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The Québec Election and the Social Union

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CANADIANS LIVING OUTSIDE of Québec could be forgiven for watching the Québec election against the backdrop of secessionist politics. First there was the Québec referendum in November 1995, a shocking cliff-hanger that led many to conclude that the federal government was handling the Québec file with considerable incompetence. The referendum was followed by intense debate among federalists about the appropriate course of action to follow. Some preferred an aggressive, tough line of refusing to consider the idea of Québec's secession from Canada, even if the secessionists were to win a referendum. Others thought it prudent to begin to consider alternative arrangements between Canada and Québec, if only in an effort to follow the dictum that forewarned is forearmed. In the event, the federal government decided instead to appeal the question of the constitutional validity of secession to the Supreme Court of Canada. In other words, it decided to treat a highly political issue as if it were a legal question. This proved to be a mistake.

In August 1998 the Supreme Court, its legitimacy feathers undoubtedly ruffled by the fact that the government of Québec refused to appear before it in an official capacity and argue its case, ruled that in the event of a referendum that produced a clear yes to a clear question on secession, the federal and provincial governments would have an obligation to enter into negotiations on the issue with the Québec government. In an incredible display of naïveté, the court also issued an admonition to both sides to

deal with one another in good faith. In the aftermath of the decision, the federalists and the secessionists busied themselves spinning it to their respective advantages, but few could doubt that the Québec government was the winner. It took Premier Bouchard no time at all to recognize the huge advantage to his government of the court's stress on the need for negotiation. In one fell swoop it removed the federal government's most potent weapon, that is, the studied refusal to negotiate anything, an understandably alarming prospect from the point of view of Québec residents since it would presage enormous uncertainty. With this unlooked for strategic gain, Premier Bouchard called an election for 30 November 1998, but not before entering into the so-called "unholy alliance" with the other provincial premiers at the Annual Premiers' Conference in Saskatoon in August.

At the conference, the premiers hammered out a "Framework Agreement on Canada's Social Union." I will return to the substance of the agreement in a moment. Suffice it to say that by joining his provincial counterparts, Premier Bouchard was making common cause with them against the federal government in a gesture that is very typical of ordinary federal-provincial politics. He was playing the game of Canadian federalism, and thereby demonstrating to the Québec electors that he is not simply a dogmatist but someone who can wheel and deal in the traditional way. And polls conducted during the election campaign seemed to confirm this to be a popular course in the province. Indeed, time and again an overwhelming majority of those polled declared that they did not want to see a referendum any time soon. For instance, on 12 November the CBC reported that an astounding 71 per cent of the total sample polled fell into this category, and it included an even more astounding 54 per cent of those who supported the Parti Québécois. The same polls revealed that equally large numbers expected the premier to pursue a referendum anyway.

Premier Bouchard and the Parti Québécois won the election handily enough, in part by declining to talk about secession at all, and instead focusing on the ordinary issues of good government. Many federalist-minded commentators took solace from this and from other factors as well. The PQ win was by no means as handsome as the premier might have been led to expect at the outset of the campaign. The Québec Liberal Party, headed by its new leader

and former head of the federal Conservative party, Jean Charest, campaigned relatively well, as did the Action démocratique, Mario Dumont's party. Altogether, just under 55 per cent of those who went to the polls voted for the latter two political parties, neither of which was proposing to hold a referendum on sovereignty. In addition, the fact that the premier had joined his provincial counterparts in the contest with the federal government over the social union seemed to indicate a willingness to ease the province back into the politics of federalism. However, this proved to be illusory. If the social-union episode has demonstrated anything at all, it is simply to confirm that Québec really is a province unlike the others. But what is the social union?

