Treaty Federalism:
The Canadian Experience

Julie Simmons

Liberales Institut

Treaty Federalism: The Canadian Experience

Julie Simmons

Contents

Introduction

In many ways the structure of the Canadian federation is very different from the German federation. Most notably, the Canadian constitution divides between federal and provincial government powers to legislate, implement and administer in specific policy areas whereas the German federation is noted for the concentration of legislative powers at the centre, and administrative powers among the Länder. Additionally, the German federation contrasts the Canadian federation in terms of the representation of the constituent governments in the central institutions of government. Despite the challenges of an "interlocked" system, many Canadian observers look admiringly to the German example of Länder government representation in the Bundesrat and lament the ineffectiveness of provincial representation in the Canadian Senate.

But despite the distinctions in the structure of the two federations, there are similarities in the conversations among politicians, academics and ordinary citizens regarding the perception of "problems" with the federation and how to "fix" them. The search for ways to make the two orders of government more effectively create and deliver policies to citizens, questions about the appropriate degree of autonomy for constituent units of the federation, concerns about whether policies should be permitted to vary across constituent units. The divergent interests of a specific Land in negotiations with the central government, the tension between conducting constitutional deliberations in a transparent manner involving the input of citizens and negotiating compromises across governments – all of these threads of debate are apparent in Canada as well.

As in Germany, competitive federalism has been a subject of academic debate. Vertical competition is a dynamic, virtually always present in discussions among the Premiers of the provinces and the Prime Minister in Canada. However, as Canada is a relatively decentralized federation, horizontal competition is also evident from time to time. This paper considers how the concept of competitive federalism has been defined in Canadian scholarship, and reviews the institutional, economic and political characteristics of the Canadian federation that contribute to federal-provincial competition and interprovincial competition in Canada. I will explore how "treaty federalism" or, in other words, negotiating non-constitutional agreements between the provinces and the federal government, has become essential to the functioning of the Canadian federation in the absence of the possibility of constitutional change. The policy impact of such agreements, negotiated primarily in the late 1990s is just now becoming evident. In theory such agreements have

further decentralized the Canadian federation, providing provinces with even more autonomy in their spheres of jurisdiction. In short, in a federation where formal constitutional change has proven impossible in the last few decades, vertical competition has come to be mediated through treaty federalism. The progressively unconditional nature of fiscal transfers to provinces from the federal government, coupled with provincial jurisdiction over important policy areas such as healthcare, education and social services, give provinces considerable discretion in the creation of provincial welfare states.

Proponents of decentralization of competencies within federations in Germany and elsewhere have argued that local governments with greater autonomy will be more likely to deregulate markets, reduce their taxes and welfare state services all in an effort to compete for mobile taxpayers and businesses. While some welcome such dynamics, others in favour of more robust social policies have argued against decentralization. Nevertheless the assumption underlying both arguments is the same. More autonomous constituent units will adjust the balance between the market and the state in favour of the market (Scharpf 2005). Given the recent developments in Canadian federalism, this is possible to consider if this assumption holds true in practice. Drawing upon the evidence accumulated from academic studies to date, this paper reveals that a downward spiral of interprovincial competition has not resulted from Canada's decentralized arrangements. The policies of provinces are gradually converging in several areas. However, it is not always in the direction that we might expect. As Gerard Boychuck has argued, the effects of decentralization are "multiple, complex and contradictory" (2003: 269). This paper concludes by considering what might account for these preliminary findings.

Federal-Provincial Relations: From Competitive to Constitutional to Collaborative and Treaty Federalism

Vertical competition, or competition between the provinces and the federal government was most apparent when Pierre Elliott Trudeau was prime minister of Canada in the 1970s and early 1980s (Simeon and Robinson 1990). This era, known as "competitive federalism" in the academic literature, was also marked by considerable federal-provincial conflict. This period is defined by the growth of provincial welfare states, conflicts over revenue sharing following the expansion of the oil sector in Alberta, and the continued rise of nationalism in Quebec. This

era culminated with the patriation of the Constitution in 1982 absent the consent of the province of Quebec.

But in many respects, vertical competition is always present in Canadian politics. Consider the following. The constitution enumerates exclusive areas of federal and provincial policy jurisdiction.[1] Yet, the complexities of modern-day decision making mean that the federal and provincial governments must communicate, if not jointly devise policy, in a number of critical policy areas. For example, environmental policy in Canada is not specified in the Canadian constitution as either a federal or provincial area of jurisdiction. However, with the ability to sign international treaties residing with the federal government, and jurisdiction over natural resources residing with the provincial governments, implementation of the Kyoto Accord requires a joint approach. Moreover, the provinces rely on the federal government's fiscal capacity for funding social policies within their boarders. Provinces have jurisdiction over healthcare, social assistance and education. Revenue generation through direct and indirect taxation is possible for both orders of government in Canada. Yet, by themselves, provincial "own source revenues" have proven inadequate for developing the modern welfare state. Both provincial and federal governments have a tendency to blame the other order of government for the shortcomings of policies, and compete to take credit for policies that are popular among Canadians.

