

## DEMOCRACY, PARLIAMENTARY REFORM AND FEDERALISM

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Discussions of democratic reform in conjunction with federalism are usually focused on the manner in which federalism can be changed to make it more open and accessible. Critics of Canadian federalism in particular typically have in mind the putatively closed, elitist and unrepresentative nature of intergovernmental conferences, ranging from meetings of un-elected officials to first ministers conferences. The answer, according to many, is to open up the intergovernmental process, to make it more open and transparent and to allow for more direct citizen participation.

The thrust of our comments here, however, is focused on what might be termed the unintended consequences, for federalism, of democratic reform of other kinds of institutions, namely the federal parliament and provincial legislatures. The role of legislatures, as a check on executive federalism, is sometimes mentioned as part of the solution to render federalism more democratic and accountable, often under the rubric of legislative federalism. However, legislative federalism has not been the primary theme of those who have recently invoked or discussed the imperative of democratic deficit reduction with respect to parliament, the executive branch and political parties. The point we wish to make is that such reforms, proposed or otherwise, based on critiques of the Canadian Westminster parliamentary model, could have a profound impact on executive federalism, even if that is not foremost in the minds of the authors of these critiques or proponents of change.

The most significant work critiquing the current parliamentary model is no doubt Donald Savoie's *Governing from the Centre*, in which the all-powerful role of the prime minister, buttressed by the support from central agencies such as the privy council office (PCO) and prime minister's office (PMO), is seen as holding sway over both cabinet and parliament. While Savoie does not make specific recommendations for reform of parliament or the executive, others have done so. These calls for reform have culminated, albeit in a rather limited way, in Paul Martin's six point plan, which, among other things has relaxed the rules on party discipline and given greater scope to parliamentary committees. Similar developments have taken place at the provincial level.

While the Paul Martin changes are on the low end of the scale as far as democratic reform goes, there are further possibilities involving more substantial restructuring and, in some instances, constitutional change, such as referenda, reform of the electoral system, and senate reform. While the intent of some of these changes is to provide more direct citizen participation or to make parties, for example, more responsive to citizen interests, by and large the overall thrust of these changes is to provide more checks and balances, primarily by restricting the excesses stemming from relatively unrestrained executive power. All these actual and proposed changes, however, are certainly not an unmixed blessing; they all have their dark side, such increased ward heeling on the part of more independent MPs and possible 'immobilism' of parliament or the executive branch.

There is a further side to these reforms and that concerns federalism. Again, while many would see positive advantages to things like greater legislative oversight over the intergovernmental process, there are also unintended consequences to this kind of oversight or "legislative federalism." There are two areas where we need to pay attention to ramifications of this sort: asymmetrical federalism and federal-provincial jurisdiction, particularly with respect to the federal spending

power. Let us elaborate. As noted above, increased restrictions on the exercise of executive authority is one of the main goals, and consequence, of many of the reforms, both actual and proposed. At the same time, since power abhors a vacuum, some of the terrain occupied by the executive, has been, in the case of parliament, ceded to MPs. Not just government MPs but also opposition MPs, particularly on parliamentary committees, including members of the Bloc Quebecois. As well illustrated by the case of the Standing Committee on Public Accounts, chaired by the opposition MP, Conservative John Williams, this committee has been thrust front and centre into a number of political issues. In the context of the current minority government, Liberal MPs can no longer control the agenda or terminate debate on difficult issues, as they had done over the previous decade. Furthermore, many government MPs themselves, no longer feeling as tightly bound by party discipline as before, are more willing to take an autonomous role. The spirited examination of the spending habits of the former privacy commissioner, George Radwanski, is a case in point. The Public Accounts committee acquitted itself perhaps less well when coping with the sponsorship scandal, with some members revealing themselves to be woefully ignorant of constitutional and machinery of government fundamentals concerning relations between elected and unelected officials. But the overall willingness of this committee, and others, to be critical of government programs and activities and to take their work seriously is clearly evident.

