COMPARING MODES OF GOVERNANCE IN CANADA AND THE EUROPEAN UNION:
SOCIAL POLICY ENGAGEMENT ACROSS COMPLEX MULTILEVEL SYSTEMS

SUMMARY OF PROCEEDINGS FROM UNIVERSITY OF VICTORIA CONFERENCE
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OVERVIEW

Both Canada and the European Union (EU) are complex multilevel governance systems where authority is dispersed between governments — local, regional, provincial, national and supranational — as well as across spheres and sectors including markets, stakeholders and citizens. Each uses different modes of governance for policy-making and implementation, in light of their unique political, constitutional, social and institutional contexts,

Over the past fifteen years Canada has devolved responsibility for many social programs from the federal government to the 13 provinces and territories. The EU has moved in the opposite direction, building pan-European approaches to complement action by the 27 EU member states. This has been done through a new governance approach called the Open Method of Coordination (OMC). Involving voluntary coordinated action, exchange of best practices, benchmarking, codes of conduct, and comparative analysis, the OMC has assisted EU member states work towards pan-European goals and policy convergence while respecting their differences.

This conference brought together almost 100 Canadian and European scholars, civil servants, students, experts, and representatives from business and non-government organizations to learn about Canadian and EU approaches to social policy governance, and assess whether EU ideas through the OMC might improve collaborative governance in Canada. In seven panels over two days the conference examined: why compare Canada and the European Union; how multilevel governance in Canada and the EU actually work; Canadian and EU experiences with employment and training, postsecondary education and social inclusion governance; and the courts as arbiters of multilevel governance. Some presentations were explicitly comparative, while others focused only on the EU or Canada. The conference concluded with publication plans in order to bring the deliberations and ideas to a wider Canadian and European audience.
PRESENTATIONS AND DISCUSSIONS

1. Panel A - Conceptualizing Multilevel Governance and Federalism. Why Compare Canada and the European Union (EU) and How? What are the differences? How important is this?

This panel was chaired by Oliver Schmidtke of the University of Victoria.

Amy Verdun, University of Victoria, opened the conference by highlighting the most common question Canadians ask about the EU — will it survive the current economic crisis and in the current circumstances why would Canada look to the EU for ideas? She noted that not only do we need to address what part of the EU is currently in crisis (sovereign debt, euro, leadership, euroskepticism), she outlined to the audience the various moments of crisis over the EU’s 60-year history when it also seemed doomed to fail (UK entry, empty chair, euroschlerosis, stage three of EMU, French and Dutch referendums, ratification of the Lisbon treaty etc). Verdun reminded participants that, despite Canada perhaps feeling more integrated now than at any time in the past three decades, we too have had moments when it seemed that the country would fail (1980 Québec referendum, Meech and Charlottetown Accords, 1995 Québec referendum). She noted that, despite these high stake times in the EU, day to day policy making continues, and that is the focus of the conference. She outlined that in the EU the OMC does not lead to EU legislative measures and does not require member states to change their laws; instead it aims to spread best practices in order to achieve greater convergence towards the main EU goals. In Canada the approach is more ad hoc; many policies are formulated by provinces and there appear to be few forms of coordination, best practice sharing or opportunities to create pan-Canadian approaches. She noted that the purpose of the conference was to showcase examples from both the EU and Canada, identify how stakeholders are involved, and consider mechanisms that can lead to closer cooperation among the constituent units within each political system.

John-Erik Fossum from the University of Oslo noted that both Canada and the EU are contested political systems, with conflict being settled through legal, peaceful means. The representative-democratic arrangements in each must strive to reconcile the competing conceptions of each polity, and both have comparable kinds of institutionally entrenched arrangements. While in Canada the electoral channels theoretically support citizen autonomy (inclusion, deliberation & accountability), in practice it does this poorly, especially with regards to accountability. Canada has had no success in changing the electoral system; executive federalism concentrates power in the hands of Ministers and senior bureaucrats, with an even greater concentration of power under the current Prime Minister (presidentialisation of power). Fossum noted the confusing array of shared jurisdiction between governments, and that issues are not settled by parliaments but through the intergovernmental relations (IGR) system. This weakens accountability to the public. While Canada may look fine on paper, in reality the workings are not that democratic. In contrast, the EU system is much more complex, in terms of the ability of parliament to hold the executive to account, and the workings of the party system (parties at member state level are not linked to the EU level). However, in the EU there are non-electoral institutions that compensate for this democratic deficit, including institutionalized deliberations and consultations, as well as a more transparent policy-making environment. The opportunities for information exchange and learning from best practices in the EU plus the further development of the powers of the
parliament results in an intergovernmental relations process that is more open to the public that that in Canada. It is worthwhile for Canada to look at these EU innovations.

Thomas Hueglin from Wilfred Laurier University noted that this was the third conference he had attended this year that focused on comparing Canada with the EU, a very welcome development. In his view the concept of multilevel governance is “escapist nonsense”—while it is good to get away from government centered politics, the concept is so wide open and open-ended conceptually that it does not lend itself to rigorous comparisons. In his view comparative federalism is a much more profitable conceptual framework to assess the workings of the two systems. Both Canada and the EU have often found themselves outside the club of established federations, especially since the US model is taken as the base. Since neither Canada nor the EU fit the ‘normal’ federal concept, they have often been ignored. The EU was considered as ‘sui-generis’, while Canada’s regime of intergovernmental diplomacy was considered as an ‘oddity’.

All federal systems have divided powers and allocations; in fact the concept of subsidiarity is at the heart of every federal system. In his view federalism contains certain normative features that are lacking in the concept of multilevel governance: member state equality (with weaker members having equal veto powers); power allocations between the centre and the constituent units; a commitment to social solidarity and sharing; and the need for mechanisms to negotiate difference on the basis of equality. In Canada this is done through intergovernmental conferences and agreements, in much the same way as happens in the EU. Canada seems to be better in its commitment to fiscal equalization, while the EU is more inclusive. In his view there is tremendous potential for innovative examination and comparison of the two political systems.

