Federalism-e

Canada's Undergraduate Federalism Journal
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Welcome to the 2008 Edition of Federalism-e

On behalf of the writers and editors we, Brian Gendron-Houle and Adam P MacDonald, the Chief Editors welcome you to the 2008 edition of Federalism-e. For the last 8 months we have collected, edited, and evaluated numerous articles concerning federalism written by a number of undergraduate students both within Canada and beyond. At Federalism-e our mandate is to produce an annual volume of undergraduate papers addressing various issues within the study of federalism such as political theory, multi-level governance, and intergovernmental relations. Both of us feel it is important to highlight the fact that this journal exists for undergraduate students. Federalism-e provides a forum encouraging research and scholarly debate amongst undergraduates which will hopefully germinate further interest in this field of study.

Federalism-e is an excellent avenue for students beginning a career within the realm of academia for a variety of reasons. First, Federalism-e is a rare opportunity for undergraduate students to have their works published, exposing them to the process of dealing with an academic journal. Our editorial board consists of a number of well known academics in the field of federalism whom have provided feedback creating the opportunity for writers to utilize this scholarly criticism to improve upon their papers. Finally, Federalism-e allows undergraduates from across Canada and the world to interact with one another, sharing ideas and commenting on each other's work. It provides a forum for networking which, we hope, will be utilized and expanded upon in the

Bienvenue à l'édition 2008 de Federalism-e

Au nom des auteurs et des éditeurs, nous, Adam P. MacDonald et Brian Gendron-Houle, éditeurs en chef, vous souhaitons la bienvenue à l'édition 2008 de Federalism-e. Au cours des derniers huit mois, nous avons rassemblé, annoté, et évalué de nombreux articles qui traitent du fédéralisme, ceux-ci provenant de plusieurs étudiants du premier cycle, au Canada et ailleurs dans le monde. Pour nous, le mandat est de produire un recueil annuel des textes du premier cycle, et qui traite de différents sujets, comme la théorie politique, le partage des pouvoirs et les relations intergouvernementales. Nous voudrions réitérer que ce recueil est mis de l'avant pour les étudiants du premier cycle. Nous souhaitons que Federalism-e procure un forum promouvant la recherche et les débats académiques parmi la communauté du premier cycle, faisant grandir l'intérêt pour ce champ d'intérêt.

Federalism-e permet aussi aux étudiants de débuter des carrières académiques, et ce pour de multiples raisons. Premièrement, Federalism-e est une des rares opportunités pour publier en tant qu'élèves de premier cycle, tout en étant exposés aux procédures liés aux journaux académiques. Notre comité éditorial est constitué de plusieurs académiques connus dans le domaine du fédéralisme, et ceux-ci ont fourni des rétroactions aux auteurs, leur permettant donc d'améliorer leurs ouvrages. Finalement, Federalism-e permet aux étudiants du premier cycle du Canada et partout dans le monde d'interagir ensemble, de partager des idées et de commenter les travaux des autres. Nous espérons que Federalism-e deviendra un

proceeding editions of Federalism-e, encouraging undergrads to discuss such pertinent matters in relation to federalism.

vaste réseau de connexions qui se perpétuera d'éditions en éditions, encourageant toujours plus les étudiants à couvrir les multiples facettes du fédéralisme.

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Adam P MacDonald (French translation by Brian Gendron-Houle)

The Nature of Federalism

Federalism as a form of political organization is a relatively new construct, with the first federations being developed in the late 18th and early 19th century. Currently in the world there are over 20 countries that are classified as federal states, encompassing roughly 40% of the world's population(1). This grouping includes countries of varying geographic, political, social and economic complexities, spanning six continents. This diversity demonstrates that there is no one model of a federal state. For example, some of the largest geographic and demographic states such as the United States, Brazil and India as well as some of the smallest countries in the world including Comoros and Micronesia are all federal states. Though there is a multitude of historical examples of the avenues in which these states became federal, the key characteristic of federalism is the perceived need of a separation of powers between various levels of government.

Usually, this necessity is a product of cleavages within a country, be it regional, social, and/or economic, which dictates the existence of autonomous regional governments to have the political power necessary to address local issues. At the same time, however, there is an imperative as well to be united under a central government, with the understanding that the individual regions benefit more from

Introduction : un tribut au fédéralisme

Adam P MacDonald (traduction française par Brian Gendron-Houle)

La nature du fédéralisme

Le fédéralisme comme forme d'organisation politique est un construit relativement nouveau, les premières fédérations s'étant développées au XVIIIème et XIXème siècles. Dans le monde d'aujourd'hui, vingt pays peuvent être classés comme étant fédéraux, ceux-ci regroupant près de 40% de la population planétaire(1). Ce regroupement inclut des pays variant de par leurs multiples complexités géographiques, politiques, sociales et économiques, et ce sur les six continents. Cette diversité démontre qu'il n'y a pas de modèle exclusif pour un État fédéral. Par exemple, les pays les plus vastes et populeux du monde sont des fédérations, comme les Etats-Unis, le Brésil et l'Inde, mais aussi certains des plus petits, comme les Comores et la Micronésie. Malgré qu'ils y aient plusieurs interprétations historiques sur l'évolution de ces pays à leur statut fédéral, la caractéristique clé du fédéralisme est qu'on perçoit un besoin de séparer les pouvoirs entre différents niveaux de gouvernance.

Habituellement, il s'agit d'une nécessité due à un clivage à l'intérieur même d'un pays, qu'il soit d'origine régionale, sociale, et/ou économique, lequel dicte les règles d'existence et du pouvoir pour les gouvernements régionaux, leur permettant d'agir dans les affaires locales. Simultanément, il demeure impératif de rester uni sous la bannière d'un

being part of the state than existing as independent polities(2). As the history of federalism has shown, however, with roughly half of all created federal states having collapsed(3), federalism is a difficult political structure to implement and maintain. The level of co-operation, therefore, between various sub-national entities, represented by their governments, within a federation is a function of the perceived utility of the system. Utility is a measurement of the political efficacy of the state to address a wide spectrum of both national and sub-national political issues. Sustainability of the federal state rest on the willingness of the regional and central governments to work together in a manner which is seen as beneficial, although usually in varying degrees, to all those involved.

A wide-spread belief in federalism, therefore, is essential in creating the conditions necessary to develop a working relationship with different regional and social groups(4). With such diversity within federal countries, political mechanisms must be flexible to adapt to a variety of circumstances which may challenge the political organization of the state. With a plethora of interests to aggregate, federal polities are faced with the task of creating a system which maintains the territorial integrity of the state but concurrently address specific interests amongst differing regional, political, social and economic groups.

The Changing Dynamic of the State: A Role for Federalism

In a contemporary context, the conception of the state is being fundamentally challenged by the processes of modernization and globalization. Not only

gouvernement central, avec l'assurance que les régions profitent plus d'être partie de l'État fédéral que d'être une entité étatique séparée(2). Mais comme l'histoire du fédéralisme le démontre, avec la moitié des fédérations de l'histoire s'étant écroulées(3), le fédéralisme suggère une structure difficile à implanter et à maintenir après coup. Ainsi, le niveau de coopération entre les nombreuses entités fédérales et provinciales, représentées par leurs gouvernements respectifs, est une représentation directe de l'utilité du système. L'utilité est ici comprise comme une mesure de l'efficacité politique d'un État à aborder une vaste gamme de problèmes, autant nationale que provinciale. Le maintien de l'État fédéral dépend souvent de la volonté des régions et du gouvernement central à travailler ensemble d'une manière vue comme étant bénéfique – peut-être différemment à chaque niveau – pour tous ceux impliqués.

Une croyance très répandue pour le fédéralisme est donc essentielle pour créer les conditions nécessaires au développement de relations efficaces entre les différents groupes régionaux et sociaux(4). Avec une telle diversité à l'intérieur des pays fédéraux, les mécanismes politiques doivent être flexible pour s'adapter à une variété de circonstances qui pourraient tester les organisations d'un État. Avec un trop plein d'intérêts à encadrer, les entités fédérales doivent faire face à la tâche de créer un système maintenant l'intégrité territoriale de leur État, tout en jouant avec la concurrence des intérêts spécifiques entre différents groupes régionaux, politiques, sociaux et économiques.

La dynamique changeante de l'État: un rôle pour le fédéralisme

is the utility of the state being challenged by the development of supra-state economic, military and social organizations (such as the European Union), as linkages, specifically trade, between various groups of peoples increases, identification appears to be following a path of localization in which individuals identify with an increasingly smaller group and territory. There appears, thus, to be a process of political fragmentation occurring at the same time (and perhaps because of) the world is becoming more economically integrated(5). The perception of a state identity, therefore, is continuously being attacked, which ultimately threatens the utility of the state formation.

In relation to federal states, as economic asymmetry grows between sub-regions, the development of competitive federalism emerges as a function of these regions attempt to combat or solidify (depending on the region) this enlarging power differential(6) The central government, therefore, of federations are placed in the difficult position of adjusting these disparities while at the same time not alienating certain regions which may believe the federation is inhibiting their political, social and/or economic progress. The ability, therefore, to accommodate growing economic, and therefore political, power differentials within federal states is perhaps the greatest challenge facing federalism in the 21st century.

With this in mind, however, federalism will most likely increasingly become an avenue for states to accommodate local calls for greater authority, while at the same time sustaining territorial integrity(7). As the devolution processes in a number of unitary states such as The

Dans le contexte actuel, le concept même de l'État est fondamentalement mis à l'épreuve par les procédés liés à la modernisation et à la globalisation. Non seulement l'utilité de l'État est mise en doute par les organismes supranationaux émergeants touchant l'économie, le militaire ou la société elle-même (comme l'Union européenne), mais aussi les liens entre les divers groupes augmentent-ils en nombre et le processus identitaire semble-t-il se réduire à des groupes et territoires de plus en plus petit. On voit donc un processus de fragmentation politique qui survient au même moment que le monde devient plus intégré économiquement(5), ce qui doit être la cause même de la fragmentation. La perception de l'identité étatique est donc constamment attaquée, ce qui ultimement mine sa validité comme entité étatique.

En relation avec les systèmes fédéraux, au moment même où l'asymétrie économique croît entre les régions, le développement d'entités fédérales compétitives apparaît comme une représentation de la tentative par ces régions de rejeter ou de se solidifier contre la plus grande poussée de pouvoir divergent.(6) Le gouvernement central des fédérations est donc placé dans une position très sensible où il doit ajuster les disparités, sans pour autant aliéner certaines de ses provinces, qui croiraient qu'on tente de nuire à leur avancement politique, social ou économique. La capacité à accommoder les besoins économiques et politiques grandissants, en plus de ses agents respectifs, le tout à l'intérieur d'un système fédéral, est sûrement le plus grand défi auquel le fédéralisme fait face au XXIème siècle.

Avec cela en tête, le fédéralisme deviendra

United Kingdom and Spain demonstrate, a federal system may be the only method for these states to survive within a growing asymmetric conglomeration of regions. As Daniel Elazar asserts, the state system has been undergoing a paradigm shift over the last 60 odd years from statism, the belief that political organization was best created in highly centralized, self sufficient, homogenous societies towards federalism characterized by decentralization of power, interdependent, heterogeneous societies, to cope with the processes of modernization and globalization(8). The impacts of internal conflicts, also, in developing countries such as Nepal is making federalism seem as the only method of maintaining the state by creating a distribution of powers to regional governments to create peace and co-operation between them(9). Federalism, therefore, as a political construct is a mechanism which is increasingly being used in a number of states for a variety of reasons to adapt to changing internal and external geo-political situations with the goal of preserving the utility and, thus, territorial integrity of the state.

de plus en plus une option de choix pour les États qui devront intégrer les demandes régionales pour plus de pouvoirs, tout en maintenant leur intégrité territoriale(7). Comme les procédés de décentralisation qu'on peut observer dans des États unitaires comme l'Espagne ou le Royaume-Uni le démontrent, un système fédéral est peut-être le seul moyen pour ces États de survivre aux pressions exercées par leurs propres nécessités régionales asymétriques. Comme Daniel Elazar avance, les systèmes étatiques ont traversé un point paradoxal au cours des dernières soixante années d'étrange création étatique, passant de la croyance en des États fortement centralisés, autosuffisants et socialement homogènes à celle de fédérations caractérisés par la décentralisation des pouvoirs, interdépendance et la multiethnicité. Ce changement de direction fut nécessaire pour que les systèmes puissent s'adapter à la modernisation et à la globalisation(8). Les impacts des conflits internes dans les pays en développement, comme le Népal, font apparaître le fédéralisme comme la seule alternative pour maintenir l'État en un tout, en amenant la paix et la coopération entre eux(9). En bout de ligne, le fédéralisme, comme construit politique, est le mécanisme de plus en plus utilisé par de nombreux États, chacun ayant différentes raisons, pour s'adapter aux changements internes et externes de la situation géopolitique. Ils s'assurent ainsi de maintenir l'utilité même de l'État, tout en assurant le maintien de l'intégrité territoriale.

Footnotes / Notes de bas de pages

(1) Introduction to federalism, Forum of Federations, http://www.forumfed.org/en/federalism/introduction.php (accessed: 1 Apr 2008).

(2) Livingston, William S. (1952) A Note on the Nature of Federalism, Political Science Quarterly, 67, pp.89-90.

(3) Federalism in the 21st Century: Trends and Prospects, Public lecture by George Anderson, President of the Forum of Federations, 23 March 2007, Sante Fe, Argentina, slide 8.

(4) Franck, Thomas, Why Federations Fail: An inquiry into the Requisites for Successful Federalism, New York: New York University Press, 1968), pp. 173-177.

(5) Elazar, Daniel J. (1996). From Statism to Federalism- A Paradigm Shift, International Political Science Review, vol. 17, no.4, p.418.

(6) Keating, Michael, Challenges to Federalism: Territory, Function, and Power in a Globalizing World, in Robert Youngs Stretching the federation: the art of the state in Canada Institute of Intergovernmental Relations (Queens University Press: Kingston, 1999), pp.10-15.

(7) Federalism in the 21st Century: Trends and Prospects, slide 22.

(8) Elazar, pp.420-426.

(9)Federalism in the 21st Century: Trends and Prospects , slide 13.

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4. "Introduction to federalism", Forum of Federations, Keating, Michael, "Challenges to Federalism: Territory, Function, and Power in a Globalizing World", in Robert Young's "Stretching the federation: the art of the state in Canada", Institute of Intergovernmental Relations (Queen's University Press: Kingston, 1999).

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Canadian Federalism: A System of Flexibility and Adaptability

Adam P MacDonald, English Chief-Editor

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The current edition is largely based within a Canadian context, though we did receive article submissions from as far away as Russia. Specifically, change is a recurring theme underlying and tying the various articles in this edition together. Federalism is not a stagnate form of governance, especially within a large, diverse polity such as Canada. In this regard, Canada serves as a case study of the challenges faced by other conciliatory federations. The current journal has been ordered chronologically to provide a stream of historical and contemporary accounts that demonstrates the constant need for adaptation to deal with change within the Canadian federal system. Though some issues researched in this journal may seem to be nothing more than historical, their impacts on Canadian politics still resonate today for each author, while researching a specific topic is at the same time addressing generic concerns about the nature of the Canadian Federation; concerns that need to be addressed for they have not be resolved

Issues such as federal-provincial transfer payments, disputes over governmental areas of jurisdiction, and constitutional amendments still dominant, to varying degrees, the Canadian political landscape, testing the flexibility of our federal polity to deal with these challenges within a country of constant political transition. At the heart of the matter lies the relationship which exists between the two autonomous levels of government in Canada. Though usually in disagreement over various matters, the nature of how the federal government and their provincial counterparts work with one another in large part dictates how well our system can absorb shocks such as the separation crisis in Quebec in the early 1990s or the rebalancing of the fiscal equilibrium. Co-operation is essential for political stability and, thus, territorial integrity. Saying that, co-operation, ultimately, depends on a sense of identity, a belief in working together for mutual benefit.

There have been and mostly likely will always be identity issues in Canada. Indeed, Canada could be argued to be one of the federal states with the lowest sense of an over-arching national identity, what Edwin R Black explains as the "...stillbirth of Canada as a nation-state"(1).The Canadian public is divided between various identities such as those to one's community, province, region and country. The diverse nature of the Canadian polity, which is a function of mainly, but not exclusively, regional and social cleavages challenges the degree to which we identify, and thus work together. Though there are concerns as to the neglect development of a well defined and broadly accepted Canadian identity, federalism in Canada, demonstrating a willingness to operate under the Canadian construct, does exist. This willingness is most likely as a result of shared common values held by Canadians in general, particularly the belief in the use of the federal system. The ability to develop institutions and procedures to supply flexibility to

this system provides an avenue in which people, regions and governments can utilize to solve political issues, justifying maintaining the current system even in the absence of a strong pan-Canadian identity.

System maintenance, however, is not a static construct for Canadian federalism must be able to aggregate a wide variety, and in many cases conflicting, interests from across the country. For example, with respect to equalization payments, while Alberta and Ontario believe they are contributing too much and receiving too little in the present payment mechanism, the eastern provinces and Quebec feel they are not receiving enough. Issues such as these demand a system that is adaptable to provide political utility to all involved, justifying its existence. The regions and provinces across Canada must believe that though the system is not perfect, it is the best one that is currently available to govern their regions; if not, independence and separation may very well become policy options, threatening the survival of the Canadian state. Though this threat does to varying degrees loom over the Canadian Federation, as the following in depth articles explain via specific issues, Canada has been and still is a country which is adaptable and flexible in meeting a wide spectrum of political challenges.

Be it concerns over Quebec separation, the fiscal imbalance or devolution of the northern territories, the Canadian federal system provides a forum in which interests can be aggregated and negotiated in a way which further solidifies the nature of the Canadian federal system. The Canadian Federation demonstrates a remarkable ability for innovative thinking, creating methods in which to further combine the interests of its diverse regions. Constructs such as 'mega constitutional' measures and the annual First Ministers Meetings are examples of the ingenuity inherit within our conciliatory system to deal with a number of issues in a manner which enhances the level of communication between the levels of government, ultimately supporting the utility of a flexible and adaptable system. There are, however, legitimate concerns over the ongoing process of subsidiary within Canada (and in other federal states as well), specifically the challenge to the political utility of a central government amidst the growing powers of their regional counterparts and the potential creation of other levels of government such as municipalities and/or Aboriginal self-government (2). Though decentralization may in the future alter the power relationship which exists between the federal and provincial governments (and perhaps others created), the belief in the Federation is strong due to is ability to resolve, as the following articles indicate, although sometimes quite slowly, issues from coast to coast.

As has been stated earlier, federalism as a political form of governance has a mixed record. Even though Canada is considered a conciliatory federation, in which, unlike in mature federations such as the US or Germany, the exact areas of jurisdictions between the two levels of government are still somewhat undefined, this ambiguity has given the country the flexibility necessary within the system to address concerns with very innovative measures. A lack of constitutional rigidity, therefore, should not been viewed necessarily as an inhibiting force in the establishment of a stable federation. This ability to maintain a flexible and adaptable system, therefore, has allowed us to survive a

multitude of political challenges, some threatening the very fabric of the country. When reading this edition, therefore, try to not only understand the specific issues being addressed, but see the larger, generic challenges facing the Canadian Federation. It should not be assumed that because Canada is in constant political change that the system is unstable. Instead, the ability to adapt to these changes by having a flexible structure demonstrates in many respects how stable our polity really is.

Footnotes

(1) Black, Edwin R Divided Loyalties: Canadian Concepts of Federalism (McGill-Queens University Press: Montreal, 1975), p.1.

(2) Stevenson, Garth, Unfulfilled Union: Canadian Federalism and National Unity, Third Edition, (Gage Educational Publishing Company: Toronto, 1989), pp.14-15.

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1. Black, Edwin R "Divided Loyalties: Canadian Concepts of Federalism" (McGill-Queen's University Press: Montreal, 1975).

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Non-Constitutional Measures as an Alternative to Constitutional Amendment: Post-Meech Lake and Charlottetown

Jennifer Chisholm

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Abstract

The period spanning from the early 1980s to 1992 has been referred to as the era of constitutional federalism in Canada. One of the most significant events in Canadian history occurred on April 17, 1982, the patriation of the Canadian Constitution. Quebec did not sign the Constitution and for the following decade the country was dominated by the "high politics" of constitutional change. The Meech Lake Accord and the Charlottetown Accord respectively attempted to accommodate Quebec's conditions for signing the document, however both failed. This paper describes the process and content of both Accords and the factors that led to their failure. It argues that Canada is better off due to the failure of these two proposed constitutional amendments. It also argues that subsequent non-constitutional measures introduced in the 1990s and 2000s have addressed many of the mega-constitutional concerns that these two accords attempted to tackle. The paper discusses some of the issues included in both Accords that have since been addressed through non-constitutional means, including: the recognition of Quebec as a distinct society; the federal government's spending power; Aboriginal self-government; a veto for Quebec on certain constitutional amendments; and Senate reform.

Introduction

The period spanning from the early 1980s to 1992 has been referred to as the era of constitutional federalism in Canada. One of the most significant events in Canadian history occurred on April 17, 1982, the patriation of the Canadian Constitution. Quebec did not sign the Constitution and for the following decade the country was dominated by the "high politics" of constitutional change(1). Two accords, the Meech Lake Accord and the Charlottetown Accord, attempted to accommodate Quebec's conditions for signing the document, however both failed. This paper will discuss the causes that led to the failure of the Accords and will argue that Canada is better off due to the failure of these two proposed constitutional amendments. It will, also, argue that subsequent non-constitutional measures introduced in the 1990s have addressed many of the mega-constitutional concerns that these two accords attempted to tackle.

The Constitutional Era of Federalism

The Meech Lake Accord

Although the Constitution was patriated in 1982, Quebec's missing signature left the project unfinished; this was seen as a blemish on the accomplishment. Brian Mulroney's Conservative government, elected in 1984, promised to "bring Quebec back into the constitution with honour"(2). In May of 1986, Liberal Premier of Quebec, Robert Bourassa, outlined the five conditions under which Quebec would agree to the Constitution(3). The conditions were: the recognition of Quebec as a distinct society; a role for the province in appointments to the Supreme Court; an expanded role in immigration; limits on federal spending power in shared-cost programs; and a veto for Quebec on constitutional amendments(4).

In August of 1986, at the Premiers' Conference, it was decided that a priority for the provinces was getting Quebec back to the bargaining table to discuss constitutional issues. On April 30, 1987, the First Ministers met at Meech Lake to discuss Quebec's five conditions and created a draft of the Meech Lake Accord. The Accord was finalized on June 3, 1987 at an isolated eleven hour meeting between the First Ministers. The objective of the Accord was to obtain Quebec's acceptance of the Constitution Act, 1982(5).

