Edited Collection

Convergence and Divergence: The Shifting Dynamics of Comparative Law

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Preface

Comparative law today is no longer confined to the simple identification of similarities and differences between legal systems. It has become a vital method of understanding how societies respond to shared constitutional, institutional, and human concerns through distinct legal traditions. The present volume, *Convergence and Divergence: The Shifting Dynamics of Comparative Law*, is conceived in that spirit.

The essays collected in this edited work reflect a wide and intellectually rich range of comparative inquiry. Across the chapters, contributors engage with constitutionalism, judicial review, federalism, rule of law, delegated legislation, vigilance institutions, anti-corruption frameworks, victim rights, domestic violence, workplace harassment, hate speech, hate crimes, racial discrimination, anti-money laundering, cybercrime, and institutional accountability. The jurisdictions examined include India, the United States, the United Kingdom, Canada, Australia, Germany, France, Brazil, and South Korea, among others. Together, these studies demonstrate that comparative law is not merely about observing foreign legal systems, but about critically evaluating how law travels, adapts, resists, and transforms in different constitutional and social settings.

A central theme running through this volume is the tension between convergence and divergence. On the one hand, legal systems across the world increasingly confront common pressures arising from globalisation, migration, technology, democratic backsliding, financial regulation, gender justice, minority protection, and human rights. This often leads to convergence in legal reasoning, institutional design, and normative aspiration. On the other hand, each jurisdiction continues to respond through its own constitutional text, political culture, historical experience, and institutional structure. It is this simultaneous movement towards commonality and difference that gives comparative law its contemporary vitality.

The contributions in this volume are especially significant because they come from a generation of legal scholars attentive not only to doctrine, but also to

context. The chapters do not treat law as an abstract system detached from society. Rather, they show how law operates within conditions of inequality, identity, institutional power, and lived experience. Questions of dignity, liberty, accountability, substantive equality, access to justice, and democratic legitimacy recur throughout the book, giving the collection a coherence that extends beyond jurisdictional comparison alone.

This volume also reflects the growing importance of comparative legal method in legal education and research. In an era where constitutional courts cite foreign precedents, legislatures borrow regulatory models, and transnational norms shape domestic jurisprudence, comparative analysis is no longer optional. It has become indispensable to understanding both one's own legal system and the wider legal world. Yet comparison must be approached with care. A rule or doctrine cannot be understood apart from the institutional and historical setting in which it functions. The chapters in this book therefore encourage a form of comparison that is critical, contextual, and sensitive to legal culture.

We hope that this collection will be of value to scholars, teachers, students, practitioners, and researchers interested in comparative public law, comparative constitutionalism, criminal justice, and evolving questions of governance. It is intended not only as an academic contribution but also as an invitation to think more deeply about the role of law in shaping just, plural, and accountable societies.

We place on record our sincere appreciation to all contributors whose chapters have enriched this volume through careful research and thoughtful comparative engagement. We also acknowledge the institutional environment of CMR School of Legal Studies, CMR University, for fostering research in contemporary and comparative legal studies. It is our hope that this book will stimulate further dialogue, research, and reflection in the field of comparative law.

Prof. (Dr.) V.J. Praneshwaran
Dr. Seema Surendran
Ms. Nirmala R. Harish
Editors

About the Volume

Convergence and Divergence: The Shifting Dynamics of Comparative Law is an edited collection that examines contemporary legal questions through comparative analysis across multiple jurisdictions and legal traditions. The volume brings together contributions that engage with constitutional law, criminal justice, administrative law, human rights, anti-discrimination law, gender justice, institutional accountability, federalism, judicial review, rule of law, and financial regulation.

The chapters in this volume compare legal responses in India with those of the United States, the United Kingdom, Canada, Australia, Germany, France, and other jurisdictions. They address themes such as judicial review, constitutionalism, victims' rights, domestic violence, racial discrimination, hate speech, hate crimes, workplace harassment, anti-money laundering, cybercrime, delegated legislation, vigilance institutions, anti-corruption mechanisms, and the role of constitutional courts in preserving democratic governance.

