

The Dispersal of Power in Federal States: Canada and Australia

Anthony Sayers and Andrew Banfield
University of Calgary
asayers@ucalgary.ca; acbanfie@ucalgary.ca

Paper prepared for the Canadian Political Science Association Annual General Meeting
June 1-3, 2010, Concordia University, Montreal

Draft: Do not cite without permission

ABSTRACT

Despite its apparent capacity to distribute power, little attention has been directed at the manner in which federalism shapes executive power in Canada and Australia. Close inspection of both cases indicates that a complex mix of intrastate and interstate federal mechanisms shapes prime ministerial authority. Intrastate federalism more clearly constrains executive power in Australia. Differences in the operation of intrastate federalism reflect the divergent impact of the respective Senates on political parties and party system development. Measures of the infrastructural capacity of national and regional governments reveal that interstate federalism constrains executive power in both countries, more so in Australia than had previously been thought.

INTRODUCTION

In *Federalist 48*, James Madison observed “[a]n *elective despotism* is not the government we fought for” (Hamilton (1788) 2003). In *Federalist 10*, Madison and Hamilton suggest federalism as a mechanism for reducing the likelihood of such despotism, limiting as it does the chance that any singularly motivated set of people would control government (Hamilton (1788) 2003). Distributing power should limit its misuse.

In the case of the Canadian and Australian federations, there is little discussion of the capacity of federalism to constrain executive power. In the former there is open concern as to the power of the prime minister (the ‘friendly dictatorship’, Simpson, 2001; Savoie 1999b). Such concern is not found in Australia, where to the degree it is discussed, limits on prime ministerial power are not linked to federalism but to the operations of the last ‘cabinet government’ in the Westminster-derived world (Weller 2007, Ch.15).

The following analysis of intrastate and interstate federalism suggests that while the former is ineffective in Canada, the latter does constrain prime ministerial authority. Executive power is intense over a relatively narrow terrain, the parliament, cabinet and partisan politics. Outside of these areas, particularly in terms of major policy decisions, there is less evidence of overwhelming power. It seems that concerns over the power of the Canadian prime minister may be overblown.

There is evidence that current analyses of prime ministerial power in Australia misstate the source of limitations on executive fiat. Rather than having their roots in the dynamics of a Westminster-style cabinet, it is the dynamics of intrastate and interstate federalism that restrict prime ministerial power. Australian prime minister enjoys balanced power across a range of institutional settings. He or she must share power in parliament, be cautious in cabinet, and negotiate with party colleagues. The apparent dominance of the prime minister and the Commonwealth government in intergovernmental relations may be overstated, as much like Canada, the national government has a limited infrastructural capacity to apply policy.

EXECUTIVE POWER IN CANADA AND AUSTRALIA

Following a century of decline in the policy making power of Parliament, there is new concern in Canada that the cabinet and caucus are also being by-passed. In his seminal book *Governing from the Centre* (1999b), Donald Savoie suggests policy is now made by the Prime Minister and a cadre of close advisers. Not only is Parliament being by-passed, Savoie suggests the cabinet and party caucuses are also excluded from the legislative process.

Events of the early 1990s give weight to Savoie's claim that executive power is focused on the prime minister to the exclusion of cabinet ministers. In 1997, armed with the first budget surplus in Canada in over 25 years, cabinet met to consider spending priorities. Encouraged to provide options, each cabinet minister and his or her department expended enormous effort identifying such priorities. One after another, their suggestions were rejected by Prime Minister Jean Chrétien and Finance Minister Paul Martin.

...Minister Allan Rock finally exploded in anger at how cabinet consultation had become a charade. "We all ran around, briefing our ministers on how to sell the departments and coming up with ways we could spend money, and in the end we all just looked silly," recalls a deputy minister in another department. "It was obvious that Martin and the PM had already decided where to spend the money. Ministers got the message. In subsequent months, they appealed directly to Chrétien for their projects" (Wallace 1998).

Underlying this development of prime ministerial dominance are a range of factors, including the crisis surrounding Canadian unity, the role of the media and lobbyists, presidentialization of the role of prime minister, administrative reforms, globalization and the nature of Canadian federalism (Savoie 1999b).

Internationalization and globalization have contributed to the power of the prime minister. Growing numbers of increasingly detailed international agreements on everything from trade to the environment require prime ministers to commit to policy objectives that impinge on provincial jurisdictions. As well, the velocity of international negotiations increases pressure on prime ministers to react quickly and heightens expectations that he or she can speak for the country. One example of this power to bypass cabinet deliberation and commit to international agreements came when then Prime Minister Chrétien committed Canada to the Kyoto Accord:

...Environment Minister David Anderson had been tipped off, but many had no idea that Chrétien was about to stand up in Johannesburg and commit Canada to voting on the controversial Kyoto agreement on greenhouse gas emissions by the end of the year. "The minister learned about it the same way other Canadians learned about it and that was by reading the headlines in the newspaper the next day," confided an aide to one minister (Thompson 2002).

Not only was the majority of the Cabinet unaware of the decision about to be made, the commitments made by the prime minister deeply impacted provincial autonomy. Led by Alberta, the provincial premiers condemned the prime minister's failure to consult them (Bueckert 2005).

In contrast to the situation in Canada, there has been relatively little concern expressed about the power of Australian prime ministers, with analysts agreeing with Bakvis (2001) that the office is nowhere near as powerful as its Canadian counterpart. Recent studies highlight cabinet's collective character and its role in making or unmaking the prime minister (Moon and Sharman 2003; Weller 2007). As well, party caucus plays a key role, particularly in the Labor party with its formalized factions, in determining the composition of cabinet. In the case of conservative governments, normally Liberal-National Party coalitions, cabinets reflect bargains between the two parties rather than prime ministerial fiat.

