

# Does the Canadian study of federalism suffer from too much or too little theory?

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2013-FEB-21

Federalism is not an idealized mechanism with origins rooted in abstract political theory. Rather, it is a practical tool for addressing the political problems of states like Canada which are characterized by important regional differences and which maintain a constitutionally-embodied split in the allocation of the powers of government. That said, while federalism is a messy compromise born of history and politics — the many details of which are catalogued by Richard Simeon and others — its effective study must incorporate a degree of political theory and law. In particular, when one wishes to consider how federal systems like Canada will address new problems, it is important to consider the conceptual basis that underlies the constitutional structure and serves as a rationale for relevant precedents. Oftentimes, this study has focused on questions of language, nationalism, and national unity, but it can also be directed to consideration of resource politics and the environment. Of particular interest is the tension between provincial power of resource development and the federal responsibility to be a decent global citizen, respect the rights of First Nations peoples, and avoid imposing intolerable externalities on others. Indeed, addressing climate change may prove to be one of the most important challenges addressed by Canada's federal system. Canada's vast stock of planet-altering fuels means that the country's success or failure on the issue will have global repercussions that endure for thousands of years. Arguably, Canada's failure to take effective action on the issue (and, indeed, its enthusiasm for embracing policies that actively worsen the problem) will eventually constitute one of the more meaningful indictments of the legitimacy and effectiveness of Canada's system of government and the danger that it will be captured by those with short time horizons and money to be put on the table today. By encouraging a parochial horse-trading style of politics, Canadian federalism as practiced to date may be an important contributory factor in Canada's failure to take meaningful action on the world's most serious environmental problem.

# 1 Provincial diversity and powers

Of the three federalist states comprising North America, Canada's is the most decentralized. Provinces are assigned substantial latitude to make decisions in many policy areas and have considerable financial means with which to advance their agendas. The origin of this dynamic can be traced back to before Confederation, where independently powerful provinces chose to come together more as a practical response to the incentives before them than in a decisive idealistic act of forming a new nation. Peter Russell's claim that "Canadians have not yet constituted themselves a sovereign people" is bolstered by the importance persistently accorded to provinces and regions, and the enthusiasm of those groups for competing with one another for the satisfaction of their (often short-term and elite-driven) policy preferences.

One of the areas in which Canadian policy-making is most comprehensively farmed out to the provinces is in natural resources, as codified in section 92 of the *Constitution Act*, pertaining to "exclusive powers of provincial legislatures". These include:

**Public lands** "The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon"

**Inter-provincial infrastructure** "Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province"

**Resources** "(a) exploration for non-renewable natural resources in the province; (b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and (c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy."

**Resource exports** "In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada."

**Resource taxation** "In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of (a) non-renewable natural resources and forestry

resources in the province and the primary production therefrom, and (b) sites and facilities in the province for the generation of electrical energy and the production therefrom, whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.”

The exclusive granting of these rights to the provinces constrains the degree to which the federal government and Canadian federation overall can restrict damaging resource use in the interests of the long-term welfare of Canadians, for the protection of groups harmed by such activities, and for the implementation of Canada’s international obligations.

Other institutional manifestations of federalism, as identified by Herman Bakvis and Grace Skogstad, include the judicial review through which the constitutional division of powers is interpreted, “the institutions of intrastate federalism that provide for the representation of constituent units within the federal government and the management of conflicts between the two orders of government”, and the institutions and processes through which the two orders of government relate to one another directly.<sup>1</sup> The institutions include first ministers’ conferences, first ministers’ meetings with the prime minister, ministerial meetings, meetings with civil servants, and interprovincial meetings in which the federal government does not take part.<sup>2</sup> Martin Papillon also identifies the senate and “the distribution of key positions in the executive or judiciary” as institutional mechanisms through which federalism is operated and as “building-in mechanisms” through which a common sense of belonging may be fostered.<sup>3</sup> The institutions of federalism are certainly not universally seen as effective; for instance, Jennifer Wallner describes Canada’s institutions of intrastate federalism as “notoriously inadequate” and claims that Canada’s chamber is “an ineffective forum” for provinces to express their interests.<sup>4</sup>