The Accord was then presented to the rest of Canada. The final document included all five of Quebec's conditions, with many of them extended to give the same power to the other nine provinces. All ten provinces would have the following four powers: a veto regarding major constitutional amendments, the power to nominate Supreme Court judges, greater control over immigration, and greater control over federal-spending on shared-cost programs (which would include the right to opt out of federal programs while receiving compensation)(6). A "distinct society clause" was, also, included in the package for Quebec. Two additional provisions were in the final draft of the accord: all

provinces would have the right to nominate Senators and an annual First Ministers' Conferences would be entrenched in the Constitution(7).

This package was unanimously approved by all First Ministers. Why then, with this level of agreement among them, did the Meech Lake Accord fail? Technically, the Accord was not ratified by all of the provinces and the federal government in time. From the day that Quebec ratified the Accord on June 23, 1987, the first province to do so, the rest of the country had three years to follow suit. By June 23, 1990, both Manitoba and Newfoundland had not ratified the Accord. This signified the failure of Meech Lake.

There were various reasons for the erosion of the unanimous consent over the three year period allotted for ratification. These reasons led to the Accord's eventual failure. One such cause was the election of three new provincial premiers after the finalization of Meech Lake on June 3, 1987(8). Frank McKenna was sworn in as Premier of New Brunswick in October, 1987, Gary Filmon of Manitoba in 1988 and Clyde Wells became Premier of Newfoundland in 1989. These Premiers were not signatories to the Meech Lake Accord. McKenna and Wells specifically campaigned against the Accord in their respective election campaigns(9). In Manitoba, Filmon held a minority Conservative government. The opposing Liberals were against the Accord until late in the three year period which led to difficulties in coming to a decision on Meech Lake(10).

The Premier of Quebec himself is also partly to blame for the Accord's failure(11). In 1989, Bourassa decided to invoke the Notwithstanding Clause to protect Bill 101 and the use of French on commercial signs in Quebec(12). This decision created a significant backlash within English-speaking Canada. It caused concern that the "distinct society clause" in the Meech Lake Accord would be used to override other individual rights(13).

Another factor that contributed to the Accord's failure was the process through which it was negotiated, which some have described as undemocratic(14). The Meech Lake Accord was created by eleven men in secret meetings without any input from the public. This demonstration of executive federalism did not sit well with many Canadians. For something as important and radical as changing the Constitution of the country, many citizens felt they should have had greater involvement in the process(15). Canadians were presented with a completed and unalterable document. There was no public debate or opportunity for discussion about the Accord(16). Although executive federalism has characterized the Canadian model of federalism, in this instance Canadians showed that they wanted an opportunity for more participation(17).

The content of the Accord itself was controversial. In order to get all of the provinces to agree to Quebec's conditions, they wanted to be granted the same powers. This would have facilitated a drastic shift of power from the federal government to the provinces. This caused concern among Canadians about the weakening of the "national fabric"(18). Many felt that these powers belonged under the federal government and should stay there to ensure a strong central government and a strong Canada. In a highly decentralized federation, provinces are able to act almost as autonomous units. This is problematic in

that the provision of services may not be consistent across the country. In addition, it has the potential to create a highly fragmented and disjointed nation.

Other Canadians were uncomfortable with granting Quebec "distinct society" status. No one really knew what the vague wording meant or what kind of additional powers it would give to Quebec(19). This caused particular unease for women's rights groups. The Charter of Rights and Freedoms would not be given precedence over the Accord. There was worry, therefore, that Meech Lake would infringe on women's rights protected under the Charter(20). Feminists such as Lynn Smith, expressed concern that such a clause would allow the provincial government of Quebec to "defend legislation on the grounds that it seeks to preserve and promote Quebec's distinctness even though it may infringe upon the equality provisions of the Charter"(21).

Another group of individuals who were dissatisfied for being left out of the decision-making process of the Meech Lake Accord were Canadian Aboriginals. Their exclusion from the process, combined with the lack of consideration of their needs or wants, was one of the most integral reasons for the failure of Meech Lake. In Manitoba, by the time the minority Conservative government had gotten support from the Liberals to pass the Accord, less than a month was left until the deadline. To do so in time, Premier Gary Filmon needed the unanimous consent of the legislature to speed up the process. NDP MP Elijah Harper, a Cree Indian, refused to give his consent to introduce the Accord for the debate without the normal two days' notice. Harper stated, "It's about time that aboriginal people be recognized"(22). He believed that the exclusion of Aboriginal people in this constitutional amendment was unacceptable. Harper did not relent and Manitoba was not able to pass the Meech Lake Accord.

In addition, former Prime Minister Pierre Elliott Trudeau's vocal opposition to the accord is another reason for the failure of Meech Lake. For example, in the May 27, 1987 edition of both Montreal's La Presse and The Toronto Star, Trudeau submitted an article strongly renouncing the Accord(23). This had a huge impact on public opinion. Trudeau argued that Meech Lake was a "document which -- if it is accepted by the people and their legislators --will render the Canadian state totally impotent", as a result of its enormous concessions to the provinces(24). Trudeau's outspokenness on the Accord persuaded many to reconsider their support for the document.

The Charlottetown Accord

Numerous Quebecers saw the failure of Meech Lake as a "rejection" of Quebec by the rest of Canada. There was a strong outpouring of Quebec nationalism and support for sovereignty directly after its failure(25). In response to this, the Allaire Report was adopted by the Quebec Liberal Party. It outlined twenty-two powers that it recommended should be transferred from the federal government to the province of Quebec(26). It also suggested that a Quebec referendum, either on a Quebec-Canada proposal for reform or on Quebec sovereignty, be held by the end of the fall of 1992. On September 4, 1990 the Quebec National Assembly established the Belanger-Campeau Commission to examine

Quebec's constitutional options(27). This commission recommended that the National Assembly hold a referendum on sovereignty somewhere between June 8, 1992 and October 26, 1992.

Every other province also examined the constitutional question over the course of the two years following the failure of Meech Lake. They wanted to get a clearer picture of where their respective populations stood on constitutional change(28). The federal government conducted three consultations in this time: The Spicer Commission, the Beaudoin-Edwards Committee and the Beaudoin-Dobbie Committee. In addition, five national conferences were held. Some of these included discussions with the public. The Aboriginal peoples, also, conducted four consultations with their constituents during the two year period(29).

On March 12, 1992 a new multilateral process to continue constitutional negotiations was started. This Multilateral Meeting on the Constitution (MMC) was comprised of the federal, provincial and territorial governments, as well as representatives from four national Aboriginal associations; the Assembly of first Nations, the Native Council of Canada, the Inuit Tapirisat of Canada, and the Métis National Council(30). On July 7, 1992 an agreement was reached regarding a new constitutional package. On August 28, 1992 the Charlottetown Accord was finalized(31).

The content of the Charlottetown Accord was similar to that of Meech Lake. The document included the recognition of Quebec as a distinct society. Some of the other aspects of the package were: a Canada clause, an equal Senate, the right to Aboriginal self-government, a veto for all provinces on institutional reform (except for the creation of new provinces in the territories) and strengthened legislative jurisdiction for the provinces(32). Change to representation in the House of Commons to better reflect representation by population was another aspect of the Accord. This included a guarantee of 25% of the seats in the House for Quebec(33).

The demise of the Meech Lake Accord on June 23, 1990 left lessons but no solutions on how to successfully negotiate a constitutional agreement(34). The process of the Charlottetown Accord showed a learning curve from the failed procedures of Meech Lake, however. First, this second round of constitutional negotiations included Aboriginal representatives. Second, although the negotiations were still dominated by executive federalism, the MMC briefed the media daily about its work(35). This was to keep the Canadian public aware of the issues being discussed. The Charlottetown Accord was negotiated through a dual process, which was not the case for Meech Lake. Quebec was removed from the initial negotiations and later became involved in the process(36). Quebec Premier Robert Bourassa and Prime Minister Brian Mulroney were both absent from the July 7 meeting. After, however, reviewing the agreement that resulted from negotiations on that day, Bourassa came to support the proposed constitutional amendment(37). According to Thomas Courchene in "The Changing Nature of Quebec-Canada Relations", the Charlottetown Accord was "a cobbling together of a myriad of concessions designed to elicit support from Canadians in all walks of life"(38). This time

around the amendment was more inclusive, showing avenues for more public participation.

A referendum in Quebec, and one in the rest of Canada, was held so that Canadians could vote on the Charlottetown Accord. The referendums demonstrated that the federal government had learned the consequences of excluding the public from the Meech Lake process. On October 26, 1992 the Charlottetown Accord was voted on and rejected by a majority of Canadians in a majority of provinces (54%). This included a majority of Quebecers and a majority of Aboriginals living on reserves(39).

The Charlottetown Accord had failed. Changes had been made since the Meech Lake Accord but they were still not enough to convince a majority of Canadians that this was the solution to the country's constitutional problems. It is not clear why Canadians voted against the Accord in the referendums(40). There are, however, some influencing factors to consider. For one thing, the "Yes" committees were poorly organized. According to James Ross Hurley, "the Accord was sold largely as an honourable compromise that would avoid the unhappy consequences of failure, rather than as a stirring vision of the future"(41). By attempting to accommodate so many diverse groups with one constitutional amendment, the result was a complex and confusing package. This strategy was obviously not the most convincing to Canadians.

The "No" side argued that the whole deal should be rejected because of certain elements that were unfavourable, such as the Canada Clause (which included the distinct society clause) or even the concept of Aboriginal self-government, which was not clearly defined(42). With such a multifaceted agreement, it is not hard to see how this argument would be more persuasive to the general public. It was easier to convince the voters of the drawbacks of particular issues of the larger package, rather than to convince them of the merits of every aspect of the accord.

Opposition to the 25% guarantee of seats in the House of Commons for Quebec was another reason for the failure of the Accord. Some people saw this as anti-democratic while others opposed it because of anti-Quebec sentiment. Many wanted clarification on what Aboriginal self-government would mean. Aboriginal leaders themselves said that they had not had time to make a proper assessment of the Accord. Another issue that created resistance to the Accord was gender. Some women's groups expressed that gender equality issues had not been sufficiently addressed in the Charlottetown Accord. Worries about the ineffectiveness of the equal and elected Senate were also expressed(43). In addition, the multilateral process was to have originally ended in May, 1992 but it did not finish until June. This meant that there was less time to explain the Accord to the people of Canada(44).

Would Canada have been better off had these Constitutional Amendments passed?

Canada would not have been better off had the Meech Lake Accord or Charlottetown Accord been ratified. Both accords would have given too much power to the provinces in

an already highly decentralized federation. This would have created a much more disjointed country with too much power concentrated within the provincial governments. Provinces would have essentially become "semi-autonomous" units and individual premiers would have been given much more control(45). With so many federal powers transferred to the provinces the federal government would have become significantly less effective. Had Meech Lake been ratified, the federal government would not have been able to appoint anyone to the Supreme Court of Canada without them first being nominated by the provinces(46). This would have given the provinces an enormous amount of control over the judicial branch of government. The same would hold true for the Senate. The Accord would also have allowed provinces to either completely stop a constitutional amendment, through the use of their veto, or opt out of it while receiving compensation(47). Again, these powers would have significant effects on the efficiency of the federal government. As Pierre Trudeau argued, the specific recognition of French-speaking Canada and English-speaking Canada would have undermined bilingualism and multiculturalism in the country(48). At the time, political leaders expressed concern that if the Meech Lake Accord was not ratified Quebec would separate from the country(49). Had the Accord passed, however, there was nothing to stop that from happening. As Marjorie Montgomery Bowker suggested, "some future Quebec government might take the position that the promotion of Quebec's "distinct identity" necessitates separation"(50).

Brian Mulroney argued that had the Meech Lake Accord been ratified, it would have given the Prime Minister power to counteract Quebec separatists. The separatist claim that the Constitution was illegitimate since Quebec was not a signatory to it, would no longer have held truth(51). Despite this argument, the Constitution applies to Quebec in the same manner as it does to the other nine provinces who did sign it in 1982. This power would not have been worth all of those given up to the provinces by the federal government.

Non-Constitutional Measures

The failure of both Accords brought an end to the era of mega constitutional politics in Canada, which had dominated for arguably 25 years(52). As Peter H. Russell describes, "at the mega level, constitutional politics moves well beyond disputing the merits of specific constitutional proposals and addresses the very nature of the political community on which the constitution is based"(53). Canadians had certainly tired of this type of debate by 1992 when the Charlottetown Accord failed. Since then, the problems surrounding the Constitution have not been forgotten but have simply been approached in a different way. Several non-constitutional measures have been put in place to address the mega-constitutional concerns that both accords attempted to resolve.

Liberal Era

On November 27, 1995 Liberal Prime Minister Jean Chrétien introduced a motion into the House of Commons which was passed a few days later. The motion stated that the

House of Commons recognize that Quebec is a distinct society within Canada. The distinct society includes Quebec's French-speaking majority, unique culture and civil law tradition(54). This legislative recognition does not hold the same weight as a constitutional amendment. It is an attempt, however, to address one of the mega-constitutional issues proposed in both Meech Lake and Charlottetown, through non-constitutional means.

The federal government's spending power is another matter that was addressed by both accords. The Social Union Framework Agreement (SUFA) was signed on February 4, 1999 by the federal government of Canada, all the provinces, except for Quebec, and the leaders of the territories. The agreement clarified the respective roles and responsibilities of both levels of government in regards to social policy. It also acknowledged the federal government's spending power(55). SUFA illustrates another instance where a mega-constitutional issue dealt with by both Accords, has attempted to be addressed by a non-constitutional measure since their failure. Since Quebec, however, did opt out of the agreement it does not really solve the problems that they had with the federal spending power to begin with. It is more of an attempt at non-constitutional change rather than a success.

In regards to Aboriginal self-government, the focus has shifted from addressing the issue by means of constitutional reform, to policy and legislative changes. Several self-government arrangements have been negotiated since the failure of the Charlottetown Accord in 1992. On May 29, 1993 an Umbrella Final Agreement (UFA) was signed between the federal government, Yukon government and the Council for Yukon First Nations. The UFA created the basis for negotiation with the fourteen Yukon First Nations about final land claims and self-government agreements. By 1999, eight Yukon First Nations had signed such agreements and the other six were all in various stages of negotiation(56).

In another case, in 1976 the Inuit Tapirisat of Canada submitted a proposal to the federal government requesting the creation of a new territory to be called Nunavut. In 1982, a plebiscite was held and several years of negotiations on the subject followed. Under the Tungavik Federation of Nunavut land claim, the creation of a new territory was promised in 1991. On April 1, 1999 the territory of Nunavut and its government was established. The Inuit are a majority of the population of Nunavut, constituting 85% of the territory's population. As a result of this demographic reality, the public government of Nunavut is largely controlled by the Inuit(57).

Another Aboriginal self-government agreement was signed between the Nisga'a Tribal Council, government of British Columbia and government of Canada on August 4, 1998. The Nisga'a Final Agreement gives ownership and self-government control of 2,000 square kilometers of land to the Nisga'a Nation, in the Nass Valley of B.C. This agreement covers provisions related to land, resources, financial compensation and governance. These examples all demonstrate how the right to Aboriginal self-government has been addressed through changes in policy and legislation, rather than through

constitutional means(58). These examples demonstrate the shift in tactics that the federal government has taken in addressing the issue of Aboriginal self- government. No longer is the solution being sought through constitutional means, rather it is being addressed through changes in policy and legislation.

In 1996, the Act Respecting Constitutional Amendments was passed. This non-constitutional measure attempted to address the issue, present in both the Meech Lake and Charlottetown Accords, of the provincial veto for Quebec. The act declares that proposals for certain amendments to the Constitution must be consented to by a majority of provinces before it can be tabled in Parliament(59). The majority of provinces must include: Quebec, Ontario, British Columbia, at least two of the Atlantic provinces (making up at least 50% of the region's population) and two of the Prairie provinces (making up at least 50% of the region's population). This act applies to constitutional amendments regarding things like changes to parliamentary institutions, the creation of new provinces and the division of powers between the central and provincial governments(60). Essentially it does grant Quebec, as well as the other individual provinces listed, a veto on these matters.

Harper Conservatives' Era of "Open Federalism"

Since being elected in 2006, Prime Minister Stephen Harper has continued this trend of tackling mega-constitutional issues through the use of non-constitutional measures. He has declared that the Conservative government will "practice an open federalism"(61). This plan includes respecting provincial and federal jurisdictions and recognizing a fiscal imbalance. The plan also calls for a "commitment to a more efficient and balanced federation"(62). Harper has attempted to move towards such a federation by addressing Quebec's desire to be recognized as a "distinct society". This was done through a motion passed in the House of Commons on November 27, 2006. The motion declared that the House of Commons recognize that "the Québécois form a nation within a united Canada"(63). Conservatives, NDP, Bloc Quebecois and most Liberal MPs voted 266 to 16 in favour of the contentious motion(64). This differs from declaring the province of Quebec a nation, which could be seen as the acceptance of the province's right to sovereignty. By recognizing the Quebecois as a nation, in the socio-cultural sense rather than territorial sense, the right to sovereignty is not applicable to a group of individuals. Nevertheless, such recognition qualifies as a way to address one of the mega-constitutional issues of the 1990s through legislative means(65).

Senate reform is another issue that would have been addressed had the Charlottetown Accord been ratified. In the last election campaign, Prime Minister Harper promised to "push for Senate reform if elected"(66). On September 7, 2006 Harper spoke in front of the Senate committee urging Senators to pass Bill S-4. This bill, An Act to amend the Constitution Act, 1867, was introduced in the Senate on May 30, 2006. It proposed a limit on Senatorial terms to eight years for new Senators. This amount of time, Harper stated, is roughly equivalent to the lifespan of two consecutive majority governments and a fair proposal; it may be re-introduced in the future(67). The Bill proposes to amend

section 29 of the Constitution Act, 1867 but is still consistent with the approach of avoiding mega-constitutional reforms to change the structure of the federation. Such an amendment is much smaller and less complex than the packages proposed by the Meech Lake and Charlottetown Accords.

Conclusion

A diverse group of factors led to the failure of both the Meech Lake and Charlottetown Accords. In the first instance, a lack of public participation in the process and the exclusion of Aboriginals in the negotiations were two main reasons for the rejection of the accord. In the second instance, although the process differed from that of Meech Lake, in that it was more inclusive of Aboriginals and the general public, it was not enough to persuade Canadians to vote in favour of the Charlottetown Accord. Canada, however, would not have been better off had these accords passed. They would have led to too much decentralization in the Canadian federation, resulting in the creation of a weak and ineffective federal government. Many of the mega-constitutional concerns that both accords tackled have been addressed by non-constitutional measures since their failure. This has been a good way to institute change in the federation without renewing the tiring constitutional debate of the 1980s and 1990s. It is not to say that this constitutional change will not be attempted in the future. For the mean time, however, Harper's plan of Open Federalism seems to show the government's willingness to continue addressing the country's issues through legislation and other non-constitutional initiatives. This tendency demonstrates that the failure of the Meech Lake and Charlottetown Accords certainly have not signified an end to Canada's constitutional challenges.

Biography

Jennifer Chisholm is a second year student at Dalhousie University, who hopes to complete a combined honours degree in Political Science and International Development Studies. She has a strong interest in Canadian constitutional politics, bilingualism/multiculturalism and human rights. Jennifer has a passion for travel and plans to continue her studies at a graduate level overseas.

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Are We Clear, Now? : Analysis of the Effectiveness and Legitimacy of Bill C-20, the Clarity Act (2000)

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Abstract:

The purpose of this paper is to analyze the effectiveness and legitimacy of the Clarity Act (2000) within the context of federal-provincial relations. Effectiveness is gauged by the extent to which the Act achieves its initial goals of clarifying government's position on separatism, redefining terms (such as 'majority') and diminishing support within Quebec for sovereignty. Legitimacy is assessed through examining whether or not the federal government has the legal ability to make decisions on the type of majority/question that a province needs for sovereignty. There are several arguments that maintain that this should remain within the jurisdiction of the provincial legislature. The historical events that led up to the Act are discussed as evidence of the Act's reflection of continuities that plagued Quebec-Canada relations. While analyzing expert opinion, the author brings together both pro- and anti- Clarity Act perspectives in order to arrive at her conclusion. Revisiting statistical work by Pinal is used to gauge the Quebecois reaction to the Act. The author concludes, ultimately, that the Clarity Act is both an effective and legitimate response to calls for Québec sovereignty. The Act upholds democratic values and supports national unity. The controversy surrounding the Act accentuates the value of debate within the intergovernmental political realm.

Any prime minister faced with the very real threat that the country could break up before his/her very eyes must carefully consider, in advance, the best available options before the unthinkable actually occurs. Prime Minister Jean Chrétien was once put squarely in the position of facing the break up of Canada. So shaken afterwards, he vowed that in any 'next time' his, or any future Canadian government, would have already taken measures aimed at staving off a rupture in the federal fabric and have the best chance to succeed in keeping Canada in one piece.

In an attempt to pacify the separatist movement that flourished in Québec from the 1960s to 1990s, the Canadian government developed the Clarity Act of 2000. This paper will present the events that led up to Clarity Act's implementation as well as evaluate its effectiveness and legitimacy. While there are some nuances in regards to how the Act was received across the political sphere, it is possible to conclude that it was both an effective and legitimate response to calls for Québec sovereignty. Its overall effectiveness is reinforced as it achieved its initial goals of redefining central terms, clarified the government's position and reduced the support for the sovereignty movement. In a parallel evaluation, its legitimacy was secured because the federal government is entitled to make decisions on the type of majority/question that a province presents although there are solid arguments that suggest this should remain within the jurisdiction of the provincial legislature. Finally, any breach(es) in the legislation's effectiveness will consequently be considered a loss of legitimacy. Ultimately, the Clarity Act had a profound impact on Québec-Canada relations as well as acting as an example of the intergovernmental debates and values that are embedded in contemporary Canadian politics.

