

# THE REAL CONSTITUTIONAL QUESTION: CANADA'S 21<sup>ST</sup>-CENTURY NATIONAL POLICY



Roderick Macdonald and Robert Wolfe

Does Canada have a national policy for the 21st century? The authors note that Canada's first national policy was first articulated by Sir John A. Macdonald, not in the *BNA Act*, but in his 1879 election campaign. They suggest four characteristic features of Canada's national policies: the economy, communications, society, and the public policy process itself. In their view, a second national policy, NP2, followed in the half-century from 1930-80, and that NP3 has been unfolding since then. Key elements of NP3 include Pierre Trudeau's Charter of Rights, and North American free trade under Brian Mulroney. Roderick Macdonald and Robert Wolfe "juxtapose legal text and policy practice in order to illuminate Canada's key constitutional challenges."

Le Canada dispose-t-il d'une politique nationale pour le XXI<sup>e</sup> siècle ? Notre première Politique nationale a été élaborée par sir John A. Macdonald, notent les auteurs, non pas dans la *Loi constitutionnelle de 1867* mais pendant la campagne électorale de 1879. Ils soutiennent qu'une deuxième Politique nationale s'est appliquée pendant le demi-siècle compris entre 1930 et 1980, et qu'une troisième l'a ensuite remplacée, prenant la forme d'une charte des droits, celle de Pierre Elliott Trudeau, et d'un accord de libre-échange, grâce à Brian Mulroney. Roderick Macdonald et Robert Wolfe juxtaposent textes légaux et pratiques politiques pour mettre en évidence les grands défis constitutionnels du pays. Ils proposent quatre domaines d'application d'une nouvelle politique : l'économie, les communications, la société et le processus même des politiques publiques.

Over the past half-century constitutionalism has become the watchword of politics in many Western liberal democracies. However beneficial this preoccupation, it is, nonetheless, not cost free. Citizens and politicians can quickly lose sight of the fact that constitutions are metaphors, not instructions for assembling bicycles. When constitutional texts are reified, the collective purposes that these texts reflect lose purchase on the popular imagination and debate shifts to which wing nut should be tightened first, and not why the bicycle has, or needs, wheels. In the Canadian context, the most powerful alternative metaphor for collective purpose is what scholars in the political economy tradition have labelled a "national policy." In this paper we juxtapose legal text and policy practice in order to illuminate Canada's key contemporary constitutional challenges.

What characterizes the political tradition of a state is not formal institutional arrangements. The 19<sup>th</sup>-century Canadian constitutional project may well have been crystallized with the *BNA Act* of 1867, but the *idea* of Canada as a transcontinental

polity was better articulated and better linked to its political-economy foundations in Sir John A. Macdonald's 1879 election platform, the National Policy. That platform, which simply put a label on a project then already more than three decades old, included both the objectives of the Canadian state-building project and the means by which they could be achieved.

Historically, political discourse in Canada has been dominated by questions about the place of Quebec, by debate about the distribution of legislative powers between provinces and the Parliament of Canada, and by the challenges of fiscal federalism. Many believe the solution to these perennial questions of "national unity" can be found in formal constitutional texts. This focus gives priority to the ends desired by leaders, and to their scrambling when things somehow turn out differently. We focus instead on the policy choices Canadians have made and the social or economic forces that motivated those choices. The story we tell is citizen- and society-centric, not political-actor-centric; it is about Macdonald, Laurier, King, Diefenbaker,

Pearson, Trudeau and Mulroney (and a score of provincial premiers dating back to Mowat and Mercier) as followers, not leaders.

Hence the importance of the question, Does Canada have a 21<sup>st</sup> century national policy? And, more to the point, do *Canadians* have a vision of what they wish to do together that shapes their understanding of the goals and tools of governance? Some of the signs are

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discouraging. Citizens tell pollsters they think that government does not work anymore. Many observers lament an apparent drift away from conventional politics evident in the attitudes of young people and in their declining turnout at elections. A number of Canadians feel neither a strong sense of attachment to nor identity with established collective institutions — whether political, socio-cultural or economic.

The signal challenge today is how to build a sense of social obligation, social solidarity, social inclusiveness, and concern for fellow citizens, while continuing to respect different attitudes toward religion, culture and the legitimacy of a secular state. The Canadian state project is defined by public policy, not by founding myths, flags, national anthems, constitutional artifacts and other symbols — however important these may have become in expressing public policy. It is defined by the things Canadians have chosen, are choosing, and will in the future choose to do together. These choices constitute a national policy.