Part of what we have seen over the past year can be attributed to minority government and part to Prime Minister Paul Martin's six-point plan. Some might argue that, in the absence of the former, the six-point plan will really have only very limited impact on the power of MPs and the House of Commons overall, citing the fact that the Martin PMO and its staff are behaving in manner that is not all that different from Martin's imperious predecessor. On the other hand, there is an indication that minority government is not a temporary aberration, but may well continue after the next federal election, judging from both public opinion and the

continuing cloud of the sponsorship scandal lingering over the Liberal government.

In addition, changes in the electoral system based on proportional representation (PR) or a variation thereof, something being actively debated in no less than four provinces, could result in minority government and/or perhaps coalition government, becoming a permanent feature of Canadian parliamentary life. Senate reform, especially the sort of reform that would result in the popular election of senators, once more, quite possibly using a variant of PR, would constitute a significant step towards constraining the executive and making the second chamber an important player in the review and development of government policies.

All these present and future developments have a bearing on what we can label legislative federalism, which in turn can have a profound effect on some important aspects of Canadian federalism. In practical terms, legislative federalism means that legislatures and their committees will have a more direct role in reviewing and possibly altering federal-provincial agreements, and quite possibly becoming involved at the development stage as well. Simply put, such reviews would likely involve the calling of witnesses and the entertainment of briefs from groups that stand to be affected. Certainly it would entail more transparency and publicity. A further development, however, is that many MPs (and MLAs, MNAs and MPPs) will develop their own conceptions of what constitutes good public policy, conceptions in which the niceties of federal-provincial jurisdictions may play only a limited role. Especially at the federal level, with the possible exception of Quebec MPs, there may well be an inclination for MPs to do the "right thing" in areas such as health care or social policy more generally, regardless of jurisdictional issues. The kinds of policy issues that MPs would see as important will also be significant. Health care is one obvious area, but education and, especially, urban issues, may also be high on their agenda. Keep in mind that if MPs have any previous political experience it is most likely to be at the municipal rather than provincial level and many will continue to

maintain their links with local groups and municipal governments. All three policy areas – health, education and urban issues – are, needless to say, primarily under provincial jurisdiction.

To the extent that jurisdictional limits are recognized by MPs, there may well be a strong inclination to overcome them through use of the federal spending power. This power, which is implicit rather than explicit in the constitution, and which over the years has been strongly resisted by many provinces but by Quebec in particular, would not necessarily be the best instrument on which to base a federal-provincial strategy premised on mutual trust and goodwill.

In brief, a more democratic parliament may well result in pressures for the federal government to act in a more unilateral fashion, which in turn will make for both increased federal-provincial turbulence and greater difficulty in reaching agreement on federal-provincial issues. Much of this greater difficulty will be through the erosion of both trust ties between federal and provincial officials, both elected and non-elected, and more generally of what has traditionally been termed elite accommodation. This latter phenomenon is often seen as contrary to good democratic practice, insofar as it involves political elites striking agreement, often in the face of dissensus at the mass level. However, it can be seen historically as having served the integration of the Canadian federation at crucial moments and, further, can be seen as serving the cause of inclusivity. That is, because elite accommodation as practiced in many culturally or linguistically divided societies tends to encompass the elites of all significant groupings in society, thereby representing more than just a simple majority, it can be said to belong in a class of instruments known as non-majoritarian democratic techniques. The Meech Lake accord of 1987, much decried because it was struck by the prime minister and the ten provincial premiers behind closed doors with little or no consultation with legislatures or mass publics, did have the virtue of having the support of the first ministers of all 11 governments. Its ultimate failure in 1990, and the holding of a national plebiscite/referendum

two years later, which saw the defeat of the Charlottetown Accord, is indicative of the changes in what is considered democratic and what is not. In other words, the practices of elite accommodation are no longer considered acceptable.

Yet, we would argue that at the same time they are not completely absent either. For good or ill much intergovernmental activity still takes place behind closed doors. Much of this activity occurs between officials in the myriad of meetings held on just about every given day of the week. But an element of secrecy and discretionary judgment also colours discussions at the political level. Take for example what Roger Gibbins has termed 9-1-1 federalism, a concept that grew out of his analysis of the social union framework agreement (SUFA). A process that began in the mid 1990s with the provinces collectively attempting to develop a common front in negotiations with Ottawa on social policy and health care, ended up with the provinces (and two territories) minus Quebec, coming to terms with Ottawa in these two areas. Quebec and the other provinces agreed to disagree. Ottawa, in turn, agreed to extend the same benefits to Quebec even though that province explicitly rejected the terms and conditions of SUFA. Hence, 9-1-1 federalism, denoting the asymmetrical relationship between Quebec and the other governments. This asymmetry, special status if you like, is not explicitly recognized in the constitution, and proposals for Canadians explicitly rejected variations of this special status when they turned down Meech Lake and Charlottetown.

