

The Dynamics of Decentralization: Canadian Federalism and British Devolution

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A NEW MESSINESS?

It used to be thought that the meaning of certain concepts was clear; for example, many believed Sir Kenneth Wheare had provided classic definitions of a federal system. It also used to be thought that it was “clear” that Canada was a federal state and the United Kingdom a unitary state. What the original Colloquium and contributions to this book demonstrate is that life is not now so simple, if, in fact, it ever really was.

Federalism in Canada is clearly in a fluid state, there being real debates about the locus of constitutional power and political and pragmatic discussions about the appropriate locus of political decision making. The nature of the federation in Canada is less clear than it was, and, as is forcefully brought out in some of the foregoing contributions, Canada itself is now much more decentralized than it was originally or indeed as compared to other federal systems. In the UK, although absolutely not a federal system, significant changes have taken place with the creation of the Scottish Parliament and Executive, the Welsh Assembly and the Northern Ireland Assembly — each with different legislative and executive powers, and with different relationships with London. Indeed, these situations are still evolving. This raises the question as to whether in the British case there was any rational, logical, or planned basis for developments since 1997. One answer is the Lord Chancellor’s comment that there “was no master plan.” Kenneth Morgan’s contribution suggests that this was important since the subsequent developments were not inexorable. The old verities have been overtaken and there is now a certain “messiness” in seeking to come to definite statements about where constitutional and political power lies.

Subsidiarity

A central point to emerge is that rather than starting from a constitutional perspective perhaps the real question is what should be done at the regional level? The answer that emerges from the foregoing chapters is whatever can be better done at that level than at any other. Although the word “subsidiarity” does not feature much in this work, in many ways it lies at its core. This is interesting since subsidiarity was written into the Treaty on European Union of 1992 as a deliberate and conscious alternative to the notion of the European Union having a “federal vocation.” A problem, of course, with subsidiarity is that although the principle can be identified, it is more difficult to agree or define it in actual policy terms. The specific level which is deemed most appropriate for certain tasks is not always clear and will depend on a series of factors such as the political viewpoint and values of those involved; and these values may not always be reconcilable; for example, there can be tension between choices based on the maximization of economic welfare as against choices based more on identity — key issues in both Canada and Britain. In addition, subsidiarity of itself does not fix a division of powers or competencies; it only provides a principle to do so. What the actual appropriate point of decision is can change over time, domain, and circumstance. The central point of decision in systems based on subsidiarity seems to float depending on circumstance. The appropriate level of decision is not always clear; it can change; and it is a matter of judgement emanating from the values of those making the judgement. Yet there needs to be a guiding principle that can be successfully *applied* in determining what should be done at the regional level.

Constitutions, Conventions and Practice

A related issue that arises in terms of the new messiness is whether the difference between the written constitutional settlement of Canada and the “conventions” of the United Kingdom are really as clearcut as imagined. The contributions above speak volumes as to how much the Canadian constitutional settlement has had to be revisited, reinterpreted, and re-configured: they do not definitely resolve the question of what is best done at the regional level; on the other hand, the United Kingdom now has the *Scotland Act*, etc., which seek to embed the settlement in law, if not in an absent written constitution. The *Scotland Act* arguably in some senses has more status than normal acts and it was of course somewhat entrenched by the overwhelming support that its principles received in the referendum of September 1997, with 74.3 percent voting “yes” to the establishment of a Scottish Parliament and 63.5 percent voting “yes” for it to have tax-varying powers. Since then in the United Kingdom there have been a series of concordats or memoran-

dums of understanding and supplementary agreements, such as the Concordat on Co-ordination of European Union Policy Issues and the Concordat on Financial Assistance to Industry between the Scottish Executive and the UK government, which have attempted to define the working relationship between the Executive and London, but even here much is left unsaid and potentially unresolved, as Salmon shows.

This leads to another key question: To what extent in both Canada and the UK have administrative arrangements and developments in public policy begun to bypass constitutional debates and formal arrangements? This is raised specifically by Claude Forget in connection with Canadian social policy. Similarly the question emerges as to whether both systems are in practice moving to a collaborative federalism in their intergovernmental relations, even if in the UK the “f-word” must not be used.

Centralization?

The evolving sense of messiness and the attempt to impose order and clarity upon it — and to seek an intelligent understanding of it — is further demonstrated in the fundamentally different approaches to federalism that emerge. Nearly all the Canadian contributions have focused on decentralization, on the political and economic dynamics of the contemporary situation and their relationship to the formal constitutional position — often to point out the gap that now exists between the two — and on the importance of political motives and economic forces in determining both the nature of and the attitudes to the situation. In Britain there remain many who view federalism as concerned with centralization, with the loss of local control, and with those new centralized authorities acting with overweening power, and almost contempt for the regions. This is the essential message of this edited collection: it is important to understand the reality of dynamic federal systems and not to be captured by myths and misconceptions. The Canadian perspective is that of the centre losing power, not that it is becoming more imperialistic. Also relevant here is the point that as the central federal government seeks to reduce public expenditure, so too the binding community-building nature of federal money is also being reduced. Similarly, as Canadian policy changed on issues such as health provision and social policy, so too did the integrative attraction of federal support, a point made by Harvey Lazar.

