



Original Article

FEDERALISM AND GOVERNANCE IN CANADA: THE ROLE OF PROVINCES

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ABSTRACT

The purpose of this article is to analyze federalism in Canada as well as the constitutional capacities of the provinces and the central government of Canada in the public policy sphere. Canada has a decentralized federalism that has helped to maintain governance in the country by granting a wide range of constitutional powers to the provinces. Canada has moved from centralized to decentralized government. Canada's federalism can be considered a unique, successful case, which has generated stable governance among a diverse and plural society and can be an example for other countries with similar characteristics.

Keywords: *Ukrainian symbols, Ukrainian weddings, Ukrainian Canadian, ethnicity, ritual*

I. INTRODUCTION

Canada is the result of the union in 1867 of three colonies of British North America: Nova Scotia; New Brunswick; and Quebec and Ontario (which were united into a single colony and called Canada East and Canada West). Subsequently, six other provinces joined Canada: Manitoba (1870); British Columbia (1871); Prince Edward Island (1873); Saskatchewan and Alberta (1905); and Newfoundland (1949). In addition, three northern territories are also part of the federation: Yukon, the Northwest Territories and Nunavut, which separated from the Northwest Territories in 1999 (Forum of Federations, 2022).

The Fathers of Confederation oversaw the creation of a federation that protected the rights of the French-speaking population of Quebec - who were determined to preserve their language, religion and law - and allowed the use of both French and English in the federal Parliament, the Legislative Assembly of Quebec and the federal courts. This protection and recognition of the French language and culture has evolved considerably since 1867 (Government of Canada, 2022).¹

The nation of Canada, founded by the Constitution Act of 1867, initially adopted a centralized federal structure. The Constitution Act of 1982 affirmed Aboriginal rights and introduced an entrenched Charter of Rights and Freedoms to which all governments and legislatures are subject. The Council of the Federation, created in 2003, acts as the voice of the provincial governments of this large and diverse country (Forum of Federations, 2022).

Provincial governments have a great deal of power and jurisdiction within their localities, including responsibility for areas such as health care, education, and welfare. They also are endowed to implement province-specific taxation. Canada's high degree of decentralization has been driven by factors such as: judicial interpretation of the division of powers in favor of the provinces; inadequate representation of regional diversity, which has led to popular support for provincial powers; the growing importance of areas of provincial jurisdiction, such as health, welfare, and education; and Québec nationalism (Smyth and McIntosh, 2020).

According to the Government of Canada (2022), the following characteristics are among those shared by states with a federal system of government:

- At least two orders of government.
- Division of powers between the orders of government defined in the constitution.
- Division of revenue sources to ensure each order of government certain areas of autonomy, also set out in the constitution.
- Written constitution that cannot be amended unilaterally.

Several reasons for a state to adopt a federal system include the need to reflect linguistic, economic and cultural differences of a population, especially one that is concentrated geographically.

Federalism has facilitated governance among the divergent purposes held by Canada's different regions. The political mobilization of such interests has led to tensions, highlighting economic, cultural, ethnic, and political divisions that assume a regional form (Bickerton and Gagnon, 2013).

¹ Government of Canada (2022), "Federalism in Canada", available at: <https://www.canada.ca/en/intergovernmental-affairs/services/federation/federalism-canada.html>, consulted in June 2022.

II. THE POLITICAL SYSTEM OF CANADA

Canada has a parliamentary democratic political system, characterized by a federal system of government, at the same time it is a bilingual, multicultural and multinational country; that is to say, it is a diverse and heterogeneous country which leads each province and minority group to promote its interests and cultural identity in a democratic and highly decentralized environment (Bickerton y Gagnon, 2013).

Canada made a transition from a federal system, highly centralized in its early years as a nation, to a more decentralized one, which has resulted in a consolidation of the provinces, where they have a wide range of powers, for example, in education, health, labor, welfare state provision, among others. In addition, the provinces have one of the highest percentages of total public spending in OECD countries.

