiments, and adds that it "signifies a material capacity for control of intra-state affairs...Sovereignty is often seen as a substantive condition which enables the authorities of each state to be their own master...it signifies the exclusive jurisdiction of each state, shielding formal decision making from external authorities."[27] Thus, though theorists are critical of the very idea that sovereignty possesses a specific definition, Weber and Osterud demonstrate that the theme of absolutist control is prevalent in the existing literature.

With this in mind, three conceptions of sovereignty will be used to illustrate the flexibility in classical sovereignty - economic, territorial, and political. Though one may

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[26] Cynthia Weber, Simulating Sovereignty: Intervention, the State, and Symbolic Exchange. (Cambridge: Cambridge University Press, 1995), 1-4.

[27] Oyvind Osterud, "Sovereign Statehood and National Self-Determination: A World Order Dilemna", in Subduing Sovereignty: Sovereignty and the Right to Intervene, ed. Marianne Heiberg. (London: Pinter Publishers, 1994), 19-20.

argue that the latter two forms of sovereignty are one and the same, there does exist a fine distinction between the two. Political sovereignty is conceptualized as the ability of a state to impose its laws and will over a particular group of people, whereas territorial sovereignty refers to the ability of a state to impose its laws and will over a particular territory. Though the distinction is very fine, it is a distinction nonetheless.

It is also important to note that the argument being made is not that states have lost their sovereignty in these three crucial areas, but instead that the power of states to express their sovereignty within these areas has greatly diminished in recent years. In other words, whereas the classical position on sovereignty would argue that sovereignty is located within the state, the multidimensional model believes that ultimate sovereignty is diffused over a greater number of political and social actors. The idea of sovereignty as malleable, as opposed to absolutist, is useful, since it captures the idea that sovereignty still exists, but in a much more flexible and adaptable form.

The flexibility in economic sovereignty is perhaps the most obvious to Canadians, especially following the debate over the Free Trade Agreement (FTA) in 1988 and the North American Free Trade Agreement (NAFTA) in 1993. In the years preceding the establishment of bilateral free trade in 1988, groups including organized labour, the arts community and academics warned that Canadian economic sovereignty would be at risk, with the Canadian Labour Congress, for example, citing the potential abandonment of "such tools of national economic management as tariffs, quotas, discriminatory

procurement and subsidies".[28] The actual agreement confirmed this hypothesis. As Ian Robinson points out, the 1988 Free Trade Agreement restricted the ability of the federal government to act in such policy areas as the establishment of tariffs or quotas on agricultural goods, the establishment of non-tariff barriers covering government procurement and technical standards, and constrained the ability of Ottawa to impose limits on the operation of public corporations.[29] The FTA also restricted the ability of the federal government and the provinces to administer natural resource supply guarantees, make laws concerning monopolies and repatriation of foreign investor profits, and enact regulations concerning the financial sector.[30]

The successful negotiation of the NAFTA, and to a lesser degree, the conclusion of the Uruguay round of the General Agreement on Tariffs and Trade (GATT), continued the decline in the ability of the Canadian state to retain its economic sovereignty. Generally speaking, Robinson cites three primary reasons why NAFTA has eroded national economic sovereignty. First, the agreement imposes new legal restrictions on the right of governments to regulate corporate behaviour. Second, due to the increased mobility capacity of trans-national corporations, market pressures will force governments to reduce their standards to a "lowest common denominator" in order to compete for investment; and three, the political power of the international business sector will increase in relation to that of government, due to the "creation of new common ground

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[28] Canadian Labour Congress, "Surrendering National Sovereignty", in The Free Trade Papers., ed. Duncan Cameron. (Toronto: James Lorimer & Company, Publishers, 1986), 138. For a discussion on cultural industries, see Susan Crean, "Cultural Sovereignty: Negotiating the "Non-Negotiable", op.cit., 174-181.
[29] Ian Robinson, "Trade Policy, Globalization, and the Future of Canadian Federalism", in New Trends in Canadian Federalism, eds. Francois Rocher and Miriam Smith. (Peterborough: Broadview Press, 1995), 240.
[30] Ibid, 240.

between their interests (foreign corporations) and those of domestic businesses".[31] In addition to these measures taken in the FTA and NAFTA, the recently ratified GATT accord further prevents governments from taking action with respect to anti-dumping duties, subsidies and countervailing duties.[32]

Trade liberalization, whether at the bilateral, regional, or global level is not the only factor responsible for the malleability of economic sovereignty. At a somewhat more fundamental level lies the idea that the global economy has passed through the era of Keynesian economics, and has now entered what Peter Leslie refers to as an era of "liberal internationalism".[33] Whereas post-war Keynesian economics was a philosophy based on government using its fiscal and monetary policies to stabilize the economic cycle, the "liberal internationalism" of Leslie, also referred to as the neo-conservative approach by Robert Campbell, relies more on market forces and less on state intervention in order to guide national economies.[34] This decline in state intervention and reliance on market forces has been exacerbated by the efforts of the federal and provincial governments to trim their budgetary deficits through spending cuts, which at the federal level will amount to $25.3 billion in spending cuts in the period from 1995 to 1998.[35] As a result, governments no longer possess the means to use monetary policy to steer national economies, even if they did possess the will (which they currently do not).

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[31] See Ian Robinson, North American Trade as if Democracy Mattered: What's Wrong With NAFTA and What Are the Alternatives? (Ottawa: Canadian Centre for Policy Alternatives, 1993), 20.
[32] Robinson (1995), 240.
[33] Peter Leslie, Federal State, National Economy. (Toronto: University of Toronto Press, 1987),
[34] See Robert M. Campbell, "Federalism and Economic Policy", in New Trends in Canadian Federalism, eds. Francois Rocher and Miriam Smith. (Peterborough: Broadview Press, 1995), 199.
[35] James Feehan, "The Federal Debt", in How Ottawa Spends 1995-96, ed. Susan Phillips. (Ottawa: Carleton University Press, 1995), 32.

As for the flexibility in territorial sovereignty, this phenomena has recently been documented by David Elkins in his book, Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century.[36] Elkins argues that governments at all levels are becoming increasingly unable to control what can and can not occur on their proper political territories, primarily because of the rapid advancements made in the area of telecommunications, electronic information sources, and general technological advancements which allow people to circumvent traditional political institutions or processes. This is even more relevant in light of the fact that modern society and economics has become much more driven by information flows, and less by industrial innovations. If government has less of an influence on the nature of the development of a particular society in a particular territory, it only follows that the inherent sovereignty of that government will also be modified.

Elkins, among several other authors, refers to the decline in territorial sovereignty as a process of "unbundling".[37] In its most basic form, unbundling refers to the loss of territorial identity and identification with a particular political unit, be it either at the national or sub-national level, and replaced with an identity which transcends territorial units.[38] In Canada, the most evident example of internal unbundling are the aboriginal peoples. Over the past decades, the aboriginals have gradually begun the construction of a pan-aboriginal identity and nationalism, which has allowed them to simultaneously

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[36] David Elkins, Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century. (Toronto: University of Toronto Press, 1995).

[37] Others who have used this term include Friedrich Kratochwil, "Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System", World Politics. 39 (October 1986): 27, and John Gerald Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations", International Organization. 47 (Winter 1993): 139-174.

[38] Elkins, 40.

disentangle themselves from any sort of national or provincial affiliation. In turn, this has led a number of academics to suggest the creation of a non-territorial aboriginal province, primarily as a means of re-inforcing the state unbundling process.[39]

What have been the effects of this process of unbundling on territorial sovereignty? For one, it prevents the national and/or provincial states from effectively claiming legitimacy over the actions which it takes over the individuals in a particular territory. If communities within the state are circumventing the proper state channels, viewing the state as a secondary institution, and possibly creating non-territorial institutions which may compete with the state for purposes of identification (such as the Assembly of First Nations in the earlier example), then the sovereignty of the state is weakened. The idea of the state as absolutist loses its validity. Second, by its very definition, unbundling leads to the creation of functional organizations that are typically non-statist in nature. The principle of functionalism, which states that particular organizations or devices should be used to solve specific problems geared towards their area of expertise, regardless of territory or boundaries, has been a fairly successful tool on the international stage.[40] As demonstrated with the example of Canadian aboriginals, it also has applications at the sub-national level. Functionalism takes away the ability of states to act within a particular territory by placing that ability in the hands of the functional organization in question. Again, sovereignty is made more flexible as a result.

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[39] See, for example, Thomas Coucherne, A First Nations Province. (Kingston: Institute for Intergovernmental Relations, 1992).
[40] Kratochwil, 48-49.

As was stated earlier, the third conception of sovereignty - political - is obviously tied very closely with economic and territorial considerations. It does, however, stand on its own in that it puts into question the source and legitimacy for the sovereignty of a state. Warren Magnusson, for one, believes that the absolutist notion of political sovereignty is in decline due to what he calls the "reification of political community".[41] By this, Magnusson is claiming that politics is not a preserve of overarching sovereign governments, but lies at the juncture of what he refers to as "localities" and "movements", the former of which he defines as the area of day-to-day interaction of individual members of the community, whereas the latter could be more commonly referred to as social movements. When a locality and a movement conjure, a political community is created which has the potential to defy the sovereign authority of the state.[42] As will be demonstrated later, the movement component of this equation has been fairly strong in Canada since the 1960s, and has continued to gain strength since that time. As for localities, it has already been mentioned that among the effects of globalization has been the rise of the so-called "global city", and an accompanying rise in self-identification based more on community and less on national or provincial identities. The rise of both elements of this "political community" equation signal that political sovereignty must allow for intrusions from outside the sovereign orders of government in place.

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[41] Warren Magnusson, "The Reification of Political Community", in Contending Sovereignties: Redefining Political Community, eds. R.B.J. Walker and Saul H. Mendlovitz. (Boulder: Lynne Rienner Publishers, 1990), 45-58.

[42] Ibid., 54-55.

In conclusion, the argument that is being put forth with regard to economic, territorial, and political sovereignty is not to say that sovereignty does not exist: states will always be able to act in a sovereign manner to a certain degree. The argument that is being made is that sovereignty can no longer be conceived of in absolutist terms - it does not have the final say in how a state chooses to exercise its political power. It has adapted in the face of changing social, economic, and political conditions to become a more malleable phenomena which must bend to conditions over which it cannot control or has no influence. It thus becomes important to remember that when speaking of the exercise of power by any one sovereign order of government, that the idea of sovereignty be tempered by the reality that it is no longer the ultimate judge of what constitutes the legitimate exercise of power.

The implications of this argument for multidimensional federalism are obvious - sovereignty is no longer a necessary pre-condition for the legitimate existence of an order of government within the federal system. Since no one level of government can claim to possess absolute sovereignty, be it the federal, provincial, or other level, it is not necessary to state that only sovereign levels of government can exist within the federal system. One of the defining characteristics of multidimensional federalism is that relationships between orders of government are not necessarily those of interactions between sovereign levels of government, but rather a more intertwined network of governmental orders relating between one another. This discussion on the changing nature of sovereignty lends credence to a federal system based on the multidimensional model.

## *The third sector in Canada: the retreat of conventional federalism*

Typically, national economies are characterized by two independent sectors - the public or state sector, and the private or non-state sector. The popular perception is that every facet of economic life can be classified under one of these two generalized categories. However, it is often overlooked by academics and other authors that there also exists a third sector within national economies, a sector which lies somewhere between the public and private sectors. Also referred to as the "social economy"[43], the third sector is only now coming into greater prominence as an important segment of the Canadian economic structure. Although it has existed in Canada for over a century, the third sector is now being viewed as a viable alternative to the state sector in many areas of what were formerly public responsibilities. What are the implications of the growth of the social economy on the conventional federal system in Canada ? It will be argued that as the federal and provincial orders of government cede more of their state responsibilities to the third sector, the conventional federal system is weakened, furthermore meaning that the dualist federal model becomes less reflective of the actual nature of public policy and public action in Canada.

Before discussing the impact of the third sector on the Canadian federal system, it is necessary to define what exactly is meant by this term. The third sector has been conceptualized as that space within organized society not already filled by the state or the market, i.e., the public or the private sector. It has been described by Paul Leduc Browne and Pierrette Landry as "...non-profit corporations and unincorporated associations,

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[43] See, for instance, Jack Quarter, Canada's Social Economy: Co-operatives, Non-profits, and Other Community Enterprises. (Toronto: James Lorimer & Company, Publishers, 1992).

voluntary and non-governmental organizations. Co-operatives, mutual insurers, and community economic development enterprises are often included among them".[44] To this, Jack Quarter adds several additional elements. He states that within the third sector, there is an absence of the traditional notions of organizational ownership rights, profit or loss accounting statements, and that there is an independence from government, as well as a democratic control of the organization by its members.[45] Perhaps the most succinct definition comes from Lester Salamon, who describes the third sector as a "massive array of self-governing private organizations, not dedicated to distributing profit to shareholders or directors, pursuing public purposes outside the formal apparatus of the state".[46]

This is not to say that the third sector exists completely independent of the public sector. On the contrary, the state plays a key role in the ability of the third sector to function effectively, through the use of such devices as favourable tax treatment, direct contractual arrangements for the provision of services, or indirect funding arrangements, usually in the form of unconditional grants or annual stipends by federal or provincial governments.[47] A 1988 study by Josephine Rekart confirmed this observation when she discovered that among third sector agencies in British Columbia, the provincial government, either through contracts or grants, was responsible for over 53% of direct funding, with other orders of government accounting for close to 12% of third sector

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[44] Paul Leduc Browne and Pierrette Landry, The "Third Sector" and Employment. (Ottawa: Canadian Centre for Policy Alternatives, 1995), 10.
[45] Quarter, 3-9.
[46] Lester Salamon, "The Rise of the Nonprofit Sector", Foreign Affairs. July-August 1994.
[47] See Samuel Martin, An Essential Grace. (Toronto: McClelland and Stewart, 1985).

funding.[48] This finding was confirmed in a 1994 study by the Canadian Centre for Philanthropy which determined that for organizations within the charitable sector, 56.5% of their revenues came from government sources, with the provincial levels accounting for over 47% of that total.[49] However, the role of the state in third sector organizations, be it either at the federal or provincial level, is limited to those defining characteristics which set this sector apart from the public or private sectors.