Our goal in this article is to investigate the idea of a national policy as both a collective endeavour and a framework for detailed policy analysis. We believe that the idea of a national policy is more constitutive of the

Canadian state and its policy instruments than any of its renamed *Constitution Acts*. In the first section we essay a genealogy of Canada's national policies. We project this descriptive genealogy forward in the second and third sections, analyzing what we take to be the principles and components of Canada's contemporary national policy, the third. We argue that this third national policy is an emerging fact, even if the substantive policy

commitments it entails are not predetermined, but are open for political decision. Debating those possibilities will shape the country more profoundly than any attempts to perfect the language and interpretation of one or the other of the country's *Constitution Acts*.

Since Confederation, Canada has seen not one but three national policies. These policies have posed a perennial dilemma: do states exist to pursue public policies, or does the purposive action of citizens lead to the creation of states? If just the former, our attention would be focused on institutional questions: Who, or what, constitutes the state? And what territory and jurisdiction does it claim? If just the latter, our attention would be focused on people and their projects.

It can be argued equally plausibly *either* that Canada's first national policy (NP1) — of imposing high tariffs, encouraging immigration to the prairies and building transportation infrastructure — was simply a project of the late-19<sup>th</sup>-century Canadian federal government, *or* that the reconfigured and reinvented Canadian state flowing from the *BNA Act* in 1867 was the fruit of an arrangement between the Montreal anglophone commercial bourgeoisie and the francophone leadership of the Roman Catholic Church, aided and abetted by the Colonial

Office in London. A self-conscious state-building policy may be articulated first by economic elites and political opportunists, but it works only when it is appropriated by citizens and instantiated in all policy domains large and small. Whether polity drives policy or policy drives polity, by 1930 the transcontinental polity and its associated instruments were complete.

A similar ambiguity of means and ends attends the story of Canada's second national policy (NP2) — of strong state spending on social welfare and the institutions of cultural and economic nationalism. NP2 was a clear example of the move to the welfare state throughout the Atlantic area in the response initially to the Depression of the 1930s, when states assumed responsibility for the economic welfare of their citizens. NP2 put the power of the state, and of state-recognized institutions — unions, socio-cultural groups, charities, professional associations, etc. — at the service of individual welfare, an enterprise that was broadly realized only in the 1960s, and was largely complete by the 1970s.

**W**e argue that Canada is now in the course of elaborating a third national policy (NP3). Like its predecessors, NP3 can be seen both as a project of the state and as a project of Canadians. Constitutional rights, multiculturalism and free trade are all policy prescriptions self-consciously adopted by political elites and meant to empower citizens as individuals. Yet these major constitutional and quasi-constitutional developments may also be characterized as consequences of citizen demands; they are the political project of an increasingly diverse, mobile, urban citizenry, less anchored to the land, frequently changing jobs and domestic partners and building virtual networks promoting more anonymous single interests rather than face-to-face, multi-faceted affective communities.

The common domestic elements of Canada's three national policies are

economic policy (monetary and fiscal policy, including taxes and subsidies), communications (including transportation infrastructure) and social policy (including migration from within the country as well as from abroad). In table 1 we attempt to schematize these common elements, using a periodization that builds on the work of earlier scholars. Our claim is not only that Canada's national policy has been instantiated through three interrelated policy components, but also that these three dimensions have gone through three iterations with three different emphases over the past 250 years. Of course, several caveats must immediately be entered. First, the particularities of these national policies do not have to be federal; both the Parliament of Canada and provincial legislatures are implicated in their pursuit. Second, the list of programs in each cell is not comprehensive; we focus on policies that serve to bind the country together, leaving aside other policies that fit the paradigm but that do not serve such a purpose. Third, in our right-hand column we identify the main governing instruments through which these policies were effected during the corresponding policy era; again, while many

other instruments were deployed at each period, we highlight only those that we believe were dominant at the relevant moment. Finally, in setting out key features of NP3, we seek to describe what seem to be the shared assumptions that reflect how

action among the social, economic, technological and ideational factors that are the basis of current policy. Changes in patterns of trade, or in the sources of migrants, or in telecommunications, will change the basis of a given NP, since it is shaped by these instru-

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Canadians understand and respond to the social and economic world they now inhabit; these highlighted features are not, that is, the reflection of a normative claim we make about the merits of any political agenda being pursued within the policy framework of NP3.

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mental possibilities as much as it is characterized by the manner in which relations between citizens and the state are conceived under its paradigmatic policy tools.

