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Full Length Research Paper

The need for executive federalism in federal-provincial relations: The Canadian example

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Prime Minister Stephen Harper's championing of a new course of federal-provincial relations in Canada away from the traditional executive federalism has drawn a lot of scholarly concerns. His open federalism doctrine has been touted by many as the future of federalism in Canada as a way of ensuring popular inclusion, participation, and grass root representation. While agreeing to the need to ensuring openness and eliminating secrecy in the democratic dispensation, this paper argues that Prime Minister Stephen Harper's watertight federal-provincial model, if left unchecked, could be very detrimental in accommodating diversity and pluralism, and the quest of defining a true national identity. In this regard, the paper argues among other reasons that executive federalism is not an enemy to democracy, and that the roles it has played in the Canadian example is worthy of emulation in federal countries in Africa and the globe at large.

Key words: Federalism, elite accommodation, Canada, cooperation, consensus.

INTRODUCTION

Intergovernmental relations in Canada have undergone drastic changes since 1867. The 'watertight compartment intergovernmental relations that existed when Canada became a nation saw changes at the beginning of the Great Depression and the events that lead to the World War II. To combat economic challenges and a growing nation, Canadian governments saw the need to interact with one another, specifically between the bureaucrats and professionals working for the various governments as well as the apex level interactions among political elites (Seccareccia, 2013; Adams, 2016). One specific relationship that has generated significant attention in the literature is the one that exists between the elites of the two orders of government which is known to be executive

federalism. For this reason, the concept of executive federalism has permeated beyond academic discourse.

Study justification and problem statement

Democracy is often believed to be inconceivable without effective citizens' participation and involvement. As Abraham Lincoln defines it, democracy is a government of the people, by the people, and for the people (Nicolay and John, 1894). Any development that mars popular participation at any level is said to be an enemy to democracy. Many scholars are of the view that executive federalism is an enemy to democracy.

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The argument goes to state that not only does elite accommodation takes democracy away from the people, it also promotes secrecy in government business.

This has been the overriding argument against executive federalism. As such, research in this area has always been on arguing for or against executive federalism. The literature is deficient on a case study analysis of the impact of executive federalism on democracy and federalism.

Therefore, a study of the impact of executive federalism on democracy and the need to make it more robust in tackling emerging challenges that federal republics face is pertinent. By using the Canadian executive federalism as a guide, this paper can answer the problem of whether executive federalism works against democracy, and the way forward for federal-provincial relations.

This paper argues from a new-institutionalism theoretical approach that executive federalism does not work against democracy, and that it is the safest way of governing a federal republic. It does so by looking at the successes chocked in Canadian federalism and provides new challenges that require the resuscitation of executive federalism if it ever went dead.

The article unfolds by first looking at the methodology of the paper, the theoretical framework of the study, the meaning and history of executive federalism in the Canadian contest as reviewed in the literature, analysis, and conclusion.

METHODOLOGY

The article is primarily a qualitative review of articles. It thus relies on a comparative historical analysis and process tracing methodology to piece together evidence from the literature, both those in favor of executive federalism and those against executive federalism before putting forward an argument to support the need for executive federalism in all federations. To this end, relevant academic journal articles, books, media reports, and other relevant literature constitute data for this work.

Theoretical framework of study

This study is situated at the intersection off two main new institutionalism approaches. The new institutionalism literature, particularly, historical institutionalism and rational choice institutionalism is used as the analytical lens for assessing policy legacies and path dependency in federal-provincial relations. This could be instrumental in explaining the emergence of executive federalism, and the logic behind my call for elite accommodation in federal republics.

A new institutionalism framework for studying the fate of executive federalism

There has been a general consensus in the field of political science that institutions matter in shaping norms,

beliefs and actions of actors. Thus, they are prime shakers of policy outcomes (Przeworski, 2004: 527). Steinmo (2001) highlights this more when he remarked that institutions help to determine the choices of political actors and influences what actors construe to be realistic and desirable.