A detailed analysis of the extensive reform of the Australian economy during the 1980s and 90s provides examples of times when the preferences of a number of prime ministers were thwarted by cabinet ministers, caucuses, bureaucrats, party organizations and non-state actors:

While the central agencies were often important as would be expected in economic policy decisions, they were not the only organisations contributing ideas to economic policy, and their direct influence on decision-making varied depending on the decision being studied. Influence on economic policy was sometimes diffuse with other government elites including cabinet, the prime ministerial and ministerial offices and other departments also important, while some decisions were made contrary to the advice of the central agencies (Goldfinch 1999).

What is surprising in both these accounts is that there is so little analysis of the role of federalism in shaping executive power. We now turn to that discussion.

INTRASTATE FEDERALISM IN CANADA

Intrastate mechanisms for distributing power in federations are found in the institutions of the central government. These include the legislature, particularly second chambers, divisions between the executive and legislature, and the role of courts and offices tasked with overseeing government activity.

The limited capacity of the Canadian parliament to constrain executive power has long been known. Parliamentary checks on prime ministerial power, such as opposition parties and question period in the House of Commons, are seen as increasingly ineffectual. Moreover, informal checks such as media and public opinion polls are sporadic and unpredictable (Savoie,

1999b). The prime minister and a few close advisors have nearly absolute control over the legislative process.

There are few checks on the prime ministerial power to appoint ministers and their deputies and use a range of measure to ensure discipline and loyalty (Bakvis 2001). Savoie (1999b) notes “[t]he prime minister has access to virtually all the necessary levers in Cabinet to ensure that he or she is the ‘boss’ in cabinet, and that if he so wishes - and prime ministers usually do – he can dominate Cabinet deliberations and its decision making” (81). It is not surprising that prime ministers are prone to make legislative decisions and major policy changes without consulting of his or her cabinet colleagues

The Canadian parliamentary committee structure is relatively weak, and is dominated by the executive. Docherty (2005) notes the committee system in Canada is only as strong as the chamber allows it to be, and in this case, the Commons is dominated by the executive. As proof, Docherty and White (2004) note that during the first Chrétien Administration “[g]overnment MPs lost their committee chairs, were removed from committees or demoted in other ways” as punishment for Liberal backbenchers who broke government ranks (620). Not only does this undermine the independence of the committee chairperson, but it also hurts the expertise of committee members if they are shifted too frequently.

Pal (1995) argues that this failed committee structure encourages interest groups in Canada to directly target the executive with their concerns, whereas in Australia interest groups are called to testify before Senate committees. This further strengthens the hand of the prime minister against other parliamentary actors, such as the Office of the Prime Minister (PMO) and the Prime Minister’s Office (PMO) and Privy Council Office (PCO) becomes the central agency for coordinating access to the legislative process.

One potential intrastate constraint on executive power in federal states is the second chamber. The Canadian Senate stands in sharp contrast to its elected counterparts in other federations. Appointed by the prime minister rather than elected, it plays a valuable but minor role in the legislative process. Dawson and Ward (1971) note:

A government finds senatorships most useful as rewards for duty faithfully preformed; as influences to produce immediate activity in the hope of recognition in the future; as inducements to persuade members of the Commons to resign and vacate a seat for new or defeated cabinet ministers or to make room for a younger MP... as a convenient scrap-heap on which to cast ministers who have outlived their usefulness or who have become for one reason or another trying [to] colleagues (70).

The appointed Senate robs Canada of two intrastate mechanisms for limiting executive power. It neither checks the legislative authority of the government, nor does it encourage the development of a unified national party system that might act as a conduit for intrastate representation (see Bakvis, 1994). Instead, the Canadian party system is fractured across two dimension; different constellations of parties contest federal elections in different provinces and regions (it is possible to argue that Canada has *no* national party) and in most cases there is little organizational integration between parties of the same name at the national and provincial levels. This is also linked with a third feature; provincial and national party systems

are often distinctive, with major players only competing at one level (although see Koop 2004). As we shall see, the need to compete in Australian Senate elections is a core driver of a fully national party system and of partisan integration across federal levels and arguably, part of the reason why parties with the same name contest state elections.

The character of partisan politics also plays a role in strengthening the hand of the prime minister against potential opponents. Canada is the only Western democracy that uses a national leadership convention or plebiscite of party members to select party leaders, and by extension, potential prime ministers. Once selected as leader, party-wide selection methods gives Canadian prime ministers an independent source of power. It removes a role for caucus and cabinet in selecting (and de-selecting) leaders, further weakening cabinet *vis-a-vis* the prime minister.

Selection of party leaders by party membership rather than caucus colleagues leaves the party leader beholden to no one other than a few close advisors and supporters. While it is true that leaders put leadership rivals in to the cabinet, he or she has few obligations to the ministers or MPs yet near absolute control of their political lives, including nomination and control of election timing, departmental budgets, the cabinet and legislative agenda, and government policy making (Savoie, 1999b).

The *Canada Elections Act* requires the party leader must sign the nomination papers of any party candidate. This is a unique among western democracies and gives to party leaders in Canada the capacity to make or unmake the careers of their fellow MPs. While outright rejection does not appear to be common, the capacity to shape who runs for the party, or withdraw endorsement, is a weapon that can be used by Prime Ministers to divert potential challengers and control the behaviour of caucus colleagues. Those seeking office and advancement are very much aware of these powers.

