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*Comparing Canada, the European Union,  
and NAFTA: Comparative Capers  
and Constitutional Conundrums*

-Steven B. Wolinetz



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## The Jean Monnet/Robert Schuman Paper Series

The Jean Monnet/Robert Schuman Paper Series is produced by the Jean Monnet Chair of the University of Miami, in cooperation with the Miami European Union Center.

These monographic papers address issues relevant to the ongoing European Convention which will conclude in the Spring of 2003. The purpose of this Convention is to submit proposals for a new framework and process of restructuring the European Union. While the European Union has been successful in many areas of integration for over fifty years, the European Union must take more modern challenges and concerns into consideration in an effort to continue to meet its objectives at home and abroad. The main issues of this Convention are Europe's role in the international community, the concerns of the European citizens, and the impending enlargement process. In order for efficiency and progress to prevail, the institutions and decision-making processes must be revamped without jeopardizing the founding principles of this organization. During the Convention proceedings, the Jean Monnet/Robert Schuman Papers will attempt to provide not only concrete information on current Convention issues but also analyze various aspects of and actors involved in this unprecedented event.

The following is a list of tentative topics for this series:

1. The challenges of the Convention: the ability to govern a supranational Europe or the return to intergovernmental cooperation?
2. How will the member states figure in the framework of the Convention?
3. The necessity to maintain a community method in a wider Europe.
4. Is it possible for the member states to jeopardize the results of the Convention?
5. The member states against Europe: the pressures on and warnings to the Convention by the European capitals.
6. Is it possible that the Convention will be a failure? The effects on European integration.
7. Similarities and differences between the European Convention and the Philadelphia Convention of 1787.
8. The role of a politically and economically integrated Europe in the governance of the world.
9. How important is European integration to the United States today?
10. The failure of a necessary partnership? Do the United States and the European Union necessarily have to understand each other? Under what conditions?
11. Is it possible to conceive a strategic partnership between the United States, the European Union and Russia?
12. Russia: a member of the European Union? Who would be interested in this association?

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**Comparing Canada, the European Union, and NAFTA:  
Comparative Capers and Constitutional Conundrums**

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## **COMPARING CANADA, THE EUROPEAN UNION, AND NAFTA: COMPARATIVE CPAERS AND CONSTITUTIONAL CONUNDRUMS**

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### **Introduction**

This is an exercise in comparative analysis. The paper examines Canada, the European Union, and the North American Free Trade Agreement (NAFTA). Its underlying premise - that political systems are best seen in comparative context - is an article of faith for students of comparative politics. Students of the European Union who began with the study of one or more of its member-states will have little problem with this, while those who started from International Relations and European integration studies will have greater doubts. Pooling the sovereignties of fifteen or more member-states, the European Union is in some respects *sui generis*. Although to be sure, it can be considered a multilevel system of governance, in some respects different from the federations with which it is often compared, the European Union is different enough to make any serious student of comparative politics pause. The EU, like many federal systems has complex decision-making procedures and impinges on the decision-making and sovereignty of its member-states, and appears as a single actor in international trade negotiations, but in other respects, it is very different: unlike many settled federations, the EU unites no well-defined people, and its inability to act as a single actor in foreign affairs or defense was documented well before current splits on Iraq and the Middle East.

Difference has never stopped thoughtful students of comparative politics. The old adage that you can't compare apples and oranges is easily met by noting that both are fruits. The EU may lack many features of federations but it is a complex multilevel system that may bear closer resemblance to lesser studied entities such as leagues and confederations. Examining the EU in comparative context is worthwhile not only because it gives us a clearer sense of what the EU is and is not, and how it has changed over time, but also because such regional systems like the EU are likely to become more common in an interdependent world.<sup>1</sup> This paper is unorthodox: it compares the EU to another large trading bloc, the North American Free Trade Area (NAFTA) and to one of its components, Canada. Comparing the EU and NAFTA is straightforward and obvious enough. The two regional systems take in almost all of the world's largest economies but are sufficiently different in their governance and politics that comparison in most areas can do little more than highlight difference.