The idea of a social union first appeared during the round of negotiations on constitutional reform that produced the Charlottetown Accord, a document turned down by the voters in a referendum in 1992. The New Democratic premier of Ontario at the time, Bob Rae, advanced the concept of a social charter as a counter to the pressures for a freer economic union among the provinces and further de-centralization of powers to them. He had in mind a kind of national pact affirming widely-held social values, and a modest version of it was included in the accord. The idea disappeared along with the accord, but was resurrected again by the federal government in the aftermath of the 1995 Québec referendum. In the February 1996 throne speech, the federal government sought to advance a revitalization of the federation, on the one hand promising to rein in the utilization of its power to spend money on new programs in provincial areas of jurisdiction—its predilection to do so being the bugbear of the provinces generally and Québec in particular—and on the other hand insisting on a stronger economic union, inter-provincial mobility of labour, capital and goods, and the maintenance and enhancement of the social values underlying the federation. By 1998, however, the language of the social union, now in the mouths of the provinces, had veered from the nationalist meaning conveyed initially by Rae and then the federal government, and instead taken on strongly provincialist overtones.

At their meeting in Saskatoon in August 1998, the premiers, including the Québec premier, produced a "consensus document" on their position on the way in which social policy ought to be

conducted in Canada. In fact, they issued a press release on the document, declining to publish the terms of the document itself. In essence, they were after the establishment of constraints on the federal government's unilateral power to spend money in areas of provincial jurisdiction. In other words, they wanted a veto on new social programs, fearing that Ottawa would not only continue to ratchet down its contributions to existing programs that the provinces administer, but at the same time pursue politically sexy new ones, thereby further constraining provincial finances. They also sought an agreement on an opting-out provision that would enable any provincial government to opt out of a new, nation-wide social program and, if it were to develop a similar program for the province, to receive financial compensation for the program from Ottawa. Further, and borrowing an idea and the accompanying language from the Free Trade Agreement between Canada and the United States, the premiers proposed to establish a dispute-settlement mechanism, that is, a third-party institution designed to help settle disagreements between the provinces and the federal government that might arise over the funding and administration of social programs. Finally, they proposed to commit Ottawa to consult with the provinces on any national standards that might be invoked in connection with a particular program, and to require provincial agreement on the standards. In general, the position taken by the premiers could be described as de-centralist. The desire was to stake the boundaries of the provincial spheres of jurisdiction and to restrain Ottawa's capacity to forge ahead in new social-program areas. Proponents of the position emphasized the need to pursue values like efficiency, coherence, and rationality in the development of social policy, and accountability and responsibility in the administration of it. Taken together, these *desiderata* mean that the jurisdictional responsibilities of each level of government ought to be clear, and that the financial resources to meet them ought to be adequate to the task. Preferably, taxing capacity and spending responsibilities ought to be aligned.

Students of Canadian federalism will recognize immediately that the agreement reached by the provinces at Saskatoon echoed the old provincialist tradition that is a permanent feature of the country's politics. It is the old tradition appropriately dressed up in contemporary terms and invoked at a time when the relationship

between the federal and the provincial governments has been somewhat testy, mostly because of the economic recession that plagued the early years of this decade and the arduous efforts of all of the governments to get under control the bloated deficits incurred for so long. Premier Roy Romanow of Saskatchewan explained the provinces' position in precise terms that are worth quoting in full:

the Canadian social union has been challenged in recent years by the unilateral actions of the federal government. Ottawa has ignored the federal nature of the country and how this influences the shape of the social union. The federal government could have, and should have, worked with the provinces in redesigning the federal transfer system and assisting in the redesign of provincial delivery systems. Instead, in the 1995 budget, the federal government unilaterally imposed a \$6 billion cut-back in transfers to the provinces for health care, post-secondary education, and social services. In order to repair and rebuild the social union, the proposed framework agreement will define the roles and responsibilities of governments and define how they are to work together in co-operating to modernize and maintain our social union.¹