The Quiet Revolution of the 1960s changed the focus of Quebec nationalism from cultural independence through defending traditional values to politically charged and oriented towards autonomy. An example of this political mobilization of nationalism is certainly the creation of the separatist party, the Parti Québeçois, in 1968. Québec's innovative leaders, such as René Lévesque and Jean Lesage, pursued a more aggressive and modern form of nationalism which has since then became a key issue of contention in Québec politics and policy making. The importance of this new nationalism increasingly pointed to one question: "How much decentralization should govern relations between Québec and Canada?"(1)

The intergovernmental debate between the Government of Canada and the Government of Quebec is, undoubtedly, a continuity of historic tensions. From the 1960s to the 1980s, there were two lingering and unresolved issues that would affect decision-making across federal-provincial relations: National unity and the negative repercussions provinces experienced due to a decline in federal transfers. Furthermore, Québec had usually been a consistent force of resentment and disobedience to national projects as the province's political culture defines itself as a distinct society that is unique from the Rest of Canada (ROC). These bitter feelings were heightened by the fundamental "constitutional dissatisfactions and economic concerns" that had existed for many decades.(2) By the

end of the 1980s, the mounting inevitability of Québec secession was growing at a steady pace.

The Mulroney government in the 1980s exercised constitutional federalism through political compromises and settlements as well as institutional changes. Unfortunately, the attempts he (and his successors) pursued fell short. The tensions in Québec increased as a result of the failure of national projects, particularly the Meech Lake and Charlottetown Accords that attempted in vain to bring Québec back into the Canadian Constitution. When these accords died, Québec felt rejected and took this as the ROC's way of "further excluding [it, which] led to a rise for sovereignty support."(3) With Mulroney's retirement and Kim Campbell's short executive stint, Jean Chrétien became Prime Minister with a huge majority in 1993 and brought with him a commitment to ensuring Québec's place in Canada. Ultimately, Québec would remain at the front of the political battlefield. Three main events forced the government to pay serious attention to the province's nationalism as a potentially dangerous issue:

The 12 September 1994 election of a Parti Québeçois government committed to independence with 75 seats versus the Liberals' 48 seats and 1 seat to the Parti Action Démocratique;

The formal launching of the sovereignty referendum process with the 6 December 1994 tabling of legislation in the National Assembly; and

The extremely narrow federalist win, at 50.6% of the vote, when the referendum was eventually held on 30 October 1995. (4)

The federal government needed to respond and strengthen the country because it looked as if it was going to disintegrate. There was considerable panic in the ROC and Chrétien's credibility was on the line. To add even more pressure on Ottawa, the Québec government was "establishing a process that would include consultations with the Quebecers (prior to, and in the form of, a referendum) and the National Assembly (prior to, and in the event of, a "yes" vote after a referendum.)"(5) In response, the government produced several programs that formed what is known as "Plan A" and "Plan B." These projects emerged mostly in 1996 as a means to popularize national unity while attempting to solve some of Québec's constitutional concerns without changing the Canadian Constitution itself. Plan A projects are soft-line approaches that seek to appease Québec. These initiatives consisted of: Bill C-110, a resolution to recognize Québec as a distinct society, talks of opting-out of new shared-cost programs and devolving labour force training to the provinces.(6) The Calgary Declaration was another national unity project but it was rejected by Bouchard's government. The initiative was unattractive to the province's government because it only recognized Québec's society as a unique part of the greater Canadian entity rather than acknowledging the province as a nation which has political implications.

The Plan A initiatives were followed by two main Plan B projects: The Québec Secession Reference to the Supreme Court of Canada and the Clarity Act. To qualify, Plan B refers to the government's preparation in the eventuality that a referendum yields a "yes" response and more specifically, it involved "hardening their position towards Québec."(7) Chrétien was (justifiably) scared by the near breakdown of the country. He referred to the Supreme Court three questions in late 1996 which asked the Court to determine the extent of power that the Québec government legally possessed (by the standards of national and international law) to unilaterally secede from Canada. As a follow up question based on the result of the first two, the Court had to decide which body of law took precedence if the laws conflicted. In the end, the Reference "aimed not only to declare the unconstitutionality under Canadian law, but the invalidity, under international law, of any Québec law that would propose a referendum on the sovereignty of Québec."(8) It is important to note that the Court provided an opinion of the requirements for clarity, not a decision, which meant that it was not legally binding.

The 1998 Supreme Court Reference concluded several main points. Firstly it determined that Québec could not secede unilaterally under either Canadian or international law. Secondly, the Supreme Court qualified the referendum issue by saying if a democratic will to secede existed on a clear question and clear majority, the ROC was obligated by law to negotiate with that seceding province. Thirdly, it would be up to the federal government to decide what constituted a "clear" question and majority. Such a vital decision as secession was advised to have an "enhanced majority" since the standard of "fifty percent plus one" of the population's support was simply not sufficient.(9) Finally, the Court interpreted secession as a constitutional change and thus the terms of secession would be "subject to the conditions of the democratic principle" guaranteed by the document.(10)

The Supreme Court offered advice that was both cautious and calculated. The opinion purposefully left the clarity of the question up to the federal government because the Supreme Court felt the decision went beyond their ability and it also recognized that perhaps the best decision makers here should have been the Quebec people themselves. Additionally, the Supreme Court was able to appease both the federal and Québec governments. The Court essentially granted both Ottawa and the Québec government legal authority to develop a coherent decision. Ultimately, the Court provided a "win" for both sides. The central government could use the opinion towards a national unity project and the Québec sovereigntists were happy as the ROC was forced to negotiate if the conditions of clarity were met.

Following the 1998 Supreme Court Reference, Bill C-20 emerged as the follow-up Plan B initiative produced by the federal government. The bill, which became the Clarity Act, both echoes and elaborates on the Supreme Court's opinion. Essentially, the Clarity Act details the conditions and methods that are required for the secession of any province to be recognized by the Canadian government. It is the Parliament of Canada that will judge the clarity of the referendum question addressing sovereignty and the majority "required to conclude that the consulted population is in favour of the idea" before the

public votes on that referendum.(11) In addition, Parliament reserves the right to evaluate the following conditions when judging if a clear majority has been attained: "the size of the majority of valid votes cast in favour of the secessionist option; the percentage of eligible voters voting in the referendum; and any other matters or circumstances it considers relevant."(12) Finally, the legislation sets out a framework Parliament must work within when deciding on the clarity of the question.

The Clarity Act stipulates what is to occur in the event that a separatist referendum in Québec was successful. In this case, the members of the Canadian federation as well as the First Nations would "have an obligation to engage the Québec government in good-faith negotiations to put into effect the clearly expressed will of Quebecers" to separate.(13) The concept that secession would required a constitutional amendment as the Supreme Court established in the 1998 Reference, was echoed in the Clarity Act as such a huge event as secession would absolutely require consensus among all ten provinces. This is conditional since the referendum question posed to the people must only relate to secession: any post-secession reference negates the option of negotiations with Parliament. It is also imperative to add that the Act concluded that any referendum that violated the conditions set fourth in the legislation would be discredited by Parliament. For example, if Parliament deems the question unclear, the referendum and its results will be discounted and negotiations will not occur.

The federal government had several goals (both latent and manifest) that it sought to achieve through the Clarity Act. The main idea was to prevent a future referendum on secession in order to maintain national unity through a "legislative intervention."(14) Moreover, the government of Canada had "a moral obligation to ensure that [democratic and nationalistic] values [were] respected, regardless of the short-term effect on nationalist sentiment in Québec."(15) This was to be achieved by clarifying the terms that are crucial to a result that has the potential to literally divide the country. Furthermore, from the outset of the preamble, the goal is not to limit the province's right to "hold referendums or determine the question itself" because the government cannot legally do this as it is a clear violation of the Constitution and Charter of Rights and Freedoms.(16) What the government can do through constitutional means is place conditions on whether a question and majority are clear enough in order to proceed with secession negotiations.(17) Stéphane Dion echoed the same kind of moral rhetoric in stating that "the Act protects the rights and interests of all Canadians from undemocratic attacks on federalism."(18) Finally, another goal was to create a "concrete form" of the Secession Reference, which was based on upholding the "lifeblood principles of the Constitution: federalism, democracy and the rule of law."(19)

There are more subtle goals that the government hoped to achieve. Optimists suggest that the Clarity Act's understated goals were to prevent governments from using confusing language to mold the behaviour of voters. Critics suggested the referendum question was a deliberate trick played by Jacques Parizeau's National Assembly to manipulate Quebecers into voting for separation without presenting the explicit words. Data from a poll conducted by sociologist Maurice Pinard clearly indicates that Quebecers did not

understand the question.(20) There is certainly good reason to find it confusing. Examining the passage reveals that the question is actually asking Quebecers to say yes to four very different items in only forty eight words.(21) The Clarity Act would thus act as a bulwark against any separatist regimes that attempted to divide Canada through deception. The Clarity Act benefits all Canadians since the government now has a plan in the event of another referendum that attempts to mislead people against their democratic right to understand what they are voting for. Claude Ryan challenges this as he explains it would be political suicide as "a sovereigntist government that pursued ambivalent strategies would [in fact] lessen its chances of a successful negotiation."(22)

Optimists go on to suggest that the Clarity Act has two other subtle goals: Qualifying items the Reference did not and determining a federal government plan for both internal pressure and legitimacy reasons. Monahan argues that it was necessary on the government's part to create legislation before another referendum was called in order to clarify the "uncertainties" that were left by the Supreme Court's declaration.(23) As an example, he cites that because the Court did not define the majority required to trigger negotiations, there was immediate pressure on the government to determine what the standard should be. In a parallel line of thought, Ryan suggests that it was crucial for the government to "take action now [as] the alternative would be to wait until another sovereignty referendum was imminent [which] at that point, the risks of such an initiative [as the Clarity Act] would have increased dramatically."(24) Legitimacy is enhanced with an Act as it would be ratified by the legislative process instead of the government simply producing a "white paper outline […] in the crunch of a real referendum."(25)

Pessimists believe quite the contrary. They suggest the legislation is meant to calm the ROC (not help Quebec), reflect intimidation tactics and demonstrate Parliament's ultimate power. Lajoie believes the Act is an "ideological effect" to pacify the panic-stricken ROC by suggesting the legislation would keep Québec in Canada by "discouraging it from organizing a referendum and asking a question of its choice [as well as convincing the ROC] that any question that would not meet the requirements of the Clarity Act […] would be illegal and unconstitutional."(26) Critics suggest that the government may have been trying to put down the view in the ROC that the Québec sovereignty movement had an increasingly unilateral approach (Rocher and Verrelli 219). By specifically looking at the Clarity Act from the point of view of minority rights, Rocher and Verrelli suggest the Act's goals can bee seen as a "bullying tactic by the feds to intimidate Quebecers [and] side step its duty to negotiate."(27) They go on to describe that the government's aim is "primarily to reassert before Québec and the ROC Parliament's legitimacy when intervening in the referendum process, before the National Assembly has the opportunity to hold a referendum and, for that matter, even before it adopts the wording of the referendum question."(28) These scholarly reasons and retorts impact the ideologies in the National Assembly today as there is consensus amongst its parties that agree the Clarity Act is only worth ignoring.(29)

One of the most controversial aspects of the Québec secession movement is the vague nature of "sovereignty" which means different things to different people. Typically in

Québec, “economic and political ties were always linked to the sovereigntist movement, although in different forms.”(30) Parizeau never outright said separation, but did a lot of talking about Québec becoming a sovereign country only after a formal offer was made to Canada for both economic and political partnership(31). When Bouchard took over from Parizeau, the support of the “yes” side took off and the federal government and the “no” committee were almost too late in realizing Bouchard's impact and respect in Quebec.

The Clarity Act can be seen as an urgent remedy to the growing sovereigntist movement which is stifled by the federal government bursting their sovereigntist bubble about what Quebecers thought they would be getting. The Clarity Act echoes Dion’s 1990s “writing campaign where he wrote a series of letters attacking the common wisdom on sovereignty.”(32) The legislation was as much an effort by the central government to have a fighting chance to persuade Quebecers against any future separation referendums and at least to qualify that a “yes” vote means full separation: No passport, no pension, no territory and absolutely no sovereignty-association. The act is quick to specify what separation is in Section 1, where it states that the legislation is dealing with the issue of “whether [a] province should cease to be part of Canada.” [emphasis added]

Politically, the Act consolidated Chrétien as he was able to diffuse a volatile political situation. In addition, the Act did reduce the support for the sovereignty movement. Chrétien came out a winner in the ROC and, in reality, lost nothing in Québec because he was not always unpopular there. When the initial referendum question went public, Chrétien kept quiet while other ministers and premiers fought it out for federalism over separatism. His passage of the Act helped soothe his place in history too, given that he almost lost the country by inactivity and not taking the upcoming referendum more seriously until it was almost too late. In addition, it was politically smart to have Dion (as the Intergovernmental Affairs Minister) write the bill as he was a native Québecer. This, of course, is debatable as he did also receive very negative reaction in Québec for his role. In terms of reducing support for the sovereignty movement, the “early poll results following the introduction of the Clarity Act indicates that a majority of Quebecers disapprove of the legislation, [although] they [do show] a decrease in support for sovereignty.”(33) The support has since fluctuated, suggesting that the sovereignty movement is a dynamic one that shifts depending on the political personnel and developments of the time.

It is also possible to evaluate legitimacy based on the gaps in the Act’s effectiveness. There are certainly some holes in the fabric of this legislation that result in a loss of legitimacy such as the condition of excluding any post-secession references and lack of clarity as to what constitutes a majority. The Clarity Act lacks democratic weight as it “goes beyond the Supreme Court’s decision” because it states the government will ignore any referendum question that “includes a reference to post-secession economic or political arrangements with Canada.”(34) This is a hole that can be filled if the legislation was amended to include the post-secession wording since this extension does not necessarily muddle the clarity of the question.(35) In a parallel vein, the refusal to

negotiate because the question includes this post-secession extension brings Ryan to basically equate the Act as a Parliamentarian ultimatum.(36)

Finally, the Act does not have a mechanism or formula in place in order to judge whether a strong enough majority has been reached. This ambiguity is certainly a gap. On the other hand, some scholars suggest that if a threshold was settled, this would be politically binding for the government and would have the potential to backfire. Both Ryan and Monahan agree that this should be specified: The former suggesting a majority of the eligible voters as threshold which has "political plausibility in Québec political circles"(37) and the latter believing that the government should "provide a threshold before the referendum takes place to promote accountability and transparency [as opposed to] the alternative reflected in Section 2."(38)

There are some gaps that have no solutions and thus the Clarity Act can be seen as partially flawed. These gaps are that it is unjust that Parliament is pursing a unilateral judgment on clarity and that the legislation does not define what the "other circumstances" in section 1(5) are. Firstly, Lajoie indicates that there is a fundamental problem with the Act which is "the fact that the Canadian government, or, more specifically, the governing party, becomes the sole judge of what constitutes a "clear" question and a "clear" majority."(39) She believes that the lack of input from the National Assembly and debate within Québec is ultimately unfair. This is ironic as the central government seems to be pursuing the very same unilateral strategy that it was trying to dismiss in the National Assembly. Secondly, the other circumstances that the state will examine when judging the clarity of the question are never defined. This creates a degree of open-endedness that is not settled by the legislation. Ultimately, the Act's legitimacy is blurred as it is only Parliament that decides what the "other views to be considered" actually are.

There are two main schools of thought - the pessimists and the optimists - that are engaged in a debate about whether the Clarity Act ultimately infringes on Québec's jurisdiction. The pessimists mainly see the Clarity Act as an "intervention in the referendum process at a stage when, by its own admission, this process lies within the jurisdiction of the Québec National Assembly."(40) Critics' main argument is that the Québec people (as a cultural minority in Canada) are being subordinated by Parliament as they are no longer in control of either the question or the majority that are required for their referendum to be legitimate. The Clarity Act, to pessimists, is stripping Québec from its right to "redefine its political future" through its own means and definitions "without external interference."(41) Finally, the Clarity Act is seen by some as "political propaganda [which] sells the idea that the Clarity Act enables the National Assembly to pose any question it wants at the time of a referendum however it also enables them to add that [its credibility is completely subject to Parliament's approval.]"(42)

It is important to note that these arguments have a decree of political weight as they have been echoed in the Québec legislature. These pessimistic views were materialized into

legislation (Bill 99) by the Québec government even though the passage of Bill C-20 did not foster any substantial protest within Québec. Bill 99 contradicted the Supreme Court Reference stating that it does not apply in Québec, the "fifty percent plus one" formula was still valid and that only the Québec government could pursue self-determination. Although the legislation went mostly unnoticed, it proved that the Québec government was not done with the sovereignty question.

The idea that Parliament is intruding in provincial jurisdiction is challenged by the optimists that see the legislation as legitimate and necessary. They believe this because it does not infringe on Quebec's jurisdiction, it follows the constitution's principles and it prevents unilateralism. The Act's main goal is to "indicate the criteria to which federal parliamentarians should refer in the case of a referendum on the secession of a province and to judge both the clarity of the question and the adequacy of the majority."(43) This does not at all refer to removing legislative power from the Québec National Assembly. It is, in fact, in line with section 44 of the Constitution Act (1982) which allows the federal government to "unilaterally amend the constitution on issues that are strictly within the federal jurisdiction."(44)

The Act follows constitutional principles and avoids unilateralism. The Clarity Act reinforces the Peace, Order and Good Government clause "both in respect of entering negotiations for secession and in respect of proposing a constitutional amendment."(45) Furthermore, the Clarity Act maintains democratic values because not only did it follow the opinion of the Supreme Court, but the clarity of the question and majority will be judged by an elected body (Parliament) and the negotiations will be multilateral, not unilateral. Therefore, the Act is legitimate since the federal government is entitled to "indirectly influence [the Québec National Assembly's] members and their electorate."(46) The Clarity Act prevents the alternative, which is the province unilaterally dictating the conditions of secession to the central government, since legislation is binding to all provinces in Canada.

In acknowledging the contradicting opinions on the effectiveness and legitimacy of the Clarity Act, it is possible to see the legislation in two distinct lights. The legislation is both a beneficial safeguard "designed to promote democratic accountability and protection against arbitrary action by government"(47) as well as the federal government's way to keep Canada intact by "ensure that Québec would never meet all the conditions needed to legally secede from Canada."(48) The Clarity Act is effective in promoting national unity as well as most of the principles outlined in the Supreme Court Reference. In terms of its legitimacy, most literature agrees that the Clarity Act has done more good than damage in upholding the democratic values embedded in Canadian political culture. The controversy and dialogue surrounding the Clarity Act and the sovereigntist movement are certainly important features of Canadian politics. In fact, the very reality that debates exist in any political realm is an implication that democracy is in practice.(49) It is within the context of these political debates that the values and principles of Canada's Charter of Rights and Freedoms are able to emerge.

Biography

Natalie Bradbury is a student at Dalhousie University in Halifax, Nova Scotia, completing a double-major in History and Political Science. Originally from Ottawa, Ontario, she attributes her early interest in these disciplines to her own family's diverse history and the inspirational education she received in school. Natalie was inspired by Dalhousie professor Dr. Kristin Good who has assisted Natalie in cultivating and advancing her appreciation for and understanding of the dynamics of Canadian federalism. Natalie's other interests include experiencing first hand other jurisdictions and cultures that she has obtained through extensive international travel. Natalie is considering a career in academia and is particularly interested in specializing in federalism and contemporary history. This summer, she looks forward to her job as an assistant research analyst with the federal government.

Footnotes

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(12) Rocher and Verrelli 217.

(13) Ryan 21.

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(22) Ryan 19.

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(43) Lajoie 161.

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Expanding the Federation?
The Ongoing Process of Devolution in the Yukon Territory

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Abstract

Since the 1970s, the transition of jurisdictional authority, specifically resource management, from the federal government to the Yukon Territorial Government (YTG) has been an ongoing endeavor. To date the transfer of powers from Ottawa has been well absorbed by Whitehorse, which has developed the institutions and expertise needed to accept these new areas of responsibilities. While it appears unlikely that this process will result in provincehood due to an apathetic Yukon political culture regarding this matter and Ottawa's unwillingness to reopen the Constitution, further devolution of powers, via federal statue, to Whitehorse in the future is expected. Devolution, however, in the Yukon is a dual process involving not just the federal government and YTG, but the Yukon First Nations as well. Aboriginal self-rule is a far more complex issue, with concerns over the lack of an experienced labour force and the cumbersome relationship with Whitehorse characterized by funding and decision-making process disputes. Ultimately, the level of autonomy and self-rule achieved by the Yukon First Nations will be dependent on their ability to secure immediate influxes in financial and technical assistance from both Ottawa and Whitehorse. This condition, however, is contingent upon the acceptance of the federal government and YTG of the Yukon Fist Nations as a legitimate level of government and, therefore, an increased willingness to develop strategies to address immediate concerns.

The northern territories are vestiges of Canada's colonial past. They are not autonomous political entities like the provinces but are creatures of federal statues in which ultimate power resides in Ottawa. The process of devolution, however, is an ongoing endeavor aimed at transferring powers from the federal government to their territorial counterparts. Of the three territories, the Yukon is the most advanced in this respect. To date the transfer of powers from Ottawa has been well absorbed by the Yukon Territorial Government (YTG), which has developed the institutions and expertise needed to accept these new areas of jurisdictions. Devolution, however, in the Yukon is a dual process involving not just the federal government and YTG, but the Yukon First Nations as well. Aboriginal self-rule is a far more complex issue, with concerns over the lack of an experienced labour force and the cumbersome relationship with Whitehorse characterized by funding and decision-making process disputes. Devolution in the Yukon, therefore, is increasingly concerned with the issue of Aboriginal self-rule since many in the YTG believe the Yukon First Nations have not reached a sufficient stage of institutional development to effectively be an autonomous level of government. The likelihood of the Yukon Territory becoming a province via constitutional reform is minimal considering the general apathetic Yukon political culture towards the issue and the federal government's unwillingness to reopen the Constitution. The Yukon, however, may affect the future devolution processes occurring in the other territories, specifically with regards to Aboriginal self-government.

Devolution as a Model of Political Development

Gurtson Dacks' model of political development and devolution highlights the interdependent relationship which exists between them. Dacks's model is a three dimensional construct, analyzing devolution as a function of 1) civic development, 2) institutional development, and 3) constitutional development. Though not necessarily linear in nature, there is a normative assessment of how each level of political development affects one another in the devolution process. His model provides a methodology for the study of the disparities that exists between the devolution processes of the YTG and the Yukon First Nations (1).

Civic Development

Civic development is concerned about the creation of a political culture articulating a desire for devolution. The development of such a political culture is based on the societal consensus of identification as a group and the need for self-government to address the needs of their community. Within this political culture, an active civil society shall be developed in which a civic elite will emerge, mobilizing and organizing the society while leading the devolution process.

