**David Smith, “Empire, Crown and Canadian Federalism,” *CJPS* 1991**

**Approach**

Historical / Classical institutionalism

**Thesis**

Canada’s imperial legacy prevented the development of a centralized federation like the US by equipping the provinces with the powers of the Crown and allowing the continuation of pre-existing provincial societies.

**Key arguments**

*Imperial connections*

* Imperial practices and modes of thought were internalized in Canada, but not in the US. Means that monarchy is now indigenous – not an external allegiance
* Evolution of self-government in the colonies meant that one king was taking on many personalities
* Monarchy became a hollow shell, with elected politicians exercising the prerogative powers
* Migration of loyalists brought Tory sentiments to Canada, but imperial heritage also visible in conquest of Quebec and the governing of the West by the HBC. The British were generally behind creation of Canada.
* Before confederation, colonies were focused on communications with London, not each other, and the Crown controlled much of the land. Post-confederation geographical isolation led the provinces to focus on consolidating their own positions.
* Provinces depended on resources for revenue while the federal government depended on the tariff
* Control over resources allowed provinces to shape their own economic and social development.
* Post-Confederation the federal government took on an imperial role as evident through its tax power, powers of reservation and disallowance over provincial laws and the declaratory power.

*The Crown*

* Continuation of the Crown has facilitated peaceful change and accommodation of different style of government from centralization under Macdonald to decentralization federalism since.
* The freedom to propose different constitutional arrangements is possible because of the prerogative powers of the Crown as exercised by the government.
* JCPC ruled that provincial lieutenant governors were as much crown representatives for the provinces as the GG was for the dominion
  + Gave provincial governments access to the powers of the Crown, “whose only limit was the impoverished political imagination of its advisors”
  + Federal-provincial tensions stem from both having powers of the Crown.

*Continuation of provinces*

* While the federal government was new at confederation, the provincial governments continued from the old colonial governments, although with reduced powers
* Since Responsible government was created before Confederation, there was no need to alter it or to change the civil society that had been established along with it (e.g. courts, press, universities, etc.).
* Therefore, the pre-existing colonial societies continued as they were.
* Thus, the Crown, society, and geography combined to produce localism.
* “The Crown endowed the provinces with unlimited potential for action, a reservoir of power which, when exercised in the absence of a common national denominator, heightened the distinctive characteristics of each evident since its founding.”
* Different paths of development in each province since Confederation have increased distinctions.
* The Federal government is judged by how well it mediates between provincial disputes
* Ideas of responsible government undermined use of disallowance with provinces contending it should only be used if the actor was responsible to those affected. Therefore provinces promoted their own prerogative and sought to reduce that of the federal government – just like was done with colonies protesting against the imperial government.
* Provinces have been effective laboratories for new policies, and have been helped in the freedom the prerogative powers give them to create new institutions or to dispose of old ones (e.g. the Upper Chambers of 5 provinces were disbanded). That is, the prerogative facilitated province-building

*Impact of continuing imperial relationship*

* Canada’s relationship with the Empire continued after Confederation through the JCPC, the appointment of British Governor Generals, and did not fully end until the CA 1982.
* JCPC in particular shaped the practice of Canadian federalism by limiting the federal government.
* However, JCPC just enabled autonomist desire of the provinces – it did not create it.
* Federal government had no pre-existing society to provide it with legitimacy, only its effectiveness at providing goods.
* Constitutional reform has proceeded to limit federal jurisdiction, not provincial jurisdiction.
* It is not clear why the British influence on Canada ended, but by the 1960s it was gone
* Because Canada never severed its ties with Britain, it never had to define a new identity.
* Efforts to create a pan-Canadian identity “have yet to offer an alternative set of national norms to that once provided by imperial loyalty.”

**Contribution**

Demonstrates how the shape of Canadian federalism has been influenced by 1) the freedom afforded by the royal prerogative and 2) the institutional legacy of the pre-confederation colonial administrations. That is, Canada’s institutional arrangements have facilitated the decentralization of the federation.