

Rebalancing Federal Citizenship In Canada

Abstract

In multinational federations, tensions around national identities, rights and entitlements, and power-sharing arrangements are endemic and never finally resolved. In Canada, simultaneous constitutional and fiscal crises in the 1990s brought into question the legitimacy of the 'federal bargain' at the core of the citizenship regime. The federal government's response was to introduce a number of institutional, programmatic, fiscal and symbolic reforms that adjusted the delicate balance between national unity and the accommodation of diversity. This pragmatic political vision, replete with certain asymmetries and ambiguities, enabled Canada to rebuild and rebalance its way to its own unique shade of federalism.

Introduction

As described by Jenson (1998), a citizenship regime is comprised of three primary dimensions: 1) a national identity and sense of belonging, 2) citizen rights and entitlements, and 3) a set of rules and representative institutions governing citizen access to the state. In multinational federations like Canada, tensions around national identities, rights and entitlements, and power-sharing arrangements are endemic; they reverberate within and sometimes call into question the citizenship regime. In the case of Canada, this political contestation has resulted in the introduction of new citizenship elements through various constitutional, institutional, legal and programmatic reforms. Changes both dramatic and subtle reflect and consolidate shifts in the nature of the 'federal bargain' that underlies the citizenship regime. If the Canadian case offers insights for students of federalism, it is that the delicate balancing act in democratic multination states between national unity and the accommodation of diversity requires both a willingness and capacity to stretch and bend - to rebalance - the various components of the citizenship regime.

Rebuilding Canadian Citizenship: Charter Federalism

For two decades, beginning with the election in 1960 of an energetically reformist government in Quebec which began that province's 'Quiet Revolution', Canada had been preoccupied by the question of constitutional reform. The pressure to reach agreement had increased with the 1976 election in Quebec of the *Parti Québécois* (PQ) that was committed to holding a referendum on independence. In the ensuing referendum campaign, Prime Minister Pierre Trudeau's federalist forces (who were ultimately victorious) promised Quebecers that a vote to remain in Canada would not be a vote for the status quo, but rather a vote for constitutional change. However, at the end of the day, Quebec was not a signatory to the 1982 Constitution Act that patriated Canada's 115-year old constitution and reformed it by adopting a Charter of Rights and Freedoms, Treaty and Aboriginal Rights, and an amendment formula. In the opinion of some prominent constitutional experts, excluding from the final agreement the primary protagonist for constitutional change was a "dangerous deed", one that risked the long-term constitutional alienation of Quebec (Banting and Simeon, 1983).

The Charter of Rights and Freedoms gave Canada's Supreme Court a prominent role in judicial review as the final arbiter of the meaning of the constitution. Almost immediately, it became central to the national identity of English-speaking Canadians and a source of political integration and unity (McRoberts 1995). The term "Charter federalism" would enter the Canadian lexicon when constitutional scholars recognized that it fulfilled the need for a stronger institutional basis for the Canadian state's claim to democratic legitimacy. The Charter became a powerful symbol of equality and rights-based citizenship that would counter fissiparous forces by strengthening Canadians' sense of national identity (their imagined national community) (Cairns 1995; LaSelva 1996). In Quebec, however, there was no strengthening of Canadian identity. Instead, as constitutional scholars had feared, there was a sense of betrayal, resentment and constitutional alienation (Laforest 1995). French-speaking Quebecers would react by abandoning their century-long adherence to the federal Liberal Party and embrace opposition leader Brian Mulroney's promise to find a way for Quebec to re-join the constitutional family with "honour and enthusiasm." The 1987 Meech Lake Accord (which proposed changes designating Quebec a 'distinct society', among other concessions) was confirmation of this promise. Its failure to gain the necessary provincial support for ratification would set in motion one of the most politically acrimonious decades in the history of the Canadian federation and push the country to the precipice of national disintegration (McRoberts 1997).