It could not have been expected that the federal government would care for this line of attack, and certainly not when it was emerging from years of strict budgetary discipline with a modest surplus to show for its efforts. It is useful to summarize that in the decade past the federal government has done three very major things: it has levied a national sales tax which has turned out be a monumental revenue producer; it has cut back funding to the provinces through substantial cuts to the Canada Health and Social Transfer (CHST), which encompasses health, post-secondary education and welfare assistance; and as noted already, it has eliminated the budgetary deficit and even made tiny reductions in the debt. As a result,

¹"Reinforcing 'The Ties That Bind'," *Policy Options* (Montreal: Institute for Research on Public Policy, Nov. 1998) 11.

it is in a position to incur expenditures on new programs, should it choose to do so. And regardless of whether it chooses to pursue new expenditures or not, it is simply the case that the federal government plans to retain its unilateral power to spend money on individuals in any way that it likes. It plans to retain its spending power, unfettered. Further, and specifically, it does not want to spend any significant portion of the surplus to restore funding to the CHST. There is not enough of a political return in such a course, since too many people identify the social programs with the provinces that administer them. Instead, the federal government would prefer to fund new social programs. But new social programs are bound to fall within provincial jurisdiction, and there's the rub.

Recently, Ottawa has shown a marked predilection for social programs that involve a direct link between it and Canadian citizens as opposed to federal-provincial, shared-cost programs that involve heavy bouts of provincial administration. Current examples of such programs are: the Canadian Millennium Scholarship Fund, which involves scholarships for university students; the matching grant for the Educational Savings Funds; and tax-free RRSP withdrawals for life-long learning at the post-secondary level. These are programs that require very little provincial administrative involvement. For the most part, the federal government administers them through the income-tax returns of those who choose to participate in them. Ideas in the hopper include a national drug plan and a home-care tax assistance plan. Finally, there is the National Child Benefit plan, but that at least was developed in collaboration with the provinces after they forced Ottawa to scrap a national daycare plan that it had conceived on its own. It is clear, then, that the federal government continues to assert its pre-eminent role in the federation, equipped as it is with impressive powers, among them the spending power. This means retaining an important role in social policy. As Robin Boadway points out, social policy "is at the heart of what governments do through their budgetary policies. Almost all transfers and a substantial part of goods and services expenditures at the federal and provincial levels of government address social policy concerns in one or more of its three main dimensions—the *ex post* redressing of income inequality, the enhancement of equality of opportunity, and the mitigation of eco-

conomic insecurity through social insurance.”² In this apparent collision course between the provinces, on the one hand, and the federal government, on the other, what can be said about Québec?

The fact that Québec joined the other provinces in the Saskatoon consensus agreement indicates that the substance of the agreement was dear to its heart, in particular, the insistence on an opting-out provision in relation to federally-sponsored social programs within provincial jurisdiction, with financial compensation for parallel provincial programs. As everyone knows, even the Québec federalists prefer a decentralized federation in which the provinces are able to discharge their considerable constitutional responsibilities, unfettered by the federal government.³ (From the point of view of Québec sovereignists, of course, such a position is an absolute minimum requirement of a tolerable federalist arrangement while they pursue the sovereignist dream.) It must be stressed that, for at least five decades, successive governments of Québec—both federalist and separatist—have opposed the federal government’s use of its spending power in areas of provincial jurisdiction. But they have opposed it in vain. Accordingly, the fall-back position is the opting-out concept. Québec insists on the right to opt out of any new or modified programs sponsored by the federal government that happen to fall within the provinces’ constitutional purview, and with financial compensation, as noted above. The inclusion of this plank in the Saskatoon agreement was the reason that Premier Bouchard was able to sign it.

It must also be stressed that this right of opting out is more important to Québec than any commitment on the part of the federal government to get the agreement of the provinces before moving ahead on a new social program. Québec does not desire to stand in the way of the preferences of the other provinces. However, it insists on its own right to pursue its constitutional obligations in its own way. Joseph Facal explains the importance of the opting-out concept from the standpoint of the province maintaining its distinctiveness within the federation:

²“Delivering the Social Union: Some Thoughts on the Federal Role,” *Policy Options* 37

³The failed Meech Lake Accord, a constitutional proposal agreed upon by First Ministers in 1987, included that provision for opting out with financial compensation available in some circumstances.