NP1 aimed at creating a transcontinental national economy by using the tariff to preserve markets for Canadian manufacturers, largely in Ontario and Quebec, populating the prairies with central and eastern European peasants and providing the transportation infrastructure to get raw materials to processors and to foreign markets. NP2 built its social programs on the same assumption that wealth could be redistributed, primarily using intergovernmental transfers and national income policies.

TABLE 1. CANADA'S NATIONAL POLICIES: SOME CHARACTERISTIC FEATURES

	Economy	Communications	Society	Policy process
<b>NP1</b> 1840-1930 subject	High tariffs; subsidies for agricultural research (wheat)	Subsidies for railways; canals; telegraph; telephone; post office	Encourage immigration; rural land settlement; discourage internal migration; sustain religions and charities	Public ownership; franchises; fault-based liability rules
<b>NP2</b> 1930-1980 object	Trade liberalization; central bank; income tax; federal equalization; subsidize oil patch	CBC; MAPL rules; magazine postal subsidies; Trans-Canada Airlines; highways; roads to reso- urces; St. Lawrence Seaway	Welfare state; unionization; urbanization; closing outports; bilingualism; multiculturalism	Regulatory bodies; group-based programs; subsidies and grants; risk-based liability rules
<b>NP3</b> 1980-? agent	Consumption and carbon taxes; end of four pillars; NAFTA; deficit reduction through downloading	Internet; tolled highways; bike paths; deregulate long-distance; competition in forms of media	Money follows the citizen; self-directed RRSPs; support for ex-urbs; identity politics	Rights claims; tax expenditures; user pay; PPPs; deregulation; privatization

Source: New Brunswick Schools Study.

In NP3, the primary market is North American, and global supply chains have lessened the importance of how much Canadians trade with each other.

The technology of communications sustains any particular national policy. In NP1 it was physical transportation by water and then rail. In NP2 these networks were complemented by broadcast networks for radio and television (one-to-many networks), improvement of the highway network to subsidize truck transport, and physical travel by air. In NP3, all these modes still matter, but less so than in the past. CBC and Radio-Canada are still instruments of national policy, but they are no longer the only networks that facilitate interaction between Canadians. When everyone blogs, or spends time on Facebook, MySpace and YouTube, everyone is a producer and distributor of information as well as a consumer, which has significant implications for the character of human interaction.

Society, too, has changed. Migration, the traditional social register for a national policy, is a mix of both an individual's decision to move on and the opportunities in a new place. In the 19<sup>th</sup> century, migration driven by famine, pogroms and rural depopulation in Europe was used to take control of the country's vast extent. The social and economic disruption of the Second World War drove the mid-20th-century movement from Europe. In NP2 migration was used to mine Canada's newly discovered resources (especially in the North and Alberta) and man its factories (especially in Ontario and Quebec). In the 21<sup>st</sup> century, a growing and well-educated middle class in developing countries seeks new opportunities in Canada.

These changes have institutional implications. To the long-standing challenge of creating and maintaining an east-west state in opposition to a north-south natural geography is now added the challenge of mapping political institutions meant to impose an east-west fis-

cal transfer system onto a north-south economy. To the longstanding challenge of filling up empty spaces in the West and North, Canada now adds the challenge of building a country where population nodes are fewer, and intervening populations are becoming sparse.

Over the past 150 years there have been significant changes in the instruments of government deployed to advance these three national policies. Because policy tools will also embed a policy objective, the challenge is not to lament the passing of the old instruments, but to think of what new tools will serve new objec-

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tives. The beginning of the move away from NP1 came with the move from tariffs to personal income tax as the source of revenue; now tariffs are almost gone and consumption taxes are thought to be the best way to raise revenue, which affects the ways in which tax measures can be used for policy purposes. A physical post office in every hamlet was both a means to implement the "universal service" norm for the delivery of paper mail and a symbol of the local relevance of the distant federal state. But if the physical links between the largest cities are no more relevant than the links between those cities and the

other great cities of the world, but infinitely more relevant than links with contiguous rural communities, policies based on physical infrastructure may no longer have much utility.

Our story is not the usual narrative of Canadian constitutional evolution. We therefore pause briefly to situate our claim within traditional constitutional discourse. While the expression "national policy" first saw light as a particular political platform in 1879, the central themes of both NP1 and NP2 were reproduced in the policies of successive federal governments — both Conservative and Liberal, in complementary policies of provincial governments of all stripes and in the quotidian actions of Canadians. It is no different with the emerging NP3. Government programs in Canada are not just what the state offers to citizens to gain electoral favour; they are in a real sense what Canadians understand themselves to be. In this sense, programs are constitutive of the state. Legal scholars, however, are inclined to see things differently: for them the state is constituted by its constitution, not the policies it pursues. The legal claim appears especially salient in federal states, where different orders of government compete for authority. Still, it bears close scrutiny.

