



Provinces have a role in Canadian foreign policy

The Canadian federal government has to deal with many matters internationally that the provinces control domestically.

THEME I: FEDERALISM AND FOREIGN POLICY

BY DOUGLAS M. BROWN

For some decades now, the Canadian provinces have been active on the world stage. Many will know about Quebec's particular role in promoting an international personality abroad, and indeed note how its foreign relations are often tied to aspirations of independence. Yet it is important to put these relations, and those of the other provinces, in a larger context. This multilevel governance need not be conflictual and can often be complementary and cooperative.

Constitutional context

Typically foreign policy, particularly treaty making, is a central government task. There is the important case of Belgium, where exceptionally, the language communities are able to sign treaties in areas of their competence.

More usually, the federal government has unambiguous legal control over foreign affairs. But the world of federalism has evolved from an emphasis on divided jurisdictions, to one of shared jurisdiction in practice. Indeed, the story in Canada is a gradual process of sharing among governments more and more responsibility for Canada's personality and relationships abroad.

Part of this cooperative sharing practice is by constitutional necessity.

When Canada was formed as a federation in 1867, it was still a colony of the British Empire. Once the country actually became more independent after the First World War, the issue arose about how independence would affect the federal/provincial distribution of power. In a major case in the 1930s ("*Labour Conventions*"), the Judicial Committee of the Privy Council ruled that while only the Federal Government could enter into treaties, the Federal Parliament could only pass laws *to implement treaties in fields of federal competence*. When the treaties touched provincial jurisdictions

only the provincial legislatures could pass legislation to give them effect.

Considering that Canadian provinces have a long list of exclusive legislative jurisdiction over such fields as education, health care, property law, labour relations, and natural resources to name a few, the potential impact on Canada's treaty obligations and on its ability to enter into such obligations, is enormous. In settling the "*Labour Conventions*" case, the court emphasized that Canada as a whole has plenty of power to conduct foreign relations but the process requires a cooperative effort on the part of governments.

Over sixty years later, we have intensive and, for the most part, productive federal-provincial relationships. The federal government brings the provinces into the early stages of the negotiation of new international commitments, including in many cases as part of the delegation. And, at the end of the day, the provinces normally pass the legislation that is required, since they have been involved from the start.

Canadian provinces do not have the legal power to make their own treaties, although the Government of Quebec contests this. They do enter into other sorts of international agreements, not binding in international law. Quebec has currently over 400 such agreements in force.

Multilevel governance

Increasingly, policy-making is an interdependent exercise. All governments are now involved and the trend is intensifying. There are three intersecting rings or arenas of multilevel governance in Canada.

The largest and most significant is that of Canadian foreign policy as such, conducted by the federal government, with only the indirect involvement of the provinces. This policy of course reflects the usual competitive mixture of regional, national, economic, social and partisan considerations.

A second, much smaller ring intersecting the first is the direct international activities of the provinces.

Third is the ring of domestic intergovernmental relations between the federal government and the provincial and territorial governments. This often involves international issues. This third ring overlaps significantly with the first, and a bit with the second.

Federal provincial relations are not just domestic any more

The third ring is the most familiar to us: the day-to-day relationships between the central, federal government and the provinces and territories.

Figure 1: Multilevel Governance



Here international issues increasingly turn up. There is no single agenda – the issues arise across a variety of forums and sectors: environment, finance, agriculture, health, etc. Also, there is little or no effort to coordinate the whole. Indeed, such an attempt would be counter-productive and just about impossible.

The most formal of these relationships are in fields of exclusive provincial jurisdiction, such as education or labour relations. Here the federal government has no choice but to follow the provinces' lead in terms of determining what Canada's foreign policy will be. But the more common pattern is of an emerging shared responsibility for international matters, reflecting the effect of regional or global integration on domestic sovereignty.

For example, international trade policy now involves a wide agenda of domestic economic matters, well beyond tariffs. Provincial policies have been involved for many years now. The federal government consults with the provinces on general trade policy, on specific international negotiations, such as those that led to the Canada-US Free Trade Agreement, or the WTO Agreements, and on trade disputes.

As a further example, we are now in version six (!) of the softwood lumber dispute with the Americans. Here the main issue to dispute is the provincial royalty regimes on their forestry resources.

Overall, the relationship on trade matters is important, productive and co-operative. It can break down when it comes to some trade disputes, and at the end of the day it is not a joint decision-making process. The provinces have been pushing the Federal Government to adopt more formal procedures, but Ottawa puts them off, and prefers not to be locked into formal joint decision-making.

The question remains: when push comes to shove on key trade co-ordination problems, how can we ensure that an integral Canadian position is maintained without a binding decision-making process?

A second major area is environment. Again it is hard to find where provincial jurisdiction ends and federal jurisdiction

begins; it is very much a shared responsibility. Also the current international agenda is very broad. To implement the Kyoto Accord, for example, Canadian governments collectively have developed an innovative and integrated consultative process among governments and with industry and other interest groups. The relationship is not always smooth and joint actions are taken by consensus, but this process represents the kind of intensive, interlocking multilevel relations that we will see more of in the future.

The provinces abroad

The second ring is the direct involvement of Canadian provinces in international activities. The main objective is to promote trade and investment. The resources deployed vary enormously because the ten provinces and three territorial governments vary greatly in size and in fiscal clout. The Province of Quebec has had the most consistent effort. It's the only one with a separate Ministry of International Relations and maintains over thirty offices abroad.

The provinces' activities are mainly complementary of the Government of Canada's foreign policy, with one exception – when Quebec engages in "proto-diplomacy", a sort of diplomacy with training wheels. This has been the goal of the Parti Québécois when in power – to prepare the world for Quebec as an internationally separate country. But all the governments of Quebec, federalist or separatist, maintain a less controversial role of making sure the world understands Quebec's unique position with the only majority French-speaking society in North America.

Federalism does not always matter

The third ring is Canadian foreign policy as such.

The chief preoccupations of the last decade have been economic globalization, multipolar security, and environmental challenges. Canada is also defined by several key relationships, none so important as its trade and security relations with the United States. Canada is also fortunate in being a member of several key clubs: the G-8, the Commonwealth of Nations, La

Francophonie, and the Organization of American States. It's the only country in the world that is a member of all these four simultaneously. So it gives Canada a kind of middle power status.

In none of these relationships, with the possible exception of La Francophonie, does the federalism factor amount to much. Canada's geo-political position is determined much more by its position on the North side of the 49th parallel, and by its status as a wealthier industrial economy.

In that sense federalism is important only as an underlying necessity – it is what provides Canada with its unity. There would not be a united, single geo-political entity north of the US border without being a federal state. If one of the units such as Quebec were to secede, Canada's clout in the world and its ability to set foreign policy would suffer.

Compared to other federations

Canada seems to lead the world in direct provincial activities abroad, particularly in those activities that are not just cross-border issues. But it doesn't have the kind of formal intergovernmental mechanisms of Germany or the upper house representation of the United States for involving the constituent governments in the ratification or approval of treaties. Canada's process is not much more centralized or decentralized as others. It's just different.

There is no federal monopoly in international relations in Canada, certainly not anymore. It is increasingly a shared task – a conclusion that can be borne out for many other federations.

Moreover, the record in Canada in recent years is of manageable co-ordination and co-operation. There are three arenas of interaction, but there is no attempted integration, and it is not likely, possible or desirable. Still, there is one major obstacle: the decision-making machinery at present is not really up to the task if you need results binding on all the parties. The current, informal relationships put a lot of burden on consensus building and may not be adequate for the more intensive multilevel governance of the 21st Century. (6)