

Summary – Presentation “Northern America”

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In his presentation, Karl Kössler focused on the resolution of vertical conflicts by both political and judicial means, comparing the US to Canada.

Vertical conflicts between national and subnational levels arise on a regular basis in federal systems. However, they are not doomed to have negative impacts, if managed well: “Differences between governments are normal and intergovernmental conflict can be constructive when it exposes competing ideas.” (Lazar, 2003) Federalism itself and especially the division of powers between national and subnational levels is one approach to reduce conflicts between the two levels.

Another way of preventing vertical conflicts is the use of federal predominance, by which subnational units are coerced into behaving in a certain way. The US and Canada have each followed a different path with regards to this question in the 1970s, with the US tending towards coercive federalism (making use of regulatory and financial tools of coercion, e.g. conditional grants) whereas Canada equipped its newly built provinces with exclusive powers, shielding them from federal intervention.

However, if those mechanisms fail and conflicts arise, they can be resolved either politically or judicially.

Political conflict resolution in both countries takes place beyond the senate, but because its design heavily depends on the governmental system, it happens in congress for the US whereas in Canada political conflict resolution takes place in smaller, inter-executive meetings (e.g. First Minister's Meetings, Conouncil of Federation). Whilst both countries share a lack of formalization and transparency and suffer from partisan polarization, conflict resolution in congress further is heavily influenced by lobbyists.

Judicial conflict resolution of federal conflicts between national and subnational units however is more than just a jurisdictional conflict and allows for a judicial review when a statute of the province clashes with fundamental federal rights. Unlike in the US, advisory opinions on other constitutional matters are possible in Canada.

Neither of the countries give preference to either mode of conflict resolution: it is a matter of strategy and switches from judicial to political conflict resolution and vice versa are possible. Judicial initiative sometimes pushes matters back on the political arena and in Canada, conflicts often times are frozen by the use of self restraint and amibguous restraint, thereby giving shape to what is happening in the political arena.

In conclusion, judicial and political conflict resolution must be balanced in order to effectively deal with the conflicts that in recent times have been reinforced and growing in frequency through the effects of parties and polarization. Judicial conflict resolution in particular must, through its complimentary function, ensure that the constitution stays respected.