

HIS 262S: #11 Delicate Dances:



Histories of Federal/Provincial Relations

Professor Heidi Bohaker

British North America Act, 1867: Division of Power

<u>Federal (Section 91)</u>	<u>Provincial (Section 92)</u>
Defense	education (crown) public lands
trade and commerce (including customs)	municipal institutions
direct and indirect taxation	direct taxation
currency	tavern and other licenses
navigation and shipping	local public works
“Indian” Affairs	solemnization of marriage
bankruptcy	property and civil rights
make laws for “peace order and good government”	“Generally all matters of a merely local or private Nature in the province”





<http://leaderpost.com/opinion/columnists/mandryk-premier-walls-inconsistencies-over-pm-justin-trudeau-rather-clever>

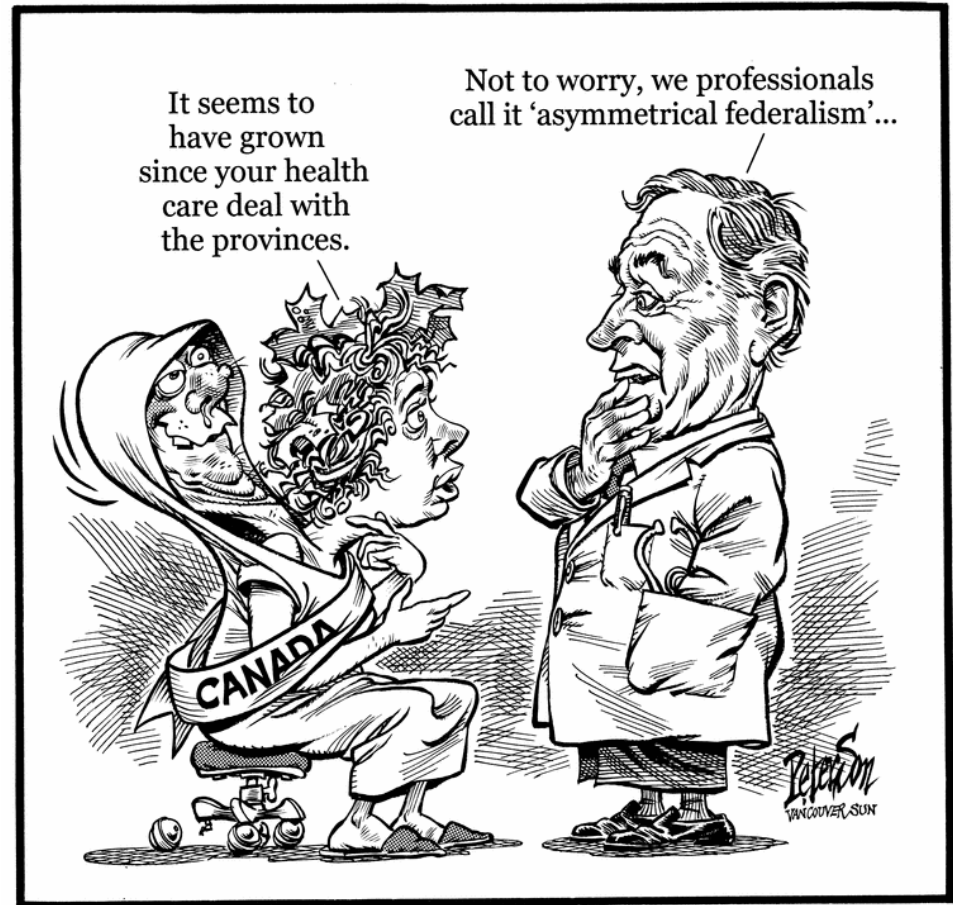
Canada Today: Federal/Provincial Relations

“19th Century Division of Powers, 21st Century Problems”

Jennifer Wallner Assistant Professor, University of Ottawa, “19th Century Division of Powers, 21st Century Problems: Understanding Canadian Intergovernmental Relations,” Research Report prepared for Canada 2020, April 2014. http://canada2020.ca/wp-content/uploads/2014/10/2014_Canada2020_PaperSeries_EN_Issue-05_FINAL.pdf

Contemporary Issues in Federal-Provincial Relations

- ▶ Why should Canadians care about intergovernmental relations?
- ▶ Why are intergovernmental relations often fraught with conflict?
- ▶ What are IG principles?



Roy Peterson, *Vancouver Sun*, 25 September 2004,
<http://edocs.lib.sfu.ca/cgi-bin/Cartoons?CartoonID=4994>

Kinder Morgan Trans Mountain Pipeline

British Columbia

- ▶ “British Columbia must defend its citizens and that is what it is doing,” Andrew Weaver, BC Green Party leader, 11 Feb, 2018.

Canada

- ▶ “We’ve made it as clear as we can that no provincial government can infringe upon federal jurisdiction,” Jim Carr, Minister of Natural Resources, 10 Feb 2018, CBC’s The House





Case Studies/Case Histories

Tensions in Federal/Provincial Relations

- ▶ *St. Catherine's Milling and Lumber Co. v the Queen* [1888]
- ▶ Manitoba Schools Question, 1896-1916
- ▶ Creating new western provinces and Natural Resources Transfer Acts, 1930



He has walked all around it several times, but he hasn't really grappled with it yet.