A shift of power towards the provincial governments became clear after 1960. A dynamic and active Quebec government emerged as an effective opponent of centralization. Other factors included the growing importance of provincial natural resources; the decline of the old commercial and financial elite based in Montreal; economic integration between Canada and the US; and the development of a more competitive party system at the national level after 1957. Between 1960 and 1980, there was a substantial increase in the provincial share of taxation and public expenditure (Smyth and McIntosh, 2020).

For Lequesne and Paquin (2017), in a federal system, the central government and the governments of its constituent parts of the federation (the noncentral governments) each retain sovereign rights in defined areas of competence. All federations have at least two legal orders that apply directly to their citizens. Federalism assumes that sovereign political authority can be exercised in the same territory, over the same people, by more than one order of government. A major problem arises from the fact that, while federal states are considered unitary agents under international law, a federal government must cope with the constitutional division of powers when negotiating with other countries to ensure that it can meet the obligations it incurs under international treaties and agreements (Lequesne and Paquin, 2017).

In federal systems such as Canada, Germany, the United States and Belgium, non-central governments have considerable autonomy. In Canada, for example, provinces are constitutionally responsible for health care, education, culture, and municipalities. They can also act in economic development, justice, environment, among others (2017).

The Canadian type of federalism involves a process of decentralization of functions from central to non-central governments, in which the provinces are given greater capacities in the formulation of public policies and in budgetary management. These capabilities give the provinces the possibility to engage in international activities to promote their interests. Changing federalism and decentralization are processes that have historically defined Canadian politics.

This constitutional situation raises a considerable problem for Canada: provincial collaboration is inevitable when areas under provincial jurisdiction are affected by an international treaty or convention. This problem is even more evident when it comes to Canada's participation in the work of international organizations that affect areas of provincial competence, such as UNESCO, the World Health Organization (WHO) or even the ILO. To avoid being challenged by the provinces, the federal government has historically adopted three strategies: 1) refusal to participate or engage; 2) the use of the federal state clause; and 3) the creation of formal

consultative mechanisms with the multi-level governance mechanisms of the provinces (Paquin, 2010).

In cases of international treaties negotiated by the federal government, in areas of provincial jurisdiction, the central government has to consult with the provinces. This leads to multilevel governance in Canada, which has yet to advance in institutionalization and is not at the level of multilevel governance seen in some countries in Europe (Paquin, 2010), where cooperation mechanisms between different levels of government are highly institutionalized. However, multilevel governance is more developed in Canada than in the United States and Mexico.

We can see that these characteristics of Canadian federalism give the provinces an important role in global politics, together with other related factors such as decentralization and the wide range of constitutional capacities of the provinces, factors which, at the end of the day, are decisive in explaining the high degree of international activities of subnational governments in Canada.

III. THE RELEVANCE OF FEDERALISM IN CANADA

It is pertinent to analyze federalism in Canada, in particular the powers of the Canadian provinces. First of all, this country has a parliamentary democratic political system, characterized by a federal system of government, and at the same time it is a bilingual, multicultural and multinational country; in other words, it is a diverse and heterogeneous country, which leads each province and minority group to promote its interests and cultural identity in a democratic and highly decentralized environment.

There are two divisive lines in the country, which have pitted the French-speaking province of Quebec against the other provinces, mostly English-speaking, and central Canada, with its large population and manufacturing base, against the peripheral regions characterized by economies based largely on natural resources. In this sense, territorial governance is composed of divergent purposes among Canada's different regions: the central state's distribution of fiscal resources and administration of the federation; Quebec's cultural preservation and promotion; Western Canada's exploration and development of vast natural resources; and economic disparities in the Atlantic region, observe Bickerton and Gagnon (2013: 173). As such, the political mobilization of such interests has led to conflicts and tensions, highlighting economic, cultural, ethnic and political divisions that assume a regional form (Bickerton and Gagnon, 2013).