Canadian federalism is also competitive because, unlike in Germany, provinces are so weakly represented in Canada's central institutions of government, and single party governments form the executives in parliamentary settings in every province. Accordingly, provincial premiers can compellingly challenge the federal government, arguing that they, rather than elected members of the national parliament, are the best spokespersons for the rights of citizens within their boarders (Bakvis and Skogstad 2008).

The diversity of demographic characteristics of the provinces also adds to the competitive tendencies of the Canadian federation. 40% of Canada's population lives in Ontario, one of the ten provinces. The French speaking population of Canada is the majority in one province Quebec, while all other provinces have English speaking majorities. Quebec and Ontario form the industrial heartland of the country,

---

1   The residual power lies with the federal government, though the decision of the Judicial Committee of the Privy Council in many early court cases post Confederation 1867 lead to a more decentralized federation that was intended by the fathers of the confederation. The residual power was narrowly interpreted.

while the four provinces to the west of Ontario and the four provinces to the east of Quebec have economies traditionally based on natural resource development and extraction. There are considerable economic disparities across the provinces with Alberta, home to much of Canada's oil and gas reserves, representing the richest of the provinces. Ontario is second, with its industrial base. However, one of the poorest provinces, Newfoundland, is poised to become one of the more affluent ones with the growth of the offshore petroleum industry in the Atlantic. Polling data suggest that citizens from provinces economically and geographically located on the periphery of the country feel a sense of alienation from the industrial, political and geographical centre of the country (Henry 2002). Each province has its own electoral cycle, distinct from the central (or federal) government electoral cycle. The cities of Vancouver, Toronto and Montreal are the most popular destinations for Canada's large immigrant population. Accordingly, the provinces of British Columbia, Ontario and Quebec experience cultural and social challenges different from those of other provinces. As a result of these dynamics, the dialogue among provinces and between provinces and the federal government, as it plays out in the televised and print media, can have a competitive undercurrent.

How have Canadian governments dealt with these competitive dynamics? The 1980s and early 1990s were punctuated by two major attempts to formally amend the constitution. One of the main thrusts of these proposed amendments was to give provinces greater autonomy in decision making. Such autonomy was thought to be essential to the preservation of Quebec's distinctiveness in the federation. Another objective of the proposed amendments was to give provinces greater representation in the second chamber of Canada's federal parliament. Ultimately, both the Meech Lake Accord of 1987 and the Charlottetown Accord of 1993 were rejected, the first by select provincial governments, the second by citizens in referenda held across the country.

In 1995 when the province of Quebec held a referendum on sovereignty, and the federalist side won by one percent, then Prime Minister Jean Chretien embarked on an era of non-constitutional renewal of the federation. One of the goals of a series of intergovernmental agreements on issues from the environment to international trade to healthcare, was to re-balance the powers of the federal and provincial governments without formal constitutional change. It was thought that a new specification of the roles and responsibilities of the two orders of government might just demonstrate to Quebecers the flexibility of the existing federal-provincial arrangement and at the same time respond to the pressures in several other provinces for greater say in shaping cross-Canadian policies (Lazar 1998).

In the Canadian context, the term "treaty federalism" is normally associated with Aboriginal politics. First Nations argue that a transfer of sovereignty from First Nations communities to the "crown" has never taken place, and thus when disagreements between the federal government and Aboriginal communities arise in modern times, the sovereign parties must come together to negotiate new understandings, all the while maintaining their respective sovereignty (Hueglin 2000). From an Aboriginal perspective, treaties entail "mutual recognition of nationhood and affirmations of commitment to a continuous nation-to-nation relationship" (Ladner 2003, p. 171). As Hueglin (2008) points out, in many respects, federal-provincial non-constitutional negotiations are also a form of treaty federalism in that each order of government is sovereign in its own spheres of jurisdiction, and the result of these deliberations can be contract-like arrangements between the two orders of government which, from time to time are revisited, renegotiated and sometimes replaced, all without the formal transfer of authority from one order of government to another.

Such intergovernmental policy making is possible in the Canadian federation by virtue of the marriage of Westminster style parliamentary decision-making to the institution of federalism. With the power to speak on behalf of their governments, premiers and the prime minister, along with the other members of their respective executives thus engage in "executive federalism" (Smiley 1976). Such extra-parliamentary intergovernmental relations have defined Canadian federalism throughout the development of the modern welfare state.[2]

However, whereas in the 1960s the provinces accepted federal leadership and influence in provincial spheres of jurisdiction in exchange for federal financing, in the post-referendum era, they have been much less likely to do so. In this sense, for some optimistic observers, the post-referendum intergovernmental negotiations have had the potential to be even more treaty-like than those of the 1960s in that the provinces are to negotiate with the federal government on equal footing with neither subordinate to the other. Hence, some Canadian scholars have come to label the post-referendum era of non-constitutional agreements as "collaborative federalism," a maturation of the "cooperative federalism" of the 1960s. The foundation of "collaborative federalism" is the view that the federal government ought not to use its federal spending power in unilateral ways, or develop policy

---

2   In the immediate post World War II era, the federal government was in a superior fiscal position. However, through the transfer of "tax points" to the provinces in 1977, the government of Canada now controls a slightly larger portion of tax revenues than do the provinces (Hueglin and Fenna, 2006: 325).

with provinces through intergovernmental agreements negotiated in a hierarchical manner, with the federal government holding the spending power trump card (Cameron and Simeon 2002; Lazar 2000; Desautels 1999). Provinces routinely express the view that they should not have to answer to the federal government for how they spend money transferred to them from the federal government.