Comparing Canada and the EU is another matter. To some, the comparison may sound absurd, and appear to compare fruit and vegetables rather than apples and oranges. Nevertheless, Canada is a federation and a state, with membership in international organizations. However, it is not a pattern state from which models and theories have been extracted and does not figure prominently in the comparative literature. Like the EU, Canada can be considered unique and *sui generis*. It is difficult to find another country held together by two single-track railways, two broadcasting networks, (until recently) two airlines, and one very long border. That said, Canada's center-periphery tensions, constitutional disputes, and disintegrative tendencies make it a case about which students of comparative politics should know more. The

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<sup>1</sup> Simon Hix, "The Study of the European Community: The Challenge to Comparative Politics," *West European Politics* 17(1) 1-30.

utility of this comparison will become more obvious if we consider not only current politics, but also the construction of the Canadian confederation (the official term), which was in some respects a battle, if not against nature, against geography and the pull of easier north-south relationships.

We will begin by comparing the EU and NAFTA, highlighting differences and similarities, and then develop the more complex, but in many ways more tantalizing, Canada-EU comparison, and show why it is particularly relevant at a time, when the European Union's constitution, like Canada's, is in discussion.

### **The European Union and NAFTA: *Vive le Difference?***

Comparing the EU and NAFTA is an obvious exercise in a world in which nation-states are supposed to be obsolete. Both are large regional systems bringing together sovereign nation-states. As such, they might be considered the wave of the future. Whether that is true or not remains to be seen. What is more than apparent is how different the two are. The EU was one of several transnational or international structures established during or after World War II. Despite the aspirations of Monnet or Schuman, the most important reason for the establishment of the European Coal and Steel Community (ECSC) was to find a means of marrying France and Germany and removing barriers to economic reconstruction. Creation of the European Economic Community (EEC) and EURATOM, following the European Defense Community debacle, reflected a saw-off between its two most important member-states, France and Germany. Established at a time when recovery was complete and much of Europe was approaching full employment, the EEC rapidly succeeded in establishing both a free trade area and customs union in the 1960s. Although aspirations to move beyond intergovernmentalism and introduce qualified majority voting in the Council of Ministers were thwarted by French President Charles de Gaulle, the EU launched the Common Agricultural Policy (CAP), and began developing its competition policy in the 1960s.

After General de Gaulle resigned in 1969, the way was open for British membership and the first enlargements, which included not only the UK but also Denmark and Ireland. In the 1970s, the European Communities (later the European Community, EC) established the Common Fisheries Policy (CFP), used ECSC instruments to tackle over-capacity in the steel industry and built a fabric of competition law to supplement its agricultural support policies. Direct election to the European Parliament was also agreed upon and implemented. At the same time, the European Court of Justice built up a body of case law that constitutionalized the treaties and established the supremacy of European over national law. In the 1980s, the EU moved forward again, implementing qualified voting in the Council of Ministers, proceeding with the Single Market, and agreeing to contemplate both monetary and closer political union. Well before NAFTA was contemplated or established, the EU was becoming an increasingly complex multilevel system in which decision-making competence in several policy areas had been transferred from national capitals to Brussels.

NAFTA's story is different. Spared the misfortune of large scale wars, North Americans had no need to marry historic enemies to secure peace. Instead, NAFTA's origins reflect the separate needs of Canada and Mexico to deal with a larger, wealthier, and far more powerful

neighbor, the United States, and in particular, to counter protectionist tendencies and ensure continued access to its markets. For Canada, seeking a free trade agreement with the United States reflected the culmination of an historic debate between economic nationalists, who hoped to enhance and protect domestic industries, and continentalists, who believed that economic salvation required closer relationships with their neighbor to the south. Historically, Liberals had been more inclined toward continentalism and the Progressive Conservatives more inclined toward economic nationalism. By the 1980s, the positions had reversed: Progressive Conservatives (The Government from 1984) and the Macdonald Royal Commission (Royal Commission on the Economic Union and Development Prospects for Canada, 1985) advocated free trade, while New Democrats and some Liberals opposed them. The 1988 election was fought on the issue. Progressive Conservatives under Brian Mulroney won a second majority and negotiated the Canada-US Free Trade Agreement, which was broadened in 1993 to include Mexico.

