

Those who employ this “unholy alliance” image reveal a depressing truth: Ottawa Liberals harbour ideologies as opposed to renewing the Canadian federal compromise as are the PQ’s *purs et durs*. The Liberals sought re-election in 1997 on the basis of an electoral platform entitled *Securing Our Future Together*. Ordinarily, election platforms are dismissed by “serious” policy analysts as mere propaganda. However, prior to both the 1993 and 1997 elections, senior Liberal strategists produced earnest 100-page documents that provide useful syntheses of conventional wisdom among senior party strategists. Two revealing examples from the 1997 document are the following:

“Medicare was introduced and developed by a succession of Liberal governments” (p.71). This passage is revisionist history. It discusses federal cost-sharing under the Pearson government in the 1960s. It ignores the fact that Ottawa thereby followed the recommendation of a royal commission established by John Diefenbaker, which had recommended extension across the country of the program that a provincial government (in Saskatchewan) had in place.

“While [Canadians] recognize and support provincial responsibility in the area of health service delivery, Canadians expect the federal government to play an active role in maintaining the basic principles and core values that will protect and sustain their health care system now and into the future” (p.71). Provincial “responsibility” presumably means a good deal less to the authors than “jurisdiction.” Ottawa has a crucial role in “maintaining the basic principles and core values.” Maintain them against whom? The next paragraph makes this clear by discussing the occasional need to withhold federal transfers to the provinces “to enforce compliance with these principles.”

Such passages reveal ideological dogmas, and do not portend success for these social framework negotiations. I give the final words to Guy Laforest who, earlier this year, in *Beyond the Impasse* (IRPP, 1998), summed up the core political problem as follows:

*The Canada-Quebec conflict is, in part, a fratricidal struggle between two groups of Quebecers. The knights of Quebec independence and the musketeers of Canadian nationalism have been tearing each other to pieces on the political battlefield for a good 30 years.... The establishment of genuine dialogue between Lucien Bouchard and Jean Chrétien, between orthodox sovereignists and federalists, whose attachment to Canada is also extreme, is a necessary condition for getting beyond the impasse.*

In their way, the Premiers are doing good work — both in advancing some by and large sensible social policy reforms, and in moving — however tentatively — “beyond the impasse” in Quebec-Ottawa relations.

**John Richards** was a member of the legislature in Allan Blakeney’s first NDP government from 1971-75. He currently teaches in the Business Faculty at Simon Fraser University, and is an Adjunct Scholar at the C.D. Howe Institute.

by Harvey Lazar

## THE SOCIAL UNION: TAKING THE TIME TO DO IT RIGHT

*L’auteur discute de trois questions soulevées par les récentes propositions en vue de renouveler l’union sociale canadienne. La nouvelle union permettra-t-elle de mettre en place une politique sociale plus efficace, capable d’offrir des programmes mieux intégrés et plus uniformes, pouvant être adaptés aux besoins et exigences d’une population en constante évolution ? Les propositions renforceront-elles ou affaibliront-elles la fédération canadienne au plan politique, selon que les Canadiens les jugeront ou non comme des mesures justes et raisonnables des deux ordres de gouvernement, conformes à leurs rôles respectifs prévus par la constitution ? Quelles seront les incidences d’une telle union sur nos institutions démocratiques ?*

Three questions are raised by recent proposals for a new Canada-wide social policy framework. Will such a framework lead to more effective social policy by providing better integrated and more coherent programs that remain responsive to shifting needs and requirements? Will the proposals strengthen or weaken the Canadian federation politically, in the sense that Canadians will see them as fair and reasonable to both orders of government and respectful of their assigned roles under the constitution? How will such a framework agreement affect our democratic institutions?

### The proposal on the table

As this paper was being written, the official positions of the federal and provincial governments had not been made public. From what has become known, however, it appears that much of the focus to date has been around the limitations that the provinces wish to see imposed on the federal spending power.

The decision rules and opting-out provisions in the provincial negotiating position arguably entail a radical transformation in the role of the federal government in social policy. Over the last half century, Ottawa has been the principal architect and funder of the income support programs of the modern Canadian welfare state. It has also provided powerful fiscal incentives for the development and expansion of provincial welfare states. These efforts have generally met with public approval. Whether for better or worse, under the provincial position, the federal government would no longer be able to provide this kind of political leadership on its own, either through the spending power or by using tax provisions to implement social programs.

While the ideologies and interests of the provinces differ in important respects, the main factor that has enabled them to develop a common position is their shared vulnerability to Ottawa's use or misuse of the federal spending (and "disspending") power. First, there were the two failed efforts at mega-constitutional reform in the 1980s and 1990s and the resulting inability to reach agreement on the rules to govern the federal government's use of the spending power to create joint programs in areas of provincial jurisdiction. Second, there was a series of ongoing reductions in the planned rate of increase in federal transfers to the provinces through the 1980s and early 1990s followed by the very large cut in cash transfers associated with the introduction of the Canada Health and Social Transfer (CHST). While advance notice was often given, Ottawa alone determined the size of the cuts. Third, even before the CHST cuts had been fully implemented, the federal government began discussing the possibility of launching new programs in education

and health. In short, Ottawa offloaded disproportionately on the provinces, required them to take the political heat attached to hospital closings and rising post-secondary education fees and then chose to use its new fiscal freedom to bypass provinces through new programs in the same areas where it had effectively forced provincial restraint.

