

Canada: Competition within cooperative federalism

RICHARD SIMEON

You will only get a partial picture of “who does what” if you read the Canadian Constitution Act of 1867. The text of sections 91 and 92 of the Act defines the division of powers and responsibilities in Canada, but gives only a partial picture of the real balance of powers. The division of powers is constantly in flux. The weight of influence has swung from federal dominance, to classical dualist federalism, to a reassertion of federal influence, to the present, in which two powerful orders of government use many jurisdictional, bureaucratic, financial and political levers to shape policy over broad areas. As new policy concerns such as the environment have arisen, both have the will and means to become involved. **“Watertight compartments” have been supplanted by overlapping, sharing, and interdependence.** Central to the Canadian policy-making process is a complex mixture of cooperation and competition among governments.

Amendment remains rare and difficult, but judicial decisions, intergovernmental agreements, and financial transfers have allowed the Constitution to adapt to new needs. Major changes were made in 1982, when a Charter of Rights was adopted and authority for amending the Constitution was “patriated” from Great Britain, so Canada no longer had to ask the UK parliament at Westminster for official constitutional amendments. Two subsequent attempts to bring in significant amendments both failed.

Many factors explain the changing patterns of Canadian federalism. First is demographic change. The Canada of 1867 with four provinces and just 3.5 million people is now a country of 32 million, ten provinces, and three territories, touching on three oceans. A once largely rural country is now one of the world’s most urbanized. A society originally made up almost entirely of people of French and British descent (together with the largely displaced Aboriginal inhabitants) is now among the world’s most diverse and multicultural. A second major factor is the importance of international agreements and trade. Canada is economically integrated into the North American market. This change has had enormous impacts on policy agendas and citizen expectations. A third set of factors has involved regional differences over concepts of citizenship, identity, and society. The fundamental division is language. French-speaking Canadians, concentrated in Quebec, have a strong sense of national identity and a distinct approach to the role of the state. Quebec has resisted increased federal power and today it is a powerful advocate for “asymmetry.” Other provinces also have strong identities, distinctive policy concerns, and strong provincial governments. A single country-wide policy is often inappropriate and unworkable.

The interaction of these forces, which often pull in different directions, makes it difficult to characterize the division of powers in simple terms. Ottawa is largely responsible for international affairs, security, macroeconomic policy, immigration and citizenship. However, provinces also have an important voice in these areas. They are largely responsible for education, health care, welfare, economic development, and regulation of industry. However, Ottawa is also involved in these areas through transfers to provincial governments, and through

its program for equalization, designed to ensure that poorer provinces are able to meet their responsibilities without undue levels of taxation. This has led to “collaborative federalism” with several intergovernmental accords respecting economic and social issues, health care and the environment.

But who does what is never a fully settled issue, and a number of important questions confront citizens and governments today.

First among these is the concern about fiscal imbalance. Provinces assert that there is a mismatch between their responsibilities and the revenues available to them. The federal government stresses its own fiscal needs and the provincial ability to raise taxes.

Another debate involves “national standards” as opposed to provincial variation. National citizenship implies that common standards should apply to all Canadians, while federalism is predicated on policy variation. How to find the balance in areas such as health care?

A relatively new issue is participation in the global and North American economies. Are provinces and local governments best placed to adapt to global imperatives, or is a stronger federal hand necessary to ensure that Canada speaks with one voice abroad?

The Constitution assigns the same responsibilities to all provinces, but would “asymmetry” better reflect the reality of the country? In law and practice, considerable divergence among provinces has developed. Would increased asymmetry strengthen or weaken the federation?

Canada wavers between competitive and collaborative federalism. Some argue that effective policy requires joint decision making, given the extensive overlap in responsibilities. Others suggest that governments should compete in an adversarial process, to ensure policy innovation and responsiveness.

External shocks – oil prices, natural catastrophes, and health emergencies, such as the outbreak of SARS – have recently hit Canada and many other countries. Divided responsibility and intergovernmental rivalries have undermined effective policy responses to them. Canadian governments need to improve their capacity to respond to future shocks.

Local governments are under provincial jurisdiction with no independent constitutional status. Yet, they provide a wide range of services to Canadians. There have been recent moves to enhance the autonomy and financial base of municipalities, and to give them a place in Canadian multilevel governance.

Aboriginal peoples have asserted their right to constitute a “third order” of government in Canada. Their claims to land rights and self-government have received strong support from the courts. It is critical for Canada to design models of self-governments, to meet the needs of Aboriginal citizens, most of who now live in urban areas.

The division of powers in Canada today remains a work in progress, its future to be determined as in the past by pragmatic accommodation, within the context of the Constitution and the broad

contextual factors noted above. As Canadians work through these issues, they will both learn from and contribute to the experience of others.