NAFTA's provisions are well known. The treaty opened up trade in goods not governed by other treaties, such as automobiles, which are regulated by the Auto Pact. In contrast to the EU's founding treaty, neither the Canada-U.S. agreement nor NAFTA hinted at anything other than a free trade area. Although there are voices in Canada who believe that Canada should adopt the U.S. dollar and think that Canada will eventually join the United States, the North American Free Trade Agreement contains no aspirations for a customs or monetary union, let alone closer political union. Instead, NAFTA has been what it was advertised to be: a free trade agreement with limited provision for the movement of people - albeit one with important consequences for the ability of federal and provincial governments to implement regulatory policies which might reflect a free flow of goods.<sup>2</sup>

We need not concern ourselves with a detailed history of either the Canada-U.S. Free Trade Agreement or the North American Free Trade Agreement that superceded it. More important is to recognize what NAFTA is and is not and how it differs from the EU. Table 1 compares the EU and NAFTA. A quick glance at the chart should convince anyone that differences between these two regional systems more than outweigh superficial similarities. The EU is a complex and, at the moment, troubled multilevel system of governance. Member-states pool their sovereignties in an increasingly wide range of policy areas and participate in complex, and in some respects, cumbersome intergovernmental and transnational structures of governance. There are larger and smaller member-states. However, even though some have played more pre-eminent roles than others, no one member-state is in a position to dominate others. Decisions are made in different ways. The normal or official legislative process is from the Commission to Council of Ministers and European Parliament. However, the European Council has assumed an increasingly important role in cutting through the most important deadlocks. Less visible intergovernmental structures, such as COREPER and Permanent Representations, underpin the Council of Ministers and play an important role in building consensus among member-states' day-to-day decision-making. Also important are the European Court of Justice and the fabric of European law which member-state courts apply in their adjudication.<sup>3</sup>

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<sup>2</sup> Khosrow Fatemi and Dominick Salvatore (eds.), *The North American Free Trade Agreement* (Tarrytown, NY: Elsevier Science Inc., 1994).

<sup>3</sup> Donald Barry, Mark O. Dickerson and James D. Gaisford (eds.), *Toward a North American Community? Canada, the United States, and Mexico* (Boulder: Westview Press, 1995).

The North American Free Trade Agreement is different. NAFTA brings together Canada, the United States, and Mexico. All three are federations, but they are not equal in status or influence. The United States is superior to Canada and Mexico in population, the size and importance of its economy, and international status. NAFTA provides both Canada and Mexico with something that some policy-makers in each country thought vital: better, though hardly perfect, access to lucrative American markets. Its governance structures are barely visible: Three councils, an intergovernmental Free Trade Commission (FTC), a Council for Environmental Cooperation (CEC), and a Commission for Labor Cooperation (CLC), bring together cabinet-level officials from time to time to deal with disputes and implement NAFTA provisions. These are staffed by small secretariats, and can decide by two-thirds vote. It is also possible to convene trade tribunals in the event of disputes.<sup>4</sup> Even these appear to be sidelined when aggrieved interests in the United States - e.g. softwood lumber interests - can press the United States Trade Representative and the Commerce Department to impose countervailing duties outside of NAFTA and WTO trade relationships. That said, NAFTA limits the ability of local, provincial or state, and federal governments in each country to regulate economic activity. This occurs not through direct prescriptions or prohibitions, but because plaintiffs - typically business firms - in each country can ask courts in other countries to strike down regulations which may be deemed to interfere with trade or limit commercial activity. The extent to which this will inhibit health or environmental regulation remains to be seen.<sup>5</sup>

Comparisons between the EU and NAFTA are better undertaken within a larger universe of regional blocs or systems. The most obvious to be included is MERCOSUR. Doing so is beyond the scope of this paper. We turn now to our less likely, but in some ways more useful, comparison between Canada and the European Union.

### **Canada and the European Union**

Comparing Canada and the European Union makes sense because both are contested multilevel systems of governance, which have or are likely to experience strong center-periphery or autonomist tendencies. Like most other nation states and political systems, both are constructs, and both are works in progress and subject to change. This is not difficult to understand with respect to the European Union. Barely fifty years old, the EU has grown from a policy-specific system with six member-states and competence in only one policy area, coal and steel, to a broader economic political union with fifteen (and before long twenty five and perhaps twenty seven member states). Despite neo-functionalist logic, the EU has moved, not in a smooth progression, with spillover from one policy area to another, but rather in a bumpier progression, in which we can distinguish periods of rapid progress toward 'ever closer union' from periods in which such progress appears at best tenuous. The European project moved into high gear in the late 1980s and early 1990s but has slowed down since then.

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<sup>4</sup> Joseph A. McKinney, *Created from NAFTA: The Structure, Function and Significance of the Treaty's Related Institutions* (Armonk, NY: M.E. Sharp, 2000).

