FEDERALISM-E

How does Canada's Decentralized Federation Impact Environmental Regulations?

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Federalism-E is founded by the Royal Military College of Canada and the Institute of Intergovernmental Relations at Queen's University - ISSN 2562-3435

Federalism-E Vol. 21, No.1 (2019)
DOI: 10.24908/fede.v21i1.13849

Federalism-e is an electronic student journal about federalism, multi-level governance, and intergovernmental relations put forth in collaboration between Queen's University and the Royal Military College of Canada. This annual journal will publish papers by undergraduate students, which are reviewed by an editorial board composed of their peers, in both English and French languages. It is a bilingual, undergraduate electronic journal with a mandate to provide a forum to encourage research and scholarly debate with respect to a wide variety of issues concerning federalism both within Canada and abroad.

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Introduction

Canada is a decentralized federation: there is a division of power between the federal and provincial governments such that neither is subordinate to the other.¹ This political structure muddles responsibilities in terms of environmental regulation, an area already saturated with failures. David R. Boyd's *Cleaner, Greener, and Healthier* sheds light on these failures. He argues that fossil fuels take the lion's share of environmental hazards which ultimately hurt human health.² Primary examples include cancer, cardiovascular disease, and stunted mental growth.³ The OECD has criticized Canada for its lackluster environmental regulation and "perverse subsidies for unsustainable industries."⁴ This begs the following: why are Canadian environmental regulations not as stringent and prevalent? This essay will argue that Canada's decentralized federation is a barrier to strong environmental regulations because it impedes effective federal actions. Ultimately, the resulting dissonance translates into weak environmental policies at all levels of the government.

The following essay has four main arguments which defend the thesis followed by counter arguments, and refutations. The *first* argument addresses the Constitution's ambiguity in terms of environmental regulation. The *second* argument makes the claim that Canada's decentralized federation is a funnel for a regionalistic stance towards natural resource management which inflames regional economic tensions in provinces. The *third* argument states Canada's decentralized federation creates a patchwork of conflicting policies at subnational levels which cannot be easily harmonized in accordance with the unique economic demands of each province. The fourth, and final, argument claims that Canada's decentralized federation forces the federal government to compromise policies for areas under its jurisdiction, namely the Kyoto Protocol.

The Constitution's ambiguity

A leading scholar on Canadian politics, Cochrane argues the Canadian Constitution's ambiguity on the matter of environmental jurisdiction is a key barrier to effective environmental

¹ Chris Cochrane, Kelly Blidook, and Rank Dyck, *Canadian Politics: Critical Approaches* 8th edition. (Toronto, ON: Nelson Education, 2017), 421.

² David R. Boyd, *Cleaner, Greener, Healthier: A Prescription for Stronger Canadian Environmental Laws and Policies*, (Vancouver, BC: University of British Columbia Press, 2015), 274.

³ Ibid., 3.

⁴ Ibid., 6.

regulations because responsibilities for mitigating climate change are not clearly defined.⁵ Furthermore, a strong decentralized federation prevents federal government from interfering in provincial matters at will.⁶ The Constitution Act of 1867 has almost no conversation about climate change mitigation, much less who is responsible for what.⁷ Nevertheless, climate change policies fall under the jurisdiction of both the federal and provincial government. Some areas are well defined, like provinces owning its natural resources.⁸ Other times, jurisdiction is not as clear and therein lies the problem: shared areas of jurisdiction translate into overlapping authority which complicate matters. For instance, the federal government can enter international environmental treaties, yet the provinces hold control over areas which are critical to the treaty's enactment, like "natural resources, energy, and local economies". The key areas of climate change fall to provincial will -- thus the powers of the federal government do not always translate into a coherent course of action.⁹ One can therefore argue that Canada's decentralized federation was posed to become an issue for climate change policies. The Fathers of Confederation could not have predicted climate change would be such a prevalent issue today.¹⁰ Canada's decentralized federation further complicates matters by allowing the provinces to adopt an isolationist approach when it comes to environmental regulation.

Discrepancies between provinces

A strongly decentralized federation can inadvertently pose a hurdle to sound environmental regulations because it impedes effective federal actions by promoting a venue which enables the manifestation of a regionalistic stance toward natural resource management. Ironically, the Constitution obscures environmental duties and this is further exacerbated by the division of power introduced by federalism. For instance, during the 1990's, Ottawa further delegated powers and responsibilities to the provinces.¹¹ This enabled Quebec and Ontario to

⁵ Cochrane, Blidook, and Dyck, *Canadian Politics*, 445.

