

**Revisited and Brand New**

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**Books on Canada**

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*Simeon, Richard (2006): Federal-Provincial Diplomacy. The Making of Recent Policy in Canada. Toronto University Press.*

*Michelmann, Hans J.; Christine de Clercy (2006): Continuity and Change in Canadian Politics – Essays in Honour of David E. Smith. Toronto University Press.*

**Kolja Raube\*: Federalism and the Canadian State in the light of European Integration**

Why bother about Canadian politics? Clearly, in times of economic and political inter- and transnational interdependence we can hardly neglect the developments in any country of the world. Descriptions and analyses of political systems are partially important to understand change or continuity and their interrelated consequences in political systems – in Canada, too.

Central to the understanding of Canada is federalism and its functioning. But beyond the description and analyses of politics in Canada, we can use it for comparison with other

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federal states or political systems like the European Union. Indeed, since quite some time, Canada has attracted our attention when comparing the structures and changes of its political system with structures and changes in the European Union (e.g. Friedrich 1968; Sbragia 1992; McKay 2001). Such comparison is very fruitful. While we take the similarities of the two systems for granted (federalism, integration of different cultures and identities, etc.), we more easily understand the crucial differences between the two. Thus, exploring classic and new books on Canadian politics can be done in two ways: as an analyses in itself or as a starting point for comparison.

When Richard Simeon first published *Federal-Provincial Diplomacy* at Toronto University Press in 1972, Michael B. Stein wrote in his review published in the *Canadian Journal of Political Science*: “It is an essential book for students of Canadian federalism to read and makes a major contribution to an understanding of the dynamics of contemporary Canadian politics.” Harrison W. Fox commented similarly positive in the *American Journal of Federalism*, “Publius”, that the work “should be recognized as a significant pioneering work that maps `the relationship of federal structures to the behaviour of decision-makers and ultimately to the kinds of policy which result`.” At the end of his review Fox concluded that “on the whole Simeon has written an important work on federalism. It should be read and perhaps even be used as a practical guide by students of federalism.”

Now, thirty-four years later, Toronto University Press has published Simeon`s book once again. Simeon wrote a new postscript at the end of the latest edition in 2006. In the subtitle of “Federal-Provincial Diplomacy” we still find the eye-catching words “The Making of Recent Policy in Canada”. Reviewers like Stein and Fox were right when they predicted that this piece of work by Simeon would make a major contribution to the study of federalism. Indeed this book, originally written in the 1970s, can still explain “the making of recent policy in Canada” – even in 2006. Even more, when you read Simeon`s book through a European lens, you will be astonished how much there is to learn not only about Canadian federalism. It is executive federalism and intergovernmental decision-making that Simeon is interested in. The author himself compares the Canadian example of executive federalism, which he calls federal-provincial diplomacy, with the European Communities and its decision-making processes (299-300).

Simeon`s study of Canadian federalism is very clearly written and elegantly structured. In the 1960s and early 1970s Canada witnesses a row of conferences between the federal government and the provincial governments through which major policy-outputs are meant to take place. However, there is no constitutional obligation for such conferences. Indeed, what Simeon observes is about Canadian politics, but international in style: Although the conferences under review are about the introduction of a Canadian pension-plan, the restructuring of finances in Canadian Federalism as well as the rewriting of the Constitution, the way these Conferences are conducted looks like international multilateral negotiations. Simeon thus calls it diplomacy between the federal and the provincial level of government.

Canada is a geographically, ethnically and linguistically diverse country. Aboriginal culture, British and French settlement and immigration are crucial elements of Canadian culture and daily life. Canada is the second largest country in the world, but it is not densely populated. Canada is made of ten provinces, which all have constitutional status. Whereas the first prime minister of Canada and one of the Canadian “founding fathers”, who constructed the Canadian Constitution, the British North American Act (BNA) in 1867, John A. Macdonald envisaged a very centrally governed state (McRoberts 1997), Canada has evolved as one of the most decentralized federal systems over the years. The American Civil War made clear to Canadians, that it needed a central state in order not to fragment and even disrupt like the United States. On top, Canada, as Seymour M. Lipset has impressively shown in “The Continental Divide”, was by no means a republic (1990). Until the 20<sup>th</sup> century Canada was a dominion of the British Commonwealth. Although Canada gained late sovereignty, Queen Elizabeth II is still head of the Canadian state. Unsurprisingly, Canada`s political institutions carry British legacies. The parliamentary system of the federal state as well as the provinces look like transplants from Westminster. Although cleavages between the English and the French, Native and non-Native people, Western and Eastern provinces, wealthy and poor provinces exist, political institutions are not able to accommodate these differences, e.g. there are no elections guaranteeing proportional representation and there is no second chamber which hardly contributes to the representation of provincial differences. Quite differently, while the provinces have

gained more and more power over the years, the Canadian party system is also made of decentralized tendencies, which means that the federal party hardly has the power to influence its own provincial level.

