

A SOCIAL UNION OR A FEDERAL STATE?: COMPETING VISIONS OF INTERGOVERNMENTAL RELATIONS IN THE NEW LIBERAL ERA

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Premiers discussed Social Policy Renewal.... The Premier of Quebec presented his views and did not participate in the consensus reached on social policy. News Release, 38th Annual Premiers' Conference St. Andrews-by-the-Sea, New Brunswick, August 8, 1997
Fundamentally, at this conference we are at a kind of Rubicon¹. Roy Romanow, Premier of Saskatchewan Ottawa, December 12, 1997

The recent debates about restructuring the welfare state, even more than the unity debate, reveal that Quebec and the rest of Canada have differing views of the country's political institutions. A federalism in which Ottawa took the leading role, often acting in a unilateral fashion, was a central pillar of the post-1945 welfare state. The Liberal governments of the 1990s, particularly since the paradigm-shifting budget of 1995, are playing by different rules in intergovernmental relations. The beginnings of a new intergovernmentalism are evident in a variety of policy domains, although the ghosts of past habits also continue to make news, as with the dispute over the Millennium Scholarship Foundation. This chapter uses the example of one social policy, the National Children's Benefit (NCB), and its attendant discussions of the Children's Agenda, to explore these changes. This choice is not made by chance; many observers cite the NCB as the testing ground for a new era of intergovernmental relations.

There is, as yet, no full consensus about the future. Therefore, the chapter stresses debates and tendencies. The agenda is still on the table and the future of Canadian federalism is still uncertain. There is a widening agreement that postwar federalism is no more. Nor do many yearn for a past “golden age.” Confronted with the need to address deficits and reduce and redirect spending, Quebec and the rest of Canada are, through their actions, promoting competing models of intergovernmental relations, based on different visions of how to manage a federal state.

One model is the “social union.” This term is not yet a part of the political vocabulary of ordinary Canadians, although it certainly merits their attention. It has acquired prominence as Ottawa, nine provinces, and the territorial governments engage in social policy redesign. At its origin, the notion of social union is the complement of the idea that Canada is an “economic union” that was finally “completed” with the Agreement on Internal Trade (AIT) in 1994. Just as the AIT remains a rickety structure, so too is the social union a work in progress. Nonetheless, the visions of citizenship and Canada’s “imagined community” common to those who use these concepts are worth a look.

The AIT sought to remove boundaries between provinces and set limits on how much democratically elected governments could manage their economics². The social union would also rearrange the boundary between democratic and market decision-making. One of the promoters of the concept of social union, Thomas J. Courchene, wrote (in a paper that has very much shaped the terms of debate) of the ways the social union would shift power:

[I]t is clear that this institution will constrain Parliamentary flexibility, even sovereignty. Indeed, this is [its] raison d'être... in effect it is a set of social and economic rights of citizens and private-sector agents generally. As a result, aspects of sovereignty will become shared among the provinces and Ottawa... Perhaps an even better way to express the result is that sovereignty will be transferred to individual Canadians. In any event, there is no free lunch for governments here. But this is increasingly what

globalization is all about - a mushrooming array of international and domestic "contracts" among governments and between governments and private sector agents in the trade, military, environmental, economic, etc., areas³.

Professor Courchene's hopes for the social union are not shared by everyone, of course. For example, the Canadian Policy Research Network's year-long series of round tables on the social union used Margaret Biggs's definition, which is less individualist and market-oriented. She defines the social union as

the web of rights and obligations between Canadian citizens and governments that give effect and meaning to our shared sense of social purpose. The social union embodies our sense of collective responsibility (among citizens), our federalism pact (between and across regions), and our governance contract (between citizens and governments)⁴.