Anne Racine, from the Québec Ministère de l'Emploi et de la Solidarité sociale, provided a practitioner’s perspective, based on her personal experience working in the Canadian IGR system as a provincial civil servant. In her view, the main difference between Canada and the EU is that in Canada due to the fiscal imbalance the federal government has the money and uses it to control the agenda (and the number of delegates they can bring to IGR meetings), whereas in Europe the resources assigned to the European Commission (EC) are significantly constrained. The federal government in Canada pursues its interests, whereas the EC is responsible for the EU as a whole. In Canada money rules and is the main motivator that brings the federal government and provinces to the table; without federal money there is little incentive for provinces to come together to do things on their own. In her experience in Canada there is very little deliberation; in fact the federal government often chooses not to consult and under the current government there are much less frequent interactions than under previous governments. In addition, the Conservatives are much less interested in social policy matters. In her view the institutionalized EU mechanisms appear to be inefficient. In Canada provinces are reluctant to involve stakeholders on a pan-Canadian basis as these are usually hand-picked by the federal government and having them at the table dilutes the provincial point of view. For them to be involved federal and provincial roles and responsibilities would need to be much more clearly delineated than currently, and more defined rules would be required. Since in Canada it is difficult to tolerate dissonance, this creates the lowest common denominator syndrome, and a significant reluctance to undertake comparisons or ‘naming and shaming’. The reporting that is currently done by provinces produces many seldom read documents which are rarely effective or used by anyone, reducing the opportunity for innovation in social policy. In Canada intergovernmental relations is highly politicized, and it is difficult for actors who are directly involved in the system to see how their interests would be served by making changes such as looking to the EU for ideas.
The discussion focused on the role of municipalities in IGR in Canada, and their current lack of engagement. Although the lack of municipal involvement was viewed as a troubling issue, no solutions were seen. Some questioned the suggestion that the Canadian system results in lowest common denominator decision-making. The role of the Senate (through the current reform proposals) was raised in facilitating connections between governments, and compared to the second chamber in Germany. It was suggested that we can’t think from the mindset of constitutional certainty as nothing is fixed; that we need to find procedural principles to sort out how to move forward on issues. Both Canada and the EU remain as negotiated systems, using IGR to work around the constitution. In both systems consensus is an essential element.

2. Panel B- the Practice of Governance in Canada and the European Union How do Multilevel Governance (in the EU) and Federalism (in Canada) actually work?

This panel was chaired by Evert Lindquist, University of Victoria.

Finn Laursen from Dalhousie University presented on social policy developments in the EU. He noted that the EU is ‘relatively federal’, with two levels of government ruling the same people, each with at least one area in which it is autonomous. Multilevel governance refers to the dispersion of authoritative decision-making across territorial levels; in his view the key difference between multilevel governance and federalism is that in federalism there is some guarantee of the autonomy of each government in its own sphere. He traced the development of social policy in the EU through a number of phases (from the European Economic Community to the Treaty on the European Union to the Lisbon Treaty) and in a number of different elements of social policy (anti-discrimination, free movement of labour, health and safety at work, working conditions, gender equality, combating of social exclusion, modernization of systems of social protection, funding for employment programs). The Lisbon Treaty lists exclusive and shared competences, and there is increased application of the community method. He noted that social policy in the EU has been driven by the Commission, the Court of Justice, and the overall integration initiative, and in recent years has considerably expanded in scope. Decision-making has moved from unanimity to qualified majority voting. Social partners have become increasingly involved. The OMC was devised as an alternative to regulation — it started with employment policy and has now moved to include pension reform, social inclusion, education, research, etc. In his view the jury is still out as to whether it leads to policy learning. Although the EU has become more federal over time, social policy in the EU still depends on member state policies and financing.

Herman Bakvis from the University of Victoria presented on the practice of federalism in Canada. Among federations Canada is exceptional in the degree to which the powers of the two orders of government are spelled out, despite the high level of interdependence in different policy areas. This often results in competition between governments. As constituent units lack direct representation in central institutions (due to a weak second chamber), relations are between governments, represented by executives (Ministers and senior officials). Their power is reinforced by the Westminster system, where executives dominate all Canadian legislatures. The primary IGR venues are meetings of First Ministers, Ministers and senior officials, with little scope for participation of municipalities, interest groups and citizens. There is a low level of rules, and secretariats are often managed on an ad hoc basis. The structure of the system shapes conflicts and their outcomes, including Québec’s role in confederation, position of First Nations,
symmetrical vs. asymmetrical federalism, east vs. west, have vs. have not provinces, rural vs. urban. He noted common misconceptions in Canadian federalism: that Ottawa and the provinces are constantly at loggerheads, that there is a lack of coordination, that there is policy drift/paralysis. He countered these misconceptions through five policy vignettes. In some areas there has been successful pan-Canadian coordination, cooperation and mutual adjustment, and he noted in particular student assessment in education (through interprovincial agreement), welfare reform (through the National Child Benefit) and WTO compliance (with provincial interests reflected in agreements). In his view health care is the only real fractious area, but that there has also been a lack of success with respect to greenhouse gas emission standards. This suggests that a highly planned and centrally coordinated mechanism of IGR in Canada is not needed to achieve mutual objectives; mutual adjustment and convergence can be achieved through jurisdictional autonomy, bargaining, and competition.

Michael O’Neill from the Institute of Governance in Ottawa noted that the public sector is not well served to do policy alignment across sectors and governments, as there is tension between cross-cutting goals and the institutional mandates of the various partners involved. He presented on how policy alignment and common objectives under distributed governance were achieved with respect to the following comparative case studies: BC’s Climate Action Plan; Canada’s Science and Technology Strategy; Nova Scotia’s Community Development Policy and the UK’s Every Child Matters. In their work they mapped federal and provincial institutions and how they interrelate with respect to roles and responsibilities, accountability and their use of power. In his view you can’t work at the institutional level, you need to work at the level of relationships between structures, practices and instruments. He identified the following factors as necessary for policy alignment success: political support in order to break through departmental and jurisdictional silos (the higher up the better as political will unlocks money); the need for clarity of overall vision and objectives; buy-in, ownership and relationships among the people directly involved; flexibility in the use of standard operating procedures; an organizational culture open to change; and proximity to the centre. Challenges include: generating political support; prioritizing objectives; overcoming inertia; and developing and measuring outcomes not outputs.