There is now considerable recognition that the post 1995 negotiations en route to intergovernmental agreements vary from policy sector to policy sector in the extent to which they reflect the collaborative or treaty model of non-subordination (e.g. Lazar 2006). Generally speaking however, the resulting accords or agreements contain a broad section enumerating the common purposes of federal and provincial governments and principles to which they both agree, commitments to work together and exchange information and commitments to report to citizens (rather than to each other) on the efficacy of policies undertaken as a result of the agreements. Occasionally the agreements include mechanisms of resolving disputes. Agreements may also leave the option for more specific bi-lateral agreements between any one province and the federal government, thus permitting asymmetrical arrangements across the federation (Simeon and Nugent 2008).

Canada has survived the constitutional impasse of the 1990s in part because of these new products of executive federalism. However, these intergovernmental agreements are not without their critics. First, it is important to realize that these intergovernmental agreements are virtually never legally binding, and in theory, can be ignored by the governments who negotiated them, and by the governments who are subsequently elected. Second, they are the product of extra-parliamentary negotiations and thus lack the transparency of legislative settings. Indeed, in some policy sectors there are efforts to directly engage interested policy advocates in information exchange and even deliberation en route to the establishment of an intergovernmental agreement. However, the results of these efforts are often sidelined in the push and pull of federal-provincial negotiation (Simmons 2008a). Accordingly, there is a democratic deficit to executive federalism. Third, to the extent that provinces can develop "local" solutions to policy problems through greater discretion in their spheres of policy jurisdiction, there is concern that the cross-Canadian fabric of social, economic and environmental policy will unravel.

In short, a differentiated sense of citizenship may supplant a universal sense of citizenship. As Keith Banting explains,

> National social programs create a network of intimate relations between citizens and the central government throughout the country,

helping to define the boundaries of the national political community and enhancing the legitimacy of the states... Social programs controlled by the central government can become instruments of nation building, helping to mediate regional tensions and strengthen the states against centrifugal forces rooted in territorial politics. Alternatively, social programs designed and controlled at the regional level can become instruments for strengthening regional cultures by enhancing the significance of local communities in the lives of citizens, thereby reinforcing differentiation and centrifugal tendencies at the national level (1995: 270-271 quoted in Boychuk 2003: 277).

More specifically in the Canadian context, the mechanics of this argument are as follows: federal intervention in social policy the domain of the provinces, in the form of conditional fiscal transfers to the provinces are fundamental in ensuring consistency in social citizenship entitlements across Canada.

As noted at the outset, a related debate focuses on whether decentralization will lead to a competitive race among constituent units in a federation resulting in less liberal policies than those created through centralized directives. The classic race to the bottom theory suggests that, in the absence of central government oversight, federal constituent governments are likely to lower taxes, adopt weak environmental policies, shrink their welfare states, and relax labour laws, all in an effort attract mobile capital. By adopting some of these strategies, constituent members of a federation are more welcoming hosts for businesses and a mobile labour force. More generous local social programs will become "welfare magnets" (Schram and Kruger, 1994), which will, in turn, force governments to adjust these programs downwards. More generally there is a concern that decentralization will make the development of new social policy developments all the more difficult to achieve.

Before exploring whether these concerns have been born out following the negotiation of several new intergovernmental agreements in Canada, it is useful to first consider, by way of example, how the division of roles and responsibilities between the provinces and the federal government has been transformed, all without formal transfer of constitutional authority.

Decentralizing the Federation: the Evolution of Fiscal Federalism

In terms of fiscal relations between the two orders of government, two major developments have taken place in the post-referendum era that have enhanced the autonomy of provincial governments in the sphere of social policy. First, the federal government's watershed 1995 budget removed some of the strings attached to payments to the provinces. Second, in 1999 nine of the ten provinces (absent Quebec) agreed to the Social Union Framework Agreement, which significantly curbed the ability of the federal government to direct social policy outcomes in the provinces through the development of new shared cost programs.

In the Constitution Act 1867 there are just three concurrent areas of jurisdiction: immigration, agriculture and old age pensions. "Hospitals, asylums and charities" however, are areas of exclusive provincial jurisdiction, along with education. This division of powers meant that the welfare state was actually slow to grow in Canada. For example, the judiciary ruled that the federal government did not have the authority to establish an unemployment insurance program during the depression.[3] However, beginning in the 1950s, Canadian governments built their welfare states by taking advantage of shared-cost programs initiated by the federal government. The federal government induced provinces to develop and spend on social welfare programs by matching dollar for dollar funds provinces put towards job training, post-secondary education, hospitals and medical insurance plans, to name a few. In 1961, major cash transfers to the provinces represented approximately 24% of provincial revenue. By 1999, however, this number would decline to 13% (Brown 2002: 68).

