

Reflections on Comparing Federalisms: Canada and the United States

Richard Simeon* and Beryl A. Radin†

*University of Toronto; richard.simeon@utoronto.ca

†American University; radin@american.edu

This article illustrates the challenges involved in preparing a systematic comparison of two federal countries. It examines questions as to what explains similarities and differences in federal systems. It rejects any single-variable approach to explaining federalism but gives primacy to ideas and to institutions. While there are fundamental differences in founding ideas and historical legacies, there are major similarities between these two federations. We conclude this analysis by underlining the value of comparison. Comparison helps clarify explanations for both variation and similarity, corrects misconceived perceptions of differences, and suggests areas of learning from one another.

The articles in this issue of *Publius* try to do something that remarkably few have attempted: to compare the structure and practice of federalism in Canada and the United States.¹ They demonstrate that what should be a relatively easy task turns out in practice to be quite difficult. Our own experience in preparing a systematic comparison of these two federal countries illustrates the challenge.

To begin, are we talking about a “most similar systems” comparison or “most different” systems? Each is plausible. These are two advanced liberal democracies. Both are explicitly federal, indeed both are among the world’s longest-lived federations, though the character of that federalism remains contested in both countries. They share a continent and a long border. They are both liberal democracies (one a federal republic; the other a federal parliamentary democracy) sharing in the Anglo-American political tradition. They are each other’s greatest trading partners, bound together in the North American Free Trade Agreement. Their borders are open to the flow of ideas and to both high and popular culture, though the flows are asymmetrical, and often subject to tension.

Their federalism scholarship also has many similarities. Many Canadian students of federalism studied in the United States. In political science generally, Canadians have most often been “borrowers” or “takers”—though there is some evidence of a recent trickle in the opposite direction (White *et al.* 2008). Whether this is a result

of American parochialism or of the Canadians' preoccupation with their own particular challenges is an interesting question. Scholars in both countries are preoccupied with their particular forms of exceptionalism.

Given these patterns, the most similar systems approach might seem to be appropriate.

But is it? Writers such as Lipset (1989) and more recently Michael Adams (2004), take the opposite approach. These, they argue, are very different systems with different cultures and institutions.

Federalism in the two countries, from this perspective, has different origins, is rooted in different values, is expressed through different discourses, responds to different societal needs, is played out through very different institutions and processes, and has different consequences.

Canadian scholars, as a result, often find that approaches and methods dominant in American political science give them little purchase on understanding the Canadian federal system, and Americans have shown little interest in applying Canadian models to their own system.

Perhaps Riker (1982) and more recently Treisman (2007) are right: having federalism in common tells you nothing of value about the system in general. Federalisms are infinitely variable; each is *sui generis*, and few if any generalizations about them are very robust. If this is true then we have two quite different models that suggest a most different systems approach. The central task, then, is not to understand and explain similarity, but to understand and explain difference.

The articles in this issue explore both sides of this dichotomy; in this essay we look for both similarities—what explains them?—and for differences—what explains them?

The writers of this essay are scholars whose previous work has primarily focused on federalism and intergovernmental relations in their own countries. Working together on comparing the two countries was a salutary experience for both of us. We had not worked together before. When we first met to discuss this project we found ourselves talking almost different languages. Some of the words that were meat and drink to Canadian scholars of federalism—adversarial and competitive federalism, multinational federalism, asymmetrical and symmetrical federalism, the high politics of constitutional reform, first minister federalism and intergovernmental “diplomacy,” for example—had very limited place in the vocabulary of American scholars.

By contrast, terms familiar to Americans—the intergovernmental lobby, unfunded mandates, coercive federalism, pre-emption, and marble-cake federalism have little or no traction in the Canadian study of federalism.

From an American perspective, U.S. federalism was too complex, variable, and multidimensional for any broad labels to apply. Its preoccupations were about policy coordination across federal, state, and local governments—the

intergovernmental maze. (Hueglin and Fenna 2006, 230). For Americans many of the fundamental questions about the relationship of federalism to the character of political community had been resolved; in Canada, they remained on the front burner.

But as this comparative process proceeded, the benefits of comparison became more apparent. The questions asked by each of us led the other to think more critically about his or her own country and suggested some new questions we should be asking ourselves.

