Representation and democratic legitimacy in multilevel systems: comparing the European Union and Canada

John Fossum [ARENA] and David Laycock [SFU]
University of Victoria, Oct. 14-15
Introduction

Paper’s objective: Compare the democratic legitimacy of elected representative institutions in the EU and Canada by examining 3 hypotheses:

1. EU’s democratic/legislative legitimacy requires meaningful executive accountability to legislature(s), and structured, inclusive deliberation.
   - In Canada, electoral channels **theoretically** support citizen autonomy (inclusion, deliberation) & accountability required for democratic legitimacy.
   - In practice, electoral channels do this poorly, esp. re. accountability.

2. EU's efforts to heighten legitimacy with stronger European Parliament, and including national parliaments in EU decision-making, compensate for EU's weak electoral legitimacy, via inclusion and deliberation.
   - Investigating this hypothesis requires attention to the EP and national parliaments, AND to the EU's multilevel parliamentary field [MPF]

3. Multilevel parliamentary field is crucial for offsetting EU's weaker electoral legitimacy.
We address these hypotheses in 3 stages.

1. justify EU - Canada comparison to shed light on institutionally addressable dimensions of the EU’s democratic legitimacy.

2. consider Canadian and EU cases against 3 hypotheses.

3. review our provisional findings; note their implications for theories of democratic representation.
Why compare the EU with Canada?

1. clarify EU’s rep-democratic shortcomings using approp. stds.
2. Both EU and Canada are *essentially contested entities* re. pol. culture, language and dem. constitutionalism
3. representative-democratic arrangements in EU and Canada must help to reconcile competing and conflicting conceptions of the polity.
4. EU and Canada have comparable kinds of institutionally entrenched arrangements of relevance to democratic legitimacy.
   a. EU has many traits of Canada’s fed gov’t [more unipolar and intrastate].
   b. strong executive presence in policy-making, constitution making. EC/FMC; similar basic configuration of dem. accountability.
c. increased deliberative-democratic handling of intractable issues.

[EU’s Charter/Constit’l Conventions; Cits’ Assemblies; Bouchard-Taylor Comm.]

d. important representative-institutional asymmetries.

- Canada: Quebec; aboriginal self-gov’t; prov. expenditure capacities.

- EU extremely asymmetrical system:
  - vertical institutional incongruence;
  - horizontal institutional heterogeneity; monetary Union only 1/2 Member States; no fiscal Union; varied fiscal capacity, welfare arrangements, & standards of living across EU.

- Canadian provinces share common currency, but less free trade; patchwork of provincial program quality

- Lisbon Treaty leads to EU’s ‘quasi-federal’ character.
5. **ALSO** important differences:
   a. Canada has majoritarian parl. democracy VS EU ‘consensus-democracy’
      - Latter → a democratic legitimacy exogenous to electoral accountability.
   b. EU’s Parl. democratic legitimacy is not functionally or conceptually equivalent to the democratic legitimacy based on electoral accountability in Canada.
   c. Will strengthening EU’s multilevel parliamentary field offer an appropriate compensation for the EU’s weak electoral legitimacy?
The Canadian Case

A. conventional case for the democratic legitimacy of rep. democracy in Canada: elections, information in open public sphere, consent, accountability

A. loose links in the chain of Parliament’s democratic legitimacy?
- failures of inclusion, deliberation, and/or accountability;
- 3 major empirical foci for this analysis:
  I. fairness of elections:
  II. ‘executive dominance’ of Parliament:
  III. democratic accountability and inclusion in federal system
I. fairness of elections

- in 5 recent provincial electoral reform debates, Canadian advocates of proportional representation have utilized five provincial reviews of electoral systems to argue for:

1. the positive impact that more proportional, and hence fairer, vote/seat translation mechanisms would have on voter turnout and civic engagement [hence some traction for the autonomy elements of legitimacy];

2. prospects for enhanced citizen control over selection of their representative “agents” [primarily the accountability dimension of legitimacy];

3. legislatures’ needs for oppositions capable of holding governments’ central executives and “their” agencies more accountable, and for a range of policy perspectives from parties willing regularly seek policy consensus [accountability and autonomy dimensions of legitimacy];
Framed in M. Saward’s terms, all 3 claims presume that PR MPs will construct ‘representative claims’ more responsively to citizen prefs.

→ largely deliberative but also accountability and inclusion gains for democratic legitimacy

But 5 provs’. initiatives on ER in past 5 years produce no change.