Seul un véritable droit de retrait peut permettre au Québec de continuer à élaborer et à développer des instruments originaux d'intervention sociale comme les CLSC (centres locaux de services communautaires) ou les centres de petite enfance répondant à sa réalité et aux préoccupations de ses citoyens. Ces mêmes instruments originaux d'intervention sociale sont au cœur de l'identité québécoise. Pour échapper au moule pancanadien, seul un droit de retrait peut permettre de reconnaître la différence et la spécificité du Québec en lui donnant le moyen de continuer à les assumer en matière de programmes sociaux.⁴

To reiterate, then, many observers were somewhat encouraged by the sight of Québec making common cause with the other provinces in a de-centralist vision of the federation. Even those unhappy with such a vision were comforted by the thought of Québec's involvement in it. How regrettable, then, to watch the whole thing fall apart little more than two months after the election. And how predictable that it should fall apart over the only thing that really mattered to the province, namely, the opting-out provision. In early February 1999, the federal government and the governments of nine provinces and two territories signed "A Framework to Improve the Social Union for Canadians," which is to be reviewed in three years. The framework agreement is a rather windy document full of statements of good intentions. Nevertheless, there are important nuggets scattered throughout it, one example being the commitment on the part of the federal government to funding predictability in connection with transfers to the provinces and territories for spending on existing programs, like medicare. The commitment is to consult with the recipients at least one year prior to the renewal of funding or the implementation of significant changes in funding. In essence, then, the federal government has promised not to make the unilateral cutbacks in funding that it launched at the beginning of the decade in a bid to get its own finances under control. Another important provision requires the use of dispute-

⁴"Pourquoi Québec a adhéré au consensus des provinces sur l'union sociale," *Policy Options* 13.

avoidance and dispute-resolution mechanisms in relation to conflicts arising between the federal government and the provincial and territorial governments on such matters as the principles contained in the Canada Health Act. However, the heart of the agreement is the procedures governing the introduction of new national social programs—in other words, the federal government's use of its spending power.

Under the agreement a distinction is made between Canada-wide programs that are supported by federal transfers to the provincial and territorial governments (social transfers), and Canada-wide programs that are supported by federal transfers to individuals and to organizations (direct federal spending). In the case of social transfers, the provincial and territorial governments essentially administer the programs, which is why they receive the money. In the case of direct federal spending, by contrast, the federal government sends money directly to the citizen clients, and its own administration costs might amount to little more than additional income-tax provisions. Under the provision on social transfers, the federal government has agreed not to introduce new national programs that require such transfers without the agreement of a majority of the provincial governments. If such a new program were to duplicate one that a provincial government has already established, then that province is not financially penalized, but instead receives the additional monies to invest in the same or a related area. The obvious example that comes to mind is Québec's daycare program, which a national program would only duplicate in that province. Under the provision on direct federal spending, the federal government has agreed not to introduce a new initiative before giving the provinces and the territories at least three months notice and offering to consult with them. Before being carried away by these seemingly impressive federal commitments, the question needs to be asked—is anything missing?

Something certainly is missing, and one key element that is missing is the idea of a province or territory opting out of a new national social program with full compensation, the one plank in the Saskatchewan agreement that meant anything at all to Québec. Opting out with full compensation is the *sine qua non* of the position of the Québec government, and not simply because it is a sovereigntist government. Opting out with full compensation is

perfectly consistent with the theory of classical federalism, according to which each level of government is supposed to stay within its own jurisdictional boundaries. The federal government, for its part, is positively intransigent on the point, and for obvious reasons. The entitlement of a province to opt out with financial compensation would reduce the leverage of the federal spending power where it matters most, which is in Québec, the one province that could be expected to take full and persistent advantage of the option. The importance of the issue was reflected in the drama surrounding the final hours leading to the signing of the framework agreement. Premier Roy Romanow did his best to convince Premier Bouchard to sign the agreement, with an asterisk over the section on the federal spending power indicating that the provincial government agreed to everything except that section. But the Québec premier refused. He was quoted as having commented: "We are not on the same train today."⁵