Historical institutionalism explains how initial choices have enduring impact on subsequent policy choices (Hall and Taylor, 1996: 6). The history behind the rise of a federation in Canada could explain why at some point in time, political elites at the federal and provincial levels adopted a federal-provincial relation that centered on accommodation, compromise, and consensus building. The interest of political leaders in seeing to the wellbeing of their people necessitated elite accommodation.

In the same way, it is important to explore why for instance, various constitutional amendments in Canada did not seek to establish constitutional provisions that seek to enshrine or eliminate elite accommodation in spite of popular agitations. Political actors act in calculated ways to team up with their compatriots when the need be. As Hall and Rosemary (1996) posit, political actors would change their preferences when institutions constraint their choices.

Executive federalism is often seen as an informal institution (March and Olsen, 2006). They are informal norms which have been established on organized norms. These do play important roles in politics (Bratton, 2007). Because of the roles of informal rules, they have the potential subvert existing formal rules in very important ways. This could explain the resilience of executive federalism despite the backlashes, and provides a way to entangle future global and national problems on executive federalism.

THE DEFINITION AND HISTORY OF EXECUTIVE FEDERALISM IN CANADA

Executive federalism is one term that has garnered considerable influence on how intergovernmental relations influence policy outcomes and consensus building in most federations in the world. The unique nature of Canada's federation meant that there was always competing interests between the provincial and federal orders of government, culminating in heated tensions and threats of secession from the federation by some provinces. These tensions are fuelled by various linguistic, cultural and regional concerns. Through it all, Canada has successfully gone through an enviable record of nation building characterized by the institution and processes of executive federalism.

Until the late 1990s, the two orders of Canada's federation made concerted efforts to solve their differences and arrived at consensus on policies and interests through "relations between elected and appointed officials" in interprovincial interactions" (Smiley, 1987:91). This is what Donald Smiley classified as

executive federalism¹. The modus operandi was to use extensive discussions and negotiations, mostly in a closed door setting to settle differences between Ottawa and the provinces.

As noted by Watts (1989), executive federalism did not emerge by chance but was influenced by certain factors in the Canadian federation. By forming a federation, states agree to come together to form a single and interdependent political unit under a central authority, while holding on to a certain order of autonomy and legitimacy. Each of the provinces in Canada's federation depended on another to perform their responsibilities which make the need for executive federalism imminent. Canada's unique system that tries to combine federal and parliamentary institutions has also been identified as contributing to the predominance of executive federalism².

Canada's executive federalism has operated with interactions of permanent public officials at the federal and provincial level. At the summit level is the interactions between cabinet ministers at the two orders of government. This level is more prominent because of the popularity and positions of the people involved. Agencies and experts serving as officials are employed to bring their expertise on board for deliberations. Thus, first ministers, ministers and senior government officials have always been in frequent discussions to ensure that citizens benefit from each order of government regarding projects and policies embarked upon by the provinces or the federal government. Kent (2007) in his book 'Federalism Renewed' provided summary of the history behind executive federalism, its achievements and the consequences of the faded concept of executive federalism.

"Canada had to be created as a federation. Only as a federation can it continue. But federalism comes in various shapes. For most of the past, in a different Canada in a different world, our first version served well enough. It failed miserably in the 1930s. In the subsequent war, it was suspended. After 1945, it was not restored but refashioned to a second version, a federalism in which the two orders of government were more mingled and collaborative. For some 30 years that served well, it gave us a quality of government admired around the world. Canadian society was transformed to fit new times. But the second federalism jibed with the politics of only one generation. Over the last 30 years, it has faded into an incoherent confusion of responsibilities, encouraging a politics of the moment, painfully weak in framing the policies on which a successful national future depends".

¹Executive federalism is "the processes of intergovernmental negotiation that are dominated by the executives of the different governments within the federal system."

Alternatively, Donald Smiley defined Executive federalism as "the relation between elected and appointed officials of the two orders of government."