Canada is now distinguished from other federations in that in almost all of its intergovernmental transfers take the form of block payments. In 1977 the shared cost approach to building the welfare state had been replaced with a block grant approach for all major policy areas except for provincial social assistance (welfare). The major block grant for post secondary education and healthcare was not unconditional however. Provinces had to maintain the tenets of the Canada Health Act introduced by the federal government in 1984. This act aims to ensure "universal coverage" for all "medically necessary" hospital and physician services. Doctors are not permitted to bill patients for such services, and no private health

---

3   The Constitution Act 1867 was subsequently amended so that the federal government had jurisdiction over unemployment insurance.

insurance schemes exist for "queue jumping" as is the case in the United Kingdom and New Zealand, for example (Flood et al 2008). In addition to this block funding and own source revenues, most provinces funded their provincial health programs through the unconditional Equalization Program, first introduced in the 1950s, which aims to redistribute funds from "have" provinces, or more affluent ones, to "have not" provinces or less affluent ones, according to a specific formula.[4] While this formula has changed over time, this program is intended to ensure that all provinces, irrespective of their individual fiscal capacity, can provide comparable services at comparable rates of taxation, a principle now enshrined in the Canadian Constitution Act 1982.

In 1995 the fiscal landscape changed dramatically. In an effort to balance its own budget, the federal government unilaterally reduced its transfer payments to the provinces with the introduction of the Canada Health and Social Transfer. This new block fund collapsed the remaining shared cost program for social assistance with the block fund for post secondary education and healthcare. Aside from the Canada Health Act requirements, the only other condition attached to the new transfer as it pertained to social assistance was that provinces could not introduce "residency requirements." That is, if a province wanted the federal money they could not establish a social assistance program that required citizens to live in their province for a specific length of time before being eligible. Thus, the Canada Health and Social Transfer significantly disentangled the federal government from the provinces in the field of social assistance. Considerable provincial diversity in programs was now permitted.

Vertical competition to avoid blame for the subsequent pressures on the health care marked the federal-provincial relations of the late 1990s even amidst the spirit of collaboration. As provinces struggled to continue to meet citizen expectations for social programs, and adhere to the Canada Health Act, premiers sought to bring greater predictability to the federal use and "disuse" of the federal spending power and sought an even greater role in establishing principles to guide social policy. With a reduced federal financial presence in provincial social programs, provincial governments could compellingly argue that they had a greater right to judge within their own provincial boundaries what was in the national and provincial interests of their residents.

---

4   Ontario is the only province never to have received Equalization payments. Currently there are four "have" provinces: British Columbia, Alberta, Saskatchewan and Ontario.

The Social Union Framework Agreement (SUFA) is the result of those efforts. For over a year intergovernmental officials met to negotiate a deal, to no avail. Then in January of 1999, then Prime Minister Jean Chrétien met with premiers in a closed meeting at his residence, and nine of the ten premiers (absent Quebec) agreed to new terms for the use of the federal spending power with an offer of an additional 2.5 billion dollars for health care on the dinner table.

Under the new agreement, the collaboration between the federal government and the provinces is required in shaping future social policies. The federal government agrees not to introduce new cost shared or bock funded initiatives in health care, post-secondary education social assistance and social services without the agreement of a majority of provincial governments. At first glance, this appears to be a significant constraint on the federal use of its spending power. This is particularly noteworthy because of the shared understanding among many social policy advocates in Canada that federal government oversight of social programs is essential to strengthening social policies in the federation. Kent (2007) opines that SUFA virtually closes the door on this traditional use of the federal spending power because of the likelihood of the four largest provinces in Canada (representing 85% of the population) opting out of any new federal social policy initiatives.

However, at the same time, SUFA states that "when the federal government introduces new Canada-wide initiatives funded through direct transfers to individuals or organizations for health care, post-secondary education, social assistance and social services, it will, prior to implementation, give at least three months' notice and offer to consult." This aspect of the agreement is remarkable for two reasons. First, it permits the federal government to exercise its spending power by giving funds directly to citizens or organizations for programs in areas of provincial responsibility *without the consent of the provincial governments.* In this sense, SUFA constrains one use of the federal spending power, but facilitates another. It is not surprising that the Quebec government, which has never acknowledged the legitimacy of the federal spending power, did not agree to SUFA. It is also not surprising that, given the cash-strapped nature of the other provinces still reeling from the cuts in the federal 1995 budget, the other nine provincial premiers agreed to these terms in exchange for additional funds for health care.

Policy Developments following Decentralization:
A Competitive Race to the Bottom?

How has SUFA affected social policy and how have the other "treaties" of the post-referendum era affected the functioning of the federation? Has a more decentralized federation contributed to interprovincial competition and a downward spiral? It is beyond the scope of this paper to consider every agreement. However, the answer is not straight forward. In the area of health care, the federal government continues to demand that provinces uphold the tenets of the Canada Health Act, ensuring that irrespective of the province in which they live, Canadians have equitable access to a state regulated health care system. Thus, even with considerable funding pressures, there has been limited provincial experimentation with other forms of health care provision. With its budget balanced, the federal government in 2004 agreed to a ten year funding arrangement for health care, following a major high profile summit of the premiers and the prime minister. Interestingly, some of the 41 billion dollars that the federal government estimated this deal represented was "targeted" towards reducing waiting times for specific surgeries, but not a condition of receipt for the funding.

