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The Politics of Boundary Control in Multi-Level Systems: Europe and Canada Compared

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B.C.'s Premier Christy Clark vividly demonstrated the persistent power of boundaries within the Canadian federation when she and her delegation brought twelve bottles of Okanagan Valley wine to the 2013 summer meeting of the Council of the Federation in Niagara-on-the-Lake. In bringing a case of B.C. wine to Ontario – operating in a legal grey zone – Clark showcased that, while consumers in Ontario can choose from a broad selection of wines from Ontario, France, Italy, or even Austria, provincial trade barriers make it rather difficult for them to purchase wine from B.C.

Boundaries matter in politics. They both limit and enable the exercise of political authority. Boundaries delimit a site of authority that confines the territorial reach of political decisions. At the same time, control over the permeability of boundaries – i.e., their degree of openness or closure for different types of exits and entries – is an important prerequisite for effective governmental action. In the broadest sense, boundary control affects the state's capability to govern the economy, to extract tax revenue, or to forge and maintain a sense of sociocultural and political community.

In multi-level systems, external boundaries coexist with internal boundaries. Internal boundaries demarcate spheres of authority between and among the centre and sublevel units. While processes of economic, cultural, or political integration reduce the effect of internal boundaries, rendering them more permeable through gradual boundary-opening, they remain in place unless sublevel entities agree to amalgamate into one fully integrated political unit. For *Länder* (in Germany), provinces (in Canada), or member states (in the European Union), boundary control is an important mechanism to protect regional policy preferences. Contrariwise, boundary control limits the centre's capability to penetrate policies of lower-level units.

The politics of boundary control in multi-level systems surfaces in two ways. First, boundary control allows sublevel units to develop strategies that *directly* shield them from encroachments from the centre or other territorial units (Rokkan and Urwin 1983; Ferrera 2005; Gibson 2012). Such strategies seek to preserve or enhance local autonomy through self-rule. Second, boundary control can also have a more *indirect, anticipatory* effect. Boundary control gives sublevel units leverage to demand concessions from the centre. Most notably, they can agree to refrain from using their boundary-protected authority, or even concede to a partial opening of boundaries, in exchange for stronger participation rights at the central level. Such strategies seek to suspend or reduce local autonomy, but strengthen, at the same time, shared-rule.

The European Union and Canada are both multi-level systems. While they have some similarities, both systems also differ in important ways. Most notably, as Amy Verdun and Donna Wood remind us in a number of contributions (e.g., 2011; 2013), both multi-level systems have evolved on diverging historical trajectories. Canada has developed from a highly centralized federal state into one of the most decentralized federations worldwide. The European Union, in contrast, started as a sectoral and rather confederal arrangement that became more federal in nature over time. European integration, in other words, is a centre-formation process (Bartolini 2005). Since it came into existence through the Treaties of Paris and Rome, the main direction of authority migration in Europe was upwards, from the member states to the supranational level. On the other hand, in Canada, authority has migrated downwards, from Ottawa to the provinces (Broschek 2015).

The politics of boundary control contributed to these divergent dynamics. In Canada, provinces continuously increased their capabilities for boundary control. Especially in the decades following Confederation, and often with the support of the Judicial Committee of the Privy Council, they established effective firewalls protecting them from federal intrusion. The vigor of federal tools such as the powers of reservation or disallowance, just as the spending power during the second half of the twentieth century, faded as provincial governments successfully deployed the politics of boundary control. In contrast, in the European Union (and, in a similar way, in German federalism), sublevel units' capacity to control internal boundaries decreased over time. Explicit treaty provisions, alongside the residual power for the Community to legislate in

all areas of the common market not specified in the treaties themselves, furnished both the EU Commission and the European Court of Justice (ECJ) with the authority to compel member states to relinquish their control over the permeability of internal boundaries. In other areas, such as the free movement of persons, member states voluntarily agreed to suspend boundary control outside the EU framework. It did not take long, however, until the Schengen *acquis* found its way into European Union law as well.[3]

The prevalence of either mode of boundary control in Canada and Europe has also affected the system of intergovernmental relations, a second crucial difference indicated in the work of Verdun and Wood. As the member states in the European Union ceded control over their boundaries, it was all the more important for them to retain the authority to influence decision-making at the centre through shared-rule mechanisms. Given the provinces' focus on protecting and expanding strategies of direct boundary control and self-rule, such intergovernmental mechanisms have remained comparatively weak and highly volatile in Canada.

More recently, however, we can observe a number of efforts in both systems to partially reverse these broad historical patterns. In Europe, major achievements of the Schengen *acquis* are currently put at risk. Germany, France, Denmark, Sweden, and Austria were the first to temporarily re-impose border controls as a response to the unprecedented influx of refugees and the Paris terrorist attacks. Schengen might be "here to stay," as Commission President Juncker put it in his December Speech at the European Parliament, but in what form remains to be seen (European Commission 2015). Perhaps even more fundamentally, in addition to the two traditional structural cleavages between the Northern and Southern member states, as well as the United Kingdom and the "ROE" (Rest of Europe), a new long-term conflict between Western and Eastern European member states has become manifest. Regaining control over different types of exits and entries has become a new imperative for a growing number of Eastern European governments. And the so-called emergency brake on migrants' access to benefits that was offered as part of Europe's deal for Britain to stay in the EU is only one example of how the UK was yet again able to re-establish boundary control where other member states had ceded it.

In contrast, Canada appears to have embarked on the opposite pathway. Initial efforts to re-establish collaboration in the aftermath of the turbulent early to mid-1990s had little impact. The Social Union Framework Agreement (SUFA) was deliberately ignored and achievements such as the Kelowna Accord and Paul Martin's Multilateral Framework on Early Learning and Childcare were abandoned by the Conservatives after 2006. However, even in the absence of high-profile meetings between Canada's federal and provincial premiers in the era of "open federalism," some developments indicate a

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[3] In the case of the Open Method of Co-ordination (OMC), the member states' remaining capabilities of boundary control in areas such as employment, social policy, or education were left untouched. The OMC therefore deviates from more coercive mechanisms prevalent in the internal market.

remarkable shift in the politics of boundary control. They are most evident in, but not exclusively limited to, the area of external and internal trade.[4] The scope and depth of the new generation of preferential trade agreements such as CETA has provided provinces with considerable leverage to give up direct boundary control capacities in exchange for partaking in shared rule at the international level. The New West Partnership Trade Agreement (NWPTA) or the comprehensive plan to renew the Agreement on Internal Trade, announced during the 2014 Annual Premiers' Conference (Council of the Federation 2014), point to a similar trend in the field of internal trade.

The new federal government's ambitious reform agenda will very likely hit a number of roadblocks that are a consequence of the politics of boundary control in Canada's past. One obvious example is Prime Minister Trudeau's envisaged pan-Canadian framework for climate change policy. It will be difficult, but not impossible, to accommodate the interests of provinces that have introduced a carbon tax (like BC) with those that have entered into a cap-and-trade regime (like Ontario and Quebec). However, if the more recent shift in the politics of boundary control gains momentum, some careful optimism might be warranted.

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[4] See Schertzer 2015 for immigration policy.

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