It is also important to note that the social economy in Canada is not a new development. In a case study of the province of Ontario, Mariana Valverde has demonstrated that the social economy has been in place since at least the nineteenth century. Valverde states that, "...the reliance by the state on philanthropies...is a Victorian "technology of government" that has survived the epoch of the welfare state and is today experiencing an upsurge in popularity even in social democratic regimes".[50] The point that Valverde is making is that ever since the dawn of liberalism in Canada in the late nineteenth century, the third sector has played a prominent role, and in certain cases, even a developmental role, in the evolution of social institutionalism in Canada.

The reliance on the third sector by government diminished somewhat with the onset of the welfare state and the growth of social democratic principles. With the encroachment of the federal and provincial governments in political territory formerly occupied by the

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[48] Josephine Rekart, Voluntary Social Services in the 1980s. (Victoria: Social Planning and Research Council of British Columbia, 1988), 39.
[49] David Sharpe, A Portrait of Canada's Charities: The Size, Scope and Financing of Registered Charities. (Toronto: Canadian Centre for Philanthropy, 1994), 20.
[50] Mariane Valverde, "The Mixed Social Economy as a Canadian Tradition", in Studies in Political Economy: A Socialist Review. 47 (Summer 1995), 38. The phrase "technology of govenment" taken from N. Rose and P. Millar, "Political Power Beyond the State: Problematiques of Government", in British Journal of Sociology 43 (1992), 183.

third sector as a result of increased social spending, primarily due to the greater demands put on government to deal with the problems of social welfare, the social economy declined in relative importance. As Samuel Martin points out, the percentage of national income that was devoted to "humanistic services", defined as state-funded services relating to health, social welfare, education, culture, and religion, rose from 17% in 1957 to 24% by 1969 to 32% by 1978.[51] Thus, the adoption of a welfare state mentality by the federal and provincial orders of government demonstrated that the federal system was able to accommodate a mixed economic structure within the confines of the public sector.

However, since the advent of the neo-conservative agenda in Canada in the mid-1980s, the third sector has begun the process of displacing the federal state as an agent of social service provision, a process which has been hastened by the collective policies of federal and provincial governments to drastically reduce public sector spending. The rise of neo-conservatism has been responsible for a shift within the Canadian economy away from the state acting as a principle provider of social services to the institutions found within the social economy. With the federal government slashing its own program spending from $122.6 billion in 1992-93 to $118.7 billion in 1994-95[52], and with the introduction of the Canada Health and Social Transfer to replace the existing system of transfers to the provinces in social-related areas, which will see a reduction in social transfers to the provincial governments of some $2 billion between 1996 and 1998, the evidence would

[51] Martin, 28.
[52] Government of Canada, Annual Financial Report of the Government of Canada 1994-95, (Ottawa: Department of Finance, 1995), 25.

suggest that the federal and provincial governments will continue to abdicate their responsibilities to the third sector.

The 1996 federal budget explicitly acknowledged the necessity of the third sector in the Canadian economic structure as a result of changes affecting the charitable, i.e. social sector. According to the budget, "The government recognizes that it is in the interest of all Canadians that the charitable sector have the ability to raise sufficient funds to fulfill that expanding role...due to the fiscal situation of governments, individuals and communities are being asked to do more".[53] As such, the federal government announced that the annual limit on charitable donations was being increased from 20% to 50%, and that the Department of Finance would be asked to examine other ways to encourage and expand the resources available to the third sector.

The implications for the third sector of these reductions in state spending are clear - as the state retreats from its former social and economic responsibilities, it is the third sector to whom government is handing over its responsibility to take on the brunt of service delivery in areas once occupied by the federal or provincial governments. Welfare services, health care, child care, and worker training are all examples of the responsibilities that the third sector has taken over from the conventional orders of government. Michael Lipsky and Steven Rathgeb Smith have summarized this phenomena when they claim, "If the state no longer directly delivers services but authorizes private parties to conduct its business, where shall we locate the boundaries of

[53] Department of Finance, Budget Plan 1996. (Ottawa: Finance Canada, 1996), 69-70.

the state ?"[54] It must be noted that this line of argumentation is not intended to illustrate that the third sector includes local orders of government, though they may support third sector organizations indirectly. Instead, this argument demonstrates that the fiscal realities of conventional federalism have led to a "localization" of government responsibilities, not only to the more local orders of government, but to organizations outside of the regular state apparatus.

It is now possible to relate this discussion to the decline in the conventional federal model. The mere existence of a social economy illustrates that the federal system of government cannot meet the social and "humanistic" expectations imposed upon it by society, and that governments are forced to look elsewhere for assistance. The recent growth of the third sector only compounds this argument that the federal and provincial governments not only desire third sector intervention, but need it. One of the effects of this abdication of state responsibility is that it becomes impossible to claim that a conventional two-tier federal system accurately represents the whole range of publicly-oriented and funded activities in Canada, and thus impossible to claim that a dualist model of federalism is the most representative model available. The complexity of the actual federal system, partly due to the growth in the third sector, does not correspond to the simplicity of a dualist model.

From these three theoretical standpoints; the rise of the sociological model of federalism over that of the constitutional, the relative decline in the notion of sovereignty,

[54] Michael Lipsky and Steven Rathgeb Smith, Non-profits for Hire: The Welfare State in the Age of Contracting. (Cambridge: Harvard University Press, 1993), 5.

and the fiscal constraints faced by the two tier federal model, it has been argued that conventional federalism can no longer accurately represent the current Canadian federal system. New social, political, and economic conditions have changed our underlying assumptions of how a federal system operates and how different orders of government interact with other orders of government. However, this only answers half of our question. In other words, we now know why conventional federalism no longer works. What has not yet been answered is why the model of multidimensional federalism presented earlier is a more accurate model, and why it better represents the Canadian federal system of today. The goal of the following chapter will be to examine this question.

## CHAPTER 3 - WHY MULTIDIMENSIONAL FEDERALISM ?

In the previous chapter, three arguments were used to prove why the concept of conventional federalism was on the decline in Canada. This chapter will also use three arguments to explain why multidimensional federalism is a more accurate representation of the federal system. One, the changing composition of the Canadian population has created a demographic situation in which the local orders of government have become equally protectionist of minoritarian interests; two, social movements and interest group behaviour have transformed local governments into institutions which are as responsive to social demands as are other orders of government, and three, democratic theory and the rise of the "public choice" model of democracy in recent years upholds the argument for the inclusion of local governments within the federal system. These arguments, coupled with those from Chapter 2, will point to one inescapable conclusion - multidimensional federalism is a real and valid portrayal of Canadian federalism.

### *Minoritarian protection: the essence of federalism*

It has been frequently mentioned that one of the principle characteristics of any federal system is that it provides the means for minoritarian groups to protect their cultural, linguistic, and economic interests vis-a-vis the majority society. Herman Bakvis notes that, "By granting cultural minorities a high level of protection in crucial areas such as education through the federal distribution of powers, a system can alleviate problems stemming from cultural fragmentation."[55] Bakvis also makes the observation that the

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[55] Herman Bakvis, "Alternative Forms of Governance: Federalism, Consociationalism, and Corporatism", in Federalism and the Role of the State, eds. Herman Bakvis and William Chandler. (Toronto: University of Toronto Press, 1987), 279.

means by which minority rights are protected and enhanced are reflected by appropriate state control over those jurisdictions which are believed to have the greatest impact over the diversity in question, such as education. Kenneth McRoberts points out that at the time of Confederation, Upper Canadian leaders were in favour of a unitary system of government, and that a federal system was established only at the insistence of the French Canadian elites who saw the provincial state of Québec as offering a certain measure of cultural protection.[56] Other federal states have had similar reasons for establishing federal systems, since the greatest advantage of federalism, in any form, is its ability to allow for the existence of a pan-national state while still enabling minority groups to survive and express their collective diversities.

What is the connection between this defining characteristic of federalism and the model of multidimensional federalism? To answer this question, one needs to examine two interrelated phenomena in Canada - demographic shifts and political involvement. However, before doing this, it is essential to define more clearly the term "minority". For the purpose at hand, minority groups will refer to the commonly held perception of groups characterized by their ethnic, linguistic, and/or religious diversities, and who possess multiple political, social, or cultural identities based on these diversities. Because of its widespread acceptance within the literature, this definition has never been seriously challenged.

An examination into these issues must first begin by stating that the demographic make-up of Canada has changed radically over the past generation. Whereas in 1957

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[56] Kenneth McRoberts, "Living With Dualism and Multiculturalism", in New Trends in Canadian Federalism, eds. Francois Rocher and Miriam Smith. (Peterborough: Broadview Press, 1995), 113.

over 90% of immigrants arriving in Canada originated from Britain or other European nations, that figure had changed to just 25% by 1987, with over 50% of new Canadians now arriving from either Asia or the Caribbean.[57] These changes in immigration are reflected in the population as a whole: in 1871 over 61% of Canadians were of British origin, with only 8% of neither English nor French ancestry. By 1986, the population had become split almost evenly in three ways - 35% of Canadians claimed a British background, 34% claimed a French background, and 31% claimed another.[58] With a low natural birth rate of only 1.7 children per family, and with immigration quotas projected to be in the range of 200,000 per year until the end of the century, it is safe to predict that the Canadian population will grow even more heterogeneous, and that minority groups will continue to form a significant segment of the population.[59]

The existence of minority groups is as pronounced at the provincial level as it is at the national level. John Porter notes in The Vertical Mosaic that, "Most provinces...have a greater variety of particular cultures within them than between them."[60] As revealed in Table 1, ethnic origin communities make up well over 10% of the population in all but three provinces, reaching a high of 54.3% in Saskatchewan. As for linguistic minorities, those reporting a mother tongue other than the majority language is also relatively high, with over 20% of Manitobans indicating a mother tongue other than the majority English language. Though religious minorities, defined as those who practice neither a Protestant

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[57] Rand Dyck, Canadian Politics: Critical Approaches. (Scarborough: Nelson Canada, 1993), 70.
[58] Robert Jackson and Doreen Jackson, Politics in Canada. (Scarborough: Prentice-Hall Canada Inc., 1990), 108.
[59] See Department of Immigration and Citizenship, Towards the Year 2000 (Ottawa: Canada Communications Group, 1994).
[60] Porter, 382.

nor Catholic religion, form smaller minority groups than do ethnic or linguistic groups, they still represent sizable minorities in relation to the population as a whole. Table 1 helps to demonstrate that Canadian society is fragmented into a large number of diversified minority groups which do not necessarily correspond to provincial boundaries. In short, national and sub-national populations are composed of multiple layers of ethnic, linguistic, and religious identities.

***Table 1 - Minority groups by province (1986 figures)***[61]

| | *Ethnic origin* | *Mother tongue* | *Religious affiliation* |
|---|---|---|---|
| Saskatchewan | 54.3% | 15.7% | 9.3% |
| Manitoba | 53.3% | 21.8% | 11.9% |
| Alberta | 49.0% | 15.3% | 16.3% |
| B.C. | 43.9% | 16.3% | 25.4% |
| Ontario | 38.8% | 16.7% | 12.6% |
| Nova Scotia | 16.6% | 2.1% | 5.0% |
| Quebec | 12.6% | 6.8% | 5.4% |
| New Brunswick | 7.4% | 1.3% | 3.2% |
| P.E.I. | 7.4% | 1.3% | 2.9% |
| Newfoundland | 3.6% | 0.8% | 1.1% |

But what of the settlement patterns of these groups? In a study completed in 1990, Frank Trovato and Shiva Halli examined census data to track the geographic mobility of certain ethnic groups over selected temporal periods. Though there were variations across different ethnic groups, Trovato and Halli concluded that in general, "It is not surprising therefore, to find that immigrants to Canada tend to form their own ethnic communities in large cities in order to be close to others of the same ethnic background

[61] Taken from Dyck, 71, 112. Mother tongue indicates that portion of the population whose mother tongue is different from the majority language, except for New Brunswick which has two official languages. Religious affiliation refers to those who are neither Protestant nor Roman Catholic.

and also to facilitate their economic adjustment in the host society."[62] Edward N. Herberg, in a comprehensive 1989 study on ethnic group behaviour, also found that though residential concentration figures for most minority groups had declined since the turn of the century, that there existed several "ethnic ghettoes", with such groups as Jews, Indochinese, Greeks, and Italians recording residential concentration figures of approximately 60%, while the British and French (the majority), had the lowest concentration figures.[63] This led Herberg to state that, "...the voluntaristic influences from within the group to develop and maintain ethnic cohesion must be considered as a powerful source of Residential Concentration among certain of the groups covered".[64]

Other studies have demonstrated that the most important factor influencing the geographical congregation of minority groups is the level of institutional completeness of the particular group. In a 1973 paper, Raymond Breton stated that, "The ethnic group succeeds in holding its members' allegiance by preventing their contact with the native community. This is achieved by a process of substitution whereby ethnic institutions rather than those of the native community take hold in the immigrant's social life."[65] There are many empirical examples of this theory in practice - the Chinatowns of several large urban areas, the pockets of French communities found throughout the West, the Atlantic region, and Ontario, Doukhobour and Mennonite settlements, and several ethnic

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[62] Frank Trovato and Shiva S. Halli, "Ethnicity and Geographic Mobility", in Ethnic Demography: Canadian Immigrant Racial and Cultural Variations, eds. Shiva S. Halli, Frank Trovato and Leo Driedger. (Ottawa: Carleton University Press, 1990), 77.