Taken together, the essays reflect the dual movement of convergence and divergence that defines modern comparative law. Legal systems increasingly face common pressures arising from globalisation, technology, human rights discourse, democratic transformation, and social justice claims. Yet the legal solutions adopted in different jurisdictions remain shaped by local constitutional structures, historical experience, social realities, and institutional design. This volume therefore treats comparative law not as a simple catalogue of similarities and differences, but as a critical method for understanding how law evolves across jurisdictions.

The work is intended for scholars, researchers, practitioners, teachers, and advanced students who are interested in comparative constitutional law, comparative public law, and comparative criminal justice. It aims to contribute to a deeper understanding of how different legal systems respond to shared challenges while preserving their distinctive normative and institutional identities.

Acknowledgement

The editors place on record their sincere gratitude to all the contributors whose research, effort, and academic commitment have made this volume possible. Each chapter in this collection reflects careful comparative inquiry and a serious engagement with contemporary legal issues across jurisdictions.

We express our deep appreciation to CMR School of Legal Studies, CMR University, for providing a stimulating academic environment that encourages research, writing, and comparative legal scholarship. The institutional support extended to faculty and students has been invaluable in shaping this work.

We also acknowledge the encouragement extended by colleagues, mentors, and well-wishers who have supported this editorial project at various stages. Our thanks are due to the publisher, Magestic Technology Solutions (P) Ltd., for bringing this volume into publication.

Finally, we thank all readers, researchers, and students who continue to engage with comparative law as a living and evolving discipline. It is our hope that this volume will contribute meaningfully to legal scholarship and inspire further study in the field.

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Editors

Glossary

Administrative Discretion The authority granted to administrative or executive officials to make decisions within the limits prescribed by law.

Adversarial System A system of criminal justice in which the prosecution and defence present their cases before an impartial judge, and the court acts as a neutral adjudicator.

Affirmative Action Legal or policy measures intended to improve opportunities for historically disadvantaged groups through targeted support or representation.

Anti-Money Laundering (AML) Laws, procedures, and institutional mechanisms designed to prevent, detect, and punish the laundering of illegally obtained money.

Basic Structure Doctrine A constitutional principle developed by the Supreme Court of India holding that Parliament cannot amend the essential features of the Constitution.

Bias A lack of impartiality or fairness in decision-making, whether actual, apparent, personal, pecuniary, or institutional.

Bill of Rights A formal constitutional or legal statement of fundamental rights and liberties guaranteed to individuals.

Colour-Blind Constitutionalism A theory that law should disregard race entirely and treat all individuals without any race-conscious distinctions.

Comparative Law The study of legal systems, doctrines, institutions, and methods across different jurisdictions in order to understand similarities, differences, and legal development.

Constitution The fundamental law of a State that establishes the structure of government, distribution of power, and basic rights of citizens.

Constitutionalism The principle that government authority must be limited by law and exercised in accordance with constitutional norms.

Cooperative Federalism A form of federalism in which different levels of government work together through shared institutions, coordinated policies, and financial arrangements.

Cybercrime Criminal activity involving computers, digital systems, networks, or cyberspace.

Delegated Legislation Rules, regulations, orders, or notifications made by the executive or administrative authorities under authority conferred by a parent statute.

Direct Discrimination Unequal treatment of a person explicitly on a prohibited ground such as race, religion, sex, caste, or ethnicity.

Due Process A legal principle requiring fairness, reasonableness, and procedural justice in the exercise of State power.

Equality Before Law The principle that all persons are subject to the same law and entitled to equal legal protection.

Equity A principle of fairness and justice used to supplement strict legal rules where necessary.

Federalism A system of government in which powers are divided between a central authority and regional units such as states or provinces.

Fundamental Rights Basic rights guaranteed by a constitution and enforceable against the State.

Hate Crime A criminal act motivated wholly or partly by prejudice against a person or group on the basis of identity, such as race, religion, caste, gender, or sexual orientation.

Hate Speech Expression that promotes, incites, or justifies hatred, discrimination, or violence against individuals or groups on protected grounds.