Indeed, there are provincial variations in health care systems. For example, provincial governments have made marginal changes to their respective lists of medical procedures funded under each provincial insurance scheme, and regional boards have been introduced in many jurisdictions as a way of cutting the costs of healthcare governance. Alberta, the province most outspoken in challenging the uniformity imposed by the Canada Health Act, published a report in 2001 which created a roadmap for introducing greater private care provisions in the public care system. However, even Alberta shied away from this direction of reform when it became apparent that the citizens in this province did not support it (Maioni 2008). There have also been some instances of violations of the Canada Health Act upon which the federal government has not acted. Nevertheless, the federal government continues to provide the conditional glue (in the form of the Canada Health Act) resulting in uniformity of norms guiding health care regimes in the provinces.

Outside of the health care arena, the evidence is mixed. Harrison (2006a) concludes from six cross-provincial comparisons of policy that provinces are not engaged in a spiral of declining taxes, shrinking welfare states and labour and environmental regulations and are capable of resisting competitive pressures. Indeed, there is some evidence of downward trends in standards. For example in his consideration of social assistance provisions in the provinces Boychuck (2006) identified a decline

across provinces. At the same time however, he has concluded that "there is little concrete evidence of a significant shift in the actual provision of social assistance resulting directly from the changing federal role in the field (2003: 269). In contrast, McKenzie (2006) identified an overall increase in provincial taxes on business over the last thirty years. In the cases of environmental standards (Olewiler, 2006) and economic development (Brown 2006) provinces have attempted to coordinate their policies, in an effort to prevent a competitive race to the bottom. Perhaps most intriguingly, Green and Harrison (2006) discovered of a "convergence in the middle" in minimum wage setting across provinces. The only clear evidence of a race to the bottom was on provincial taxes on tobacco (Harrison 2006b).

Research on Canada's National Child Benefit also suggests a gradual convergence across provinces over a ten year period (Simmons 2008b). In 1998 the provinces and the federal government devised a new social program very much in accordance with the parameters of SUFA. The National Child Benefit has two components. The federal government supplements the Canada Child Tax Benefit, providing additional income to low income families. This additional income is known as the NCB Supplement. Provinces, with jurisdiction over social assistance, may then reduce social assistance recipients' incomes by the value of the NCB Supplement. The provinces then reinvest these funds in a variety of provincial programs benefiting children and families. While there is no net change to the incomes of social assistance recipients, the working poor, or low income families *not* on social assistance see an increase in their incomes, and, in theory, an increase in programs and services provided by their provincial government.

In as much as the federal government provides additional income to low income families, the federal spending power takes the form of a direct transfer to citizens, as permitted in SUFA. The federal government provides income support, while the provinces are to provide services, thus disentangling the relationship between the two. In as much as provinces can decide how to spend the money they save through reducing social assistance incomes, and are not directly accountable to the federal government, this is not a conditional grant.

This new scheme is not without its critics. (Pulkingham and Ternowetsky, 1999; McKeen, 2001; Patterson et al 2004). However, it suggests that new social policy development is possible in the absence of the federal government *imposing* it. In terms of the nature of provincial investments, initially there was considerable variation across provinces. However, it now appears that most provinces are following a similar pattern in as much as they provide a provincial child benefit (income supplement) to low income families (Simmons 2008b).

But, looking to the field of early learning and child care, one can also make the case that the new social policy development has been obstructed following SUFA. In 2006 the Organization of Economic Co-Cooperation and Development reported that spending on early education and care of children as a percentage of GDP is lowest in Canada. We are a laggard compared to Western Europe and even compared to the United States. While most industrialized countries have well organized systems of early learning and child care, there is no national approach in Canada and no province has a large scale system of high quality early learning and child care programs even though mothers' workforce participation is relatively high (Friendly and White 2008). This is despite the recognition among child development researchers that such early year programs are important for children's future developmental, social and economic success.

In the 2004 federal election, a significant part of the Liberal party platform was early learning and child care. Ultimately this party won the election, forming a minority government. After lengthy negotiations, social services ministers from across the country agreed to four principles to guide the future of early childhood development. Care should be high quality, universal, accessible and developmentally focused (QUAD). However, because different provinces had different visions as to how to implement these four broad principles, the federal government was unable to get the provinces to agree to a more specific program. Accordingly, the federal government then negotiated individual five year bilateral agreements for funding for provinces to begin to develop comprehensive early learning and care schemes. Ultimately, the minority government fell, and the new federal minority government, under the Conservative Party, backed out of all ten agreements after one year. Instead, the new federal government has chosen to exercise its spending power by forging direct fiscal relationships with citizens, rather than with provinces, and now provides a very small ($1200) annual taxable allowance (presumably for child care) to families with children under six.