Institutional Development

The creation of effective government institutions and procedures, such as representation and accountability, which are supported by the society, is essential for establishing the

infrastructure needed for self-rule. The development of an institutional elite, having the specific expertise to implement new areas of authority, is also a crucial factor. Institutional development is aimed at establishing an organization with the skill assets and resources needed to present an alternative form of government, legitimizing claims for greater autonomy.

Constitutional Development

Dacks argues that constitutional entrenchment of the devolution process is heavily dependent on the levels of civic and institutional development. If there is a strong political culture for self-rule combined with the political infrastructure to assume the responsibilities of a previous government, the likelihood of constitutional development is high. Defining the status of a region constitutionally, however, may create new powers or simply entrench those previously granted through other forms of legislation.

The History of Devolution in the Yukon Territory

Before beginning an analysis into the current stage of political development with respect to devolution in the Yukon, a short history of this process is needed to provide a context for its contemporary study. Indeed, many of the issues affecting the present state of devolution are products of past political actions. By investigating this history, therefore, the roots of such concerns can be analyzed, resulting in a predictive capability in forecasting the future avenue(s) of the devolution process.

Following the Gold Rush in the late 19th Century, the Yukon Territory was created in 1898 via the Yukon Act(2). The territory was governed by a Commissioner, a federal appointee, whom had an executive council advising him/her. Though the committee gradually became to be exclusively comprised of elected officials, executive power remained solely with the federal appointed Commissioner who was in charge of the day-to-day governance of the territory. The Commissioner was responsible not to the people of the Yukon but the federal government through the Minister of the Department of Indian Affairs and Northern Development (DIAND). Letters of Instruction were the legislation employed by DIAND to relay the federal government's intent with respect to matters pertaining to the Yukon to the Commissioner, who was legally bound to abide by them(3).

By the 1970s, a vocal political elite in the Yukon Territory arguing for a greater role in the decision-making process for elected officials emerged. Though constituting a majority of the Executive Committee, elected representatives had no official function in the government process which was dominated exclusively by the Commissioner; the extent of the Commissioner's powers were seen as undemocratic and colonial in nature. In 1978, the first ever territorial election contested by political parties gave the Yukon a party-based government with a leader equivalent to that of a premier in the provinces(4).

Devolution had been a major campaign issue in the territorial election and following Joe Clark's victory in 1979 at the federal level, the Conservatives, which supported devolution in the Yukon, moved quickly to remove the Commissioner from the decision-making process. On 9 October 1979, then Minister of DIAND, Jake Epp, sent a Letter of Instruction to Commissioner Christensen stating "You will not be a member of the cabinet or the Executive Council, and will not participate on a day-to-day basis in the affairs of the Cabinet or the Executive Council"(5). Though the move created initial political turmoil, resulting in the resignation of the Commissioner Christensen, the role of the Commissioner had essentially become the equivalent of a provincial Lieutenant-Governor, fully accepting the advice of the premier who was the head of government. By removing the Commissioner from the Executive Council, also, the Legislative Assembly became the institution responsible for the creation and implementation of the territorial budget, giving the elected government legitimacy as the real organization of power(6). These new found powers introduced the concept of responsible and representative government into the territory by connecting the government, which had essentially inherited the former powers of the Commissioner, to the populace through elections.

The new political arrangement became entrenched in the amended Yukon Act of 2002 which states in the preamble "Whereas Yukon is a territory that has a system of responsible government that is similar in principle to that of Canada"(7) [emphasis added]. Though the Commissioner retains executive power, it is the elected government, the responsible government that has the actual political power. Responsible government is supported by Article 10 which states the Executive Council, the decision-making body in the Yukon, shall comprise only of the elected members of the Legislative Assembly(8). Furthermore, Article 4 (3) limits the ability of the Commissioner to intervene in the decision-making process by forcing him/her to act in accordance with any written instruction given either by the Governor in Council (the Premier of the Yukon) or the Minister of DIAND. The position of the Commissioner, therefore, retains its executive functions but is obligated to act in accordance with the wishes of the elected government.

After de facto political power had been transferred from the Commissioner to the elected government, the next phase of devolution consisted of transferring federal areas of jurisdictions, administered by DIAND, to the YTG. One of the first major agreements was the Yukon Oil and Gas Accord (YOGA) which came into effect in 1998. YOGA established the process of transition of the administrative control of the Yukon's oil and gas industries to the YTG(9). All other resource control was handed to the YTG following the implementation of the amended Yukon Act (2002).

Discussions concerning amending the Yukon Act began in the mid-nineties culminating in the Devolution Protocol Accord signed in September 1998 by the federal government, the YTG, and the Yukon First Nations. Control over public lands, forests, minerals and to a certain degree water were transferred from DIAND to the Yukon Commissioner, though there was an understanding that actual control of these resources would be the responsibility of the Cabinet of the YTG. This transfer of powers discussed in the

Protocol became legal in 2002 with the amending of the Yukon Act. To date, the Yukon is the only territory in Canada with a resource revenue sharing agreement with the federal government (10).

At the same time that devolution was developing at a territorial level, the Yukon First Nations were, also, heavily engaged in discussions concerning self-government with DIAND and the YTG. The major Aboriginal organization in the process was, and still is, the Council of Yukon First Nations (CYFN) which represents 11 of the 14 Yukon First Nations(11). Talks between the three accelerated during the 1970s but a real breakthrough did not germinate until the signing of the Umbrella Final Agreement (UFA) in 1993. The UFA laid the groundwork for further negotiations in which each of the First Nations would construct a final land claim agreement with the federal government and the YTG(12). The UFA, also, allocated almost 10% of the Yukon's land base under the jurisdiction of the CYFN, which was in charge of resource management and land use planning in this area(13). Another major aspect of the agreement was the creation of a royalty regime concerning natural resources, established between the CYFN and the YTG stating the CYFN would receive 50% of the royalties up to a cap of $2million in which case afterwards they were entitled to 10%(14).

To address these growing areas of responsibilities, the CFYN has created various Lands and Resource Departments to advise local Aboriginal governments on issues pertaining to development as well as monitoring any activity on the settlement lands such as resource development and research(15). Due to the incapacity of the CYFN and the 3 other Yukon First Nations to assume the financial burden of administering these regions, the Financial Transfer Agreement (FTA) was designed in which federal funding to the Yukon First Nations would be negotiated every five years. The goal of the FTA was to provide funding for services and programs in the Aboriginal regions while at the same time ensuring taxation levels remained similar to those of the rest of Canada. Another program developed to aide in the generation of revenue for the Yukon First Nations was The Programs and Services Transfer Agreements (PSTA) established between the Yukon First Nations and the YTG, in which the YTG would transfer the originally allotted funding to administering services and programs on Aboriginal lands to the Yukon First Nations. The Yukon First Nations, also, are allowed to tax its citizens and property(16); in support of this measure, the YTG has reduced territorial taxes levied in these areas to avoid double taxation(17). Though final land claims agreements are still underway, in theory the Yukon First Nations has acquired significant authority and revenue generation capabilities to govern themselves, their lands and resources.

Contemporary Challenges Facing the YTG and the Yukon First Nations

Overall, the YTG has developed the institutions, technical and managerial expertise needed for administrating former areas of jurisdictions controlled by DIAND. The creation of 'mirror legislation' by the YTG with respect to natural resources such as The Environmental Assessment Act and the Territorial Lands Act have entrenched preexisting federal legislation, creating a smooth transition from Ottawa to Whitehorse(18). At the

same time, upon the completion of the Devolution Transfer Agreement (DTA), former DIAND bureaucrats working in the Yukon were reassigned to the YTG, providing the administrative expertise to assist in the transfer of federal responsibilities(19). The recent process of devolution, entrenched in the amended Yukon Act (2002), therefore was not a radical shift in policy orientation or institutional organization but mostly a transfer of similar legislation and staff from the federal government to the YTG. Due to these factors, it can be argued that the speed of the devolution process is a function of the YTG capacity to assume these new responsibilities in a bureaucratic framework similar to that of the federal government; Ottawa believes that Whitehorse has the ability to administer previous federal areas of jurisdictions in a manner which will be sustainable and stable, increasingly relying less federal involvement.

Though institutionally the YTG has the capacity to assume greater responsibilities, revenue generation is the major obstacle for continued devolution. Though short term economic forecasts predict a steady growth in revenue(20), the Yukon's economy is largely based on primary industries, such as minerals, which are vulnerable to world markets. For example, whereas Canada's GDP throughout the early to mid 1990s was growing at a slow but steady rate, the Yukon GDP in 1995 was 10% lower than its 1992 levels(21). The level of volatility in the economy has a direct affect on population demographics. For example, The Yukon population decreased by 6.8% between 1996 and 2001; the cause of the decline was attributed to the closing of the Mayo mine and a general lack of job opportunities due to weak investment by resource companies in the region(22). Revenue generation, therefore, funding new areas of territorial jurisdictions may become an issue with respect to personal income and property taxes. With a history of unstable population growth, the YTG may be forced to increase business taxes which may stifle investment. The impact of Aboriginal taxation, also, on the revenue capabilities of the YTG is still as of yet unknown.

Whereas the YTG has largely developed the institutional capacity to absorb new responsibilities as a result of the DTA, the Yukon First Nations face a number of challenges which are inhibiting the devolution process from moving forward. Specifically, the lack of indigenous technical expertise with respect to the management needed for self-rule and their relationship with the YTG are the two main obstacles. Generally, the Yukon First Nations have a strong political culture which supports self-rule. For example, in their charter the CYFN see themselves as one of the three levels of government in Canada, working towards the "entrenchment of the inherent right of self-government"(23). Though there exists a mature level of civic development, institutional development concerns are limiting the abilities of the Yukon First Nations to effectively manage their settled lands.

According to the 2001 Census of Canada, 6,540 people in the Yukon Territory identified themselves as being a member of the Aboriginal community, representing 22.9% of the total Yukon population (stated as 28,674). Forty-eight percent (3,150) of those of Yukon Aboriginal identity resided in Whitehorse with the other 52% living in various small communities, ranging from 45-1,000 inhabitants. The three largest communities in which

Aboriginals comprise over 50% of the population are Carmacks (pop. 430), Mayo (pop. 365) and Ross River (pop.335) (24). Due to the small numbers of Yukon Aboriginals inhabiting their settled lands, therefore, there exist major problems over Aboriginal administration of these areas.

Though many Aboriginals have an in-depth knowledge of their lands, the managerial and planning skills needed for effective bureaucratic control of policy formulation and implementation is severely lacking. Of the 3,540 Yukon Aboriginals 25 years and older (comprising the bulk of the work force), only 230 have managerial occupations(25); these numbers, also, do not discriminate between the Aboriginals living on the settled lands and those in Whitehorse. With such a small population base, there is a constant need for skilled workers to staff First Nations Governments. High unemployment amongst Yukon Aboriginals (26.8% according to the 2001 Census) combined with a labour force in which 33.5% of Aboriginals have less than a secondary school level education is further eroding the possibilities of developing a professional bureaucracy which is crucial for effective self-government. Though there are some signs suggesting an increased effort as of late by the YTG and Yukon First Nations to actively recruit and train specialists, particularly foresters, from amongst the Yukon Aboriginal communities, no real progress has come to fruition(26).

The perceived lack of internal capacity to assume the responsibilities within the self-government agreements is causing reluctance on the part of the YTG to fully allow the Yukon First Nations authority over those jurisdictions. Further solidifying this philosophy is the entrenchment of existing federal programs via mirror legislation and the transfer of former federal employees to the YTG, which has forced the Yukon First Nations to work with similar institutions and bureaucratic mindsets which, generally, believe they are unfit to govern themselves. As Natcher and Davis comment "…First Nations now find themselves forced to deal with the same regulatory regime that was in place prior to administrative transfer and must continue to negotiate with the same individuals who opposed devolution from the outset"(27). Specifically, there exist significant differences concerning resource management. Whereas the YTG approaches these issues in a centralized, bureaucratic model, with particular emphasis on resource inventories, management programs and policy initiatives, the Yukon First Nations relies heavily on traditional codes of conduct for addressing such issues; a mindset which many non-First Nations, whom comprise an overwhelming majority of the YTG, have a difficult time understanding(28). The willingness, therefore, to transfer authority to Aboriginal Governments is lacking for the YTG believes that without these bureaucratic institutions and mindsets in place, effective governance is impossible.

Stemming from this conflicting relationship, funding problems are further inhibiting the ability of the Yukon First Nations to achieve self-rule. The largest concern amongst the Yukon First Nations is that they are not treated as an independent level of government in their negotiations with Whitehorse, which consistently interfere in their jurisdictions. For example, with respect to YOGA, the YTG agreed not to approve economic activities on First Nations lands without their approval and conduct talks over impact and beneficial

agreements between the First Nations and developers. On many occasions, however, the YTG has taken opposing interests to those of the First Nations over development issues, creating a relationship of conflict, usually leading to the abandonment of developing deals simply because the Yukon First Nations feels they are not being treated as equals in negotiations. In some instances, the YTG has signed agreements with developers which in theory imply Fist Nations consent, but usually are in opposition to Aboriginal interests. Further deteriorating the relationship is the issue of the royalty regime funding formula, specifically the continual under-valuing of gold by the YTG which reduces the amount paid to the Yukon First Nations(29). Disagreements, also, between Ottawa and Whitehorse over compensation with regards to PSTAs has completely left the Yukon First Nations out of the discussions(30).

The lack of funding puts a significant strain on the Yukon First Nations measures for self-government. The absence of reliable financial support from either the YTG or the federal government inhibits development of the institutions and technical expertise needed to manage their settled lands. The funding that they do receive, also, is mostly in the form of conditional transfer payments, further limiting the ability to exercise their authority(31). This inability to institute resource management programs, in large part due to a lack of funding, serves as a justification of the YTG concerns over Aboriginal self-government. The problem, however, is that it is the YTG which is disrupting the funding process, creating the conditions for the Yukon First Nations to fail in developing the institutions and procedures needed for self-rule.

The Future of Devolution in the Yukon Territory

The YTG

As has been demonstrated, the dual process of devolution occurring has been asymmetrical towards development, both civic and institutional, in relation to the YTG and the Yukon First Nations. Since the implementation of the DTA, with the transfer of former federal employees and the adoption of mirror legislation, there exists a functional bureaucracy which has given the YTG the capability to assume the responsibilities previously controlled by DIAND. Though through the amended Yukon Act there has been the implementation of a more autonomous territorial government, the prospects of constitutionally entrenching this status seem unlikely.

Referring to Dacks' model of political development and devolution, though the YTG has created the institutional capacity to assume new powers, civic development, one of the key components to constitutional development, is missing; the Yukon populace has no real desire to seek provincial status. Though recent public opinion data is lacking, in a November 2000 survey, only 29% of the respondents believed devolution was a top governmental priority. In another poll conducted in October 2002, shortly after the implementation of the amended Yukon Act, 3% of those asked believed devolution was the top governmental issue; this percentage decreased to 1.4% in February 2003(32). It seems political concerns are centered more on implementing the services inherited as a

result of the devolution process and not on entrenching the growing autonomous nature of the YTG. There are, however, plans by the current Yukon Party Government to continue to process through consultations with Ottawa to eliminate the subordinate relationship that exists between the Yukon Commissioner and the Minister of DIAND, ensuring the YTG has the exclusive right to make decisions concerning territorial matters(33). Still, with a lack of popular support advocating provincehood, it appears measures to further devolve powers from Ottawa to Whitehorse will be through changes in federal statue.

As the amendment processes of Meech Lake and Charlottetown demonstrated, any future constitutional change process would most likely result in a reevaluation of major aspects of the document, beyond the entrenchment of the Yukon as a province. Since the failures of the Accords, 'mega-constitutional' measures have been undertaken in an effort by the federal government to address constitutional issues without reopening the Constitution. The possibility, therefore, that Ottawa would be willing to negotiate with Whitehorse over constitutional changes is quite low, especially considering the apparent apathetic mindset of the Yukon populace towards the issue. The ability, also, of the federal government to reclaim control over the Yukon's lucrative resources, although unlikely, may be a capability Ottawa wishes to maintain as a contingency in relation to potentially changing geo-political situations and concerns in the future.

The Yukon First Nations

Whereas civic development towards greater autonomy for the YTG is deficient in terms of the non-Aboriginal Yukon population, the process of devolution with respect to the Yukon First Nations is inhibited not by a lack of political support but by a lack of institutional development. The Yukon First Nations have a strong civic culture which sees itself as a legitimate level of government. YTG concerns, however, in relation to the development of the capacity to govern themselves has led to a conflicting relationship between Whitehorse and the Yukon First Nations over the devolution process. The key to further devolving of powers in support of Aboriginal self-rule, therefore, is the creation of a more constructive relationship between the Yukon First Nations and the YTG, resolving disagreements over interests in terms of resource management, planning and funding transfers. The Yukon First Nations are in a dependent relationship with Whitehorse for they comprise a small percent of the population, and as such have difficulty in aggregating political power to pressure the YTG to take action. The lack, also, of Aboriginals within the YTG is another factor mitigating the pressures for Aboriginal self-government from becoming a serious territorial political issue(34).

There are, however, signs that talks between the two may still bring greater authority to the Yukon First Nations. The present Yukon Party Government has asserted it will complete land claims negotiations with the goal of creating the conditions for the development of an institutional capacity to support First Nation governance(35). Consultations, also, are ongoing between the YTG, the Yukon First Nations and Ottawa, with the latest occurring in February 2008 discussing the findings of the nine-year report

on the Yukon First Nation and Self Government Agreements. Key discussion points of these talks revolved around sustainable development issues, particularly the need for increased funding to support programs in the short term, aimed at establishing a competent Aboriginal bureaucracy capable of supporting self-rule(36). Ultimately, the prospects of Aboriginal self-rule depend on the level of institutional development, which is contingent on the ability to secure adequate financial and technical assistance for Whitehorse and Ottawa.

Conclusion

Since the 1970s, there has been a steady process of devolution in the Yukon, culminating in the implementation of the amended Yukon Act (2002), giving the YTG a new range of powers primarily concerning resource management. The transition of these powers has been relatively smooth, with the YTG having the institutional infrastructure needed to administer these new jurisdictions. Presently, the process of devolution has largely been through changes in federal statue. The lack of a Yukon political culture (outside the Aboriginal population) pressuring for continued devolution, potentially with the end state of provincial status, combined with Ottawa's unwillingness to reopen the Constitution will most likely continue directing future devolution changes via federal statue.

At the same time, however, the process of devolution with respect to Aboriginal self-government has been plagued with concerns over the lack of an institutional capacity to manage their own affairs. Though there exists a strong Aboriginal civic culture supporting self-rule, Whitehorse and Ottawa believe the political structures within these communities have not created the conditions for effective government. Issues over a lack of indigenous technical and managerial knowledge concerning resource management are the major obstacle inhibiting the process. The YTG in particular argues that this deficiency justifies the slow natured transition of power to the Aboriginal communities; these conditions, however, will most likely not evolve unless the YTG and Ottawa further invests the technical and financial assets needed to achieve effective Aboriginal self-governance. Ultimately, the process of devolution is contingent upon the acceptance of the YTG and the federal government of the Yukon Fist Nations as a legitimate level of government and, therefore, an increased willingness to develop strategies to address immediate concerns. The ability of the Yukon Fist Nations to aggregate their interests in a manner to affect in a significant way Yukon politics, pressuring the government and opposition into taking more action on the situation is critical for any hope of accelerating the process of devolution.

Biography

Adam MacDonald is a fourth year undergraduate student completing his BA in Political Science at the Royal Military College of Canada. Adam has held many leadership positions at RMC including the Cadet Wing Recreations Officer and the Cadet Squadron Leader. Adam, also, is a member of the RMC Strategic Liaison Council.

Adam's research interests include federalism, Canadian politics, strategic studies, and Asian politics. Next year, Adam will be pursuing his MA in Political Science at the University of Victoria.

Footnotes

(1) The following description of Dackss model stems from Dacks, Gurtson, (1) An overview on devolution, Summer 1990, The Northern Review, no.5, pp. 11-15.

(2) Yukon Territory, Canadian Encyclopedia, http://www.thecanadianencyclopedia.com (accessed: 26 March 2008).

(3) Smyth, Steven, Constitutional development in the Yukon Territory: perspectives on the Jake Epp Letter, March 1999, Arctic, 52:1, pp. 71-74.

(4) Ibid, pp.75-76.

(5) Epp, Jake 1979. Letter to Commissioner Christensen, 9 Oct 1979 in Ibid, p.75.

(6) Smyth, pp. 76-77.

(7) The Yukon Act (2002), The Preamble, Department of Justice Canada www.justice.gc.ca (accessed: 28 Jan 2008).

(8) Ibid, Article 10.

(9) Irlbacher-Fox, Stephanie, and Mills, Stephen J. Devolution and Resource Revenue Sharing in the Canadian North: Achieving Fairness Across Generations (2007), Commissioned by the Walter and Duncan Gordon Foundation, www.gordonfin.org (accessed: 15 March 2008), p.5.

(10) Backgrounder: Northern Affairs Program Devolution Transfer Agreement, The Department of Indian Affairs and Northern Development (DIAND), www.ainc-inac.gc.ca (accessed: 28 Jan 2008)

(11) Throughout the paper the acronym CYFN will represent the 11 First Nations which are a part of the Council of Yukon First Nations. When Yukon First Nations is used, it implies the 11 groups of CYFN and the three other autonomous First Nations.

(12) Dacks, Gurtson, (2) Implementing First Nations Self-Government in Yukon: Lessons for Canada", September 2004, Canadian Journal of Political Science, 37:3, 671-694, p.675.

(13) Natcher, David C. and Davis, Susan (2007) Rethinking Devolution: Challenges for Aboriginal Resource Management in the Yukon Territory" Society & Natural Resources, 20:3, 271-279. p.272.

(14) Irlbacher-Fox, Stephanie, and Mills, Stephen J, p.6.

(15) Natcher, David C. and Davis, Susan, p.273.

(16) Under consultations with Ottawa, as well, certain Yukon Fist Nations can tax non-Aboriginals inhabiting their area of jurisdictions. Dacks (2), P.276.

(17) Dacks, (2), pp.275-276.

(18) Natcher, David C. and Davis, Susan, p.276.

(19) Backgrounder: Northern Affairs Program Devolution Transfer Agreement, DIAND.

(20) 2008-2009 Projections, Yukon Department of Finance www.finance.gov.yk.ca (accessed: 25 March 2008).

(21) Grenon, Lee, Employment and industrial development in the North (1997), Perspectives, 18-27, www.statscan.ca (accessed: 15 March 2008), p.20.