Human Dignity The inherent worth of every individual, recognised as a foundational constitutional and human rights value.

Indirect Discrimination A seemingly neutral law, rule, or practice that disproportionately disadvantages a particular group.

Inquisitorial System A system of criminal procedure in which judges play an active role in investigating facts and questioning witnesses.

Judicial Activism A judicial approach marked by a broad and assertive interpretation of the Constitution or law, often to protect rights or address institutional failure.

Judicial Independence The freedom of judges and courts to decide cases impartially without interference from the executive, legislature, or external pressures.

Judicial Review The power of courts to examine the legality or constitutionality of legislative and executive actions.

Jurisdiction The legal authority of a court or institution to hear and decide a matter.

Lokpal The national anti-corruption ombudsman established in India to investigate complaints against public officials.

Lokayukta A State-level anti-corruption ombudsman in India.

Money Laundering The process of concealing the illegal origin of money and making it appear legitimate.

Natural Justice Fundamental procedural principles of fairness, especially the right to be heard and the rule against bias.

Non-Arbitrariness The constitutional requirement that State action must not be irrational, unfair, or based on whim.

Partie Civile A French legal mechanism that allows a victim to participate in criminal proceedings as a civil party and seek compensation.

Parliamentary Sovereignty The principle, traditionally associated with the United Kingdom, that Parliament is the supreme law-making authority.

Procedural Fairness The requirement that decisions affecting rights or interests must be made through fair process.

Proportionality A standard of judicial review requiring that State action be suitable, necessary, and balanced in relation to the objective pursued.

Public Interest Litigation (PIL) A legal action brought to protect public rights or the rights of disadvantaged groups, often with relaxed rules of standing.

Race-Conscious Measures Legal or policy measures that explicitly take account of race or similar identity markers to remedy structural inequality.

Racial Discrimination Unequal or prejudicial treatment based on race, colour, descent, or ethnic origin.

Reasonable Restrictions Constitutionally permitted limits placed on rights in the interest of public order, morality, security, or other legitimate grounds.

Reservation A system of constitutionally permitted affirmative action in India providing representation to historically disadvantaged groups in education, employment, and legislatures.

Restorative Justice An approach to justice that seeks to repair harm by focusing on victims, offenders, and the broader community.

Rule of Law The principle that all persons and institutions, including the government, are subject to law.

Separation of Powers The constitutional distribution of legislative, executive, and judicial powers among different branches of government.

Shared Household Under domestic violence law, a household in which the aggrieved person lives or has lived in a domestic relationship.

Substantive Equality An approach to equality that seeks to address structural disadvantage and achieve real, not merely formal, fairness.

Transformative Constitutionalism The idea that the Constitution is an instrument for social change and the dismantling of entrenched injustice.

Ultra Vires A doctrine meaning "beyond powers," used when a public authority acts outside the authority granted by law.

Vigilance Administrative oversight aimed at preventing corruption, misuse of authority, and misconduct in public office.

Victim Compensation Financial relief provided to victims of crime either by the offender, the State, or a statutory compensation mechanism.

Wednesbury Unreasonableness A traditional English standard of judicial review under which a decision may be struck down if it is so unreasonable that no reasonable authority could have made it.

Writ Jurisdiction The constitutional power of higher courts to issue writs such as habeas corpus, mandamus, certiorari, prohibition, and quo warranto.

List of Abbreviations

AC Appeal Cases

ACAS Advisory, Conciliation and Arbitration Service

ADJR Act Administrative Decisions (Judicial Review) Act

ADR Alternative Dispute Resolution

AI Artificial Intelligence

AML Anti-Money Laundering

Art. Article

Arts. Articles

BNS Bharatiya Nyaya Sanhita, 2023

BNSS Bharatiya Nagarik Suraksha Sanhita, 2023

BSA Bharatiya Sakshya Adhiniyam, 2023

CBI Central Bureau of Investigation

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women

CERD Committee on the Elimination of Racial Discrimination

CJI Chief Justice of India

CPIB Corrupt Practices Investigation Bureau

CrPC Code of Criminal Procedure, 1973

CVRA Crime Victims' Rights Act

CVC Central Vigilance Commission

CVO Chief Vigilance Officer

DPSP Directive Principles of State Policy

DOJ Department of Justice

DPDP Act Digital Personal Data Protection Act, 2023

ED Enforcement Directorate

ECHR European Convention on Human Rights

ECtHR European Court of Human Rights

EEOC Equal Employment Opportunity Commission

ET Employment Tribunal

FATF Financial Action Task Force

FBI Federal Bureau of Investigation

FGTI Fonds de Garantie des Victimes des actes de Terrorisme et d'autres Infractions

