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The Charter proves to be Canada's gift to world

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The Charter of Rights and Freedoms was signed 30 years ago Tuesday. Since then, not only has it become a national bedrock, but the Charter has replaced the American Bill of Rights as the constitutional document most emulated by other nations.

“Could it be that Canada has surpassed or even supplanted the United States as a leading global exporter of constitutional law? The data suggest that the answer may be yes.” So conclude two U.S. law professors whose analysis of the declining influence of the American constitution on other nations will be published in New York University Law Review in June.



[Video: Kirk Makin on the Charter - It's met Trudeau's lofty goal](#)



As the first Commonwealth nation to adopt a bill of rights, Canada has influenced other former British colonies as they create or revise their own constitutions, the study finds. Israel, Hong Kong and Eastern European countries have also drawn from the Canadian example.

Both the Charter itself and the nation that gave birth to it serve as an example to the world. “Some countries may be especially prone to borrow from the Canadian Charter of Rights and Freedoms because they perceive themselves as sharing the same goals and values as Canadian society,” write David S. Law, who is professor of law at Washington University in St. Louis, and Mila Versteeg, who teaches law at University of Virginia.

In contrast, professors Law and Versteeg conclude that the American constitution, once the foundational document for new nations in search of a government, has fallen out of favour. It fails to protect rights, such as freedom from discrimination based on race or sex, that are considered fundamental in our time; it enshrines rights, such as the right to bear arms, that other nations don't value; its courts increasingly interpret the American document so perversely – by claiming that it must only be applied as the founding fathers originally intended – as to render it useless as a tool for tackling modern problems.

The Charter of Rights and Freedoms not only prohibits discrimination based on race or gender, it protects mobility and language rights and enshrines the presumption of innocence. It balances the rights of legislatures and courts through the “notwithstanding” clause, which gives the federal and provincial parliaments limited powers to override court decisions.

Beyond the Charter itself, the Canadian Supreme Court is considered an exemplar in balancing constitutional and legislative powers, a role the American Supreme Court lost entirely after Republicans and Democrats turned it into an ideological battleground.

“The Charter is widely admired, and so are the decisions of the Canadian court,” observes Peter Hogg, one of Canada’s foremost constitutional authorities. “And one reason is that Canada is not the United States.”

The U.S. study, which offers a meticulous comparison of how constitutions around the world reflect and influence each other, leads the authors to conclude that “other common-law countries are looking either directly or indirectly at the Charter,” as they draft and amend their own constitutions, Prof. Law explained in an interview Sunday.

“Overall, the evolution of global constitutionalism has tilted more toward the mild-mannered country to the north than its superpower neighbour to the south,” the report concludes.

Jean Chrétien was a founding father of the Charter. He, as federal justice minister, Roy Romanow, then attorney-general of Saskatchewan and Roy McMurtry, then attorney-general of Ontario, crafted the “Kitchen Accord” that Pierre Trudeau, who was determined to get a bill of rights, and the premiers, who were determined to protect their own powers, could all live with. Only Quebec refused to sign the document, though a recent poll showed Quebecers overwhelmingly endorse the Charter.

Mr. Chrétien is saddened by the Harper government’s decision not to mark in any meaningful way the 30th anniversary of the signing of the Charter, which may be altogether too Liberal an achievement for the Conservatives’ taste.

“I would celebrate it; they don’t,” Mr. Chrétien said Sunday on Global TV’s The West Block.

Conservative premiers played a major role in the crafting of the Charter, especially Bill Davis of Ontario. As Mr. Chrétien observed, without him there might never have been a deal.

The Charter doesn’t belong to the Liberals or to Conservatives. It belongs to all Canadians. And, increasingly, to the world.

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