Heather Millar from the University of Toronto examined accountability relationships between government and non-government (NGO) actors, with a particular focus on the “non-profit” or “third sector”. She noted that NGOs in Canada are becoming increasingly involved in governance, and is interested in why some accountability frameworks are more effective than others, and the extent to which they enhance or hinder policy innovation and learning. There are five common types of accountability: political (or democratic), legal, administrative, professional and social. She is interested in looking at how different modes of governance impact these accountability relationships. Canada’s voluntary sector is the second largest in the world, and governments are increasingly using NGOs for program delivery. Accountability is achieved through contract management or financial audits, highlighting the principle/agent issue. The federal government recently introduced reforms, designed to increase fiscal reporting and reduce risk. In her view this has created a number of negative externalities including greater transaction costs, stifling of policy innovation, and extensive technocratic reporting. Despite the pull of horizontal relationships and the need to account to patrons, the clients and themselves, for NGOs accountability to the federal government dominated. There are limited opportunities for NGOs to provide input on policy development, nor are there forums for using the ‘naming and shaming’ accountability mechanisms of the EU. Governance is a mix of a hierarchical, command and
control approach to policy development, combined with a market-based approach to service delivery. Future avenues for research would include looking at provincial accountability structures, variation across policy sectors, and a more focused look at the interaction between governance and accountability.

André Juneau from the Institute of Intergovernmental Relations, Queen’s University Kingston, provided a practitioner’s perspective, based on his experience as a federal civil servant. He noted that an important element of how decisions get made is the process used within individual governments, across departments. Sharing a common research base (e.g. Fraser Mustard work on early childhood) is very helpful for facilitating coordination. While he is a great admirer of the EU, he has prudent skepticism about how their practices could be translated to Canada, especially their approach to regulation. In his view too many EU decisions get made by France and Germany. There have been few examples in which Canada explicitly sought to learn from Europe, notably with respect to fiscal, immigration, constitutional or municipal issues. We need to look at the pathways of learning, including who learns, how we learn and what we learn. Federal and provincial politicians and officials in Canada like executive federalism and so are not particularly open to learning. Perhaps we should not focus so much on what works, but on what doesn’t work. There may be value in learning about IGR mechanisms in the EU, not only to enrich Canadian federalism, but also to understand the EU a bit better. We need to do this in order to advance our Canadian interests, especially in light of the Canada-EU trade discussions. He noted that until this conference he had not heard about the OMC; upon reflection he sees that the work being done in the health sector is very OMC-like, with common objectives, reporting, a health council, CIHI to analyze data etc. This was a Canadian invention. Certainly in Canada we need to figure out ways to work better together — he noted the difficulties over the past decade with respect to the blood file, federal fiscal cutbacks (CHST) and Supreme Court decisions. Since we are no longer building the Canadian welfare state but constraining it, do we really need to worry about multilateral engagement? In his experience the most meaningful activity currently taking place is at the bilateral level, resulting in increased asymmetry across Canada. He characterized this as sequential bilateralism, where the Government of Canada reaches agreement with one province, and that becomes a template for the rest using a ‘me too’ clause. Like Bakvis, he thinks that while the Canadian federation is messy, it works.

The discussion from this panel focused on the need to update our understanding of IGR in Canada (no recent First Ministers’ meetings, increased asymmetries, decline of constitutional debates), and find better ways to know more about what is actually going on, given the closed door nature of IGR. Canada does not do collective goals and objectives whereas the EU does (e.g. 75% labour market participation rate target in Europe). Respondents noted the need to better understand the role of culture and trust in each political system. The forthcoming Johns, Inwood and O’Reilly (Ryerson) volume on IGR in Canada would be helpful in this regard.

3. Panel C - Managing Shared Governance in Employment and Training Policy

Canadian and EU experiences

This panel was chaired by Harvey Lazar, from the University of Victoria.

Mariely López-Santana, George Mason University, Virginia presented on the re-allocation of activation powers in the EU and the United States. Activation policies seek to increase employment rates, and combat dependency on passive income support. In Europe the balance of
power has been adjusted as the national, sub-national and supra-national levels within the multilevel governance system have acquired new powers and competencies. Some countries, such as Sweden, uploaded their active measures model to the EU, and the European Employment Strategy is the most highly developed OMC. European coordination has allowed for the diffusion of the activation paradigm across EU member states. Sub-national levels like in Italy have assumed greater responsibilities in order to increase flexibility at the local level. This has often been done with funding provided through the European Social Fund. This extra funding has helped to push and frame active labour market policies at the regional level in member states that received the funding, providing them with the resources and administrative capacity they needed to offer a public employment service, and experiment with innovative solutions. She noted that decentralization can take many forms — political, administrative, fiscal, localization — and varies considerably from one country to another. It also results in direct connections between the local and regional level and the EU level, often bypassing the national level. However, in general, fiscal capacity is still centralized at the national level in the EU, with the local level spending within the limits and boundaries set by the national level. These institutional transformations demonstrate that new multilevel structures are weakening the traditional, hierarchical models of the welfare state, challenging the autonomy of EU member states and the welfare states that they have traditionally guarded closely.

Robert Csehi, Central European University Budapest noted that while it was acceptable to use the ‘f’ word in Canada (federal) this was not acceptable in Europe. His paper described and explained some of the major changes in the intergovernmental sphere in both Canada and the EU as it relates to labour market development policy, assessing the extent to which IGR practice has had an impact on the power-related elements of the federal structure. He noted that collaborative federalism is policy-making through the promotion of dialogue, shared understanding of values, mutual engagement, deliberation, consensus building and agreements. In Canada the federal government has neither the power nor legitimacy to define a common framework on its own, resulting in the need for a system of IGR. This has been done, not through constitutional amendment, but through a series of bilateral (e.g. Labour Market Development Agreement) and multilateral (e.g. Trade, Investment and Labour Mobility Agreement between BC, Alberta and Saskatchewan) agreements. In contrast, in the EU the ‘federal’ level is even more constrained as it lacks the financial resources that the Government of Canada possesses, and the constituent units are very reluctant to give over power to the EU level. IGR in the EU is more formalized than in Canada. In both systems there are lots of ‘grey’ areas with governments at both levels able to claim competence.