<sup>5</sup> Barry, Dickerson and Gaisford, *Toward a North American Community?*; William C. Graham, "NAFTA vis à vis the EU: Similarities and Differences and their Effects on Member Countries," *Canada-US Law Journal*, vol. 23, 1997.

The EU's present situation is difficult to discern. European integration is at a threshold from which it could either advance or regress. Earlier projects, including monetary union and 'somewhat' closer political union have been partially (though hardly fully) realized. In 2004 the EU will take in ten new member-states. EU decision-making structures, strained with fifteen member-states, will have to accommodate twenty five. Anticipating the problem, the fall 2001 Laeken European Council established the European Constitutional Convention. Chaired by former French President Valery Giscard d'Estaing, the Convention is to propose a single constitution to replace the treaties. However, it is not certain whether, or how rapidly, it will or can succeed.

Lurking behind all this is a profound sense of unease: Europe has been an elite project, built a few steps a time. Only a few of the member-states have put the question of EU membership or ever closer union to their citizens for approval. Anti-European sentiments are stronger in some member-states than in others, but in the late 1990s and the first years of this decade, those sentiments have been mobilized by new right parties (and occasionally smaller left parties) who themselves oppose established parties and governing elites. Replacing the treaties, constitutionalized by the European Court of Justice, with a single, more transparent document is supposed to be a solution for this.

### The Canadian Case

What about Canada? To understand the Canadian story we need to go back and consider the ways in which Canada came together. Canada was assembled from British territories that did not join the thirteen American colonies in their rebellion against British rule. These initially included not only Nova Scotia and New Brunswick, in Atlantic Canada, but also Upper and Lower Canada - the present-day provinces of Ontario and Quebec. Quebec had originally been French territory but was lost to Britain in 1763. Though defeated and conquered - a fact that *Quebecois* still regret<sup>6</sup> - the territory was allowed to retain its language and religion. At the time there were few whites west of Quebec; fearing American expansion northward as well as westward, the British encouraged settlement in Upper Canada (Ontario).

Colonial governments were dominated by wealthier upper classes. Rebellions in the 1830s induced the British to establish a more broadly based regime in Upper and Lower Canada. In 1840, both were brought together in the United Province of Canada. This was a power-sharing regime in which new measures had to be approved by concurrent majorities from Canada East and Canada West. This proved to be short-lived. By the 1860s, there were pressures to unite all British North America. Requiring concurrent majorities produced frequent deadlocks. Political forces in Upper Canada were becoming restive. Incipient industrialization was underway and the population was growing, producing pressure for representation according to numbers (impossible under the equal representation clauses of the 1841 Act of Union). The Colonial Office in London wanted to unite the maritime provinces. Fears that the post Civil War United States might want to expand northward provided further impetus for a different form of government. In 1864, the future fathers of Canadian confederation came together in Charlottetown, Prince Edward Island, to discuss the construction of a stronger federation to

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<sup>6</sup>This is evident in a variety of ways: Quebec license plates no longer advertise '*le belle province*' but remind driver '*je me souviens*'.

govern all of British North America. Confederation took place when the British House of Commons passed the British North America Act in 1867. Initially, only Ontario, Quebec, New Brunswick, and Nova Scotia joined, but the promise of a rail link persuaded British Columbia to enter in 1871. Prince Edward Island followed in 1873, but Newfoundland remained independent until 1949. In between Ontario and British Columbia were territories, which became the provinces of Manitoba, Saskatchewan, and Alberta.<sup>7</sup>

The Canadian Constitution (through 1982, the British North America Act, 1867) adapted British institutions to a vast territory. Provinces were constitutionally entrenched and shared in sovereignty. However, the initial design was quite centralized. Residual powers belonged to the federal government, and federal governments could disallow acts of provincial legislatures. Rarely used, this power has fallen into desuetude. Over time, court decisions and practices have de-concentrated powers and made confederation far more decentralized. This was no more apparent than in the 1960s and the 1970s, the period in which both federal and provincial governments were building the Canadian welfare state. Activist federal governments became involved in education, health, and social welfare - key areas of provincial jurisdiction. Some provinces, and particularly Quebec, objected. All responded by building up their own provincial state apparatus. Initially, differences could be paved over by expanding budgets. Once these began to contract, conflicts were inevitable.<sup>8</sup>