Thus, the provincial position contains elements of self-defence as well as self-interest. But while understanding motives is important, the proposal's impact on the public interest is what matters most. It has to be evaluated therefore in terms of what it might mean for social policy, federalism and democracy in Canada.

### Policy

The social union proposal appears to envisage both orders of government *collaborating* to establish objectives and goals for a sector (*e.g.*, children, persons with disabilities). It also anticipates agreement on the relative roles of the two orders of government in achieving those goals and the output measures for determining if those goals are being reached as well as public monitoring mechanisms to track success relative to the output measures. It envisages each order of government *acting independently* of the other, however, in the design and delivery of its own programs within its sphere of responsibility and being held accountable for the results.

This mixed federalism model could have considerable appeal. First, it *explicitly* recognizes that in areas of joint responsibility, or when one government acting within its own jurisdictional responsibility has a major

impact upon another government, there must be a better means of managing these common interests. *Implicitly*, it acknowledges that there is a federal role in redistributing income among people and in reducing barriers to inter-provincial mobility. It also recognizes that there are individual needs for education and other services that are best dealt with in the

provinces and communities where these individuals live. Thus, the interdependence between the two orders of government is acknowledged. In this sense, the model *appears* to have the potential to further coherence in social policy. It would also allow citizens to hold their governments accountable for the results of the individual programs that they deliver by clarifying who does what and by promising a timely flow of relevant information to assist citizens in that accountability exercise. These elements of the proposal are no doubt as attractive to Ottawa as the provinces.

The proposal also raises concerns. It entails a two-phase process. The initial step seems to envisage joint decision making. If this fails to produce unanimity, a

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second phase is triggered that is rules-based, with votes, opting out, dispute settlement *etc.* But whether a failure to secure unanimity swiftly in phase one automatically would, or should, trigger phase two is unclear. If phase one turns out to be a mere formality, this would be of concern because of the apparent incentive structure of step two. The second stage has two elements: first, a decision rule that six provinces are needed to approve a federal proposal, without any provision that those provinces represent some minimum percentage of the population, say 50 percent. And second, an opting-out rule under which provinces would enjoy a virtual *carte blanche* in how the money is spent. The result is a strong incentive for individual provinces to opt out once the six-province threshold has been reached. Since Ottawa is unlikely to introduce programs where the required majority of provinces represent only a small percentage of Canadians, the low provincial threshold may perversely stymie federal action and hence Canada-wide programs. For this reason, it may do little to achieve the more integrated and coherent policies that a social union should facilitate.

The above does not mean, however, that the federal government should be free of intergovernmental disciplines when it launches or modifies Canada-wide programs. When Ottawa acts in the social policy area, its measures may thwart the incentive structure of provincial programs. More broadly, the federal government can cause havoc in provincial fiscal planning for health, education and social services if it can lure/coerce provinces into national programs and then change fiscal commitments with relatively little notice and by amounts that it decides on its own. When the post-war welfare state was being created, the interdependence among orders of government was less deep. But now that the federal and provincial welfare states are imbedded and connected, better arrangements to manage the interdependence are very much in order.

A *middle ground* is therefore needed. The following are a few preliminary thoughts to help find that ground. First, the nature and extent of federal intrusion into provincial jurisdiction varies according to the way in which the federal spending power is used. Historically, new federal-provincial social programs have started through cost sharing. These initiatives have had a direct impact on provincial priority setting and effectively required provinces to do some things and not to do others to receive their share of federal funds. Even with block transfers from the federal government to the provinces, there may be conditions that some provinces find unduly intrusive, as with the Canada Health Act conditions. In cases where the federal government transfers money directly to individuals, the intrusion may lead to a one-time adjustment in provincial pro-

grams. However, in these cases, there are few or no legal requirements on the provinces to prove expenses are eligible for cost sharing, no need to seek legal interpretations of cost-sharing rules or conditions, no statutory audits are required *etc.* These two uses of the federal spending power (intergovernmental transfers and transfers to individuals) may therefore be sufficiently different from one another, in terms of their effect upon the provinces, that there should be different rules for each.

It is also worth adding that the political "blame" for federal reductions in transfers to individuals falls directly on federal shoulders. Conversely, when Ottawa cuts transfers to the provinces leading them to reduce services or raise taxes, the province bears most if not all of the political blame. This difference may also reinforce the case for a distinction to be made.