Donna E. Wood, University of Victoria noted that over the past fifteen years labour market policy (both passive and active) has become increasing decentralized in Canada. Active measures are now managed and delivered by 13 provincial/territorial governments under four different template bilateral federal-provincial agreements; almost all previous federal conditions on social assistance have been eliminated. Her work assesses whether EU techniques through the OMC might make decentralized governance in Canada work more effectively. Her presentation compared Canadian and EU practices based on interviews undertaken in Canada and the EU. She assessed governance effectiveness across both political systems using the following principles: participation; openness; transparency; accountability; clarity of roles; effectiveness; and coherence. When Canada and the EU were compared she concluded that in Canada there is less participation beyond the executive; less transparency and openness; less policy coherence; weak
accountability; few opportunities for mutual learning; and an inability to assess program effectiveness. She suggested some concrete lessons for Canada to consider that might improve decentralized governance: consolidation of the different bilateral agreements and the use of benchmarking like in the EU to supplement accountability controls in fiscal transfers; use the EU principle of subsidiarity to clarify federal and provincial roles and responsibilities; undertake research, analysis, and comparisons between provinces and territories in order to facilitate mutual learning; revitalize the long-standing federal-provincial IGR governance structures in light of devolution; and explore opportunities to engage social partners, civil society and other stakeholders (such as Aboriginal organizations) on a pan-Canadian basis.

Heather Dickson, with Heather Dickson and Associates provided a practitioner’s perspective on the panel deliberations, based on the many years she had spent representing the province of British Columbia at the federal-provincial labour market table. She noted that labour market policy is an ‘opaque policy area’, a small part of micro-economic policy that few Canadians understand. Making things more complex is that both orders of government are intricately involved, with provinces often represented at the IGR table by 2-3 Ministers who change frequently due to provincial electoral cycles. She noted some fundamental differences between Canada and the EU ─ Canada was born a federal state, whereas the EU is about creating a functional structure and bonds to prevent them from going to war with each other again. In terms of Wood’s recommendations for change, she could not see how the four agreements could be combined into one ─ not only do they have different time frames, but the funding sources are different. Some groups (e.g. disabled persons) will say they have disappeared through consolidation. She noted that it would be very difficult for Canada to undertake benchmarking as developing common indicators was tried in the Labour Market Agreements, but getting agreement across all provinces was impossible. She thought that the integration of the social services and labour market intergovernmental forums would be resisted, especially since every province places these responsibilities in different departments. In her view, there was not really a need for pan-Canadian stakeholders to be involved in the sector; that what was more important was for stakeholders to be engaged at the provincial level. She questioned the relevance of a pan-Canadian dimension in this policy area; that it is at the provincial level where efforts need to be focused. In her view an examination of how third party contractors are involved in the policy domain, and the governance mechanisms used by provincial governments in that capacity, would benefit from more research, information and analysis.

4.  Panel D- Managing Shared Governance in Post-secondary Education Policy

Canadian and EU experiences

Aaron Devor, Faculty of Graduate Studies, University of Victoria chaired this panel.

Åse Gornitzka from the University of Oslo, provided an overview of how Europe had been able to come together and coordinate their activities in higher education (HE) policy, an area of great national sensitivity and diversity with respect to the number of European institutions, students and staff, as well as cultural and language diversity. Before the 2000s, with the exception of vocational education and mobility, there was marginal political interest and weak political will towards coordination at the EU-level, and HE was the policy sector least expected to be coordinated. The build-up of a governance capacity in the “knowledge” sector has been gradual: a European Commission’s DG for education; sectoral ministers meeting in the Education Council; a proliferation of transnational actors; and expertise communities and networks between
policy makers. In the 2000s a number of factors coalesced to create a stronger European level involvement in higher education: the Lisbon Strategy placed an enhanced expectation on cross-sectoral coordination and triggered a need for the sector to defend itself against the employment sector; a need for Europe to respond to the knowledge economy; poor results in the PISA; and recognition of the need to focus on lifelong learning. The surprising advent of the Bologna process outside the EU also created a new dynamic for European cooperation within higher education, with repercussions also inside the EU. Governance is multimodal: through money (student mobility), as well as OMC processes such as the development of common goals, monitoring, reporting, information exchange and mutual learning. Gornitzka noted that in higher education EU governance is by 1) numbers (benchmarks and statistical indicators are the backbone in order to provide a common numerical language) 2) learning (organized arenas beyond executives provide opportunities for policy-makers to learn more about themselves than they learn from others) and 3) voluntary standards (OMC is a breeding ground for setting the standard). All this has been done without the transfer of legal competencies to the EU-level, and has been made possible through experimentation. Small steps in the creation of new governance sites have become stepping stones, leading to often unexpected outcomes.

J. Peter Meekison, University of Victoria, identified that post-secondary education (PSE) in Canada is the one sphere of social policy where federal-provincial dialogue is almost non-existent, despite the Government of Canada playing a major role in funding, and general agreement that there is a national dimension to the sector. An important reason for provincial reluctance to engage with the federal government may be the close relationship between education and culture, and Québec’s strong aversion to federal involvement. Despite this, most provinces have generally comparable approaches to PSE. There are interprovincial IGR cooperation mechanisms through the Council of Ministers of Education (CMEC) as well as the Council of the Federation; however, there is no national accreditation body. CMEC has no hesitation in asking for increased federal transfers at the same time as it stresses exclusive provincial jurisdiction over PSE. It sees its role as ‘consulting’ with the federal government, but not as ‘collaborating’. The Council of the Federation in 2006 held a PSE summit and wanted to meet with the Government of Canada on a Canada-wide education and training strategy; however this meeting never occurred. The unilateral establishment of the CHST was a major setback to federal-provincial relations, although the 2007 budget increase responded to provincial requests. The main way that dialogue seems to take place in PSE is through arm’s length communiqués, policy statements and budget documents. Sometimes the Association of Universities and Colleges Canada has played a ‘surrogate’ role in filling the vacuum between federal and provincial governments in Canada. Recently both the federal government and the provinces articulated a desire to become more involved with a plan to market Canada to international students, but to date no IGR dialogue has been instituted. It is clear that governments in Canada have avoided dialogue on PSE issues for far too long; PSE is a critical component of the Canadian economy and federal and provincial governments need to get beyond the silence. The EU Bologna process may offer some insights.