As this chapter documents in detail below, the tensions provoked by differing definitions of the social union continue to characterize the debate. Nonetheless, at this stage a few generalizations can be made. One core principle of the vision of the social union is the need for intergovernmental relations that can "manage interdependence." This means, as we will see, that the notion of efficiency takes precedence over the constitutional division of powers. Another principle is that a new division of labour between states, markets, and communities, different from that of the postwar decades, must be established. There is increasing enthusiasm for "partnerships" between governments and a wide variety of actors. As Paul Martin said on February 24, 1998, "[W]e must work in partnership. Acting alone, in isolation is no longer on. Working together respects the reality that we each have a role to play-whether as governments, business, labour or the voluntary sector⁵."

This vision involves much more than talk, although there is a lot of that, coming from governments, think tanks, commissions, summits, political parties and individuals. The Liberals in Ottawa, nine of the

provinces, and the territories are already creating programs and using new intergovernmental institutions that reflect their understanding of the social union. The NCB is an example of such a program, as are agreements about job training and the Canada-Wide Accord on Environmental Harmonization signed in January 1998.

The other vision of intergovernmental relations is promoted by the government of Quebec. It is a “federal” one, in which the constitutional division of powers overrides any other principle for organizing intergovernmental relations. The second pillar of this alternative is that the public sector should continue to play a leading role in defining societal projects, even if it no longer has as big a part in their actual implementation. In other words, the government of Quebec seeks “partnerships” too, but it will only participate in those that continue to recognize the leading role of an active state.

This model is also being elaborated in action. By virtue of its insistence that social policy belongs by constitutional right to the provinces and any federal action is an infringement, the government of Quebec is promoting its own vision of intergovernmental relations and state-society relations. Although it did sign an agreement on job training just before the 1997 federal election, it has rejected participation in both the NCB and the environmental accord because they maintain a significant role for Ottawa in areas of provincial jurisdiction. At the same time, ongoing reforms of income security programs, as well as education and family policy, are putting into place new rights, regulations, and standards. In this way Quebec is actively designing a social policy regime that responds to its own priorities. How this will fit with the reforms undertaken by the federal government and the other provinces remains an open question.

This chapter argues that, despite often being presented in the language of “decentralizing federalism,” and sometimes vaunted as a solution to the constitutional tangle of Quebec-Canada relations, the social union concept is more than that. The model of the social union involves decentralization to be sure. It is *not a shift within federalism* of decision-making power going from one level of government to the other, however. Rather, the power that is being decentralized is going

from states to markets and from public to private. The private sector, communities, families, and individuals are being exhorted to take more responsibility, as governments scale back their roles. At the same time, the social union depends upon the creation of new intergovernmental institutions, which become sites of decision-making *among* governments. It is in these institutions that the nine provinces acting together assert themselves as *co-managers* of the social union, seeking to establish institutional guarantees that they will be consulted and involved in Ottawa's actions in their areas of constitutional jurisdiction.

On both these dimensions, the government of Quebec's position is different. It demonstrates less enthusiasm than the Liberals in Ottawa and some provincial governments for handing over state power to other stakeholders. Nonetheless, it has done so in some important sectors. The more important difference is that it maintains the strong and traditional position of Quebec nationalists, both federalists and *indépendantistes*, that the constitutional division of powers in federalism must be respected. Thus, like the Union Nationale of Duplessis with respect to post-secondary education and like the Liberals of Jean Lesage with respect to pensions, the government of Lucien Bouchard refuses to participate in institutions of intergovernmental relations that fail to respect the federal principle. The result is that the social union's management of interdependence, under the guise of "decentralizing federalism," has no resonance for the government of Quebec. The Premier refuses to "participate in the consensus⁶." He stands apart, because the consensus does not respect the division of powers set out in Sections 91 and 92 of the Constitution Act, 1867. As he said in December 1997, 'I'm going to Ottawa to defend the law. We have a law and the fundamental law is called a Constitution. So everyone has to respect it, including the federal government⁷.'

In the eyes of the other provinces, however, pragmatism prevails. Indeed, for them the social union has great appeal. They are attracted by the concept of "subsidiarity," which appears in some writings about the social union. The definition of subsidiarity used in Canada's discussions provides a rule for dividing responsibility based on efficiency rather than constitutional jurisdiction⁸. Ottawa would make financing commitments but leave spending decisions to the level of

government “closest to the people.” Subsidiarity only permits state action when private action, whether in the family or the community, has been shown to be wanting. The nine provinces now also insist on negotiations to create mechanisms of consultation and dispute resolution for “managing the interdependence” they now accept as inherent to the social union.

