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FEDERALISM IN NORTH AMERICA: LEGISLATURES, GOVERNORS, AND PREMIERS

Peter C. Dobell[†]
Canadian Speaker

Thank you. So good morning on a still quite pleasant Sunday morning. I want to thank Henry King for the invitation. I have found this a fascinating meeting, but more particularly, I found that the discussion over the past two days raises issues that resonate at the state provincial level. I am going to try to pull some of those distinct subjects that were discussed together.

As you can see, I am going to focus on the relations between states and provinces, how extensive they are, and how have they evolved. I should begin by indicating that Canadians are now focused in a greater way than ever before on the United States, everywhere and at every level.

We have always had a shared population. As stated numerous times, we have a very long border. However, what has made the big difference in recent years has been the fact that now some close to 90 percent of our trade goes to the United States.¹ That, inevitably, produces increased interest. Simultaneously, it produces new challenges on how to relate to the United States.

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¹ See Richard W. Fisher, *The Changing Labor Markets of the Western Hemisphere*, 2 RICH. J. GLOBAL L. & BUS. 131, 133 (2001).

Now, I want to examine the evolving nature of state provincial relations at the executive and at the legislative level, and to try to point to quite distinct regional differences.

However, before turning to the state provincial level, I want to begin briefly talking about relations between legislators at the federal level, because that is where these relationships started. I am not going to deal with federal executive relationships, which are extensive and longstanding.

I am going to begin first with some analysis of just how, what kind of relationships there are, and then I want to try to identify the success or lack of success of those relationships. Now, as I have mentioned, the relationships between legislators began at the federal level.

In 1959, President Eisenhower and Prime Minister Diefenbaker agreed to establish what is now known as the Canada-United States, or if you are an American, United States/Canada Interparliamentary Group.² It meets once a year.³ There are 24 from each side.⁴ Initially they met for a day's serious discussions in Washington, or on the alternate year, in Ottawa.⁵

However, that began to produce some problems, because the way it works is that the representatives on each side, and particularly on the American side, would end up suggesting the items that they thought should be discussed. I can remember occasions when we would be meeting in the Congress, down in Washington, and the principal U.S. speaker, the person who had put the item on the agenda, had not turned up. He was off at another meeting somewhere else.

On the Canadian side, we also ran into one serious problem in 1971. That was when we were facing the impact of President Nixon's decision to put a surcharge on imports.⁶ This so agitated Canada that although there was a delegation from the U.S. Congress in Washington on this annual meeting, we did not meet for that whole day. We were so engaged in the debate in the House of Commons that they were invited to sit in the balcony and watch.

However, within a couple of years we had taken the decision that we should move the serious part of the meeting to some area outside of Washington, usually a comfortable resort. We also took a decision to break the discussion up into three committees, because let me tell you something about the deficiencies and the achievements. I should make a preface, perhaps, by saying that the objects of these meetings can be twofold.

² 22 U.S.C. § 276 (Repealed).

³ *Id.* at § 276d

⁴ MATTHEW J. ABRAMS, *THE CANADA-UNITED STATES INTERPARLIAMENTARY GROUP* 32 (1973).

⁵ *Id.* at 125.

⁶ Exec. Order No. 11,615, 3 C.F.R. 602 (1971); Proclamation No. 4074, 3 C.F.R. 60 (1971).

There is advantage to be gained simply in meeting together and learning about each other. Americans did not have the same opportunity to learn about what is going on in Canada just by reading the daily newspaper that a Canadian has to know what is going on in the United States. Therefore, I see this as being highly desirable to have Americans meeting with Canadians. Nevertheless, because I started life in the executive branch, I tend to look for change outcomes. That is less frequent by a long way from these meetings.

Let me talk about the deficiencies. There are objectives at these meetings of perhaps twenty-five to thirty items. You have a day, with about five hours of meetings. Well, that means that no subject gets more than one, maybe one and a half hours. In addition, on each side the people who know most about the subjects often are not included in the delegation. Therefore, it is interesting, but it is not always productive.