This discussion also raised the more general question as to what explains similarity and difference in federal systems. First is the old debate about the relations between state and society: Which has primacy? Does society shape the state or the state society?

In the federalism literature, both approaches contend. Livingstone, reinforced by younger scholars such as Jan Erk (2007), sees the causal arrow going from society to state: homogeneous societies produce centralized federations; territorially diverse societies produce decentralized federations. Institutionalists—and they have been dominant in Canada—reverse the causal arrow: the character of federalism is fundamentally a consequence of its institutional design (Cairns 1977).

We employ both approaches in our analysis of these two systems.

We reject any single-variable approach to explaining federalism, but we give primacy to ideas and to institutions. The constituent ideas about federalism in the two countries have quite distinct roots, and their institutions have a profound influence on the practice of federalism. Both are territorially highly diverse countries, but that diversity plays out differently in large part because of basic differences in their political architecture, themselves the product of their differing historical legacies.

This enterprise has inevitable pitfalls. One, familiar to all students of policy and decision making, is that we are trying pin down a constantly moving target. In the United States, there has been a constant flow of “new federalisms”—Nixon, Reagan, Clinton, and Bush. We do not yet know if there will be an “Obama federalism.” It is not clear whether Canadian Prime Minister Stephen Harper’s “open federalism” is simply a rhetorical flash in the pan or something more lasting (Institute of Intergovernmental Relations 2009).

This is the framework in which we developed our analysis. What does federalism mean in each country? What impresses us: similarity or difference? We think there are lessons for the broader task of comparison across the much more diverse array of federal countries in the world.

So what did we learn and what did we conclude?

First, Canada does lie closer to the decentralized end of the spectrum than the United States—but that distinction is much less sharp and clear than Canadians often think. In some areas—the criminal law for example—states exercise much

more influence than Canadian provinces do with massive policy consequences in terms of, to take just one example, the use of the death penalty. Similarly, federal election regulation occurs in U.S. states, while it is centralized in Canada.

Second, Canadian federalism is more competitive and adversarial than American federalism, but again with a qualification—“both” are complex mixtures of cooperation and conflict, varying over time, and by issue area and policy sector.

Third, Canadian provinces loom larger in the Canadian political cartography than do U.S. states. Canadian provinces are far more jealous of their jurisdiction and autonomy, resisting federal “intrusions,” and seeing themselves as equal “orders” not “levels” of government. It is difficult to imagine any policy debate in Canada in which federalism is not at the center. State and local initiatives are increasingly at the centre of American policy debates as well, but not as strongly as in Canada.

Fourth, Canadian provinces are more financially autonomous than U.S. states, they raise and spend a higher proportion of total government revenues and expenditure; are less dependent on transfers from the federal government, and these transfers come with many fewer strings attached (Policy Research Initiative 2009).

Fifth, what has been called “legislative federalism” (Peterson 1995)—the role of national legislatures in shaping and managing the intergovernmental relationship—is immensely larger in the United States than in Canada. Congress plays a central role in intergovernmental relations; in Canada Parliament is largely absent (Simeon and Nugent 2008).

Sixth, federalism shapes the playing field of Canadian politics to a greater degree than in the United States. It often seems in Canada that the federalism debate—who does what, who should do what, competition for turf and public support—trumps substantive policy debate, while in the United States, policy trumps federalism—but again perhaps not always.

Seventh and most important, Canadian and American federalist discourses appear often to be about quite different things. In Canada, the federalism debate is primarily about language, region, and managing difference. National unity versus difference, “province-building” versus “nation-building,” “national standards” and common social citizenship versus provincial autonomy and valuing diversity are the fundamental preoccupations that shape the Canadian federalism discourse.

In the United States, the discourse at the founding was much more about federalism as a device for sharing power, limited government and checks and balances. This perspective continues to shape debate in the United States, but some argue that it has largely been superseded by the concept of “national federalism” (Beer 1993). But limited government “market federalism” (Weingast 1995) remains an important thread in U.S. federalism scholarship; but is less prominent in Canada.

