

## **LINKING THE DEMOCRATIC AND INTERGOVERNMENTAL AGENDAS: LEGITIMACY AND EFFECTIVENESS**

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Our working assumption in this final session is that the initiatives on intergovernmental relations and democratic reform represent a serious endeavour on the part of Canadian governments. Provincial and territorial governments are committed to cooperating with one another to improve the efficient and effective functioning of the federation. The Government of Canada shares this commitment and is-and will be in the future-more flexible, inclusive, and accommodating of the provinces and territories, even providing them with direct representation in matters of federal jurisdiction like international relations. Among the democratic reform initiatives, electoral reform processes will bear fruit in the form of a greater measure of proportional representation in provincial voting systems. In Ottawa (and perhaps also in some provincial capitals), politicians will 'walk the talk' by giving legislators on both the governing and opposition benches more independence and legislative authority, and by making governing processes more open and transparent.

Members of this panel are not allowed to be doubting Thomases. We take politicians at their word. That word, as I understand it from the presentations of government spokesmen at this conference, is that governments are driven by the need to shore up their legitimacy. Governments at both orders are thus in a quest-competition?-to enhance their own legitimacy. They recognize that greater legitimacy requires more democratic and more effective governing. The latter, in turn, necessitates new rules and institutions of executive federalism, intra-governmental executive-legislative conduct, and citizen-government relationships. The questions here are the following. First, are these ongoing and heralded institutional reforms tracking in the same direction? Can they-will they-yield more

legitimate and effective governing at one and the same time? Second, what does the experience elsewhere tell us about the compatibility of strong executive federalism and democracy? And third, what are the components of a future reform agenda?

To address the first question, I will analytically separate the likely impacts on governing legitimacy and effectiveness of three sets of reforms: greater proportional representation in the electoral system, more autonomy and authority for legislators *vis-à-vis* executives within each order of government, and greater intergovernmental cooperation. I begin by clarifying my usage of the terms *democracy*, *legitimacy*, and *effectiveness*. Democracy requires that people choose their governments through elections that provide for equal and fair representation of citizens, governments that are responsible and accountable to voters, governing processes that are transparent (and so enable accountability) and provide opportunities for public deliberation, and respect for the rights of minorities. Legitimacy captures citizens' belief that those who make rules on their behalf have the right to do so, and that the decisions and public policies are themselves appropriate. Legitimacy is strengthened by democratic procedures that increase the likelihood that those in office behave in a way that roughly reflects voters' preferences and values. Legitimacy is also enhanced by effectiveness: that is, by addressing and solving problems in a timely and resource-efficient fashion.

### **A. LEGITIMACY AND/OR EFFECTIVENESS?**

Are the democratic reform and executive federalism initiatives likely to strengthen the legitimacy and effectiveness of governing arrangements in Canada? In my view, electoral reform directed toward more proportionate representation would permanently strengthen governments' legitimacy. To date, it is the provinces, not Ottawa, that are embarked on processes designed to reduce the gap between voters' preferences and parties' representation in the legislative chamber. Were electoral reform to proceed only at the provincial level, without

Ottawa also getting on the bandwagon, the Government of Canada's own perceived legitimacy and moral authority would suffer *vis-à-vis* those electorally reformed provinces (and note that it includes the most populous provinces) who would be able to say with greater accuracy than in the past that they speak for people within their borders.

The changes to the executive-legislature relationship to give backbench and opposition parties more influence over government policy can also be read as a legitimacy-augmenting exercise. To the extent that more independent legislatures make it more difficult for governing parties to overlook systematically the concerns of some Canadians by virtue of their geography and class, representational democracy is enhanced. Governments ought to be more accountable as well. It appears to be the Government of Canada—namely, Prime Minister Martin—that has made the strongest commitment (admittedly, in advance of the June 18th election) to greater legislative autonomy and policy influence. However, if provinces do carry through on the electoral reform agenda and introduce greater proportionality into their legislative chambers, they will also face strong incentives—by virtue of their greater likelihood of minority governments—to be more responsive to members of their legislative assemblies, whether from the opposition side or their own back benches.

If these democratic gestures are likely to enhance respect and support for governments, will that gain in the form of enhanced legitimacy be offset by losses as a result of governments having a reduced capacity to resolve problems in a timely fashion? Governments are likely to be less efficient—in the sense of minimizing the resources of time, energy, finances, and so on to address political and policy problems. However, providing executives change their behaviour to reflect the new realities of governing with legislatures that are both more representative of the population and more influential in the policy-making process, there is no reason to assume governments will be less effective at resolving problems within their own sphere of jurisdiction.