Mark Crawford, Athabasca University, considered how Canada and the EU balance access, mobility and competitiveness across their respective multilevel governance systems. He highlighted the use of the OMC in higher education policy in the EU, and how the Bologna declaration created a ‘European Higher Education Area (EHEA)’ that was developed in response
to the competitive threat from Anglo-Saxon universities in the UK, US and Australia. This EHEA is larger than just the EU27 to include 47 countries. The EHEA has facilitated easily readable and comparable degrees across Europe, transferable credits, student and faculty mobility, quality assurance, and the development of European dimensions in curricula, inter-institutional cooperation and programming. In Canada, the relative autonomy of universities has tilted them towards developing bilateral relationships with the Government of Canada. Provinces pushed back by creating CMEC. The Social Union Framework Agreement (without Québec) was a dialectical compromise where the federal role was acknowledged for the first time. Federal money through the Millennium scholarship program was diverted by provinces to other priority areas. In Canada there are growing issues of equitable access. In the EU there is poor mobility and transferability. Crawford wonders whether Canada or the EU require a constitutional amendment.

Thomas Townsend, University of Ottawa provided a practitioner’s reflection on the OMC, based on the experience he had while with the Canadian Mission to the EU. In 2003, at the height of New Public Management in Canada, he was tasked to assess the OMC. In terms of how it is working out, the reaction in the EU to the OMC is mixed and depends on the policy area. It is clear than in some areas there has been a change, and that EU member states, by coming together sometimes got more than they bargained for. While many member states thought that coordination would merely help them in their internal processes, the implications of transparency and mutual learning affected policies themselves and how policy formulation was approached. Although he brought the EU OMC ideas back to Canada, there has been relatively little interest at the federal level. He attributes this to a number of factors. For example, the way we say we do policy and actually do it are very different. Politicians seek advice outside the civil service which makes the structured approach of institutional actors (government officials) incomplete. In Canada we too often fail to include actors outside of government in the formal policy process. Where ideology plays a motivating role in policy, formal learning processes are less welcome. A second consideration is that the structure of the OMC assumes cause and effect can be known at the time of the policy formulation and relies heavily on traditional evaluation approaches. In today’s complex world things don’t necessarily work that way and experimental approaches may provide better results. He believes that policy actors can learn. A way forward in terms of policy learning and sharing may be to focus not so much on governments, but focus instead on the multiplicity of actors in the policy sector, especially at the service delivery level (in PSE this would include universities, quasi-government organizations, NGOs, private enterprises etc.). Governments can play an important role in establishing structures for such exchanges and promoting learning networks. They can also open up the large storehouses of government data in order to create incentives for interested parties to explore relationships and the policy space. A system of actors can self organize in a sustained fashion, given modest incentives to do so. In all cases it is important for actors to get together and share what they are doing. In doing so governments and non-governmental actors are engaged in natural experiments which can be a source of significant knowledge if there is an organizing framework for looking at experience across the system. Here it is not governments who are the primary consumers of learning, but others involved in the sector, especially at a localized practitioner level. He noted that the federal government appears to have a very limited appetite in promoting these kind of learning networks to the provinces, and that provinces are not keen on highly detailed reporting such as that promoted in PSE through the now defunct Canadian Council on Learning or Macleans magazine.
5. **Panel E - Managing Shared Governance in Social Inclusion Policy** Canadian and EU experiences

Kurt Huebner, University of British Columbia, chaired this panel.

Laura Cram, Strathclyde University, Scotland, presented on the changing dynamics of social inclusion policy in the EU, and why there is as much EU-wide social policy as there is. The welfare state in both Canada and the EU is at the heart of the state-citizen relationship, and is one of the key mechanisms in generating or eroding public support for national governments (e.g. health care in Canada). In the EU member state governments were not driving the development of EU social policy; instead the European Commission became a ‘purposeful opportunist’. With neither jurisdiction nor money, they facilitated the development of the OMC — a weapon of the weak — by coordinating what was already going on within member states. First there was the mushrooming and institutionalization of groups, then a hardening of the ‘soft’ law, then a shift in the narrative towards now where 74% of EU citizens see a role for the EU level in social policy. This all took place in the context of austerity, court activism, and changes in the capability-expectations gap. Europe 2020 is a very crowded turf of actors involved in social policy in the EU; however, national parliaments and citizens (the targets of social policies) are mostly sidelined and not engaged. There are multiple maestros calling the tune, often with competing agendas. We should not underestimate the Commission as a hydra that fights on many fronts. The OMC is a tool for coordination that has resulted in significant changes in the EU.

Julie Simmons, University of Guelph, presented on the role of citizens in developing and implementing Canada’s social policy ‘soft law’. She noted that executive federalism in Canada makes many policy areas completely opaque, raising questions of transparency as well as accountability. There has been some improvement in transparency with the Council of the Federation website and the health care accord, but this varies from one sector to another. The power politics of IGR tend to trump the impulse of including citizens in the IGR process. IGR in Canada is mostly done on an ad-hoc basis; however, there have been instances of improved inclusion of citizens and advocacy organizations (e.g. expert panels on finances, Martin bilateral agreements on health). Harper’s current era of ‘open federalism’, with its more classical interpretation of the constitution, does not mesh well with an expanded role for citizens and advocacy groups in IGR. She noted public reporting as a form of increased transparency, but identified the difficulty for citizens in reviewing public reports. There is also a lack of commitment by provincial governments to report on what they committed to. Looking to the EU and the use of the OMC, she acknowledged that this is a centralizing trajectory promoting convergence through the Commission/Council, even though there is variability in member compliance. In contrast, Canada is on a decentralizing trajectory, with no bodies in place to identify best practices and recommendations for action. Like the EU, there is variability in compliance with reporting. Canada’s ‘soft law’ is ‘softer’ than in the EU. As to whether Canada should make its soft law firmer like in the EU, Simmons suggests this can only be done at the interprovincial level, without the involvement of the Government of Canada.