The fact of Québec standing apart and the political symbolism of the isolation are unfortunate. This is not simply because it would be helpful, from the federalist point of view, to see Québec working fruitfully with the other provinces as well as with Ottawa, thereby demonstrating that "federalism works." It is more because of the considerable effort that the provinces made to produce the Saskatoon agreement. That agreement was the result of work begun in the aftermath of the 1995 federal budget, in which Ottawa asked the provinces to join it in developing mutually agreed-upon principles underlying the social union. In response, the premiers developed and co-ordinated their ideas, making extensive use of the simple institutional framework that supports their annual get-togethers. One of the outcomes was the *Calgary Declaration* on constitutional matters that was produced in the fall of 1997. Québec was not part of this notable agreement, which contained a provision countenancing the idea of special Ottawa-Québec deals so long as the same deal is offered to the other provinces. In other words, it countenanced federal asymmetry, which is a significant development. A year later came the Saskatoon agreement, which

⁵"Bouchard Resists Friendly Persuasion: Québec Premier Rejects Pleas at Sedate First Ministers Meeting to Sign a Deal that Makes No Sense to Him," *The Globe and Mail* (5 Feb. 1999): A7.

Québec did sign. Claude Ryan, a former leader of the Québec Liberal Party and a minister in the government of Robert Bourassa, has articulated well the reaction of many observers to this recent example of Québec's isolation:

I was encouraged by the news that Québec had joined the team of provinces around this proposed agreement, and when Québec found itself left out in the wake of the late agreement between Ottawa and the other provinces, I was deeply disappointed. I don't think this is a truly national agreement because of the exclusion of Québec.⁶

We are left, then, on the one hand with a sovereigntist government fresh from an election win, and on the other hand with yet another failure of federalism from the point of view of Québec. Moreover, it is a signal failure that leaves unresolved, from Québec's point of view, the key problem with the federal spending power, that is, the use of it to invade provincial spheres of legislative competence *without financial penalty*. It is also not clear how effective or prudent is the other major federal commitment in the framework agreement, that is, the commitment not to proceed with new programs requiring a transfer of funds to the provincial and territorial governments (social transfers) without the consent of a majority of the provincial governments. First, there is the suspicion that requirement of a majority is too easy to meet, particularly given the often less than robust economic circumstances of the four Atlantic provinces. With four in hand, so to speak, the federal government requires only two more. This is why Claude Ryan, who is a federalist, after all, interprets the provision as "opening the door to greater dominance by the federal government in the area of social policy."⁷ If Ryan proves to be correct, then it would appear that the Saskatoon agreement was a weak gambit indeed. In addition, there is now in place a hard rule—the majority of the provinces—and it will be tempting for any federal government desirous of launching an appealing new social program or two to resort to it, even at the risk

⁶"Four Views of the Social Union," *Policy Options* (Montreal: Institute for Research on Public Policy, April 1999) 68.

⁷"Four Views of the Social Union" 70.

of exacerbating Québec's apartness should it not join the majority, which is highly likely.

When he took the place of Jacques Parizeau as premier, Lucien Bouchard governed for close to three years without an election. Now in his second term as premier, and having won his own mandate in the election past, Premier Bouchard might well call a referendum before the next provincial election. And in a referendum campaign, he will try to argue that federalism fails, pointing to the framework agreement as exhibit A, as irrevocable evidence that Québec does not see eye-to-eye even with provinces like Alberta and Ontario, let alone the federal government. Thus federalists everywhere ought to be grateful that the framework agreement is not a constitutionally entrenched document. It is simply an agreement among governments that is limited to three-years duration. It can be improved upon, which means that the eternal dialogue of federalism continues.