Back in 1972 as today, this short description of the underlying factors of Canadian politics is valid. Exactly for that reason Simeon was interested in why the intergovernmental conferences he observed happened to take place, which issues were at stake, which actors and interest were present, how decision-making was to be organised and described and which outcome would be made.

Simeon identifies the social and institutional context of Canadian politics as crucial variables explaining the coming-to-being of executive federalism. The federal political institutions do not provide for accommodating differences which are virulent in Canadian society. Moreover, the division of jurisdictional competences between the federal and the provincial level of government based on the BNA, the accumulation of tax revenues by both the federal and the provincial level as well as growing need for nation-wide jurisdiction has led to a situation in which the governments had to co-operate and look for common policy-solutions. Simeon says: "When the constitution allocates functions jointly to both levels, or is silent or ambiguous on important powers, or the financial resources assigned to governments do not permit them to carry out their assigned functions, then interaction will be more frequent. In addition, intergovernmental interaction is likely to be more frequent the less the institutional arrangements at the national level accommodate regional interests." (303) Indeed, the case of establishing a Canadian pension-plan in the 1960`s and following federal-provincial diplomacy makes the constellation more obvious: Whereas the equal participation of Canadian people in the fund was envisaged, there was no competence on the federal level. Moreover, provinces, who had the formal competences, did not have the financial means to establish individual funding. Additionally, Quebec foresaw to opt-out for reasons of independence and provincial speciality. Thus, when Canadian society wanted to adjust its politics in either the case of the welfare state, finances or even the constitution the executives chose to cooperate among themselves. Simeon concludes: "[...] The extent and frequency of interaction will depend on the attitudes and perspectives of leaders at each level and on the demands and problems facing the system. Thus, when major problems or demands cut across formal divisions of powers, adjustment will be more necessary (303)." Indeed,

Simeon outlines a similar incentive for governments to co-operate, as Stanley Hoffman has done it in the case to explain why governments feel the need for co-operation in the European integration process: “The comparative study of international regimes shows that they are most likely to be established in areas where, and at moments when ‘the sovereign’ national actions are likely to be insufficient or unproductive: when joint actions produce better results, for each other, than ‘uncoordinated individual calculations of self-interest’, in areas of ‘high issue density’, marked by interdependence and linkages among the issues (1982: 33-34).”

However, as Simeon shows outcomes are hardly the same over different policies. Rather, policy issues matter when one wants to explain the outcomes of the conferences. Indeed, in restructuring finances (tax revenues and equalization payments) the negotiations rather tended to be a negative zero-sum-game with actors profiting from the outcome the more others had to lose through it (264). But the policy issue itself is not the only determining variable explaining outcomes. In fact, Simeon can show through interviews with participants of the conferences that bargaining was not always the most present form of communication/negotiation among participants of the conferences. Indeed, the rather friendly and private atmosphere of the negotiations, which did mostly not allow access of the public, contributed to a situation of mutual persuasion and understanding, making consensus possible beyond the smallest common-denominator. But when television was allowed in the constitutional conference, the actors actually had problems playing two games at the same time: “to mobilize and seek support among the voters back home and to negotiate with other governments (237).” Comparatively, the EU grand bargains over treaty-changes have been explained by separating the two levels of indoor- and outdoor-action (executive bargaining and executive supply and demand vis-a-vis the domestic) by claiming that executives arrive at the negotiation table with a fixed set of preferences (Moravcsik 1993). For the context of Canadian politics, Simeon however shows how difficult it is to keep and understand the two levels as separated: “even though much of the discussion takes place behind closed doors, it still remains difficult to keep action in one area separated from that in others (237).”

Simeon writes in his postscript that “what is remarkable is not so much change but continuity in intergovernmental relations. Intergovernmental players from

the 1960s would be on familiar ground were they to join the fray today. Indeed, many of the elements of the process that we observe today were first coming into focus in the tumultuous decade of the 1960s.” (322) However, as Simeon analyses, the intense debate and the quantity of executive meetings downsized during the 1990s and later. We can only imagine why that is: executive actors did not have that much interest in cooperation among governments and thus it reduced. The crucial idea about the federal-executive diplomacy was collaborative federalism, as Simeon says (324): Executive federalism which was observed during the conferences was not a top-down approach by the federal government, rather collaboration among the eleven governments of Canada (324). Still, intergovernmental affairs in Canadian politics seem far from totally disappearing: Simeon rather thinks that a strong path-dependency can explain why the executive cooperation was used again and again to achieve policy-goals (329). The two orders of government – the federal and the provincial – are not able to have the resources (neither financially, nor constitutionally) to look for useful policy-outcome, while government on both levels is so centralized that the executives do have an almost unchallenged power within their level of politics (329).