[63] Edward N. Herberg, Ethnic Groups in Transition: Adaptations and Transitions. (Scarborough: Nelson Canada, 1989), 138-139.

[64] Ibid., 140.

[65] Raymond Breton, "Institutional Completeness of Ethnic Communities and the Personal Relations of Immigrants", in Canadian Society: Sociological Perspectives, eds. J. Porter et.al. (Toronto: MacMillan Canada Inc., 1973), 58.

ghettos scattered throughout the country. Thus, Canadian demography reflects a situation whereby minority groups are found in relatively homogeneous locations when conditions are such that social, political, and economic institutions exist to explicitly meet the interests of that minority group.

When minority groups in Canada congregate in specific geographical locales, research has shown that they not only demonstrate a greater respect for political institutions, but that their rates of political participation are equal to, or in some instances higher than that of the dominant majority groups. For instance, in a 1980 study, David Elkins concluded that political efficacy among first generation Canadians was slightly higher than that of native-born Canadians, though substantive differences existed between individual provinces.[66] His findings led him to conclude that newly-arrived minority groups tend to place political institutions in slightly higher esteem, and also that they tend to assimilate to the local or regional political culture as opposed to the national political culture.

Similar results were found in analyses of political participation. For example, William Mishler and Harold Clarke have argued that participation among ethnic, linguistic, and religious minorities does vary across regions, but that overall rates are not substantially higher or lower than that of the majority.[67] In his analysis, Herberg stated that at the political level, members of ethnic groups do tend to take on an active political nature, meaning that they will vote, participate, and where possible, legislate to protect the inherent interests of their constituent groups, and that this level of participation does not

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[66] See David Elkins, "The Horizontal Mosaic: Immigrants and Migrants in the Provincial Political Cultures", in Small Worlds, eds. David Elkins and Richard Simeon. (Toronto: Methuen, 1980), 112-13.
[67] See William Mishler and Harold D. Clarke, "Political Participation in Canada", in Canadian Politics in the 1990s, Third Edition, eds. Michael Whittington and Glen Williams. (Scarborough: Nelson Canada, 1990), 169.

fundamentally differ from that of the majority population.[68] One may therefore conclude that the level of political involvement of minority groups is not unlike the population of the locality where the minority group is located.

Let us now combine the two subjects of analysis just examined. It has been stated that in general, minority groups congregate in specific geographical locations when proper institutional structures are present, and that they possess levels of political involvement proportional to that of the majority group, though perhaps in a more cohesive manner. Is it therefore not logical to state that in local areas of minority domination that the minority group will effectively hold control over local political institutions, be they school boards, municipal councils, or even regional governments ? Cannot one visualize these "minority enclaves" as analogous to aboriginal governments, whereby small clusters of one minority group effectively holds power over a governmental authority (although aboriginal governments do exist under different conditions) ? The logical conclusion to this line of thinking would be that these minority-controlled authorities would act in the best interests of their constituent groups, and that their mere existence would help to ensure the survival and potential future growth of the group in question.

Our argument has now come full circle. It was mentioned earlier that one of the distinguishing characteristics of most federal systems was the necessity to preserve and protect cultural minorities; the analysis of Bakvis and McRoberts proved useful in this respect.[69] It was then demonstrated that not only are there a great number of divergent minority groups at both the federal and provincial level, but that these groups generally

[68] Herberg, 239-240.
[69] See pages 34-35.

tend to congregate geographically and display a level of political involvement relative to that of the majority population. As such, if local orders of government are dominated by these groups, it would be correct to state that these orders of government will be among the multiplicity of governmental levels able to provide the adequate levels of preservation and protection for each minority group that the very definition of federalism suggests. In a country as ethnically diverse as Canada, true minoritarianism can only be expressed in a multidimensional federal model, since this is the only model that recognizes the existence and legitimacy of all the levels of government by which minority interests can be adequately protected. Cultural diversity thus represents the first explanation for multidimensional federalism.

### *Social movements and interest groups: Strategic targeting*

Social movements and interest groups have consistently been ranked among the top influences affecting long-term public policy at all levels of government. Warren Magnusson, for example, has written extensively on the role of critical social movements in "de-centering the state", and in particular, their role in challenging the notion of the state-centric nature of politics.[70] Yvon Thériault has stated that interest groups and social movements represent the most democratic expression of political involvement for the individual, and as a result of this activity, has altered our entire perception of political culture and political society.[71] In other words, social movement and interest group

[70] See Warren Magnusson and R.B.J. Walker, "De-Centring the State: Political Theory and Canadian Political Economy", Studies in Political Economy: A Socialist Review. 26 (1988): 37-71.
[71] See Yvon Thériault, "Mouvements Sociaux et Nouvelle Culture Politique", Politique. 12 (Automne 1987): 5-36.

behaviour has had an influence not only on day-to-day policy choices, but on the fundamental nature of politics as well.

Although the relationship between social movements and specific interest groups is a highly complex one, the concern here is merely to point out the influence of the state on the institutional form taken by these political forces and not to analyse the full dynamic of the state-civil society relationship. Analyses of the relationship between social movements, interest groups and the Canadian federal system are not new - empirical studies of social movements within Canadian federalism have been conducted regularly since the 1950s. Evidence for the strength of interest group theory vis-a-vis federalism can be found in the fact that the underlying argument to explain the interrelation between social movement/interest group activity and multidimensional federalism arises from a series of observations made in 1951 by David Truman, who noted that interest associations which operate in a federal system tend to take on a federal form themselves.[72] In other words, the structure of interest groups and social movements will be such that pressure will be brought to bear on whichever order of government can maximize the goals of the interest organization, which will often requiring a splitting of the interest association so that the different orders of government can be pursued, depending on the specific powers that each level exercises. As a result of this operation within the federal system, interest groups adopt a federal form similar to that of the state itself.

[72] David Truman, The Governmental Process, (New York: Knopf, 1951), 112.

If social movements and interest groups are themselves federal in nature, and operate within a federal structure, logic would dictate that due to their relative importance within the Canadian political scene, an analysis of the activities of social movements and interest groups should reveal certain truths about the functioning of the federal system itself. In particular, an analysis of the relationship between interest groups and the different orders of government that they are attempting to influence should give an indication as to the functional nature of Canadian federalism. The contention that will be explored is that social movement/interest group activity is as consistent in its dealings with the local levels of government as it is with the federal and provincial orders. If this is the case, than the argument must follow that movements and associations have themselves recognized the existence and practicality of the multidimensional model, and are prepared to act within such a model to further the interests of their members.

In a study released in 1992, Pierce, Sreger, Steel, and Lovrich compiled data using a principal components factor analysis to demonstrate that in a representative sample of 61 environmental pressure groups operating in Canada and the United States, that interaction was the most frequent between the groups and the provincial or state governments, followed closely by interaction with the local levels of government, and finally with the national levels.[73] When the data was broken down into organizations from Ontario and Michigan, a consistent pattern emerged which illustrated that the organizations from Ontario relied more heavily on local governments to pursue their interests than their American counterparts, due largely to the greater communicational capacity of the

[73] John Pierce et.al. Citizens, Political Communication, and Interest Groups: Environmental Organizations in Canada and the United States. (Westport: Praeger, 1992), 136.

Michigan groups that allowed them to express their demands on a wider scale.[74] This study is all the more illusory when one considers that under the Canadian federal system, the environment is a concurrent jurisdiction between the federal and provincial governments, leading one to believe that the degree of policy space for other levels of government would be severely limited. However, as seen in the Canadian case, the results of environmental interest group activity are obvious at the local levels of government - municipally or regionally administered recycling programs, individual school board educational programs, local environmental waste depots, Christmas tree pick-ups, etc. This is not characteristic of a two-tier federal model.

The raw data aside, several authors have qualitatively demonstrated the high incidence of social movement/interest group activity at the local level of government. For instance, one of the foremost authorities on social movement activity in Canada, A. Paul Pross, has documented several of the ways and means in which pressure groups operate vis-a-vis the local levels of government. In Group Politics and Public Policy, Pross states that, "Door-to-door canvassing, meetings organized to attract concerned citizens, and campaigns to obtain signatures on petitions are all believed to affect the thinking of municipal politicians and public officials."[75] However, this is not to say that Pross does not recognize the split within interest associations that a federal system necessitates; he acknowledges that the growth in the size of government and bureaucracy at the federal and provincial levels after the Second World War was accompanied by a corresponding rise in interest associations dedicated to influencing these orders of government. At the

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[74] Ibid., 166.
[75] A. Paul Pross, Group Politics and Public Policy. (Toronto: Oxford University Press, 1986), 157.

same time, the decentralizing tendencies which mirrored the growth of the post-war state has ensured that local organizations will remain the "life-blood of most groups", and that pressure at the local level will continue to remain a fundamental aspect of social movement evolution.[76]

Several case studies may help to clarify this point. In a 1992 article, E. Nick Larson concluded that the successful implementation of Bill C-49, which at the time was considered one of the toughest anti-prostitution bills enacted by a national government in the western world, was primarily a "bottom→up" response by the federal government to initiatives taken by municipal and regional anti-prostitution interest groups.[77] His study of interest group activity in four Canadian cities (Toronto, Winnipeg, Vancouver, and Edmonton), also revealed that there existed a unique political culture among associations in each of these four cities in question, which differed on such grounds as socio-economic status, feminist ideology, and degree of institutionalization.[78] This observation reflects the notion that divergent localities possess divergent political cultures and identities, which reifies the idea that local orders of government are as representative of the distinctiveness of their populations as are the provincial or national orders of government.

Specific locale case studies also highlight the multidimensional nature of interest association activity. From his introductory statement that, "...only the neighbourhood...can cultivate the qualities of genuine citizenship in self-empowered, autonomous communities", Michael McConkey demonstrates how the Neighbourhood

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[76] ibid., 45, 225.
[77] See E. Nick Larson, "The Politics of Prostitution Control: Interest Group Politics in Four Canadian Cities", International Journal of Urban and Regional Research 16 (June 1992): 190.
[78] For a discussion on these differences, see ibid., 192-200.

Association Movement in Toronto has had a successful history in fostering social and political change by the use of certain regional political institutions within the Regional Municipality of Toronto.[79] Through their collective actions, over 100 urban political associations have inadvertently created an urbanized social movement which has brought pressure on several organs of localized government, and has been able to affect political change in such areas as affordable housing, community development, and law enforcement. These associations limited their lobbying campaigns to the local levels of government, without having to extend their pressure tactics into either the provincial or federal realm, and as a result, were able to join with other residents of Toronto in meaningful political change.

Henri Lustiger-Thaler conducted a similar study for the City of Montreal. He classifies the relationship between the local state structure in Montreal and social movements/interest groups as the "politics of bricolage", in which interest associations take on a greater responsibility for the legitimization and distributive functions of government, whereas the local state structure demonstrates a greater reliance on these organizations to govern effectively.[80] The strength of these urban interest groups was formally institutionalized with the creation of the Montreal Citizens Movement in 1974, which was intended to be an umbrella organization designed to serve as a bridge between the local state apparatus and the Montreal interest group network. Such a formalized

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[79] Michael McConkey, "Toronto's Neighbourhood Association Movement, in Light of the Artificial Negativity Thesis", in Culture and Social Change: Social Movements in Québec and Ontario, eds. Colin Leys and Marguerite Mendell. (Montreal: Black Rose Books, 1992), 169.

[80] Henri-Lustiger-Thaler, "Political Culture and the Politics of Bricolage: The Case of Montreal", in Culture and Social Change: Social Movements in Québec and Ontario, eds. Colin Leys and Marguerite Mendell. (Montreal: Black Rose Books, 1992), 186-187.

relationship between state and social movement is most characteristic at the federal or provincial level (e.g., National Action Committee on the Status of Women): its implementation at the local level lends credence to the notion of a multidimensional federal model.

The idea which the preceding pages has outlined is clear - social movement and interest group activity is a fundamental expression of political desires in any political system, and their activity at the local levels of government are no exception. Through their structures, their targets of pressure, and their actions, social movements and interest groups have demonstrated that the local levels of government are a viable and influential order of government, and will treat them as legitimate members of the federal system. Though interest associations may use the local levels of government as a means to achieve ends within other levels of government, as was shown by Larson, the reality is that the local levels are used strategically by interest associations as a result of their inclusion within the federal system. In other words, social movement networks will not only pressure local levels of government for the sake of influencing those policy areas within the jurisdiction of the local levels of government, but will use them in their role as legitimate governments within the federal system to put pressure on other orders of government. In short, interest groups and social movements have arrived at the conclusion that a multidimensional federal model currently exists, and have modified their actions accordingly.

### *Democratic legitimacy: The politics of representation*

It was stated earlier that one of the pre-conditions for the existence of a legitimate order of government within the multidimensional federal system was the democratic argument - the government in question had to be chosen by the people over whom it presided, unless, as in the case of certain aboriginal groups, collective historical tradition dictated other means. The reason for the inclusion of the democratic pre-condition is relatively straightforward - modern liberal societies have come to rely on democracy to fulfill the representational function of government, and as such, democracy has become a necessary ingredient within liberal society for any order of government to claim the true legitimate status of a governmental power. As a result, modern and post-modern thinking dictates that true governments must derive their power from the people over whom they preside.