This chapter uses the example of policy toward children as an illustration of the difference between these two quite different visions of Canadian federalism.

THE NATIONAL CHILD BENEFIT: EXPERIMENTING WITH THE SOCIAL UNION

In its post-election Speech from the Throne in September 1997 the Liberal government announced that it would contribute \$850 million toward the National Child Benefit (NCB) program. In the 1998 Budget the amount was increased by a further \$425 million for each of the next two years. Because the Throne Speech also announced that Ottawa would establish its own Millennium scholarship fund, many observers, including the premiers, tended to interpret it as marking the return to old Liberal ways of unilateral spending and centralized federalism⁹. Nevertheless, the NCB provides some evidence that other tendencies are also at work. The NCB commitment is also frequently cited as the most tangible evidence of a new relationship among the federal government and the provinces and territories¹⁰.

The NCB is the continuation of a strategy for reforming social policy that began under the Mulroney Tories. It privileges fiscal mechanisms for federal involvement over direct program provision. Thus, in July 1998 the Canada Child Tax Benefit will combine in a single tax benefit two existing programs, the Child Tax Benefit and the Working Income Supplement. Both of these will be increased. This is not an example of governmental largesse, however. Linked to the increased federal spending is another, much vaguer change:

As the federal benefit increases, provinces and territories will decrease benefits for social assistance recipients. This decrease will not exceed the amount of the federal increase—the total benefit available to social assistance families will remain at least the same. The funds that provinces/territories would have otherwise spent on social assistance will be devoted to reducing barriers to work and to providing more benefits and services for low-income families with children¹¹.

In other words, the deal agreed to by all governments, except Quebec, is that Ottawa will individualize its relationship with poor families and their children, via tax credits.

This is not new, of course. However, the difference between this initiative and previous social policy decisions is that the reform was co-ordinated *in advance* with provincial governments. Thus their engagement to “reinvest” the money they will save on social assistance is linked to an increase in Ottawa’s tax spending. There is no compulsion, or any advance agreement, on how or where or whether “reinvestment” will occur, however. Provinces and territories can make *à la carte* choices, as they see fit. These might include “reinforcing the market” by spending to encourage for-profit and non-regulated child care, for example. They might include further tax credits, rather than any new services, thereby allowing parents to make their own choices about “investing in their children.” Or, spending might provide public programs such as prenatal care, high-quality child care, and so on. The one result that is clear, as Bach and Phillips pointed out in *How Ottawa Spends 1997-98*, is that long-standing hopes for a standard set of services for all children, such as a pan-Canadian child care system, are dashed by programs such as the NCB¹². That era is over, closed down both by neo-liberal preferences for decentralizing from the public sector to markets via tax credits and by the competing visions of intergovernmental relations that are the focus of this chapter. How did the NCB come into being? Similarly, we might ask how it was that despite the opposition from many Liberals in the House of Commons, Ottawa agreed to the provinces’ demands for greater control over environmental policy in January 1998? Most generally,

how was it that, despite the Liberals' 1997 Speech from the Throne, on December 12, 1997 Prime Minister Chrétien had reluctantly to accept the nine premiers' and territorial leaders' demands that Ottawa engage in negotiations of a framework agreement governing all future policy initiatives touching on the social union? Finally, how is it that Canadians can now read, without a flicker of confusion, descriptions of "national" programs, such as the NCB, that in a footnote explain to Quebecers that they need read no further: the term "national" does not apply to them?¹³

The short and obvious answers to these questions are found in the national unity file. A Parti Québécois government is interested in exiting Canada, not constructing a "social union." The Liberals had to cede in December 1997 because the premiers had Chrétien over a barrel. Under direct and strong, if hidden, pressure from Ottawa's intergovernmental affairs bureaucracy, the premiers had signed the Calgary Accord on September 14, 1997. But their signatures had come with a price. They extracted a promise of a First Ministers' meeting to talk about social policy, at which time they would present their consensus position, put together at their own meeting of premiers at St. Andrews in August 1997.