Federalism is conceived as a method conducive to good governance, in which reconciliation and political understanding become good practice in a context of conflicting ideologies, dissenting groups, and increasingly irreconcilable positions. The federal system is a shared governance resource; it is conceived as a "creative balance" between the need for an effective federal center and the need for strengthened federal constituent units (Majeed, 2005).

Canada is one of the most decentralized countries in the world, where the provinces exercise a wide range of powers, for example, in education, health, labor, welfare state provision, among others. In addition, the provinces account for one of the highest percentages of total public spending in OECD countries. Canada moved from a federal system, highly centralized at the beginning, to a more decentralized one, which has resulted in a strengthening of the provinces, which enjoy greater autonomy and independence with respect to their counterparts in the United

States. This situation could not be understood without the push for greater decentralization by the province of Quebec.

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In this context, the international activities, known as paradiplomacy, implemented by Canadian provinces have taken the form of international and regional cooperation schemes with their counterparts in the United States; these schemes take various forms such as conferences, forums, regions, alliances, which in turn become poles of the new governance. In addition, Canadian provinces have signed hundreds of bilateral cooperation agreements with their U.S. counterparts in recent decades and have formed multilevel governance, promoting their agenda and interests.²

IV. CONSTITUTIONAL FOUNDATIONS OF FEDERALISM IN CANADA

In Canada there are federal, provincial, territorial, and municipal governments. From a subnational approach, Canada is made up of 10 provinces (Alberta, British Columbia, Saskatchewan, Quebec, Manitoba, Ontario, Prince Edward Island, New Brunswick, Nova Scotia, and Newfoundland and Labrador) and 3 territories (Yukon, Northwest Territories, and Nunavut); it also has 3,805 municipalities. The most important provinces in economic and population terms are: Ontario, Alberta, Quebec, and British Columbia.

The responsibilities of the federal and provincial governments were defined in 1867 in the British North American Act, also known as the Constitution Act of 1867. In Canada, the federal government takes responsibility for matters of national and international interest. These include defense, foreign policy, interprovincial trade and communications, currency, navigation, criminal laws and citizenship. The provinces are responsible for municipal government, education, health, natural resources, civil and property rights, and highways.

The articles of the Canadian constitution that define the distribution of powers between the central and non-central governments are located from 91 to 95. For example, Article 92A gives subnational governments exclusive control over non-renewable natural resources, forest resources and electric power; and Article 93A gives the provinces exclusive jurisdiction over education (Kuznetsov, 2014). Detailed analysis of the articles of the constitution reveals that there is no article or statement that clarifies the level of authority that provincial governments have in formulating international treaties with foreign actors; furthermore, there is no reference in the constitution on how the relations between the federal and provincial governments should be in

² Paradiplomacy is defined as the international activities of subnational governments, such as the Canadian provinces.

case international affairs overlap with the items that fall under the competence of the provinces (Kuznetsov, 2014).

The federal government and the provinces share jurisdiction over agriculture and immigration. Federalism allows the different provinces to adopt public policies tailored to their own populations and gives the provinces the flexibility to experiment with new ideas and public policies. Each province has its own elected Legislative Assembly, like the House of Commons in Ottawa. The three northern territories, which have small populations, do not have the status of provinces, but their governments and assemblies perform many of the same functions (Government of Canada, 2014).

Canada's provinces have exclusive powers and jurisdiction in various sectors of public administration. The Constitutional Act of 1982 establishes the division of powers between the federal and provincial governments and identifies three types of jurisdictions in this regard (Makarenko, 2009).

- Exclusive jurisdiction of the provinces refers to areas in which only the provinces can pass laws, while the federal government cannot enact legislation in these areas.
- Exclusive jurisdiction of the federal government comprises areas in which only the federal government can pass laws, thus prohibiting the provinces from enacting legislation in these areas.
- Shared federal-provincial jurisdiction and powers refers to areas in which both the provinces and the federal government may make laws.