Friendly and White (2008) summarize the situation this way: "Three years of intergovernmental negotiations [...] have left us exactly where we were before: with no national early learning and child-care system and with little progress in most regions. This policy outcome reflects a failure of the way federalism is practiced in Canada" (p. 197). In the past, the federal government could have imposed upon provinces a new shared cost national program. Now, in having to work collaboratively with the provinces, the development of a national scheme has proven elusive. The non-legal nature of intergovernmental agreements meant that the newly elected conservative government could back out of the bilateral deals made by its predecessor. However, it is important to recognize that the federal Liberal go-

vernment lacked political will to impose a national program on provinces. In this sense, it is not so much that SUFA restrained the federal government but that the federal government restrained itself.

Understanding Patterns of Convergence

To sum up, in the treaty federalism or collaborative federalism era, provinces have greater autonomy in a number of policy areas from the environment to social policy. The federal government cannot unilaterally introduce conditional shared cost grants as a way of homogenizing policies across provinces. New intergovernmental agreements are less hierarchical than those of the 1960s in that provinces are generally no longer accountable to the federal government for how they spend funds transferred from the federal government, but rather, are directly accountable to citizens through issuing public reports. Under these conditions, one can argue that Canada has become a more decentralized federation. However, to date, there is little evidence supporting either the view that greater decentralization leads to a competitive race to the bottom, or that greater decentralization has prevented the development of new social programs. There are several instances of convergence, suggesting that "differentiated citizenship" has not (yet) overtaken "universal citizenship." Moreover, there is little evidence of convergence at the "lowest common denominator." Convergence is also sometimes the result of deliberate attempts to coordinate policy across the provinces.

How do we make sense of these findings? Simeon has rather eloquently and succinctly observed the following: "federalism permits divergence and difference; it does not require it." For him, the presence of convergence in provincial policy outcomes even without the same degree of federal intervention common in the 1960s, is attributable to shared policy preferences among Canadian citizens, irrespective of the province in which they live. He reasons that, "even if policy-making and delivery are highly decentralized to provincial governments, if their citizens all embrace similar conceptions of social citizenship, the results will also be similar" (Simeon 2006: 39).

One possible explanation for the absence of races to the bottom is that one of the principle assumptions of this argument does not hold in the Canadian case. Boychuck (2003) observes that in an era of globalization and international competi-

tion, mobility of capital within a country is as important a focus for governments as the possibility of capital exciting a country entirely. However, the assumption of citizen migration in search of the most generous package of provincial benefits requires greater scrutiny. Particularly in Canada, where citizens live in five different time zones, is not a reality.

There does seem to be evidence however, that provinces sometimes engage in "benchmarking" which results in convergence, though not necessarily at the lowest common denominator. Harrison concludes that provincial governments look to the standards in other provinces to evaluate the reasonableness of their own, seeking to remain "in-line." Harrison's (2006b) consideration of provincial tobacco taxes revealed that emulation across provinces is particularly evident when political actors, not necessarily government, publicize variances across provinces. Seeking to avoid voter punishment, outlier provinces fall in step. My own research on the National Child Benefit also reveals this benchmarking dynamic. However, an even more significant influence has been the role of specific policy entrepreneurs who network with public servants through the web of executive federalism and spread ideas which in turn inform policies similar in design (Simmons 2008).

But the presence of similar programs in provinces, even in the absence of federally devised conditional shared cost programs must be understood against the backdrop of Canada's Equalization Program. Without the transfer of revenue from one province to another via the federal government through this program, there would no doubt be fundamentally different patterns of convergence and divergence in the Canadian federation. This program does not pre-determine provincial convergence or prevent races to the bottom, but it ensures that provinces have the *ability* to create citizenship entitlements at other places on the top to bottom continuum.

Some observers contend that Canadian's commitment to redistribution of wealth across the provinces through the Equalization Program may erode as the percentage of Canadians living in cities rises, and Canada's ethnic diversity increases. Canada's rate of foreign born citizens – roughly 18% is second only to Australia's. The fear is that urban dwellers will be more concerned with poverty in their city than with poverty in a province several time zones away, and that immigrants, less familiar with Canada's federal political community, will be less convinced by the logic of Equalization payments (Chaudhry, 2006). Nevertheless, others point out that, while provinces may bicker about the equalization formula, no province directly attacks the principle of equalization itself (Simeon 2003: 139). Opinion polls suggest that support for the transfer of money from richer to poorer provinces was at 85% in 2004 (Noel 2006: 63). Moreover, public opinion research suggests

that within one generation, the children of immigrants have virtually the same values as those whose parents were born in Canada (Mendelsohn 2003 cited in Noel 2006: 64). Contrary to findings in Western Europe, "there appears to be no direct impact of ethnic diversity on support for social welfare programs" (Soroka, Johnston and Banting 2007: 296).

Federalism is a process as much as it is a structure. The era of treaty federalism has seen Canada around the constitutional impasse of the late 1980s and early 1990s. In the absence of constitutional change, the Canadian federation continues to evolve. Our experience with relatively autonomous constituent units has, to date, not significantly eroded Canadians' sense of universal citizenship or Canadians' commitment to redistribution of wealth across provinces. Whether this will remain the case is not clear. Nevertheless, the Canadian experience reminds us that the relationship between autonomy and decentralization and convergence and divergence is complex and considerably informed by the environment in which it takes place.