More complete answers to these questions are found, however, in a closer examination of the last three years of intergovernmental relations. These have been less concerned with national unity than with redesigning the role of the state and its institutions. These years have been marked by competition between alternative visions, one of the "social union" and another of classic federalism.

ORIGINS OF "REBALANCING TALK" - THE LEGACIES OF UNILATERALISM

In its first mandate the Liberal government had two obsessions: reducing the deficit and responding to pressures for "decentralization" coming from federalists from Quebec and from right-wing politicians in both Ottawa and provincial capitals. The government initially responded in a traditional fashion, even if the policy content broke with some fundamental principles of postwar federalism and its citizenship regime¹⁴.

The 1995 budget announced the creation of the Canada Health and Social Transfer (CHST), covering the areas of health, welfare, and post-secondary education. This change was rationalized as a contribution to establishing a durable economic and social union via new partnerships with the provinces and Canadian citizens¹⁵. It was, nonetheless, traditional Ottawa unilateralism. The deficit-cutting talk was also familiar from the Tory years. The difference that caused the shock was that the federal government was voluntarily backing out of areas of provincial jurisdiction in which for the whole of the postwar years it had been a major player. Instead, it would transfer funds to the provinces with very few strings attached. At the same time, however, Ottawa slashed its transfers; cash transfers in health, welfare, and postsecondary education fell from a floor of \$19.3 billion in 1994 to a threatened \$11 billion in 1997¹⁶. With the CHST the Liberal government was following in the tradition of the Mulroney Conservatives, who had “capped CAP” for the three richest provinces. But the Liberals succeeded in going much further than the Conservatives in reducing the involvement of Ottawa in Canada’s welfare state. This was no longer social policy by stealth; it was “in your face” retrenchment.

The result seemed to be a massive “decentralization,” trotted out in the pre-referendum months as evidence of federalism’s flexibility. The provinces appeared to have acquired the room for manoeuvre many had long sought. There were, however, two forms of poison in the CHST gift. First, the loss of funds was substantial, experienced at the same moment that the provinces were struggling to cut their own deficits. Secondly, Ottawa’s rhetoric continued to promise that it would “safeguard national standards” for health care and social assistance. Thus, it would keep hold of an oar, even as it stopped pulling its weight.

The provinces were not pleased. Off-loading responsibility for deficit-cutting was not appreciated, even if many provincial governments were doing similar things to their own local authorities. Nor did decentralization combined with “national standards” play well in Quebec, where they are seen as just another word for infringement in provincial jurisdiction. The other provinces, for their part,

also complained that the federal government could hardly impose constraints and “national standards” on their spending decisions when it provided less and less of the money. This is an argument of natural justice: if you don’t pay the piper, you can no longer call the tune. Nor did the federal government have much in the way of leverage. It could only use the blunt knife of cutting financial transfers against the Conservative Klein government of Alberta when it permitted private health clinics, and again against British Columbia when the NDP government imposed a three-month residency requirement for access to welfare in order to avoid reducing benefit levels.

Beyond all the anger about off-loading and regulation, however, is a deeper issue about process. The decisions of the federal government about deficit-cutting, spending reduction, and the invention of the CHST were all taken unilaterally. So too were the Axworthy reforms and the creation of “employment insurance” in 1994-95. While that process undertook an elaborate consultation with “Canadians,” the provinces were left out of the loop almost completely.