Though studies on democracy and democratic theory most often take the national or sub-national government as the principal unit of examination, there is a very rich and established field of academic studies which envisions democracy at the local level, also referred to as the level of the city-state. The Ancient Greek philosophers, Plato and Aristotle in particular, believed that democracy could function only within a political space in which individuals interacted on a day-to-day basis. It was this daily interaction that allowed for a proper exchange and dissemination of ideas, which would then be evaluated by the local body politic.[81] This philosophic current continued throughout the centuries, right up to modern times. For example, in 1951, H.D. Kitto used a hypothetical

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[81] For a discussion on the views of Plato, Aristotle, and other Greek philosphers on their democratic theories, see History of Political Philosophy, eds. Leo Strauss and Joseph Cropsey. (Chicago: University of Chicago Press, 1987), 62-65, 138-141.

encounter between an Ancient Greek and a member of a social club in London to explain his views on the role of the locality in democratic theory:

> The member regrets the lack of political sense shown by the Greeks. The Greek replies, "How many clubs are there in London ?" The member, at a guess, says about five hundred. The Greek then says, "Now if all these combined, what splendid premises they would build. They could have a clubhouse as big as Hyde Park." "But," says the member, "that would no longer be a club." "Precisely," says the Greek, "and a polis as big a yours is no longer a polis."[82]

In 1967, in what became a seminal article, American Robert Dahl wrote that the nation-state as a unit of democratic expression was unworkable, and that like other historical democratic entities, it was merely a transitory phenomena.[83] Instead of the nation-state, Dahl argued that the city (i.e., the locality), was the appropriate political space in which democracy should be practiced. Dahl stated the logical observation that, "...the smaller the unit, the greater the opportunity for citizens to participate in the decisions of their government", whereas the larger the unit, and the more complex its tasks, the more political participation must be reduced, for most people, to the single act of voting.[84] In essence, based on his interpretation of the role of the locality within a federal political structure, Dahl may be thought of as one of the first proponents of a multidimensional federal model.

What these analyses aim to demonstrate is that from a prescriptive standpoint, many theorists view the locality as offering the best, if not the only, unit of democratic

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[82] H.D. Kitto, The Greeks. (Baltimore: Penguin Books, 1951), 79.
[83] Robert Dahl, "The City in the Future of Democracy", American Political Science Review. 4 (December 1967): 956-957.
[84] Ibid., 960.

expression within an established political order. However, there is a very important distinction between what *should be* and what *is*, since it is the latter of these that is being examined. It is one thing to say that the locality offers the best form of democratic expression, but quite another to say that democratic theory provides further legitimacy for the existence of multidimensional federalism. Nevertheless, the prescriptive aspect does allow for the foundation of an empirical analysis of democracy at the lower levels of government within the federal system.

There is a very strong tradition of democratic practice within those orders of government existing below the sub-national level. Though the exact means of democratic expression for each level of sub-provincial government will be examined in the following chapter, it is clear that the local orders of government have a long history of democratic participation. For instance, in his book, Direct Democracy in Canada, Patrick Boyer has documented the history of referenda and plebiscites at all levels of government in Canada, and has concluded that, "The source of the citizen's right to vote directly in a plebiscite or referendum is entirely statutory. This political right, which entitles citizens themselves to be lawmakers or at least to perform an advisory role in the process, exists primarily at the local or municipal level."[85] Boyer was able to substantiate this claim by conducting a province-by-provinces analysis of the history of local orders of government and their use of referenda, which revealed that there existed legislative provisions in each province for the holding of referenda in municipalities or other orders of local government on issues deemed to require popular consent. Though the list of issues dealt

[85] Patrick Boyer, Direct Democracy in Canada: The History and Future of Referendums. (Toronto: Dundurn Press, 1992), 190.

with in plebiscites at the local levels of government is extensive. some of the more recurring issues include prohibition. municipal boundaries. school construction or location. fluoridation. and zoning by-laws.[86] Considering that there have been only three instances of direct democracy in Canadian history at the national level. democratic action and accountability could be said to be flourishing at the local levels of government. .

The democratic argument for multidimensional federalism has gained greater legitimacy over the recent past with the appearance of the "public choice" model of municipal or regional democratic expression. The public choice model states that instead of the traditional method of using the electoral system to enact political changes. individual citizens will "vote with their feet", and settle in the community that gives them the best mix of services for their tax dollars. Inefficient communities will be forced to mend their ways to avoid a population and tax revenue drain.[87] Gordon Tullock, a strong supporter of the multidimensional federal model and the public choice model, has written that the public choice model of democratic expression is first and foremost a valid theoretical model. that it provides the citizen with an additional element of control over the government within which that citizen lives. and also that studies conducted by Charles Tiebout have demonstrated its empirical validity, i.e., local governments will enact political changes designed to attract new settlers in the event of large out-migrations by the existing population.[88] Tullock states that this method of holding local governments accountable for their actions has the secondary effect of accentuating the

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[86] Ibid. 193-220.
[87] For a more complete description of the public choice model. see Gordon Tullock. The New Federalist. (Vancouver: The Fraser Institute. 1994). back cover.
[88] Ibid., 33-34.

sociological nature of Canadian federalism, an interpretation which has already been examined.

By itself, the existence of public choice as a form of local democratic expression does not prove the legitimacy of multidimensional federalism. However, it does show that democratic expression at local political jurisdictions has a greater sense of complexity than the straightforward ballot box expression of democracy which characterizes the federal and provincial orders of government. When combined with the earlier discussions on democratic participation and use of direct democracy, the conclusion that one can make is that democratic values and traditions have a long and deep history within those orders of government comprising multidimensional federalism. With such a long and diverse history of democratic involvement, it is only logical to state that the lower levels of government are just that - orders of government, since their democratic nature necessarily implies their representative, and thus public, nature. Thus, the many forms of democratic expression available to localized governments provides a further justification for the existence of multidimensional federalism within Canada.

Three theoretical arguments were used to argue that the multidimensional federal model, with its emphasis on the inclusion of the local levels of government, is a more representational model of Canadian federalism in the 1990s. The multidimensional model is the only model which can fully explain the role of federalism as acting as a source of protection for minoritarian interests, has social movement and interest group activity as legitimizing factors, and a tradition of democratic practice at the localized

levels of government, which have all been presented as reasons why multidimensional federalism is a more accurate portrayal of the federal political system. When coupled with the arguments made in Chapter 2 against the conventional model of Canadian federalism, there exists a strong theoretical case for a revision of the traditional notions of federalism. However, theory alone cannot adequately prove that the established ideas that scholars hold with respect to federalism in Canada are insufficient. A proper analysis of multidimensional federalism must also incorporate an empirical element in addition to a theoretical element. The next two chapters do this - the following chapter examines the four orders of government which, in addition to the federal and provincial levels, form the foundation for Canadian federalism, while the preceding chapter analyses the Canada Works Infrastructure Program as an example of multidimensional federalism in action, and what lessons the Infrastructure Program offers on how governmental programs can be structured so as to take advantage of the multidimensional model.

## CHAPTER 4 - WHAT ORDERS OF GOVERNMENT ARE INVOLVED ?

Having stated that a multidimensional federal model is more complex due to the greater number of levels of government, it would be useful to examine those additional political actors which can claim the status of a legitimate order of government, based on the definition and criteria which were set forth earlier in this thesis.[89] In addition to the federal and provincial orders of government[90], it will be argued that four other levels of government fall into this model - these additional levels are municipalities, regional governments, school boards, and aboriginal governments. It is important to note that the selection of these four levels does not preclude the potential for additional levels of government to be included within the multidimensional system. However, at this point in time, political conditions are such that only the six levels of government already mentioned meet the three necessary criteria of being democratically recruited, possessing political institutions, and delivering services of a public nature for the good of the individuals residing in a particular political territory.

### *Municipal government - the traditional "third order"*

When Canadians think of government in Canada, it is not uncommon to hear of municipal governments referred to as the "third order" of government found within the federal system. The reasons for this label are evident - municipal government tends to be more visible, more influential, and has a greater impact on the everyday lives of

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[89] See page 7 - "*...the federal level must be democratically chosen, and through its political institutions, should formulate the best means available to undertake or deliver services of a public nature for the good of the individuals residing in a particular political enclosure.*"

[90] Though territorial governments are a separate and legitimate order of government within multidimensional federalism, for the purposes of this thesis they will be treated as quasi-provincial states.

Canadians than any other level of government. As Tindal and Tindal note, "... [municipalities] are familiar with local views and concerns, they are readily accessible, and they are sensitive and responsive to these concerns..."[91] But aside from their increased visibility and influence, what political factors endow municipalities with the legitimacy to claim the status of viable actors within the federal system ? Several responses can be given to this question - municipalities meet the three criteria stated as necessary to claim the status of a governmental order, in that municipal leaders are democratically elected, they possess many diversified political institutions, including, in some cases, massive bureaucracies, and they deliver a wide range of public services for a specifically demarcated population. However, municipal governments also gain legitimacy from the fact that they possess autonomous tax bases and that they have a long history of inter-governmental relations with the provincial and federal levels of government. An analysis of each of these characteristics will better explain the legitimacy of municipalities existing within the federal structure.

The first factor that will be examined, municipal democracy, has a long history in Canada. When the first municipal government in Canada was created in Saint John, New Brunswick in 1785 by a British royal charter, there was the stipulation that although the mayor and certain other officials would be appointed, the six aldermen comprising the "Common Council" for the city would be elected by qualified electors (those possessing property, status, or family privileges).[92] Though this was a small first step, it began the

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[91] C.R..Tindal and S. Nobles Tindal, Local Government in Canada. (Toronto: McGraw-Hill Ryerson Ltd., 1990), 2.

[92] Engin Isin, "Canadian Federalism and Cities: A Colonial Legacy", in Political Arrangements: Power and the City, ed. Henri Lustiger-Thaler. (Montreal: Black Rose Books, 1992), 45-46.

evolutionary process for subsequent municipal and regional governments to become democratically representative. In 1834, the City of Toronto came into existence with elections slated to choose a mayor and Council, followed by Halifax in 1841, Québec and Montreal in 1842, Kingston in 1846, Hamilton in 1847, and so on.[93] Today, the vast majority of municipal governments in Canada have some form of democratic selection. In addition, because of their relatively heavy use of referenda, (as discussed in the preceding chapter), municipalities could be considered to possess a stronger liberal democratic tradition than their federal or provincial counterparts. Though it is true that voter turn-out at municipal elections is generally lower than that of provincial or federal elections, usually averaging in the 30-40% range, the fact remains that the democratic process is firmly in place in municipalities across Canada, and that democratic principles are adhered to and respected.[94]

As with other levels of government, municipalities possess a diversified set of political institutions, which are broken down into three categories. First, though the nomenclature may be different from region to region, municipal governments are led by some form of legislative branch, accompanied by a variety of executive structures; "...an elected council, headed by a mayor and composed of a number of councilors or aldermen", as described by Jack Layton.[95] As with legislative branches in other levels of government, the municipal council represents the final decision-making apparatus within the

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[93] Ibid:, 50-55.
[94] Jack Layton, "City Politics in Canada", in Canadian Politics in the 1990s, eds. Michael Whittington and Glen Williams. (Scarborough: Nelson Canada, 1990), 402.
[95] Ibid., 410-411.

municipal organization, and is ultimately held accountable for the actions of its employees.

A second category of institutional structure is what Andrew Sancton has termed "special-purpose bodies".[96] Essentially, these bodies are separate administrative units responsible for a single governmental function, but are still subordinate to the policies enacted by the municipal council. Examples of such bodies include police boards, planning councils, and museum boards. It will be argued later in this thesis that due to their administrative nature, school boards can be more accurately described as a level of government within the multidimensional federal model, and not as a special-purpose body. Even though the method for appointments to these boards varies from municipality to municipality, with the provincial governments often responsible for a number of direct appointments, the fact that these boards are in areas of local jurisdiction and are subject to the regulations of their constituent municipalities, they can best be classified as bona fide municipal political institutions.

The final institutional component of municipal government is bureaucracy. Municipal bureaucracy enables municipalities to play an influential role in the everyday lives of its citizens not only due to its size, which in 1990 accounted for over 330,000 public employees (see Table 2), but also due to its level of administrative professionalism and expertise. Harold Kaplan has demonstrated that since the turn of the century reform era in Canadian municipalities, there has been a greater tendency towards a more centralized and departmentalized bureaucratic structure. This, Kaplan argues, has "...enhanced the

[96] See Andrew Sancton, Governing Canada's City-Regions: Adapting Form to Function, (Montreal: The Institute for Reseach on Public Policy, 1994), 7.

system's generalized instrumental capacity, its ability to implement a wide range of goals, its ability to process a larger number of information inputs, and its ability to convert these inputs into more sophisticated intellectual images."[97]

***Table 2 - Municipal government employees by province*** [98]

| | *1988-89* | *1989-90* |
|---|---|---|
| Newfoundland | 2,812 | 2,942 |
| P.E.I. | 424 | 424 |
| Nova Scotia | 7,520 | 8,064 |
| New Brunswick | 4,378 | 4,660 |
| Quebec | 66,325 | 68,655 |
| Ontario | 151,190 | 157,607 |
| Manitoba | 10,936 | 11,097 |
| Saskatchewan | 11,738 | 12,349 |
| Alberta | 33,617 | 33,815 |
| B.C. | 30,762 | 31,933 |
| TOTAL | 319,700 | 333,546 |

Institutions, special-purpose bodies and bureaucracies, however, are simply a means to an end; the end being the delivery of public services. Through their programs and services, municipal governments play a key role in the social and economic development of their respective communities, primarily through the provision of so-called "hard services" and "soft services". Hard services are those which ensure proper community livability - sewage treatment, fire protection, water supply, solid waste disposal, roads, policing, electricity or natural gas, building regulation, etc.[99] Though exact responsibilities vary from municipality to municipality, it is the provision of these

[97] Harold Kaplan, Reform, Planning, and City Politics: Montreal, Winnipeg, Toronto. (Toronto: University of Toronto Press, 1982), 205.
[98] Statistics Canada, Canada Year Book 1992. (Ottawa: Statistics Canada, 1992), 244. These figures do not include hospital or school board employees.
[99] For a complete list of such services, see Sancton, 11.

necessary services that has traditionally been the primary function of municipal governments.