(22) 2001 Census Aboriginal Population Profiles, StatisitcsCanada, www.statscan.ca (accessed: 15 March 2008).

(23) Constitution of the Council of Yukon First Nations, Article 2-Objectives (b), Council of Yukon First Nations, www.cyfn.ca (accessed: 28 Jan 2008).

(24) Aboriginal Data: 2001 Census, Yukon Bureau of Statistics, www.eco.gov.yk.ca (accessed: 28 Jan 2008).

(25) 2001 Census Aboriginal Population Profiles, StatisitcsCanada.

(26) Natcher, David C. and Davis, Susan, p.273.

(27) Ibid, p.277.

(28) For an example of traditional First Nations approaches to resource management see the DooLi case of the Northern Tutchone Council. Ibid, p.274.

(29) Irlbacher-Fox, Stephanie, and Mills, Stephen J, pp.10-15.

(30) Dacks, (2), p.682.

(31) Natcher, David C. and Davis, Susan, p.276.

(32) Yukon Public Opinion Surveys, Data Path Systems, www.datapathsystems.net (accessed: 17 March 2008).

(33) Building Yukons Future Together- A Clear Vision for a Bright Future The Yukon Party, www.yukonparty.ca (accessed: 15 March 2008), p.27.

(34) Dacks, (2), p.675.

(35) Building Yukons Future Together- A Clear Vision for a Bright Future The Yukon Party, p.26.

(36) Yukon First Nations and Yukon Government heading to Ottawa, Canada Newswire, 8 Feb 2008.

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Restoring Fiscal Equilibrium in the Canadian Federation: The Strides of the Harper Government

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Abstract

The Canadian federation is by no means a fiscal equilibrium and this imbalance has been a growing area of weakness for decades. However, the Harper Conservatives have acknowledged Canada's fiscal imbalance and have placed it as a top priority for their government. Since 2006 Harper and his government have committed, and followed through with, several significant efforts towards fixing Canada's fiscal imbalance through measures included in both the 2006 and 2007 federal budget plans. No other government in decades has taken such measures and actions to meet this goal. The paper begins by describing how Canadian fiscal relations have evolved into what has been termed the fiscal imbalance. The paper then outlines the actions the Harper Conservatives have taken to properly address the imbalance since 2006; including both the vertical and horizontal fiscal imbalances and the corresponding changes to the CST, CHT, the Equalization Program and the TFF. Lastly, the paper discusses the fiscal imbalance in relation to municipal governments and Harper's initiatives in that area.

On January 12th, 2006 newly elected Prime Minister, Stephen Harper, wrote a letter to Premier Ralph Klein (also the chairman of the Council of the Federation) regarding Canada's fiscal imbalances. The letter stated: "Immediately upon being elected, my government will begin consultations with the provinces and municipal representatives with the intention to reach a long-term, comprehensive agreement, addressing both the vertical and horizontal imbalances."(1) In fact, in the Conservative 2006 federal platform that fueled their first successful election in thirteen years, the fiscal imbalance was given particular priority. "The Conservative Government will work with the provinces in order to achieve a long-term agreement which would address the issue of fiscal imbalance in a permanent fashion."(2)

The Canadian federation is by no means in a fiscal equilibrium, however the Harper Conservatives have acknowledged Canada's fiscal imbalance and have placed it as a top priority for their government. No other government in decades has acknowledged the presence of the fiscal gap and implemented tangible steps to reduce it like Harper's Conservatives. The fiscal gaps present in the Canadian federation are well on their way to being significantly narrowed so long as Harper's initiatives are followed through. The Harper Conservatives have acknowledged Canada's fiscal imbalances, placed it as a priority for their government, instilled plans in Budget 2006 and 2007 to fill these gaps and have begun taking appropriate action towards those ends. If all goes accordingly, the Harper government will leave Canada with a legacy: rebalancing fiscal relations within our federation.

This paper will begin by briefly describing how Canadian fiscal relations have evolved into what has been termed the fiscal imbalance. This section will set the context and prove that there is, in fact, a fiscal imbalance within Canadian federation. The paper will then shift to describe the actions taken by the Harper Conservatives since 2006 regarding this imbalance. This will begin with the vertical fiscal imbalance, emphasizing the changes to the Canada Social Transfer and the Canada Health Transfer. Next the paper will outline Canada's horizontal fiscal imbalance, paying particular attention to Harper's new initiatives for the Equalization Program and the Territorial Formula Financing arrangement. Lastly, the paper will address the fiscal imbalance in relation to municipal governments and Harper's proceedings in that area.

The History of Canada's Fiscal Arrangements

The fiscal arrangements of the Canadian federation have undergone numerous changes in the 140 years of its existence. These constant changes and shifts in policy have been designed with the intention to accommodate the dynamic needs of this diverse state. A brief history of Canada's fiscal arrangements from Confederation to present is necessary to understand how the current fiscal imbalance has grown.

To begin, the BNA Act of 1867 established extremely clear divides as to taxing and expenditure responsibilities among the provincial and federal levels of government. This, also, included the federal government's ability to collect 'by any mode or system of

taxation' whereas the provincial governments were limited to 'direct taxation.'(3) Forms of direct taxation grew into the most effective revenue-raising tool and, therefore, the federal government began to establish its authority in that field. Due to the high costs of both World Wars, the federal government took over the personal, income and inheritance taxes in 1941.(4) To compensate for this take-over, the federal government allocated special grants to the provinces – this set the stage for what would become the high level of entanglement between federal and provincial fiscal transfers.

In the three decades following the war, many social institutions were created with the funding becoming the prime focus of discussion and negotiation between the two levels of government. The federal government's interest and ability to fund social programs (an area of provincial jurisdiction) led to an era of competitive federalism in which the two levels competed for fiscal resources and debated jurisdictional rights. The federal spending power, cost-shared programs and the Equalization Program emerged during these three decades following the war. The Equalization Program, created in 1957, was a major federal program created to address the horizontal fiscal gaps within the Canadian federation. To this day, this program has been highly examined, debated and undergoes constant readjustments. The major issues of concern regarding the Equalization Program that are highly disputed to this day are: the list of revenues being equalized, the standard to which revenues are equalized and the treatment and inclusion of natural resource revenues.(5) The horizontal fiscal gaps have widened and narrowed over the years as a result of the ever-fluctuating equalization formula. The horizontal fiscal imbalances within the Canadian federation hinted at elements of centralization. During the 1960s and 1970s, however, topics such as Quebec nationalism, regionalism, province building, and the oil and energy crises led to the decentralization of Canadian federation.(6)

In 1976 the Established Programs Financing changed the landscape of federal-provincial fiscal arrangements. The EPF eliminated three shared-cost programs (Medicare, post-secondary education and hospital insurance) and replaced them with tax points and cash transfers. These cash transfers were per-capita based rather than the former shared-cost route – a shift that meant the funding was no longer based on the provinces' expenditures.(7) Inevitably, this hampered the ability of the provinces to adequately fund their responsibilities and led to the opening of the vertical fiscal gap. Subsequently during the 1980s, Canada was plagued with high inflation and increasing deficits that resulted in the federal government decreasing the growth rate or annual escalation rate of the provincial transfers.(8)

During the 1990s, Canada's increasing deficit and debt burdens led to major federal expenditure cuts – one of the largest being transfers to the provinces. For instance, the 1995 Budget blended the transfers for health, post secondary and social assistance into one program: the CHST, and then cut the total funding from $18.5 billion to $12.5 billion within two years.(9) This major cut placed yet another strain on the provinces and led to further widening of the vertical fiscal gap.

This history of Canadian fiscal relationships leads us to the present era. From 1995-2006, the governing Liberals acknowledged the presence of the horizontal fiscal imbalance, but year after year refused to acknowledge the vertical fiscal imbalance claiming there is merely a fiscal 'pressure' on the provinces, but ultimately they have access to the same revenue bases as the federal government.(10) For the first time in history, a Canadian government, the Harper Conservatives, has acknowledged and addressed both of Canada's fiscal imbalances and has made it a top priority to close these gaps. Budget 2006 began to outline the direction the Canadian federal government would take to achieve fiscal equilibrium, and Budget 2007 has furthermore provided the detailed and precise steps to meet that end. Minister of Finance, Jim Flaherty, announced during his March 2007 Budget; "through this budget we are delivering an historic plan worth over $39 billion in additional funding to restore fiscal balance in Canada."(11) Budget 2007 has provided realistic action plans for restoring vertical and horizontal fiscal imbalances and addressing the issue of municipal fiscal relations.

Restoring the Vertical Fiscal Imbalance

Canada's vertical fiscal imbalance has long been a topic of heavy debate within the federation. In a letter from the federal government to the Council of the Federation's Advisory Panel on Fiscal Equilibrium in 2005, the Liberals wrote:

The Government does believe in the existence of a fiscal imbalance between the federal and provincial governments in Canada. Both orders of government have access to all the major sources of tax revenues and have complete autonomy in setting their tax policies to address spending pressures related to their respective jurisdictions.(12)

In 2006 the Advisory Panel completed their report on the fiscal imbalance and found that the fiscal prospects of the provincial governments look unsatisfying for the next 20 years. The report stated that on average the provincial and territorial revenues would increase by 3.6 percent each year until 2024-2025, however this must be compared to the expected 4.7 percent growth in total program expenditures during the same period.(13) This is a vertical fiscal imbalance and will only serve to widen the gap if left untreated. The forecast deals mainly with expenditures provided in the Canada Social Transfer and the Canada Health Transfer. In their publication titled "Reconciling the Irreconcilable," the Advisory Panel on Fiscal Imbalance argued that when the federal government restored fiscal health (by cutting transfers and producing surplus budgets) in the late 1990s it did not return to the provinces what it had taken.(14) They continued by commenting that raising provincial taxes would not solve the problem, rather it would only lead to increases in Canada's horizontal fiscal imbalance.(15)

Harper's concept of open federalism has taken into consideration the Panel's report, arguments and recommendations. In the 2006 Conservative federal platform, Harper promised to "ensure that any new shared-cost program in areas of provincial/territorial responsibility have the consent of the majority of provinces to proceed, and that provinces should be given the right to opt out of the federal program with compensation,

so long as the provinces offer a similar program with similar accountability structures.(16) The Harper government has addressed the vertical fiscal imbalance and has implemented many initiatives in their 2007 Budget to restore equilibrium.

The major themes of the Budget's solution to the vertical fiscal imbalance include placing transfers on a long-term principles-based footing to ensure the provinces elements of stability and predictability. Equally important, the Budget seeks to clarify the roles and responsibilities of each level of government so as to eliminate non-jurisdictional spending. The Harper government also plans to restore vertical fiscal equilibrium mainly by channeling money through the Canada Social Transfer and the Canada Health Transfer systems rather than direct spending.

The Canada Social Transfer includes funding for three main areas: post-secondary education, social assistance and childcare. Previously, this transfer system was stunted due to lack of financial weight and unequal per capita allocation to all Canadians.(17) In Budget 2007, the Harper government will add $687 million to the transfer in 2007-2008 to ensure equal per-capita funding to all provinces. In addition, $800 million more will be included in the CST in 2008-2009 to cover post-secondary initiatives. As well, $700 million will be added to the CST's 2006-2007 level of $6.2 billion for social programs. Finally, in Budget 2007 the Harper government has allocated $5.6 billion in 2007-2008 alone to childcare, (this includes the new addition of $250 million for 25 000 new childcare spaces). Compare this with the Liberal Budget 2005 where the issue of childcare was touched upon only very briefly: "5 billion over the next five years to start building a framework for an Early Learning and Child Care initiative in collaboration with provinces and territories."(18) In Budget 2007, the childcare plan has a clear direction with numerous goals, numbers and detailed allocation paths that demonstrate the Conservative's commitment to ensuring effective national childcare. Overall, the CST base will be increased by $687 million in 2007-2008, in 2009-2010 an addition $1.05 billion will be added to that base and the 3 percent annual escalation rate will begin from there.(19) Moreover, the CST has been renewed until 2013-2014, placing it right alongside the Canada Health Transfer.

The changes made to the Canadian Health Transfer are another area of the 2007 Budget that is serving to narrow the vertical fiscal gap. In 2004 the Liberal government implemented the 10 Year Plan to Strengthen Health Care, an action plan to strengthen the Canadian health care system based on a number of principles decided at the First Ministers Meeting on the Future of Health Care 2004. The Harper Conservatives have shown support for this plan, which will allocate $41.3 billion to the provinces and territories over 10 years in an equal per-capita fashion.(20) What's more is the annual escalator rate of 6 percent of the $19 billion base that began in 2006-2007. The Advisory Panel reported in 2006 that this escalator would be sufficient as it is in line with the growth rate of expenditures predicted until 2024-2025.(21) The 10 Year Plan expires in 2014-2015 and, therefore, the government will wait until then to implement its equal per-capita cash allocation of the CHT.

In the Advisory Panel's 2006 report on the vertical fiscal imbalance, a few major conclusions were drawn, based upon data that made educated predictions until the years 2024-2025. To begin, they predicted that the federal governments would be in a much more favorable stance than the provincial governments in terms of fiscal positions. Secondly, using the aforementioned position they decided it was within reach for the federal government to make solid, long-term commitments to restoring the vertical fiscal imbalance – this was an attainable possibility. Thirdly, they concluded that the provinces are extremely dependent on their ability to contain health and education costs to a minimum because even though both governments have access to similarly increasing revenues, the expenditures of the provinces and territories are presumed to grow at a much faster rate.(22)

Fortunately, Harper has taken these forecasts into consideration when his government drew their 2007 Budget. Public policy expert France St. Hilaire claims that since 1997 the federal government has preferred direct spending in areas of provincial jurisdiction, causing serious strain on the provincial governments.(23) Changes to the Canada Social Transfer and Canada Health Transfer have been designed with heavy emphasis on relieving this strain and closing the fiscal gap between the federal and provincial governments. Harper's Conservatives have drawn an attainable route to achieving vertical fiscal equilibrium; it is now in the hands of the current government and the successive governments to follow through.

Rebalancing Horizontal Fiscal Arrangements

Due to Canada's vast geography, diverse population and wide range of social conditions, no two provinces are alike. These factors lead to multiple differences in economics and politics. All provinces vary in population, revenue-raising abilities, resources, personal initiatives and self-interests. There is no denying the fact that horizontal fiscal imbalances are prevalent and very present in the Canadian federation. The Harper Conservatives successfully installed action plans in their 2007 Budget to address and reform this issue. Their main focuses lie with the Equalization Program and the Territorial Financing Funding arrangement. The new initiatives within these two programs focus toward bringing them back to principle-based formulas that will ensure stability and predictability. Combined efforts will include $2.062 billion more over the next two years than the previous system.(24) Harper's Conservatives have taken the issue of horizontal fiscal imbalances seriously, as it has been a looming and highly debated issue in the Canadian federation for decades. His government has placed a firm commitment on this topic and has outlined their actions to ensure equilibrium in the near future.

The Equalization Program was created in 1957 and has since undergone countless adjustments to better meet the dynamic needs of Canada's diverse provinces. Notably in 2004/2005, under the Liberal government, the formula based calculations to measure provincial entitlements were suspended and replaced with an interim formula. The interim formula was unpopular as it used a fixed pool with a fixed escalator rather than a dynamic pool based on measurements of fiscal capacity. In the Advisory Panel's review

of the horizontal fiscal imbalance they found that this interim formula "abandons a key feature of Canada's Equalization Program – namely, the principle that equalization payments to a province are to be determined by its fiscal capacity relative to that of a standard."(25) This formula did not address the fiscal varieties of the provinces, however the Harper government has made many adjustments to meet those ends.

The Harper Conservative's 2007 Budget included many of the recommendations set forth in the O'Brien Report of 2006. Most importantly, this includes a shift to a ten-province standard (rather than a five-province standard) in order to heighten the national Equalization standard and ensure less wealthy provinces are brought up to a national average. Next includes adjustments to the highly contested inclusion of natural resource revenues: 50 percent exclusion from the Equalization formula to ensure that resource-producing provinces gain some economic benefits from these revenues. In addition, Harper has implemented a fiscal capacity cap to make sure "have-not" provinces do not gain higher fiscal capacity than the "haves." Lastly a "smooth transition" has been included in the 2007 Budget so as to guarantee stability and predictability. This transition will make sure receiving provinces obtain no less than the 2007-2008 payments in the coming years.(26) In accordance with the new Equalization program, the province's CST and CHT transfers would also not drop below 2007-2008 levels.

The adjustments made to the Equalization Program in the Harper government's Budget were designed to restore the fiscal imbalance among the provinces. The current government has made significant efforts and has consulted numerous review panels and reports (Advisory Panel, O'Brien Report) in order to implement the most beneficial program for all Canadians. In Paul Boothe's essay "The Stabilization Properties of Canada's Equalization Program", he points out "provincial and territorial ministers have been urging the removal of the Equalization ceiling and for a return to a ten-province standard rather than the current five-province standard."(27) The Conservative government has taken into consideration the desires of the provinces and is working with them in order to ensure a highly advantageous program for as many provinces as possible.

The Territorial Formula Financing (TFF) arrangement is another program that has undergone changes in the recent budget. Similar to the Equalization Program, in 2004 the TFF also had its formula-based calculations suspended. The 2007 Budget, however, reinstalls these principle-based formulas in order to meet the needs of Canada's three territories. The Harper government consulted the territories and came up with a fully endorsed set of guidelines for the new TFF. To start, the formula-based approach would return with additional 'gap-filling' grants to recognize the differences among the three territories. For instance, Nunavut is much less developed in areas of healthcare, education and social well-being than the other territories.(28) Next, there would be a new and easy approach to how resources are incorporated in territorial revenue measurements. In addition, the government will provide the territories with new incentives in order to increase revenue and economic growth so that eventually they can become self-reliant and self-sufficient. Budget 2007, also, sets out a simple transfer and estimate system so

that the territories can count on the stability and predictability of the federal government. Lastly the government will treat resource revenues in a similar fashion as the provinces: 50 percent exclusion from transfer payment calculations. Overall, in 2007-2008 the federal government will allocate $2.2 billion to the three territories - $115 million more than the previous year.(29)

Every year Canada's provinces and territories increase their expenditures in response to growing populations and costs of providing adequate and comparable services. Combine this burden with the inability of some provinces and territories to raise sufficient funds to meet their own needs, while others have no problems at all. This incongruence has lead to an undeniable horizontal fiscal imbalance. The Harper government recognizes this imbalance and the increasing strain on provincial and territorial governments to fund programs with the similar ease as of their counterparts. In the 2007 Budget the Conservatives laid a solid framework to restore the gap and ensure that all provinces and territories can offer comparable services at comparable tax rates.(30) The Harper government has a clear and attainable guideline as to how to achieve fiscal equilibrium among the provinces. In similar fashion to the vertical fiscal imbalance, the framework and instructions are there, it is now up to the current and future governments to uphold and adhere to these guidelines.

The Fiscal Imbalance and Municipalities

Little is known or documented regarding the fiscal imbalance in relation to municipal politics. Municipalities are simply 'creatures of the provinces,' meaning they are under provincial jurisdiction and have no official relationship to the federal government.(31) During the 1996-2001 period, provincial and federal governments have produced an average of 25 percent increase in revenues; compare this to the 14 percent increase that municipalities have simultaneously incurred.(32) Municipalities, like provinces, are currently experiencing annual expenditure increases while simultaneously lacking efficient growth of their revenue-raising capabilities.(33) Essentially municipalities suffer in the same manner as provinces do in regards to a vertical fiscal imbalance.

There are three major areas of concern for municipalities and their fiscal relationships. Primarily the "offloading" of certain federal and provincial services onto their backs has caused an increase to their annual expenses. While their responsibilities increase, however, their revenues- raising abilities do not. Secondly, the provinces and the federal government have chosen to decrease their responsibilities in certain areas, while they have not specifically transferred the role to another level of government, the municipalities feel the need to fill this hole.(34) Thirdly, both the federal and the provincial governments often set standards or requirements for the municipalities to fulfill (such as sewage, water testing, etc) but do no provide any compensation or funding for these new initiatives. This is often referred to as "unfunded mandates."

Enid Slack points out in her article, "Fiscal Imbalance: The Case for Cities" that municipalities appear to be quite healthy due to the restrictions placed on them via

provincial legislation: the inability to run deficit budgets, caps on borrowing, and somewhat inflexible tax-increase options.(35) Slack notes that the watchful-eye of the provinces on municipal affairs contributes to their seemingly balanced budgets.(36) She, also, argues that even though they appear to be healthy on paper, real evidence of weakness is seen in the sacrifices they make to service provisions and infrastructure. The effects of weak municipal fiscal autonomy and low financial profiles place municipalities in competition with one another and can seriously deter residents and potential commercial investors – an effect detrimental to the Canadian economy as a whole.

The Harper Government has acknowledged the fiscal strains on municipal governments. At the Federation of Canadian Municipalities Conference in 2006, Harper gave a speech in which he stated that the fiscal imbalance is

"Not just about federal-provincial relations. Ultimately it is about the relationships of all levels of government with our citizens. And municipalities – represented most broadly by your federation – are a vital partner in this dialogue. In the meantime we'll do our part. By urging the provinces to meet their obligations to municipalities and by containing dialogue with both levels of government."(37)

In the 2007 Budget, the Harper Conservatives outlined a few initiatives to address municipal concerns. First off, municipalities are included in the $5 billion per year increase by 2009-2010 for infrastructure support. This allocation is eight times greater than the funding recorded during the 1994-1995 to 2004-2005 era.(38) In addition, this funding will be extended until 2014-2015. The government, also, has committed to extend to Gas Tax Fund for municipalities transfer from 2010-2011 until 2014-2015. Two billion per year will be transferred under this program for an additional $8 billion.(39) Lastly, the government will continue to honor the very important 100 percent GST rebate for municipalities – this will continue to provide reliable, stable and predictable financial funding.

The Harper Conservative's have responded to the municipal outcry for more public funding in their 2006 and 2007 budgets, which allocate more money and concentration on ensuring dialogue and co-operations among all levels of government. Likewise, by providing strong foundations and actions to rebalance the vertical and horizontal fiscal relations in the federation, ultimately this should lead to increases in municipal funding. If provinces begin to ease up on their limitations to municipalities due to their own internal fiscal relaxation, this should lead to better provincial-municipal fund sharing. Municipalities have a long way to go to ensure their financial needs are met, and this issue will gain increasing precedence in the Canadian federation as urban sprawl and municipal autonomy movements continue to grow. The Harper government has taken adequate steps to tackle this issue in the past two Budgets, and has committed to increasing dialogue and co-operation among all levels of government, promoting ideals in their policy of open federalism that will surely benefit the municipalities in years to come.