Simeon admits though that he did not look at the implications of executive federalism on the democratic deficit of the Canadian State (328). It was Donald Smiley, as Simeon mentions, who pointed at the downside of executive federalism: that it undermines democracy through closed-door negotiations, without the possibility of parliamentary scrutiny and parliamentary accountability. Indeed, also in the European Union the issue has been raised: Andrew Moravcsik explained the new *raison d`état* of governments: to co-ordinate government action on an intergovernmental level of decision-making and, thus, to circumvent parliamentary scrutiny “at home” (1993). Differently to executive federalism in Canada, which is not constitutionally embedded and still remains informal, procedures in the Intergovernmental Conference, the Council and European Council of the European Union are parts of the treaties constituting integration. While Simeon saw this comparatively deep integration in the European Communities in 1972, he could not foresee the growing role of the European Council (an idea by Giscard d`Estaing and Helmut Schmidt in the mid 1970s (Dann 2006: 262)). Over the years, scholars have shown that governments did make an effort to further transfer policies to the intergovernmental level of decision-making, precisely

because they tried to cut the leach of democratic constraints. This is e.g. true for the Common Foreign and Security Policy (Koenig-Archibugi 2004). In total, while Canadian executive federalism has not been constitutionalized, European governments undertook great efforts to establish executive federalism as a constitutional principle. However, while executive federalism grew, democratic participation of European decision-making – either through direct participation, national parliaments or the European Parliament grows, too. The European Union`s latest treaty reform result – the Lisbon Treaty – provides more democratic participation than ever. Also, the influence of other supranational actors on most areas of European policy-making is very high. Thus, to describe European integration as a system of executive federalism and intergovernmental bargaining only, would not focus on the tremendous input of the European Commission and the European Court of Justice on the institutionalisation of supranational norms and the execution thereof (Stone Sweet/Sandholtz 1997).

Like Simeon`s book a new book focuses on the underlying factors influencing Canadian politics. To the honour of David E. Smith, Hans J. Michelmann and Christine de Clercy edited a book on *Continuity and Change in Canadian Politics*. David Smith`s latest works have all been interested in the evolution of prominent principles and institutions in Canadian government. During the last years Smith has laid forward the impressive list of four monographs which all deal with such (partially conflicting) principles of government: the Republican idea and the heritage of the Crown, Federalism and Second Chambers as well as Democracy and the House of Commons (Smith 2007, 2004; 1999; 1994). *Continuity and Change in Canadian Politics* follows this research agenda. The book consists of 10 individual articles on Canadian politics. Having read Simeon`s book this new literature on Canadian politics adds additional insights. It is interesting that there is no separate article on executive federalism. However, it is always present as a background factor. In his article on constitutional politics in Canada, Peter H. Russell argues that the days of mega-constitutional reform and constitution-making a` la Locke are over. Any of the large intergovernmental conferences during the 1980s and 1990s have brought some constitutional change in the way that the constitution itself was changed. Neither did the Meech Lake, nor did the Charlottetown Accord bring about constitutional change. Also, Quebec did not separate while a referendum on the separation was very narrowly

lost. Whatever the diverse reasons for constitutional failure (Manfredi/Lusztig 1998), Canada has returned to constitutional change a` la Burke which means reforming constitutions in bits and pieces (23). The consequence is that not the whole constitution is subject to reform and the state institutions re-organized at large, but that constitution reform comes in small steps, amending the constitution by single changes. While the constitutional changes of the 1980s and 1990s failed, politicians learned that a “country-wide consensus” was unable to achieve (26). However, “under section 43 of the amending formula, amendments to any provision in the Constitution of Canada that applies to one or more provinces but not all of them require only the support of the federal Parliament and the legislature of the province or provinces concerned . In the 1990s four such amendments were adopted. (26)” Additionally, there have been important steps towards rather informal constitution-making under way, e.g. through a Social Union Framework Agreement (SUFA) between the federal and provincial governments (30). Indeed, as Simeon writes in his postscript, this Agreement had political implication that can be called constitutional – again it was made in the old fashion of executive federalism (317). In a way, although the Canadian Charter of Rights and Freedom was changing the constitutional framework in Canada by giving the Canadian people individual rights and transforming the character of the constitution into a constitution of the people, there was obviously enough room for governmental maneuver left: “the two poles now co-existed in delicate tension. (Simeon 2006: 317).”