From the start, Canadian governments had to cope with strong disintegrative tendencies. Dissatisfied with its terms of union, Nova Scotia did not enter the confederation until 1869, and tried to secede in 1886. The western, and to a lesser degree the eastern, provinces invariably felt shortchanged by state-building policies which they felt favored central Canada (Ontario and Quebec). Conservatives in the 19<sup>th</sup> century and Liberals in the 20<sup>th</sup> century promoted a national policy. These included protective tariffs for fledgling industries and freight rates which made it more advantageous to ship finished goods west from Ontario and wheat east to Ontario. These translated into a deep-seated sense of alienation and surge of support for parties of agrarian protest in the 1920s and 1930s, and again later in the 20<sup>th</sup> century.<sup>9</sup> At the centre were Quebec and Ontario. However, Francophone *Quebecois* harbored deep grievances against English-speaking commercial elites in Montreal, then the financial centre of Canada. Within Quebec, the Roman Catholic Church maintained strong social control. Nevertheless, issues such as opposition to conscription in both world wars divided Quebec from the rest of Canada. North-south relations were also a source of continual strain. Because north-south shipping and travel was invariably easier than east-west movements, there were regular flows of people back and forth across the border. Actual boundaries were settled early on, but relations with the United States, particularly whether to resort to protective tariffs or seek free trade, could be divisive.

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<sup>7</sup> *The Canadian Encyclopedia* (Edmonton, Alberta: Hurtig Publishers, 1988).

<sup>8</sup> R. Kenneth Carty and Steven B. Wolinetz, "Disconnected Competition in Canada," Paper prepared for the Conference on *Multi-level Electoral Competition* (University of Birmingham: Institute for German Studies, September 22-23, 2001). R. Kenneth Carty and Steven B. Wolinetz, "Political Parties and the Canadian Federation," Paper prepared for the Conference on *The State of the Federation* (Kingston, Ontario: Institute of Intergovernmental Relations, November, 2001).

<sup>9</sup> R.K. Carty, W. Cross and L. Young, *Rebuilding Canadian Party Politics* (Vancouver: UBC Press, 2000). Carty and Wolinetz, "Disconnected Competition in Canada." Carty and Wolinetz, "Political Parties and the Canadian Federation."

Canadian politicians sought to balance these pressures by practicing a non-ideological brokerage or aggregate style of politics. Initially, Canada had a two party system. In the 19<sup>th</sup> and early 20<sup>th</sup> centuries, first the Conservatives, under Sir John A. MacDonald, and then the Liberals, under Sir Wilfred Laurier, pursued a National Policy, offering something for everyone, while building the industrial heartland - Ontario and Quebec. Initially, Canada's cleavages were contained within a two party system, but this proved difficult after World War I. Agrarian discontent in the west fed protest movements and third parties, providing a basis for a multi-tiered multiparty system. Many but not all provinces continue to have two party systems, but from the 1920s and 1930s more than two parties were represented in the House of Commons. At present there are five parties but only the Federal Liberals can even pretend to be a nationally based party. More disconcerting, and different from most other federal and multilevel systems, parties competing at the provincial level are often not the same or even organizationally connected to parties operating in federal politics. In instances in which the parties happen to bear the same names, it is not unusual to find relatively harmonious relations between federal and provincial governments from different political families and acrimonious relations among parties of the same stripe or family.<sup>10</sup>

Party competition is only one of several arenas in which Canadian politicians and governments wrestle with centrifugal tendencies. Parties governing in Ottawa try to represent all provinces and major cities in the federal cabinet. Regional ministers typically serve as intermediaries between provincial governments, whatever their political color, and the federal government.<sup>11</sup> When available, patronage and federal largesse help to smooth over differences.<sup>12</sup>

The party system is not the only setting in which conflicts are dealt with. Intergovernmental relations are equally important. The federal and provincial governments have their own line administrations and have concurrent jurisdiction in most policy area. Moreover, the provinces have to be involved in any process of constitutional change. Constitutional disputes have been a persistent but by no means exclusive source of conflict. Fiscal relationships and their ensuing policy conflicts are a close second. This reflects the build-up and later contraction of the Canadian welfare state. When the Canadian welfare state was being expanded in the 1960s and 1970s, the federal government became an important source of funding in health, education, and social welfare, all of which are areas of provincial jurisdiction. Although federal funds were willingly accepted, some provincial governments (particularly but not exclusively Quebec) opposed Ottawa's attempts to impose uniform standards; for the most part, Quebec was able to insist on its right to design its own programs in areas such as pensions. Later on, budgetary restraints fuelled further conflicts. When the federal governments decided they had to bring their deficit under control, transfers to the provinces were cut, strapping provincial governments that found it difficult to sustain programs over which they felt they had little

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<sup>10</sup> Ibid.