Cross (2004) suggests that former Prime Minister Jean Chrétien was especially proficient in using this appointment power. Chrétien regularly imposed his candidate of choice on local riding associations. Provincial campaign chairs (also appointed by the prime minister) have “regularly told would-be candidates that there were unacceptable to the party and should not seek the nomination” risking “public embarrassment of having the leader reject their nomination” (55). Moreover, “central party officials have occasionally rigged the process to ensure the nomination of a favoured candidate” (55). Long time Liberal MP and cabinet minister Brian Tobin concluded ‘the party’s current rules governing candidate selection amount to a “massive shift of power from riding associations and provincial organizations to the national leader and then national campaign committee”’ (quoted in Cross 2004, 55).

Given the prime minister’s nearly unfettered power to shape the cabinet, ministerial fortunes are tied to the unwavering allegiance to the leader.¹ Chrétien’s successor and long-time rival Paul Martin encouraged prominent businessman David Emerson to run for the party in Vancouver by offering him a position in a subsequent Liberal cabinet. When Martin’s Liberals fell to defeat in early 2006, Emerson crossed the floor to join the new Conservative cabinet. His public statements made it clear that his allegiance was not to the Liberal party but to Paul Martin, and that this was conditional on Martin remaining in power:

¹ The only caveat here is that prime ministers are sensitive to a range of regional, language, ethnicity and gender balance considerations when constructing their cabinets.

I fundamentally went through the thought processes many times over, and came to the conclusion I can be more helpful to the people of my riding, the people of my city, the people of my province and the people of my country doing this [crossing the floor], as opposed to being in opposition and trying to become a powerful political partisan which I have never been (Brown 2006).

Finally, both Bakvis (2001) and (1999b) note that success or failure of a candidate is in large part shaped by the perceptions of the party leadership. As Docherty suggests (2005) “the minimal personal vote in Canada means that member’s careers are heavily dependent on the leader.” Thus, damaging a leader’s image either by publicly opposing him or her, or by creating negative press, is likely to hurt the electoral and career fortunes of MPs and ministers alike.

INTRASTATE FEDERALISM IN AUSTRALIA

The central claim of studies of prime ministerial power in Australia is that to the degree it is constrained, it is by the operation of the cabinet (Weller 2007). On closer inspection, it appears that these cabinet dynamics have their roots in federal structures as much as in Westminster parliamentary tradition. In particular, the power and relevancy of the Senate requires a prime minister to share legislative authority with his or her cabinet colleague who is leader of the government in that chamber.

This intrastate mechanism has also shaped the Australian party system. It forces parties to sustain a presence in all parts of the country. As well, the federated nature of Australian parties provides members of cabinet with their own power base. Prime ministers must be careful to who they choose, cannot summarily dismiss cabinet colleagues, and cannot control their selection as candidates.

The Senate has introduced accountability into the Australian Parliament (Sharman 1990). There are two sources for this injection of accountability: its “co-ordinate” legislative power with the lower house, and the use of a system of proportional representation (PRSTV) to elect the Senate. The Senate shares legislative power with the lower house, save tax and spending bills, which are the exclusive domain of the lower house.² The adoption of the PRSTV system has meant that for much of the last 60 years (since 1949) governments formed in the lower house have not controlled the Senate.

An unforeseen benefit of adopting PRSTV has been the growth of minor parties and independents competing for Senate seats. As a corollary of this competition, minor parties have been able to hold the balance of power in the Senate. Because an opposition majority generally controls the Senate, greater scrutiny is given to government legislation. As a result of this scrutiny function, a complex web of inter-institutional and inter-party relationships has developed as the government attempts to secure passage of legislation (Bach 2003).

² Section 53 of the Australian Constitution states the Senate may not:

1. *Initiate* proposed laws ‘appropriating revenue or moneys, or imposing taxation’ ;or
2. *Amend* proposed laws
 - A) imposing taxation
 - B) appropriating revenue for the ordinary annual services of the Government, or
 - C) ‘so as to increase any proposed change or burden on the people’

However, the Senate can *suggest* changes to money and taxation bills.

It is worth noting that if the government secures the support of the main opposition party in the Senate, passage of legislation is easily obtained. Yet, even this passage is often the result of a delicate dance between government and opposition parties (Bach 2003). When major parties oppose government legislation, the government must negotiate with minor parties and independents to secure passage. John Uhr (2002), using data from the second Howard term (1998-2001) illustrates this point. Of the 379 bills introduced by the Howard Government, the Senate suggested 3379 amendments (about 11 per bill). In 75 per cent of the cases, the House accepted the Senate changes, and in the remaining 25 per cent the two houses were often able to negotiate a settlement (15). Thus, Uhr concludes, "in 46 (or 25 per cent) of the bills amended or involving the Senate (105 requests over three years), there were disagreements between the Houses, usually terminated through behind-the-scenes parliamentary negotiation" (15).

Many of the Senate structures required for this oversight function such as the comprehensive committee system were first developed in the 1970s, 25 years after the introduction of PRSTV. This system began with a modest eight committees and now spans the entire panoply of policy responsibilities (Bach 2003). With the additional responsibility vested in the committee system to conduct special inquiries, it has been suggested that committee chairs rival ministers in terms of power (Hamer, quoted in Bach, 306).

Senate committees are vested with the ability to call ministers and question them about specific legislation. While only ministers who are Senators are required to attend such hearings, ministers from the House often attend when legislation hangs in the balance. Famously in 1993, Treasurer John Dawkins was not only questioned, but he and the government were forced to accept substantial Senate amendments to the budget. The amendments, which lowered tax rates, show the power of the Senate to alter government policy. In order to pass his budget the following year, Dawkins had to agree to formal consultations with the minor parties during the budgetary process (Ward 1998).