¹Ibid

EXECUTIVE FEDERALISM IN CANADA: MAJOR ACTORS

To understand the Canadian federalism, one needs to appreciate the seeming intertwined angles of social, economic, institutional and political interplay between the two orders of the federation. It is along these lines that federalism has thrived in Canada. Nation building in Canada, for many years, has been shaped by the interests and ideas of provincial and federal orders responding to the ever evolving social and economic demands. The British North America Act prescribed powers for the various orders, thus section 92 detailing provincial powers and section 91 providing the powers of the federal government. With federal-provincial powers in place, the SCC was mainly involved in deciding on whether one order of the federation is acting outside its constitutional mandate.

It bears emphasising that these arrangements greatly contributed in making executive federalism a dominant mechanism in Canadian federalism. Fluidity of laws and norms effectively characterized the Canadian system, and was generally less institutionalised (Barkvis et al., 2009: 105). At the topmost of executive, federalism was the First Ministers Conferences, a term that gained currency in 1971³. There were the premiers and the council of the federation, ministerial councils, and the meeting of regional bodies. All these levels of executive federalism worked in an environment of contested interests and competition in building a nation characterized by small population, large distance, different language and values. The job has been trying to keep these forces together, which is the beauty of federalism.

NATION BUILDING IN CANADA: PROGRESSING IN COLLABORATION

The roles that executive federalism has played in Canada's nation building are worth stressing the more. Intergovernmental relations allowed governments to do away with excessive court battles that have been very characteristic of most federations. Provincial and federal orders in Canada's federation have over the years as much as possible shown hesitancy in settling their differences at the court. This in part bores down to their awareness that the court orders may jeopardize their interests and could affect the stability of the federation.

It is also argued that the courts do not give clear and unambiguous judgement. An example, is when the SCC called upon to decide on Quebec's decision to secede from the federation. This happened when in 1994 the Party Quebecois was re-elected to govern the province of Quebec held a second referendum in 1995 to determine whether the residents of Quebec wanted to separate from

³Ibid

Canada. The outcome of the referendum, 50.6% against secession to 49.4% for secession, triggered the advocates of separation to hold another referendum. The federal government unhappy with this decision submitted three reference questions to the SSC requesting an opinion on the legality of Quebec's separation from Canada. The court held that Quebec cannot unilaterally separate from Canada, unless a "clear" majority of Quebec residents vote in favour of secession and that this should be in a response to a "clear" referendum. The court went further to state that Canada must negotiate the terms of separation with the government of Quebec⁴.

More so, Canada's nation building has been very successful because of the roles executive federalism played in ensuring cooperation and compromise in a very competitive environment, a point shared by many scholars. For example, Robert and Jackson believe that intergovernmental relation has over the years facilitated cooperation and compromise between governments (Jackson and Jackson, 2008: 288). The mechanisms of conflict resolution have been the very key to the survival of Canada's federation. It is at this point that executive federation has triumphed the most in ensuring that the federation stayed intact until the constitutional amendment that has seen the end of the dominance of executive federalism. After the SCC split ruling on the federal government's power for patriation and constitutional amendment that would lead to an entrenched Charter of Rights, it was cooperation and compromise that later worked the magic. Events leading to the Kitchener accord show how cooperation and compromise helped bring some hope in the Patriation process. As Stephen Azzi points out, "Brian Peckford deserves considerable credit for our constitution, alongside Pierre Trudeau, Jean Chrétien, Roy Romanow, and Roy McMurtry. Important too were Saskatchewan's Howard Leeson, Alberta's Peter Meekison, and countless other unelected officials who shunned the spotlight and have been largely ignored in the history books".⁵

What is more, executive federalism is hailed for promoting consultations and effective harmony between the activities, interests and operations of the federal and provincial orders of government (Cameron and Richard, 2002: 49-72). One may quicken to stress that arriving at the common good is the duty of parliament. However, historical developments of the constitutional amendment and Patriation and the failure of parliament to arrive at a consensus will mean that executive federalism has indeed played crucial role in Canada's nation building. Parliamentarians often take entrenched positions in their fight for the interests of their provinces. An example is when five liberal members of parliament from

Newfoundland and Labrador threatened to resign if the then prime minister fails to honour his promise to the government of Newfoundland and Labrador regarding offshore oil revenue. Cases like this always leave the federation fragile and require harmonious consultations to thrive (Collins 2012). As Bakvis et al (2009) have noted, executive federalism, characterized by limited number of actors sometimes makes it easier to reach agreement.

