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OPEN FEDERALISM:HARPER'S PROPOSAL FOR CANADIAN FEDERALISM

Introduction

In order to try and address certain pressing issues in contemporary Canadian politics, the Harper government has developed the concept of open federalism aimed at protecting areas of provincial jurisdiction from federal influence. Although this system of federalism is not entirely new in Canadian politics, it would be a change in the current relationship between the federal and provincial levels of government. While the concept of open federalism does make an intriguing argument to address certain issues in contemporary Canadian politics, especially concerning Quebec, it does not necessarily address issues in most other provinces or work to strengthen national unity outside of Quebec.

This paper will begin first by defining federalism and providing a brief overview of its history in Canada. Secondly, Harper's proposal of "open federalism" will be defined and compared to other forms of Canadian federalism. Next, open federalism, as an appropriate and effective response to contemporary issues will be analyzed. More specifically, the question of whether or not open federalism will increase national unity and strengthen federal-provincial relations will be answered. Issues concerning Quebec and Alberta will be highlighted, including proposed solutions to the problem of fiscal imbalance, before recognizing the shortcomings of open federalism and its implications for smaller, less powerful provinces. This paper will conclude by arguing that the type of decentralized government proposed in open federalism could lead to a race-to-the-bottom that would entail the destruction of national social policies and institutions that are, in part, intended to unite Canada.

Federalism

Federalism is defined as being a political system in which legislative power is distributed between two or more constitutionally distinct levels of government (Robinson and

Simeon, 2004). In Canada, power is divided between the federal government, and provincial or territorial governments. The *Constitution Act of 1867* (previously entitled the *British North America Act*) clearly defined the division of powers between these two levels of government. The federal government was given jurisdiction over areas such as defence, criminal law, postal service, and transportation. The provincial governments were given control over separate areas such as education, health, and welfare. The division of power was clearly defined in the *Constitution Act of 1867* and each level of government was to remain within its appointed jurisdictions.

This distinct separation of powers became increasingly diluted in the years following the *Constitution Act of 1867*. The federal government became more involved in the affairs of the provinces in attempts to establish a stronger national identity. An example of this is a nationalizing vision; a dimension of Canadian federalism intended to strengthen the federation. This vision in Canadian politics was aimed at denying other sources of political identity, particularly identities based upon region or province, by creating a more centralized government (Rocher and Smith, 2003). Agreements, such as the Social Union Framework Agreement (SUFA), were created based on a nationalizing vision and reinforced the federal government's spending power in areas of provincial jurisdiction (Rocher and Smith, 2003). This form of federalism, was not defined by a strict division of power that had been the basis of the original form of Canadian federalism. It is worth noting that when the Canadian Constitution was created, it was actually intended to be very centralized, and basically quasi-federal. However, due to early rulings made by the Judicial Committee of the Privy Council (JCPC) that took away certain powers from the federal government, Canada began as a highly decentralized federal state (Baier, 2007).

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Open Federalism

Harper's proposal of open federalism is, in a sense, not new, because it would be a return to a more decentralized federal system. Open federalism is a type of federalism that, according to Harper, involves a "renewed respect for the division of powers between the federal and provincial governments" (Harmes, 2007, p. 417) that would have a strong central government, but that government would respect the exclusive jurisdiction of the provinces. Open federalism involves a more decentralized federation, characterized by a higher level of respect for the constitutional division of powers. It is a proposal that would try to "reverse years of federal encroachment into areas of provincial jurisdiction and to satisfy the aspirations of Quebec nationalists" (Harmes, 2007, p. 418). It would aim to achieve a strong central government through efficiency in constitutionally mandated areas of federal responsibility. Essentially, open federalism is intended please the provincial and territorial sub-units of Canada by giving them autonomy over powers set out in the constitution, and have the federal government focus its energy on its own constitutionally entrenched powers.