<Table 1> Canadian Federalism - Division of powers (ss. 91-95 of the Constitutional Act 1967)

Federal Powers	Provincial Powers	Joint powers of the federal and provincial governments
Peace, order and good government The raising of money by any system of taxation Trade and commerce of an international or interprovincial nature Banking and currency Foreign affairs (treaties) Militia and defense Criminal law and penitentiaries Naturalization Weights, measures, copyrights, patents	Anything local and private in nature Direct taxation Crown lands and natural resources Hospitals (health sector) Education Welfare Municipalities Local works Intra-provincial transportation and business Administration of justice Property and Civil rights Cooperatives and Saving banks	Immigration (priority to the fed. gov.) Agriculture (priority to the fed. gov.) Pensions (priority to the prov. gov.) Marriage

<p>Postal system, telegraphs and communications of an interprovincial or international nature; by extention: radio, television, satellites, internet</p> <p>Transportation of an interprovincial or international nature: canals, navigable waters, railways</p> <p>Indians</p> <p>Residual powers</p> <p>Declaratory power</p> <p>Disallowance and reservation</p> <p>Unemployment insurance (1940); old age pensions (1951)</p>		
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Source: Bélanger, C. “Canadian Federalism – Division of Powers (ss. 91-95 of the Constitution Act 1867)” Marianopolis College. 14 November 2008.

With respect to the consequences of decentralization on the democratization of public policy formulation and government performance, it is argued that decentralization is positive for democratic societies, since it provides more avenues for citizen participation and at the same time expands opportunities for political representation. Furthermore, it is noted that subnational governments are more responsive to the needs of citizens and more attuned to their problems. Therefore, shifting responsibilities to lower levels of government can contribute to more effective and efficient public policy making (Fry, 2011).

However, political decentralization processes have not always resulted in more efficient public policies, especially in those countries that have not been democratically consolidated, where non-transparent practices persist, especially at the subnational level.

As previously highlighted, various studies commonly characterize Canada as a highly decentralized country in terms of its division of powers. Canada has one of the most decentralized federal systems in the world (Hague and Harrop, 2013). This is due to the fact that the provinces control very important areas of public policy; they also have access to important sources of government revenues (Makarenko, 2009).

First, the provinces have exclusive jurisdiction over key areas of social services, such as health care, education and welfare benefits of the welfare state. Today, these areas form the core of Canada's modern welfare state and are considered central to public interests.

Second, the provinces have exclusive jurisdiction over property and civil rights. The above has been interpreted under the constitution to include any object subject to ownership, such as real estate, animals, liquor, vehicles, goods, stocks and bonds, etc. Civil rights include such things as contracts, labor-management disputes, marketing, credit, adoption, and social services for minors.

Third, provinces have exclusive control over local government. With this jurisdiction - along with others, such as intra-provincial transportation and property rights - provinces dominate a wide range of important local issues, including urban and rural development, property taxation and local infrastructure (e.g., roads, drainage, garbage collection, etc.) Even though many of these issues are administered by local governments, provinces often play a central role in setting budgets, priorities and the powers of local governments to administer these activities.

By examining the type of federalism in a given country, we can determine the degree of decentralization between the central and subnational governments with respect to decision making and public policy formulation, as well as in other areas such as public spending and tax collection. To be classified as federal, a country must satisfy three structural criteria: (a) geopolitical division, (b) independence, and (c) direct governance. Typically, one can determine whether a country satisfies these criteria by looking at its constitution: (Thies, 2011).

- Geopolitical division: the country must be divided into mutually exclusive regional governments that are constitutionally recognized and cannot be unilaterally abolished by the national or central government.

- Independence: national and regional governments must have independent bases of authority. Typically, this independence is constitutionally established by the national and regional governments being elected independently of each other.