Conceptually, Canada’s federal structure may exist to “provide a balance between unity and diversity”, as argued by Bakvis and Skogstad, but the practical effect may often be to encourage short-term thinking and the privileging of politically influential individual interests over group interests that are less immediately obvious. The “regionalism” or “provincialism” in Canadian politics, discussed by Simeon and others, may constitute an important barrier to the identification of wider interests and the implementation of policies to protect them.<sup>5</sup> Papillon also identifies the danger that federalism will “entrench divisions” including by

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<sup>1</sup>[1] p.4

<sup>2</sup>[1] p.9

<sup>3</sup>[2] p.131-2

<sup>4</sup>[5] p.169

<sup>5</sup>See: [3] p.16-8 and [5] p.161

“creating a strong institutional locus for the expression of minorities’ identities in provincial governments”.<sup>6</sup> There is also a danger, described by Jennifer Wallner and others, that federalist governments are especially slow to adapt to new ideas, generating a “mismatch between constitutionally assigned authorities and the nature of the problems confronting the society”.<sup>7</sup> This may produce “a tendency to adopt lower common denominator policies”, a situation that is especially problematic when one or more provincial governments are subject to disproportionate influence from lobbies that are advancing their own agendas at the expense of the population at large.

## 2 The responsibilities and priorities of governments

One problematic aspect of Canada’s federalist structure is how it further enhances the always-present tendency of politicians to focus on local and immediate effects, to the detriment of long-term and global ones. Provincial premiers and even MPs see themselves as champions of their provinces and regions, engaged in a zero-sum contest with people in other parts of Canada and largely ignoring the impacts of their choices on people outside the Canadian borders. Simeon identifies how “policy debate” is often “subject to considerations of turf, status, blame-avoidance and credit-claiming”.<sup>8</sup> This may be most true in the area of the environment and climate change, where fossil-fuel-producing provinces hold themselves up as the blameless financiers of the Canadian federation, and nobody is willing to consider how today’s decisions (fail to) align with what Canada must achieve long-term. As summarized by Wallner, Kathryn Harrison argues that “[b]ecause neither order of government is constitutionally supreme in the environmental field, federalism provides a perfect opportunity for both orders [of government] to either pass or pick up the jurisdictional buck when it is in their interests to do so”.<sup>9</sup> Both tendencies are demonstrated when — for example — the federal government counts the expected greenhouse gas pollution reduction impacts of promised provincial policies toward the achievement of federal goals,<sup>10</sup> and as justification for not adopting more active and effective policies at the federal level.

Federalism is also enmeshed with regulatory capture: in which influential industries effectively gain control over the government bureaucracies that are meant to regulate them. This can be seen in the excessive deference paid to the oil and gas industry by Natural Resources Canada and Environment Canada at the

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<sup>6</sup>[2] p.123, 131

<sup>7</sup>[5] p.162

<sup>8</sup>[4] p.86

<sup>9</sup>[5] p.164

<sup>10</sup>For instance, when Minister of the Environment Peter Kent claimed at the 2012 UNFCCC Conference of the Parties at Doha that Canada is halfway to meeting the target it adopted at the 2009 Copenhagen COP.

federal level. Talk about the ‘sustainable development’ of the oil sands demonstrates this amply, given that the whole point of climate change is that fossil fuel use is no longer sustainable — particularly when it comes to developing vast new unconventional reserves. Despite extremely credible evidence about the harm done through toxic and greenhouse gas pollution, economic arguments about the jobs and tax revenues produced by fossil fuels always trump concerns about health, overall human welfare, and the dangers being stored up for the future. In place of sober long-term policy-making that takes into consideration long-term trends and the implications of today’s resource decisions for the future, we get policy decisions made on the basis of the consequences expected within the lifetime of a parliament, at most. This tendency is even more acute at the provincial level, exacerbated by the assumption that the proper role for provincial governments is to serve as champions for their extractive industries. At a time when Canada should be implementing a plan to phase-out fossil fuels, both the federal and many provincial governments are instead determined to expand production and exports as aggressively as possible. The long-term impacts of climate change are ignored in favour of the job and growth benefits expected in the short-term and projects are being approved that will lock-in unacceptable pollution for decades and scupper the chances of Canada fulfilling its global obligations. Those who question these choices are branded as naive or unpatriotic.