FIU-IND Financial Intelligence Unit–India

GST Goods and Services Tax

HRA Human Rights Act, 1998

ICC Internal Complaints Committee

ICERD International Convention on the Elimination of All Forms of Racial Discrimination

ICRW International Centre for Research on Women

ICT Information and Communication Technology

ILO International Labour Organization

IPC Indian Penal Code, 1860

IRS Internal Revenue Service

IT Act Information Technology Act, 2000

IT Rules Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

JIVAT Service d'Aide au Recouvrement des Victimes d'Infractions

LL.B. Bachelor of Laws

LL.M. Master of Laws

MLAT Mutual Legal Assistance Treaty

NCRB National Crime Records Bureau

NGO Non-Governmental Organization

NIA National Investigation Agency

NITI National Institution for Transforming India

NSS National Security Strategy

OECD Organisation for Economic Co-operation and Development

PC Act Prevention of Corruption Act, 1988

PDF Portable Document Format

PIDPI Public Interest Disclosure and Protection of Informers

PIL Public Interest Litigation

PMLA Prevention of Money Laundering Act, 2002

POSH Act Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

PWDVA Protection of Women from Domestic Violence Act, 2005

RBI Reserve Bank of India

SARVI Service d'Aide au Recouvrement des Victimes d'Infractions

SAR Suspicious Activity Report

SCC Supreme Court Cases

SC Scheduled Castes

ST Scheduled Tribes

UGC University Grants Commission

UK United Kingdom

UN United Nations

UNGA United Nations General Assembly

UNODC United Nations Office on Drugs and Crime

USA United States of America

US United States

VAWA Violence Against Women Act

VIS Victim Impact Statement

WTO World Trade Organization

About the Editors

Prof. (Dr.) V.J. Praneshwaran Director, School of Legal Studies CMR University Prof. (Dr.) V.J. Praneshwaran graduated in Law and then completed LL.M. in Constitutional Law, M.Phil in Law, and Ph.D from Bangalore University. After obtaining significant experience in practicing law, he decided to pursue his passion in teaching.

With core experience in practicing Law, Client Counselling, and Teaching, his lustrous experience spans over 23 years. His Ph.D thesis titled "A Study of Laws Relating to Armed Forces and the Protection of Human Rights in India" reflects his understanding of the need for equal treatment and respect for human rights in disciplined organizations like the Indian Armed Forces.

A core nationalist, he has consistently contributed to nation building by imparting, organizing, and encouraging legal literacy, education, and legal awareness initiatives at various levels. He also serves as a patron in Legal Aid Trust, a registered NGO.

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With over 4 years of experience as an Assistant Professor, her areas of interest include Criminal Law and Constitutional Law. She has cleared UGC-NET and holds certifications in Child Rights, Data Privacy, and Human Rights.

She has served as a resource person for legal workshops and has presented and published various articles and book chapters in reputed journals.

How to Use This Edited Book

This edited volume is designed to be read in more than one way. Readers may move through the book sequentially, following the broader development of comparative themes across chapters, or they may consult individual chapters independently depending on their research interest.

The volume brings together contributions from different areas of law, including constitutional law, criminal justice, administrative law, anti-discrimination law, gender justice, institutional accountability, and comparative public law. Since each chapter addresses a distinct theme and jurisdictional comparison, the book may be used both as a complete academic collection and as a subject-based reference work.