One of the most visible of the Australian Senate committees is the *Scrutiny of Bills* committee. Established in 1973, this committee issues a weekly briefing alerting Senators to provisions in bills that may affect the civil rights and liberties of individuals. The committee's reports "generally incorporate fresh ministerial explanations of suspect provisions, thereby strengthening parliamentary deliberation during the legislative process" (Uhr 2002). Now, one could easily conclude that this committee could be used to further partisan advantage. However "parliamentary observers [argue that] committees conduct their business in a measured non-partisan way and almost always manage to reach conclusions in which all their members join, regardless of parties" (Bach 2003).

This arrangement places a premium on competent ministers. If a government hopes to succeed with legislative initiatives, it must be able to send ministers to the Senate to defend its interests. Moreover, ministers or the leader of the government in the Senate must be able to negotiate with coalitions of opposition and minor parties to ensure passage of important legislation (Bach 2003). Ministers and Senate leaders must have some leeway to negotiate agreements with other parties or independents, and must be vested with the ability to make (sometimes substantial) changes to the government's legislative intent. While there is a level of constraint placed on the amount of latitude granted to a minister, in order to be successful there has to be some level of discretion. For a negotiator who cannot build the trust of other

players by being able to make and deliver legislative compromise will not maintain the authority needed to ensure passage of essential legislation. Indeed, a Senate leader or a minister in Australia carries with him- or herself a level of executive prerogative vested in only the prime minister in Canada.

A major difference between Canada and Australia are the distinctive roles played by the national party leadership in nominating candidates for parliament. Major national parties are federations of state branches. In Australian parlance, preselection for Senate and House of Representatives seats is controlled by these state branches. This reflects the fact that political parties evolved before the federation and the presumption that candidate selection for the Senate rightly belongs with state branches.

The leadership of the national party cannot control the composition of the national caucus and as a result, is constrained in choosing cabinet ministers. The dynamics of state branches, with various factional balances in the case of Labor and personality driven cliques in the case of Liberal and National parties, are imported into national politics. MPs often owe a much greater allegiance to state-based forces that control the preselection process than to the leader. In preselection battles prior to the 2007 election, state branches of their respective parties ignored the expressed preferences of both the Liberal and Labor leaders, replacing sitting MPs with local favourites (ABC, 2006; Barrass, 2006).

The prime minister must appoint a cabinet with an eye to respecting and balancing powerful state-based actors and factions. Removing ministers is equally fraught with factional danger. Given state control of MP selection, party financing and sway over policy, the national leader must be careful to not to generate damaging intra-party fighting. Recent history on both sides of politics indicates how important it is for leaders to pay attention to caucus politics.

Leadership selection methods have substantial implications for the relationship between the caucus, cabinet and prime minister in both Canada and Australia. In Australia parliamentary caucus, usually led by the cabinet, may vote to review party leadership and is able to vote to replace the leader. As Davis (1998) notes that Australia has one of the most "efficient" systems for removing (and electing) a party leader "during a single evening sitting of the parliamentary caucus." For example the Australian Labor Party's parliamentary caucus decided in 1983 to remove Bill Hayden and select Bob Hawke, even though Hawke had only served two years in the House of Representatives. Over the next eight years, Prime Minister Hawke carried the Labor Party to victory four times.

However, this impressive electoral feat could not keep rival and Treasurer Paul Keating from issuing a challenge to the sitting Prime Minister. Hawke received 66 (60 per cent) of the 110 votes to Keating's 44 (40 percent) (Davis 1998). Although Hawke withstood the initial challenge, Keating's relative success in the caucus vote virtually guaranteed a second ballot. Keating went to the back benches with half of the ministers from Hawke's cabinet. Six months later he launched another challenge, this time successfully defeating Hawke by a 56-51 margin (*ibid*).

The Hawke-Keating episode is particularly revealing of the constraints that an Australian Prime Minister (and party leader) faces from within his or her own caucus. First, a leadership challenge can be mounted at any time and only needs to be strong enough to provoke another challenge a later time. Second, it suggests that alliances must be built and maintained, by both explicitly and implicitly sharing power and information among select colleagues. The same can

be seen in Tony Abbott's recent rise to the leadership of the Liberal party. Maintaining a cabinet with talent but not inordinate ambition is one of the key tasks of any successful Australian leader.

The federal nature of the party system is reflected in the composition of the Senate providing an additional check on the executive. As noted above the equal representation and the use of the PRSTV electoral system has two impacts on legislative outcomes. First, although the Senate has not acted as a "states-house" the equality of representation has led to an overrepresentation of small states in the party caucuses. Policy discussions on the prime minister are shaped by this federal component. That is, unlike the Canadian case where regional interests dominate a party which the leader panders to; in the Australian case the prime minister be conscious of adversely affecting any one region for fears of hurting electoral opportunities. Bakvis notes that the nationalized, federated party system provides the conduits along which intrastate representation flow (1994, 273-5).

Finally, the Senate constrains the prime minister's power over the calling of elections. Its semi-fixed six year term limits the prime minister's room for manoeuvre in this regard. Governments are notoriously less popular mid-term. A prime minister who creates mid-term Senate elections as a result of insisting on an election for the House of Representatives may suffer at the polls and introduce to caucus and parliament Senators whose policy preferences are shaped by an election that revolves too an abnormal degree around criticism of the incumbent government.

In all, the Senate both directly through its legislative role, and indirectly through its impact on the character of parties and the party system plays a key role in constraining executive power.

INTERSTATE FEDERALISM IN CANADA

Interstate mechanisms for distributing power deal with how power is divided and negotiated between the orders of government and across governmental units. The division of powers in the constitution, the use of executive federalism, vertical and horizontal imbalances, and asymmetry of power in regional units are all elements of this federal dynamic. Given the power of the provinces over most major aspects of government policy making, Canadian prime ministers have only a limited terrain over which they are dominant.