Eye of the Storm

In the 1990s, the Canadian Federation found itself beset by a number of overlapping crises. Constitutional wars raged in the first half of the decade, culminating in a second Quebec referendum on independence in 1995. At the same time, a severe fiscal crisis triggered by mounting public debt and deficits led the federal government to slash intergovernmental transfers for core social programs, inciting a bitter and sustained provincial backlash. The party system was upended by the collapse of the governing Progressive Conservative Party, replaced in western Canada by the neo-liberal, populist Reform Party and in Quebec by the *Bloc Québécois*, which became the PQ's sovereigntist twin at the federal level (Bickerton, Gagnon and Smith 1999). Adding to the political maelstrom was the growing militancy of the Indigenous Peoples' movement. The decade began with a prolonged armed confrontation at Oka, Quebec involving First Nation protesters and the Canadian military, leading to the appointment of a Royal Commission on Aboriginal Peoples (Simeon, Robinson and Wallner 2014).

The political stress fractures created by these events tested the resilience and adaptability of Canadian federalism and its institutions. At the time it was not clear, given the deep divisions and antagonisms that had surfaced – including rival nationalisms (Canadian, Quebecois, Indigenous) – whether or how the federation might be placed on a more cooperative and stable footing. The push for a new constitutional deal that would address these issues in a comprehensive fashion came to a decisive end with the defeat of the Charlottetown Accord in a 1992 national referendum. Three years later, a razor-thin federalist victory in the second Quebec independence referendum shifted the search for some sort of national reconciliation to non-constitutional means of recognizing and accommodating Canada's minority nations. If the Charter's guarantee of individual rights and freedoms had enhanced national identity and unity amongst English-speaking Canadians, it had failed to address the identity claims and autonomy demands of the Quebecois, or the self-government and rights claims of Indigenous peoples (Gibbins 2014).

In the throes of a legitimacy crisis, a number of new initiatives and 'course corrections' were undertaken by federal authorities. Taken together, they suggest an effort to seek out the "workable compromises" (Requejo 2010) that could restore and maintain stability within the federation. The need for rebalancing was impressed upon federal elites by the incendiary potential of minority nation alienation, stoked to life by two failed attempts at further constitutional reform and culminating in Quebec's near-secession in the 1995 referendum as well as growing native militancy borne of frustration with inaction on the Treaty and Aboriginal Rights guaranteed in the 1982 constitution.

Rebalancing Federal Finances

It took time to overcome the scars of intergovernmental acrimony generated by the unilateral federal cuts to social transfers in the 1990s. The first step toward doing so was the 1998 Social Union Framework Agreement (SUFA) whereby the federal government agreed to the principle of seeking provincial consent before any new national social program was developed. Though the substantive long-term import of the agreement may have been negligible, the gesture was symbolic of federal recognition of the need to restore a measure of intergovernmental trust. More significant were the three Health Accords negotiated between 2000-2004 that committed the federal government to restoring the traditional federal share of funding public health care in Canada. Finally, there was the resolution of the structural 'fiscal imbalance' claimed by several provinces, with Quebec its most vocal exponent. The argument was that Ottawa, which was running large budgetary surpluses at the time, should transfer more money (or equivalent tax room) to the responsibility-laden provinces where fiscal deficits were the norm (Bickerton 2008). The 2007 re-negotiation of the federal equalization program, which produced a financial windfall for Quebec, finally ended the complaint. Not that this new spending restored the federal government to its traditional oversight role in the social policy realm. According to one 20-point benchmark scale measuring the degree of constitutional, political and fiscal decentralization, as well as asymmetry, by 2008 Canada had the highest decentralization score amongst the nine OECD federations (Requejo 2010), a ranking supported by a cross-national comparison of the

spending shares of regional governments (OECD 2014: 32). In effect, Canadian provinces had become the most powerful and autonomous sub-national governments in the democratic world. And Quebec, it hardly needs mentioning, was the most autonomous of these, due to the distinctive policy and program content and asymmetry in governance ambit that demarcates it from other Canadian provinces (Gagnon 2014).