The founders of the Canadian federation were deeply suspicious of the American values of republicanism and democracy, and fearful of the excesses of federalism they saw manifest in the American civil war. For them, federalism was the choice in

order to find a means of accommodation between French and English speakers, and to bring together the scattered British North American colonies threatened by potential American expansionism.

There were other pivotal moments that left powerful legacies. The civil war in the United States ended the threat of secession, and established national supremacy. No such decisive event occurred in Canada. In the United States, the New Deal cemented national policy leadership; in Canada similar policies were adopted, but they came later and undermined provincial responsibilities less. In the United States, the civil rights revolution strengthened federal authority to ensure social justice for minorities; in Canada, social justice for the French-speaking minority would be achieved through autonomy for the French-speaking Quebecois nation, concentrated in one province.

The result is that in important ways American and Canadian federalism are about quite different things.

Despite these fundamental differences in founding ideas and historical legacies, there are of course major similarities between these two federations. Both are complex multilevel systems, with resulting challenges of coordination, cooperation, and policy implementation. They often face very similar policy agendas, to which the practice of federalism must respond. Interdependence between orders of government characterizes both—as indeed it does in every federation.

In both countries, the pendulum of relative influence between governments has often swung, and sometimes in much the same direction. Thus, both experienced significant centralization with the impact of the Great Depression, Second World War, and the advent of the welfare state. In the United States, this change is constantly challenged and moves back and forth between centralization and decentralization; in Canada, the trend since the early 1960s has been generally in a decentralist direction.

In recent years, however, conservative governments have been in power at the national level in both countries in critical policy areas, such as social policy and climate change. This has left political space for both states and provinces to occupy, and the response in both countries has been similar. In climate change policy, for example, the lead in both has recently been taken by states and provinces—with interesting cross-border alliances between them.

Canadians often see Canada as uniquely diverse, given its powerful regional and linguistic differences. They tend to see the United States as a much more homogeneous country politically and culturally. The fact is that each country is highly diverse territorially, though in both regional differences co-exist with other, sometimes more important, divisions. The question, then, is why regional difference so preoccupies Canadians, while they are less prominent, and less politically mobilized in the United States.

So what we have observed is a complex combination of similarity and difference.

One of our tasks has been to explain the difference between the two countries. In our view, one societal fact and one institutional fact are paramount.

At the “societal level,” the difference lies in the ways the dominant political cleavages in each country plays out: language in Canada, race in the United States. In Canada the fact that Quebec constitutes a nation, one that is territorially concentrated in one province, has been the principal driver of Canada’s decentralization. Canada is a federal country largely because of Quebec; it is one of the world’s most decentralized federations because of Quebec’s long-time concern for autonomy (if not for sovereignty). In the United States, by contrast, the presence of African Americans, much more spread across the country, has been a principal driver of a stronger federal role. Social justice for Quebecers was sought through increased autonomy from the Anglophone majority; social justice for African Americans was to be found in a call for federal action to challenge racist southern state regimes. Yet for the past fifty years the federalism discourse in the United States has not acknowledged the impact of race in shaping the practice of federalism. Many other differences between the two countries follow from this societal difference.

At the “institutional” level, the explanation for difference lies not so much in those parts of our constitutions which lay out their federalist elements. In neither case do the original texts provide much guidance to contemporary practice. Instead the difference lies overwhelmingly in the fact that Canada weds federalism to a Westminster style Parliamentary system, with strong executive dominance, and the United States weds it to shared powers in a presidential/congressional system. In Canada, power is concentrated in the executive; strong party discipline dominates the legislature. One result is that in Canada, when governments agree, they can be assured that the legislature will comply. In the United States, the divided responsibilities between the executive and the legislature mean that such commitments cannot be guaranteed. In Canada, Members of Parliament have little independent base and play a minor role in advocating provincial or local interests at the federal level. Congressional logic, including much weaker party discipline binds Senators and Representatives closely to their local constituencies. Moreover, the U.S. Senate is a powerful, elected body representing states equally; the Canadian Senate is appointed by the Prime Minister, and hence lacks legitimacy and plays virtually no role in the intergovernmental relationship.