At the same time, Canadians have on several occasions, asked for special meetings, to come down and talk about a specific subject. For example, about three years ago a group of Canadian members went to Washington to talk about soft wood lumber. Based on past experience, they decided it would be more productive if they broke into small groups and had one-on-one discussions with U.S. Congressmen and Senators. In the end, they saw about thirty or forty of them. That was three years ago, and as you can see, the problem has not been resolved. Therefore, I did not regard that as an achievement, although, there is some utility in increased understanding.

Let me suggest during the 25 years that I have been associated with this group, I have observed two very interesting achievements. One involved the free trade agreement negotiations. You may remember that suddenly the Canadians walked out. They walked out because there was no dispute settlement mechanism.

Secretary Baker telephoned a man by the name of Sam Gibbons, who was senior member of the Ways and Means Committee. He had participated for probably twelve years already in these meetings. He understood enough about the relationship and how the Canadian system worked that in twenty-four hours he produced the formula, which is the current dispute settlement mechanism. I am not going to say it is an infallible mechanism, far from it, but at least it allowed the agreement to take place.

The second and the only other significant achievement of the 25 years that I have served, was on West Coast salmon. In this case, we asked for a special meeting. We went down to Washington, and we had an all day meeting with four Senators, two from Alaska and two from Washington.

If you did not have the local Senators, you did not get anywhere. Therefore, in this case, they were persuaded that this was a problem that should be addressed. It was decided that one representative on each side would meet together. The Canadians chose Mitchell Sharp. Out of those discussions

came an agreement, which was followed for about five years before falling apart. At least it kept it going for about five years.

It is clear that Canadians recognize that the enormous powers of Congress require that we should have contacts with them and try to influence them. It was interesting that, in principle, until the 1980s, the Canadian Ambassadors did not deal with Congress because they said their responsibility was to deal with the executive. It was the U.S. executives' responsibility to make the Canadian point to Congress.

Well, then along came the free trade negotiations. Alan Gotlieb was Ambassador in Washington at the time, and he was encouraged by the State Department, you go out and talk to those Congressmen, which he did. Ultimately, that was a factor leading to the agreement.

I am going to talk very briefly about something called the Center for Legislative Exchange,⁷ because it has some, I think, quite interesting lessons. This is a program that I set up in 1972, deliberately to overcome the limitations that I have described of the Canada-U.S. group, where you have this very large agenda, and a relatively short time on each item.

What we did is we organized three to five-day meetings of a group of members who were extremely knowledgeable about the subject to the other country. The object was to try to learn from the other country's experience. We brought American Congressmen and Senators to Canada, Canada MP's to Washington. I will talk about two programs, which produced rather interesting results.

In 1979, the conservatives were proposing to have a debate on introducing mortgage interest deductibility. I thought, "Gee, the Americans have had that for a long time. It is worth taking a look at their experience." Joe Clark had been on this program previously. He agreed, and thought it would be useful.

Therefore, I took a group down to Washington. Of all the meetings that we had over five days, the only people who said, "Do this" were the home-builders. Everyone else said, "Do not do it. Once you do it, you never get out of it." However, do not do it was the message.

The popularity, however, was such that even Bob Rae and he happened to be on that visit, went home and started talking to his party. He said, "You know, if we could introduce just something to make it sound a little bit like we're going down this direction, which would be good politics." We did not want to adopt it, of course, but just make it look like that.

Anyway, when I got back to Ottawa, I was attacked by several Conservatives, because it was said, "Here you are, you are deliberately trying to enter

⁷ See http://www.parlcent.ca/canada/cle_e.php (last visited Sept. 30, 2004).

into the election supporting the Liberals against the Conservative Caucus.” That showed how much impact it had had.