Conclusion

The fiscal imbalances present in the Canadian federation have been a growing area of weakness for far too long. In 2006 with the election of the Harper Conservatives, this trend has begun to change. Harper has firmly stated; “the fiscal imbalance impacts almost all Canadian provinces, territories and municipalities and is a threat to the proper functioning of the Canadian federation.”(40) Furthermore, since winning their election in 2006 the Conservative government has made restoring fiscal equilibrium in Canada a top priority. Both the 2006 and 2007 Budget have included tangible, realistic and favorable action plans to work towards both vertical and horizontal fiscal equality and strengthening fiscal relations with Canada’s municipalities. The Advisory Panel on the Fiscal Imbalance predicts the federal government’s financial position to be quite strong in the upcoming years. They have hypothesized the federal budget surplus to increase from $10.5 billion in 2005-2006 to $23.7 billion in 2024-2025.(41) The Canadian federal government has the resources and ability to commit itself to long-term, predicable and stable goals to restore fiscal equilibrium in the Canadian federation. The Harper government has taken monumental steps, unlike any other government, in acknowledging and addressing fiscal imbalances and promoting the ideal of closing these gaps. The framework, guidelines and road-map to fiscal equilibrium have been incorporated in the 2006 and 2007 federal Budgets – it is now up to the current and successive governments of Canada to continue to ensure these mandates are met.

Biography

This is Sarah Chisholm’s first publication and she will be graduating from Dalhousie University with combined honors Bachelor Degree in Political Science and Canadian Studies in the spring of 2010. Sarah is passionate about Canadian politics and is specifically interested in French-English relations, regionalism and fiscal politics. Sarah has recently represented her school at the 2008 World Model United Nations Conference in Puebla, Mexico where she took on the role of Romania on the United Nations Environmental Program.

Footnotes

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(2) Stand Up For Canada: Conservative Party of Canada Federal Election Platform 2006 (Conservative Party of Canada, 2006.

(3) As sited in: Reconciling the Irreconcilable, 22.

(4) Reconciling the Irreconcilable, 22.

(5) Reconciling the Irreconcilable, 26.

(6) Kristin Good, Intergovernmental Relations, 9 October 2007, slide 17.

(7) Odette Madore, Federal Support for Health Care Under Bill C-28. Parliamentary Research Branch. 21 November 2003 http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/PRB-e/PRB0320-e.pdf

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(10) Kristin Good, Fiscal Federalism, 16 October 2007, slide 28.

(11) Canada, Department of Finance, Aspire to a Stronger, Safer, Better Canada The Budget Speech 2007 (Ottawa: Minister of Finance, 19 March 2007) 5.

(12) Reconciling the Irreconcilable, 107.

(13) Reconciling the Irreconcilable, 64.

(14) Reconciling the Irreconcilable, 67.

(15) Reconciling the Irreconcilable, 67.

(16) Stand Up For Canada, 43

(17) Canada, Department of Finance, Restoring Fiscal Balance for a Stronger Federation: Aspire to a Stronger, Safer, Better Canada (Ottawa: Department of Finance, 2007) 21.

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(21) The Budget Plan 2007, 75

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(23) France St. Hilaire, Écarts et Déséquilibres Fiscaux: La Nouvelle Donne du Fédéralisme Canadien Institute for Research on Public Policy 2005, 27

(24) Restoring Fiscal Balance for a Stronger Federation, 4.

(25) Reconciling the Irreconcilable, 79.

(26) Restoring Fiscal Balance for a Stronger Federation, 16.

(27) Reconciling the Irreconcilable, 175.

(28) Restoring Fiscal Balance for a Stronger Federation, 19.

(29) Restoring Fiscal Balance for a Stronger Federation, 19.

(30) Restoring Fiscal Balance for a Stronger Federation, 4.

(31) Kristin Good, Creatures of Federalism, 20 November 2007, slide 3.

(32) Our Cities, Our Future: Addressing the Fiscal Imbalance in Canadas Cities Today. Big City Mayors Caucus 2006, 2006, retrieved from: http://www.fcm.ca/english/documents/bcmcfinal.pdf

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(34) Our Cities, Our Future, 3.

(35) Our Cities, Our Future, 7.

(36) Our Cities, Our Future, 9

(37) Building Prosperity Together, Federation of Canadian Municipalities. 2006: 10.

(38) Restoring Fiscal Balance for a Stronger Federation, 34.

(39) Restoring Fiscal Balance for a Stronger Federation, 37.

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(41) Reconciling the Irreconcilable, 62.

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Fédéralisme américain et environnement : le rôle des États fédérés dans le développement d'une diplomatie parallèle

Annie Chaloux

Résumé

Les enjeux environnementaux, et plus particulièrement le phénomène des changements climatiques constituent un élément significatif dans la redéfinition des relations internationales contemporaine. L'État central, bien qu'il reste un acteur majeur sur la scène internationale, n'est plus considéré comme l'unique représentant des intérêts nationaux. Sur le plan environnemental, les collectivités locales et régionales acquièrent une légitimité leur permettant de définir leurs propres intérêts sur la scène internationale, en dépit des positions de l'acteur central, appelé phénomène paradiplomatique. Aux États-Unis, ce phénomène est de plus en plus important dans le secteur environnemental, notamment depuis le rejet de Washington du protocole de Kyoto en 2001. Certains États ont dénoncé la position de Washington et ont développé une diplomatie parallèle avec d'autres États fédérés dans le monde afin de dénoncer la position du gouvernement central sur la question des changements climatiques. Cet article traitera donc du développement du phénomène paradiplomatique aux États-Unis, dans le secteur environnemental. Particulièrement, il se concentrera sur l'évolution de la politique environnementale américaine concernant le réchauffement climatique, l'intensification de la paradiplomatie des États fédérés, ainsi que du rôle de ces entités subétatiques suite au rejet de Washington du protocole de Kyoto en 2001.

Introduction

En 1992, lors du Sommet de la Terre à Rio de Janeiro, les États s'entendent pour la première fois sur une Convention-cadre sur les changements climatiques. Les États prennent conscience que « les actions apparemment internes ont des répercussions externes directes ou indirectes et la solution des problèmes internationaux fait appel à des forces à la fois internationales et internes(1) ». Un protocole menant à des mesures contraignantes est négocié par la suite, au Japon, connu sous le nom de protocole de Kyoto. En 1998, les États-Unis signent ce protocole, donnant espoir aux différents acteurs quant à une possible entente internationale sur la question du réchauffement de la planète.

Or, en mars 2001, le gouvernement Bush s'est opposé à la ratification du protocole de Kyoto en considération des sévères coûts que cela provoquerait sur la santé économique américaine. Le plus grand émetteur de gaz à effets de serre de la planète faisait ainsi volte-face nonobstant une certaine préoccupation populaire envers le réchauffement climatique. De lourdes divergences entre la position de l'État fédéral et des États fédérés sont apparues, et certains États américains ont conséquemment développé une diplomatie parallèle, plus « pro-Kyoto ». En 2007, les États-Unis se refusent toujours de considérer les engagements liés à la Convention-cadre des Nations unies sur les changements climatiques. Au surplus, le président possédant une prérogative sur la politique étrangère états-unienne, l'abandon états-unien est pleinement légitime, le président ayant désavoué le projet avant la ratification, qui demandait l'approbation du sénat, par ailleurs réticent face au protocole.

La littérature scientifique actuelle développe amplement sur la question des changements climatiques, et plus précisément sur l'impact de la non-ratification des États-Unis au protocole de Kyoto(2). On y constate par ailleurs l'affaiblissement du protocole de Kyoto par le rejet des États-Unis de le ratifier. De même, certains auteurs ont abordé plus spécifiquement les avancées des États américains et des villes états-uniennes envers leur législation sur les changements climatiques(3). Michael Kraft avance d'ailleurs l'idée que la distribution de l'autorité gouvernementale ferait en sorte que plus de 70 % des législations environnementales seraient appliquées par les États fédérés, ce qui « reflète un jugement indépendant des préoccupations politiques et de la politique fédérale(4) ».

D'autres auteurs ont centré leurs recherches sur le développement de la paradiplomatie(5) comme nouvelle approche des relations internationales. Stéphane Paquin affirme d'ailleurs que les acteurs subétatiques jouent désormais un rôle clé dans les Relations internationales, et que l'environnement constitue un des « grands dossiers paradiplomatiques(6) ». L'auteur ajoute que « les monopoles étatiques sur lesquels repose le système international westphalien sont remis en question par les entités subétatiques. […] En outre, il ne détient plus le monopole de la représentation internationale(7) ».

Or, il a été constaté que depuis le retrait de Washington au protocole de Kyoto, plusieurs acteurs subétatiques se sont élevés contre ce laisser-faire prôné par l'État central, et ce,

parallèlement aux politiques internationales environnementales de Washington, compte tenu de l'importance de l'enjeu environnemental(8). De ce fait, certains États fédérés ont développé une politique extérieure active sur la scène internationale en matière d'environnement, délaissant du coup cette idée de l'État-nation homogène et unitaire(9). Ce phénomène de paradiplomatie vient donc proposer une explication dans l'émergence de ces nouveaux acteurs sur la scène internationale. Une question devient alors pertinente : les États américains ont-ils contredit Washington et ont-ils établi leurs propres politiques environnementales par rapport à la problématique des changements climatiques ?

En dépit d'une littérature abordant amplement la question environnementale et les enjeux du protocole de Kyoto et la non-adhésion des États-Unis(10), aucune ne traite de la paradiplomatie états-unienne comme étant une réponse à la globalisation de la question environnementale dans le monde, au détriment de l'exclusivité de Washington sur ses propres politiques extérieures. Cet article se concentre donc sur l'implication des États fédérés dans la conception de nouvelles politiques états-uniennes en matière d'environnement, tant sur le plan interne qu'externe. Il propose également une corrélation entre la globalisation de la question environnementale et l'action des entités subétatiques face à l'inaction de Washington.

L'hypothèse émise sera donc que la position du gouvernement fédéral n'est pas représentative de la vision interne face à cette problématique, ce qui a poussé les entités fédérées à agir en fonction de certaines conventions internationales, dont Kyoto, et ce, malgré le rejet de cette convention par Washington. On peut donc se questionner quant à la possible fin du monopole de l'État central états-unien sur ses politiques extérieures en matière d'environnement, notamment quant à la problématique sur les changements climatiques et le protocole de Kyoto. Ainsi, cette recherche examinera particulièrement l'évolution de la politique environnementale états-unienne sur les changements climatiques, le développement de la paradiplomatie des entités subétatiques aux États-Unis, ainsi que du rôle de ces entités subétatiques envers le protocole de Kyoto.

Contexte et évolution de la politique environnementale états-unienne envers les changements climatiques

La Constitution états-unienne et le partage des compétences

Aux États-Unis, la séparation des pouvoirs est établie par la Constitution de 1789. La Constitution états-unienne prévoit d'ailleurs que le président doit obtenir l'accord des deux tiers des membres du sénat pour ratifier une convention internationale(11). Ainsi, la négociation de traités internationaux par l'Exécutif doit prendre en considération les positions du sénat, puisque sans l'aval de ce dernier, aucun traité international ne peut devenir force de loi au pays(12). Cette forme de contrepoids permet d'éviter une prédominance de la sphère exécutive sur le législatif, étant donné que la ratification d'un traité international devient partie intégrante des législations internes aux États-Unis. On s'assure ainsi que les rôles des différents pouvoirs sont respectés et on se prémunit contre

un possible déficit démocratique. En somme, les traités internationaux doivent obtenir l'aval du sénat pour qu'ils puissent par la suite être ratifiés et devenir loi sur l'ensemble du territoire du pays et dans chaque État fédéré, et ce, « nonobstant des dispositions contraires insérées dans la Constitution ou dans les lois de l'un quelconque des États(13) ».

D'autre part, le système politique états-unien est un système fédératif, ce qui fait en sorte que l'État fédéral et les États de la fédération se partagent certains pouvoirs. En effet, « tout ce qui n'est pas attribué expressément au gouvernement fédéral relève de la compétence des États(14) », ces pouvoirs étant énumérés dans la section 10 de l'article 1. Entre autres, le gouvernement fédéral acquiert par cet article l'exclusivité de la négociation des traités internationaux. Toutefois, cette exclusivité ne laisse pas au fédéral le monopole absolu des relations internationales et de la politique extérieure(15), tel que nous le verrons dans la section 2.1.2.

L'Exécutif fédéral possédant l'autorité sur la politique extérieure et celle de négocier les traités internationaux, on pourrait facilement croire qu'ils peuvent exercer cette prérogative alors que certains États pourraient être en désaccord avec ces politiques. Néanmoins, dans un premier temps, il faut se rappeler que tout traité international doit obtenir l'aval du sénat, composé de personnalités élues dans chacun des États (soit 2 par État, pour un total de 100). Les États possèdent donc un certain pouvoir sur les politiques extérieures(16).

D'autre part, les États fédérés ont la capacité d'établir certaines politiques extérieures de par leurs compétences énoncées dans la Constitution du pays.

The 50 states of the United States of America possess limited international competence divided from their (1) constitutional authority to engage the international arena in limited ways as states but not nation-states, (2) political freedom to pursue state-local interests internationally, and (3) governmental capacity to act independently in the international arena(17).

Les gouvernements des États fédérés établissent depuis plusieurs années déjà leurs propres politiques extérieures, et ce, dans de nombreux domaines. Paquin soutient par ailleurs que « les 22 300 États, comtés et villes américains ont une latitude non négligeable en matière de relations internationales(18) ». Les États fédérés posséderaient à l'heure actuelle autant de bureaux permanents à l'étranger que le gouvernement fédéral ne dispose d'ambassades(19). De plus, certains gouverneurs états-uniens mènent davantage de missions économiques de commerce international annuellement que le président des États-Unis et les membres de son cabinet(20).

Les États fédérés agissent même dans des sphères d'activité généralement réservées aux États centraux, dont les secteurs des Droits humains, de la culture et de l'environnement. Par exemple, l'État du Massachusetts et la ville de San Francisco ont imposé certaines sanctions économiques contre le Myanmar, avant même que le président de l'époque, Bill

Clinton, n'impose des sanctions économiques. Également, la ville de New York et l'État de la Californie ont banni certaines banques suisses de par leur insatisfaction à l'égard des explications données par ces banques au sujet de la disposition de l'or et d'autres éléments pris des victimes de l'Holocauste lors de la Seconde Guerre mondiale(21).

Certains États ont agi dans des secteurs allant quelques fois même à l'encontre de la politique extérieure fédérale (dont Los Angeles, Chicago, Portland et New York par exemple, qui s'étaient positionnés contre la guerre en Irak(22)). Les entités subétatiques possèdent donc la capacité d'agir et de redéfinir la politique étrangère états-unienne, au détriment peut-être de l'exclusivité de Washington dans ce domaine.

La politique extérieure états-unienne en matière d'environnement (1992-2007)

En 1992, les États-Unis avaient pleinement adhéré aux valeurs du Sommet de la Terre, s'engageant donc dans un processus de réduction des gaz à effet de serre sur leur territoire. La présence des États-Unis à cette convention était primordiale étant donné qu'ils étaient les principaux émetteurs de GES et la grande puissance mondiale. Ainsi, en octobre 1992, un plan de réduction volontaire de GES était approuvé. Toutefois, la Convention-cadre des Nations unies sur les changements climatiques n'observait à l'époque aucune mesure chiffrée et il s'agissait davantage de mesures volontaires.

L'arrivée de Bill Clinton au pouvoir a modifié la politique états-unienne en matière d'environnement. Il souhaitait implanter des mesures de réductions des GES, mais subissait lourdement les pressions des industriels de tous les milieux et des membres du Congrès(23). En avril 1993, il a adopté un plan de stabilisation des GES au niveau de 1990 pour 2010. Cependant, des contraintes budgétaires et les réticences du Congrès ont fortement entravé les possibilités de réductions significatives des GES sur le territoire états-unien. Ainsi, la taxe sur la consommation sera très faible, et le plan de réduction de GES sera tourné sur des mesures entièrement volontaires, ce qui, en somme, ne fera nullement changer les habitudes énergétiques des citoyens et des industries états-uniennes(24).

Par la suite, la signature du protocole de Kyoto par le vice-président Al Gore a suscité la controverse au pays. Le protocole établissait des mesures de réductions de 7 % par rapport aux données de 1990 aux États-Unis, le plus grand émetteur de la planète(25). Or, le Congrès s'opposait à l'unanimité au protocole de Kyoto. Le refus du sénat de ratifier le protocole vient du fait qu'ils désiraient que les pays émergents soient également concernés par les mesures de réductions des GES(26). La position états-unienne restait à cette période fortement divisée.

Les deux mandats du président Clinton ont été tout de même significatifs dans la lutte aux changements climatiques. Bill Clinton est devenu le premier président des États-Unis à reconnaître l'importance d'imposer des limites d'émissions de GES. « We will work with our people, and we will bring to the Kyoto conference a strong American

commitment to realistic and binding limits that will significantly reduce our emissions of greenhouse gases.(27) »

En l'an 2000, l'accession de George W. Bush à la présidence des États-Unis a transformé radicalement la politique étrangère des États-Unis face aux changements climatiques.

Là où l'Administration Clinton était fortement partisane d'une politique agressive sur les changements climatiques, l'Administration Bush se montre très critique, et ce, même après la parution des résultats d'une étude commandée par elle […] dont les conclusions sont identiques à celles des rapports de l'IPCC(28).

Ainsi, tel que mentionné précédemment, en mars 2001, les États-Unis se retirent du protocole de Kyoto. Ce qu'il faut toutefois regarder, c'est qu'à partir de ce moment, plusieurs initiatives des États fédérés vont émerger et les États fédérés développeront leur propre politique étrangère en matière de changements climatiques. La position de l'Administration Bush ne représentera pas la position de l'ensemble des États américains dans la lutte aux changements climatiques.

Quoique le président Bush ait reconnu en juin 2001 la réalité et la gravité des changements climatiques(29), et malgré qu'il ait implanté en 2002 un plan d'action visant la réduction en intensité des GES dans l'atmosphère de près de 18 %(30), son Administration ne reconnaît toujours pas l'impact humain sur les émissions de GES. D'ailleurs, lors de la 10e conférence des Parties qui a eu lieu en 2005, « le négociateur en chef des États-Unis a continué de soutenir que les fondements scientifiques de l'origine anthropique des changements climatiques demeuraient incertains(31) ».

On constate donc que jamais l'Administration Bush ne s'est rapprochée des positions européennes face au protocole de Kyoto et qu'il n'a jamais voulu proposer du moins des mesures concrètes de réduction des GES sur le sol états-unien. Il a par ailleurs affirmé quant aux changements climatiques que « la croissance économique est la solution, pas le problème. Car une nation dont l'économie progresse est une nation qui peut se permettre de faire des investissements dans les nouvelles technologies(32). »

Législation fédérale en environnement

Tout d'abord, il n'existe aux États-Unis aucune forme de ministère ou d'agence qui a pour objectif de coordonner les différentes institutions et les différents acteurs liés à l'environnement. Cette carence fait en sorte de rendre « difficile toute affirmation sur l'élaboration d'une politique de l'environnement aux États-Unis(33) ».

De plus, le partage des compétences au sein des institutions fédérales fait en sorte de décentraliser « l'autorité gouvernementale ». En effet, l'Exécutif fédéral possède certaines compétences liées à l'application des politiques environnementales, qui sont à leur tour divisées entre les différentes agences et ministères. Puis, au sein même du législatif, il y a encore une fois un fractionnement des pouvoirs entre les deux chambres

législatives, soit le sénat et la chambre des représentants(34). Finalement, il y a une très forte décentralisation des pouvoirs envers les États fédérés. Or, pour ce qui est des changements climatiques particulièrement, les États peuvent établir leurs propres politiques environnementales, puisqu'ils possèdent une large part des champs de compétences, qui est estimé à environ 70 % en ce qui concerne les législations environnementales(35).

Ainsi, nonobstant l'absence de politique environnementale ambitieuse sur les changements climatiques au niveau fédéral, de nombreuses actions limitant les émissions de GES ont été entreprises par les entités subétatiques(36). Ce phénomène paradiplomatique en l'environnement sera traité dans la section suivante, mais il démontre assez clairement que les politiques de Washington ne sont plus représentatives des valeurs des États fédérés et surtout, en ce qui concerne les changements climatiques, les États-Unis ne parlent plus d'une seule voix sur la scène internationale.

La paradiplomatie dans le domaine environnemental et les entités subétatiques aux États-Unis

Le phénomène paradiplomatique

Un nouveau phénomène est apparu dans les dernières années, impliquant des gouvernements locaux sur la scène internationale, la paradiplomatie. Ce concept entraîne une transmutation importante de l'étude des relations internationales et de la politique extérieure des États centraux. De nombreux auteurs constatent que le phénomène paradiplomatique aurait pris naissance dans les États fédéraux tout d'abord, résultat de la séparation des pouvoirs entre les différents paliers de gouvernements, ce qui peut entraîner certaines frictions entre eux. Pour Francisco Aldecoa, la paradiplomatie est toujours une question sensible dans des États fédéraux, où la division de pouvoirs, donnant la compétence externe exclusive à la fédération, se heurte souvent avec le désir de la part des unités fédérées pour projeter leurs responsabilités intérieures à l'étranger(37).

Bien que le concept de paradiplomatie soit assez récent, la littérature actuelle aborde tout de même le phénomène, sous plusieurs angles d'étude. Alors que certains auteurs voient en ce concept la fin des territoires et des États centraux(38), d'autres auteurs dont Michael Keating y voient davantage une transformation du système international lié à une nouvelle forme de régionalisme, résultat de la mondialisation, tant économique, politique que culturelle(39). Il remarque également que le phénomène paradiplomatique est très différent de la diplomatie traditionnelle :

Paradiplomacy is not the same as conventional state diplomacy, which is about pursuing a defined state interest in the international arena. It is more functionally specific and targeted, often opportunistic and experimental. There is certainly a strong functional logic to the activity, and we have noted how it has expanded with globalization and the need of regions to operate in the global market(40).

Pour Panayotis Soldatos, la paradiplomatie serait tout simplement définie comme le développement de la politique étrangère des États fédérés en réaction face à la crise de l'État-nation(41). Ivo D. Duchacek, quant à lui, traite davantage des liens qui existent entre des entités fédérées ou des gouvernements locaux avec des gouvernements centraux ou d'autres États fédérés étrangers [Traduction] « dans le but d'exercer une influence sur le commerce en général, l'investissement et d'autres politiques et actions(42) ». Les acteurs paradiplomatiques agissent désormais sur de nombreuses sphères que l'on croyait réservées à l'État central, dont le Commerce et les Droits de l'Homme.