Carey Doberstein, University of Toronto noted that in Canada, there are many OMC-type processes already in place — homelessness governance in both Vancouver and Toronto is an example. With no explicit constitutional role, in 1999 the federal government entered the policy domain, and through bottom up engagement with the community have provided a place for local actors to come together and develop approaches to solve the problems in their communities.
There are no national targets, everything is determined at the local level — cooperation is facilitated through the funding provided by the federal government. However, the federal government writes the policy and accountability rules and informs those operating at the local level; this does not however, include indicators and data that would allow for comparisons between different sites. There are many similarities to the OMC, including voluntary action, local flexibility, coordination, and civil society involvement. There are also differences: the goal is not national coordination and there are no national targets; deliberative activity comes from the bottom, not the top; and financial incentives provide the main lubricant. Given the flexibility afforded by the federal program, Vancouver uses a model in which decision-making authority moved outwards and downwards and civil society outnumbers municipal officials. By contrast, Toronto has used a model where the City of Toronto remains as the final decision-maker and civil society only has a consultative role. There are strengths and weaknesses with each approach from a governance and accountability perspective. Further application of OMC principles could improve governance and policy effectiveness in this domain, including (i) direct comparison of cities’ approaches using comparable performance measures, (ii) institutionalizing information sharing among homelessness policy leaders across the country, and (iii) incorporating local influence on the direction and structure of the national policy framework.

Rachel LaForest, Queen’s University, Kingston, noted that in Australia wells are built as gathering places for cattle to keep them from wandering away, as opposed to fences. In the 1980s the Government of Canada created ‘wells’ for collective action on social policy, as social citizenship was viewed as an important federal goal. NGO’s gathered around these federal funding opportunities, and as a result umbrella organizations developed at the national level. Provincial organizations (except in Québec) were much weaker. The height of this activity was in the early 2000s, where dialogue and coordination across levels of government and across sectors was fostered through organizations and initiatives such as the Canadian Council on Learning, the Canadian Institute for Health Research, the Voluntary Sector Initiative, the Canadian Council on Social Development, Canadian Policy Research Networks etc. While this built capacity in the NGO sector and brought them into the policy-making process, it also allowed the Government of Canada to control and lead the agenda. Certain forms of institutional structures were legitimated and privileged, leading to interdependence between NGOs and the federal government and a reduction in their advocacy role. These federally developed wells have now dried up; 55% of voluntary groups have lost their federal funding, and 1 out of 4 organizations have disappeared. The voluntary sector is now seen by the federal government primarily as an agent of service delivery. The agenda has narrowed and spaces for engagement have disappeared. Canada’s time for a multilevel governance system focused on participation, openness, accountability, coordinated action and coherence appears to have passed, as the federal government no longer wants to be engaged. The current government is content to let provinces address many issues; as a result there is less impetus for sharing of information. She concludes that if spaces for debate and deliberation disappear, Canada may end up setting boundaries and building/maintaining fences, rather than sharing and collaborating with each other.

Sheila Regehr from the National Council on Welfare in Ottawa provided a practitioner’s perspective on the panel’s deliberations. She highlighted the Council’s recent report The Dollars and Sense of Solving Poverty, and that their conclusions as to future directions bear considerable resemblance to the EU’s OMC. They have concluded that there has been no lasting change in Canada as it relates to poverty rates for non-seniors because of our governance problems — that
is, our collective failure to plan and coordinate and come up with a coherent design framework, and forums for dialogue to inform the policy-making process. In her view social assistance in Canada is a disaster; while the National Child Benefit was a good idea, it was offset by federal reductions in Employment Insurance. Where the EU has a comprehensive poverty strategy, we have a fragmented approach, with individual provinces taking the initiative and the Government of Canada refusing to engage. She noted that Québec has defined processes for non-government organizations to engage in the policy process, pooling funds like in the EU for capacity building that provide organizations with flexibility to do things beyond just service delivery.

The discussion on this panel sought further clarification from Simmons on the key differences in dynamics between the EU and Canada. In her view the OMC focus on policy learning is driven by the member states themselves with support from the Commission, whereas in Canada the federal role is fundamentally contested and provinces will not allow the federal government to tell them what to do. On the other hand, it is very hard in Canada for provinces to take this kind of leadership themselves, although this is happening on the poverty front where a number of provinces have taken the initiative. In this case provinces that have developed poverty strategies have each taken a different spin on the issue, and are using different indicators for success. Many are asking the federal government to engage but to date they have not. Simmons suggests that leadership could be taken by the Council of the Federation (C of F) where sector learning tables could be established that would include ‘conversation spaces’ for governments, stakeholders and citizens to come together with less sanctioning and less accountability. The C of F could play the European Commission role in facilitating the creation of spaces for dialogue and processes to develop good data on outcomes and policy transfers. The discussion also sought clarification on the role of provinces in the federal homelessness strategy; here it was noted that provinces were suspicious of direct federal action and sought a fiscal transfer instead. The federal government argued that homelessness was a national disaster and they were doing something that provinces refused to do. As a result the current program has been renewed until 2014.

6. **Panel F - Managing Shared Governance in Social Inclusion Policy** *Canadian and EU experiences*

Heidi Kiiwetinepinesiik Stark from the University of Victoria chaired this session.