The key components of NP1 shaped the distribution of legislative powers to the Parliament of Canada by the *BNA Act* of 1867. Any action not needed for building a transcontinental state and economy was left to the provinces — a relatively easy constitutional compromise between the commercial ambitions of anglophone capital and the social ambitions of the francophone Catholic Church. The story of NP2, however, was one of continual conflict between provincial and federal governments because the NP1 allocation of legislative authority was ill-adapted to a changed view of state-building. The 1867 compromise did not imagine that the state (whether federal or provincial) would enter onto the social terrain then

occupied by religious and charitable institutions. When, in response to the economic crisis of the 1930s, Canadians felt the need to create the institutions of the welfare state, most provinces had neither the tax base nor the governance capacity to manage these institutions. But federal instruments were limited by how the “watertight compartments” doctrine of constitutional competence came to be understood. Successive feder-

(NP1) and the bureaucratic institutions of the welfare state (NP2) in the service of the dreams and aspirations of every Canadian. No politician, no poet, no pundit has yet provided an enduring label for this new national policy for the 21<sup>st</sup> century. Nonetheless, we can see elements of this new NP struggling to emerge in the actions of governments across the political spectrum in all parts of Canada. Our objective here

or time to take advantage of the opportunities on offer. We respond that elites may be misguided when they think they infallibly know what makes choices “bad” and when they presume *ex ante* how much choice citizens are capable of managing.

Admittedly, those who would pursue a neo-liberal agenda frame the resulting tools in the language of “freedom.” Just as the instruments of NP2 did not necessarily command a welfare state (although in Canada — by contrast with the United States — they most certainly did), so too the instruments of NP3 do not necessarily command a minimalist State. In claiming that the already existing programs of NP3 reflect a citizen-focused conception of governance our point is to signal the instruments and institutional forms that such a conception implies, not to support the conscription of those tools in any ideological project.

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al governments sought to avoid these limits by promoting constitutional amendments (as with unemployment insurance in 1940 and Old Age Pensions in 1951), and developing new governance tools such as tax rental agreements (1942), federal-provincial agreements on shared-cost programs (1957), tax expenditures through an increasingly important income tax regime, and by using the federal spending power to provide direct subsidies to citizens, groups and corporations.

Many policy analysts loved NP2 and mourn the passing of an era when the state and its agencies engaged in the highly visible top-down (social democratic) task of improving the welfare of citizens. Can we discern the possibility of a third national policy that could sustain a 21<sup>st</sup>-century welfare state? Just as the advent of NP2 did not signal the abandonment of programs and policies of NP1, in NP3 new instruments will be layered upon surviving programs and instruments of both NP1 and NP2. In the next section, before engaging in normative analysis of this type, we advance a set of descriptive claims about the emerging elements of NP3.

Over the last 25 years, we have argued, a third national policy has begun to emerge, a collective project that puts the transcontinental economy

is largely analytical, although we do suggest how these emerging principles can be consistent with political virtue. The first governance question is not about economic efficiency but about the relations between citizens, and the second is about their relations with the state. What kind of policy instruments and what types of institutions do Canadians want in a citizen-centred national policy?

On the evidence to date, NP3 is characterized by policies that aim: (1) to facilitate agency; (2) to privilege real choice about identity; (3) to mediate multiple, fluid identities and to broaden lateral interest-based affiliations rather than reinforce totalizing, territorial institutions; and, therefore, (4) to unbundle programs and services managed by centralized bureaucracies (both public and private).

Without abandoning earlier objectives and achievements, indeed by building upon them and maintaining the material basis for individual prosperity, the NP3 objective is to enable citizens to live rich lives of their own choosing. An agency-enhancing policy framework is not without its critics. Some social democrats who agree that allowing people to lead self-directed lives is a fine objective in theory still worry that policies and programs of this type put too many demands on citizens who may not have the capacity, energy

Political theorists have traditionally argued that the Canadian state was an amalgam of diverse political ideologies, at least some of which rested on an organic conception of society in which citizens were conceived as members of identifiable socio-cultural communities. The *BNA Act* explicitly recognized the salience of language and religion. For many Canadians today, however, personal identities and the relationships they imply (geographic, employment, familial, religious, cultural, even linguistic) are typically shorter, instrumentalized and more intense. Non-state social structures are less and less the result of history and inheritance and more and more the consequence of conscious affiliation — identity is less given, more chosen.