For students, the book may be used to understand how comparative legal reasoning operates across different jurisdictions and legal traditions. For researchers and scholars, it offers chapter-specific analyses that may be consulted for doctrinal study, comparative methodology, and further research. For teachers and practitioners, the essays may serve as accessible comparative readings on focused legal issues.

Readers are encouraged to use the table of contents to identify thematic areas of interest. Each chapter is self-contained in structure and may be read independently. At the same time, when read together, the chapters reveal broader patterns of convergence and divergence in the development of legal systems.

This volume is therefore intended not merely as a compilation of separate essays, but as a comparative legal resource that may be used flexibly for study, teaching, reference, and advanced academic engagement.

Contents

Chapter 1

A Comparative Study of American Dual Federalism and Canadian Constitutional Asymmetry

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Abstract. This paper offers a comparative legal and political analysis of "True Federalism" showing how the American example of dual federalism is quite different from the Canadian system of a strong executive coexisting with local authorities in decentralized arrangements. Whereas the U. S. Constitution is mainly about giving more power to the states (see the Tenth Amendment) Canada which was originally a very centralized country, has through court decisions become more of a decentralized and cooperative type of federalism. In fact, by studying fiscal independence, methods of resolving jurisdiction conflicts and amendment procedures, the paper finds that "True Federalism" is more of a changing spectrum than a fixed ideal. More importantly, this article contests the U. S. centered viewpoint that a single federalism model exists, arguing that the asymmetric and flexible Canadian solution is better able to accommodate regionalism and multiculturalism in democratic societies that are very diverse and therefore, serves as an excellent model for us all.

Keywords. Constitutional Jurisprudence, Dual Federalism, Division of Powers, Subsidiary, Asymmetric Federalism.

1.1. Introduction

To govern diverse democracies is to manage the paradox of national unity and regional autonomy, which federalism strikes an effective balance in this regard. The United States has been the foremost example of "True Federalism," where dual sovereignty and the strict division of powers prevail; yet, Canada as a lesser-known alternative that is largely different, since executive federalism and constitutional asymmetry constitute Canadian federalism in Canada.This research confronts the U. S. centric viewpoint, among others, by looking at the constitutional origins, judicial interpretations, and practical usage of the functioning of both systems. In-depth examination of major cases, e. g. Printz v. United States and Reference re Secession of Quebec is utilized in this paper to prove that federalism is not only a theoretical concept but also a changing and living continuum.

What is Federalism?

Wheare's federal principle involves splitting powers so that the central and local governments can work independently and as equals, thus maintaining law and order without a unitary hierarchy. The United States followed this pattern most closely, with dual federalism and the Tenth Amendment playing a significant role in the separation of powers. The amendment empowered both state-sovereignty proponents and nationalists, although cooperative federalism later on brought about some overlaps and sharing of responsibilities. Canada is a multinational federal state, giving Quebec an asymmetric status on account of its linguistic and cultural differences from the English-speaking majority of the country.

Key Differences at a Glance

U. S. - Canada federalism divergences: U. S. sovereignty "derives from We the People" whereas Canada's is Crown-in-Parliament; Tenth Amendment saves states' powers while POGG is federal residual; competitive/uncooperative states vs. executive collaboration; the original Constitution is structural in the U. S. whereas the "Living Tree" is a metaphor of evolution in Canada; strong Senate regionalism in the U. S. vs. First Ministers' Conferences in Canada.

How the Two Nations Started

U. S. Constitution 1787 fixed the issues of the Articles that did not give the central government the power to tax, defend or regulate commerce. It did so by establishing federal supremacy in certain enumerated areas (Art. I, s. 8) whilst leaving the states with residual powers (Tenth Amendment), thus limiting the possibility of a central government that could overreach.

1.2. The U.S. Model: Protecting State Power

The principle of "Dual Sovereignty" is a foundation of the American federal structure. It means that the states and the federal government are the two different political capacities and each one is shielded from the other's encroachment. Actually, this dualism is not only a matter of policy preference but also a structural necessity. It has been designed to minimize the risk of tyranny by maintaining a balance of power.