The Conservative Party of Canada's *Policy Declaration* (2005), which was adopted at its National Policy Convention, states that they support "the restoration of a constitutional balance between the federal and provincial and territorial governments" (p. 6). The idea of strong provinces within Canada is also accepted with the premise that the federal government "should work co-operatively with the provinces to improve the lives of Canadians while respecting the division of power and responsibilities outlined in the Constitution" (Conservative Party of Canada, 2005, p. 6). The *Policy Declaration* (2005) continues on to say that federal spending in areas of provincial jurisdiction should be limited, and that there should also be an opt-out formula that includes full compensation should a province decide to refuse federal involvement in an

area of provincial jurisdiction.

The *Policy Declaration* adopted by the Conservative Party under Harper generally implies a level of focus on "the original distribution of powers in the Constitution Act and support for disentangling the activities of the orders of government" (Young, 2006, p.19). It would be a return to a federalist system more like the highly decentralized system of federalism in Canada's earlier years. Therefore, it can be concluded that the Harper Conservatives' proposed concept of open federalism is new, in a sense, because it is different than the recent centralized form of federalism. However, open federalism is also not entirely new because it is a concept that can be compared to earlier forms of federalism in Canada's political history. The Harper government cannot return completely to a federal system like the one in the early years of Canada because areas such as the environment, transportation, and infrastructure will demand collaborative cooperation (The Ottawa Citizen, 2006), but this is as close a return as possible, given the societal changes that have occurred over the last century or so.

Role in Addressing Contemporary Issues in Canada

The concept of open federalism is primarily concerned with increasing national unity and strengthening provincial relations as sub-units in the Canadian federation. Operating as a minority government, it is the Harper Conservatives' goal to obtain a majority government by getting the provinces and their citizens on board with open federalism. Having the support of Alberta and Quebec would significantly improve Harper's chance of having a majority government and it is likely that both Alberta and Quebec would support, although for different reasons, a more decentralized federal system. As Young (2006) points out, Harper has proposed deeper reform in the way of open federalism in order to address Quebec's situation within Canada (more specifically Quebec's non-signature of the Constitution), Western alienation, and the

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need to build a long-term partnership with Canada's aboriginal peoples. These are important issues in contemporary Canadian politics that open federalism is concerned with. This paper will be primarily focused on Quebec's situation within Canada in terms of open federalism.

The issue of Quebec's situation within Canada is certainly not a new one in Canadian politics. Because of Quebec's unique linguistic and ethnic culture, its position within Canada is different in that it is not an Anglophone majority. The majority of Quebec's citizens are Francophone and French is the province's official language, so this naturally alters its relationship with the rest of the country. Quebec's unique situation has been a hot topic in Canadian politics for years, and numerous Prime Ministers before Harper have tried to incorporate Quebec's demands into the federal system. Mulroney's famous failed attempts at constitutional reform in Meech Lake and Charlottetown intended to improve Quebec's position in Canada, but ended up providing ammunition for the secession movement in Quebec. Open federalism is Harper's way of recognizing Quebec's unique situation in Canada and adhering to its demands for increased political autonomy through policy change rather than constitutional reform.

The federal government of Canada has for years used its 'spending power' in areas of provincial jurisdiction, whether or not it was welcomed by the province. According to Telford (2008), 'spending power' gives the federal government "the authority to extend grants to the provinces to create and support programs that are matters of exclusive provincial jurisdiction" (p. 15). "This power has been controversial, particularly among

those Canadians, especially in Quebec, who insist on strict adherence to the principle of the provinces' autonomy in their exclusive jurisdictions" (Brown, 2007, p.65). Open federalism addresses this by clearly stating that the federal government should limit its involvement in provincial jurisdiction and promote national unity through its own areas of power. This approach is very clear, but as open federalism addresses the financial characteristic of federal-provincial relations in a deeper manner, the issue becomes more complex.