The formidable obstacle to effective governing in our current era lies in the ability to address problems that transcend geographic and political boundaries. Turning then to executive federalism, the reforms posed here can be welcomed. Effective governance in an era of regional and global trade agreements requires a single cohesive and coherent domestic government position, and in my view, the only way that we can get to that outcome is by executives working closely with one another. Better intergovernmental cooperation and policy harmonization add to substantive legitimacy by making it possible to address problems that cross jurisdictional and geographical boundaries. International trade is a primary example of a policy domain in which Ottawa depends vitally on the information that provinces (and non-state actors) provide for effective policy making. Canadians, Patrick Fafard has told this conference, seem to recognize this reality and have identified good federal-provincial relations as a priority.

In my view, strengthened executive federalism—along the lines in which governmental actors have told this conference they are moving and as indicated by the Council of the Federation—can bolster the legitimacy of governments. The opposite view—that executive federalism diminishes legitimate governing because it undermines democratic values—is, of course, an important one not easily dismissed. But if we take our eye off what Steve Dupre labelled summit federalism—first ministers' meetings—and look at functional federalism, the so called democratic deficit is not so readily apparent. What we see is executive federalism embedded in network governance. Functional federalism is surrounded by intricate and institutionalized patterns of state actors interacting with non-state actors who are consulted and participate in the definition of policy issues and the formulation of solutions to them. This pattern of ongoing state and non-state interaction typifies a number of policy sectors, including international trade, agriculture and agri-food policy, and the environment. Summit federalism sits atop this democratic infrastructure.

## **B. LESSONS FROM ELSEWHERE**

If a major governing challenge of our current era is the reality of greater economic integration and supranational governance, the European Union offers an important lesson. The EU's ever closer economic and political integration has diminished the individual sovereignty of member state governments, creating in its wake a widely perceived democratic deficit. Addressing this legitimation imperative has required ancillary steps to strengthen the only chamber of direct citizen representation in the EU decision-making apparatus, the European Parliament. While some might contend that government executives in the European Union still really do 'call the shots', the rule of co-decision gives the European Parliament effective powers to curb their legislative authority on the vast array of policy matters that relate to the internal market. To bolster its own credibility, the non-elected European Commission has changed its own methods of policy formulation, consulting widely and broadly with representatives of civil society in advance of initiating legislative proposals. The lesson is clear: the more a political system engages in governing by executives, the greater the legitimation imperative to strengthen its representational credentials. Enlarged powers for chambers of direct representation are one important means to this end. Network governance is another.

## **C. AN AGENDA FOR REFORM**

One obstacle to legitimate governance is not so much an absence of opportunities for citizens to participate in politics as it is for unorganized citizens to have the same chance for meaningful representation and participation as their organized counterparts. The best way to correct this limitation is strengthening representative democracy. Standing committees have a role to play here, as does the House of Commons as a whole. (I set aside Senate Reform because any significant change to it would require a constitutional amendment.) My assessment of the potential of parliamentary standing committees, after years of tracking the work and debates of the Agriculture and Agri-Food

standing committee, is mixed. On the one hand, these legislative forums certainly serve to articulate a wide array of interests, including those which are likely to be overlooked by the government. On the other hand, partisanship reigns supreme and it takes exceptional circumstances for members to get beyond their partisan loyalties to cooperate across parties to solve problems. When committee members do succeed in aggregating interests, it is normally within a very narrow range of interests. Additionally, those societal actors who appear before committees tend to be the very ones with good access to public servants and ministers. Accordingly, an agenda for legislative reform then should minimally including increasing the research capacity of standing committees and extending the opportunities for a wider spectrum of interests to appear before them. One way to ensure the latter is for governments to subsidize the costs of group and individual witnesses at committee hearings. The need for better resources—particularly of research capacity—was all too evident during the recent hearings of the Public Accounts Committee into the so-called sponsorship scandal.

Shifting to executive federalism, the reform agenda here should, in my view, be directed to rendering intergovernmental meetings more transparent. This reform speaks to the publicity condition in democracies. There will always be citizens who are not paying attention, but for those who are, opening up summit federalism to the press and observers will, in my view, go some way to checking cynicism about deals behind closed doors. If open forums make it harder to broker the deals for consensus building, for example, by ruling out some side-payments, so be it. The price is worth paying.

To conclude, it bears emphasizing that when rules change, so does political actors' behaviour. Institutional reforms will give elected politicians—and citizens—incentives to act differently than they do in the current arrangements of executive federalism and representative democracy. One important impact of the reforms proposed or already underway—with respect to the electoral system, the executive-legislative relationship, and executive

federalism—is to require more consensus-building across more political actors. The requirement of more consensus-building will likely result in less timely resolution of outstanding issues. Offsetting that cost is the anticipated gain of public policies that are more effective in domains of jurisdictional overlap as well as more responsive to a broader range of interests. The net effect then should be more legitimate governing in Canada.