While accepting Savoie's main point that cabinet as a collective has become less powerful, Bakvis (2001, 66) argues that the concern over the apparent power of the Prime Minister is overdrawn. Both cabinet and intergovernmental relations provide some checks on executive power. He rejects the idea that there was once a halcyon period of equals in the cabinet. Nor does he believe that the power of the cabinet's role in policy making has lessened over time. Rather, Bakvis argues that the role of the cabinet reflects the governing style of the prime minister and suggests that the power has moved down to individual ministers and their departments (66). But even Bakvis, focused on the intensity of the Prime Ministers power rather than its extent, suggests the Canadian case "...represents the more extreme example of the concentration of power..." in the office of the Prime Minister (67).

Bakvis (2001) does note that intergovernmental relations may provide for the only significant restraint on prime ministerial power

In the total scheme of things, the presence of sophisticated and highly centralized provincial governments likely constitutes the largest single counterweight to the power of the federal government and, indirectly, the prime minister's exercise of power (Bakvis, 68).

It is arguable that executive federalism, the development of policy amongst first ministers (federal – provincial diplomacy) was invented in Canada and remains its defining institutional feature (Simeon 1972; 2006). It reflects the nature of the Constitution which with its overlapping jurisdictions that must constantly be negotiated. Intergovernmental meetings are the centres of policy debates rather than the federal (or provincial) cabinets.

The importance of executive federalism in Canada reflects in part the strength of each of the first ministers in relation to their own parliaments. Rarely do first ministers expect to have their authority challenged by their respective legislatures, giving them the authority to speak in all negotiations. The prime minister and premiers may not even discuss the details of these negotiations with their cabinet colleagues (Savoie 1999b). It could be argued that *primus inter pares* is more aptly applied only to First Ministers Meetings rather than the federal or provincial cabinets.

The power of the provinces and the complexities of intergovernmental relations constrain the power of the prime minister. While it is true that the federal government has more money than responsibility and provinces the reverse, the presence of Quebec and the relative fiscal independence of some provinces requires that the federal government cajole provinces into major policy agreements. If it cannot, it has few options. Jean Chrétien signed the Kyoto accord, but without provincial agreement the federal government was unable to implement any effective policy. In comparison, the Commonwealth has had more success using its foreign affairs power to sign international agreements in order to impose outcomes on the states that are beyond its legislative mandate.

The judiciary has helped to define executive power in Canada. The Judicial Committee of the Privy Council (JCPC) expanded the powers of provinces and limited the powers of the federal government (see for example: Cairns 1971; Russell 2004; Saywell 2002). The addition of a Charter of Rights and Freedoms to the Canadian institutional firmament in 1982 has in general strengthened the hand of citizens against the government, limiting executive power. It "... now functions like a *de facto* third Chamber of the legislature, more than a court" (Knopff and Morton 2000). In the process, it has somewhat favoured the federal government over the provinces, (see for example: Manfredi 1993; Morton 1995), but in nothing like the degree to which the JCPC enlarged provincial powers in the early 20th century.

Yet even with these apparent constraints on executive power, there is evidence of the power of a determined prime minister (not unlike Thatcher in the 1980s). The federal government is the most powerful financial actor in the federation. Federal success in reducing social spending beginning in 1994-5, resulting in the largest reduction in federal transfers to the provinces in Canadian history (40 billion dollars), is evidence of prime ministerial power in this arena. This reduction, against the express wishes of all the premiers whose provinces deliver most social services, was a stunning corrective to the presumption of provincial power in the Canadian federation. Not only was Jean Chrétien able to ignore provincial complaints, the resulting federal surplus became the key element of his successful re-election campaigns.

While there is little doubting the power of the Canadian prime minister, federalism is operating much as Madison suggested, complicating and constraining the powers of the federal government. In particular, it limits the extent of prime ministerial power. One important caveat to this is evidenced by events of 1994-5, where a determined prime minister withdrew forty billion dollars from transfer payments to the provinces, overturned an 80 year old pattern of unbroken increases.³

INTERSTATE FEDERALISM IN AUSTRALIA

The traditional means for understanding the distribution of power in federal states is to focus on measure of centralization – decentralization. Thorlakson (2003) notes that while the constitutional division of powers suggests such a balance, it may

... mask the underlying reality of power allocation in the state, as it has been shaped over time by centralising or decentralising judicial interpretations of power, by the federal involvement in policy borne of state financial need, and by influence derived from state administration (11).

One way of overcoming this difficulty is to use the relative taxing and spending of the central government relative to total government taxing and spending as a measure of the allocation of power and authority in a federation. This approach presumes that the spending of money is a measure of power.

As we can see in the first row of Table 1, Australia and Canada are nearly the extreme cases, with the former seen as centralized and the latter as decentralized. This is a commonly held view of the relative power of regional and central governments in the two polities. The Commonwealth government is widely held to be preeminent in major policy fields, even dictating policy in areas of state jurisdiction, leading some to claim that Australia is clearly the most centralized of all federations (Fenna 2007).

But as measures, taxing and spending have their own challenges. In the Australian case, there is indirect evidence that premiers seek to avoid the opprobrium of having to set tax rates (Dollery and Worthington, 1995) preferring the advantages of spending money, even if it is in the form of directed transfers from the Commonwealth. The Commonwealth has limited capacity to oversee how transfers are spent and a short electoral cycle (3 years) that constrains its capacity to punish states for non-compliance. This bargain on the part of Premiers, some constraints on how money is spent in order to avoid having to take the political heat for raising taxes, seems entirely rational.

Another approach to understanding the power of governments is in terms of their capacity to govern. In Ziblatt's formulation (2006) this can be understood as the 'infrastructure' power of government. It is associated with measurable capacity to implement policy. We offer three possible candidates for such measures. First, the sunk costs of government – to how much infrastructure does each level of government have access? We measure this in terms of non-financial assets. Second, what level of function is the government performing as seen in

³ In this category we might also include Prime Minister Pierre Trudeau's success in patriating the Canadian with the addition of a Charter of Rights and Freedoms in 1982.

the formal ministries and portfolios it maintains? And finally, how many people work for each level of government?