We see the role of the state in NP3 therefore as facilitating meaningful choice about identities, and as providing meaningful engagement with the multiple identities Canadians choose for themselves. The pressure is on Parliament and courts to rethink regulatory policies relating to both home

and work: adoption, marriage employment and jobs, religion and life style. Canadians care in different ways about their family, their employer, their city, their province, their country and the world. Today, these sites do not stand in any fixed hierarchical relation to each other. The governance challenge is facilitating the ability of individuals to reconcile these multiple, frequently

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overlapping and sometimes conflicting identity claims. Large, centrally organized programs that require people to adopt a stable, unitary primary identity are ill-suited to 21<sup>st</sup>-century citizenship.

The federalism of NP1 was indisputably physical, represented in the notion of Canada comprising several colonies and seeking to exercise “dominion from sea to sea.” In NP2, the concept of territory underwent a transformation, as federalism became less about place and more about jurisdiction. In this new personal federalism, programs began to mediate citizenship across physical space. Even though certain regulatory domains continued to be organized by reference to the lines of physical territory, the services being delivered were meant to be nationally similar, portable and attached to persons, not bricks and mortar institutions.

In NP3, the idea of territory as geography is further attenuated. Citizens could live in Toronto but receive certain social services from an entity based in their ancestral First Nation on James Bay. Whether it makes sense for them to do so would depend, among other things, on the nature of the service, its relative efficacy and cost, and whether its receipt requires physical displacement. Fewer and fewer services are necessarily tied to geography and identity, and most that are fall within the remit of municipalities, rather than provinces or the federal government.

In a traditional conception, we can know the government agent that “acts,” we can determine the nature of the action, and we can assume a unique action meant to achieve identified purposes. But the assumption of the centralized bureaucratic state is usually misleading, when the unit for policy analysis is not the bureaucratic agency in a hierarchical relationship to other

actors but horizontal collaborative relationships. Instruments can be embodied in public agencies, Crown corporations, private firms, NGOs, banks, courts or expenditures. In this new world, sometimes economic actors will seem like agents of government in implementing a particular policy while at other times economic actors will appear as principals instructing the government to pursue particular policy goals.

In this fluid and uncertain new world, many Canadians worry about the legitimacy and democratic accountability of all political institutions, not just Parliament and legislatures; likewise, governments at all levels are experimenting with new policy instruments, new forms of civic engagement and new processes and channels through which bidirectional communication and understanding may be negotiated and refashioned. The political challenge of NP3 then lies in finding models of participation and accountability that ensure a continuation of the democratic ideal of citizen equality in a fluid, plural, relatively boundaryless universe of policy implementation.

The traditional elements of a national policy in Canada are economic policy, communications, social policy and consciously chosen policy processes. In this section, our focus is on the reciprocal interaction between policy and tools, and on how they may either be constrained by or shape the formal constitution. Our analysis is now more explicitly normative, however, in that we are concerned with the policy choices

Canadians ought to make if they are to give life to the NP3 principles identified in the previous section. Within the overarching constraints of liberal-democratic political ideology, everyday governance should not try to work at cross-purposes to the underlying forces that change national policies.

Recollect the aspirations and instruments of NP1 and NP2. NP1 was characterized by extensive growth (an increase in GNP) through macro-infrastructure supported by macro-policies meant to support that macro-infrastructure: governance focused on objects. NP2 was characterized by the promotion of intensive growth (an increase in GNP per capita) and redistribution: governance focused on subjects. In such models of governance, everybody has to want the same thing, and the same thing has to be delivered equally well to everybody — hence the need for big, bureaucratized, expensive command and control organizations.

The socio-demography of NP3 Canada is not like that of NP1 and NP2. Canadians are better educated, more mobile, less deferential and of demonstrably more diverse ethnic, cultural, linguistic and religious affiliations. The challenge is to achieve appropriate political outcomes through policies and programs that are more demand-driven and responsive to providing particular services where and when people want them. Once again, it bears repeating that while not all tools of government can serve equally well all political ends, to recognize the transformation of policy instruments (and the need to do so) is not to accept that the ends they serve must also be transformed. There is no incompatibility between a substantively egalitarian politics and the policy instruments of NP3.