Stéphane Paquin définit par ailleurs 5 variables qui encouragent l'essor du phénomène paradiplomatique au sein des États fédérés. Dans un premier temps, ce serait la mondialisation et la crise de l'État-nation qui serait à l'origine du développement de la paradiplomatie. Les entités subétatiques agiraient de la sorte afin de « favoriser leurs exportations, mais aussi […] d'attirer les investissements étrangers(43) ». La seconde variable liée à la paradiplomatie serait le processus d'internationalisation et d'intégration régionale, puisque ces deux phénomènes touchent directement les champs juridictionnels des entités subétatiques(44). Paquin estime également que le nationalisme pousserait les entités fédérées à établir des politiques extérieures, en vue de valoriser la croissance du sentiment national d'un groupe minoritaire dans un État multiculturel(45). Le régime politique serait, selon Paquin, un quatrième élément à prendre en considération dans le développement du phénomène paradiplomatique. Et finalement, il présente la personnalité des décideurs comme étant lié à l'essor de la paradiplomatie(46).

La fin de l'exclusivité fédérale dans le domaine de la politique étrangère environnementale

Nous avons mentionné précédemment que les États fédérés possèdent une large part des pouvoirs dans le secteur environnemental. Or, lorsque le président Bush avait décidé de ne pas ratifier le protocole de Kyoto, il s'est servi de son pouvoir présidentiel de ne pas poursuivre la ratification d'un traité international, alors que certains États défendaient ardemment une position plus « pro-Kyoto ». Dans les mois et les années qui ont suivi, on a pu constater la fin de l'exclusivité fédérale d'établir sa politique étrangère en environnement puisque de nombreux États, dont la Californie, le Vermont, le Connecticut, le Maine, le Massachusetts, le New Hampshire, la Pennsylvanie, le New Jersey, l'Oregon et Washington, pour ne nommer que ceux-là, ont adopté des plans se rapprochant des objectifs du protocole de Kyoto. Certains États ont même pris des engagements avec d'autres entités subétatiques comme les provinces canadiennes. Ces quasi-traités prouvent à eux seuls la volonté des États américains d'établir leur propre politique étrangère, et ce, au détriment de l'exclusivité de Washington. On peut donc constater clairement un rejet par les entités subétatiques de la politique extérieure environnementale du gouvernement Bush.

Position des États fédérés concernant Kyoto

Le développement de la paradiplomatie aux États-Unis est le résultat de plusieurs facteurs. Or, en se basant sur les variables de la paradiplomatie développée par Stéphane Paquin, il est possible de constater que l'essor du phénomène paradiplomatique en environnement serait le résultat du processus d'internationalisation de la problématique qui aurait poussé à acteurs subétatiques à élaborer des stratégies pro-Kyoto malgré le rejet de Washington sur cette question. Le réchauffement climatique affecte toutes les régions du globe et ne se limite pas aux frontières. Également, le régime fédéral ainsi que la personnalité des certains gouverneurs seraient une autre variable qui aurait favorisé l'essor de la paradiplomatie de l'environnement aux États-Unis.

Certes, certains États fédérés se sont alignés sur la politique de Washington. Toutefois, spécifiquement pour cet article, nous nous concentrerons sur les États fédérés qui ont décidé d'adhérer aux valeurs de Kyoto, et/ou qui ont établi des liens avec d'autres entités subétatiques et voire même certains États, en ce qui concerne les changements climatiques.

Initiatives des États fédérés

Alors qu'ils ne représentent que le vingtième de la population planétaire, les États-Unis produisent plus du quart des gaz à effet de serre (GES) dans le monde. Pour leur part, les États fédérés génèrent dans certains cas autant de GES que certains grands pays industrialisés(47). En effet, le Texas produit plus de GES que la Grande-Bretagne et le Canada réunit, alors que la Californie, émet davantage de GES que l'État du Brésil(48). Le développement de politiques subétatiques envers les changements climatiques devient alors fondamental étant donné l'impact réel que peuvent avoir un tel type de politiques des États fédérés sur les émissions totales de GES dans le monde.

L'immobilisme de Washington sur la question des changements climatiques a eu un effet antagoniste sur les États américains et a de ce fait créé un sentiment d'urgence face à cet enjeu environnemental global. Les États américains se sont rassemblés, ont constitué des regroupements avec d'autres entités subétatiques et étatiques et ont mis au point des plans de réduction des GES d'envergure et antinomiques avec les politiques énoncées par le gouvernement Bush. Voici donc le parcours de certains États à l'égard des changements climatiques.

Californie

Considérée depuis longtemps comme étant un État avant-gardiste sur les politiques états-uniennes, la Californie est d'ailleurs le premier État américain à s'être engagée globalement dans la lutte aux changements climatiques. État le plus riche et le plus peuplé au pays, huitième économie mondiale et douzième plus grande émettrice de GES au monde(49), les positions de la Californie jouent donc un rôle considérable dans l'élaboration de nouvelles politiques étrangères à l'égard des changements climatiques, puisque qu'elle possède une influence significative en tant qu'État américain.

En 2006, l'État de la Californie a décidé de poursuivre en justice les six grands constructeurs automobiles pour avoir construit des voitures polluantes, qui coûtent aujourd'hui des milliards de dollars à l'État, soit les compagnies Chrysler, General Motors, Ford, Toyota, Honda et Nissan. « Le but est de rendre les fabricants d'automobiles responsables des sommes dépensées par les contribuables pour faire face aux dommages(50) » liés au réchauffement de la planète. La poursuite, au nom du « peuple californien », est une poursuite au civil et il s'agit d'une première aux États-Unis(51).

Aussi, le 27 septembre 2006, le gouverneur Schwarzenegger annonçait l'entrée en vigueur d'une loi intitulée Global Warming Solutions Act sur la réduction des émissions de gaz à effet de serre sur son territoire. Les objectifs de réductions des GES dans l'atmosphère sont de l'ordre de 25 % pour 2020 et de 80 % pour 2050(52), s'engageant du coup à respecter les objectifs internationaux de réduction de GES pour 2050. Cette loi, AB 32, a donné pour mandat au CARB (California Air Ressources Board) de réglementer et de développer des mécanismes qui permettraient à la Californie de réduire ses émissions de GES de 25 % pour 2020. Particulièrement, l'organisme californien doit entre autres réglementer les différentes sources d'émission de GES pour janvier 2009, adopter un plan de réduction des GES pour la même période, ainsi que développer un marché du carbone(53).

La Californie a reconnu très tôt l'importance des regroupements régionaux et des alliances dans la lutte aux changements climatiques. L'État californien est désormais membre du Western Regional Climate Action Initiative depuis sa création en 2003, et a signé des ententes avec certaines provinces canadiennes dont la Colombie-Britannique et l'Ontario. Au surplus, en 2006, le Premier ministre britannique Tony Blair et le gouverneur Schwarzenegger de la Californie ont conclu un pacte de coopération dans la lutte au réchauffement climatique. Le pacte signé par les deux parties stipulait que le Royaume-Uni et l'État de la Californie s'engageaient à mettre en place rapidement des actions concrètes pour réduire les émissions de GES et de soutenir le développement des technologies peu émettrices de GES(54).

États de la Nouvelle-Angleterre

Le Massachusetts, le Rhode Island, le Maine, le Connecticut, le Vermont et le New Hampshire luttent depuis de nombreuses années déjà contre le réchauffement climatique, puisque l'élévation des mers affecterait directement ces États côtiers. Ils se sont donc servi d'une tribune et d'une association régionale, soit la Conférence des Gouverneurs de la Nouvelle-Angleterre et des premiers ministres de l'Est du Canada, pour discuter de la problématique des changements climatiques, et en 2001, lors de la 26e rencontre annuelle des gouverneurs de la Nouvelle-Angleterre et des Premiers ministres de l'Est du Canada, ils ont adopté un plan d'action collectif sur les changements climatiques. Ainsi, les différents États américains et provinces canadiennes se sont entendus sur des mesures de réductions chiffrées et communes. Les objectifs sont une stabilisation des GES au niveau

de 1990 pour l'année 2010, puis une réduction de 10 % des émissions de GES pour l'année 2020(55).

Les États de la Nouvelle-Angleterre ont également développé un marché régional du carbone, qui devrait devenir effectif pour 2009(56). Certaines provinces canadiennes tenteraient d'ailleurs d'intégrer ce marché, arguant que « les provinces et les États américains disposent de leurs propres pouvoirs pour s'attaquer à la menace grandissante posée par les changements climatiques(57). »

Regional Greenhouse Gas Initiative

Le Regional Greenhouse Gas Initiative a été fondé en 2003, grâce à l'initiative du gouverneur de l'État de New York, M. George E. Pataki. Le but initial de cette alliance était de développer un programme de réduction des émissions de CO2 des producteurs d'électricité dans une période de 2 ans. Huit États se sont joints à ce regroupement, soit le Maine, le New Hampshire, le Vermont, le Massachusetts, le Connecticut, le New Jersey, le Delaware et le Rhode Island(58).

Puis, suite à l'établissement du programme de réduction des émissions de CO2 des producteurs d'électricité, le regroupement a songé à étendre son rôle initial et ainsi tenter de réduire leurs émissions d'autres gaz à effet de serre provenant des producteurs d'électricité et aussi d'intégrer d'autres États au regroupement. Actuellement, certains États dont la Californie songeraient à intégrer la RGGI. De plus, certaines provinces canadiennes assisteraient aux rencontres en tant qu'observateurs.

Fait intéressant, les regroupements des États américains visant la réduction des GES comme le RGGI ont poussé l'Union européenne à reconnaître ces efforts de lutte aux changements climatiques : « In recognition of U.S. states' efforts, the European Union has inserted a clause into their trading rules that will allow trading of carbon allowances between EU member countries and U.S. states with comparable programs, such as RGGI (if it is implemented).(59) »

Actions d'autres États américains

Les actions effectuées par les États cités précédemment ne sont que certains exemples de l'ensemble des actions des États américains face aux changements climatiques. L'État du Vermont a également légiféré sur de nombreux aspects liés aux secteurs de l'Énergie, des véhicules, pour ainsi lutter efficacement contre les émissions de GES. La Floride également a récemment pris position récemment en faveur du protocole de Kyoto, alors que le gouverneur de l'État s'engageait à signer une loi optant pour l'application des cibles californiennes de réduction des GES, à savoir une réduction de 25 % pour 2025 et 80 % pour 2050(60).

Poursuite des États fédérés contre l'EPA

Alors que le gouvernement fédéral tarde à reconnaître les effets néfastes des GES sur les changements climatiques à l'échelle internationale, certains États américains dont la Californie et le Massachusetts ont porté devant les tribunaux l'Agence de protection de l'Environnement états-unien (EPA), pour forcer cette dernière à faire reconnaître les émissions de GES comme étant des gaz polluants. Ces onze États américains souhaitaient contraindre l'EPA à légiférer pour restreindre les émissions de GES sur le sol américain, avançant que les gaz à effets de serre étaient polluants et nocifs(61). Le jugement de la Cour suprême, rendu en avril 2007, a donné raison aux États poursuivants, en reconnaissant les GES comme étant des gaz polluants et en affirmant « que le gouvernement fédéral avait l'autorité pour réguler les émissions de C02 rejetées par les voitures, et qu'il avait failli à son devoir en ne le faisant pas(62). ». Il y a donc lieu de croire que les États fédérés veulent redéfinir et relancer le débat sur la position fédérale à l'égard des changements climatiques, tant sur le plan interne qu'externe.

Conclusion

Les trente dernières années ont vu apparaître un enjeu de taille au sein des relations internationales et même sur le plan interne des États, soit la problématique environnementale. Ces questions se sont globalisées, exigeant de la part des États des réponses globales et concertées. Pour le phénomène des changements climatiques, une première convention-cadre a vu le jour en 1992, lors du sommet de Rio de Janeiro. Les États s'engageaient pour la première fois dans une lutte commune contre le réchauffement climatique. En 1997, les négociations internationales aboutissent au protocole de Kyoto, offrant une portée contraignante et des mesures chiffrées de réduction des émissions des gaz à effet de serre, responsables des changements climatiques. Bien que 160 États s'étaient rencontrés pour négocier le protocole de Kyoto, l'étape de la ratification du protocole par les grands pollueurs s'avère plus ardue que prévue.

Particulièrement aux États-Unis, la problématique reste entière alors que le sénat avait, en 1998, refusé à l'unanimité la ratification de l'accord. Ainsi, en 2001, le président Bush annonçait le retrait complet des États-Unis au protocole de Kyoto. Ce rejet à cette époque était une décision prise uniquement par la branche exécutive fédérale, ne prenant pas en considération les positions des entités subétatiques à l'égard de Kyoto, alors que les États fédérés se retrouvent à appliquer près de 70 % des législations environnementales sur le territoire(63). Cette séparation des pouvoirs liée au système fédératif crée un certain déséquilibre entre le pouvoir central et les entités subétatiques, qui tentent alors de développer leur propre diplomatie et du coup de répondre à leur manière à la problématique des changements climatiques. Paquin explique d'ailleurs que

[l]e fédéralisme, dont le fondement principal est la divisibilité de la souveraineté, s'accommode mal des principes de l'ordre westphalien. On postule en effet dans ces régimes politiques que la souveraineté peut être exercée sur un même territoire et sur une même population par plusieurs sources d'autorité politique. Alors que l'on assume au niveau international que les États fédéraux sont des acteurs unitaires, rationnels et qu'ils

représentent « l'intérêt national » de leur communauté politique, les faits démontrent que la réalité est bien différente(64).

Ainsi, en traitant des positions états-uniennes et des entités fédérées face aux changements climatiques, nous avons constaté que les États-Unis ne sont pas le seul État central à avoir décidé unilatéralement de la ratification du protocole de Kyoto. Alors que Bush s'est servi de son pouvoir présidentiel pour ne pas ratifier la convention internationale, nous avons remarqué également que le Canada a ratifié quant à lui le protocole de Kyoto sans un consensus avec ses provinces. Aussi, il pourrait être intéressant de comparer les résultats obtenus avec d'autres pays industrialisés, qu'ils émanent d'un système fédéral ou unitaire, pour pouvoir observer dans quelle mesure la paradiplomatie de l'environnement jouerait un rôle dans les politiques extérieures des États centraux.

Finalement, à la lumière de cette recherche, nous pouvons constater que le phénomène paradiplomatique redéfinit le rôle de l'État central dans le développement des politiques étrangères. Le système international dérivé du système westphalien ne permet plus de répondre adéquatement aux problématiques internationales puisque tant les acteurs subétatiques que d'autres flux transnationaux viennent proposer de nouvelles avenues, qu'on ne peut plus ignorer. De par la globalisation des enjeux environnementaux, les entités subétatiques ont développé des alternatives efficaces et ont pu établir de nouvelles pressions sur l'État central, créant certes des frictions avec ce dernier, mais démontrant du coup le pouvoir qu'ont les gouvernements locaux de développer une diplomatie parallèle, centrée sur leur besoin, et répondant peut-être aux réelles positions du peuple américain.

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Les Stratégies Provinciales dans le développement des énergies renouvelables a faible impact et la place du gouvernement fédéral : Des actions efficaces?

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Résumé

Cet article examine le développement des énergies renouvelables à faible impact pour l'environnement (ERFI) au Canada. Les provinces, qui ont compétence exclusive dans l'exploitation des ressources naturelles, ont chacune mis en place des programmes pour développer les ERFI. Les politiques les plus efficaces sont celles qui sont contraignantes, comme les renewable portfolio standards, qui fixent des normes minimales de production d'électricité susceptibles d'évoluer dans le temps. Ils offrent un cadre d'action rigoureux doublée d'une certaine flexibilité qui tient compte de la réalité.

Le palier fédéral n'est pas empêché d'agir par le cadre institutionnel canadien : la Constitution lui octroie des compétences dans le commerce et la taxation des ressources naturelles, et des décisions judiciaires lui accordent un rôle prépondérant dans la protection de l'environnement. Il peut influer favorablement sur le développement des ERFI, mais il n'a toujours pas de vision globale dans ce domaine, et donc toujours pas de politique cohérente. S'il est présent dans le financement de programmes de Recherche & Développement et dans le développement de l'énergie éolienne, cela reste à une place modeste. Dans les autres domaines, il est absent.

Sans coordination au niveau fédéral, pour des raisons plus politiques qu'institutionnelles, seules les provinces qui mettent en place des législations contraignantes parviennent à un développement efficace des ERFI.

Introduction

La réduction des gaz à effet de serre est une priorité pour le Canada : le développement des énergies renouvelables à faible impact pour l'environnement (ERFI) est alors un instrument efficace. Les provinces, qui ont compétence exclusive dans l'exploitation des ressources naturelles, ont mis en place plusieurs types de programmes, de manière non coordonnée, pour développer les ERFI. Les politiques les plus efficaces sont celles qui sont contraignantes, par exemple les renewable portfolio standards, qui fixent des normes minimales contraignantes de production d'électricité à long terme, mais susceptibles d'évoluer dans le temps. Ceux-ci offrent à la fois un cadre d'action rigoureux auquel les compagnies électriques sont obligées de se soumettre, et une certaine flexibilité en permettant un réajustement à court terme des normes de production pour tenir compte de la réalité.

Le palier fédéral n'est pas empêché d'agir par le cadre institutionnel canadien, bien au contraire. La Constitution de 1982 lui octroie des compétences dans le commerce et la taxation des ressources naturelles, et des décisions judiciaires lui accordent un rôle prépondérant dans la protection de l'environnement. Il dispose d'instruments qui peuvent lui permettre d'influer favorablement sur le développement des ERFI, mais il n'a toujours pas de vision globale dans ce domaine, et donc toujours pas de politique cohérente. S'il est présent dans le financement de programmes de Recherche & Développement des technologies nécessaire au développement des ERFI et dans le développement de l'énergie éolienne, cela reste à une place modeste. Dans les autres domaines, il est absent.

Sans coordination au niveau fédéral, pour des raisons plus politiques qu'institutionnelles, seules les provinces qui mettent en place des législations contraignantes parviennent à un développement efficace des ERFI.

Selon la Constitution canadienne, les provinces ont un champ de compétence exclusif sur l'exploitation des ressources naturelles, même si le gouvernement fédéral, par le biais de décisions judiciaires, a acquis des compétences en ce qui a trait à la limitation de la pollution et à la protection de l'environnement. En signant le protocole de Kyoto, le gouvernement fédéral s'est engagé à réduire ses émissions de gaz à effet de serre (GES), et on estime qu'entre 1990 et 2003, les énergies renouvelables à faible impact (ERFI)(1) ont permis de réduire celles-ci de 52,3 mégatonnes (Limming 2004). Or celles-ci ne répondent en ce moment qu'à 1,3% de la demande d'électricité au Canada.

Alors que les ERFI sont parmi les solutions efficaces pour réduire les GES, elles sont placées sous deux juridictions, fédérale et provinciale, non coordonnées entre elles : il n'existe pas de stratégie nationale quant à leur développement, et les provinces usent d'outils très différents pour les promouvoir.

Quelles sont donc les stratégies politiques provinciales les plus efficaces en ce qui a trait au développement des ERFI, avec quelle marge de manœuvre efficace pour l'intervention du gouvernement fédéral?

Aucun article scientifique n'a examiné l'efficacité des politiques provinciales et fédérales en ce qui a trait aux ERFI eu égard au cadre institutionnel canadien : le but de ce travail est de combler ces lacunes en triangulant l'objet « ERFI au Canada » par l'examen de différentes sources se penchant sur différents aspects de cet objet. Il convient tout d'abord d'examiner les types de politiques provinciales en ce qui a trait au développement des énergies renouvelables afin de déterminer lesquelles sont les plus efficaces (I). Puis nous examinerons les possibilités théoriques d'actions du gouvernement fédéral dans le cadre institutionnel canadien et les manières de le faire évoluer (II), avant de faire le bilan des actions du palier fédéral eu égard aux politiques provinciales déjà en place et aux moyens dont il dispose. Nous pourrons alors tirer un bilan global sur le degré d'efficacité, mais aussi de complémentarité avec les politiques provinciales, des politiques fédérales, comblant ainsi un manque dans la littérature scientifique.

À ce stade, notre hypothèse est que les énergies renouvelables connaissent un développement plus rapide dans les provinces qui imposent à leurs compagnies électriques des normes minimales contraignantes dans l'approvisionnement en ERFI, en comparaison avec les provinces qui ne mettent en oeuvre que des mesures incitatives non contraignantes; et qu'en ce qui concerne le gouvernement fédéral, c'est moins le manque de clarté dans ses compétences en ce qui a trait spécifiquement aux ERFI que le manque de volonté politique qui l'empêche de jouer un rôle déterminant dans ce domaine.

Les différentes politiques provinciales et leur degré d'efficacité

Les moyens d'action des provinces

On l'a dit, les provinces canadiennes ont un champ de compétence exclusif sur l'exploitation des ressources naturelles, dont les énergies renouvelables à faible impact font partie. Pour agir dans cette juridiction, les provinces disposent de plusieurs types de politiques publiques, dont les moyens et les buts diffèrent. Avant de faire un état des lieux de la situation dans chaque province, il convient de mettre à jour ces différents types de politiques (Lipp 2007) et leur conséquence sur les ERFI.

Pour l'aspect scientifique, on peut penser aux programmes de Recherche & Développement, qui consistent à donner des fonds pour assurer les conditions scientifiques du développement des ERFI. Pour l'aspect légal, une multitude de choix s'offre au législateur. Tout d'abord les Renewable Portfolio Standards (RPS), qui obligent les compagnies d'électricité de produire ou d'acheter un seuil minimum d'électricité provenant d'énergies renouvelables. Également le net-metering, qui permet aux individus, aux coopératives ou aux industries qui produisent de l'électricité à partir d'ERFI d'installer des micro-générateurs pour vendre leurs surplus. On peut évidemment penser aux politiques fiscales : les gouvernements peuvent jouer sur cet instrument pour réguler le marché et fixer des prix assurant un seuil de rentabilité pour les producteurs d'ERFI, mais également pour taxer ceux qui abusent des énergies non-renouvelables ou accorder des « crédits verts » pour ceux qui investissent dans l'installation ou le

développement d'ERFI. Les provinces peuvent jouer sur un dernier aspect des politiques publiques : le soutien au développement. Deux types d'actions sont possibles. D'une part, les programmes de soutien aux énergies vertes, en stimulant le développement des énergies renouvelables par des simplifications administratives et par un soutien financier, et d'autre part l'attribution de marchés verts par les administrations gouvernementales, qui achètent de l'électricité produite à partir d'ERFI, soutenant ainsi la demande et envoyant un message, indiquant une voie aux consommateurs.