⁶ Cochrane, Blidook, and Dyck, *Canadian Politics*, 445.

⁷ Evan Romanow, "Federalism, Climate Change and the Role of Provinces in Domestic and Foreign Policy-Making in Canada," *Masters Abstracts International* 50, no.3 (2012): 12.

⁸ Andrea Olive, *The Canadian Environment in Political Context*, (Toronto, Ontario: University of Toronto Press, 2016), 29.

⁹ Romanow, "Federalism, Climate Change and the Role of Provinces," 12.

¹⁰ Olive, *The Canadian Environment in Political Context*, 25.

¹¹ *Ibid.*, 33.

prioritize their desires over others due to their larger number of seats in Parliament.¹² This results in Western alienation and causes provinces to look towards their respective provincial governments as opposed to Ottawa.¹³ In the past 50 years, each province's respective economic staple, like oil for Alberta, has "turned federalism into conflict over regional economic interests."¹⁴ Obviously, decentralized federalism exacerbates the tension surrounding natural resource management. The existing economic tension was amplified in the political arena in the form of Western Alienation. Provinces would rather turn to their government which they believe is more attuned to their respective needs rather than the Quebec-Ontario dominated Parliament.

A counter-argument may claim that Canada's decentralized federation is not a barrier to strong environmental regulation. Instead, it is the economic forces and political leadership which thwart the effective implementation of regulations. Currently, Canada's economy is mainly a derivative of its natural resources, particularly solid and liquid metals.¹⁵ This is a continuation of the historical trend of Canadian dependency on "export of staples, like minerals and energy."¹⁶ Political leaders have followed suit as well. For a good decade, the Conservatives were in power and Stephen Harper's administration was not environmentally conscious.¹⁷ The Conservative government was responsible for "sweeping regressive changes to environmental regulations," like the Navigable Waters Protection Act.¹⁸ This was intended to accommodate for Canada's growing dependency on "staple resource extraction," which accounted for 20 percent of the nation's GDP.¹⁹ Clearly, the hand-in-hand combination of economic and political forces are primarily responsible for poor environmental regulations. The combination of economic and political forces magnifies the lucrative nature of natural resources which explains why political leaders promote their use at the cost of sound environmental regulations.

¹² Ibid., 47.

¹³ Olive, *The Canadian Environment in Political Context*, 47.

¹⁴ Ibid.

¹⁵ Cochrane, Blidook, and Dyck, *Canadian Politics*, 48.

¹⁶ Cochrane, Blidook, and Dyck, *Canadian Politics*, 48.

¹⁷ Robert MacNeil and Matthew Paterson, "This changes everything? Canadian climate policy and the 2015 election," *Environmental Politics* 25, no. 3(2016): 82.

¹⁸ Robert MacNeil, "The Decline of Canadian Regulation: Neoliberalism and the Staples Bias," *Studies in Political Economy* 93, (2014): 82.

¹⁹ Ibid.

The opposition makes a valid point about the influence of economic and political forces being behind poor environmental regulations, however, it overlooks the role of Canada's decentralized federation. The aforementioned political structure is what allows for such forces to weaken regulations and impedes effective action at the federal level. There is a plethora of diverse interests at the provincial level and trying to harmonize them at a national scale is exceedingly difficult.²⁰ Climate change policies are especially susceptible to complications because "the content of climate change negotiations is primarily subnational and tends to consist of a multitude of uncoordinated efforts."²¹ This was a reason as to why Kyoto Protocol failed for Canada: the two levels of government could not come to a consensus to act as one on the domestic and international stages.²² Obviously, Canada's decentralized federation facilitates the establishment of footholds for political and economic forces to disrupt any attempts at a national climate change policy. As the opposition previously stated, Harper's administration championed petrol production and the mining industry.²³ Subsequently, he furthered his stance by taking advantage of the ambiguity offered by the Constitution to bend environmental rules to favor the economic situation. The political structure is responsible for the mismatched environmental policies across Canada.

Patchwork of environmental regulations

Canada's decentralized federation creates a patchwork of conflicting policies at subnational levels because each province's standard is uniquely tailored to its own demands. This prevents the harmonization of policies on the national-level. Harper's government introduced regressive environmental regulations, but the regulations did not vanish entirely because provinces implemented their respective emission mitigating policies.²⁴ However, the provinces did not consult with one another regarding what policies they were going to implement. As a result, there were multiple policies across Canada with varying degrees of stringency which impeded national-level harmonization. For instance, British Columbia has a revenue neutral carbon tax, whereas Quebec has a cap and trade system which is harmonized with California.²⁵

²⁰ Romanow, "Federalism, Climate Change and the Role of Provinces," 3.