THE COUNTERISTS' POSITION AND CHANGING TREND IN INTERGOVERNMENTAL RELATIONS

The predominance of executive federalism in Canada received numerous backlashes from scholars, academia, politicians, and sections of the public. Prime Minister Trudeau for instance described the concept of executive federalism as "characterized by the idea that the role of parliament in governing the country should diminish while premiers should acquire more influence over national public policy. In effect, this theory means that Canada's national government would be a council of first ministers..."⁶

The processes and outcomes of executive federalism have also been questioned. For example, the Meech Lake accord has been critically questioned. Simeon (2001) summarized the criticisms against the Meech Lake accord succinctly. He said "the process took place largely in secret, public mobilization was carefully avoided, and decisions were made by 11 first ministers, all men, making a deal, under extraordinary pressure, behind closed doors.

The result, in turn would further institutionalize executive federalism, enshrining annual first ministers' conferences on the economy and the constitution, and requiring collaboration in development of shared cost programs and appointment to the Senate and the Supreme Court" (Richard, 1988).

It has often been argued that as citizens are better educated, they become less differential and demand to be involved in the affairs of a nation. This in part, Nevitte (1996, 2002) explains how executive federalism came under siege. The introduction of the Charter of Rights in 1982 and the constraints put on the powers of both orders of the federation is argued to promote a culture of open, participatory and rights-oriented federation.⁷ It becomes unsurprising that pressures from minority groups and Aboriginals helped in persuading first ministers that a national referendum was necessary to garner popular support for the Charlottown Accord. Going forward, successive prime ministers have been guided to be more democratic and less tolerant to elite accommodation.

When we see conservative leader Harper campaign on an 'open federation', we can sense that the traditional

⁴Janigan, Mary. 1998. "The Meat of the Matter." *Maclean's*, Feb 16, 16. <http://cyber.usask.ca/login?url=http://search.proquest.com/docview/218469640?accountid=14739>.

⁵ <https://www.historicacanada.ca/blog/giving-credit-where-credits-due-rewriting-the-patriation-story/>.

⁶Ibid 2

⁷Ibid 5

application of executive federalism is on the brink of undergoing changes again. How can openness, participation, and an entrenched rights provision after the Patriation affect nation building in this unique federation of Canada? Prime Minister Harper after leading the conservative party to win three consecutive national elections starting from 2006 was never a fan of executive federalism. True to his campaign promise, he showed least interest in federal-provincial consultations, believing Ottawa must work in the interest of Canada and not to interfere or allow the provinces to interfere in federal affairs (Montpetit, 2007). To promote democracy, he believed that Ottawa and the provinces must adhere to the powers allotted them in articles 91 and 92 respectfully.

EXECUTIVE FEDERALISM HOLDS THE FUTURE OF CANADIAN NATION BUILDING PROCESS

As I start, I cannot avoid noting my disagreement with the argument made against executive federalism as undemocratic. Critics often point to mass disapproval of the Meech Lake accord. Such a claim becomes very questionable looking at how the same 'undemocratic, elitist and secretive' executive collaboration brought forth the Social Union Framework Agreement (SUFA) without any public uproar. As Allain (2010) noted, the absence of public disagreement on the passing of SUFA and other agreements reached through elite consultation could be interpreted that dissatisfaction with executive federalism, has for the time been, arise when the issue at stake worked against the majority of Canadians.

As history teaches us, the establishment of federalism in Canada and the changes that has occurred in federal-provincial relations including the patriation of the constitution, the amendment formula, the bill of rights, the Canadian Health policy, among others since the 1867 and beyond, were largely achieved with little or no popular involvement. Such is the working of executive federalism and elite accommodation rather than an unwarranted desire to overthrow a political regime.