- Direct governance: authority should be shared between regional governments and the national government; each governs its citizens directly, so that each citizen is governed by at least two authorities. In addition, each level of government must have authority to act independently of the other in at least one aspect of public policy; this sovereignty over public policy must be constitutionally declared. Regional units in a federal system of government have different names, depending on the country. For example, they are called states in Australia, the United States, and Venezuela; provinces in Canada; territories in Germany and Austria; cantons in Switzerland; and regions in Belgium.

Such criteria indicate whether a country has a federal system, in which sovereignty is constitutionally distributed between at least two territorial levels, so that independent governmental units at each level have authority in at least one area of public policy. In this decentralized federalism, provincial governments have become one of the increasingly relevant actors in governance, which is manifested not only at the national level, but also in the regional and global scenario.

Considering the mentioned above, we can examine more precisely the role of Canadian provinces on the domestic and external scene. The type of federalism determines the level of decentralization and, consequently, the room for maneuver of subnational governments to engage in the international arena.

At the end of the day, it can be observed that paradiplomacy in Canada is not regulated by specific constitutional provisions, but rather by ongoing interactions between the federal government and the provinces, which are found in the federal nature of the Canadian state (Kuznetsov, 2014).

About 40 percent of the world's population lives in a country with some form of federal government, notably the United States, Canada, Mexico, Germany, and Belgium, according to the Forum of Federations (a Canadian think tank). In addition, in recent decades, there has been an increase in the number of countries with federal systems or decentralized structures of government (Lequesne and Paquin, 2017).

There are two dozen federations containing about two billion people; these comprise almost 500 federated or constituent states, compared to only approximately 180 political sovereign states (Watts, 1996).

In other words, the number of countries with federal systems of government is growing and people are demanding that their localities have their own forms of government.

In Canada, the provinces administer the systems of health, education, social benefits, labor, among others. In 2011, about 47 percent of public spending was concentrated at the provincial level in Canada (the highest percentage in this area among OECD countries), while local government accounted for 20 percent and the federal government for 28 percent of public spending (OECD, 2015). These powers of the provinces allow them to design the implementation of international treaties that affect the items under their jurisdiction.

Andre Lecours (2009) notes that the relationship between Canadian federalism and foreign policy is important, considering at least three reasons: (1) the provinces play an important role in the implementation of international treaties, which means that intergovernmental relations normally accompany treaty negotiations; (2) the international action of some provinces is quite developed and includes the presence of offices abroad, the conduct of official visits and missions, and the signing of international agreements; and (3) Quebec's proclamations for an increased international role pose a serious dilemma for the federal government, even to the extent of presenting implications for national unity.

The type of federalism prevailing in Canada is one of the factors that has allowed the provinces to enter and participate in decision-making on international affairs. For example, Paquin notes that in Canada there is no clear constitutional recognition of the exclusivity of federal power in international relations. Federalism and the rights of the provinces have had important effects on the conduct of international relations. Canada even has a number of characteristics of multilevel governance systems (Paquin, 2010). The Constitution Act of 1867 does not deal much with the issue of international relations. In fact, there is no attribution in the Constitution on the exclusive power of international relations. With the 1931 Statute of Westminster, Canada acquired sovereignty in international affairs, but the role and competence of each level of government in international affairs was still unsettled.

Geoffrey Hale (2012) has detected that a series of judicial decisions since the 19th century have given the provinces significantly greater jurisdiction and discretion in areas of public policy ranging from economic development to the regulation of labor relations, capital markets, and natural resource development (Table 2). In addition, this same author highlights the fact that, although the 1937 ruling of the Judicial Committee of the Privy Council in the case of labor conventions allows Ottawa to negotiate treaties in areas of provincial jurisdiction, at the same time it precludes their enforcement without provincial consent. These patterns contrast significantly with the more than 180 years of precedent for centralization in the U.S. Supreme Court's interpretations of the "commerce clause" of the U.S. Constitution (Hale, 2012).