References:

Bakvis, Herman and Grace Skogstad. 2008. "Canadian Federalism: Performance, Effectiveness and Legitimacy." In *Canadian Federalism: Performance, Effectiveness and Legitimacy* Second Edition. Toronto: Oxford University Press.

Boychuk, Gerard W. 2006. "Slouching toward the Bottom? Provincial Social Assistance Provision in Canada, 1980-2000." In *Racing to the Bottom? Provincial Interdependence in the Canadian Federation.* Ed. Kathryn Harrison. Vancouver: UBC Press.

-------. 2003. "Social Assistance and Canadian Federalism." In *New Trends in Canadian Federalism* Second Edition. Eds. Francois Rocher and Miriam Smith. Peterborough: Broadview Press.

Brown, Douglas M. 2006. "Still in the Game: Efforts to Government Economic Development Competition in Canada." In *Racing to the Bottom? Provincial Interdependence in the Canadian Federation.* Ed. Kathryn Harrison. Vancouver: UBC Press.

-------. 2002. "Fiscal Federalism: The New Equilibrium between Equity and Efficiency." In *Canadian Federalism: Performance, Effectiveness and Legitimacy* Toronto: Oxford University Press.

Cameron, David and Richard Simeon. 2002. "Intergovernmental Relations in Canada: The Emergence of Collaborative Federalism." *Publius: the Journal of Federalism* 32,2: 49-71.

Chaudhry, Sujit. 2006. "Redistribution in the Canadian Federation: The Impact of the Cities Agenda and the New Canada." In *Dilemmas of solidarity: Rethinking Redistribution in the Canadian Federation.* Eds. Sujit Chaudhry, Jean-Francois Gaudreault-DesBeins, and Lorne Sossin. Toronto: University of Toronto Press.

Desautels, L.D. 1999. "Accountability for Alternative Service-Delivery Arrangements in the Federal Government: Some Consequences of Sharing the Business of Government." In *Collaborative Government: Is there a Canadian Way? New Directions* no. 6. Eds. S. Delacourt, D. G. Lenihan. Toronto: Institute of Public Administration of Canada.

Flood, Colleen M., Mark Stabile, and Carolyn Hughes Touhy eds. 2008. *Exploring Social Insurance: Can a Dose of Europe Cure Canadian Health Care Finance?* Kingston: Queen's School of Policy Studies.

Friendly, Martha and Linda A. White. 2008. "From Multilateralism to Bilateralism to Unilateralism in Three Short Years: Child Care in Canadian Federalism, 2003-2006." In *Canadian Federalism: Performance, Effectiveness and Legitimacy* Second Edition. Toronto: Oxford University Press.

Government of Canada. 1999. *A Framework to Improve the Social Union for Canadians.* Online: www.socialunion.gc.ca/news/020499_e.html.

Green, David A. and Kathryn Harrison. 2006. "Races to the Bottom versus Races to the Middle: Minimum Wage Setting in Canada." In *Racing to the Bottom? Provincial Interdependence in the Canadian Federation.* Ed. Kathryn Harrison. Vancouver: UBC Press.

Harrison, Kathryn. 2006a. "Are Canadian Provinces Engaged in a Race to the Bottom? Evidence and Implications." In *Racing to the Bottom? Provincial Interdependence in the Canadian Federation.* Ed. Kathryn Harrison. Vancouver: UBC Press.

-------. 2006b. "Follow the Leader and Dominoes: Games that Provinces Play in Tobacco Taxation." In *Racing to the Bottom? Provincial Interdependence in the Canadian Federation.* Ed. Kathryn Harrison. Vancouver: UBC Press.

Henry, Shawn. 2002. "Revisiting Western Alienation: Towards a Better Understanding

of Political Alienation and Political Behaviour in Western Canada." In *Regionalism and Party Politics in Canada.* Eds. Lisa Young and Keith Archer. Toronto: Oxford University Press.

Hueglin, Thomas O. 2008. "Specifically Canadian?" Unpublished paper.

-------. 2000. "From Constitutional to Treaty Federalism." *Publius* 30, 4: 137–52.

Hueglin, Thomas O. and Alan Fenna. 2006. *Comparative Federalism: A Systematic Inquiry.* Peterborough: Broadview Press.

Kent, Tom. 2007. "The Federal Spending Power is Chiefly for People, not Provinces." *Spending Power Working Papers Series 2008-2.* Kingston: Institute of Intergovernmental Relations. Online: www.queensu.ca/iigr/working/spending Power.html.

Ladner, Kiera L. 2003. "Treaty Federalism: An Indigenous Vision of Canadian Federalisms." In *New Trends in Canadian Federalism* Second Edition. Eds. Francois Rocher and Miriam Smith. Peterborough: Broadview Press.

Lazar, Harvey. 1998. "Non-Constitutional Renewal: Toward a New Equilibrium in the Federation." In *Canada: The State of the Federation 1997: Non-Constitutional Renewal.* Ed. Harvey Lazar. Montreal and Kingston: McGill-Queen's University Press.