More so, the unique nature of Canada requires a mechanism for managing diversity. Canada was created among many ideas of bringing together English and French speaking people. This is just an aspect of how diverse the country is. Managing diversity does not come easy as it requires an effective means of consultation, compromise, and mutual respect. Executive federalism has proven to be the best tool for managing diversity in Canada. Canada today is very stable as a country because executive federalism could champion the cause of fairness and justice which are prerequisites for stability. The future of Canada requires not only fair distribution of the federal cake but viable participation, inclusion and belonging. In all these instances, elite consultation would be kept going forward. For an

effective federation, there should be factors that bring the different aspects of the communities to federate. These factors must not be tied to a rigid piece of laws that have the potential of losing sight of changing demographics in diversity and human development (Franck, 1968).

In the same way, the increasing growth of globalization requires some effective elite consultations to deal with transnational threats. The threats posed to a country like Canada by globalization requires that federal-provincial executives plan on the effective ways to deal with issues of terrorism, market unpredictability, movement of goods and services, immigration challenges and the advancement in technology. As the hegemonic stability theory suggests, the rise into hegemon of one powerful country as the world leader, order, conformity and leadership would exist and thus the world would know peace. As Weber et al (2007) points out "from terrorism to global warming, the evils of globalization are more dangerous than ever before. What went wrong? The world became dependent on a single superpower. Only by correcting this imbalance can the world become a safer place". Many critics of executive federalism are of the view that to ensure an efficient working and development of a federation in tackling issues of national and global concern, the federal order should reign supreme and sovereign over the provincial order. This has not been the case as the example of the United States' hegemonic influence and the rise in global threats has proven.

In an increasingly networked society like Canada's, places that fall between the networks are very dangerous places and there will be more ungoverned zones when there is only one network to join without collaboration and frequent consultations. These ungoverned networks may supersede the capacity of the provinces. The ungoverned zones between the networks are at best filled up by executive federalism and hence executive federalism becomes inevitable for the future of Canadian federalism.

Globalization has come with new challenges. Challenges that defeats our earlier imagination of a reduced government intervention and collaborations. Our thoughts were mere fantasies. Genuine intergovernmental collaboration is inevitable no matter how difficult it would be in an era of enshrined rights and the call for transparency and participation. In the words of Kent (2007).

"A generation ago, globalisation was greeted with eager proclamations of the impending euthanasia of "big government." International markets would overwhelm the pretensions of national politicians to steer economies and redistribute wealth. The more hidden hands of high finance and transnational corporations would beneficently shape the world's work. What would remain for the public sector would be more trivial concerns, local matters where meddling and muddling by politicians could do little harm to the assets of serious business. Government is not withering away. On the contrary, more intrusive

technologies will make us more and more interdependent. We will impinge more and more upon each other, in communications and in trade, in work and in leisure, in gratifications and in ideas, in village and in city, at home and across the world. And the more we interact, the more intensive and extensive are the necessary rules of the road, the more is living together dependent on the public framework of regulation and support”.

Trudeau senior, Harper and likeminded Canadians are of the view that sovereignty cannot be shared and that the federal-provincial relations should operate in a superior-subordinate relationship. A course like this will eliminate elite accommodation between the two orders. Such an assumption may lose sight of the very essence of federalism. As Allain reiterated, in federal democracy, the central governance is only one player among others. The central government cannot be viewed as the only one true custodian of what is perceived to be “the national interest”. A position like this is needed to constraint the power of the central government and guaranteeing minorities’ sovereignty. Allain (2010) was clear on this when he quoted Reginald Whitaker that: “modern federalism is an institutionalization of the formal limitation of the national majority will as the legitimate ground for legislation. Any functioning federal system denies by its very processes that the national majority is the efficient expression of the sovereignty of the people; a federation replaces this majority with a more diffuse definition of sovereignty. It does this not by denying the democratic principle as such, but by advancing a more complex definition of democratic citizenship. As a result, individuals find political expression and representation in dual (sometimes even multiple) manifestations which may even be contradictory and antagonistic”.

Similarly, the utmost national interest of any federation should be the ability to, in the words of Michael Burgess, “protect, promote and preserve one or more sub-state nationalisms”. Achieving this feat in the future may require greater recognition of the needs of the various provinces as and when they arise without creating any form of resentment and biases amongst the provinces. Executive federalism, through round table discussions and consultations and ultimate consensus is the safest approach to avoid resentment and any ill-feel of cheating and deceit.

