

Canada-American Federalism

Any student of political science will sooner or later come across the idea of federalism. This is a political philosophy in which a group of members are bound together with a governing representative head. The term federalism is also used to describe a system of the government in which sovereignty is constitutionally divided between a central governing authority and constituent political units (like states or provinces). Federalism is the system in which the power to govern is shared between the national & state governments, creating what is often called a federation. Federalism works in both Canada and the United States, but in very different ways. This essay will discuss how Canadian federalism is different from American federalism. We will do this by first looking briefly at the US model of federalism, and then contrast it with the Canadian system, and from this it will be clear that the two systems are alike in some ways, but different in the sense that Canada has shifted from a centralized federation to a decentralized one since its inception, and the American federation has done the opposite.

In the United States, federalism is the system of government in which power is divided between a central government and the government of each state. Before the U.S. Constitution was written, each American state was essentially sovereign, and the U.S. Constitution created a federal government with sufficient powers to both represent and unite the states, but did not replace state governments. This federal arrangement, by which the central federal government exercises delegated power over some issues and the state governments exercise power over other issues, is one of the basic characteristics of the U.S. Constitution that checks governmental power. Other such characteristics are the

separation of powers among the three branches of government, the legislative, executive, and judicial.

Federalism in Canada, or the division of powers between levels of government, created two spheres of government in Canada, the national government headed up in Ottawa and the many provincial governments.¹ In theory, this could range from the allocation of powers to the different levels from a highly centralized one to a highly decentralized one, but the father's of Confederation intended that Ottawa have more power than less.²

Despite the fact that both Canada and the United States have federal political systems, these federal principles were adopted for very different reasons in each country. Canadian federalism was put into place as a way of primarily handling ethnic diversity, while the American system was designed to divide and ease the concentration of political power.³ To improve the fragmentation, the American federal system was initially decentralized, but for largely the same reasons as in Canada, the way that American federalism evolved was different than the Canadian, as American federalism has shifted over the last 70 years or so, to a very centralized structure.⁴

Relative to other federal systems, the basic institutional and constitutional framework supporting Canadian federalism has worked very well. The *Constitution Act* of 1867 was the original constitutional document, and this enabled, among other things, political and economic union in 1867. It also allowed for accommodation of Quebec's

¹ Ronald G. Landes, *The Canadian Polity – A Comparative Introduction*. 5th ed. (Prentice Hall Allyn and Bacon Canada: 1998), 54.

² Ibid.

³ Ibid.

⁴ Ibid, 91.

unique needs at the time.⁵ Later, there were adjustments made to the federal and provincial powers through judicial review, formal amendment, and changes in conventions which allowed for Canadian federalism to adapt to any new major changes, potentially brought on by the entry of new provinces, war, economic development, depression and new policy challenges.⁶ As this happened, the federal system in Canada went from being highly centralized at the time of Confederation, when the federal government could intervene in provincial jurisdiction through different means, to a more decentralized system.⁷ By the end of the nineteenth century, these federal challenges to provincial authority were becoming much more infrequent.⁸ Unlike the United States, Canada is one of the more decentralized of the world's federal systems. The Canadian federal system has also experienced the development of different types of formal and informal forums for the exchange of information, negotiation, and the making of collaborative agreements between governments, something that had provided a way to bring a measure of closure to most, if not all, outstanding disputes.⁹

Because the American states were preexisting political entities, federalism was not defined or explained in any one section, but it did contain numerous mentions of the rights and responsibilities of state governments and state officials with regard to the federal government.¹⁰ The federal government has specific enumerated powers including the right to levy taxes, declare war, and regulate interstate and foreign commerce. In addition, the “necessary-and-proper clause” gives the federal government the implied

⁵ Herman Bakvis and Grace Skogstad, *Canadian Federalism: Performance, Effectiveness, and Legitimacy*. Edited by Herman Bakvis and Grace Skogstad, *Canadian Federalism – Performance, Effectiveness and Legitimacy*. (Oxford University Press: 2002), 3.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid, 4.

¹⁰ Landes, *The Canadian Polity – A Comparative Introduction*, 91.

power to pass any law “necessary and proper” for the execution of its express powers.¹¹ There are also certain powers that the Constitution does not delegate to the federal government or forbid to the states, and they are known as the reserved-powers. These powers are reserved to the people or the states.¹² The power delegated to the federal government was significantly expanded by amendments to the Constitution following the Civil War, and by some later amendments, including the overall claim of the Civil War, that the states were legally subject to the final dictates of the federal government.¹³

After this point, the federal government has increased greatly in size and influence, both in terms of its influence on everyday life and relative to the state governments. There are several reasons for this, including the need to regulate businesses and industries that span state borders, attempts to secure civil rights, and the provision of social services. Although many people believe that the federal government has grown beyond the bounds permitted by the express powers, from 1938 until 1995, the U.S. Supreme Court did not invalidate any federal statute as exceeding Congress' power under the Commerce Clause (*United States v. Lopez*, challenging the Gun-Free School Zones Act). However, most actions by the federal government can find some legal support among the express powers.

Further evidence of America’s centralized federalism in the United States can be seen in their responses to both domestic and international crises. Until the 1930s, the American government was much more decentralized, but for them to adequately respond to the Great Depression, the national government had to assume many of the functions that were under state control, these included welfare, unemployment and economic

¹¹ Ibid.

¹² Ibid.

¹³ Robert F. Nagel, *The Implosion of American Federalism*. (Oxford University Press: 2003), 103.

development.¹⁴ As is the case in Canada, the federal government in the United States had superior taxing power and this eventually led to it taking control of matters that were in the realm of state and local authorities.¹⁵ Through a series of financial mechanisms, such as the program of revenue sharing, the federal government has become extensively involved in financing of state and local government.¹⁶ This further shows how America has shifted from a decentralized country to a centralized one.

Despite occasional bumps, intergovernmental-relations in Canada have gone rather smoothly, and despite the high degree of decentralization, the Canadian federation has successfully faced several major policy changes, for example medicare.¹⁷ The federal arrangement in Canada has allowed resources needed to meet various challenges and opportunities to be marshaled pretty quickly and efficiently. It appears like federalism in Canada has not impeded federal or provincial governments from pursuing effective and coherent policies, either together or separately.¹⁸

This essay has given a brief look at the concept of federalism and how this concept applies to both Canada and the United States. From this, it has been shown that they are alike in some ways, but different in the sense that Canada has shifted from a centralized federation to a decentralized one since its inception, and the American federation has done the opposite. Nevertheless, both systems have proven to work, despite the setbacks that might occur along the way.

¹⁴ Landes, *The Canadian Polity – A Comparative Introduction*, 92.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Bakvis and Grace Skogstad, *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, 4.

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