In other words, at the level of political elites a strong element of accommodation is still at work, playing itself out especially where Quebec is concerned. The Council of the Federation, largely through the handiwork of Premier Jean Charest, has succeeded in promoting the notion of Quebec's special position even further. It is worth noting that there has been little public discussion of the tacit acceptance and legitimation of this concept, certainly not in parliament.

It is also worth mentioning some of the “intrastate” forms of elite accommodation that stand to be affected by greater legislative involvement and transparency. The federal-provincial arena is not the only arena in which accommodation has taken place. Historically, the federal cabinet has long been a venue for fostering understanding and collaboration between the different solitudes, especially between Quebec and the rest of Canada. The government caucus, traditionally operating in secrecy has also served as an arena in which the different interests and visions of different parts of the country have been accommodated.

If, however, parliament or provincial legislatures begin more actively discussing Quebec special status, this tacit acceptance of asymmetry may well change. Such discussion is likely to promote more extensive public discussion; further agreements involving the tacit acceptance of Quebec’s unique position may well be stymied or become more difficult to finesse.

The above discussion is largely speculative. So far neither the federal parliament nor provincial legislatures have taken an active role in tackling federal-provincial issues. In many ways both the prime minister and cabinet on the one hand and parliamentarians on the other are still at the start of a learning curve, although at this point is not clear where this learning curve may lead. It could mean, as suggested above, that MPs will want to do all they can to connect more directly with citizens, provincial jurisdiction notwithstanding. On the other hand, it could be that over time MPs and committees will come to appreciate their broader responsibilities as well as the finer points of federal-provincial jurisdiction. Furthermore, it is conceivable that a parliament less fettered by party discipline may be seen as more legitimate by Canadian citizens and also lead them to identify more readily with the federal government as an entity that will protect and promote their interests.

Some of the same tendencies towards the concentration of power identified by Savoie with respect to the Chrétien government appear to be

re-asserting themselves in the Martin government, such as a prime minister’s office prone to excessive control. But at the same time, Martin’s six point plan has generated expectations, particularly with respect to the relaxation of party discipline in parliamentary votes. To a considerable extent the die has been cast and it is likely the Martin government will be bumping up against a more activist parliament in which some of the fiercer critics are to be found on the government benches.

To summarize, current developments and further reforms can lead to some of the following outcomes:

- Increasing the emphasis on openness and improved transparency may very well erode some of the remaining, but still crucial, practices associated with elite accommodation, practices underpinning implicit understandings associated with 9-1-1 federalism and Quebec’s representation in bodies such as the federal cabinet;
- Newly independent and empowered legislators, now less constrained by party discipline, for example, could feel a powerful urge to get involved in provincial jurisdiction, more so than before, relying in the main on the federal spending power
- Such an increased reliance on the spending power could increase tension with Quebec as well as with provincial governments as a whole;
- A more democratic parliament could also make life more difficult for the Prime Minister; specifically parliamentary committees or a recalcitrant caucus may limit his/her capacity to exercise their authority and flexibility at First Ministers’ Conferences making it more difficult to reach agreements;
- At same time, with more democratic central institutions, there is potential for increasing Ottawa’s legitimacy as Canadians identify more readily with Ottawa as protecting and promoting their interests, as opposed to seeing Ottawa synonymously with “ministers, bureaucrats and trained seals;”

Given the number of contingent factors, it is almost impossible to predict how any of these scenarios might unfold. However, given the strong likelihood of even limited reforms taking hold and perhaps accelerating, especially in light of proposed changes in the electoral systems of one or more provinces, life in various intergovernmental arenas is not going to remain the same and executive federalism as we now know it may look decidedly different a decade from now.