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# The Challenge of Canadian Federalism



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# The Challenge of Canadian Federalism

by Robert J. Jackson, Chairman,  
Department of Political Science,  
Carleton University

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## Introduction

Canada has ten provinces and two territories. They are distinct and have different levels of wealth, education and industrial development. They share a federal government, but each provincial government has considerable autonomy. They were settled by people of widely different origins.

Canada's continuing challenge is to preserve separate identities within a harmonious union. It is difficult in a rapidly-changing continent to maintain a satisfactory balance between the federal and provincial governments. It is a situation familiar to Americans.

Canada's flexible federal structure has encouraged balance and development for more than 110 years, but many Canadians recognize that there is now a need for a fundamental revision of the constitution adjusting the division of powers and finances between the provinces and the Federal Government.

There are basic economic and linguistic facts that explain this desire for change. In the west, British Columbia is cut off from the

rest of Canada by the Rocky Mountains and is drawn naturally in many ways to the United States. Alberta is oil-rich. The economies of Saskatchewan and Manitoba are based more on grain. Ontario and Quebec, in the heartland of Canada, contain 65 per cent of the country's population. Ontario has farms, industries and sprawling urban centres and its own strong concerns. Quebec's pride and aspirations centre on the fact that its population is approximately 80 per cent of French descent. The Atlantic Provinces – New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island – are the least prosperous, and the two northern territories, the Yukon and the Northwest Territories, are the least populous.

Canada's two official languages are English and French ; 61 per cent of the population use English as their first language, 26 per cent French and 13 per cent other languages. Eighty per cent of the

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French-language group live within the province of Quebec and the bulk of the remainder are in New Brunswick and Ontario. The country is also multicultural : 44.6 per cent of the population is of British origin, 28.7 per cent of French origin and the remaining 26.7 per cent is of other ethnic origins.

Quebec has the most pressing cultural demands. In the last 15 years its *Francophones* have become increasingly vocal about the erosion of their language and culture. Many believe their distinctive character will survive only if their provincial government takes strong initiatives in reforming social structures and promoting economic changes.

In 1968, various nationalist groups in Quebec united in a new provincial party, the Parti Québécois, born as an expression of the desire to preserve their language and culture. In the 1976 provincial election, the Parti Québécois campaigned on a platform of government reform and promised not separation but a provincial referendum within the next few years that would give Quebecers an oppor-

tunity to express their views on "sovereignty-association" with Canada.

The Parti Québécois government has taken bold steps to assert Quebec's distinctive character. The Federal Government has moved as well. In 1977, it established a task force of prominent Canadians to cross the country and encourage dialogue and expression of ideas about Canadian unity. The Government continued to increase opportunities for bilingual Canadians in the federal bureaucracy and it proposed a federal referendum to allow Canadians to express their views on questions about Confederation. However, the basic issues continued to centre on the sharing of the public purse and power. The complexity and scope of this problem requires some background knowledge of the Canadian Constitution.

## **Constitutional development**

In 1867, 80 years after the Constitution of the United States was drafted in Philadelphia, Pennsylvania, the British Parliament, at the request of the three colonies – New Brunswick, Nova Scotia and the Province of Canada\* – passed the British North America Act, which formally established a semi-independent country to the north of the United States. In the years to come, six more provinces and two territories joined, creating eventually the second-largest autonomous country in the world. However, most of Canada remained sparsely populated or uninhabited. It now has about 23 million people, 75 per cent of whom live in urban areas within 150 miles of the American border. The United States, with a smaller land-mass, has over 216 million.

The American Constitution was written after a war with Britain and marked a total political break with the mother country. The Canadian Constitution was written as part of a movement to unite against a possible confrontation with a powerful neighbour whose federal forces had just won a civil war. There were other very important motives, such as a desire to protect and

develop the western territories and to create thereby a more self-sufficient national economy.

The founders also wanted to break a political impasse between the French and English in the government of the united Canadas.

They attempted to construct a constitution incorporating the best of the British and American models while being analogous to neither. Confederation endowed Canada not with a loose alliance of sovereign states, as the term implies, but with a federal structure such as the United States had chosen. The new state was, following the British model, a constitutional monarchy with a parliamentary system in which the Prime Minister and Cabinet were chosen from Parliament.

