

The Fulton-Favreau Formula In New Brunswick

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The Fulton-Favreau formula was approved by the New Brunswick Legislature without dissenting vote on March 16, 1965.¹ The Honourable Louis J. Robichaud, Premier and Attorney General, in introducing the resolution said of the formula: "It is not necessarily perfect, but it is the best formula that thus far ten Attorneys General with the Attorney General of Canada, the Minister of Justice, and ten Premiers with the Prime Minister of Canada were able to agree upon unanimously."² The motion was seconded in a short speech by the Honourable Daniel A. Riley, Chairman of the New Brunswick Hydro-Electric Power Commission.³ No other government supporter participated in the debate.

The leader of the opposition, C. B. Sherwood, saw in the formula a possible threat to the authority of the Dominion. "I am not", he said, "in favour of the decentralization . . . of federal authority when it is so obvious, Mr. Speaker, that New Brunswick's future well-being is closely tied to a very vigorous central government with aggressive policies for national and regional development."⁴ Though neither the Conservative leader nor any of the six other Conservative members who spoke on the resolution voted against it, each had criticisms and reservations. The power to delegate authority from the Dominion to groups of provinces was questioned; it was argued that the requirement of unanimous provincial consent for amendment of provincial powers would impose a constitutional strait-jacket; there were technical criticisms of the recommended amending

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¹ The operative portion of the resolution read:

"Be it Resolved that the Legislative Assembly of the Province of New Brunswick approve the formula as set forth in the proposed enactment for amending the Constitution of Canada, and consent to its being brought into force in the manner proposed, and that a copy of this resolution certified by the Clerk of the Legislative Assembly be transmitted to the Rt. Hon. The Prime Minister of Canada." *Synoptic Report of the Proceedings of the Third Session of the forty-fifth Legislative Assembly of the Province of New Brunswick*, session of 1965, volume 1, p. 372.

² *Ibid.*, p. 380.

³ *Ibid.*, pp. 380 and 381.

⁴ *Ibid.*, p. 398.

procedures; several speakers confessed a lack of technical competence to debate the intricacies of the formula, and protested against inadequate opportunity for study.⁵ Mr. Sherwood wound up for the opposition by saying: "I have to draw the conclusion that reasonable men have sat around the conference tables for a lengthy period of time and have come up with a solution even though it may not be an entirely satisfactory solution."⁶ The Conservatives supported the principle that Canada should determine its future constitutional changes.⁷

News coverage seemed reasonably adequate. The Saint John Telegraph-Journal, the daily with the widest provincial circulation, gave editorial support.⁸

A New Brunswick critic of Fulton-Favreau was George A. McAllister, Professor of Constitutional Law in the Faculty of Law of The University of New Brunswick. In a sharply worded message published in the *Financial Post*,⁹ he condemned the formula in these terms:

The repatriation formula as presently conceived should be rejected categorically. It compounds any reasonable notion of fundamental provincial rights; it exacts an unwarranted requirement in unanimity; it could preclude the development of national standards sought by a preponderance of the nation or desirable in the context of Quebec.

The delegation proposal is defective in the restricted provincial powers subject to it. The very absence of a similar restriction of federal powers is clearly fatal; apart from fragmentation and other possibilities, it is unthinkable, for example, that laws touching civil rights and citizenship, which hinge on federal powers, should not be excepted. The total formula (and it has other serious defects) should be submitted to critical examination.

Responsibility rests squarely and inexorably with the Prime Minister and the provincial premiers to provide for that examination and to undertake their own indispensable reappraisal of their respective responsibilities for national progress.

The present formula is an arrangement for walking backwards into the future; it shows in significant areas little regard for Canada as a nation, for the maintenance of federal principles, or for the role of the central government.

Public interest in the issue was sparse. Fulton-Favreau came and went with little impact on the provincial consciousness.

⁵ *Ibid.*, pp. 381 to 401.

⁶ *Ibid.*, p. 400.

⁷ *Ibid.*, p. 401.

⁸ *The Telegraph-Journal*, September 4, 1964, p. 4.

⁹ *The Financial Post*, November 7, 1964, p. 7.