Toutes ces politiques ne sont pas exclusives les unes des autres, les gouvernements provinciaux peuvent donc les combiner selon leurs situations et leurs stratégies.

État des lieux de la situation dans chacune des provinces(2)

La situation est très inégale selon les provinces : certaines n'en sont qu'à un stade préliminaire de recherche et d'implantations alors que d'autres ont mis en place depuis plusieurs années des programmes ambitieux et efficaces.

Les territoires, la Colombie-Britannique et Terre-Neuve et Labrador, malgré leur fort potentiel en ce qui a trait au développement de l'énergie éolienne, n'ont pas vraiment lancé de programme de développement des ERFI. Le Yukon s'est simplement engagé à financer un programme de Recherche & Développement d'une valeur de deux millions de dollars en 2003 (Pape-Salmon et al. 2003) dont les résultats se font toujours attendre, et la Colombie-Britannique a prévu d'accroître de 50% en dix sa production d'énergie éolienne, mais sans résultats concret depuis la définition de cet objectif.

Aussi surprenant que cela puisse paraître, c'est l'Alberta qui s'est en premier lancée dans le développement de masse des ERFI. Le marché de l'électricité y a été complètement libéralisé en 2002, en pleine crise de l'électricité en Californie. Des conditions favorables au développement de l'énergie éolienne ont donc été réunies, avec la bénédiction du gouvernement albertain (qui veut sécuriser son approvisionnement en électricité), et désormais les ERFI fournissent 3.5% de la demande en électricité (Pape-Salmon et al. 2003). Celui-ci a également attribué des marchés verts, avec pour but d'acheter pour ses administrations 90% d'électricité verte, mais il n'a pas fixé de date à cela (Re-Focus 2004), il n'a pris aucune mesure concrète pour favoriser à long terme le développement des ERFI, mettant en avant une régulation par le marché. Le souffle devrait donc retomber bientôt.

La province la plus ambitieuse est l'Île du Prince Édouard, qui a promulgué en 2004 le Renewable Energy Act. Celui prévoit d'accroître la production d'électricté à partir d'ERFI de 14 MW actuellement à 200 MW en 2015, soit 100% de ses besoins en électricité, et ce par le biais d'un RPS dont les seuils minimums sont relevés à chaque année depuis trois ans.

On peut parler de « départ raisonnable » en ce qui concerne le Nouveau-Brunswick et la Nouvelle-Écosse, qui ont mis en place des mécanismes de RPS pour atteindre un niveau

de production d'électricité à partir d'ERFI de 10% en 2016 pour le premier, et 5% en 2010 pour la seconde. La Nouvelle-Écosse a également légalisée la mise en marché d'électricité verte privée par le biais de net-metering (Pape-Salmon et al. 2003). On peut joindre à ce groupe la Saskatchewan, qui a pris des mesures de soutien et d'encouragement en demandant à SaskPower de fournir 22,5% de l'électricité verte aux administrations provinciales.

Trois provinces se détachent du lot : le Manitoba, le Québec et l'Ontario. Le Manitoba d'abord, qui a prévu de multiplier par 10 sa production d'électricité verte (de 100 MW en 2005 à 1000 MW en 2015) par un soutien financier et fiscal actif aux petits projets et au projets locaux, dont l'installation de 13000 maisons, dans l'agglomération de Winnipeg, dont l'électricité sera fournie par l'énergie géothermique (Re-Focus 2004). Puis le Québec, qui est la première province à avoir planifié un large développement des ERFI, dès 2003. Déjà 1000 MW d'électricité sont produits par l'énergie éolienne pour un coût 0,058$/kW, soit le moins cher au Canada, et Hydro-Québec s'est vu imposer par ses autorités de tutelle de fournir 1000 MW d'énergie verte de plus d'ici 2012 (RPS voté en 2002) (Pape-Salmon et al. 2003). D'ici 2015, 7% de la capacité électrique de la Belle Province proviendra d'ERFI Le gouvernement du Québec offre également un crédit d'impôt équivalent à 50% des investissements sur 5 ans pour les petites entreprises impliquées dans la production d'énergie éolienne (Eggertson 2002). Enfin, l'Ontario, qui fait face à la nécessité de trouver une énergie alternative au charbon (25% de sa capacité électrique), a lancé en 2002 un vaste programme d'entraînement pour développer les ERFI, et vient de voter une politique fiscale incitative pour l'énergie éolienne et les autres énergies renouvelables, qui devrait être en 2010 à l'origine de 10% de la production électrique ontarienne. La question qui va se poser dans cette province est celle de la ré-ouverture des centrales nucléaires, si l'augmentation des capacités en énergies vertes est trop faible pour remplacer le charbon.

Pour conclure, notons que les provinces féfinissent des programmes et des objectifs différents, mais qui correspondent à leurs spécificités environnementales, comme l'accent sur l'énergie éolienne au Québec et en Saskatchewan, versus l'énergie géothermique au Manitoba (Eggertson 2002).

Les mesures les plus efficaces

Après avoir brièvement présenté les situations et objectifs des différentes provinces, un bilan s'impose : les mesures incitatives et de Recherche & Développement, si elles sont nécessaires, ne suffisent pas. Si Terre-Neuve, les Territoires et la Colombie-Britannique sont à la traîne, c'est parce que celles-ci n'ont pas imposé de mesures légalement contraignantes. Bien au contraire, « l'expérience indique que le chemin le plus efficace pour améliorer l'efficacité énergétique [verte] se trouve dans l'élaboration de stratégies intégrées » (Limming et al. 2006, 7).

On entend par mesures intégrées le fait d'avoir une approche globale des ERFI que les gouvernements provinciaux entendent réguler : non seulement des actes législatifs, mais

encore des motivations fiscales et une attention particulière à l'information de la population. Ce sont ces mesures qui sont le plus efficace dans le développement des énergies renouvelables. Il semble également qu'un instrument de politique publique se détache du lot quant à la promotion des ERFI : les renewable portfolio standards, qui permettent, à partir d'objectifs fixés par le gouvernement, « de forcer l'augmentation de la production d'électricité à partir d'énergies habituellement renouvelables » (Jaccard 2004, 413). En bref, un gouvernement provincial peut imposer aux compagnies de produire un pourcentage minimum de leur électricité à partir d'énergies renouvelables, par exemple 10% en 2012, après avoir atteint 7% en 2010. Cet instrument, outre la flexibilité au sein d'un cadre contraignant, offre trois avantages : il offre un marché aux producteurs d'énergies renouvelables, il est directement relié aux objectifs gouvernementaux, et il permet de minimiser l'interventionnisme gouvernemental (Ibid, 415). S'il est cependant trop tôt pour fournir une évaluation empirique des résultats des RPS, il n'y a pas non plus d' « évidence empirique que les mesures volontaires soient plus efficace que les mesures contraignantes dans un marché ouvert où la compétition est rude », et le RPS est alors « l'instrument le plus puissant qu'un État puisse utiliser » (Limming et al. 2006, 22).

Il convient désormais de se demander, dans ces situations provinciales diverses, la place que peut théoriquement occuper le gouvernement fédéral du Canada.

Les possibilités théoriques d'intervention du palier fédéral dans le cadre institutionnel canadien

La division constitutionnelle des compétences

Les articles 91 et 92 de la Loi constitutionnelle de 1982 donnent aux provinces et au gouvernement fédéral des juridictions propres et partagées sur tout ce qui touche à l'environnement. Les provinces ont une compétence exclusive sur ce qui a trait à l'exploitation des forêts et des ressources naturelles, et le fédéral a compétence exclusive sur la sécurité des eaux, l'énergie nucléaire et « la paix, l'ordre et le bon gouvernement du Canada ». En matière de la taxation indirecte et de commerce interprovincial des ressources naturelles, les compétences sont partagées. Enfin, les deux paliers n'ont compétence que sur une partie du champ environnemental et de l'exportation des ressources naturelles (Pelletier 2000, 56-58). Avec l'exploitation des ressources naturelles, les provinces ont donc la part belle en ce qui concerne les ERFI, mais cela ne condamne pas pour autant le palier fédéral à l'inaction : celui-ci a vu ses compétences accrues par des décisions judiciaires en ce qui concerne la limitation de la pollution (R. v Crown Zellerbach, 1988) et la protection de l'environnement (R. v Hydro-Québec, 1997) auxquelles les énergies renouvelables contribuent. Institutionnellement, le palier fédéral a donc la légitimité pour intervenir dans la promotion et le développement des énergies renouvelables.

Cependant, tant pour les ERFI en particulier que l'environnement en général, le palier fédéral a adopté dans les années 1990 une « attitude de déférence avec un respect des

provinces » (Harrrison 2003). C'est même le Conseil de la Fédération qui s'est saisi, depuis 2003, de la coordination interprovinciale en matière énergétique (Lipp 2007), et pas le gouvernement fédéral. Cette posture relève d'un choix politique :

« Le gouvernement fédéral n'a pas la volonté de s'engager ambitieusement dans un champ où il manque de compétences claires, et à la lumière des efforts fournis par Ottawa dans les années 1980 et le backlash des provinces de l'Ouest ». (Eggertson 2002, 23)

À la suite de MacKay, on peut alors parler pour ce domaine de fédéralisme collaboratif, où le gouvernement fédéral laisse agir les provinces sans se mêler des politiques qu'elles mettent en oeuvre : le fédéralisme collaboratif « exclu virtuellement l'intervention du palier fédéral » (MacKay 2004, 42). Mais le gouvernement fédéral n'est pas contraint d'agir dans le cadre d'un modèle de fédéralisme collaboratif, et un modèle de « coopération avec les provinces pourrait radicalement accélérer la transition vers un schéma de développement durable » (Limming et al. 2006, 21), puisque les deux paliers de gouvernement travailleraient en commun pour développer l'utilisation des ERFI.

Les politiques fédérales envisageables

On l'a dit, le cadre institutionnel canadien offre au gouvernement fédéral un rôle dans le développement des ERFI, et celui-ci peut agir dans chacun des besoins du secteur de l'énergie. Il peut mettre en oeuvre des programmes fédéraux de Recherche & Développement pour fournir des études techniques à l'industrie, agir sur le marché de l'énergie par des mesures régulatrices pour y assurer un accès stable aux producteurs d'ERFI, prendre des mesures fiscales garantissant la compétitivité des producteurs d'ERFI, passer des marchés verts pour démontrer sa volonté politique, coordonner les différentes administrations pour simplifier les procédures, et enfin mettre en oeuvre des politiques d'éducation et d'information afin d'accroître le soutien du grand public (Lipp 2007).

À chacune des étapes du processus de développement des ERFI, le gouvernement fédéral dispose d'instruments lui permettant de mettre en oeuvre des politiques publiques correspondant non seulement à ses champs de compétences, mais encore aux besoins immédiats de l'industrie de l'énergie verte et du développement des ERFI.

L'harmonisation au niveau national : une responsabilité

Si les provinces sont des acteurs majeurs dans le développement des ERFI par leur compétence sur l'exploitation des ressources naturelles et par le biais de leurs compagnies d'électricité, la plupart des groupes d'intérêts citoyens regrettent l'absence de coordination et d'harmonisation au niveau fédéral. La Coalition pour l'Énergie Rénouvelable et l'Air Pur demande à ce que le gouvernement fédéral définisse des objectifs nationaux contraignants en matière d'ERFI pour accélérer le développement de ce secteur (Coalition pour l'énergie renouvelable et l'air pur 2002), et l'Alliance Canadienne d'Énergie Renouvelable appelle à une stratégie au niveau pancanadien de

développement des ERFI, avec une élaboration de normes de qualité et de sécurité, la mise en place d'un organisme fédéral de coordination, et la cartographie des sources d'énergies vertes (qui n'a toujours pas été réalisée!) par Ressources Naturelles Canada (Alliance Canadienne d'Énergie Renouvelable 2006). Par delà la coordination et l'harmonisation des politiques, on voit donc que c'est un véritable appel au leadership que lancent les activistes au gouvernement fédéral.

Pour conclure, on voit donc que le palier fédéral possède une marge de manœuvre importante et concrète dans la promotion et le développement des ERFI : le cadre institutionnel canadien lui permet de mettre en place une vaste gamme de politiques publiques de soutien à la production d'énergie verte et de promotion de son utilisation, et il a le soutien des environnementalistes pour prendre le leadership sur cette question au Canada. À la lumière de toutes ces possibilités, on peut se demander quel est le bilan concret, pratique des actions du gouvernement fédéral afin d'en tirer un bilan éclairé.

Le bilan concret des actions du gouvernement fédéral canadien dans le domaine des ERFI

L'absence de vision globale

Au niveau fédéral, au moins trois ministères peuvent mener des politiques de support et développement des énergies renouvelables : Environnement Canada, Ressources Naturelles Canada, et le ministère des Affaires Intergouvernementales; sans parler du rôle du budget fédéral et du positionnement du Bureau du Premier Ministre. Or, aucun service spécialisé dans le développement des ERFI n'a vu le jour à Ottawa : les différentes administrations agissent sans concertations chacune de son côté. « Les buts, les champs d'interventions, les directions à prendre et les approches du gouvernement fédéral ne sont pas clairs, précis, identifiables et changent continuellement » (Limming et al. 2006, 22). Une approche cohérente sur le domaine particulier des ERFI est impossible, puisque Ressources Naturelles Canada n'a même pas collecté les données nécessaires quant au potentiel canadien et n'a toujours pas établi la liste des technologies de production d'électricité propre éligibles pour entrer dans le cadre des quelques programmes fédéraux (Eggertson 2004, 51)!

Outre cela s'ajoute le problème de la gouvernance multi-niveau (Limming et al. 2006): le gouvernement fédéral ne semble pas vouloir sortir du modèle collaboratif de fédéralisme puisqu'il ne s'engage pas vers la coordination des politiques en matière d'ERFI et se refuse toujours à définir sinon une politique, tout au moins une stratégie, qui soit réellement nationale. Est-ce à dire que le palier fédéral n'a aucune politique concrète dans ce domaine?

Une action centrée sur l'éolien et le développement des technologies

Le gouvernement fédéral a tenté de se positionner comme un acteur important du développement de l'énergie éolienne, puisqu' « une grande partie de la croissance [de ce secteur] a été motivé par la décision du gouvernement fédéral d'acheter 20% de ses

besoins en électricité à partir d'énergies vertes » (Eggertson 2002, 19). En 2000, le programme d'Encouragement à la Production d'Énergie Éolienne a été mis sur pied dans le but de réduire les émissions de GES au Canada : en offrant un appui de 260 millions de dollars sur cinq ans, le gouvernement espère accroître la production d'électricité à partir d'éoliennes de 500% (Ibid).

En contrepartie, les autres énergies renouvelables ont été largement ignorées par les programmes fédéraux. Des crédits d'impôts pour le développement d'énergies renouvelables et les économies d'énergies ont été lancés en 1996, les plans pour lutter contre les changements climatiques de 2000 et 2002 ont accordé quelques subventions globales pour le développement des ERFI, et des projets municipaux de développement des énergies renouvelables ont en partie été financé par le fédéral (Pape-Salmon et al. 2003). On le voit donc : pas de stratégie cohérente dans le temps, et surtout pas de financement ambitieux. Et le peu d'action du gouvernement fédéral a par ailleurs été en grande partie gommé par le nouveau gouvernement conservateur de Stephen Harper (Lipp 2007, 33).

En revanche, on peut noter l'activisme du gouvernement fédéral dans le financement des programmes de Recherche & Développement des technologies nécessaires au développement des ERFI : recherche à coûts partagés, développement et démonstration des technologies relatives aux énergies renouvelables. Ressources Naturelles Canada est le principal acteur fédéral dans ce domaine : en 2000, le ministère a investi l'équivalent de 11,9 millions de dollars américain pour développer les technologies nécessaires à l'exploitation des énergies renouvelables pour produire de l'électricité (Islam et al. 2004, 501-506). Le paradoxe réside alors dans le fait que le gouvernement finance des recherches sur les technologies sans avoir celles qui étaient admissibles à recevoir des fonds public...

L'existence de barrières au développement des ERFI

La littérature fait état de l'existence de barrières bien identifiées au développement rapide et conséquent des ERFI au Canada (Ibid, 506). Pour chacune de ces barrières, le gouvernement fédéral n'a entrepris aucune politique, au point que l'on puisse considérer désormais son action comme une nouvelle barrière aux ERFI. L'absence d'évaluation des externalités environnementales et sanitaires engendrées par les énergies renouvelables par les différents ministères concernés (Santé, Environnement, Ressources Naturelles), l'absence de familiarité avec les technologies relatives au développement des ERFI, qui sont financées de manière aléatoire et sans règles par Ressources Naturelles Canada, l'absence d'intervention sur le marché de l'énergie pour assurer la compétitivité des producteurs d'ERFI (alors qu'Ottawa a compétence à le faire), et l'absence de buts et de politiques à long terme pour promouvoir les énergies vertes, tout cela contribue à ralentir l'expansion des ERFI.

Si le palier fédéral en lui-même est une barrière supplémentaire, c'est parce qu'il ne sait pas remplir le rôle qui devrait être le sien. Au lieu d'agir en complémentarité des

politiques provinciales, il développe ses propres programmes, peu ambitieux et sans aucune cohérence les uns avec les autres. Au lieu d'indiquer une voie à suivre, il est incapable de définir une stratégie globale cohérente. Le bilan est donc relativement médiocre, même s'il faut prendre acte des efforts louables de Ressources Naturelles Canada dans le financement de programmes-cadres de Recherche & Développement. Cependant, le gouvernement fédéral peut encore corriger la situation :

« Le leadership et la volonté politique sont un devoir pour engendrer des programmes efficaces en ce qui a trait aux énergies renouvelables. [...] L'augmenter les dépenses gouvernementales est alors l'élément crucial dans la promotion du développement du secteur de l'énergie renouvelable, par un accroissement de la recherche, du développement et des démonstrations. » (Ibid 516-517).

Conclusion : quel degré d'efficacité des politiques fédérales et provinciales?

Après cette vue d'ensemble de l'objet « politiques sur les énergies renouvelables à faible impact au Canada », plusieurs constats s'imposent. Au niveau des provinces, celles qui sont le plus avancées dans le développement et la promotion des ERFI sont celles qui ont mis en place des programmes alliant contrainte juridique et flexibilité. Si le Québec, l'Ontario et la Manitoba font course en tête, la mise en place de renewable portfolio standards et de procédures de net-metering seront les instruments du futurs pour doper la croissance des ERFI dans les provinces. Quant au gouvernement fédéral, un examen concret des possibilités institutionnelles et politiques dont il peut user dans le domaine des énergies vertes permet de prendre conscience de l'ampleur du chemin qui lui reste à parcourir pour mettre en oeuvre une politique concrète et efficace. Avant cela, il doit (enfin) recenser les potentiels en énergie renouvelable au pays et définir les technologies qu'il veut homologuer et les buts qu'il veut atteindre, mais surtout voir de quelle manière il peut agir en complémentarité des politiques provinciales dont il semble n'avoir toujours pas pris acte.

Heureusement qu'il y a des provinces! Telle pourraient être notre conclusion, mais sur une note plus positive, on ne peut que se féliciter de la prise de conscience par l'opinion publique canadienne de l'urgence environnementale, et espérer qu'elle contraindra les provinces à la traîne et le palier fédéral à s'impliquer davantage et utilement dans le développement des ERFI, un objectif intégré au protocole de Kyoto et qui devrait participer à la réduction des émissions de gaz à effet de serre.

Notes en bas de page :

(1) On définit les ERFI comme des « formes d'énergie (lumière du soleil, vent, chaleur géothermique, puissance de vague, énergie de marée, hydro-électricité à faible impact, et matière organique) qui traversent la biosphère de la terre, disponibles pour l'usage humain indéfiniment, à condition que la base physique pour leur écoulement ne soit pas détruite. » (Jaccard2004, 413)

(2) Sauf indication, les données présentées dans cette sous-partie proviennent de larticle de Judith Lipp : « Renewable Energy Policies and the Provinces ».

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Concluding Comments

In the end Federalism-e is a big project that involves a lot of people. We would like to thank every one, but even then we might forget someone. To start, let us thank you all the writers whom participated in this year's journal, giving their best so that this edition was possible. Our thesis advisor, Dr. Christian Leuprecht, and our technical assistants, Ryan Zade and Frederic Drolet also deserved a good thank you. Without their vital contributions, none of this would have been possible. Also, the editorial board cannot be forgotten. They have worked behind the scenes, but were key members for the success of this venture. Though some of them want to stay anonymous, we would like to point out all of them that did a tremendous job.

En bout de ligne, Federalism-e est un énorme projet qui implique beaucoup de gens. Nous souhaiterions remercier tout le monde, tout en soulignant que nous allons sûrement en oublier quelques uns d'une manière ou d'une autre. Pour débuter, nous offrons nos remerciements aux auteurs du recueil de cette année, qui ont encore une fois donné leur meilleur pour que ce projet soit possible. Notre superviseur de thèse, Dr. Chrsitian Leuprecht, et nos assistants techniques, Ryan Zade et Frédéric Drolet, méritent aussi plusieurs mercis. Sans leur vitale contribution, rien n'aurait pu se faire. Aussi, on ne peut laisser les éditeurs de côté. Ils ont travaillé dans l'ombre, mais ils étaient les éléments clés pour le succès de cette aventure. Si certains d'entre eux veulent garder l'anonymat, nous souhaiterions souligner la contribution exemplaire de certains – qui sont aussi moins gênés.

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… et autres qui réclament l'anonymat / and those who wish to remain anonymous.

We hope you enjoyed this edition and now share the goal of sparking further interest in the study of federalism. We, also, encourage all our readers and past writers to think about contributing to the 2009 edition of Federalism-e, either in the volume or on the future website interactive version. Thank you all once again…

Nous souhaitons que vous ayez aimé cette édition, et espérons que vous partagez maintenant notre but de susciter l'intérêt dans l'étude du fédéralisme. Nous encourageons aussi nos lecteurs et nos anciens auteurs a contribué de nouveau dans l'édition 2009 de Federalism-e, soit dans le recueil ou dans la nouvelle version interactive du site web. Merci encore une fois de plus…

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