Leslie Seidle, Forum of Federations presented on the results of their project on multilevel governance as it relates to immigrant integration in seven federal systems (Canada, US, Australia, Switzerland, Belgium, Spain and the European Union). He noted immigrant integration as a two way process involving not just selection and naturalization, but also the economic, social and civic integration of newcomers over time. Selection/admission is carried out by the federal government alone (except in Canada and Australia) while naturalization is an exclusive federal responsibility in all (except for Switzerland). Both federal and sub-national governments are often active in social and civic integration, providing settlement services and language training. Often these services are funded by the centre. The education system plays a significant role in the integration of immigrant children. In many countries sub-national governments are becoming increasingly involved, especially in multilingual countries (Canada, Spain, Belgium, Switzerland). In Canada the arrangements are asymmetrical with three provinces delivering settlement services (Québec, Manitoba and British Columbia) and the federal government responsible in the rest. Seidle noted that in Canada policy variation may bump up against certain rights of immigrants and new citizens. On the European side the EU
institutions acquired some elements of competence over immigration in the 1990s; however, member states retain most competence. There are EU-wide common basic principles, and a common agenda for integration; however this explicitly excludes harmonization of policies for third country migrants. There is a handbook for policy-makers and practitioners, national contact points, a EU website, a European Integration Forum, and EU funding, all managed through an OMC-type process. A 2010 conference initiated the development of core indicators of integration in politically sensitive areas: employment, education and social inclusion. He wonders whether the EU approach has the potential to forge agreement on a common policy thrust in Canada.

Keith Banting, Queen’s University, Kingston, presented on the transatlantic divergence which seems to be emerging between Canada and the EU with respect to multiculturalism. Europe before the 1980s was relatively homogenous, but is becoming increasingly more diverse. Fearing the development of separate societies, there has been a recent retrenchment, with some European leaders stating that multiculturalism has ‘failed’. The forms of civic integration and a newcomer’s duty to integrate vary from one member state to another, creating a deep tension between integration and multiculturalism (for example Denmark never embraced multiculturalism). In contrast, because there is a high degree of support for immigration in Canada there is a persistent support for multiculturalism, although the consensus is uneasy. Ours is a liberal model of integration where we want immigrants to integrate and don’t want separate/parallel societies like the space we have created for Québec and First Nations. Although it seems like Canada and the EU are moving apart, in reality we are converging. The Multiculturalism Policy Index (MLP) provides this evidence in Europe over time, looking at eight factors. At the policy level multiculturalism is getting stronger; it is at the level of discourse where the ‘m’ word is now being avoided. Banting also noted significant divergence of support for multiculturalism across different levels of government in both Canada and the EU (EU, national, sub-national, municipal), and the emerging significance of municipal multiculturalism. For example, the federal level in Canada takes a pan-Canadian approach, whereas the Québec approach is philosophically different. While there may be different strategies and approaches at different levels, most policies are driven at the national level. He concludes that images of divergence obscure real patterns, that there is transatlantic convergence and divergence.

Joanne Heritz, McMaster University, focused her presentation on comparing the inclusion of indigenous groups in social policy-making — in Canada urban aboriginal peoples in Ontario, and in the EU travellers in Ireland. Both groups are indigenous to their countries, have been nomadic in the past, rely on oral traditions, and are subject to considerable discrimination. Both lag on an array of social-economic indicators when compared to the general population. In Canada, even though the federal government focuses most of its efforts on Aboriginal persons on-reserve, it also provides for off-reserve Aboriginal people through the Office of the Federal Interlocutor for Métis and non-Status Indians (OFI). Although most services for off-reserve aboriginals are provided by provincial governments, the OFI facilitates the Urban Aboriginal Strategy (UAS), which coordinates the aboriginal community via voluntary organizations. In the EU the Council of Europe has a High Level Group on Traveller Issues; however it has not been successful in resolving discrimination issues. In Canada the organizations involved with the UAS have proportionately more Aboriginal people on staff than the participation of travellers in Ireland. Program funding to facilitate coordination in Canada has not declined, whereas in the EU it has. In both cases it is a mixture of governance levels.
Bonita Beatty, University of Saskatchewan, presented on the steps undertaken in Northern Saskatchewan for First Nations people on reserve to take on responsibility for health, education and child welfare programs from the federal government. The federal government is constitutionally responsible for Aboriginal people on reserve; however the policy areas noted are provincial jurisdiction. The focus of her presentation was a case study of a shared governance model in health services. In this case there was a tripartite agreement between two federal government departments: Indian and Northern Affairs and Health Canada and the Peter Ballantyne Cree Nation (PBCN) Health Services Inc governed by a community board. The idea was to separate politics from implementation. She looked at the themes of power and authority; relationships; accountability, and political culture. While they have had 16 years of successful governance, there have also been some gaps and challenges. Of key importance is to not have ‘one-size-fits-all’ governance; citizen participation is important; and First Nations values need to be incorporated. For good governance you have to properly assess needs, do longer-term strategic planning, and provide ongoing training and support.

Terrance Hunsley, Canadian Council on Social Development (CCSD), noted his involvement with the Canadian welfare state over a period of many years, both as a civil servant and as an advocate. The voluntary-not-for-profit sector in Canada delivers a wide array of programs to support the Canadian welfare state, and though fragmented in operation, is connected by shared values. It has been examined through various federal initiatives, including the Broadbent Commission in 1999 and the Voluntary Sector Initiative in 2000-2004, while the Social Union Framework Agreement was being put in place (without Québec participation) to guide the evolution of social policy. The Voluntary Sector Initiative acknowledged that the sector is in a good position to identify problems, and requires funding for its core functions, one of which is advocacy — a key value of the sector. But in 2004 the federal government started to re-trench and follow-up to these initiatives at the federal level was curtailed. Some provinces and municipalities have stepped up, but from many fronts there is just silence. He also noted that governments are increasingly spending on health matters, leaving less money for other social welfare issues. The sector is concerned about increasing demand, particularly in light of cutbacks and worry over the renewal of the federal-provincial funding arrangements. As a result of these issues the CCSD is exploring a National Commission to look at the human services sector in Canada, with the aim of responding to current problems, advising governments on funding and operational issues, establishing a placed-base collaborative planning model, and a national research base for the helping services. The Commission will be funded by and supported by the sector, and work is in the exploratory phase. In his view while the EU’s OMC looks like a good formula that Canada could learn from, it is not likely to develop given the confines of present federal-provincial relations.

Discussion on this panel focused primarily on the immigration and multiculturalism presentations and the different contexts that Canada and the EU find themselves in.

7. Panel G: The Courts as Arbiters of Multilevel Governance

Martha O’Brien, University of Victoria chaired this final panel.