1.3. The Anti-Commandeering Doctrine: Printz v. United States

The modern interpretation of American federalism, particularly in the judiciary, hinges greatly on the "anti-commandeering" principle, which acts as a legal barrier against federal intrusion into state matters. It is this principle which was greatly escalated in Printz v. United States (1997), where the highest court of the land was tackling the issue of whether the federal government can compel local police officers to carry out background checks on gun buyers as per the Brady Handgun Violence Prevention Act. Justice Antonin Scalia, delivering the opinion of the Court, stated that the Federal Government's power would be 'augmented immeasurably and impermissibly' if it can conscript state officers into its service without the states bearing any cost.

The Courts logic behind Printz rested on a few fundamental pillars in its structural interpretation:

Historical Practice: It was pointed out by the Court that even though early Congresses had the power to require obligations from the state judges, they had not at the same time assumed the power of issuing command to state executive officers.

Dual Sovereignty: The Framers, instead of opting for a central government, which would treat the states as political bodies to be acted upon and through,

they rather decided upon a system whereby the federal government deals directly with the individuals.

Separation of Powers: According to Scalia, allowing Congress to disregard the President and order state officers to implement federal laws would be undermining the Federal Executive as a whole since the President would be deprived of the most significant control of law enforcement.

This ruling on the one hand shields the states from infringement by the federal government, but at the same time, it endorses a "strict-separationist" model that might hinder national efforts in dealing with interjurisdictional crises. Erin Ryan, among others, argues that such a model is overemphasizing the "check-and-balance" aspect at the cost of downplaying the "problem-solving" aspect of federalism, especially in the "interjurisdictional gray area" of modern governance. Congress can use its "spending power" to incentivize state cooperation under U. S. law, but within the limits of the law it cannot compel it.

Competitive Federalism and the Nationalist Thesis

Samuel Beer was one of those who looked at American federalism and argued that it has changed "national democracy" even though the government interactions (giving or taking power) and the changes of one feds resulted in the erosion of the separateness of dual federalism. Now the division of power reflects the weights of different units as voters decide and the state/federal level gets balanced. On one hand state competition of a horizontal nature (to lure residents/businesses through taxes/regulations) results in efficiency but on the other hand it goes against the uniformity of the federal level which is the Kincaid's "competitive challenge to cooperative federalism."

1.4. The Canadian Model: Provincial Growth

The historical development of the Canadian Constitution really demonstrates how powerful court interpretations can be. Although the Constitution Act of 1867 gave the federal government many direct powers, including the right to disallow provincial laws and the residual peace, order and good government (POGG) power, the Judicial Committee of the Privy Council (JCPC) in London, which was the supreme court of Canada until 1949, changed the division of powers in its rulings.

The Reversal of Founders' Intent

Guided by a team of legal scholars including Lord Watson and Lord Haldane, the JCPC created a legal philosophy which chose to give prominence to the rights of provinces while the federal government's rights were declined. This was done by: **Narrowing the POGG Clause:** The federal residual power could only be exercised in the case of national emergencies or for things of "national concern" that were not listed by the other powers.

Expanding Section 92(13): The True to Supreme Court supremacy, prior rulings had actually strengthened provincial independence unlike U. S. Courts' federal enlargements. Canada's courts remain impartial among regionalism; according to Warren J. Newman, its "flexible cooperative federalism" has to honour ss. 91/92 exclusivity.

1.5. The Labor Conventions Case and International Obligations

The 1937 Labor Conventions case represented a turning point for Canada's decentralization: the JCPC decision was that while Ottawa, can negotiate treaties, it can only implement them within its powers-matters regulated by provinces (e. g. labor standards) are with provinces. This treaty "disadvantage" as compared with the U. S. is a reason for federal-provincial talks, giving power to the provinces internationally. Peter W. Hogg and other experts condemn the bifurcated court jurisdiction as "lamentable," resulting in a plethora of suit disputes.

1.6. Division of Powers: Comparative Jurisdictional Lists

The real way federalism works depends on the actual things assigned to each level of government. Canada's Constitution Act, 1867 has two complete lists of exclusive powers, but the U. S. Constitution only has a federal list and leaves states with a broad reservation.