In recent years, there has been a tendency among municipal governments in Canada to branch out into the provision of "softer services", which can be defined as the intangible services provided by government. Whereas the provision of such soft services as social service delivery and land-use planning have generally come under the jurisdiction of municipalities, such state functions as economic development and environmental planning are more recent areas into which municipal governments have extended their jurisdiction. Meric Gertler has demonstrated that in the case of economic development, for example, increasing global competition for investment has forced municipal governments to design and implement strategies for attracting new business, strategies which include the provision of serviceable industrial land, special tax considerations, and aggressive advertising and promotional campaigns directed at potential investors.[100] Trevor Price has also explored how environmental considerations have permeated municipal policy decisions, mainly due to the increased social demand for environmentally aware policy choices.[101] Though these two jurisdictions are not the sole examples of soft services being pursued by municipal governments, they do demonstrate that municipal governments pursue a wide diversity of public sector initiatives, which are not restricted to merely traditional municipal functions.

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[100] See Meric Gertler, "Economic Development", in Urban Policy Issues: Canadian Perspectives, eds. Richard Loreto and Trevor Price. (Toronto: McClelland and Stewart, 1990), 35-57.
[101] See Trevor Price, "The Environment", in Urban Policy Issues: Canadian Perspectives, eds. Richard Loreto and Trevor Price. (Toronto: McClelland and Stewart, 1990), 124-144.

The fourth source of legitimacy for municipalities as a level of government within the federal system is their ability to raise taxes. Municipal government has three principle methods of financing its operations - provincial transfer payments (both conditional and unconditional), property taxes, and user charges. For most municipal governments, transfer payments form the bulk of operating budgets; in 1991, they amounted to over 50% of all municipal government revenue.[102] The conditional philosophy of provincial transfers, which represents close to 80% of all transfer payments, states that the specified funds must be used for a predetermined purpose, a determination usually made by the provincial government. However, it is the ability to set rates and administer a system of taxation which draws the parallel between municipalities and other legitimate forms of government.

Property taxes represent the largest source of self-generated revenue for municipalities, representing approximately 40% of all municipal government revenue.[103] Though most of the methods and rules of tax assessment and tax exemption are principally a provincial matter, the administration of the system, including collection, enforcement, and of course, the ability to spend revenue received falls under the responsibility of the municipality.

The other means that municipal government has to generate revenue is the user charge, which is essentially a fee for the provision or use of some service. Representing roughly 10% of municipal government revenue, user charges have always been a politically sensitive form of revenue generation, even more so in recent years.[104] Due to cutbacks in

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[102] Statistics Canada, Local Government Finance, (Ottawa: Statistics Canada, 1992), 32.
[103] Ibid., 32.
[104] See David Siegel, "The Financial Context for Urban Policy", in Urban Policy Issues: Canadian Perspectives, eds. Richard Loreto and Trevor Price, (Toronto: McClelland and Stewart, 1990), 24-25.

transfer payments, speculation has arisen that municipalities may, or already have introduced new user fees on such services as garbage collection or sewage treatment that have been free of charge in the past. Even though many community groups object to these charges as a hidden form of indirect taxation, the fact remains that municipal governments have the full legal authority to introduce such charges at their discretion.

The final argument for the legitimacy of municipal governments existing in the federal system is in the history of trilateral inter-governmental relations in Canada. Though the Constitution Act (1867) officially entrenched the notion of municipalities existing in a subservient relationship vis-a-vis the provincial state, informal ties have managed to develop between municipalities and the federal government. For instance, under the auspices of the Canada Mortgage and Housing Corporation, first established in 1946, the federal government has established *de facto* links with municipal governments in such areas as housing and urban sprawl.[105] Policy linkages have also been established in fields such as transportation, crime prevention, environmental policy, and infrastructure, though provincial participation is almost always a prerequisite for these linkages to be established.

Perhaps the most interesting example of municipalities asserting themselves within the federal system has to do with the issue of constitutional reform. Beginning with the intense constitutional discussions of the late 1960s, individual municipalities and their national lobby group, the Canadian Federation of Mayors and Municipalities (which later became the Federation of Canadian Municipalities), pressured Ottawa and the provinces

[105] Tindal and Tindal, 142.

for greater autonomy, constitutional recognition, and new fiscal arrangements.[106] This lobbying campaign continued throughout the patriation process of 1981-82, the Meech Lake Accord in 1987, and the process leading to the drafting of the Charlottetown Accord in 1992, all with little success. Nevertheless, the actions and positions taken by the FCM, which did receive limited recognition by the federal and provincial governments, were commensurate with the activities of any legitimate order of government within a federal system.

These five characteristics of municipal government offer ample evidence for the legitimacy of this order of government to be a political actor within the multidimensional federal model. However, as with other local levels of government, the chief obstacle to the full recognition of municipalities as a legitimate order of government will continue to be the provinces. Since Confederation, provincial governments have loudly protested any attempts to change the status of municipalities and other forms of local government which were granted to them under section 92 (8) of the Constitution Act (1867). Despite these protestations, the available evidence suggests that provincial governments may have to come to accept that for reasons outlined throughout this paper, municipalities exist co-dependently with the provinces in the federal system, and not subserviently.

### *Regional governments - a work in progress*

In his book, Governing Canada's City-Regions: Adapting Form to Function, Andrew Sancton speaks of a two-tier local government model - the lower tier comprised of municipal governments, and the upper tier responsible for concerns that are common to

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[106] William Young, Municipalities, the Constitution, and the Canadian Federal System. (Ottawa: Library of Parliament Research Branch, 1991), 9-22.

an entire region.[107] In more common vocabulary, Sanc .on is referring to the newest level of government to be found in the multidimensional framework - regional governments. Though the individual structures and responsibilities of regional governments differ among the three Canadian provinces where they have been created (Ontario, Quebe and British Columbia), they possess a sufficient number of commonalities so that the argument can be made for their inclusion within the federal system.

The primary purpose of regional government, as stated by Sancton, is to look after those concerns which affect a whole region, and in so doing, "...minimizes the need for cooperation and agreement among the municipalities within the area covered by the upper-tier authority".[108] That is to say that public functions are divided between the overarching regional government and the constituent municipalities, with the regional government assuming responsibility for those jurisdictions which can be addressed more efficiently from a regional point of view. For instance, in the Regional Municipality of Ottawa-Carleton, it is the regional government that is responsible for bus services, recycling programs, and public health, whereas the constituent municipal governments are responsible for local sidewalks, neighbourhood sewers, and animal licensing.[109] In addition, more areas currently served under regional government are being policed by regional police forces, instead of the more traditional municipal police force. However, as with any inter-governmental relationship in a federal structure, there is a certain degree of overlap and shared jurisdiction, especially in such areas of land-use planning and

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[107] See Sancton, 57-71.
[108] Ibid., 61.
[109] Regional Municipality of Ottawa-Carleton, A Guide to Regional Government. (Ottawa: Information and Public Affairs Office, 1995), 6.

public works. Thus, close cooperation with the municipal and provincial levels of government is a necessity.

Another common trait among regional governments is that they are democratically accountable to their constituent populations, although in certain instances, in a somewhat different manner than that of other levels of government. From their beginning, the members of many legislative branches of regional government were not directly elected, but were comprised of elected municipal officials, such as the mayor and/or council members of the constituent municipalities. For example, the original structure of the first regional government in Canada, Metropolitan Toronto in 1953, was a 25-member council, which was comprised of the mayor or reeve of the twelve municipalities (excluding the City of Toronto) who made up the regional government, as well as twelve members from the City of Toronto, consisting of the mayor and eleven council members, plus one appointed chair.[110] The Greater Vancouver Regional District (created in 1967), and the Montreal Urban Community (created in 1970), possessed similar methods of direct municipal representation within the regional political structures.[111] These mayors and other designated elected officials formed the membership of the regional council (referred to as the board of directors in the Greater Vancouver Regional District), which became accountable for the actions and/or decisions made by the regional government as a whole.

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[110] Harold Kaplan, Urban Political Systems: A Functional Analysis of Metro Toronto. (New York: Columbia University Press, 1967), 50-52.
[111] Sancton, 66 and 83.

Following the release of a number of task force reports on regional government in Ontario which put into question this idea of indirect municipal representation. Ontario regional governments began to move away from a system of indirect democracy, and began to inch towards a system of direct election of regional councillors and a regional chair, or in certain cases, a hybrid version involving municipal representation and direct election.[112] This was witnessed in 1988 with the first direct election of Metropolitan Toronto councillors, while 1994 saw the first direct election of a regional government in Ottawa-Carleton. Because of the greater level of democratic accountability associated with the direct election or hybrid models, it may come to pass that other regional governments in Ontario, Quebec and British Columbia will follow one of these models. Having said this, it is important to note that although the model of indirect democracy used by many regional governments may not be the ideal system, it is still a form of democratic representation.

Having established that regional governments do deliver services of a public nature, and are democratically chosen in one of several ways, the final criteria that must be met is the existence of political institutions. As already mentioned, the legislative branch of regional government is composed of a regional chair and a council, who are held accountable for the actions of the government. However, perhaps due to the widespread use of indirect election, Henry Jacek has noted that regional bureaucracies play a much more influential role in terms of decision-making than does the legislative branch,

[112] For examples of such studies, see Brian Koscak and David Siegel, Accountability and Representation. (Niagara Falls: Niagara Region Review Commission, 1988), and Task Force on Representation and Accountability in Metropolitan Toronto, Analysis and Options for the Government of Metropolitan Toronto. (Toronto: Ontario Government Bookstore, 1986).

indicating a shift in where true institutional political power lies within regional governments. As Jacek states, "...(there has been) a major increase in the influence of public servants...at the expense of local elected officials and residents...regional councillors appear relegated to a role of responding to policy proposals put forward by the bureaucracy..."[113] Despite such criticism of the weakness of the legislative branch of regional government, the fact remains that a functioning council and a functioning bureaucracy at the regional level do exist.

The preceding brief discussion on regional government leads to two fundamental conclusions. One, there is no immediate likelihood that regional governments will disappear from the Canadian political scene. Their democratic, institutional, and functional evolution all suggest that regional governments have become a useful fixture within the federal system, and that they are accommodating themselves within the federal structure. Second, there is no immediate likelihood that regional governments will replace municipal governments. The effectiveness of regional governments in dealing with issues such as urban planning and urban renewal has come from their federated structure. Municipalities will likely continue to hold jurisdiction over issues of a local nature, and thus are in little danger of being replaced.

### *School boards - the single-purpose level of government*

At first glance, the inclusion of school boards within a discussion of the federal system appears misplaced - for many analysts, school boards are merely another example of a

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[113] Henry Jacek, "Regional Government and Development: Administrative Efficiency versus Local Democracy", in The Government and Politics of Ontario, ed. Donald MacDonald. (Toronto: Nelson Canada, 1985), 111.

special-purpose body as described earlier by Sancton, analogous to a police commission or a heritage board. However, in a major study on government agencies, boards, and commissions (ABCs) led by Dale Richmond and David Siegel, school boards were ruled out as a type of special-purpose body, primarily due to the fact that unlike a true ABC, school boards had the ability to tax.[114] What Richmond and Siegel do not answer is that if school boards are not to be considered a government agency or board, then what exactly are they ? The position taken in this thesis is that they can best be understood as levels of government within a multidimensional federal structure.

In a 1963 text, Frederick Enns describes school boards as "...a local government body which not only legislates but also administers both its own regulations and that of the department...Its own rules and regulations have the full force of law and must be considered valid in the courts."[115] From another perspective, Peter Woolstencroft describes the role of school boards as "...trustees who play at least some role in determining educational policies and providing citizens some measure of direct control, which is not available in other policy areas..."[116] These defining characteristics do not differ greatly from region to region, or even between the Canadian system and the American system (the United States being the only other country in the world with a similar system of elected school boards).

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[114] David Siegel, "The ABCs of Canadian Local Government: An Overview", in Agencies, Boards, and Commissions in Canadian Local Government, eds. Dale Richmond and David Siegel. (Toronto: Institute of Public Administration of Canada, 1994), 8.

[115] Frederick Enns, The Legal Status of the Canadian School Board. (Toronto: Macmillan Company of Toronto, 1963), 5.

[116] Peter Woolstencroft, "Education", in Urban Policy Studies: Canadian Perspectives, eds. Richard Loreto and Trevor Price. (Toronto: McClelland and Stewart, 1990), 150.