<sup>11</sup> Herman Bakvis, *Regional Ministers: Power and Influence in the Canadian Cabinet* (Toronto: University of Toronto Press, 1991).

<sup>12</sup> Carty and Wolinetz, "Political Parties and the Canadian Federation." Herman Bakvis and Steven B. Wolinetz, "Canada: A Case of Hyper-Presidentialism?" Prepared for the ESF/SCSS Exploratory Workshop, *The Presidentialisation of Politics in Democratic Societies* (Kinston, near Lewes, United Kingdom: April 12-14, 2002).

control. As a result, relations between federal and provincial governments are often overtly acrimonious.<sup>13</sup>

Though never formalized, there are regular contacts among federal and provincial ministers and their civil servants. Federal and provincial governments come together in federal-provincial conferences bringing together either ‘first’ ministers (Prime Ministers and provincial premiers) or the federal and provincial ministers active in policy areas such as finance, health, education, and social welfare. In addition, provincial premiers sometimes meet without their federal counterparts. Federal-provincial conferences can be important arenas in which positions are stated, thrashed out and sometimes reconciled.<sup>14</sup> The former was more typical when the Canadian economy and government budgets were expanding in the 1960s and 1970s, the later more typical, when both levels of governments were balancing budgets in the 1990s. Aside from constitutional issues and center-periphery and linguistic strains, financing the Canadian welfare state is a continuous object of contention.

As noted earlier, educational, health, and social programs were financed by federal governments operating in what were previously areas of provincial jurisdiction. Typically federal moneys were available as long as provincial programs met national standards. Reducing deficits and bringing federal finances into balance has meant that the federal government finances a smaller proportion of each envelope. This has made it far more difficult for federal governments to insist that provinces, more and more inclined to go their own way, adhere to such standards. One consequence is that despite a regular underbelly of cooperation, federal and provincial relations have become more and more acrimonious. Provincial governments argue that the federal government is not paying its fair share. For its part, the government in Ottawa has been increasingly reluctant to provide transfers without strings or to fund programs for which the provinces take credit.<sup>15</sup>

Thus far, our discussion has emphasized center-periphery tensions and the regularity of conflict between the federal government and its provincial (and territorial) counterparts. Missing and deliberately omitted are conflicts around language, constitutional change, and the position of a modernized Quebec in Canadian confederation. These are important, but also better known. Language has been a continuing problem. Reflecting the quiet revolution in Quebec, Liberal governments under Pierre Eliot Trudeau promoted bilingualism, much to the annoyance of anglophones in provinces without large concentrations of francophones. Reflecting the same Quiet Revolution and the subsequent transformation of Quebec society, governments of the Province of Quebec have not only promoted French as the dominant language in Quebec, but also have insisted on both the distinctiveness of Quebec society and the right of a majority of the Quebec people to separate from the rest of Canada.

Insistence that Quebec is distinct and that it should be able to assert that distinctiveness in either a special relationship in Canadian confederation or a separate country has dogged federal provincial relations and made it difficult to resolve either constitutional or day-to-day issues

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<sup>13</sup> Carty and Wolinetz, “Disconnected Competition in Canada.” Carty and Wolinetz, “Political Parties and the Canadian Federation.”

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

dividing the federal and provincial governments. During the Trudeau era, federal and provincial governments tried unsuccessfully to agree on the status of Quebec and an amending formula which could be included in a 'repatriated' constitution. The 1982 Canada Constitution Act revised the Canadian Constitution by adding a Charter of Rights and an amending formula, requiring that amendments be accepted by seven of the ten provinces with 50% of the population and approved in a national referendum. However, this was done with the consent of only nine provinces and the unrelenting opposition of Quebec. The Quebec government opposed the repatriated constitution because it neither recognized Quebec as a distinct society nor gave the province a veto over constitutional change. Progressive Conservative governments under Brian Mulroney tried to resolve the problem through a renewed constitutional settlement, the Meech Lake Accord. This granted Quebec and the other nine provinces a veto over constitutional change and recognized Quebec as a distinct society. Initially accepted by all ten provinces, the Meech Lake Accord failed when two provinces, Newfoundland and Manitoba failed to ratify it within the specified three year period.<sup>16</sup>