Jurisdictional Distribution in the Canadian Constitution

Section 91 gives the federal government of Canada an exclusive control over trade and commerce currency banking, criminal law and procedure defense militia and navy, marriage and divorce, Indigenous affairs and reserves, navigation and shipping. Section 92 provides provinces with the power to levy direct taxes,

public lands and timber municipalities local works, property and civil rights, education (s. 93), and local or private matters. While the two sets of powers are exclusive, there are some areas of overlap (e. g. agriculture and immigration with federal paramountcy); the courts have abandoned the idea of "watertight compartments" in favour of cooperative federalism which allows for concurrent regulation without operational conflict.

Executive Federalism and Intergovernmental Relations

One key feature of the Canadian system that distinguishes it from the U. S. one is "Executive Federalism". The term was invented by Donald Smiley and it refers to the processes of intergovernmental negotiation which are the prerogative of federal and provincial government executives. Smiley considered it "the relationship between elected and appointed officials of two orders of government," and he added that it" usually operates through the meetings of permanent public officials at both levels. " The procedure is a natural result of the coming together of federal and parliamentary institutions.

The Logic of Parliamentary Federalism

U. S. presidential system allows regional interests to be represented through the Senate while the Canadian Senate, being appointed, is seen as providing only a "sober second thought." Ronald L. Watts considers "executive federalism" as one of the consequences of federal-parliamentary combinations, with inter-executive discussions replacing the role of strong regional bodies. In terms of main venue, it is the First Ministers' Conferences (FMC) where the Prime Minister and the premiers meet and discuss various issues such as healthcare, the economy, and reforms. The conference has been praised for its flexibility in accommodating the diversity of Canada while at the same time, is being criticized for its lack of transparency and accountability since it sometimes comes off as "summit diplomacy".

Quebec and Special Rules

American federalism is premised on the notion of "constitutional symmetry" where each of the 50 states, has the same formal powers. On the other hand, Canada has evolved into a system of "asymmetric federalism" in order to recognize

and accommodate its multi-national character. This asymmetry acknowledges that Quebec is a "distinct society" which leads to its unique institutional and legal requirements.

Manifestations of Canadian Asymmetry

1.7. Quebec's unique status is expressed through several specialized arrangements

Legal Bi-juridicalism: Quebec is the only province with a civil law system for private matters, while the rest of Canada uses common law.

Immigration Control: The Canada-Quebec Accord grants Quebec the right to select its own immigrants and manage their integration, recognizing the province's role as the primary contractor for its societal culture.

Opt-Out Rights: Provinces in Canada, and Quebec in particular, have frequently secured the right to "opt out" of federal shared-cost programs with financial compensation, allowing them to design their own social services while receiving federal tax transfers.

In a practical sense, asymmetrical federalism acts as a deterrent to secessionist impulses. According to Harihar Bhattacharyya, since a multi-ethnic state signifies diversity, such states require different types of federal structures for the purposes of not only diversity but also stability. Canada's approach of giving different treatment to Quebec is a guarantee that "Quebec will not be divided but instead will move forward united." While some opponents argue that it lessens the power of the central government, proponents believe that it is vital for the purpose of maintaining unity in the face of different loyalties.

Fiscal Autonomy and the Equalization Principle

The strength of a federation can often be measured by its "fiscal federalism", the degree to which constituent units possess independent revenue-raising power and the mechanisms for redistributing wealth.

Comparative Fiscal Metrics

Canadian provinces, according to Fenna, collect approximately 40% of the income tax, independently finance 80% of their expenditure, retain resource revenues,

and apply s. 36(1982) equalization to provide uniform services without high taxes. This position is anti-exceptional. On the contrary, Bland and Lecours view this as a citizenship equalizer. On the other hand, U. S. federal government is the main player in income tax collection; states heavily depend on sales and property taxes along with sharing resources; block/conditional grants on one hand redistribute implicitly but on the other hand widen disparities (Ruggeri), formally there is no equalization in the U. S. which is considered an "American exceptionalism."