Our first infrastructural measure (second row) captures the physical assets of government as a means of assessing its capacity to deliver goods and services. The second is based on the number of portfolios in national and regional cabinets as a means of assessing the number of functions that a government thinks are important enough to warrant such an institutional commitment (Moon and Sayers 1999; Sayers and Moon 2002). The next row captures the ratio of department size at the national level to the notional average department size of regional government. Finally, we include a more traditional measure, workforce size.

To give some sense of the magnitudes we are dealing with, the Commonwealth in Australia has about \$75 billion in non-financial assets, out of a total of approximately \$400 billion of such assets shared by all levels of government; the figures for Canada are \$55 billion of \$280 billion. In terms of ministerial portfolios in Australia, the Commonwealth accounts for 50 of approximately 330. There are about 1.3 million public servants in Australia, and about 2.1 million in Canada.

Table 1
National Government Share of Selected Total Government Infrastructures⁴

Measure	Canada	Australia
National Government Share of Total Government Revenues ¹	45% (1999)	67% (1999)
National Government Share of Total Government Non Financial Assets	20% (2009)	19% (2008)
National Government Share of Total Government Functions* ³	12% (2010)	15% (1997)
National Government Functions Compared to Average Regional Government Functions ³	1.1	1.0
National Government Share of Total Government Workforce*	13% (2010)	15% (2010)

¹ Reports figures from Thorlakson (2009, 165); ² Figures for rows 2 - 5 are provisional; ³ Measured as share of Government Portfolios. ⁴ Yet to be calculated. * Excludes municipal component.

National governments in Canada and Australia command about a fifth of the physical infrastructure required to apply policy. This broad measure includes all the buildings, machinery, and other non-financial assets a government requires to fulfill its role. In the Australian case, this is about one and a third of the 'share' of all government infrastructure if it

⁴ Sources: IMF Government Finance Statistics Yearbook, 2008; Australian Bureau of Statistics, 2010; Stascan <http://www.statcan.gc.ca/pub/68-213-s/2006000/t/4152727-eng.htm>; <http://www40.statcan.gc.ca/l01/cst01/govt65a-eng.htm> (accessed April 6,20, 2010);

were spread evenly across state and commonwealth governments (7 governments). In the Canadian case, it is about double this share. By this measure, the Canadian government commands more capacity than its Australian counterpart.

The comparative capabilities of regional and national governments in the two countries are very similar. In terms of the breadth of government functions, national governments in each country are about as extensive as the notional average regional government (ratio reported in row four). It would be difficult to argue that the Commonwealth was more capable than the Canadian federal government, or that states were less capable than their provincial counterparts.

These figures provide a distinctive view of the relative capacity of central and regional governments in Australia and to a lesser degree, Canada. In contrast to the standard story of a powerful Commonwealth and weak States, this approach suggests a more limited Commonwealth, making it seem much more like the standard view of the Canadian federal government. The infrastructure capabilities of states displayed here might be seen to fit with their constitutional authority in major policy areas such as health, education, and criminal law. These demand extensive infrastructure capacity and the functional division of authority expressed in government departments.

The infrastructural limitations of the Commonwealth have been evident across a broad range of areas in recent years. These include seniors care (aged care homes), economic stimulus policy (home insulation and school building), health policy (failed attempt to displace states), and environmental policy (inability to move states on water usage in the Murray River basin). The Commonwealth has money, but few effective means for spending its wealth; it cannot apply its will.

This discussion suggests that our attempts to understand federal states by reference to some 'balance of power' between the units may not be as simple as sometimes presented. The apparent division of powers in the constitution we know to be unreliable; the capacity to raise and spend money, the impact of judicial interpretation and the capacity for concurrent legislation that are often used in place of constitutional divisions may prove to be equally limited. Power is so multifaceted, and its measurement so problematic, that reducing it to a single moment - such as taxing and spending - may be unhelpful. Institutional or Infrastructural capacity seems to offer – longitudinally and comparatively – an additional source of information regarding the dispersal of power in federal states.

CONCLUSION

Canadian prime ministers are powerful with respect to the operations of cabinet, parliament, and in the life of political parties. They are relatively constrained with respect to the making of international agreements, and are rarely in a position to dictate policy development or delivery in the major areas of government activity. However, given the right circumstances, a Canadian prime minister may use control of the extensive financial resources of the federal government to overwhelm the provinces.

Australian prime ministers must share executive authority in the parliament and cabinet, and must negotiate with fellow partisans in shaping party politics. They are relatively free to act with respect to international agreements. And while the Commonwealth dominates

taxation and spending, its limited infrastructure capacity suggest it too has limited means by which to dictate and implement policy in major areas of government activity.

The character of intrastate federalism in both Canada and Australia is dominated by the role of the Senate and political parties (Simeon 2006, 328-329; see also Riker 1987; Skowronek 1982). While the capacity of parliament to oversee the executive withered in both countries with the arrival of mass type political parties (see Beer 1966; Cox 1987), the Australian Senate has managed to resurrect critical parliamentary oversight functions. The appointed Senate in Canada, while like its Australian counterpart formally nearly equal in power to the House of Commons, does not have the legitimacy required to play this role.