-------. 2000. "The Social Union Framework Agreement and the Future of Fiscal Federalism." In *Canada: The State of the Federation 1999/2000 – Toward a New Mission Statement for Canadian Fiscal Federalism.* Ed. Harvey Lazar. Kingston: Institute of Intergovernmental Relations.

-------. 2006. "The intergovernmental dimensions of the social union: A sectoral analysis." *Canadian Public Administration* 49,1: 23–45.

Maioni, Antonia. 2008. "Health Care." In In *Canadian Federalism: Performance, Effectiveness and Legitimacy* Second Edition. Toronto: Oxford University Press.

McKeen, Wendy. 2001. "Shifting Policy and Politics of Federal Child Benefits in Canada." *Social Politics* Summer: 186–190.

McKenzie, Kenneth J. 2006. "A Race to the Bottom in Provincial Business Taxation in Canada?" In *Racing to the Bottom? Provincial Interdependence in the Canadian Federation.* Ed. Kathryn Harrison. Vancouver: UBC Press.

Noel, Alain. 2006. "Social Justice in Overlapping Sharing Communities." In *Dilemmas of solidarity: Rethinking Redistribution in the Canadian Federation.* Eds. Sujit Chaudhry, Jean-Francois Gaudreault-DesBeins, and Lorne Sossin. Toronto: University of Toronto Press.

Olewiller, Nancy. 2006. "Environmental Polciy in Canada: Harmonized at the Bottom?" In *Racing to the Bottom? Provincial Interdependence in the Canadian Federation.* Ed. Kathryn Harrison. Vancouver: UBC Press.

Paterson, Stephanie, Karine Levasseur, and Tatyana Teplova. 2004. "I Spy with my Little Eye… Canada's National Child Benefit," In *How Ottawa Spends 2004-2005: Mandate Change in the Paul Martin Era.* Ed. G. Bruce Doern. Montreal and Kingston: McGill Queen's University Press.

Pulkingham, Jane and Gordon Ternowetsky. 1999. "Child Poverty and the cctb/ncb: Why Most Poor Children Gain Nothing," In *Canada's National Child Benefit: Phoenix or Fizzle?* Ed. Douglas M. Durst. Halifax: Fernwood.

Scharpf, Fritz. "No Exit from the joint Decision Trap? Can German Federalism Reform Itself?" *MPIFG Working Paper* 05/8 September 2005. Online: www.mpi-fg-koeln.mmpg.de/pu/workpap/wp05-08/wp08-8.html.

Schram, Sandford F. and Gary Krueger. 1994. " "Welfare Magnets" and Benefit Decline: Symbolic Problems and Substantive Consequences." *Publius: The Journal of Federalism.* 24, 4: 61-82.

Simeon, Richard. 2006. "Social Justice: Does Federalism make a Difference?" In *Dilemmas of Solidarity: Rethinking Redistribution in the Canadian Federation.* Eds. Sujit Chaudhry, Jean-Francois Gaudreault-DesBiens, and Lorne Sossin. Toronto: University of Toronto Press.

-------. 2003. "Important? Yes. Transformative? No. North American Integration and Canadian Federalism." In *The Impact of Global and Regional Integration on Federal Systems: A Comparative Analysis.* Eds. Harvey Lazar and Hamish Telford and Ronald L. Watts. Montreal and Kingston: McGill-Queen's University Press.

Simeon, Richard and Amy Nugent. 2008. "Parliamentary Canada and Intergovernmental Canada." In *Canadian Federalism: Performance, Effectiveness and Legitimacy* Second Edition. Toronto: Oxford University Press.

Simeon, Richard and Ian Robinson. 1990. *State Society and the Development of Canadian Federalism.* Toronto: University of Toronto Press.

Simmons, Julie. 2008a. "Democratizing Executive Federalism; The Role of Non-Governmental actors in Intergovernmental Agreements." In *Canadian Federalism: Performance, Effectiveness and Legitimacy* Second Edition. Toronto: Oxford University Press.

-------. 2008b. "What Causes Policy Convergence in a Federal Setting?

Lessons from the Provincial Components of Canada's National Child Benefit." Presented at the annual meeting of the Canadian Political Science Association, 4-6 June 2008, Vancouver, British Columbia, Canada.

Smiley, D.V. 1976. *Canada in Question: Federalism in the Seventies.* Second Edition. Toronto: McGraw Hill-Ryerson.

Soroka, Stuart N., Richard Johnston, and Keith Banting. 2007. "Ethnicity, Trust and the Welfare State." In *Social Capital, Diversity and the Welfare State.* Eds. Fiona M. Kay and Richard Johnston. Vancouver: University of British Columbia Press.

If you wish to support our work:
Commerzbank Berlin
BIC 100 400 00
Donations account: 266 9661 04
Donation receipts will be issued.

Prof. Julie Simmons is an assistant professor at the University of Guelph, Ontario and holds a PhD from the University of Toronto. She teaches in the fields of public policy and administration and Canadian politics. Her research focuses on how federal and provincial governments jointly make social and environmental policy and why it is difficult for citizens to access these processes. She has contributed to publications of the Forum of Federations (2003) and the Institute of Intergovernmental Reforms at Queen's University (2004). She was previously employed at the Ontario Ministry.