Indeed, it can be argued that the interplay between local, regional, and national interests that is at the heart of federalism is played out largely in Congress. Intergovernmental relations between states and cities are of course also hugely important. But the American term to describe this is the “intergovernmental lobby,” which suggests that states are interest groups, among many others, exerting pressure both in Congress and the administration. In Canada, provinces see themselves not as lobbyists, but as equal partners in governance, and their

relationships are almost entirely with the executive. To use Karl Lowenstein's terms, Canada exemplifies "inter-state federalism"; and the United States "intra-state" federalism (Smiley and Watts 1986). Accommodation of regional interests in the United States is focused primarily on Congress; in Canada on "executive federalism,"—bargaining between largely autonomous governments.

Again, an enormous number of the differences between our federal systems follow from the contrast between a presidential/congressional political system and a Westminster parliamentary system: power concentrated versus power dispersed. In both countries the institutional architecture flows from the two countries founding moments and founding ideas, but their consequences continue to drive differences across a wide range of aspects of each system.

These patterns are reinforced by some other institutional differences, including the party system. The American two-party system generates a different dynamic than does the Canadian multiparty system, which has a sharp separation between national and provincial party systems and a highly regionalized party system in Ottawa. The difference in the numbers of states and provinces—ten plus three self-governing territories in Canada, compared with fifty states and fifteen territories in the United States—means that intergovernmental relations in the latter are more complex. The President and state governors cannot sit around a single table to discuss issues and come to binding agreements; in Canada, they can.

An important institutional similarity between the two countries lies in the role of the courts. In both countries, they have had a powerful influence in shaping the practice of federalism. But since the 1930s, they have tended to move in different directions. With some recent exceptions, U.S. courts have treated federalism as a political question, and have been sympathetic to extension of federal influence—as in use of the federal trade and commerce power. In Canada, the courts have been more careful to ensure a federal-provincial balance—interpreting the Canadian trade and commerce power much more narrowly, for example.

Finally, what did we learn from this comparative experience?

We found that Canadian students of federalism are often too dismissive of the American model, and harbor some illusions about it. They often assume, wrongly, American homogeneity, and underestimate the role of the states as policy innovators. American scholars, by contrast, pay too little attention to alternative models of federalism, not only in Canada, but in other federations as well.

Canadians might need to inject legislatures more directly into the intergovernmental process—does the American experience provide any lessons to them? By contrast, some believe that American federalism might be enhanced (or at least simplified) by fewer conditions and constraints on state initiative resulting from grants in aid and unfunded mandates or "coercive federalism," as John Kincaid (1990) puts it. However, given the diversity within the U.S. system, that is difficult to accomplish.

Canadians, unlike Americans, have put the study of local government, and of federalism into two quite separate silos. In the United States, local and state governments are considered by scholars as integral parts of the intergovernmental system. However, much of the academic approach usually deals with local, state and federal governments as very separate entities. The recent focus on multilevel governance and policy networks, however, has reemphasized the interrelationships between the three levels of government. In Canada as well, the claim of Aboriginal peoples to autonomy and self-government as “First Nations” is adding yet another tier to intergovernmental relations.

Canadian scholars have tended to place their main emphasis on the “high politics” of national unity such as the constitution. Given the challenges of the past few decades this is understandable. But one consequence is that Canadians have relatively neglected the quotidian day to day ordinary life of the in the work of countless officials at both levels working to fix problems that can only be dealt with through cooperation. However, that some recent work—especially that reported in Bakvis and Skogstad (2008)—has addressed this gap. A younger generation of Canadian scholars now works on the links between federalism and public policy and management. In a sense, this will bring the American and Canadian study of federalism as multilevel governance close together.

Scholars of federalism in both countries have tended to be parochial in their approaches. Canadians have focused on unity and the management of diversity; Americans on the challenges of coordination in a fragmented system. This illustrates the truism that in understanding of federalism, context is everything, and that each federation must be studied *sui generis*.

But our tentative excursion into comparing Canadian and American federalism suggests the value of comparison. It helps clarify for each country explanations for both variation and similarity. It helps correct misconceived perceptions of difference. And it suggests areas in which each can learn from the other.

Note

1. There are of course, notable exceptions. Recently, for example, Barry Rabe (2007) on environmental policy and Gerald Boychuk (2008) on health care policy.

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