The 1991 failure of the Meech Lake package led to a flurry of constitutional activity. Meech failed, it was argued, because it had been negotiated by elites (in this case, the federal and provincial premiers closeted in a Gatineau villa) without broader involvement or success. A series of citizens forums were held, resulting in a new package, the 1992 Charlottetown Accord, negotiated by federal and provincial governments. However, this was rejected not only in Quebec but also in a national referendum. The failure of both the Meech Lake and the Charlottetown Accords contributed in part to the subsequent defeat of the Progressive Conservatives in 1993. Since then, the Liberals under Jean Chretien have preferred to keep constitutional change and the cans of worms which it entailed off the political agenda. Benign neglect gave way to a more aggressive posture after 1995, when separatists nearly won majority in a Quebec referendum on sovereignty came close to winning a popular majority. Believing that no successful resolution was possible, the Chretien government refused to reopen the constitutional file. It did however adopt a harder line, the so-called 'Plan B.' This entailed recruiting a more aggressive Quebec Minister of Intergovernmental Affairs (a political scientist, Stephan Dion), seeking a reference from the Canadian Supreme Court on what would be required for Quebec to separate, and more generally putting separatists on notice that the Government of Canada would not necessarily lay down and acquiesce to Quebec's separation. The Supreme Court ruled that should a majority of Quebec voters vote for separation on a clear question that the Government of Canada would be obliged to negotiate with it. These actions put constitutional issues on the back burner. In power in Ottawa, the Chretien Liberals have seen no purpose to engaging the discussion. *Parti Quebecois* governments would happily call for a referendum if they thought that they could win it, but no government has felt that 'winning conditions' existed.

At this point, it is useful to conclude our discussion of Canada and return to Canada-EU comparisons. We have sketched a portrait of Canada, known to some extent to people outside the country. The Canada we have sketched is a country with strong centrifugal tendencies. Differences among provinces and between west and east are considerable. These include not

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<sup>16</sup>Ironically, the Meech Lake Accord could have been approved under the amending formula in the 1982 Canada Constitution Act, but reflecting its unanimity requirement, the Meech Lake Accord required unanimous consent.

only physical but also psychological distances. Although it could be argued that the country (more specifically, its English speaking part - the 'rest of Canada') is held together to some extent by its public broadcaster, the CBC (English language listeners and viewers hear or see the same public affairs programs), there are also profound differences, exacerbated as immigration changes both Ontario and British Columbia. True to their Westminster origins, party systems are adversarial, but given the current fragmentation of the opposition parties at the federal level, opposition from provincial and territorial governments to the federal government is at least as important as the criticisms of New Democrats, Progressive Conservatives, the *Bloc Quebecois*, and the Canadian Alliance.

### Canada-EU Comparisons

Our sketch of Canada is necessarily incomplete, but sufficient to raise questions about the utility of Canada-EU comparisons. These can be treated in several ways. There were obvious parallels between "Meech Lake syndrome" and the "democratic deficit" from which the EU was said to suffer following the Maastricht Treaty. We could also extract cautionary tales about the futility of constitutional discussions without sufficient consensus. But neither, in and of itself, will tell us about the utility of systematic comparative analysis. That is the job of this section and the conclusion which follows.

Can Canada and the EU be compared? Obviously, yes. In principle, anything can be compared, but some comparisons are more useful and more telling than others. As we suggested earlier, both Canada and the EU are multilevel systems of governance, and both, in comparison to federations such as the United States, are poorly and weakly integrated. Canadians do not readily disobey their national government - the laws of the government of Canada, including criminal and family law, are followed inside and outside the province of Quebec - but the national government and its institutions do not enjoy the same deep legitimacy or affection that most Americans accord their national government and constitution. Nor does the European Union or its institutions in Brussels, Strasbourg or Luxembourg enjoy strong affection and legitimacy from European citizens. The ways in which central or higher level governments deal with these problems - working with them or around them - is an area which could be studied. The most obvious efforts - putting big signs saying Canada on the sides of federal buildings, distributing plastic flags, financing Canada Day celebrations across the country on Canada Day (July 1), or their European equivalents - subsidized school trips to Brussels - may seem like better grist for satire - but it would be interesting to know what long term effects can be attributed to EU financed exchange programs, such as Erasmus and Socrates. Equally, it would be interesting to know what effects divisive issues - e.g., relations with third countries, controversial military actions promoted by third countries, conflict in the former Yugoslavia - have on underlying identities. The same question, of course, can be asked about enlargement.