I want to use as a second illustration a reverse program. In 1985, we brought the members of the U.S. Steel Caucus from Congress up to Toronto, and we arranged for visits to the Canadian steel mills, and for them to spend time with Canadian members of Parliament from constituencies with mills. It was there that the Americans came to recognize that Canada and the United States had an integrated steel market that was mutually advantageous.

I think that it has been recognized that that was a turning point in terms of understanding within Congress.

Anyway, the reason I mentioned this program is because during the period of close to twenty years, we had over 1,000 members from the two sides visiting and spending three to five days.⁸ However, since 1990, that has become impossible in terms of getting Americans to come to Canada. I attribute this to, first, the fact that they are much busier than they used to be when I set the program up. I went down and I had 45 minutes with Carl Alburn, and I did not even plan it. He just said set up a meeting for you with Gerald Ford for another 45 minutes. So it became clear that their timetables had become so charged that they could not get away, maybe a little bit of time on Saturday or Sunday.

The second impediment was the development of the jet aircraft. It opened up easy travel to more agreeable places than Ottawa in the winter. Therefore, for both of those reasons, this experience illustrates the challenges that Canadians now face.

Congress is powerful. Bob Rae pointed out how important the Canadian’s Center for Legislative Exchange is to be heard in the United States. What we have found is that a Canadian Member of Parliament will be accepted in the United States. However, even an unelected Senator will be accepted in the United States. Therefore, that is something that the government is now pressing for, but the problem is you have 30,000 lobbyists in Washington with better access. On top of that, Canadians did not vote in the United States.

I want to talk rather briefly about the changing character of economic relations. Canada used to be a country where trade moved east and west. That is no longer the case. You used to have American companies coming in to get over Canadian tariffs. It changed with the World War, with the oil and gas, and now with the free trade agreement. The border, the movement, instead of being east-west, is now north-south. The impact of this change has had considerable effect.

⁸ *Id.*

We have always had good relations, as I pointed out, but Canada, even Ottawa, was founded by Americans moving north for land, and Canadians have moved south for jobs or for marriage. As I said, the change came with free trade, particularly. The other big difference is that provinces acquired powerful governments starting after the Second World War, and as the judicial decisions led to strengthening of provincial governments.

This trade has moved in two ways, because American states now recognize that across the border there is an interesting market quite often. I will not go into the many areas in which the provinces and states are relating, because time is running out.

I will also indicate only very briefly that there are significant regional differences. In Canada, in the eastern region, governors and provinces, as was noted yesterday, were the first to develop with a relationship going back to 1973. This was partly because on both the U.S. side and the Canadian side there has been enough movement of population, and they had a shared interest in trying to develop their economies.

It is a unique situation with Quebec that is worth noting simply because they look on this as of not only economic significance, but also a political significance. I did not have time to go into the details, but it is quite significant how many contacts they have established. This was mentioned by Bob Rae.

Ontario has not had a very comfortable relationship up until now with the Council of Great Lakes Governors. In Manitoba and Saskatchewan, their relationship had developed because of the flooding of the Red River, was causing backup problems in North and South Dakota. Now they have discovered that with Devil's Lake, the easy relationship that they had is no longer around.

When it comes to Alberta and British Columbia, we had a discussion yesterday evening about Cascadia and some references to PNWER, and I think this is important because PNWER has developed. It involves the private sector. The initiative of the legislators there is a single Chairman of the two partners, and there is a Co-Chairman from the private sector who is always from the other country, they have an integrated secretariat, so this has become a model across the whole of Canada. I know it is being discussed right now even in the East Coast.

I will not go into details on bilateral relationships, but I just want to indicate that in addition to relationships across the whole region, east, west or central, there are often individual bilateral relationships. One of these was mentioned yesterday where there is in Alberta the joint vehicle inspection program, and so on.

I want to mention briefly that there are provincial offices in the United States, which I think is unique. Quebec specifically has seven offices in the United States. This illustrates how their objective is not only economic, but

it is political. Nova Scotia used to have an office in Boston, it is closed, but they have a local consultant, and they work with the Canadian Consulate.