The fiscal imbalance that exists between the federal and provincial levels of government has been an especially important topic in Quebec, and open federalism proposes a plan to help end this financial issue. As defined by Brown (2007), "a fiscal imbalance exists when a province's revenues are still not sufficient to meet its needs, even after federal transfers are taken into account" (p.67). This was the case in Canada before the recession; with the federal government running a surplus while most, or all provinces were in debt. This imbalance means that the federal government has more financial resources than necessary, while provincial governments do not have enough resources to meet their spending responsibilities. Quebec has been persistent in demanding that this fiscal imbalance be recognized and addressed. Quebec accuses the federal government of using "its spending power to bolster its presence in, and control over, the areas of provincial jurisdiction, despite the opposition" (Commission on Fiscal Imbalance, 2001) when the provinces cannot meet their own spending responsibilities.

Open federalism, according to the Harper government, acknowledges that a fiscal imbalance does exist. However, Harmes (2007) notes that their pro-

posed solution is very ambiguous (p.419). The options proposed are varied, and "would each have very different implications for the distribution of powers between the federal and provincial governments" (Harmes, 2007, p.419). In considering that federal spending power, according to Harper, has been "outrageous" and "gave rise to domineering and paternalistic federalism" (Harmes, 2007, p.420), increasing federal transfers to the provinces would have to include an opt-in or opt-out clause in order to be even considered by provinces as a solution to the fiscal imbalance. However, this could prove to be problematic because what would be the incentive for provinces to opt-in, if given the option of opting out? Federal transfers, like the Canada Health Transfer (CHT) and the Canada Social Transfer (CST), are conditional payments to be spent in the areas of health care, welfare, post-secondary education, etc. As Brown (2007) acknowledges, payments like these are "important means through which the federal government can build national programs while leaving their delivery to the provincial governments" (p.68). However, if given the option of opting out, provinces may decide to neglect social programs and use these transfers in other areas. Since it is more beneficial, economically, for provinces to attract businesses rather than people who require social assistance programs, provinces might find themselves in a race-to-the-bottom where they reduce corporate taxes in competition with one another to attract businesses. This would certainly lead to the destruction of social programs, and is an example that supports Gibbins (1998) assessment that "decentralization is incompatible with the maintenance of national standards" (p.145).

The federal government could decrease taxation on its citizens, which would then allow more tax room for the

provinces to increase their own taxes independently. This would ideally put an end to the fiscal imbalance and provide provincial governments with appropriate funds to provide adequate social programs. However, this system is not a perfect one. Because the wealth of citizens varies from province to province, the amount of money available to be raised from taxes in each province also varies on a per person basis. This means that there would now be a horizontal fiscal imbalance. Because the citizens in Alberta are wealthier than those in Prince Edward Island, the Alberta government could raise much more money, per citizen, than the P.E.I. government could.

Another option available to the Harper government would be to simply enrich equalization payments. This would likely earn Quebec's approval, because equalization payments are unconditional the provincial government would be able to control how the money is spent without intervention from the federal government. This doesn't seem to be a completely effective solution either, even though it would have the support of Quebec, because it would have a similar result as the opt-in or opt-out clause discussed earlier. Having the ability to decide how these funds should be distributed on an individual provincial basis would likely cause social programs, which are very important, especially in Canada's smaller, poorer provinces, to deteriorate. I think the federal government could most definitely improve Quebec's position within Canada by implementing open federalism. However, I also find that open federalism may be problematic in other ways because it ignores the regions of Canada that would be in favour of maintaining a national standard for social programs.

An Effective Strategy?

I understand that the goal of any minority government is to become a majority government, and, while earning support in every province is important, it is especially difficult to do so without having the support of Quebec and Alberta. Therefore, it does make sense for the Harper government to implement open federalism, allowing provinces to work freely within their jurisdiction, and even the financial playing field between the two levels of government would certainly improve Quebec's support and would likely do the same in Alberta. Open federalism is about "national unity" and is "meant to address issues arising out of the Canadian federation's regional and linguistic cleavages" (Harmes, 2007, p.427). However, by focusing so much attention on pleasing Quebec, Harper's concept of open federalism fails to recognize other parts of Canada. Lost in the debate of open federalism, is what this concept would mean to smaller, less powerful provinces such as Manitoba, and the Atlantic provinces.

