

COMBINING THE AGENDAS: FEDERALISM AND DEMOCRACY¹

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This conference focused on two broad themes: recent developments in intergovernmental relations in Canada; and ways in which we might address the 'democratic deficits' within Canadian political institutions. Both were interesting. But there was little connection between them. The discourse about IGR – intergovernmental competition, ways to achieve greater harmony and coordination; asymmetry or not; the implications of the Council of the Federation seem strangely disconnected from the discourse on democratic weaknesses – accountability, representation, participation, and the like. In these concluding comments, I hope to tie the two themes a little closer together.

The basic question is how federalism can better serve democracy, and what are the implications of a renewed democracy for federalism in Canada? We need to begin with some basic – and long-standing -- questions about the relationship between federalism and democracy. We all know the obvious ways in which federalism and democracy go together. Ron Watts summarized them well: multiple governments, bringing governments closer to the people; more avenues for participation; the chance of forging a closer match between citizen preferences and public policies; and greater opportunities for experiment and innovation. Also, hugely important is that federalism allows minority communities opportunities for self-government, provides protection against the tyranny of the majority, especially in more asymmetrical federal systems, and so on. In many other obvious ways, democracy and federalism do go together.

¹ This is an edited version of remarks made at the conclusion of the conference. It draws extensively on the discussion that took place, as well as on previous work by David Cameron, myself, and others.

But they can also be in tension with each other. First, some conceptions of democracy, especially majoritarian or populist versions, can very easily threaten diversity and the autonomy for territorially concentrated minorities that are associated with federalism. Federalism, by empowering and protecting minorities, constrains the idea of democracy as simple majority rule across the whole system in many ways. Equal representation in a Senate, for example, reflects federalist, but not majoritarian ideas of democracy. There is also a tension between federalism in a divided society like Canada and the more direct versions of democracy such as the use of referendum. Arend Lijphart argues that managing conflict in divided societies requires a high degree of elite accommodation, and requires a high degree of delicately balanced statecraft in order to forge the delicate compromises. That is not easy in more populist versions of democracy, as we saw in the defeat of the Meech Lake Accord or in the British Columbia referendum on Aboriginal peoples. So that is one very important set of issues: in a divided society, to what extent do we need to modify and temper the way we express our democratic politics? If we believe in democracy as majority rule, how do we decide *which* majorities – provincial or country-wide are to prevail? In addition, Lijphart argues that divided societies require highly consensual methods of decision making. That's not easily done in a Westminster-style parliamentary system where the emphasis is on majoritarian, winner-take-all, competitive politics.

The most obvious democratic deficit associated with Canadian intergovernmental relations is the elitist nature of executive federalism, that all-too familiar story of "closed door, men in suits, etc." that Donald Smiley so effectively savaged about 20 years ago. "My charges against executive federalism are these..." After the debacles of Meech Lake and Charlottetown, in which public outrage against executive federalism exploded, many commentators argued that things could never be the same again. Executive federalism had lost its legitimacy; the public would no longer allow 'governments' to mess with 'their' constitution or fundamental public policies. We would have

to find new ways to open up and democratize intergovernmental relations.

In hindsight, these expectations turned out to be wrong. The Agreement on Internal Trade; the Social Union Framework Agreement, and other recent accords have all, for the most part, been negotiated in the traditional closed door processes of executive federalism. Most strikingly, the founding documents of the Council of the Federation suggested that it is classic First Ministers Federalism with hardly a single bow to a more participatory, transparent kind of system or to the involvement of legislatures. I don't want to argue here that all intergovernmental relations should be carried out in full public view. I think it's probably true that people tend to worry less about the democratic deficit in intergovernmental relations than they wonder if governments will get along. But still, Smiley's charges do remain effective as they ever did.

Another huge challenge for executive federalism and democracy is the incredibly complex tangle of accountability associated with it. We have the federal parliament spending money over which it has very little control. To exercise real control would require high levels of conditionality in federal transfers, which are unacceptable to provinces. So we undermine the federal government's accountability to parliament. The stricter reporting mechanisms in some recent agreements go only a small way towards dealing with this. Then we have provinces spending money for which they have not taking the responsibility of raising, undermining their accountability to their own legislatures. More fundamentally, in a collaborative model of intergovernmental relations, how do we balance the accountability of governments to their own legislatures with the accountability of governments to each other? This is a very hard circle to square. So the more we embrace collaborative federalism, with governments making decisions collectively, and the more we move toward a multi-level type of government which is not just provincial, but also local, regional, international, these questions of accountability become ever-more complex. While collaborative, multi-level governments

may be essential for effective decision-making, the challenges they pose to citizens in order to be able to understand and participate in the process are very great.