Bob Rae closed down a number of Ontario's offices that they had in the early 1990s, but they do have a senior representative based on the Canadian Consulate in New York. Alberta suspended their office in Portland, but they are now trying to open one in Washington, which is interesting.⁹ Canada has consulates or quasi-consulates. Therefore, these are all available for assistance to provinces.

Now, some concluding remarks, few Canadian provinces have a northern neighbor, so they all focus on the south. Of course, the initial access just across the border leads further south, so that produces a huge difference in attitude.

A second important factor is the differences in the systems of government. In the United States, you have separations of powers. We have a parliamentary system. In addition, the respective powers of the institutions within our two countries cause some complications and make some difficulties in maintaining effective relationships. Specifically, elections, much more frequent in the United States, so that relationships that may be established fall apart when people are defeated. When governors are replaced, the staffs are usually people who are working for the governor. They are not members of the state executive legislators, where as in Canada a Provincial Premier has a permanent public service on which he or she draws.

It was significant, for instance, recently when there were five governors in New England that were defeated.¹⁰ There was a total breakdown almost in the relationship because they had all gone, and the staff relationships no longer existed. When two Canadian Premiers were defeated, they had the same staff who could maintain the relationship.

A third factor is term limits in U.S. states, meaning elected officials stay around less long. Now, these have certain consequences. The quality of the relationship at the executive and legislative levels is enormously affected by personal relationships. It is even significant that an organization like PNWER, which had an up period, then a down period, because the people who were elected were not of the same capacity, and recently, it had a very strong up period because of the quality of the people.

I think it is worth noting just to draw attention to the fact that it is important that on both sides there should be working groups, if possible, involving

⁹ See generally <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?mid=12> (listing consulate office locations) (last visited Nov. 18, 2004).

¹⁰ Ned Reynolds, *Out of the Closet: Climate Change as a Driver for Energy Efficiency*, available at: http://www.cleanair-coolplanet.org/information/pdf/ACEEE_NR_Remarks_Aug04.pdf (last visited Oct. 6, 2004).

permanent officials on both sides who can make sure that the ground is prepared when Premiers and Governors meet.

It is interesting that the closest relationship between Canadian and American officials is in the intelligence field, because those people are in touch almost every day. What that points to is the continuity of the relationship and the frequency is what is important for achieving good results, a joint secretariat is extremely important, and the single Chair for the two countries.

I encourage increasing involvement of the private sector, because this encourages people to come together. U.S. legislators are more entrepreneurial, but, of course, what really makes the difference is that U.S. legislators have the power independently, whereas, in Canada, they must only work with the Premier.

Canadian provinces with greater Constitutional autonomy overall, like to fight with Ottawa even more than I think they do here. This has produced an interesting result. Provinces would love to be able to go and make their case in Washington. The only one that can do that is Alberta, because it alone produces more oil and gas in the United States than Saudi Arabia or Venezuela,¹¹ so Premier Klein has been twice.¹² I do not say it has had great impact, but it is surely helpful for him back home at a time when they have BSE.¹³ Therefore, it has a domestic impact.

Concluding, the relationship has exhibited very substantial growth, and I am sure it is going to continue to grow.

Thank you.

¹¹ See generally David Luff, *The Environmental Implications of the Discovery and Delivery of New Energy Resources in the Canada/U.S. Context: The Environmental Implications of the Discovery and Delivery of New Energy Resources in the Canadian Context*, 28 CAN.-U.S. L.J. 219 (2002).

¹² See generally John Cotter, *BC Alta Coal Pollution*, CANADIAN PRESS NEWSWIRE, June 15, 2001.

¹³ Charlie Gillis, *Mad-cow Disease Strikes Canada: First Case in 10 Years Dooms Alberta Herd: U.S. Temporarily Bans Imports of Canadian Livestock and Beef Products*, NATIONAL POST, May 21, 2003, at A1.