1.8. Rules for Staying (or Leaving) the Union

The most significant legal analysis of Canadian federalism in the modern era occurred in Reference re Secession of Quebec (1998). This landmark judgment by the Supreme Court of Canada addressed whether a province could unilaterally secede and, in doing so, defined the "unwritten" principles of the Canadian Constitution.

1.9. The Four Pillars of the Canadian Constitution

The Court held that the written text of the Constitution must be interpreted through the lens of four fundamental, interlocking principles:

Federalism: A principle that seeks to reconcile diversity with unity by protecting the autonomy of constituent units while providing for shared national action.

Democracy: This principle recognizes that there are "equally legitimate majorities" at the federal and provincial levels, and that the will of the people must be expressed through clear processes.

Constitutionalism and the Rule of Law: This ensures that all government action is subject to the supreme law of the land and protects individuals from arbitrary state action.

Protection of Minorities: A principle that is "independent and fundamental," ensuring that the country does not operate on simple majority rule and that minority voices are fairly considered.

The Court concluded that while unilateral secession is illegal, if a clear majority of a province’s population votes for secession on a clear question, the rest of the federation has a "reciprocal obligation" to negotiate constitutional changes to respond to that desire. This "duty to negotiate" is a unique feature of Canadian constitutional law that recognizes the negotiated, pact-like nature of the federation.

1.10. Comparative Methodology: Functionalism and Bricolage

The study of federalism benefits from Mark Tushnet's methodologies for comparative constitutional law. Tushnet posits that by looking at foreign constitutional experience, one can identify "false necessities" in one's own system. Sujit Choudhry extends this analysis, arguing for a "dialogical mode" of interpretation where courts identify factual assumptions in their own jurisprudence by engaging with foreign case law.

Tushnet's Three Modes of Inquiry

Functionalism: This approach examines how different constitutional provisions serve the same function. For example, the U.S. Tenth Amendment and the Canadian POGG/Property and Civil Rights framework both aim to balance national and local power, despite their different textual origins.

Expressivism: This uses comparison to illuminate a nation's own values. The American rejection of federal "commandeering" expresses a deep commitment to state dignity, while the Canadian acceptance of asymmetry expresses a commitment to pluralism and reconciliation.

Bricolage: This refers to the more or less random adaptation of constitutional tools that are "at hand". Tushnet suggests that constitutions are often a mix of inherited traditions and pragmatic solutions rather than coherent systems.

This perspective suggests that the Canadian and American systems are not "pure" types but are evolving assemblages. Bruce Ackerman notes that this "global transformation" of constitutionalism has begun to impact even American thought, traditionally more insular. For instance, Canada "borrowed" the federal idea from the U.S. but "mixed" it with British parliamentary traditions, creating a hybrid that is unique.

Mechanisms for Constitutional Amendment

The stability of a federal state (or federation) to a large extent depends on its "amending clause," since this is what governs the alteration of the most fundamental rules. In his view, Dave Gunette considers these procedures as the "DNA" of a state, that is, they reflect the nervous system or epicenter of the constitutional mechanism.

Rigidity vs. Flexibility

The 2/3 Congress + 3/4 states rule in Article V of the U. S. Constitution is considered by some as the strictest amendment rule in the world. This has led to the phenomenon of "judicial amendment" by the Supreme Court where the Court changes the Constitution without the people participating. Canada's 1982 amendment formulas are added by s. 33 "notwithstanding clause" for legislative Charter overrides as per Paul Bender collective minority rights are better safeguarded than in U. S. Bill. Its 7/50 division-of-powers rule requires provincial consent, but not unanimity; thus, it is somewhat more flexible than U. S. for structural changes.

Conclusion

"True federalism" is about being responsive to the changing needs of society rather than sticking to a fixed model: The United States' dual system of federalism that limits the central government has become a protective standard recognized worldwide; The use of asymmetry/executive federalism in Canada is a way of managing multinational states which is achieved through collaborative instruments such as equalization/negotiations. The key to success lies in the willingness to change in response to the public's expectations, rather than a strict reading of the constitution: Canada is a case in point of how a strong and flexible federation can thrive while remaining uniformly united in diversity.

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