Before we jump on the bandwagon of collaborative federalism, which I admit I have tended to do in the past, we need to give one or two cheers for competitive federalism. Perhaps one answer to some of the democratic deficits associated with executive federalism is to have less of it. That is to say, while understanding that collaborative federalism grows out of this extraordinary interdependence among governments, it is still desirable to try to clarify who does what and to have single governments responsible to their electorates and legislatures for what gets done as much as possible.

So the question remains: how we can work on both federalism and democracy at once?

We might begin by asking how we might reduce the democratic deficits associated with executive federalism. First, can we, should we, open up these intergovernmental processes much more to the media and the public? If we were to eventually have annual first ministers conferences, should all, or part of them, be open? Again we reach a Lijphartian concern: if we have open meetings, governments may grandstand for the folks back home, so there is no way we're going to get an agreement without having closed doors. But I think there is an alternative argument to that which says that actually more public scrutiny might create very strong pressures for these governments to focus on the substance of the issues that they are debating than on the issues of turf protection and credit claiming and blame avoidance, which so bedevils intergovernmental relations today.

A second and more important area in which we can bring these two agendas together is through a much larger element of "legislative federalism" -- that is, greater legislative involvement in and scrutiny of intergovernmental relations. It seems to me that the parliamentary reform agenda that we talked about so much in our discussion of democracy must include things like standing committees

on intergovernmental relations in all our legislatures. With the exception of Prince Edward Island, no province has a standing committee on intergovernmental relations, such a simple thing to do. We need much more legislative discussion of the intergovernmental agenda, especially if we are to have regularly scheduled annual first ministers' conferences. We need much better reporting back by the first ministers and the ministers about what goes on at these meetings.

There needs to be much more legislative debate than we have seen about the intergovernmental agreements that are part of collaborative federalism. Parliaments need to be much, much more engaged in intergovernmental relations, even if this means that executives lose a little bit of their control in the process.

We also need to get federal, provincial, and local government representatives from particular regions to meet on a more regular basis to discuss *together* how they can meet the needs of their constituents who, after all, are exactly the same people. British Columbia has now twice convened meetings of local councillors, provincial members, and federal members to discuss common issues and approaches. Quebec has done something similar, where federal members have participated in various consultative mechanisms organized by the provincial government. Could such mechanisms be extended and emulated in other provinces? It seems to me this would serve several goals -- making multi-level government work more effectively in policy terms, opening up the system to wider participation, and providing more bridges to integrate federal, provincial, and local politics.

It would also be useful to could create something like the American Council of State Legislatures, which brings legislators together from across the country for information exchange. Our MP's all belong to lots of international associations, which take them to Venice and Rome and other interesting places, but it is much more important that they actually belong to a Canadian inter-legislative forum

which takes them to places like Regina and Moncton.

Another advantage of involving our legislatures is that they could take on some of the burden of national accommodation, which now falls so heavily on the First Ministers. This is not a democracy issue, but it is my opinion that we should build as many linkages between the levels of government as possible, removing the pressure that rests so heavily on that one institution. Another benefit of creating a wider range of intergovernmental mechanisms is that there would be less of a tendency to regard each government as a monolithic single entity for which the premier and government alone can speak. In fact most provinces -- not to mention the federal polity -- are themselves pluralistic and diverse. This internal pluralism is not captured in our current pattern of executive federalism; devices such as those suggested here would not, of course, replace executive federalism, but would provide important counterweights to it.

Finally, any discussion of federalism, intergovernmental relations and democracy needs to contemplate the implications of the broader democratic reforms currently under discussion. Greater proportionality in the electoral system at the federal level, for example, could well increase the country-wide representative capacity of the federal parliament, and thus perhaps make it more capable of 'speaking for all of Canada,' and hence could weaken the ability of premiers to claim to be the chief advocates of provincial interests. A similar result could follow from genuine (but also unlikely) Senate reform. More proportionality could also result in the proliferation of 'regional' parties, making parliament a central arena for managing regional differences. More proportionality at federal and provincial levels would also increase the probability of minority government at both levels, making First Minister intergovernmental relations more difficult to manage, and enhancing the possibility of a greater measure of legislative federalism.

So, to conclude, there are real tensions between the two agendas of democratic reform and improving the conduct of intergovernmental relations. It is important to bring them together. Federalist reformers need to keep a sharper eye on the democratic deficits in executive federalism. Democracy reformers need to be more sensitive to federalism values and the complexities of intergovernmental coordination. No remedies to the democratic deficit are going to set aside federalism. They must take account of the dilemmas of democracy in a bi-national and very provincialized society. The good news is that as one surveys the lively democratic reform landscape in different jurisdictions across the country, the virtues of federalism in encouraging experiment and innovation are very much in evidence.