One goal of NP1 was the creation of a single market from coast to coast. That goal is yet to be fully achieved — to take but one example, Canada still does not have a single (or multiple but fully integrated) securities regulator. The *Competition Act*, passed in 1889, remains

an important NP1 tool. In NP3 it is also important to allow nimble small firms to thrive, and to think about citizens as economic actors. Economic instruments directly aimed at citizens work best for policy purposes when analysts think about how the information in an economic measure shapes outcomes. The choice among instruments is not just about preferring on moral grounds one or the other of criminalization, state ownership, franchises, regulation, taxation and redistributive spending, but about the information each contains. We believe that access to such information, the analytical capacity to do something with it and the economic security to exercise real choice are fundamental

requirements for, and attributes of, modern citizenship. Reducing asymmetries of information may not need large centralized organizations for simple things like providing drinking water. The best means of economic regulation (price of water and entry to the distribution market) may differ from effective social regulation (water safety and quality). Privatization and competition may well be an optimal policy for water provision, since the risks are low and easily monitored. Conversely, regulatory inspectorates may be optimal for environmental testing, since the risks are significant and the technical information is not readily accessible to citizens. Unbundling the components of the water supply system would make it easier for Canadians to acquire and digest information in a usable form.

What then should regulatory, fiscal and monetary policy for NP3 look like? It begins with a move from place-prosperity to people-prosperity, a move from province-to-province equalization leading to duplicate bureaucracies to a “negative income tax” that puts money where it is needed; a move from locked-in agricultural and fisheries subsidies (including seasonal employment insurance spending) to mobility subsidies that support people moving from declining industries and regions in search of new opportunities elsewhere; from supports to production, to direct support to people; from permitting hidden universal cost-shifting in production processes to visibly pricing externalities at the point of consumption.

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While consumption taxes let the federal state tax activity wherever it takes place, the only information general undifferentiated consumption taxes contain is that consumption attracts more tax than saving. The goods and services tax is therefore neutral on where Canadians should live or what goods and services they should buy, while recognizing their mutual obligations to each other as Canadians. As an information-poor tax, the GST should be a hidden tax (like the manufacturers sales tax that it replaced) that can readily be raised or lowered as fiscal needs change. By contrast, a visible, point-of-sale tax (for example, most carbon tax proposals) is information-rich. Climate change policy should therefore be based not on top-down regulation or large bureaucracies (both inevitable consequences of cap-and-trade systems) but on price signals that convey information to citizens about their choices.

Traditionally, Canadians have imagined the transportation and communications aspects of any NP primarily in terms of hardware to move goods and people (railways, canals, airports, roads, pipelines); and

to move information (post office, telegraph, telephone, radio, television, and Internet). The NP3 objective is straightforward: make these systems the best in the world, and ensure “universal service” in all media — access to the equivalent of dial tone should not be dependent on where Canadians live.

Transportation and communications policy, however, has another dimension. Canadians rejected Hugh Allan’s 19<sup>th</sup>-century proposal to route the CPR across Michigan from Sault Ste. Marie, just as they insisted on all-Canadian pipeline routes in the mid-20<sup>th</sup> century. How can this concern with “Canadian” content be cast in NP3

terms when the newest 21<sup>st</sup>-century communication networks are not located in physical space? For example, if the regulatory framework that sustains the lucrative private broadcast networks still serves a public purpose, which combination of requirements with respect to content, ownership, employment and production at CTV, TVA and CanWest-Global best promotes that purpose?

Some argue that the communications revolution leads increasingly concentrated media conglomerates to treat Canada as a branch plant of the United States, making advanced technologies available only when profitable and purveying cheap programming to a captive market. Should this in fact be the case, the appropriate response is neither prohibition nor strict content regulation, nor mandated service delivery. It is a consumption tax on foreign product, redistribution to facilitate market entry of new outlets and the removal of the allocational advantage afforded to the first entrant.

Social policy may have replaced the railroad as a symbol holding the country together, as Tom Courchene has often argued. In this sense the NP2 welfare state could arguably be seen, at least by social democrats, as creating

the material basis for individual agency and autonomy. Those NP2 objectives have not been fully achieved, but here too we wish to focus on the new NP3 agenda using the traditional policy domains.

The first social policy issue for NP3 is to determine the purposes of immigration. Should Canadians seek to build their economy, or to replicate themselves in ethno-cultural and religious dimensions? Should they seek to skim the most-educated, highest-skilled and healthiest from elsewhere? Should the policy goal be to invite the most interesting and dynamic people in the world (regardless of ethnicity, religion, education, skill and health status) to bring their ideas and energy to Canada?

The second issue is about the integration of newcomers, whether from abroad or from within. Canadians move around a lot. The 2001 census reported that over 900,000 people had changed provinces in the previous five years. The biggest cities are growing, but small towns and rural areas are not. The two key challenges for building communities, practices and institutions of social solidarity are the ability of internal and external migrants to find a place and a means to integrate into those cities, and the growing divide between those cities and smaller places. Canada's big cities are more diverse than almost any other places on earth. The smaller places whose populations tend to be long established are both older and much less diverse. These differences have social, political and therefore policy implications. For example, "immigrating" to Montreal from the Gaspé is in some respects as big a move as "immigrating" to Montreal from a developing country. What kinds of supports should be available in the two cases?