²¹ Ibid., 6.

²² Ibid., 11.

²³ Cochrane, Blidook, and Dyck, *Canadian Politics*, 445.

²⁴ MacNeil and Paterson, "This changes everything Canadian climate policy and the 2015 election," 556.

²⁵ Ibid., 557.

Indeed, the realities of federalism are not lost on the current Prime Minister: Justin Trudeau never committed to highly ambitious emission mitigation goals while campaigning.²⁶ He did so knowing that Ottawa has neither direct control over the main “greenhouse gas emitting activities such as natural resource extraction...or urban planning,” nor can it force the provinces to harmonize their policies.²⁷ Clearly, Canada’s decentralized federation is a barrier to strong environmental regulations because the implementation of any proposal falls to the provinces. The subnational government understandably prioritizes its own needs as opposed to compromising with other provinces’ standards. This ultimately poses a barrier to effective federal action.

An opposing viewpoint may argue Canada’s decentralized federation is not a barrier to strong environmental regulations, instead it is Canada’s position as an energy exporter which is the barrier. In terms of political structure, the EU is also a decentralized federation and it performs better than Canada environmentally speaking.²⁸ It is the EU’s status as a net importer of energy which incentivize the nations to perform better environmentally because energy costs are rising globally.²⁹ Consequently, the onus is on producing energy domestically and diversifying energy production beyond fossil fuels.³⁰ Therefore, the EU links its economy’s competitiveness to the strength of its environmental policies.³¹ By contrast, Canada is a net exporter of energy and believes its economy hinges on the extraction of “oil and gas resources in the Western provinces, like Alberta.”³² Subsequently, this results in deprioritizing rigorous environmental policies. For instance, Canada prioritizes harmonizing with the United States’ environmental standards and principles for the sake of the economy as opposed to environmental health.³³

²⁶ Ibid., 556.

²⁷ MacNeil and Paterson, “This changes everything Canadian climate policy and the 2015 election,” 556.

²⁸ Miranda A. Schreurs, “Federalism and the climate: Canada and the European Union,” *International Journal* 66, no.1(2011): 95.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid., 94.

³³ Ibid., 103.

Obviously, the deciding barrier to strong environmental regulations is Canada's status as a net energy exporter, rather than an importer like the EU.

The opposition makes a valid point about the implications of being a net exporter of energy versus net importer; however, Canada's decentralized federation is nonetheless an important factor because it makes provinces the sole managers of natural resources. The provincial ownership of natural resources translates into a higher probability of giving into the demands of the fossil fuel industry, which weakens the impact of regulations. For example, the provincial governments streamline regulations by "centralizing authority for environmental protection into a one window approach."³⁴ Since the regulations target lucrative products, the provincial government tends to place regulatory authority in agencies which prioritize the industry's needs over environmental protection.³⁵ For instance, British Columbia adopted the aforementioned single window approach in 2010, which effectively gave the Oil and Gas Commission the primary regulatory authority.³⁶ The Commission officially has the power to approve permits for building roads and water usage, which is especially questionable because fracking pollutes aquifers.³⁷ Subsequently, provinces can delegate their regulatory authority to lower levels: in this case, they are delegating to institutions which do not necessarily have the best interests of the environment. Beyond the national level, Canada's decentralized federation also interferes with the implementation of international agreements like the Kyoto Protocol.

Failure of the Kyoto Protocol

Environmental regulations in Canada needlessly suffer due to the nature of decentralized federalism. A clashing agenda between the national and subnational governments forces Ottawa to compromise on policies for areas under its jurisdiction. For instance, the Kyoto Protocol's defeat in Canada is a symptom of the subversion of environmental regulations due to federalism. Alberta was one of the most vocal opponents against Kyoto and it formally lodged a complaint in 2005.³⁸ The province proclaimed Kyoto would severely setback the "lucrative oil and gas

³⁴ Miranda A. Schreurs, "Federalism and the climate: Canada and the European Union," *International Journal* 66, no.1(2011): 67.

³⁵ Ibid., 66.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Christopher Napoli, "Understanding Kyoto's Failure." *SAIS Review* 32, no. 2(2012): 192.

industry” by decreasing Canada’s competitiveness compared to other oil producing nations.³⁹ Ultimately, Alberta’s complaint was adhered to. While Ottawa never formally agreed with Alberta and it did not resolve Alberta’s complaint, the federal government did not pressure Alberta or any of the provinces to reduce their emissions.⁴⁰ Clearly, the Kyoto Protocol’s failure is attributable to decentralized federalism. In the above scenario, Alberta leveraged the loopholes provided by Canada’s decentralized federation to defeat the Kyoto Protocol. The federal government may have the constitutionally charged power to accept international treaties but its effective implementation is undermined by provincial powers.