Follow the Money

This train of thought is an echo of the Watergate investigation conducted by Woodward and Bernstein: follow the money. To what extent is there now an era of

“fiscal federalism”? Or in the UK context, is it not true that the old adage of politics has a new resonance: real political decisions are about the allocation of values and resources. Invariably these revolve around money: who wins, who loses, and crucially, who pays? As has been evident from other situations, this last question is usually the key to determining policy outcomes and processes. In Canada it appears that taxation and its distribution are becoming the key to understanding the realities of power. In the UK the fact that the Scottish Parliament has limited tax-varying powers could become critical, although the major players have so far issued self-denying ordinances in this regard. However, between 1979 and 1997 there would have been enormous tension between two different approaches to the levels of and nature of public expenditure, and since 1997, as Michael Keating points out, an increasing number of questions have been raised about the Barnett formula which has been the basis of determining overall levels of public expenditure in Scotland as a proportion of overall English expenditure for over 30 years. In the northeast of England complaints are now frequently heard that Scots receive on average £600 per head per annum more than their English counterparts.

Federation or Devolution?

All of this brings home that the difference between federal and devolved systems is not nearly as great as many may anticipate, although the formal distinctions between a federal system and a devolved system are considerable — not least the issue of entrenched powers and a formal court of appeal. Indeed, decisions by the Canadian Supreme Court have had and are likely to have an important bearing on the future of Canada, not least because of their “raising of the threshold” of secession by ruling that it should not be a unilateral act.

Regions?

But the “blurring of boundaries,” it becomes clear, is further clouded by the need to revisit the issue of the definitions of the region, especially since in many apparently established regions there are developing sub-regions. Here a perception of peripherality and psychological distance appear to be crucial. Both regions and sub-regions have now clearly developed an international/external dimension and have begun to form regional partnerships with each other domestically or with others externally. There is clearly still some argument as to how important these tensions are with some not convinced that these tendencies are as divisive as often portrayed, but others drawing attention to the fact that there are significant trends emerging, for example in trade patterns, with Ontario now conducting over twice as much of its trade outside Canada as inside.

Speaking of regions also raises the question of the visibility of the tiers of government and administration, and of how well individuals are able to locate the real locus of power. Visibility relates directly to the question of identity and the foregoing contributions make abundantly clear just how important this issue is. In Canada it appears in the increasing use of the word “national” rather than “federal” and the question of Quebec versus Canada, or as it may be interestingly put: what is Canada without Quebec — simply the rest of Canada? In the UK the questions are similar: What is the relationship between being Scottish and British? Can one be both? And what is the “rest of Britain” without Scotland, albeit that England makes up 85 percent of the UK? In one sense the question hangs in the air: What is England or the rest of Canada, simply a state of mind or more than that? In both Canada and Britain these are now really pressing issues as is the question as to whether identity is exclusive or not. The questions continue: What is the glue that holds an evolving Canada together and what is it that makes one British?

Asymmetrical Government

The former clarity about the distribution of power has been muddied by the asymmetries that exist between the real political powers of the individual provinces and the federal government; a situation parallel to the different arrangements between Edinburgh, Cardiff, and Belfast on the one hand and London on the other. The British arrangements are asymmetrical and each scheme is different in both degree and kind. Can this asymmetry survive? How asymmetrical can it become before the stresses caused by them begin to tear the constitutional, political, and administrative settlement arrived at or evolving apart? In both the British and Canadian contexts the question is whether reform stimulates or modifies separatist tendencies. Many argue that the devolution of power or decentralization need not inevitably lead to the break-up of the existing system and that federal systems can survive, but obviously not all agree.

The Citizens

This leads to the interesting question: For all the changes in Canada and Britain do “ordinary” people, the voters, sense that power is any nearer to them? To cite the Treaty on European Union (Article 1): is there any greater sense that “decisions are taken as openly as possible and as closely as possible to the citizen?” Going back to the psychological point about power made earlier: there is perhaps a feeling that changing the geographical location of power does not always match a change in the actual location of power; other things like money were more

important. Increasingly in both Canada and the UK there is evidence of voter alienation or disengagement from traditional politics, and both face important issues relating to the real extent and nature of their democratic values. There are even questions, as Hugh Segal notes, about the very definition of citizenship in this situation. If it is accepted that citizenship is based on relationships rather than having a static basis, then it too needs to be redefined.

This is made even more problematic by the context of globalization and a strong sense that there is an increasing blurring of boundaries, so that the traditional link between politics and economic “space” is breaking down. No solution yet appears in sight as to how this might be resolved. In this context of democracy, Richard Simeon makes the interesting observation that the increasing use of formal intergovernmental agreements may increase the “democratic deficit,” since the agreements are almost entirely executive in nature. Others have noted that this is now an ever more pressing issue given the role of the World Trade Organization and the North American Free Trade Agreement, which could have profound consequences for constituent parts of federal systems.

CONCLUSION

Perhaps the real message of this collection is that the questions that need to be asked are becoming clear but that the answers are not. To cite Scottish law, on many of the foregoing issues the jury’s verdict is “not proven.” So fluid is the situation in Canada that it is not entirely clear where Canada is going and what it might look like for the next generation. Similarly in Britain there are still legitimate questions as to whether the will of the Scottish people is really “settled,” whether people understand devolution and whether those directly involved have the will or wit to ensure that the system works.

It is also necessary to note that on nearly all these questions, no answers can be written on tablets of stone since the answer depends on the political philosophy of the individual, the party or the government providing it. There is no “end of ideology” on these questions, and it is not just minor questions of administrative adjustment. It is about the life-blood of politics: the allocation of values and resources, and increasingly about identity, although there was perhaps a sense, argues Richard Simeon, that in Canada there is not the appetite for these questions that there was just a few years ago. Curiously perhaps, in Britain, it is after devolution has been established that the debate has really begun outside Scotland.

What this collection definitely demonstrates is that politics is about choice. In both Canada and the UK the people, the parties, and the respective governments are still trying to clarify and resolve these choices. As Kenneth Morgan concludes, their answers at the turn of the new century were different and reflected a different world compared with the answers proposed at the end of the nineteenth century.