The Canadian Constitution is not incorporated in a single document. The British North America Act and the unwritten laws that embody the basic rights that evolved from the

\*Part of present-day Ontario and Quebec.

Magna Carta in Britain are equally important in Canadian constitutional law. Fundamental among these laws are political liberties and the principles governing the cabinet system of responsible government. A variety of statutes, Orders-in-Council and judicial decisions are also part of the constitution.

The Fathers of Confederation gave the French-speaking majority in Quebec specific constitutional protections. French and English were made the official languages of the federal Parliament and courts, and in Quebec the French and English languages were given equal status in the courts, government and administration. The province also retained French civil law, and controlled education and such public services as existed at the time. However, French language rights were not protected outside Quebec, and today New Brunswick is the only province with an official bilingual policy. The other provinces have voiced general support for minority language rights.

The Constitution of the United States has a complicated but complete system of amendment. In Canada certain aspects of the constitution can be amended only

by the British Parliament on petition from Ottawa. This reflects not a desire in Britain to hold on to power but the inability of Canadians to agree on a new procedure for amending their constitution. A new method would have to safeguard basic provincial and minority rights while permitting a flexibility that would allow the constitution to be altered to meet changing circumstances. Several federal-provincial conferences have been called in pursuit of this goal.

Two proposals, one in the 1960s and another, known as the Victoria Charter, in the 1970s, won wide but not unanimous acceptance. The Victoria Charter came closest, having been approved by all the provinces and by the Federal Government in 1971; Quebec later withdrew its support because its leaders decided the Charter did not provide sufficient guarantees for its security as a French-speaking province.

## The Canadian federal structure

Most states of the world are unitary— which means that each has a single government with complete jurisdiction — but all the largest six, except China, are federations. Canada, like the United States, chose a federal structure to provide for common action and to take account of provincial differences. The Fathers of Confederation gave the new provinces of Ontario and Quebec their own provincial governments and also joined them in a larger unit, hoping for peaceful co-existence.

The drafters of the BNA Act paid particular attention to this division of authority. They gave the Federal Government all the powers considered important in the mid-nineteenth century — including defence, banking, taxation and trade regulation — and all other powers not specifically granted to the provinces. The provinces retained control of religious, linguistic and cultural interests and were given powers over what then seemed the relatively minor matters of education, property and civil rights.

In the United States, the general drift since the Civil War has been towards greater federal power, but in Canada the original intent to give all powers for the maintenance

of "peace, order and good government" to the Federal Government has been altered by later judicial decisions. The courts have often ruled in favour of increasing provincial powers, and some specific areas of control granted to the provinces in the BNA Act — such as medical care, social welfare and education — have become more important. In consequence, provincial expenditures have increased dramatically and, since provincial governments may levy only direct taxes, they, like the American states, have had to rely on funds from the federal government, which in Canada has the broader authority to exercise "any means of taxation". Ottawa has entered many tax-sharing and shared-cost agreements with the provincial governments. These *ad hoc* arrangements and the bargaining techniques by which they are achieved have come to be called "co-operative federalism". They are often difficult to administer and may require complicated agreements that materialize only after prolonged annual negotiations.

## Government structures

In discussing the nature of federal-provincial relations, a few basic differences between the American presidential and the Canadian parliamentary-cabinet systems should be kept in mind. In Canada, the head of state and the head of government are not the same person. Canada is a constitutional monarchy and recognizes Elizabeth II, the Queen of Canada, as a permanent, non-partisan head of state. The Queen's representative in Canada is the Governor General. He is appointed by the monarch on the advice of the Government and carries out almost all the official duties of the head of state in her name. The Prime Minister, on the other hand, is the head of government.

The American presidential system separates the legislative and executive branches and restricts each with a system of checks and balances. The parliamentary-cabinet system fuses the two. In the American system an individual cannot be a member of Congress and hold an executive position at the same time. Precisely the opposite is true in Canada – all members of the Cabinet must be Members of Parliament: the Prime Minister and his ministers belong to the legislative body and are responsible to it.