Second, there is the need for some kind of *de minimus* rule. The current proposal refers to "major" impacts. But it is unclear, for example, whether a significant change in the

tax deductibility of medical expenses, to use one illustration, would impose the same obligation on Ottawa as, say, an initiative to start a Canada-wide home care program. The word

"major" helps but much more clarity is needed.

Third, federal fiscal arrangements with the provinces should be subject to provisions that improve both the certainty and predictability of the flow of funds to the provinces. If the federal government is to retain its right to reduce expenditures on intergovernmental transfers when the federal fiscal outlook deteriorates, there should be an agreed rule on the degree of deterioration that would trigger such a cut as well as a formula for determining its magnitude. There was a time when provincial revenue stabilization was a much larger part of Canadian fiscal federalism and re-inventing some version of the old arrangements might make sense as part of a new *quid pro quo*.

Although it was argued above that there is a case for distinguishing in the rules between the different uses of the federal spending power, once a new program has been negotiated and implemented, the need for predictability and certainty in the federal financial commitment may also be strong in the case of personal transfers. Thus, if Ottawa suddenly decided to halve a large refundable tax credit, the impact on provincial budgets would be severe if provinces felt effectively obliged to fill the breach.

Finally, a less legalistic approach to a framework agreement would be a better starting point for collaboration, especially in regard to transfers to individuals and the use of the Income Tax Act. In these areas, there is a risk of rigidity. It would be better to take a few steps and learn from experience and then add rules as

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needed. On this point, the Agreement on Internal Trade is important as a precedent. The AIT is a framework of agreed principles but there is no decision rule that binds provinces to further commitments. It is unreasonable to expect Ottawa to accept limits in the social union context that the provinces would not accept in the economic union.

### Federalism

The current provincial position *appears* to rank well from a federalism perspective by aiming at a social union in which each order of government is *de jure* sovereign within its constitutional sphere of authority while, *de facto*, encouraging an arrangement of equal partners to help manage the interdependence that is so often deeply imbedded in contemporary reality. I have resorted to the word “appear” because the devil is always in the details and more work is required to ensure that the proposal best balances the practical need to manage interdependency with the constitutional rights of both orders of government to function as sovereign within their spheres of competence. With this qualification, it scores much better than the federalism of the last several decades, under which there have been occasional heavy doses of federal unilateralism. It also scores better than a system of relatively watertight compartments promoted by some provinces, in which the inevitability of interdependence is ignored.

### Democracy

To date, Canadians have not been particularly creative or effective at establishing processes in which governments simultaneously work well with one another and with legislatures and the public. This is an Achilles heel in the provinces’ proposal. It is only after a deal is struck among governments that legislatures and the public normally become aware of what has been agreed; and they may then be told that the arrangement is so nicely balanced that there is no room for modifications. Two options are suggested here. The first is to design the intergovernmental process in several stages with provision for legislative and public input at each stage. The second is for governments to continue as at present largely in private to secure the initial deal but with an explicit understanding that each has a right and obligation to seek legislative and public input before the further rounds of negotiations that are needed to finalize and implement a deal (as with the Calgary Accord). Under both options, the results will be subject to legislative and public scrutiny. This will add to the political legitimacy of what is decided but at the cost of making a difficult process even more complex. But in a democratic federation, that appears to be an essential price for achieving such legitimacy. The alternative is a

more thoroughly disentangled federalism. But interdependence is deeply rooted, not only within Canada, but also increasingly across international borders. To propose a thoroughly disentangled federalism is to dream of a simpler era that once was. In today’s context, it is better to experiment with democratizing intergovernmentalism.

In other respects, the proposal scores well. The proposal for output measures and regular monitoring reports to determine effectiveness fits well with democratic accountability. Similarly, the fact that each government will be responsible for designing and delivering its own programs should avoid confusion as to whom to hold accountable for what.

### Looking ahead

The current proposals are at the heart of Plan A in the efforts to encourage political reconciliation within Canada. The federal government must therefore respond constructively and in good faith to the current proposal. Since there will be at least several provincial general elections in the next year, however, the probability of reaching a deal in the immediate future is not high. For one thing, the PQ government is unlikely to

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be interested in the search for middle ground before the next Quebec election. The same could be true of some other provinces. Should the Quebec Liberals form the next government, there may be more scope for accommodation. Alternatively, depending on the political

climate within Quebec, a re-elected PQ government may also judge that a “bird in the hand is worth two in the bush.”

The idea of an Intergovernmental Ministerial Council on Social Policy Renewal determining social policy priorities and assessing effectiveness within a general framework of agreed principles is an important and bold initiative. It contains much that is attractive. The reward/risk ratio of what is on the table suggests, however, that more attention must be given to the incentive structure of the proposed rules, including the opting-out provisions, and issues of democratic legitimacy. The talks should proceed but with a clear recognition that it is more important to get it right than do it quickly.

**Harvey Lazar** is Director, Institute of Intergovernmental Relations, Queen’s University.