Thus, school boards play a key role in tailoring standardized educational policies to the needs and demands of the population over which it serves. This is especially important in areas with large ethnic, religious, or linguistic minorities, for whom preset teaching guidelines may be found offensive, or that may omit certain aspects deemed important to the school district in question. However, this should not detract from the influence of the provincial governments in primary and secondary education; educational policies, systems, and cirriculums are established at the provincial level, and is still a jurisdiction which the provinces are very reluctant to relinquish any control.

Even though school boards are relatively weak in the face of the provincial governments, there is no doubt that they do deliver services of a public nature. There is also little doubt that in most of the country, school boards meet the democratic criteria. In each province, with the exception of Nova Scotia and New Brunswick, school board representatives (referred to as trustees) are elected by the people residing in specific districts.[117] However, as with other forms of localized government, questions have been raised with regard to the effectiveness of school board democracy. For example, Bryne Purchase and Ronald Hirshhorn point out that not only is voter turnout at school board elections "abysmally low", but that because of the close connection between school boards, provincial governments, and municipalities, there is a sense of blurred accountability in terms of educational policy.[118] In short, electors are unable to adequately determine what it is they are voting for in a school board election. On the

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[117] Woolstencroft, 150.

[118] Bryne Purchase and Ronald Hirshhorn, Searching for Good Governance. (Kingston: School of Policy Studies, 1994), 83.

other hand, school boards possess unique forms of democratic accountability and participation not found in other levels of government, usually in the form of parent-teacher associations or direct parental participation in the setting of cirricula. Despite the arguments for or against the level of democracy in school boards, the fact remains that school boards do adhere to the fundamental principles of a democratic system.

As for the final criteria - political institutions - school boards are headed by a council of trustees and a chair who is typically chosen by the board members, who are, to a certain degree, held accountable for the individual schools in their jurisdiction. It is more difficult to identify the composition of a bureaucratic structure within school boards, since teaching staff cannot be adequately perceived of in the traditional sense of a bureaucracy. The number of non-teaching positions in school boards is obviously proportional to the relative size of the school district, though in larger urban centers, the size of the school board bureaucracy is relatively large. Table 3 outlines the bureaucratic size of a select number of school boards from throughout the country. As seen in the table, there is a fairly large bureaucratic structure in place among Canadian school boards, though the ratio of the number of non-teaching employees versus the student population demonstrates that bureaucratic strength will depend upon the region and resources available to each individual school board. In short, though school board bureaucracies and institutional bodies may be less complex than those of their federal or provincial counterparts, they still do represent organized structures designed to implement the policies decided upon by democratically elected public officials.

*Table 3 - Non-teaching employees of selected school boards - 1996*[119]

| *District* | *# Employees* | *# Students* | *Ratio** |
|---|---|---|---|
| Halifax District School Board | 500 | 14,500 | 1:29 |
| Cmn. des ecoles catho. de Quebec | 392 | 9,126 | 1:23 |
| Ottawa-Carleton Board of Education | 1,373 | 33,406 | 1:24 |
| Seven Oaks School Division - Winnipeg | 425 | 9,000 | 1:21 |
| Greater Victoria School Board | 1,400 | 21,000 | 1:15 |

*Ratio denotes non-teaching employee : student served under the board

There is no doubt that school boards meet a very specific need in the federal system - their methods of democratic participation, their specialized public responsibilities, and their forms of political institutions are all targeted to the provision of educational governance. However, though the specificity of school boards may be viewed as arguing against their inclusion in a federal system, the functional capability of any particular level of government is inconsequential in the multidimensional model; the legitimacy of the political actor in question is consequential. In the case of school boards, the political legitimacy for their existence within a multidimensional model is present and viable.

### *Aboriginal governments - the rising stars*

One of the elements included in the 1992 Charlottetown Accord was a provision to recognize the inherent right of self-government for the aboriginal peoples of Canada. Had the Charlottetown referendum been successful, this right would have constitutionally entrenched aboriginal governments as an officially sovereign order of government within

[119] Figures taken from phone interviews with individual school board head offices, March 28, 1996.

the Canadian federation.[120] Though Charlottetown failed, it did raise the possibility of aboriginal governments existing as a separate level of government within the conventional federal structure. However, under the parameters of multidimensional federalism, aboriginal governments already can claim the legitimate status as a separate order of government in Canada.

The primary reason for the existence of aboriginal governments is to administer a select number of public functions on territorial demarcations referred to as reserves. The political structures and apparatuses which have been designed to accomplish this goal are somewhat analogous to a municipality, and in many ways they both share common characteristics. However, in the area of democratic involvement, aboriginal governments differ somewhat from their municipal counterparts. Until the nineteenth century, native bands were led by chiefs or elders of the tribe who were chosen through one of several means that had been collectively passed on from one generation to the other. Following the proclamation of the Indian Act in 1876, and leading up to as late as 1951, the federal government attempted to suppress traditional forms of aboriginal government, and replace them with a system of democratically elected band councils.[121] Because adoption of the elected band council model of government was seen as a convenient method of satisfying the federal government, yet with the concurrent desire to maintain the traditional methods of governance, a unique situation arose in a number of native bands whereby the elected councils were used publicly, but that it was understood by members

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[120] Radha Jhappan, "Inherency, Three Nations, and Collective Rights: the Evolution of Aboriginal Constitutional Discourse from 1982 to the Charlettown Accord", in International Journal of Canadian Studies. 7-8 (Spring-Fall 1993): 237.

[121] Jill Wherrett and Jane Allain, Aboriginal Self-Government. (Ottawa: Library of Parliament Research Branch, 1995), 4.

of the band that major decisions would be made in private by the traditional form of government.[122]

The argument could be made that in traditionally-governed aboriginal bands, which may not be democratic in the conventional sense at all, that aboriginal governments do not meet the criteria of democratic accountability. This interpretation does not take into account the notion of culturally diverse forms of democratic expression. If a society agrees in a collective manner to be governed in a certain manner, especially if that agreement has the force of historical tradition, is that not as equally legitimate a method of democratic expression as the Eurocentric notion of elections ? In other words, if a particular native band collectively desires a government chosen by a patriarchal chieftain system, for example, then that system represents that society's vision of democracy. The system could therefore be considered to possess the same level of accountability as any other system of democratic expression, including that of the ballot box.

Though the democratic argument may be a question for debate, there is no doubt that the responsibilities undertaken by aboriginal governments fall within the provision of services undertaken for the public good. The powers and responsibilities exercised by native governments have evolved considerably over the past fifteen years. Until the 1980s, aboriginal governments were responsible for services of a purely local nature, which included community health, traffic, construction of public works, land use, zoning, water supplies, and even bee-keeping and poultry raising, among others.[123] During the 1980s and 1990s, agreements were concluded between several bands and the federal

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[122] Ibid., 4-5.
[123] Ibid., 5.

government which allowed for more responsibility and autonomy to be passed on to specific aboriginal governments. This process culminated in 1995 with an announcement by the federal government that it would recognize the inherent right of self-government for aboriginal communities, which would permit the decentralization of even more responsibility to aboriginal governments, including new powers over culture, languages, political institutions, education, resources, and social services.[124] It could be argued that due to the nature of the powers being handed to aboriginal governments, quasi-provincial states are being created for the aboriginal community.

Where aboriginal governments and municipal-type governments do converge is in their political institutions. Though institutions will differ from band to band, the most prevalent political institution is that of a municipal-style council headed by an elected chief. This is not to say that this representational model has not gone unchallenged. As mentioned earlier, democratic elections were viewed by some bands as subjugating the traditional means of governance. Also, there has never existed a consensus within the aboriginal community that governments should even exit at the local level; certain native organizations have argued for a system of provincially or even nationally-based governments.[125] Despite this lack of official consensus, the 1995 policy initiative announced by the federal government to devolve greater powers to aboriginal governments is being conducted at the community level, and being handed over to

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[124] See Government of Canada. Aboriginal Self-Government: Questions and Answers. (Ottawa: Department of Indian and Northern Affairs, 1995).

[125] See Paul Tennant, "Aboriginal Rights and the Penner Report on Indian Self-Government", in The Quest for Justice: Aboriginal Peoples and Aboriginal Rights, eds. Menno Boldt and J. Anthony Long. (Toronto: University of Toronto Press, 1985), 325-326.

representative political institutions in individual bands, not to any nationally or provincially-based representative group.

In addition to the three requisite criteria that have already been explored, there is one other characteristic of aboriginal government that legitimizes its existence as an order of government in multidimensional federalism - as with other levels of government already explored, aboriginal governments have the right to tax, even if that right is indirect. Marc Malone demonstrates that there exists two types of tax income which aboriginal governments are free to pursue - direct taxation and resource revenue-sharing. Direct taxation is limited to only a small number of aboriginal bands, located primarily in the two territories and Northern Quebec, but which have been granted "municipal-type taxation prerogatives". [126] Resource revenue-sharing allows aboriginal governments to collect a form of royalty for revenues gained by resource exploitation on aboriginal territory. As with other levels of local government, aboriginal governments also receive both conditional and unconditional financing, principally from the federal government, though in certain cases, from provincial governments as well.[127] Because of this ability to legally collect public monies in an autonomous manner, the case for aboriginal governments existing as legitimate levels of government within a multidimensional federal model is made much stronger.

In conclusion, one can remark that despite the existence of a number of characteristics unique to aboriginal governments, they do fit the criteria to exist as an order of

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[126] See Marc Malone, Financing Aboriginal Self-Government in Canada. (Kingston: Institute of Intergovernmental Relations, 1986), 5.
[127] Ibid., 13-14.

government within multidimensional federalism. They have processes of accountability (though not always in the traditional sense of the word), they perform services for the public good, they possess forms of political institutions, and in certain prosperous bands, large bureaucratic structures, plus have the ability to levy their own form of taxes. It is no wonder that many conventional federalists refer to aboriginal governments, and not municipal governments, as the "third level" of government in Canada.

This chapter has argued for the inclusion of four additional political actors within the Canadian federal structure. It has been demonstrated that municipalities, regional governments, school boards, and aboriginal governments all meet the criteria set forth in the definition of what constitutes a governmental order. Perhaps the strongest observation that can be made from this chapter is the actual complexity of Canadian federalism; the public sphere encompasses a far greater number of interests, powers, and responsibilities than a more simplistic view of federalism as a federal-provincial continuum captures. To more clearly understand the dynamics and nature of this complexity, it would be useful to investigate a real-life example of the fundamental ideas of multidimensional federalism put into practice. This will be purpose of the following chapter.

## CHAPTER 5 - WHAT IS THE CANADA WORKS INFRASTRUCTURE PROGRAM ?

In the federal election of 1993, the Liberal Party of Canada was elected to office on the basis of promises made in a policy document entitled Creating Opportunities: The Liberal Plan for Canada, more commonly known as the Red Book. Page 61 of the Red Book reads as follows:

> A Liberal government will establish a federal-provincial-municipal public infrastructure program. Each level of government will contribute $1 billion a year for two years, increasing Canada's investment in public infrastructure by $6 billion over two years. After two years the program will be reviewed to determine whether it should be continued.[128]

This statement would become the seed that would eventually flourish into an exemplary case study of multidimensional federalism put into practice - the Canada Works Infrastructure Program.[129] This chapter will analyse the infrastructure program by looking at the history of multilevel infrastructure investment in Canada, followed by an examination of the intergovernmental dynamics that occurred to eventually give the program life, structure, and an operational philosophy. Finally, a comparison of the goals of the program with its actual results will be used to illustrate the mechanics of the multidimensional federal model put into practice.

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[128] Liberal Party of Canada, Creating Opportunities: The Liberal Plan for Canada (Ottawa: September 1993), 61.

[129] Much of the research for this chapter was conducted for an article with Caroline Andrew in How Ottawa Spends 1995-96, ed. Susan Phillips. (Ottawa: Carleton University Press, 1995).

### *Infrastructure in the past - where have we been ?*

Because of its very nature, investment in infrastructure is a policy pursued by all levels of government. Table 4 illustrates that each level of government has actively participated in the provision of infrastructure in the post-war period. One noteworthy observation is that it is a commitment that has risen by all levels of government over the past twenty years, and is expected to continue to rise. Aside from the annual incremental projects that governments have pursued, there have been six intergovernmental ad hoc programs put into place between 1938 and 1984 designed to increase the existing stock of infrastructure. These fixed-term programs have helped to bolster infrastructure spending for relatively short-term time periods of time.[130] David Amborski and Enid Slack argue that these programs have gone through three phases of evolution - the first, lasting from 1938 to 1960, saw programs such as the Municipal Improvements Assistance Act and the Municipal Development and Loan Act designed principally for reasons relating to economic development and employment growth.[131] The second phase, lasting from 1960 to 1984, was concerned with providing an adequate quality of services for new developments caused by the post-war population boom. The final phase, lasting from 1984 until 1994, witnessed an absence of intergovernmental cooperation on the infrastructure front.

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[130] Caroline Andrew and Jeff Morrison, "Canada Infrastructure Works: Between 'Picks and Shovels' and the Information Highway", in How Ottawa Spends 1995-96, ed. Susan Phillips (Ottawa: Carleton University Press, 1995), 109.

[131] David Amborski and Enid Slack, "Federal, Provincial, and Municipal Co-operation: Past, Present, and Future", in The Proceedings of the First Canadian Conference on Urban Infrastructure, eds. Daniel Smith and Gary Heinke. (Toronto: Sodanell Canada Ltd., 1987), 44-45.

