



Book Review

Smith, D. E. 2010, *Federalism and the Constitution of Canada* University of Toronto Press 240 p.

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In his recent book, *Federalism and the Constitution of Canada*, David E. Smith characterizes Canada's federalism as existing on two planes. Horizontally, Canada consists of a territorial federalism- divided among ten provinces with equal jurisdiction and three territories, united by a common central government. Vertically, Canada is a cultural federation: two distinct nations, the English and the French, again connected by a common central government. Using this schema, Smith reevaluates some of the key questions in Canadian federalism. In particular, he analyses the relationship between Canada's constitution and its variant of federalism. While Smith's analysis provides a novel approach to the study of Canadian federalism, this review highlights some of the difficulties with his framework of dual federalism; in particular that his conception of cultural federalism is too rigid to accommodate Canada's broad cultural composition.

While Smith accurately identifies Canada's federalism as combining territorial and cultural elements, his treatment of these concepts occasionally lacks nuance. Firstly, in identifying Canada's founding nations, Smith all but ignores the presence of aboriginal nations. Where these groups are mentioned, it is usually in jurisdictional terms: whether provincial or federal governments have 'responsibility' for them. This suggests that Smith adheres to the colonizers' view of federalism- that aboriginals in Canada have long ago given up any rights to Canadian territory. However, many aboriginal groups and academics believe that the treaties between aboriginal and colonizing nations are effectively constitutional and thus their relationship to the Canadian government should be considered a form of 'treaty federalism'. This perspective of indigenous-federal relations is not acknowledged by Smith, nor, indeed, by the majority of Canadians. Given the topic of Smith's book, this omission is surprising.

Perhaps Smith can be excused for excluding this specific perspective, which might be seen as obscure in some circles. But his outright failure to address the place of aboriginal groups within Canadian federalism is a noticeable omission. It is an outdated perspective of Canada's cultural constitution that omits aboriginal nations; in recent years this has become unacceptable due to increased analytical attention to the question of the political and social statuses of these groups.

Is it possible to insert aboriginal nations into Smith's framework of dual federalism? It seems unlikely. Smith's argument is premised on the fact that the units of cultural and territorial federalism overlap. Attention to aboriginal nations would make Smith's theory considerably messier, given that these cultural units do not line up with any territorial unit. There is no single province that represents the multitude of aboriginal interests. Thus only in a context which excludes aboriginal culture can Smith's framework be wholly relevant.

But a further question remains- is Canada truly the bicultural nation that Smith envisions, or the tri-cultural nation that would result from the inclusion of aboriginal peoples? Canadian governments, from Pierre Trudeau's onward, have explicitly endorsed multiculturalism for this country. In 1982, multiculturalism gained

constitutional status, becoming enshrined in section 27 of the Charter of Rights and Freedoms. Smith's analysis fails to recognize the official multi-, rather than bicultural policy of Canada. He accepts the controversial view that Canada is a bicultural state with constitutionally embedded binationalism. In so doing, he fails to account for constitutional multiculturalism.

Can multiculturalism replace biculturalism in Smith's framework? This is also unlikely. As discussed above, his theory is based on the premise of overlapping cultural and territorial federalisms. There is no such structure in terms of multiculturalism: cultures do not all have provinces to represent them.

Overall, when it comes to the cultural federalism that is key to Smith's primary purpose- to display Canada's dual federalism- the main flaw is the rigidity of his position. By failing to acknowledge the limitations of his dual federalism framework, Smith leaves himself vulnerable to criticism. The premise that Smith lays out cannot accommodate Canada's First Nations, nor can it account for its ostensible multiculturalism. That is not to say that Smith's framework is irrelevant; as concerns the relationship between the English and French in Canada, it is quite insightful. However, Smith's work would benefit from, if not analysis, at least acknowledgement of the way it might address all of Canada's cultural groups.