If the Government loses the confidence of the House of Commons before its five-year maximum term, it must resign. The Governor General would then dissolve Parliament and call a general election. The Prime Minister may at any time advise the Governor General to call an election and, though the Governor General retains some formal powers, he will as a general rule follow the Government's advice. A Prime Minister has much more flexibility in this respect than does an American President, who is committed to a specific election date.

The Canadian legislature is composed of two houses, the House of Commons and the Senate, and the Members of the Commons are elected simultaneously from constituencies across the country, at least once every five years. The official governing party is the one controlling the greatest number of seats in the House.

The head of that party is the Prime Minister. Canadians never

vote directly for the Prime Minister as such. He runs in a specific riding and is elected to the House as the representative of its citizens. This can, in questions of national importance such as Canadian unity, make the Prime Minister's role difficult. He cannot, like an American President, claim a clear personal mandate to resolve the issue.

Another important feature of parliamentary-cabinet government is the principle of collective responsibility. A President's cabinet functions basically as a group of advisers. The Prime Minister has a dominant role in the Canadian Cabinet, which derives from his position as party leader, but the Cabinet stands as a unit.

The Senate bears little resemblance to the American Senate, except in name. It was created mainly to assure a conservative upper house as a check on the House of Commons and to award the major regions of the country equal representation regardless of their size or

population. Canadian Senators are appointed by the Government of the day and are normally party-patronage positions that last until retirement at age 75. All bills must pass through the Senate, but today this is largely a formality. Senators may also initiate minor legislation not involving expenditure of public funds, but their most useful contributions often are in committee work and commissions of inquiry, and in "refining" legislation.

The committee system in both houses is much weaker than in their American counterparts. Canadian committee appointments are sometimes for less than one session of Parliament and the committees have little professional help. They therefore do not enjoy the weight of influence and power that their counterparts exercise in the United States Congress.

Two major political parties have vied for parliamentary power throughout Canadian history. The Liberal Party has dominated the Federal Government for most of the twentieth century, while the Progressive Conservative Party has generally been the official opposi-

tion. There are also smaller parties represented at the federal level, the New Democratic and the Social Credit Parties. Throughout Canadian history the French-English relation has been a dominant factor in the development and fortunes of the parties. Quebec is the second most-populous province in Canada and the only one that is predominantly French. In the twentieth century it has voted almost as a bloc, so that it is very difficult for a party to win a general election without its support.

National parties may operate at both the provincial and federal levels, but party relations between the two levels of government vary greatly. Often strong provincial parties are minor or even non-existent on the federal scene, and vice versa. The Parti Québécois, for example, is strictly a provincial party.

## Canadian dialogue

Throughout Canadian history, economic and linguistic disparities have placed strains on the federal system. Recently the ethnic division between a *francophone*-oriented Quebec government and the rest of Canada has demanded the particular attention of federal leaders.

In the search for a creative compromise, politicians are being forced to enunciate and examine Canada's fundamental issues. The eventual redefinition of federal arrangements will rest somewhere between national and provincial aspirations.

It is likely that reconciliation can be built only through a recognition of two facts:

- There are in Canada two linguistic groups and several cultures and they are often in conflict.
- Canada is a country of heterogeneous socio-economic regions.

The first fact demands constitutional and institutional guarantees and the second a proper division of the public purse and power. Both problems must be resolved in a way that allows flexibility and change. The changing socio-economic forces of the past century have made a redefinition of Confederation necessary. So, undoubtedly,

will those of the next 100 years. To begin, then, a formula for amending the constitution should be agreed on.

This dialogue will not end even with an agreement on these issues. The federal system will still require constant attention and delicate management. While provincial distinctiveness is the fundamental reason for all federal systems, some sense of positive consensus among the different regional groups is also imperative. The next century will be as difficult to navigate as the past, but it will not be impossible. In Canada, as in the United States, the original constitution provided a framework within which future generations could build a government. In both countries, the issue of the precise division of powers between central and state or provincial governments was left to be worked out through court decisions and political agreements in the pressures of a changing society. In both countries the process is still evolving.

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