Indeed, the European Union has also developed beyond the pure executive federalism, too. Not only, as mentioned above do supranational and democratic features have to be taken into account in order to describe the Union in all its complexity, also individual EU-citizenship and the introduction of the Charter of Fundamental Rights have changed the Union into the direction of a cosmopolitan democracy, in which there is a common consent on the conception of membership and citizenship while diversity in the Union is accepted as a crucial principle (Fossum 1999: 221). Indeed, as John Erik Fossum has argued: “The sheer diversity of Europe to which the EU must relate has made it an arena not simply for interstate bargaining. It is a setting where actors are more compelled than before to justify their stances with reference to arguments. (1999: 223).”

Greg Poelzer and Ken Coates argue in their article on *Aboriginal People and the Crown in Canada* that the diversity of Canada also has implications on the levels of government. They argue that local government is the third order of government, next to the federal and provincial (151). However, it has to be constitutionally protected and it has to include “executive ultimate decision-making authority” (152). Indeed, through the 1990 Nisga`a Agreement the Aboriginal People of Nisga`a received self-governing functions as a third order of government. It marked a fundamental change in Aboriginal self-government functions. As the two authors go on, the agreement is based on the Canadian Charter of Rights and Freedoms, which also addresses rights of the Aboriginal people in section 25 and 35. It is therefore constitutionally protected. With regards to decision-making authority the Nisga`a Agreement is based on concurrent-law-making(153), while provincial and federal law-making mostly prevails in the case of conflict. In the case of education the self-government of Nisga`a can set the standards in case of conflict. However, the Nisga`a can by the law of the agreement decide who belongs to their community without possible conflict with federal or provincial law – thus, they can define citizenship and rights emerging from this principle (154). Such wide-ranging self-government functions are seen as stabilizing democracy in Canada. However, their existence depends on a two-fold negotiation process with the federal and the provincial governments who both have jurisdiction over the necessity and implementation of such self-government agreements (166). While competences over self-government of ethnical minorities do not lie with the European Union, this issue is still a national one. While the Charter of Fundamental Freedoms guarantees negative freedoms of ethnical minorities, there is no obligation for positive rights, including political rights and self-government. The diversity of the European Member States can also be seen by looking at the diverse measures – from no measures at all to very complex arrangements – with respect to political participation, representation and self-government of national minorities (Frowein/Bank 2001).

At least two more recent developments in Canadian politics can be realized when reading the compilation by Michelmann and de Clercy. As Brooke Jeffrey analyses in his article *From Collaborative Federalism to the New Unilateralism* recent tendencies of Canadian federalism have been called unilateralism. Recalling the terms used by Simeon in his book on Federal-Provincial Diplomacy, uni-

lateralism strikes us as being a term taken from international relations literature as well. Indeed, as Jeffrey shows unilateral federal action has been much more the case than approaches to co-operate with other provincial governments. Next to federal-provincial diplomacy the federal government set up policy instruments with directly affected citizens through the tax system rather than through provincial legislation (e.g. education). The consequence of these actions were provincial counter-actions, exemplifying provincial unilateralism in turn (139). In the end, citizens in need of programmes were left in a position even worse than the status-quo-ante (139). Whether the pendulum swings back from unilateralism remains an open question of research on the recent Martin- and Harper-governments.

Just like interests in co-ordination might be smaller or larger according to changing federal governments resources and interests, provincial interests might alter. Today, no other province than Alberta can show how an economic upswing can alter the position among the provinces. Quite similarly, Thomas J. Courchene argues that interest in co-operation among the provinces might rather alter, as integration into the North American Free Trade Agreement (NAFTA) grows and their economic transfers largely depend on the US economy. Provinces “will begin to legislate in ways that will privilege themselves and their citizens in NAFTA economic space (45).” How will the east-west integration of Canada look like with growing integration to the south (51)? In a way the political and social integration of Canada will have to deal with externalities stemming from the economic integration in NAFTA (61). However, rather than understanding the process as one of eroding Canadian sovereignty, Courchene thinks that regional integration itself is the best means to sustain national sovereignty (61). Automatically, the European experience with regional integration and questions about the national sovereignty come to mind. The tricky problem of explaining to which degree the concept of sovereignty changes in the case of deep integration is still on the agenda of recent academic debate (Schuppert 2007).

The two books on federalism and the Canadian state offer a very good overview on the “old” and recent trends of politics in Canada. Likewise, to the European reader they introduce a fascinating political federal system which problems are in many cases quite similar to those of the European Union. It is the great ad-

vantage of the two books that their results are so clearly outlined that comparison is likely to emerge and further stimulate the debate on the future of Canada and the European Union.

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