The current federal government thinks that social policy is about empowering individuals, not building state delivery. This is consistent with NP3 thinking. But *how* individuals are

empowered matters. In supporting students, are grants or loans better? Does needing to pay off the loan that funded high medical school tuition alter the new physician's view of her public role? It matters whether citizens are merely holders of rights to consume public services, as opposed to citizens who take collective responsibility for the community action. It matters whether the chosen tools bring people together or push them apart.

We conclude this section with a consideration of the bureaucratic health care system, the ultimate in NP2 social policies. The difficulty with some of what we have said about NP3 when it comes to health is that putting money in people's hands risks moral hazard: patients lack information and providers lack incentives to control cost. This said, however, it is notorious that the system cannot respond to current concerns about cost, choice and wait times. Canada's health care system rests on large NP2 organizations

to offer roughly similar care to a roughly similar group of patients. If an elderly woman suddenly needs a little more care, she is shipped to the emergency room of the local hospital. Even if hospitalization is initially required to stabilize her condition, she spends longer in a regular hospital bed than needed because the nursing home cannot manage the follow-up care she needs.

One can imagine a better system that puts the patient at the centre, and uses new technologies to track and allocate all available resources wherever they happen to be located in the health care system. The politics of wait times can be either organization-centric or patient-centric. When we look at patients, the issue is not how long they wait for a specific procedure, but how long they wait from reporting a symptom to an outcome. Rather than managing hierarchical agencies, the task becomes orchestrating all nodes

**Canada's big cities are more diverse than almost any other places on earth. The smaller places whose populations tend to be long established are both older and much less diverse. These differences have social, political and therefore policy implications. For example, "immigrating" to Montreal from the Gaspé is in some respects as big a move as "immigrating" to Montreal from a developing country. What kinds of supports should be available in the two cases?**

delivering a standardized product. It is failing because it uses resources inefficiently and inflexibly. Emergency rooms can be a nightmare of waiting to be seen and then waiting for a bed, but the problem is not primarily in the ER — the blockages happen because patients who should be seen by a family doctor or a local clinic are diverted to emergency rooms. Moreover, beds are often occupied by patients who need some continuing care, but not at the level of a general hospital. Nursing homes are another egregious example of how this problem arises. In classic NP2 terms they are equipped

in a network to provide services when and where needed. If the emergency room intake service could effectively redirect arrivals to appropriate accessible service providers, and if the nursing home could identify the unique set of services needed to support that elderly woman for a few days of recovery (for example, portable oxygen or a nurse to provide a daily injection), and had a flexible budget that set the extra costs of that care against the hospital's costs for keeping her, everyone would be better off, including the accident victim waiting in emergency for a bed. Some problems are solved not by internal-

izing all health functions in large bureaucracies, like hospitals, but by the capacity to allow each part of the system to do what it does best in close collaboration with the other parts.

Do Canadians have the Canada they want? Does Canada now provide appropriate opportunities for self-fulfilment and appropriate services to sustain those opportunities to all its citizens? The prosperity promised by NP1 still has not reached large numbers of Canadians, and the welfare institutions of NP2 are too often constrained by operational boundaries that might once have made sense, but that today seem capricious; that seem designed for the benefit of service providers, rather than by the needs of citizens. Despite the continuing salience of certain policy prescriptions of NP1 and NP2 and the importance of seeking to fully achieve them, we also see elements of a different approach — a third national policy — in the emerging thinking of Canadians and in the experimental practices of governments.

Canadians have reached the end of mass everything. While some mass services or mass products may survive, because the easily accessible Internet democratizes information, publication, and access to data, the dominant market metaphor is now the “niche.” Control of mass distribution is effectively impossible, which undermines all elites. Place does not matter when government services can be delivered in Whitehorse in the same way as in Toronto, at a time and place of citizens’ choosing, ideally through a “one window” physical or virtual entry point to government services. Citizens (and nursing homes) should deal with one intermediary who helps government adapt to their needs, rather than that intermediary being a gatekeeper forcing citizens (and nursing homes) to recast their question in the way the government structure understands. Of course, in such a conception of service delivery, much still depends on citizen initiative. Available information still



Montreal Gazette archives

**Pierre Trudeau and Brian Mulroney at the PM's Centre Block in October 1984. The two prime ministers were the architects of major pillars of the third phase of Canada's national policy, or NP3, namely the Charter of Rights and Freedoms and the North American Free Trade Agreement.**

has to be accessed; options for future conduct still have to be assessed; support for those needing assistance in selecting appropriate services still must be provided; and opportunities to reconfigure the interaction of state and citizen still have to be promoted. So while NP3 thinking can point to the general contours of policy and the optimal agency-enhancing tools of governance, the specific mechanisms needed to achieve these goals are as yet indeterminate.