There is evidence of that the Canadian Senate has become more anachronistic as it has passed the very laws that helped make Canada more democratic, including the Charter of Rights and Freedoms. The Australian Senate was also largely constrained by questions of legitimacy until the introduction (for narrow partisan reasons) of proportional representation for Senate elections in 1949. This triggered emergent properties that took politicians and voters more than 20 years to understand. This Senate has been converted into an institution that is arguably at odds with the Westminster traditions of responsible government that supposedly underpin the Australian parliament.⁵

The differential development of parties and party systems in the two countries also reflects the fact that mass style politics pre-existed the Australian federation but not Canadian confederation. This institutional inertia is seen today in the federated, nationwide character of Australian parties and the integration of state and national party systems. The national parties are beholden to state parties for critical functions, such as candidate selection, while Senate elections encourage the national spread of party systems and organizational integration. Canadian parties struggle to remain nationwide, are not internally integrated, and national and provincial party systems are fragmented. As well, regulations surrounding party functions in Canada have entrenched the dominance of party leaders, reducing the capacity of parties to distribute power.

The development of interstate federalism reflects an altogether different logic. In particular, despite profound differences in their experiences, it is at least arguable that the national and regional governments in Canada and Australia sustain relatively similar infrastructural capacities. If anything, the Canadian government sustains a somewhat disproportionate capacity to apply policy in comparison with its antipodean counterpart. This runs against the presumption that the federal government is relatively weak in Canada. It is possible that the demands of governing such a geographically and socially diverse country place more demands on the Canadian government. Not threatening the widely held impression that the provinces are powerful may also be helpful in sustaining the federation.

In the Australian case, premiers seem unconcerned with the widely held impression, based on tax and spending data, that the Commonwealth is the dominant government. It may be that, as long as they avoid the political costs of levying taxes and the Commonwealth remains limited in its capacity to closely audit state spending, this is a bargain that is not worth testing. Direct confrontation on these issues would be costly, and may not markedly improve

⁵ In 1975 the Senate brought down a duly elected government with a majority in the House of Representatives.

their capacity to implement policy. In both cases - Canada and Australia - these strategic calculations deserve greater attention.

The insights gained from using infrastructural capacity to understand the relative power of central and regional governments suggests we might usefully re-evaluate how we measure power in federations. Balance of power analyses not only suffer from measurement issues, but a myriad of other limitations. When we argue that a federation is centralized, we usually mean comparatively, although the comparators are not always clear. We often ignore factors such as asymmetrical distribution of power among regional governments, because they complicate conclusions. And we ignore evidence of the contingent nature of power - when events and actors modify or reverse existing power relations.

Sartori notes that it is sometimes valuable to move up and down a 'ladder of abstraction' in the hope of making extensional gains – the capacity to use a concept broadly, "...without having to suffer unnecessary losses in precision and empirical testability" (1970, 1041). Infrastructural capacity allows us to move to a distinctive analytical level in understanding the dispersal of power in federations.

References

- ABC, 2006. "MP Quits over Labor Preselection Battle" Australian Broadcasting Corporation <http://www.abc.net.au/news/stories/2006/02/28/1580079.htm>, accessed April 20, 2010.
- Bach, Stanley. 2003. *Platypus and Parliament: The Australian Senate in Theory and Practice*. Canberra: Department of the Senate.
- Bakvis, Herman. 1994. "Intrastate Federalism in Australia." *Australian Journal of Political Science* 1.29, pp.259-276
- Bakvis, Herman. 2001. Prime Minister and Cabinet in Canada: An Autocracy in Need of Reform? *Journal of Canadian Studies* 35(4): 60-80.
- Barrass, Tony. 2006. "Benefactor Holds Key to Preselection Battle" *The Australian*, <http://www.theaustralian.com.au/news/nation/benefactor-holds-key-to-preselection-battle/story-e6frg6nf-1111112336635>, accessed April 20, 2010.
- Beer, S.H. 1966. *British Politics in the Collectivist Age*. New York: Knopf.
- Brown, Rob and CTV.ca news staff. 2006. "Former Liberal Emerson Defects to Tories." CTV news 2006 [cited July 10 2006]. Available from http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20060206/emerson_defection_060206/20060206?hub=TopStories.
- Bueckert, Dennis. 2005. "Alberta Poised to Battle Ottawa over Kyoto Implementation Plan." *The Globe and Mail*, November 2, 2005, A18.
- Cairns, A.C. 1971. "The Judicial Committee and its Critics." *Canadian Journal of Political Science* 4:3:301-45.
- Carty, R.K. and Steven .B.Wolinetz 2004. "Political Parties and the Canadian Federation's Coalition Politics," in Meekison, J. Peter. *Canada: The State of the Federation 2002: Reconsidering the Institutions of Canadian Federalism*. Montreal: McGill-Queen's University Press,
- Cox, Gary W. 1987. *The Efficien Secret: The Cabinet, and the Development of Political Parties in Victorian England*. Cambridge: Cambridge University Press.
- Cross, William P. 2004. *Political parties, Canadian democratic audit*. Vancouver: UBC Press.
- Davis, James W. 1998. *Leadership Selection in Six Western Democracies*. Westport Connecticut: Greenwood Press.
- Dawson, MacGregor R., W.F. Dawson and Norma Ward. 1971. *Democratic Government in Canada*. Toronto: University of Toronto Press.