What is more? In every federation, there is the need for effective competition stemming not only from businesses, intellectuals, civil societies, religious groups, Aboriginals, language, culture and the various forms of interest groups but also competition between the legislative and executive branches. The lack of this elite level competition produces a shortage of checks and balances in the political structure which has been the character of the Canadian parliamentary system of government. To keep a balance, bridge the gap, elite competition through consultations and accommodation would be pivotal. Executive federalism has proven since World War II that

it has the capacity to provide checks and balances while maintaining the needed synergy for nation building. Undoubtedly, the Canadian Constitution laid out a model of intrastate federalism. This original idea has withered to embrace a more interstate model (Smiley, 1977). As Smiley pointed out, one of the reasons for the new interstate federation (executive federalism) has been the lack of spelt out roles of the provinces in deciding the formal makeup of federal institutions. For example, unlike their German counterpart, Smiley opines that the Canadian provincial governments are not given a say over the selection of senators. Whereas the German Lander is given input into Bundesrat, the Canadian provinces lack this capacity. This makes the Canadian Senate a powerful political tool serving the interest of the federal government but unable to serve as house of regional representation (Smiley, 1974: 15; Pelletier, 2002: 4). With the senate, unable to provide a legitimate intrastate voice for championing provincial interests (Williams, 2007: 17). To fill the challenges created in such a development, executive federalism has presented an effective interstate mechanism for nation building in Canada and would still be required going forward.

In the same direction, executive federalism becomes inevitable in a centralised power system at the federal level. The ability of responsible government to effectively express regional interests within the federal government has been limited. Essentially, the centralization of power projects a principle of ministerial and collective responsibility. This mechanism promotes majoritarian party discipline at the house of commons and other provincial assemblies (Malcolmson and Myers, 2002). For this reason, the power of the Prime Minister is enhanced over the power of Parliament. Parliament at the end becomes ineffective in promoting and representing regional bodies. This has defeated the intrastate federal interest the Constitution seeks to achieve. For this reason, executive federalism becomes the reliable means of promoting regional representation.

One known critic of executive federation, Donald Smiley, in his book ‘Federal Condition’ admitted that “the constitutional distribution of powers between parliament and the provinces underlies a situation in which the two orders of government are highly interdependent”. Such an interdependence was very effective under executive federalism until Prime Minister Harper adopted his ‘open federalism’ concept.

To prevent recent occurrences like the outcome of the Assisted Human Reproduction Act (Ref re AHRA) in 2010 by the Supreme Court of Canada and similar legal challenges on private healthcare require a return to executive federalism as the safest guide of the Canadian nation building. More importantly, since the Canadian Constitution bestows explicit powers upon the two orders of government, it is necessary for the provincial and federal governments to interact and arrive at consensus whenever disagreements crop up. It is always necessary that “... a continuous process of federal-provincial

consultation and negotiation is at the heart of the Canadian federal system” (Deschamps and Lebel, 2010)

As Cairn (1977) points out, the two orders of government in Canadian federalism are expected to perform distinct set of roles. To enhance the performance of these roles, bureaucracies are needed at both orders of government. With a well set up bureaucracies, political elites are in a good position to advance the state building processes through consultations compromising. Their very nature makes elite accommodation the prudent mechanism for settling regional interests that may arise.

Avoiding consultations and elite accommodation would imply an assumption that the autonomy and an establishment or the orders of the federation as enough in accomplishing an effective nation building process. On the contrary, the equality in status between the two orders of government and the autonomy of the provinces provide the very reason why constant consultations, compromise and accommodation are required in the nation building process. The provincial and federal governments have their own jurisdictions in which they are autonomous and on the same order. For this reason, it is important to note that for the orders to pursue nation-building strategies on the same footing and in the same direction, there is the federal and provincial political elites to engage in consultations and taking decisions that would be championed by all rather than strict adherence to and the believe that the provincial and federal powers could work it all.