A counter argument may claim the Kyoto Protocol failed because Canada was highly concerned about the issues of free-riding and the costs of desynchronizing its economy with the United States. Canada withdrew, along with other nations who abstained from ratifying the Kyoto Protocol, based on “a conscious cost-benefit calculation” of states free riding.⁴¹ Clearly, Canada’s decentralized federation did not play as a much of a part as simple cost-benefit analysis on the issue of free-riding. Even more, the U.S did not ratify the Kyoto Protocol which gave Canada further incentive to follow suit. The United States is Canada’s biggest trading partner; therefore, ratification would translate into desynchronizing certain environmental standards which could have potentially hurt trade. Ultimately, Kyoto was doomed to fail because it did not induce any nations to spur major norm changes in terms of emission reduction.⁴² Canada’s decentralized federation did not play a part given Canada’s priority was protecting itself from free riding and ensuring trade with the U.S continued smoothly.

The opposition brings up valid points by citing the critical weaknesses of the Kyoto Protocol and highlighting Canada’s priorities. However, Canada’s decentralized federation is a barrier to environmental regulations because it forces Ottawa to compromise policies for areas under its jurisdiction. Even before Harper’s Conservative government and his environmentally regressive policies, Kyoto’s failure was apparent during Jean Chretien’s time as Prime Minister.⁴³ Chretien had announced Kyoto’s ratification without the consent of the provinces, which was constitutionally acceptable because the federal government has the sole power to

³⁹ Ibid.

⁴⁰ Angela V. Carter, Gail S. Fraser, and Anna Zalik. “Environmental Policy Convergence in Canada’s Fossil Fuel Provinces? Regulatory Streamlining, Impediments, and Drift.” *Canadian Public Policy* 43, no. 1(2017): 192.

⁴¹ Napoli, “Understanding Kyoto’s Failure,” 190.

⁴² Ibid., 184.

⁴³ Cochrane, Blidook, and Dyck, *Canadian Politics*, 445.

enter international agreements.⁴⁴ Nevertheless, Kyoto proved to be highly contentious because it heightened discord between the provinces and federal government.⁴⁵ For example, Alberta saw it as betrayal and as a “reincarnation of the NEP.”⁴⁶ As a result of the backlash, neither Chretien nor his successor Paul Martin actually implemented mitigation policies.⁴⁷ The barrier is clear: Canada’s decentralized federation forced the federal government to compromise in an area which was rightfully Ottawa’s, as is evident in section 91 of the Constitution.⁴⁸ Chretien’s announcement was within Constitutional limits, but the provinces’ reaction limited it, even though Kyoto falls under international treaties which is Ottawa’s jurisdiction.

Conclusion

Ultimately, Canada’s decentralized federation hinders effective environmental regulations because the federal government cannot excessively intervene into provincial powers. Firstly, the Constitution’s ambiguity about environmental responsibilities sets an uncertain tone on how to deal with scenarios whenever there is overlapping authority. Secondly, matters become increasingly complicated because Canada’s decentralized federation provides a venue for the manifestation of an isolationist approach toward environmental management. Thirdly, Canada’s decentralized federation leads to a patchwork of regulations across Canada: these environmental regulations vary in terms of their stringency and mechanics. Moreover, the federal government cannot unilaterally harmonize these policies due to the *laissez faire* commandment of decentralized federalism. Finally, the federal government cannot exercise the full breadth of its power for areas under its jurisdiction, like the Kyoto Protocol, because strong climate change mitigation policies involve the provinces as well. This is a substantial obstacle, because getting provinces to agree on a uniform standard is exceedingly difficult given each has different needs. In sum, Canada’s decentralized federation forces Ottawa to underplay its hand, which contributes to the dissonance and poor environmental policies at all levels of government.

⁴⁴ Nathan Lemphers, “Lecture 26.2.” (Online presentation at the University of Toronto Mississauga, Mississauga, ON, March 21, 2018).

⁴⁵ Cochrane, Blidook, and Dyck, *Canadian Politics*, 445.

⁴⁶ Ibid.

⁴⁷ Cochrane, Blidook, and Dyck, *Canadian Politics*, 445.

⁴⁸ Nathan Lemphers, “Lecture 26.2.” (Online presentation at the University of Toronto Mississauga, Mississauga, ON, March 21, 2018).

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