Beginnings of Dominion-Provincial Conversations



1927 Dominion-Provincial Conference.



The Great Depression & the Rowell-Sirois Report

- ▶ Royal Commission on Dominion-Provincial Relations, 1937-1940
- ▶ Established by federal government to report on and propose alternatives to “the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last 70 years”

<http://collections.musee-mccord.qc.ca/en/collection/artifacts/C-034706>: Photograph of the Rowell-Sirois Commission.



1950s & 1960s: Evolving a System

- ▶ With new federal programs post WWII:
 - ▶ Intergovernmental relationships become politicized
 - ▶ Growing federal/provincial interdependence
 - ▶ Provinces also becoming more assertive

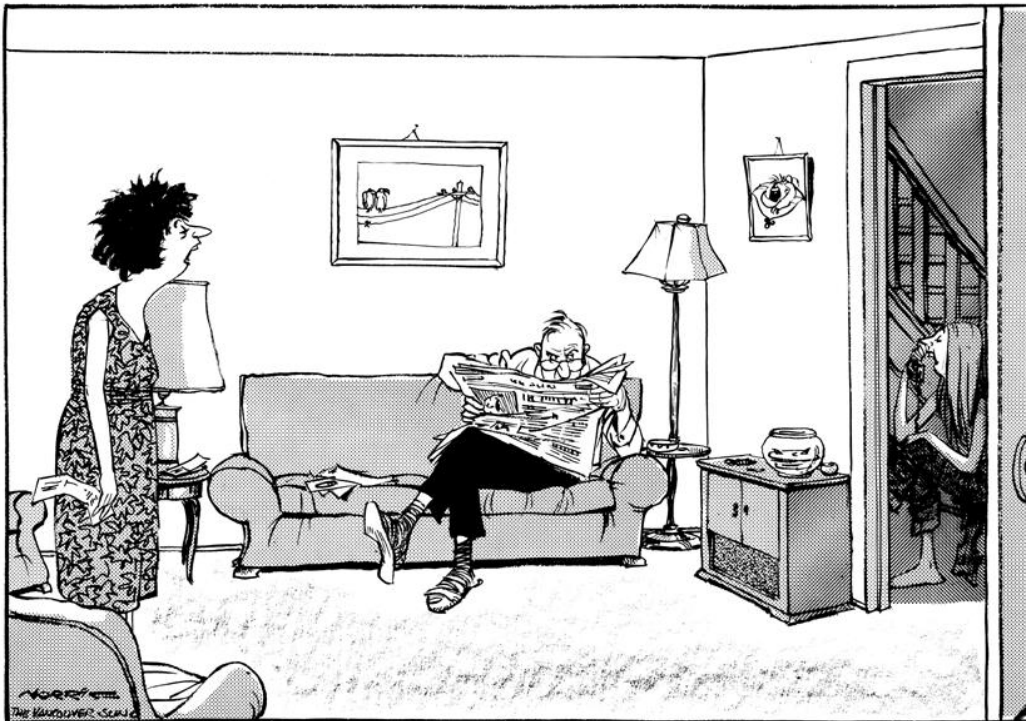


“... I don't know why you keep sending them money, it only encourages them to fight over it.”

Len Norris, *Vancouver Sun*, 3 April 1964

Early 1980s – “executive federalism”

- ▶ National Energy Program – 1980
- ▶ Patriating the Constitution, 1982
- ▶ Canada Health Act, 1984



Pierre Trudeau, after his return to power in 1980

"... \$10 million Ottawa spends on ads for unity when they could phone each provincial premier long distance and save half that." Len Norris, *Vancouver Sun*, 26 August 1980

The Mulroney Years, 1984-1993

- ▶ Return to more cooperative model, but not without problems.

*"Brian Mulroney
has got everyone
on board: the
Canadian Space
Agency will be in
Montreal, in
Ottawa, in
Toronto, in
Calgary"*

1987

McCord
Museum

M2011.105.68



Equalization in the 21st century



ONTARIO WILL BE
HAVE-NOT
PROVINCE BY 2010
SAYS ONTARIO
CHAMBER OF
COMMERCE. PLEASE
HELP THE HAVE
NOTS "The Prime
Minister says he
won't be coming
around for some
time. Does Madame
prefer that the Rolls
be left on idle in the
meantime?" Roy
Peterson, *Vancouver
Sun*, 27 August 2010

Back to Kinder Morgan and Pipelines

Can Ottawa trump provincial rights?
D?

British North America Act, 1867: Division of Power

<u>Federal (Section 91)</u>	<u>Provincial (Section 92)</u>
Defense	education (crown) public lands
trade and commerce (including customs)	municipal institutions
direct and indirect taxation	direct taxation
currency	tavern and other licenses
navigation and shipping	local public works
“Indian” Affairs	solemnization of marriage
bankruptcy	property and civil rights
make laws for “peace order and good government”	“Generally all matters of a merely local or private Nature in the province”



Can B.C. Really Stop the Pipeline?

YES

- ▶ “If BC wanted to get really bloody-minded about it, it could play constitutional whack-a-mole.” Ian Blue, lawyer with Gardiner Roberts, expert in energy & constitutional law.

NO

- ▶ “A province cannot impair a federally regulated undertaking,” said Robin Junger, the former head of B.C.’s environmental assessment office and a former B.C. deputy minister of energy.

Section 90 of the BNA Act

- ▶ **90.** The following Provisions of this Act respecting the Parliament of Canada, namely, -- the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, **the Disallowance of Acts**, and the Signification of Pleasure on Bills reserved,-- shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.
-





► Maybe? Image *National Post*, 7 February 2018.

So where is provincial sovereignty?
Time for a constitutional rethink?

What do you think?