Moreover, critics argue that executive federalism created undue federal-provincial tension and strife. Kent (2005) while championing for the democratization of executive federalism argued that “Canada cannot live with the federal-provincial strife of the past ten years. It confuses responsibilities. Its uncertainties frustrate sound planning and administration for health and education and much else. And where it is leading has become all too probable. Present politics make the provinces strong, Ottawa weak. The existing government does not as yet admit to the existence of fiscal imbalance but its actions put it on the road toward capitulation before the business and provincial pressures to diminish the role of national government”. He further noted that situations that may call for executive federalism can be avoided if Ottawa adheres to the constitutional provisions. Kent’s argument cannot be relied upon. Fortunately, history guides us to understand how federal-provincial governments misinterpreted the constitutional regarding issues of jurisdiction. The SCC is often called upon to settle on those matters. The aftermaths have not always been successful. For example, the judicial affirmation of the Aboriginal and Treaty Rights has not achieved any significant feat. The Aboriginal and treaty rights have been won on the legal battle but it can also be argued that the battle has been lost when it comes to practicality. Implementing the Aboriginal and Treaty rights now requires cooperation, consultation and bureaucratic

interactions between the federal government and the provinces.

It is only logical that as mankind progresses, new considerations and accommodations are required. These new considerations and accommodations are needed to tackle new challenges that may be lacking clarity either in law or in practice. Executive federalism provides the platform for accommodating new challenges while finding immediate solutions to them. These does not decolour the beauty of democracy in anyway but rather expresses the beauty and flexibility of federalism. Federal constitutions are in part friendly to co-operative federalism. In the Québec (Attorney General) v. Canada (Attorney General), 2015 SCC 14 case on long-gun registry information, the four dissenting judges recognised that the ancillary powers of section 29 allows the both orders of government to validly pass a legislation that affects the other’s jurisdiction. They however pointed out clearly that those doctrines cannot be understood without reference to co-operative federalism (Leslie, 1999). As Zachary et al. (2015) noted on the supreme court’s ruling of the case, the unwritten principles of federalism and, most important, co-operative federalism must “infuse the analysis and interpretation of the division of powers”, thereby allowing both levels of government to legislate efficiently in areas of shared jurisdiction or where the matters overlap. Only by applying the pith and substance doctrine in a way that recognizes the increasingly complex nature of coordinated federal and provincial legislative schemes, can modern federalism meet the local needs of unity and diversity”.

Conclusion

Analysing the argument put forward thus far, it is important to field in the theoretical approach of this article to make meaning of what the future requires of federal-provincial relations. History-dependent processes influence political outcomes and choices. Politics, policies, and political relations should always be recounted on historical processes. The history behind the formation of federations can never be forgotten in this era. As such, the best remedy to give flexibility in intergovernmental relations is executive federalism.

Moreover, new developments require new measures that are not always ever present in formal rules and institutions. The need for a new world order at certain point I time necessitates the need for executive federalism. As Olsen and March (2006) postulated, new institutionalism redefines our understanding of the world order. We can find meaning in national and global order from the rational choice or new economic institutionalism approach. Elite accommodation can therefore provide the order and meaning we require to tackle pressing issues of national and global concern.

In the same vein, there has always existed an

interdependence between social and political institutions. Executive federalism can work perfectly by linking these relatively autonomous and coherent institutions together for the common good, through consensus building. From the historical and rational choice perspective, we can envisage a theoretically that distribution of resources in a federal republic would always be uneven. Actors' success in cooperating for the common good would best be seen in executive federalism that works on rationality based consensus.


In fine, this article takes the position that executive federalism could be the fulcrum of the future of Canadian federalism. While admitting that the elite accommodation may be too secretive and unrepresentative of the peoples' interests, a noble justification for federal-provincial elite accommodation has been presented. At the same time, it must be emphasised that the elite accommodation and arriving at a consensus could incorporate transparency and representation as and when needed to maintain and encourage popular participation and democracy. Town hall discussions, debates and seminars could be employed in tandem with executive federalism.

CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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