The question of identity and the ability of citizens to hold multiple identities and affections, is only one of several areas that might be studied. Equally important is the whole fabric of intergovernmental relations in federations and multilevel systems of governance. Whether we are looking at Canada and the EU, or perhaps including European federations such as Germany, Austria, or Switzerland, we need to know more about the underbelly of informal relationships which underpin formal relationships. Canada is unusual among federal and

multilevel systems in that there is no arena, aside from the Canadian Senate, in which provinces are formally represented at the federal or higher level. Ostensibly, the appointed Senate represents the provinces. However, Senators are appointed by the Governor General in Council (in effect, the Prime Minister) and serve until they reach the age of seventy-five, making this at best a passive channel. The informal channels described earlier - ongoing contacts among civil servants, federal-provincial conferences - are more important even when they are inactive. More to the point, though, few formal (or center-stage) processes of intergovernmental relations succeed without substantial underpinning. Something has to go before, smoothing and paving the way. In the European Union, the most important and least visible channels are from member-state governments to Permanent Representations in Brussels, and via COREPER and equivalent channels, the Council of Ministers. Even if the Canadian channels are not formalized, they exist, and could be compared fruitfully with EU processes and intergovernmental structures in other federal or multilevel systems. How such structures operate depends to some degree on the structures, and the extent to which they facilitate compromise and mutual understanding, but the impact of context could also be studied. Federal-provincial relations were smoother in Canada (though by no means smooth) when federal and provincial budgets and activities were expanding. Coping with contraction is another matter.

Other areas that might be studied include policy in any number of sectors, and the whole question of constitutional change. It is an open question whether the EU's Constitutional Convention will produce a document on which existing and candidate member-states can agree. John Fitzmaurice has argued that it will succeed because it has to B i.e., the costs of failure would be too great.<sup>17</sup> Fitzmaurice may well be correct, but the obstacles at the moment are formidable: disagreement on war in Iraq, annoyance, depending on the corner it is coming from, at the French and Germans or the British because of positions which they have taken; very real disagreements on the shape which an enlarged EU will take. It is possible that Giscard will succeed, and produce a package that member-states can not only accept, but which will give greater legitimacy and clarity to the European project. But it is also possible that the constitutional convention will fail, disagreeing not only on contentious issues of governance and competencies, but also on issues which would not have been raised - e.g., whether God should be recognized in the new constitution - had there been no convention. Should this turn out to be the case, and Europe finds itself suffering from a '*maladie canadienne*,' then European leaders may regret opening this file. Whatever the case, both the process of constitution-making and the process of seeking approval, if a constitution is indeed made, call for comparative analysis. And this is valid whether the result bears closer resemblance to a successful caper or a nagging conundrum

## Conclusion

Let us conclude our discussion. The aim of this paper was to demonstrate - perhaps to the convinced - the utility of Canada-EU comparisons. That case has been made and there is little utility to concluding it with an extended list of possible comparisons. The agenda I have suggested is sufficient to keep students of Canadian and EU politics, and more generally students

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<sup>17</sup> John Fitzmaurice, "The European Convention," Paper presented to the Memorial university European Studies Programme, Brussels, 2002.

of multilevel systems of governance, busy for some time to come. What is not needed is further lists, but rather critical imagination.

Table 1. Comparing the EU and NAFTA

	<b>European Union (EU)</b>	<b>North American Free Trade Area (NAFTA)</b>
Type of system	Free Trade Area Customs union Incomplete monetary union Partial governance structure: Pools sovereignty in certain areas	Free trade area
Membership	Most European states	Canada, Mexico, United States
Governance structures	Complex, combines transnational and intergovernmental structures	Intergovernmental
Internal power relationships	Balance among larger and smaller member-states: leading role for certain larger states but no clear hegemon	United States
Legal basis	Treaties, constitutionalized by European Court of Justice (EJC); new constitution being drafted	Treaty
Scope of policy	Initially economic (tariffs, trade, competition, agriculture, fisheries). Broadened to include some health and safety, social policy, monetary policy, foreign and security policy, justice and home affairs, citizenship	Tariffs and trade with potential impact on competition, environment, and labor
Principal type of policy	Regulatory	Regulatory
Instruments	Regulations, directives, some benchmarking	Courts Adjudication by trade tribunals
Aspirations	Ever closer union	Free trade