*Table 4 - Public investment in fixed infrastructure (Billions of constant 1993 dollars, Annual average)*[132]

| | *1961-75* | *1976-84* | *1985-92* | *1993-2002(projected)* |
|---|---|---|---|---|
| Federal* | 1.448 | 1.465 | 2.122 | 3.581 |
| Provincial** | 4.176 | 4.540 | 4.773 | 6.536 |
| Municipal*** | 4.753 | 5.347 | 6.833 | 8.664 |

* Includes infrastructure spending by aboriginal governments.
** Includes physical infrastructure spending by school boards.
*** Includes infrastructure spending by regional governments.

Sensing that there was a greater hesitation on the part of the federal and provincial governments to co-operate on the development of infrastructure, due primarily to its potential costs, the Federation of Canadian Municipalities commissioned a study in 1983 to examine the state of infrastructure in Canada and to propose possible solutions. In 1985, the FCM published the results of this study which demonstrated that the current stock of infrastructure, especially in such essential services as sewers and water mains, was deteriorating at an unprecedented rate, and that in certain urban areas, infrastructure was nearing the end of its useful lifespan.[133] In response, the study recommended that a five-year, $12 billion infrastructure improvement program be implemented whereby costs, responsibilities, and decision-making would be shared between the federal, provincial, and various local orders of government. The study also stated that the local levels of government would have to refocus their budgetary priorities to address the

[132] Michael McCracken and Carl Sonnen, "Infrastructure and the Canadian Economy: The Macroeconomic Impacts", in Infrastructure and Competitiveness, eds. Jack Mintz and Ross Preston. (Kingston: John Deutsch Institute for the Study of Economic Policy, 1993), 125.
[133] Federation of Canadian Municipalities, Municipal Infrastructure in Canada: Physical Condition and Funding Adequacy (Volume 1). (Ottawa: Working Group on Municipal Infrastructure, 1985).

decline in the state of physical infrastructure, and if necessary, find new sources of revenue so as to be able to finance a joint infrastructure initiative.[134]

The federal Conservative government of the day responded to this report by stating that due to constitutional limitations, the federal government was unable to establish any program in the field of infrastructure since infrastructure was principally a provincial jurisdiction. Officials within the Department of the Environment also had reservations about the program, arguing that it would prevent municipalities from adapting more efficient systems of water use.[135] The opposition Liberals, however, took a different view. In 1989, the federal Liberal caucus set up a task force to look into the question of infrastructure. Their final report, entitled Canada's Infrastructure: Sharing the Commitment, echoed the report of the FCM in recommending a multi-level and multi-funded infrastructure program with strong representation from every level of government involved.[136] The promise that the federal government would not dominate the implementation of the program was essential to secure provincial support for the program, as well as to secure the support of a number of Liberal Members of Parliament who felt that a joint program between the federal government and the local levels of government could be viewed as a sign of provocation by the provinces.[137] Following ratification of the policy at the Liberal Biennial Convention in 1992 as an official plank in the Liberal election platform, the link between the Liberal Party and a joint infrastructure program was firmly in place.

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[134] Ibid., 50.
[135] Andrew and Morrison, 110.
[136] Liberal Party of Canada, Canada's Infrastructure: Sharing the Commitment. (Ottawa: Liberal Party of Canada, 1990).
[137] Mr. Jesse Flis, M.P. (Parkdale-High Park), interview by author. August 1994, Toronto.

Following the victory of the Liberal party under Jean Chretien in the 1993 federal election, and the appointment of Art Eggleton, a former mayor of Toronto, as Minister Responsible for the Infrastructure Program, the federal government moved quickly to implement the program as outlined in the Red Book. Having already been given assurances by the FCM that municipal governments would give their full support to the program, the federal and provincial governments agreed at a First Ministers' conference in December 1993 that bilateral agreements would be signed between Ottawa and each province or territory to guide the implementation of the program.[138] In the short period of time during which official implementing agreements were being drafted, the provinces had given their consent for the participation of other, non-municipal orders of government; namely, regional governments in Ontario, Quebec, and British Columbia, and school boards and universities in Manitoba, Nova Scotia, and Ontario. In addition, a separate tripartite program was established strictly for First Nations reserves, which would be implemented by the appropriate aboriginal governments. By the spring of 1994, ribbon-cutting ceremonies for the first approved projects had already begun.

### *Structure of the program - the multidimensional model in action*

When one scratches below the surface and examines the organizational structure of the program, it becomes clear how the fundamental concepts of multidimensional federalism have been incorporated into the design of the infrastructure program. To analyse, this structure, it will be necessary to look at the approval process, including the methods of project selection, as well as the departmental organizational structure. The student of

[138] Andrew and Morrison, 115.

public policy should come to recognize the uniqueness of this particular type of policy structure.

At a general level, the structure of the Canada Works Infrastructure Program has remained largely the same as the original description found in the Red Book - despite minor discrepancies, it has retained its original form of a three-year, $6 billion shared cost program, with the federal government, the provincial governments, and the local orders of government each financing $2 billion, or one-third of the total costs. Slight variations did occur. For example, as of December 1995, the original figure of $6 billion had been exceeded by over $300 million, due to additional local and private sector expenditures. However, because each implementation agreement stated that any additional financial requirements were to be the responsibility of the local order of government, the federal and provincial orders of government were not liable for this extra expenditure. Also, the 1995 federal budget stretched the program from three years to five years, thereby permitting additional time for the completion of designated projects.[139] These slight changes notwithstanding, the infrastructure program has generally been implemented along the lines described in the Liberal election platform.

On a more detailed level, the program has been structured to essentially meet the needs of the local orders of government. The starting point for this process lies, naturally enough, with these local orders of government. Municipal governments in all provinces, as well as regional governments and school boards in those provinces previously mentioned, were permitted to recommend proposals for infrastructure projects in their

[139] Taken from Government of Canada, "Infrastructure Works Completes Peak Year", News release. (Ottawa, December 14, 1995).

respective jurisdictions. These project selections were based on certain mandatory criteria which had been agreed upon in the bilateral agreements between Ottawa and each of the provinces. These mandatory criteria included short-term job creation provisions, projects had to be incremental to the 1994 capital budget (i.e., had to be new investments)[140], they had to create, renew, or enhance physical infrastructure, and finalized projects had to be operated by the local governments in question upon completion.[141] A set of discretionary criteria were also included, which were considered favourable, though not essential requirements. Among the discretionary criteria included the creation of long-term jobs, the enhancement of economic competitiveness, the use of innovative financing, and an upgrading of environmental qualities and sustainability.[142]

Once it had been established that these specific requirements were met, there still existed the question of which projects would be chosen for financing. The process of project selection varied from local jurisdiction to jurisdiction. Though detailed records were not maintained, officials working within the program believe that local orders of government pursued one of two decision-making processes. One, projects were taken from lists of capital works that the local order of government had intended to pursue at some point in the future, but had not already been included in any official public works plan by the local government in question. Decisions concerning which of these projects would go ahead would be made by a legislative branch. Secondly, the bureaucratic structure itself would make the decision, usually the engineering or public works

[140] Incrementality was waived for the province of Newfoundland and Labrador, since local orders of government were unable to finance any non-incremental projects.
[141] Government of Canada. Canada-Ontario Infrastructure Works: Questions and Answers. (Ottawa, January 25, 1994).
[142] Ibid.

divisions, based on their own assessment of current needs.[143] Regardless of the source of project proposals at the local level, once the decision to seek approval on a specific project was made, a detailed description of the proposal was submitted to the appropriate management committee.

The management committee, which was comprised of representatives from the federal and provincial governments, was the decision-making body for each province. It was the responsibility of these committees to determine whether local projects were eligible for funding based on their ability to meet the criteria set forth in the implementing agreements, and in general, were responsible for the functioning of the program in each respective province. From a legal standpoint, representation on the management committees was guaranteed only to federal and provincial delegates; however, in four provinces (Alberta, New Brunswick, Nova Scotia, and Ontario) municipal governments were also represented on the committees.[144]

Once a project had received the proper funding approval from its proper management committee, and proper formalities and announcements had taken place, the local order of government would then be responsible for contracting out the work involved, as well as responsible for covering the full cost of the project. Once this had been done, the province would reimburse the local order of government for two-thirds of the total cost, after which the federal government would reimburse the province one half, otherwise equal to one-third the total project cost. This funding arrangement meant that the local

[143] Interview with Tom Scott, Department of Infrastructure, interview by author, February 8, 1996, Ottawa.
[144] Federation of Canadian Municipalities, FCM Forum, (Ottawa: May-June 1994).

orders of government were also responsible for ensuring that all contract, labour, and safety regulations were respected and upheld.[145]

From a federal and provincial organizational perspective, interesting arrangements were utilised to respond to the unique nature of the infrastructure program. The federal government structured itself along the lines of its regional development agencies, with staff, equipment, and office space borrowed from each of these agencies. Thus, the Atlantic Canada Opportunities Agency (ACOA) was responsible for administering the program in Atlantic Canada, Western Economic Diversification for the Western provinces, the Federal Office for Regional Development - Quebec in the province of Quebec, the Department of Industry and the Federal Economic Development - Northern Ontario Region (FEDNOR) for Ontario, and the Department of Indian and Northern Affairs for the First Nations program.[146] The provincial and territorial governments also used pre-existing departmental structures to administer the program - five governments used their municipal affairs ministry, four governments used an intergovernmental relations ministry, and three governments used an economic development ministry to administer the program.[147]

The use of this innovative structure for the implementation and administration of the infrastructure program allows one to make several conclusions with respect to the model of multidimensional federalism. First, from a federalist point of view, what makes these structures interesting is that they demonstrate that the means already exists within current

[145] Interview with Tom Scott, February 8, 1996.
[146] Government of Canada, Canada Infrastructure Works: Backgrounder. (Ottawa: January 12, 1994), 4.
[147] Andrew and Morrison, 117.

federal and provincial government bureaucracies to conduct a policy of intergovernmental relations with the lower levels of government. Even though direct linkages may not have been established between every order of government involved, the lines of communication were such that intergovernmental relations were able to be conducted in a coherent and organized fashion. These political structures not only lend credence to the possibility of a multidimensional relationship within the federal system, but provide ample evidence that it is achievable as well. Second, this structure allows the lower levels of government to be significant participants in the program, even though they are subjected to certain guidelines imposed upon them from the federal and provincial orders of government. As will be demonstrated in the following section, the four lower levels of government were able to use their role within the program to better meet their local and individual needs. Thus, the structure of the infrastructure program illustrates a policy that reflects the principles of multidimensional federalism.

### *Goals of the program - how did it perform ?*

Before the infrastructure program was even launched, the various orders of government had already stated their own expectations of what they hoped the program would accomplish. If one can compare these expectations with what the program actually produced, it would offer some insight into the responsiveness and representational dimension of a program based on multidimensional federalism. In other words, how well was the infrastructure program able to meet the needs of each level of government, and what lessons can be applied to a multidimensional federal model from such a comparison?

To answer this question, one must first examine the stated intentions of the program from each level of government. The federal government clearly stated its intentions of the infrastructure program in the Liberal Red Book. Though short and long-term job creation were the immediate goals of the program, the Red Book stated that investing in "state-of-the art infrastructure will enhance the skills and technological expertise of Canadians, creating development opportunities and domestic markets for such expertise. In addition, the industries developed around this knowledge...will help expand Canada's share of world trade by offering innovative goods and services in foreign markets."[148] This statement suggested that the federal Liberals intended the program to be a vehicle through which the groundwork for information and high-technology industries could be developed. Subsequent statements since the 1993 election demonstrated that the federal government was relying on the high-technology and information sectors to assist them fulfill their election promises of economic growth and job creation, which strengthened their hope for an infrastructure program based on information highway-type projects.[149]

For the provinces, their primary concern was that Ottawa not dominate the program, nor intrude into areas of exclusive provincial jurisdiction. Provincial governments also wanted a certain degree of flexibility within the program, to enable them to pursue projects which could best meet the needs of their respective jurisdictions. For instance, some provinces hoped to create an environment for public-private partnerships in the provision of infrastructure; others did not. Some provinces wanted the program to focus

[148] Liberal Party of Canada, 60.

[149] Various statements by the Hon. John Manley, Minister of Industry, and the Hon. Paul Martin, Minister of Finance, are testament to this reliance on the high-technology sector.

on hard-core physical infrastructure; other provinces were more sympathetic to the position of the federal government.[150] No matter what the differences were, the provinces expected enough of a say in the implementation of the program that their differences in expectations would be addressed, while at the same time, without having to contend with the interference of the federal government in areas of provincial jurisdiction.

Municipal and other local levels of government were very clear and unified in their stated expectations of the program. The 1985 report conducted by the Federation of Canadian Municipalities had demonstrated that road, bridge, sewer, water treatment, and sidewalk upgrading were considered the most pressing concerns of municipalities and local governments.[151] The FCM concluded that the most important goal of an infrastructure program would have to be the rehabilitation of Canadian cities and towns. It also stated that the input of local levels of government was essential, and that the various orders of government "should be equal partners in the management of the program".[152] In this respect, the provincial and local orders of government shared a common goal.

How did these expectations compare to the actual results of the program ? The short answer to this question is that the infrastructure program was able to incorporate the stated expectations of the federal and local levels of government, yet was flexible enough to accommodate the interests of the various provincial governments. Table 5 helps to explain this conclusion.

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[150] Federation of Canadian Municipalities, "Summary of Federal-Provincial Infrastructure Agreements", FCM Forum. 18-3 (May-June 1994), 17.
[151] Federation of Canadian Municipalities (1985), 22.
[152] Federation of Canadian Municipalities, Towards A New Infrastructure Program: Communique. (Ottawa, December 27, 1995).