<Table 2> The federal division of powers in Canada and the United States

Divisions	Canadá		United States	
	Federal	Provincial	Federal	Sub-state
International commerce	X		X	
Economic development		x	X	
Primary industries / land use		x		
Food standards	X		X	
Energy		x	X	
Environment			X	
Border management	X		X	
Roads / related infrastructure		x	X	
Inmigration	X		X	
Labor mobility			X	
Corporate governance / securities regulation.			X	

Source: prepared by the author with data from:: Geoffrey Hale (2012)

Out of the 200 nation-states in the world today, only two dozen maintain federal systems of government that constitutionally divide authority between national and regional governments. Unlike the political landscape in the rest of the world, all three North American countries have federal systems; but each country has different levels of decentralization between central and non-central governments. Canada has the most decentralized system in the region, with the governments of the 10 provinces exercising greater powers in the formulation of public policy, compared to those of the 50 states of the United States or the 32 states of Mexico (Fry, 2004). Furthermore, the historical evolution of federalism is different in each country, especially in the case of Mexico, where a centralist tendency has predominated in the country's political life (Curzio, 2000).

Canada has free trade agreements with 10 countries, and also belongs to regional free trade agreements such as NAFTA (now CUSMA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, also known as TPP11, as well as a free trade agreement with the European Union, known as the Comprehensive Economic and Trade Agreement or Comprehensive Economic and Trade Agreement (CETA).

In this context, the North American Free Trade Agreement (NAFTA) has contributed to intensify the political and institutional links between the provinces of Canada and the states of Mexico and the United States. Several cross-border organizations have been created to facilitate greater regional cooperation between non-central governments. Some border states in North America facing common issues have formed working groups; for example, the 10 states in the southern United States and northern Mexico have held regular joint meetings to sign cooperation agreements on issues as varied as economic development, commercial ports, education, health and security, among others.

In Canada, provincial governments are generally free to act internationally within their areas of competence as described in the Canadian constitution, and the national government is expected to consult with the provinces before implementing any international treaties affecting the provinces in their areas of competence (Fry, 2011).

At the level of the provinces and federal states in the North American region, a significant number of sub-state governments have developed their own foreign affairs departments. This trend has been most pronounced in Canada. Unlike Mexican state governments, Canadian provinces are not required to report to their central government on international agreements that are signed with other sub-national governments, unless the agreement infringes on the jurisdiction of the federal government. Compared to their Mexican counterparts, most of their provinces have not institutionalized international relations in the governmental structure, with Alberta, Ontario and Quebec being the exception (Parks, 2012).

V. CONCLUSION

Canada has a political and governmental system characterized by federalism with a high level of decentralization. Canadian provinces possess a variety of legal capacities that enable them to perform in the international arena.

Canada is a country with a form of government characterized by decentralized federalism, where sub-national entities exercise a wide range of public policy capabilities, enabling them to deploy a range of international activities to promote their interests, their economic development and also their identity.

Canadian provinces have a high degree of international legitimacy, which is not granted to sub-federal governments in other federations due to Canada's constitution and previous decisions of the Judicial Committee of the Privy Council (JCPC) and the Supreme Court of Canada.

Canada could be regarded as a successful case of federalism in the world, in which diverse nations with their specific characteristics are accommodated in a federation where the provinces possess a wide variety of constitutional capacities. It is also an example of coordinated intergovernmental relations between central and non-central governments.

The federal government must consult with the provinces prior to the negotiation of international treaties affecting areas under their jurisdiction. However, these mechanisms do not mean that the federal government recognizes the power of the provinces in international relations. Although it is also true that international treaties adopted by the central government must be implemented by the provinces, and ultimately may not be enforced if the provinces object. Prior to 1961, Canada had ratified only 18 of 111 labor conventions adopted with the International Labour Organization (ILO); with respect to human rights conventions, Canada had ratified only six of 18 agreements by 1969 (Paquin, 2010).

In the case of Quebec, in addition to decentralization and federalism, we note a high degree of nationalism that is evident in the province's international actions to preserve its own culture and identity, which are promoted through paradiplomacy.

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