Canadian environmental policy-making is also hampered by the ghettoization of environmental responsibility. Not only are provinces significantly empowered to exploit natural resources regardless of the concerns of federal institutions charged with environmental protection and the upholding of international agreements, but the federal institutions that are supportive of a heedless resource extraction agenda are powerful and rich in allies, while the institutions charged with ensuring the preservation and enhancement of the quality of the natural environment are marginalized, seen as inhibitors of economic progress, and persistently lacking in allies. The existence of organizations nominally charged with environmental protection allows other bodies to dismiss these concerns as somebody else’s problem. At the same time, the relative powerlessness of those protection bodies means they cannot bear the burden that other organizations assume they will. The result is weak environmental management and the persistent favouring of those who can deliver tax revenues and jobs today, regardless of how much damage they are causing and whether the actual net effect of their decisions on the welfare of Canadians is positive or negative.

### 3 Conclusions

In 2013, Canada is in the somewhat odd position of being ruled federally by a party with an overt passion for favouring the resource development claims of provinces over the complaints of others about pollution and other ill effects. This ignores the likelihood that fossil fuel exploitation is actually a particularly pernicious form of theft — in which the harm to the victims substantially exceeds the benefit to the thief.<sup>11</sup> Given the general failure of the international community to create effective institutional mechanisms for addressing climate change — and given the lack of prodding from the United States to do so so far — Canada has not yet been pushed to develop a serious climate change plan. If projections about rapid sea level rise and agricultural devastation continue to become manifest, that situation is likely to change. When it does so, it may constitute the first real challenge to Canada’s business model, which has arguably always centred on the conversion of natural resources into profits, with little regard paid to those who suffer as a result. Canada’s depletion of cod or beaver stocks certainly represents the mis-management of a renewable resource, but the error being committed now with fossil fuels is far more grave. For 10,000 years, human civilization has depended on relative climatic stability; countries like Canada are now choosing to put that in jeopardy because their governments have been captured by those whose interest is to perpetuate the *status quo*, because the population has not yet come to understand the magnitude of the threat, and because Canada’s government lacks the imagination to see a path to a sustainable energy future.

In a sense, then, Canadian federalism suffers gravely from a lack of theory. It functions as a machine for perpetuating the interests of those who are economically powerful and politically influential today, while discounting the legitimate and important ethical and political claims made by groups who are harmed by the *status quo*. This cosy arrangement may well persist for decades to come, particularly if the rest of the developed world fails to get serious about climate change both internally and through international agreements and institutions. If we do bring upon ourselves the worst possible impacts of climate change, Canadians and others around the world will be quite justified in seeing Canada’s federal system as a contributory cause, given the ways in which it has prioritized the short-term over the long-term and the interests of those who create externalities over those who have suffered from them.

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<sup>11</sup>See, for instance, the Stern and Garnaut reviews of the economics of climate change. [http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/sternreview\\_index.htm](http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/sternreview_index.htm) <http://www.garnautreview.org.au/update-2011/garnaut-review-2011/summary-garnaut-review-2011.html>

## References

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- [2] Martin Papillon, “Is the Secret to Have a Good Dentist? Canadian Contributions to the Comparative Study of Federalism in Divided Societies,” in White, et al., *The Comparative Turn*.
- [3] Richard Simeon, *Political Science and Federalism: Seven Decades of Scholarly Engagement* (Kingston: Queen’s University Institute of Intergovernmental Relations, 2002).
- [4] Richard Simeon, “Plus Ça Change ... Intergovernmental Relations Then and Now,” *Policy Options* March-April 2005, 84-7.
- [5] Jennifer Wallner, “Empirical Evidence and Pragmatic Explanations: Canada’s Contributions to Comparative Federalism,” in White, et al., *The Comparative Turn*.
- [6] Linda White, Richard Simeon, Robert C. Vipond and Jennifer Wallner, eds, *The Comparative Turn in Canadian Politics* (Vancouver: UBCPress, 2008).