- Docherty, David C. 2005. *Legislatures, Canadian Democratic Audit* Vancouver: UBC Press.
- Docherty, David C., and Stephen White. 2004. Parliamentary Democracy in Canada. *Parliamentary Affairs* 57:3:613-629.
- Dollery, Brian and Worthington, Andrew. 1995. "Federal Expenditure And Fiscal Illusion: An Australian Test Of The Flypaper Hypothesis." *Publius: The Journal of Federalism* 25(1): 23-34.
- Fenna, Alan. 2007. "The Malaise of Federalism: Comparative Reflections on Commonwealth-State Relations," *Australian Journal of Public Administration*, 66:3, September 2007 , pp. 298-306
- Galligan, Brian. 1993. The power of seven. *The Weekend Australian*, 17-18 July.
- Goldfinch, Shaun. 1999. Remaking Australia's economic policy: economic policy decision-makers during the Hawke and Keating Labor Governments. *Australian Journal of Public Administration* 58(2): 3-20.
- Hamilton, Alexander, James Madison, John Jay with an Introduction by Gary Willis. (1788) 2003. *The Federalist Papers*. New York: Bantam Dell.
- Knopff, Rainer, and F. L. Morton. 2000. *The Charter revolution and the Court party*. Peterborough, Ont.: Broadview Press.
- Koop, Royce. 2004. "Federal-Provincial Voting and Federal Integration in the Fourth Canadian Party System." *Federal Governance*. 4(1).
- Manfredi, Christopher P. 1993. Constitutional rights and interest advocacy: litigating educational reform in Canada and the United States. In *Equity and community: The Charter, interest advocacy and representation* edited by L. Seidle. Montreal: IRPP.
- . 2001. *Judicial power and the Charter : Canada and the paradox of liberal constitutionalism*. 2nd ed. Toronto: Oxford University Press.
- Meekison, Peter, Hamish Telford and Harvey Lazar. 2004 "The Institutions of Executive Federalism: Myths and Realities," in Peter J. Meekison ed., *The State of the Federation 2002: Reconsidering the Institutions of Canadian Federalism* Montreal: McGill-Queen's University Press.
- Moon, Jeremy, and Campbell Sharman. 2003. *Australian Politics and Government the Commonwealth, the States, and the Territories*. Cambridge: Cambridge University Press.
- Moon, Jeremy, and Anthony Sayers. 1999. "The Dynamics of Governmental Activity: A Long-Run Analysis of the Changing Scope and Profile of Australian Ministerial Portfolios", *Australian Journal of Political Science*, 34 (2): 149-167.

- Morton, F. L. 1992. *Morgentaler v. Borowski : abortion, the charter and the courts*. Toronto, Ont.: McClelland & Stewart.
- . 1995. The Effect of the Charter of Rights on Canadian Federalism. *Publius-the Journal of Federalism* 25 (3):173-188.
- Pal, Leslie A. 1995. *Interests of state: the politics of language, multiculturalism and feminism in Canada*. Montreal: McGill-Queens University Press.
- Riker, William H. and Ronald Schaps. 1987. "Disharmony in Federal Government," *The Development of American Federalism*, ed. William H. Riker Boston: Kluwer Academic Publishers, pp. 73-97.
- Russell, Peter H. 2004. *Constitutional odyssey : can Canadians become a sovereign people?* 3rd ed. Toronto: University of Toronto Press.
- Sartori, Giovanni. 1970. "Concept Misformation in Comparative Politics" *The American Political Science Review*, 64 (4): 1033-1053
- Savoie, Donald J. 1999a. The Rise of Court Government in Canada. *Canadian Journal of Political Science* 32 (4): 635-664.
- Savoie, Donald J. 1999b. *Governing from the Centre : The Concentration of Power in Canadian Politics*. Toronto: University of Toronto Press.
- Sayers, Anthony and Jeremy Moon. 2002. "State Government Convergence and Partisanship: A Long Run Analysis of Australian Ministerial Portfolios", *Canadian Journal of Political Science*, 35(3): 589-612.
- Saywell, John T. 2002. *The Lawmakers : Judicial Power and the Shaping of Canadian Federalism*. Toronto: University of Toronto Press.
- Sharman, Campbell. 1990. "Australia as a Compound Republic." *Politics* 25:1 (May):1-5.
- Simeon, Richard. 1972.. *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* Toronto: University of Toronto Press
- Simeon, Richard. 2006. *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* Toronto: University of Toronto Press
- Simpson, Jeffrey. 2001. *The Friendly Dictatorship*. Toronto: McClelland & Stewart
- Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920*. New York: Cambridge University Press.
- Smiley, Donald V. 1979. "An Outsider's Observations of Federal-Provincial Relations among Consenting Adults." In *Confrontation and Collaboration: Intergovernmental Relations in*

- Canada Today*, edited by R. Simeon. Toronto: Institute of Public Administration of Canada.
- Smith, Jennifer. 2004. *Federalism, Canadian democratic audit*. Vancouver: UBC Press.
- Streeck, Wolfgang, and Kathleen Thelen (eds.), *Beyond Continuity: Historical Change in Advanced Industrial Economies*, Oxford: Oxford University Press.
- Thompson, Elizabeth. 2002. "Balance of power: Is the PMO so Powerful that Cabinet is becoming Irrelevant?" *Star - Phoenix* October 5, E1.
- Thorlakson, Lori. 2009. "Patterns of party Interration, Influence, and Autonomy in Seven Federations.: *Party Politics* 15 (2): 157-177
- Uhr, John. 2002. "Explicating the Australian Senate," *The Journal of Legislative Studies* 8:3 (Autumn):3-26.
- Wallace, Bruce. 1998. "For the Love of Power." *Maclean's*, 16.
- Ward, Alan J. 1998. "Redesigning Westminster Legislatures in Australia." Paper read at The Dominion Concept: Inter-state and Domestic Politics in the British Empire, at University of Warwick, England.
- Weller, Patrick. 1997. "Political Parties and the Core Executive." In *The Hollow Crown: Countervailing Trends in the Core Executive*, edited by Patrick Weller, Herman Bakvis, and R.A.W. Rhodes. London: Macmillan Press.
- _____. 2007. *Cabinet Government in Australia, 1901-2006*. Sydney: University of New South Wales Press.
- Ziblatt, Daniel. 2006. *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism*. Princeton: Princeton University Press