Rebalancing Minority Nation Status

A prominent Quebec objection to the 1982 Constitution was the loss of the province's historic veto over formal constitutional change and the failure to entrench its status as one of Canada's two founding nations. While the federal Parliament extended its own legislative veto to Quebec shortly after the Referendum, a similar concession to other Canadian regions made further constitutional reform even more unlikely. This stalemate was counterbalanced by the 1998 *Reference re Secession* which advanced the Supreme Court's role in preserving if not augmenting the foundational importance of the principle of federalism in Canada's constitutional order. Importantly, its constitutional vision would inform the court's adjudication of constitutional disputes and its interpretation of Charter rights where they threatened to limit federal diversity (Kelly 2008). And while the 1999 federal Clarity Act imposed conditions on Parliament's validation of any future referendum outcome, this was counterbalanced by the virtually unanimous passage by Parliament of a 2006 resolution recognizing the Québécois as a nation within Canada. Meanwhile, on mundane matters of intergovernmental relations, informal recognition of Quebec's distinct status involved the well-established federal practice of dealing with Quebec's concerns "with special sensitivity" compared to the other provinces (Savoie 1999; Gibbins 2014).

The appeal of the sovereigntist project in Quebec resides primarily in the realm of identity: the Québécois' sense of belonging to a nation that does not have its own independent state. However, Canada's unusually open (some would say weak) sense of national identity and its highly decentralized federal system has made it possible for the Québécois nation and the Quebec state to remain nested, though not always comfortably, within the Canadian nation and state. In incremental fashion, this state of affairs has become an acceptable one for most Quebecers, as indicated by the sharp decline in electoral fortunes of separatist parties in Quebec, the most recent manifestation of which is the collapse of support for the PQ in the 2018 provincial election (Hannay et al. 2018).

Rebalancing Reconciliation with Indigenous Peoples

Just as there were discernible and significant initiatives that rebalanced the place of Quebec within the identity, rights and representational dimensions of the Canadian citizenship regime, so too were there responses to the alienation and demands of Indigenous Canadians. The Royal Commission on Aboriginal Peoples (1991-96) was the first major response to Indigenous frustration. A federal Inherent Rights Policy (regarding self-government) and the completion of several major treaties followed, though the final resolution of land and self-government claims has been an exceedingly slow and disappointing process (Papillon 2014). All the same, progress was evident in the appointment of the Truth and Reconciliation Commission (TRC) on the legacy of Indian Residential Schools, and the government's commitment to act on every one of its 94 Calls to Action, potentially marking an important turning point in Indigenous-Non-Indigenous relations (PM 2015). This could also be true for the replacement of Aboriginal Affairs (formerly the Department of Indian Affairs) with two federal departments with new mandates: Indigenous-Crown Relations and Indigenous Services. Realistically, however, there will continue to be both advances and setbacks ahead, as Canadians and their governments edge toward accommodating a third order of Indigenous government in the Canadian federation while at the same time ensuring the basic compatibility of Indigenous and Canadian citizenship.

Conclusion

In the quarter-century since the second Quebec referendum in 1995, the Canadian citizenship regime has continued to evolve, with new institutional practices and innovations, judicial interpretations, political declarations, legislative changes and identity shifts. In particular, judgements by the Supreme Court have given priority to the federal principle and succour to a plurinational concept of Canada. As well, the Court has moved toward an expansive interpretation of Aboriginal rights, one that has advanced the multi-generational project of Indigenous self-government, comprehensive land claims, and realization of a just partnership with non-Indigenous Canadians.

The 'deep diversity' found within multination states requires an approach to national unity that focuses on the management of 'legitimacy deficits'. This governance challenge derives first from the universal democratic challenge of protecting the conditions for realizing individual freedom, dignity and equality within the state. The second challenge refers to the state's role in protecting and ensuring the conditions for cultural pluralism. Balancing the 'unity with diversity' principle that is at the core of federalism requires that deficits in both realms – democratic and cultural – be addressed, even when the requirements to satisfy one sometimes interferes with the conditions necessary to secure the other (Requejo 2010). This process amounts to nothing less than the 'art of the possible': cobbling together, through dialogue and negotiation, a series of workable compromises, including whatever asymmetries, ambiguities, silences and constitutional abeyances are necessary (Simeon and Conway 2001). Securing national unity and political stability in democratic multination states is a messy process that requires a pragmatic political vision, one willing to settle for a 'satisficing' middle ground between regime types. In this fashion, Canada has rebuilt and rebalanced its way to its own unique shade of federalism.

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