Dimitry Kochenov, University of Groningen, Netherlands presented on the principle of proportionality. This is deeply rooted in both Canadian and EU legal systems and enables the courts to exercise control over political systems by asking for sound reasons and balancing
interests at stake. Courts also add legitimacy to a constitutional system, as polities get stronger if the courts ensure that the law makes sense. Yet questions arise when proportionality is applied in the areas of safeguarding core rights and combating social exclusion, where some abstract “good” is prone to outweigh vital individual interests in residence, financial support etc. Drawing on a number of examples, Kochenov suggests that the principle of proportionality should not always be viewed as the principle of dealing with conflicting interests, as the logic of relativism can have harmful effect for the essence of core rights.

Emmett Macfarlane, University of Victoria, examined the Supreme Court of Canada’s decision regarding the jurisdictional dispute concerning InSite (a supervised drug injection site in the city of Vancouver). The facility was initially established as part of a comprehensive multilevel governance agreement, but when the Conservatives came to power in 2006 they decided that they no longer wished to continue to provide the necessary exemption to the federal Controlled Drugs and Substances Act. The BC government wanted it to continue, arguing the need to focus on harm reduction and their jurisdiction over health matters. The federal government argued that they could close it down given their jurisdiction over criminal law. This dispute, where there was significant interlocking of federal and provincial schemes, clarified how the respective governments in Canada exercise their powers, although in fairly narrow terms. The jurisdiction of both orders of government was upheld, confirming that both can act within their jurisdiction. The case was ultimately decided under the Charter of Rights and Freedoms, with the court ruling that closing down the facility would have a negative and grossly disproportionate impact on the safety of its clients. The case demonstrates that an appeal to rights can trump federal-provincial jurisdiction. The decision was in favour of the government (that is British Columbia) that protected the rights of the disadvantaged. This demonstrates that rights may increasingly have ramifications for multilevel governance and the resolution of intergovernmental disputes.

Erika Arban, University of Ottawa, compared the use of the concept of ‘subsidiarity’ between Canada and the EU. In general terms, it means that action should be taken, whenever possible, at the lowest level of government, favouring local control except where broader interests predominate. It one of the most important principles used in the EU; her purpose was to investigate whether, and to what extent, the Supreme Court of Canada dealt with the issue, and the differences, if any, in usage with the EU. The concept dates back to Aristotelian political thought and the social teaching of the Catholic Church; it was given a name and transformed from a social to a political and legal principle in the context of German constitutionalism. Introduced in EU law in 1993 with the Treaty of Maastricht, a key purpose was to defend member state sovereignty against incursions by the European bureaucracy. In Canada the word has never been used in the debates on the allocation of powers; however Hogg argues that the idea has been influential in the development of Canadian federalism, especially since in the early years the Privy Council favoured provincial jurisdiction. She ran a keyword search on the term with respect to the Supreme Court of Canada and turned up four relevant cases (vs. 313 in EU and none in the United States. She concludes that Canada seems to be more concerned with subsidiarity than the US, suggesting that, for the first time beyond EU borders, subsidiarity is being invoked by supreme courts in federal/multilevel governance states to support the division of powers.

Hester Lessard, University of Victoria, presented on constitutional jurisdiction and the women’s movement in Canada. She noted that answering the question of who has authority to govern and
over what matters has tremendous implications for policy-making. She explored this by examining issues related to women’s reproductive citizenship, specifically access to abortion. When Canadian courts are faced with jurisdictional disputes between the federal and provincial governments in Canada, sometimes they invoke the principles of federalism — the reconciliation of unity with diversity — as well as democracy. An element that they are concerned with is the political marginality of the group or community in question, and a key question in that respect is whether women can be considered as ‘outsiders’. Certainly many issues with respect to women’s reproductive citizenship have been relegated to provincial jurisdiction over ‘local and private matters’. On the other hand, the regulation of abortion under the federal criminal law power has led to an emphasis on its moral character. Given that most provinces have put barriers in place to restrict access, the women’s movement has stressed the criminal law character of abortion regulation, and to characterize provincially generated obstacles as unconstitutional intrusions into the federal criminal law field. This is the opposite of the strategy pursued in the Insite example. Decisions being made in complex multilevel systems are now taking into account the interplay between concepts such as jurisdiction, democracy, rights and citizenship.

Jeremy Webber, University of Victoria, led the discussion following the panel, and noted that it fundamentally dealt with which jurisdiction exercises power, the inherent advantage of each level over having jurisdiction in certain areas, and how one determines the relevant jurisdictional level. In Canada we start with a list of powers, with the federal government paramount, although competing federal-provincial approaches often get dealt with in the political realm. He noted Richard Simeon’s piece *Criteria for Choice in Federal Systems* (8 Queen's L.J. 131, 1982-1983 27 pages, 131 to 157) as being particularly relevant in this regard. The federal level is focused on knitting together the constituent units into a single country, and this often comes up against province building. Québec scholars by definition have a problem with the Supreme Court of Canada due to its pan-Canadian dimension. Hueglin noted that the subsidiarity issue in the EU was first mentioned in the 1571 Dutch Reform Church; it is not able to allocate powers but is a procedural process for doing this — guiding executive federalism in terms of procedures.

**NEXT STEPS**

In her concluding remarks Verdun noted that there is an intention to publish out of the conference, given our agreement with one of our partners, the Institute of Public Administration of Canada (IPAC). This could be in an edited volume in the University of Toronto press, through a special edition of *Canadian Public Administration*, or both. A special journal edition would allow us to target a specific audience — that is civil servants, academics and NGOs interested in public administration in Canada — who are not necessarily scholars of federalism or multilevel governance. At the conference 32 papers were presented, and clearly not all could be included in any of the publishing options. We will also be limited by the funds we can raise. She asked presenters who did not want to be included in the publication project to let her or Donna Wood know. In the meantime, all the papers presented at the conference would be made available on the conference website, unless people specifically asked to opt out.

Of the 12 conferences she had organized in the past, she had been quite uncertain of the outcome of this one, especially given the practitioner direct involvement. In her view what we learned is that it is not easy to compare Canada and the EU, that there is no cookie cutter model, but that
the conference has opened up the discussion. Hopefully the publication that emerges will broaden the conversation to include those who were not able to physically join us in Victoria.