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Has the Supreme Court made Harper an accidental reformer?

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With Friday's Senate reference, Prime Minister Stephen Harper has chalked up another loss before the Supreme Court of Canada. For Court watchers, constitutional disputes involving the Harper government will form a key part of Chief Justice Beverley McLachlin's record. From another angle, the disputes our Prime Minister has sent to the Court give him an unintended legacy as a constitutional reformer.

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The contrast appears stark between Mr. Harper and his Conservative predecessor, Brian Mulroney. Mr. Mulroney rolled up his sleeves and threw himself into constitutional reform. He met with provincial premiers for days and nights to reach accords at Meech Lake and Charlottetown.

Mr. Harper avoids first ministers' conferences. He shows little appetite for talks with provincial premiers on anything, let alone constitutional reform.

This inclination to avoid working with the provinces underlay several constitutional questions that Mr. Harper has referred to the Supreme Court. Create a national securities regulator? Mr. Harper asked the Court if the Parliament of Canada could act alone. The judges told him no.

Make an appointment to the Supreme Court that might be illegal and that Quebec would foreseeably reject? The Court declared it invalid. While on the subject, the judges added that modifying the Supreme Court's composition is a constitutional amendment and requires provincial consent.

Could Ottawa alone change the process for selecting senators and their terms of office? On Friday, the Court said no. Such changes would require the consent of seven provinces representing one-half of the population. It also held that abolishing the Senate would require consent by all provinces.

In these cases, the Supreme Court of Canada blocked efforts by the federal government to act alone. It affirmed that Canadian federalism requires Ottawa and the provinces to work together. Time will

tell whether the Court allows Ottawa to destroy data from the old firearms registry over Quebec's protests.

During the Harper years, the Supreme Court's assertions of provincial prerogatives have reshaped the constitutional landscape. They undermine the accounts, especially current in Quebec, by which the Court's federalism judgments have empowered Ottawa at the provinces' expense.

The Court says it has based these decisions on the constitutional text, case law, and principles. But that wouldn't explain the shift towards co-operation between Ottawa and the provinces. Might the judges have recoiled from the Prime Minister's evident disdain for democratic institutions and his distaste for negotiating with the provinces?

To be clear, in rebuffing Ottawa's claims, the Court hasn't reversed decided cases. It has answered questions that have long been open. Mr. Harper may not like the answers he's gotten. But he's the one who put the issues to the Court.

The upshot is that a Prime Minister who dislikes negotiating with the provinces has triggered processes by which the Supreme Court has entrenched the need for such talks. Ironically, a leader who wouldn't touch direct constitutional reform with a bargepole will leave major developments in federal-provincial relations as his heritage.

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