*Table 5 - Approved infrastructure projects by class (as of October 18, 1995)*[153]

| *Province* | *Wat./Sew.* | *Road/Hwy.* | *Other Eng.* | *Non-Res.* | *Other* |
|---|---|---|---|---|---|
| B.C. | 73.3% | 10.0% | 2.6% | 13.1% | 0.9% |
| Alberta | 28.8% | 37.1% | 11.0% | 21.9% | 1.1% |
| Sask. | 32.2% | 22.5% | 5.9% | 35.9% | 3.5% |
| Manitoba | 26.2% | 22.9% | 5.6% | 24.0% | 21.3% |
| Ontario | 15.6% | 24.3% | 9.1% | 49.0% | 2.0% |
| Quebec | 31.7% | 34.6% | 2.9% | 23.4% | 7.4% |
| N.B. | 60.1% | 11.8% | 15.9% | 10.7% | 1.5% |
| N.S. | 60.8% | 12.9% | 4.0% | 21.4% | 0.9% |
| P.E.I. | 59.9% | 19.2% | 12.3% | 8.5% | 0% |
| Nfld. | 51.6% | 21.0% | 7.2% | 19.8% | 0.5% |
| Yukon | 26.1% | 32.0% | 13.3% | 24.6% | 4.0% |
| N.W.T. | 0% | 16.9% | 13.8% | 68.4% | 0.9% |
| First Nat. | 35.3% | 26.0% | 19.6% | 19.1% | 0% |
| TOTAL | 32.2% | 25.7% | 6.8% | 31.5% | 3.9% |

Wat./Sew. - water/sewer Road/Hwy. - roads/highway
Other Eng. - other engineering (other types of hard-core infrastructure)
Non-Res. - non-residential ("soft" infrastructure)
Other - includes gas/oil, equipment, dams/irrigation

A number of observations can be made from this data. For one, the so-called hard-core, physical infrastructure projects have dominated the program - nationally, they account for over 64% of the approved projects, whereas projects based on information technology or community development projects (such as tennis courts, libraries, or swimming pools), defined as non-residential projects, represented approximately 32% of the funded projects. However, there exists wide discrepancies in these figures between individual provinces. For example, in Ontario, non-residential projects accounted for

[153] Department of Infrastructure, National Summary - Approved Projects by Class of Infrastructure. (Ottawa: October 18, 1995).

almost half of the funded projects, whereas in British Columbia, hard infrastructure projects represented over 85% of allocated funding.

Similar discrepancies exist between individual municipalities and different levels of local government. For instance, Table 6 shows the results of a survey of six Ontario school boards and six Ontario municipalities with regard to the class of accepted infrastructure projects.[154]

***Table 6 - Class of infrastructure for 6 selected school boards and 6 municipalities - Ontario ( 000s of dollars - percentage of total)***[155]

| | *School boards* | *Municipalities* |
|---|---|---|
| Water/Sewage | 34 - 0.1% | 10,087 - 24.4% |
| Roads/Highways | 58 - 0.3% | 18,269 - 44.3% |
| Other Engineering | 13,259 - 58.5% | 12,338 - 29.9% |
| Non-Residential | 9,306 - 41.1% | 599 - 1.4% |
| TOTAL | $22,657 | $41,293 |

It should come as no surprise that whereas school boards were more concerned with such projects as school renovations and construction of new educational facilities, municipalities were preoccupied with road repair, sewer construction or retrofits, and upgrading community recreational areas. More importantly, what this survey demonstrates is that not only are there great variations between the goals and needs of the provincial governments, but between the goals and needs of different local levels of government as well.

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[154] The six school boards are the Atikokan BOE, Essex County RCSS, Halton BOE, London Middlesex BOE, and Sudbury BOE. The six selected municipalities are Elliot Lake, Grimsby, North Bay, Oshawa, Port Elgin, and Sarnia.

[155] Selected jurisdictions and their projects taken from Department of Infrastructure, Infrastructure Projects - Ontario. (Ottawa, April 30, 1995).

Aside from the type of infrastructure that was being pursued, it was also stated that job creation was a fundamental goal of the program, at least from the federal perspective. How did the program live up to this goal ? As Table 7 indicates, it appears as though the program will meet its original target of 100,000 jobs created, a figure which does not include potential spin-off jobs resulting from the infrastructure put into place.

***Table 7 - Eligible costs, direct jobs, and cost per job by province (As of Dec. 5, 1995)***[156]

| | *Eligible costs ($000s)* | *Direct jobs* | *Cost/job* |
|---|---|---|---|
| B.C. | 672,855 | 10,334 | $65,111 |
| Alberta | 541,413 | 8,843 | $61,225 |
| Saskatchewan | 246,947 | 4,387 | $56,290 |
| Manitoba | 205,562 | 3,474 | $59,171 |
| Ontario | 2,284,074 | 32,506 | $70,266 |
| Quebec | 1,717,922 | 27,439 | $62,608 |
| New Brunswick | 148,118 | 2,729 | $54,275 |
| Nova Scotia | 221,846 | 4,039 | $54,925 |
| P.E.I. | 35,861 | 692 | $51,822 |
| Newfoundland | 147,505 | 2,406 | $61,307 |
| N.W.T. | 8,665 | 139 | $62,338 |
| Yukon | 7,912 | 126 | $62,793 |
| First Nations | 84,848 | 1,373 | $61,797 |
| **TOTAL** | 6,323,527 | 98,487 | $64,206 |

Even though the program will most likely reach its projected job creation targets by the end of 1996, the cost per job ratio suggests that the potential existed for even further job creation, especially when one considers that the cost per job ratio was over $6,000 higher in Ontario, the province receiving the largest amount of funding under the program, than the national average. But having said this, the fact remains that the goal of the federal government to stimulate job creation has largely been met.

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[156] Department of Infrastructure, "Infrastructure Works Completes Peak Year", News release. (Ottawa, December 14, 1995).

What conclusions can be drawn from the comparison of the original intentions of the federal partners concerning the infrastructure program and its actual results ? The fundamental conclusion is that the program was flexible enough as to ensure that the goals of the federal, provincial, and various local orders of government were satisfied to a certain degree. From the federal perspective, it was just stated that the infrastructure program will meet its job creation targets by the end of its lifespan. As for the additional goal of high-technology, leading edge-type projects, it was illustrated earlier that non-residential projects, which include computer networking, electronic mail hook-up, and environmentally sound retrofits, encompassed over 31% of the approved projects on a national scale. Projects under this classification ranged from the installation of a $654,000 Solar Aquatics sewer system in Annapolis County, Nova Scotia to the construction of a $1,100 paper recycling bin in Macnutt, Saskatchewan.[157] Though Ottawa may have hoped that the program had evolved more along these lines, precedents were set in the establishment of high-tech infrastructure that now have the potential to be used by other regions in the country.

Provincial governments also had reasons to be pleased. The bilateral agreements have allowed provincial governments the flexibility to develop the program in a manner best suited to their own needs. The provinces were allowed to decide upon which levels of local government would be able to participate, they were allowed to distribute funds between the various localities as they saw fit, and they had the ability to use the funds for their own individual purposes, such as inter-municipal road repair projects.[158] They also

[157] Department of Infrastructure, Infrastructure Projects - Excluding Ontario. (Ottawa, April 30, 1995).
[158] Ibid.

had a large influence over the type of projects that would proceed. For instance, the government of British Columbia acknowledged that there was a problem with sewer and water works in the province, and therefore included a provision in its bilateral agreement with Ottawa that over 85% of its funding would go to local water, sewer, and transportation projects, which Table 5 confirms.[159] On the other hand, the province of Ontario had invested in sewer and water works in previous years through its own programs, enabling almost 50% of its allocation to go to non-residential projects. Thus, in a sense, one could state that the program did meet the goals of the provincial governments in that it permitted them the flexibility to tailor the program to fit their own individual concerns.

Local orders of government were also highly satisfied with the program. In a survey conducted in October and November 1995 among members of the FCM, 91% said that the program had been effective, permitting the FCM to conclude that, "Municipal governments strongly agree that the National Infrastructure Program has been a resounding success".[160] The reason for this support was that the program met the goals of the local levels of government - the original problems identified in the 1985 FCM report with respect to the need for hard-core basic infrastructure have been addressed, and because local orders of government were allowed to propose projects, they were able to pursue their own individual goals and needs, as illustrated by the survey in Table 6. Aboriginal governments could be considered double beneficiaries in this sense, in that they were able to meet their own local goals, but were given the added recognition as a

[159] Governments of Canada and British Columbia, Implementing Agreement. (Ottawa, 1994).
[160] Federation of Canadian Municipalities, Towards A New Infrastructure Program: Communique.

separate political entity in Canada by being handed responsibility for their own separate program.

What this analysis has demonstrated is that when public policy is implemented along the lines of a multidimensional framework, it is possible to accommodate the interests of the various orders of participating governments while still maintaining a cohesive, structured program. Based on this conclusion, the likelihood exists that future public programs may borrow from this model, and that practical usages of multidimensional federalism will be replicated in public policy.

## *Making the link - the infrastructure program and multidimensional federalism*

What lessons can be learned from the infrastructure program that could be applied to the model of multidimensional federalism explored in this thesis ? Three significant observations can be made. First, when used as a methodology for implementing public policy, a multidimensional federal model allows the delivery of public services to better reflect the needs and concerns of particular regions or localities, since whichever localized forms of government involved in the delivery of the public good will be better placed to represent the interests of their particular region. In other words, there is a better opportunity for the representation and articulation of Canadian regional and local interests, in whatever form that articulation may take, in the policy-making process under multidimensional federalism. This observation was evident in the infrastructure program.

Second, the infrastructure program demonstrated that multidimensional federalism tends to diffuse or decentralize political power over a greater number of political units. In

doing so, the precarious balance of power that exists between the federal and provincial governments within a conventional federal system is put into question with the addition of new political actors. Though the infrastructure program did not experience this particular dilemma, and was instead able to manage "harmonious intergovernmental relations"[161], the potential for conflict within such a system is omni-present, since a diffusion of power will necessitate greater levels of intergovernmental co-operation. Canadian history shows that this has not been achieved without a certain amount of animosity.

Finally, yet perhaps most importantly, the infrastructure program provides a demonstration of the complexity of multidimensional federalism. Though any federal system is complex to some degree, multidimensional federalism compounds the complexity by doing away with the traditional bilateral relationships common to the conventional federal-provincial federal model, and replaces them with a system requiring much greater co-ordination, organization, and negotiation. Though the infrastructure program proved that the complexity of Canadian federalism could be overcome within existing governmental frameworks, it is too soon to evaluate whether similar forms of organization would be as efficient as it has been in this case.

It would therefore be a fair assessment that the infrastructure program has illustrated that the multidimensional federal model not only exists outside of academic debates, but can also be seen as a tool for an evolving structure of policy-making. It has also illustrated that the local levels of government can play a significant role in federalist

[161] Andrew and Morrison, 133.

policy formation, which proves that federal system based on several levels of government does exist in Canada. However, this is not to say that the potential for conflict is not present; on the contrary, there is a greater possibility of conflict occurring within a federal framework involving more than two political players. Nevertheless, the infrastructure program is a step forward in the evolution of a practical usage of multidimensional federalism.

## CHAPTER 6 - CONCLUDING THOUGHTS - THE PATH AHEAD

It was stated at the outset of this thesis that conventional notions in political science must constantly be re-evaluated in the face of changing economic, social, and political forces. This thesis has examined from a theoretical and empirical perspective the reasons why this statement holds true for the common understanding of Canadian federalism. Canada and the global community are in an age of declining state authority, globalization of markets, and localization of collective identity. The pressure of these forces upon the federal structure has been such that local political actors are increasingly able to claim the status of legitimate participants within the federal system, with at least four orders of government possessing the necessary characteristics to claim this status. The Canada Works Infrastructure Program demonstrated that the multidimensional model not only has a theoretical basis, but that it is beginning to be a model for the implementation of public policy.

What is the path ahead for this federal model ? Can one claim that multidimensional federalism will become the new conventional model of Canadian federalism, drastically altering the way in which intergovernmental relations are carried out in this country ? The short answer to this question is probably not. It appears that at least for the short-term, the conventional federal-provincial model, with all of its associated characteristics, is too ingrained into the workings of the political system, as well as political society, for any challenger to usurp its dominance. The federal and provincial levels of government have always jealously guarded against other forms of political authority from intruding into their proper political territory, with any acceptable shifts of power from occurring

within the bilateral federal relationship. Thus, the notion of a more inclusive federal system, with the potential for a surrendering of powers to these new orders, will not be immediately acceptable to the two conventional orders of government presently within the system.

Instead of becoming immediately accepted by the political community, in all likelihood the multidimensional model will become a more gradually recognized and accepted political phenomena. As international and intra-national borders become more and more malleable with the spread of globalization and the liberalization of markets, it becomes difficult to imagine any federal system that can withstand the pressures of change from within. This is especially true when one considers that the federal system has been placed under a great deal of pressure to reform itself in the face of increasing localized nationalism, led by, but not restricted to the province of Quebec. Federalism is thus in a state of continual evolution; it may only a matter of time before the political, social, and economic forces described in this thesis combine to entrench the ideas of multidimensional federalism within the Canadian political lexicon.

In closing, the theories and ideas that have been presented in this thesis provide excellent proof of how susceptible the Canadian political system is to changes in the international and domestic order. Multidimensional federalism and its associated notions are nothing more than steps in this process of political conversion. It will be up to Canadians and their political establishment to ensure that proper structural changes are made to accommodate the eventual acceptance of the multidimensional federal model.

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