Central to the concept of open federalism is the removal of the federal government in areas of provincial jurisdiction. This is largely tied to social institutions that were originally under control of provinces, but which have been overtaken or influenced by the federal government. Open federalism would have the federal government withdraw their influence over these institutions. But do all provinces want complete control over their social institutions? Do smaller provinces, such as P.E.I. or New Brunswick, have the capabilities to handle these programs? Perhaps it is just powerful provinces, such as Quebec and Ontario, which want more control over the social institutions in their province. If the federal government removes itself from areas of social policy (as would be the case in open federalism) and the social institutions begin to deteriorate in Cana-

da's smaller provinces, then all open federalism would have accomplished is the strengthening of the larger provinces, and the alienation of weaker ones.

Canada is a country of many differences. Because of our vast territory, and our cultural, ethnic, and linguistic differences, it can often be hard to get all citizens to feel united in one country. The national programs and social institutions that are funded by the federal government are not perfect. They are however, intended to be equal from one province to the next and they do serve as a means of connecting citizens across the country. Federal transfers to provinces and the financial imbalance that has existed because of financial discrepancies certainly should be addressed, but having the federal government essentially remove itself from social policies and institutions is not the answer to unifying Canada. Although certainly not a perfect system, intergovernmental transfer payments are an important means "through which the federal government can build national programs while leaving their delivery to the provincial governments" (Brown, 2007, p.68). Open federalism might strengthen certain parts of Canada, but it also may weaken and alienate other areas.

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Complying to meet the demands of one or more provinces is not the way to strengthen national unity. In fact, since the Harper government has begun implementing open federalism “the tenor of intergovernmental relations has been raised but not in a harmonious pitch” (Brock, 2007, p.2). There is certainly an argument, which can be made, that the Harper government “may fuel the very fires of national disintegration which they seek to quell” (Brock, 2007, p.3).

Conclusion

Open federalism does serve as an interesting and possibly effective option in addressing certain questions in contemporary Canadian politics. It does propose an interesting solution to Quebec’s demand to resolve the fiscal imbalance and their demands for increased autonomy. It also might very well please Alberta, as open federalism would allow Alberta to have more control over its massive revenues from oil and gas (Brown, 2007, p.63). Open federalism might also be well supported by the business community of Canada because it would return “the federal government to something closer to the role of the night watchman state” (Harmes, 2007, 433). Open federalism is certainly a concept that does have support in Canada and it may, in fact, be a useful strategy used by Harper to achieve a majority government in the next election.

It is important to recognize the support for open federalism because it does propose an interesting platform to gain Quebec’s support, but it would be unwise to ignore the repercussions that could arise from its implementation. This type of decentralization of government could create the conditions for “a race to the bottom and a further shredding of the safety social net” (Harmes, 2007, p.434). This destruction of the national social policies and institutions that connect Canada from province-to-province would, most certainly,

have an impact on Canadian citizens and most likely be a detriment to strengthening a united country. In a government press release promoting open federalism, Harper is quoted as saying “Canadians want their governments to work for them. They are fed up with the spectacle of turf wars and squabbling over money. They want their leaders to work together to deal with real-life priorities” (The Office of the Prime Minister, 2006). This is likely an accurate statement of national sentiment, but what is going to be Canadians’ response if open federalism fails? What if open federalism fails and the concept ends up being unpopular because certain provinces lack the capabilities to run their own social programs? The 1995 Referendum that almost saw Quebec vote in favour of secession was a response to two failed attempts at constitutional reform. It is hard to say with any degree of confidence that Canada can handle another Prime Minister’s failed attempt to unify the country.

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