- so Canadians’ misgivings about representative democracy DON’T revolve around electoral axis of its legitimacy
- electoral system change NOT obvious remedy to democratic deficit perceived by broad Canadian public
II. “Executive dominance’
A. Federally
- disempowerment of the institution from which the Canadian system derives its primary democratic legitimacy, esp. re accountability.
- formal accountability guarantee of ‘responsible government’ offset by limited Parl. contributions to either policy development or legislative agenda setting, dominance of PM/central agencies.
- Stephen Harper’s increased power for PM and PMO → executive accountability to Parliament, & deliberation within it, dropping to new depths.
Harper offers most extreme manifestation of Savoie’s ‘Court Government’ federally

Such executive-empowering features undermine deliberative and accountability aspects of Parl’s democratic legitimacy.

above tendencies exacerbated by high party discipline in Parliament

combination of responsible government with ‘court government’ and party discipline

→ heightened partisanship in House, & structural obstacles to expression of range of public opinion.
other aspects of PM’s power heighten exec dominance:

– Harper’s demonstration that minority gov’t can function as strong majority gov’t via ‘electoral chicken’ has further disempowered MPs

– omnibus budget bills centralize more power in PMO.

– Public’s low esteem for elected politicians and legislatures provides opening for administration to implement its agenda while diminishing power of Parliament.

– Harper’s Jan. 2010 proroguing of Parl, and refusal to provide major pg, cost estimates before 2011 election, shows he believes that Canadians’ regard for Parl – & the electoral basis of its democratic legitimacy - is low enough to do this.
B. Provincial executive dominance

- At least Alberta, British Columbia, and Ontario operate with ‘post-institutionalized’ or premier-centred cabinet structures.
- Insofar as they suffer from exec. dominance and difficulties with legislative accountability, prov. govts. thus also undermining legitimacy in Cdn rep. democracy.

III. Executive Federalism

- confusing welter of shared jurisdictions and agmts in ‘executive federalism’ → accountability, deliberation and inclusion failures
- small fraction of IGAs discussed by either federal or provincial legislative committees, or as policy proposals in legislatures.
- participation by org. interests sporadic, seldom inclusive.
- elected legislatures unable to ensure that these agreements correspond to public wishes, → big accountability deficit in EF.
such interactions between units within the larger federation increase the EU’s democratic legitimacy, BUT REDUCE the democratic functioning and *bona fides* of Cdn system.

some ‘process legitimacy’ across policy areas (Bakvis & Skogstad, 2008), BUT OVERALL:

- low levels of inclusion, deliberation and accountability in EF allow first ministers to **construct** provincial **constituencies** with regionally uniform identities
- undermines presentation of contrary ‘representational claims’ by other parties, civil society actors.
This inverts the basic P-A relationship of representation in Exec. Fed.

- Saward: “perhaps the constituency is the agent, and the representative [first minister] is the principal?”

- How can citizens be principals, and their representatives act as agents? [Cutler re. Cdns’ difficulties sorting out fed. or prov. govt responsibility, and electoral accountability]
  - “if politicians think voters lack motivation or the tools to accurately attribute responsibility, they may be able to shirk in their role as citizens’ agents.” (Cutler, 2008, 651).
Our point: with almost no political consequences for P-A inversion, Cdn exec. federalism in Canada now institutionally protects such shirking.

BY COMPARISON, EU policies have more than electoral sources of democratic legitimacy.

→ Lessons that Canada can learn from the EU?
  - increased democratic legitimacy for Canadian legislatures may be possible via more inclusive processes of consultation, deliberation and consensus-building re. key areas of public policy.
  - these could provide more thoroughly considered policy options, and a badly needed source of legitimacy for both the policies and the representative institutions in question.
Conclusion
Using criteria of autonomy and accountability, we have:

– Confirmed that when two cases assessed by established state-based standards, Canada fares better than the EU.

– EU not a fully-fledged parl. system: executive doesn’t emanate from EP constitutional-institutional underpinnings of the EU-level constituency far weaker than in Canada.

– Re. citizen inclusion, more shortcomings in Canada than EU. EU makes more efforts to obtain non-electoral legitimacy than Canada, with more gains to citizen autonomy.

– Re. deliberation: EU is consensus-making system with culture of consultation By contrast, insubstantial inclusion and legisl. review of IGAs bring Canada’s exec. federalism low marks on deliberation dimensions of autonomy.
- Re. Accountability: Canada's Westminster system promising in theory.
  - BUT party discipline, executive dominance & low policy accountability in exec federalism impede conversion of theory into practice.

SO Canada’s overall democratic legitimacy score only slightly higher than EU’s?
  - Even though Canada has institutional and constitutional procedures to hold executives accountable in all relevant policy domains
  - With interparliamentary deliberation and cooperation, EU offsets some dem. legitimacy limitations in EU structure. Similar options in Canada?
Democratic qualities of complex political systems require reconsideration of prevailing conceptions of representation.

- Eg. Saward’s work on the representative claim

Need esp. to seriously consider implications of executive dominance.

- In EU & Canada, rep. systems are distressingly closed, self-referential, driven by system-generated within-puts less than democratic inputs.

- EU & Canada operate with different inverted P-A models
  - But EU has modified this via institutionalized deliberation and consultation; both principals and agents operate in a more deliberative, transparent policy-developing environment.
Should either the EU or Canada adopt 'supplementary' democratic mechanisms, OR

move [more] in direction of the multilevel parliamentary field?

- to make this choice, helpful to re-think representation in systemic terms, through comparative analyses.