**W**e argue that a thick (or socially embedded) conception of citizen agency provides a powerful analytic register for understanding the complex identities of all Canadians, and an operable policy notation for the emerging collective project that could be called Canada's third national policy. Generating an approach to public policy, and to its delivery by public servants, that sees citizens as sites of multiple interactions with multiple communities of affect, catered to by multiple government programs, is a necessary feature of state-building for the Canada that now exists. Canadians are no longer the "hewers of wood and drawers of water" imagined under NP1, nor the entitlement-driven consumers of bureaucratic social welfare programs imagined under NP2. There can be no returning to a rural, monolithic, deferential and organic arcadia.

What is more, the challenges for NP3 go well beyond questions of immigration, religion, race and language or the postmodern anomie of globalization. The NP3 objective is to enable self-directed autonomy with mutual obligation for all citizens without asking the state to choose among their multiple overlapping identities as, say, Muslim, female, working-class or francophone. That does not mean that policy should privilege those aspects of any community or religion that limit the agency of other members of that community. To recognize the plurality of normative communities does not presuppose that these communities are of equal weight or worth. To recognize Sharia courts (or

the authority of the Catholic Church or rabbinical tribunals) is not to say that other normative orders (and particularly the official legal system of the state) must accept all their pronouncements as legitimate and deserving of "full faith and credit" — quite the reverse.

Where NP1 and NP2 assumed that because Canadians were all different, they wanted to be made the same, NP3 assumes that because Canadians are all now the same, they must be allowed to flourish in their differences. A number of corollaries flow from this prescription. First, NP3 aims at maximizing the opportunities for citizens to actively shape their interactions with government. Second, it does not presume that the state will wither, or that certain functions of the state may not even become more centrally managed. A change in governing instruments does not automatically mean a change in fundamental socio-economic aspirations. Third, some features of the Canadian legal and political landscape — provincial boundaries, bilingualism, regional equalization, a parliamentary governance regime — are less open to reconfiguration than others. Fourth, the collaborative project (the social project) that is celebrated in NP3 is not an individual (or individualistic) project. It is every bit as collective as the projects of NP1 and NP2, but it celebrates the diversity of life projects that Canadians seek for themselves and focuses on providing the material conditions and the opportunities for Canadians to turn their aspirations into accomplishments.

**I**f there is nothing anti-social about a country that invests resources to enable all citizens to derive the benefits of its recognizing linguistic duality, there is nothing anti-social about a country that extends that logic to other thick identity claims. Finally, many of the federal-provincial jurisdictional conflicts precipitated by the objectives, programs and instruments of earlier national policies are fated to disappear. Jurisdictional trespass, conditional transfers and shared-cost pro-

grams will be wound down as the federal government seeks to interact directly with citizens, deploying taxation and tax expenditures to achieve policy through information-rich governance instruments.

The constitutional history of Canada, we believe, is best understood as a story of its national policies. Sometimes, however, the story has been less than explicit in the consciousness of Canadians. Indeed, each of Canada's national policies was born before it was conceived. Lord Durham's Report, the *Act of Union* of 1841, the Annexation Manifesto of 1849, and the *British North America Act* of 1867 can be seen as competing diagnoses of and competing legal responses to articulating the first national policy that was given a name by Macdonald in 1879. The Rowell-Sirois Report of 1940, the constitutional amendments of 1940 and 1952, the Tremblay Report of 1956 and the shared-cost programs of the 1950s and 1960s can be seen as competing diagnoses of and competing legal responses to articulating a second national policy that, surprisingly, was never baptized with a high-sounding name: both the federal (cooperative federalism) and the Quebec (*fédéralisme rentable*) alternatives were instrumental slogans; neither spoke the in the aspirational language of policy. Most recently, the *Constitution Act* of 1982, the Macdonald Royal Commission, the North American Free Trade Agreement and the Nisga'a Final Accord can be seen as complementary diagnoses of and legal responses to Canadians' desire for a third national policy — a policy that as yet has been neither conceived nor baptized, but just as surely has been born.

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