In the past three years provincial governments, with the exception of Quebec, have therefore developed a united front against the federal government and have forced the Liberals to begin modifying intergovernmental practices inherited not only from the Trudeau years but from the whole post-1945 period. In St. John’s in the summer of 1995 and again in Jasper in 1996, the annual premiers’ meetings gave notice to the federal government that more consultation would have to occur, that it could no longer behave as if it were the “senior” government. At the same time, by insisting on new forms of inter-governmental relations, the provinces effectively acquiesced to the continuing presence of the federal government in their areas of jurisdiction. “Rebalancing” the division of powers and “managing interdependency” came to dominate the political vocabulary in English Canada. In August 1997 the final communiqué of the Premiers’ Conference called for negotiation of “a broad framework agreement on the social union to address cross-sectoral issues such as common principles, the use of the federal spending power and new ways to manage and resolve disagreements.”

TWO POSITIONS ON MANAGING THE SOCIAL UNION

In 1995 the provinces were not agreed among themselves about how they wanted intergovernmental relations to change¹⁷. Gradually, however, over the three years and as a result of the work being done by new institutions, and particularly by the Provincial/Territorial Council on Social Policy Renewal created in Jasper in 1996, the level of agreement among the nine provinces and territories rose. Compromises are solidifying, even as each communiqué matter-of-factly announces the non-participation of Quebec in the consensus. Nonetheless, it is still worth treating separately the two original positions on the social union, for what they reveal about the differences among provincial strategies, and about the space left for Ottawa to manoeuvre.

Flexible Decentralization with Standardization

This way of reforming social policy and organizing intergovernmental relations is the one preferred by the Chrétien government. It is also pushed by those provinces most dependent on interprovincial transfers and by the smaller ones, whose capacity for autonomous policy innovation is somewhat limited. Adopting this position would mean less unilateral action by Ottawa than was used to institute the CHST or to bring in the Axworthy reforms. The trade-off is that it still maintains a guiding role for Ottawa in areas of provincial jurisdiction. Therefore, the federal Liberals stress the continuities in this position, describing it as a case-by-case approach. The federal government sees the NCB as a good example of this way of doing things. In December 1997, “no fan of the abstract, he [Chrétien] told the premiers he favours proceeding on a case-by-case basis, as with the new child-tax benefit. No fancy frameworks and grand principles to keep bureaucrats busy. Just concrete programs driven by political will¹⁸.”

The provinces that subscribe to this position are not prepared simply to bow before Ottawa's leadership, however. For them, establishing new practices and even institutions for the social union is a way of ending the days of federal fiat. Even the smallest provincial governments are loud in their insistence on increasing the provincial role in directing social policy reform. Premiers' Conferences since 1995

have all produced unanimous (if you don't count Quebec) agreements that the provinces should take a *co-leadership* role in setting standards and redesigning social policy. Thus, for example, the *Report to Premiers* prepared for the 1996 meeting in Jasper called on the provinces to co-operate among themselves and with the federal government in social policy reform and renewal¹⁹. In order to initiate such a process, the Jasper meeting endorsed an eight-point plan that included giving the federal government a deadline by which pan-Canadian social policy standards would have to be negotiated and that set up the Provincial/Territorial Council on Social Policy Renewal²⁰.

The January 1997 agreement on child poverty programs, brokered by Pierre Pettigrew, federal Minister of Human Resources Development, was an early result of that process; the NCB is its follow-up. The NCB has a long history. In 1989, the United Nations Year of the Child, the House of Commons voted a resolution committing the government to eliminating child poverty by the year 2000. As the millennium approached, poverty levels were rising rather than falling, so in June 1996 at the First Ministers meeting the commitment was renewed. By January 1997, agreement in principle was reached on an initiative against child poverty. All ten provinces accepted a preliminary intergovernmental accord, recognizing a role for the federal government, but only through the tax system²¹. However, as the program was developed further in work co-ordinated by the Provincial/Territorial Council on Social Policy Renewal, Quebec withdrew its participation. It chose instead to develop its own child benefit and to demand the return of tax points from the federal government.

Agreements with those provinces wishing to take over job training fall into the same case-by-case category. In December 1996 it was also Pettigrew who signed the first arrangement with the province of Alberta, and, in the last minute run-up to the 1997 federal election, the one with Quebec. The symbolic significance of these agreements is great; provincial control over job training was a long-standing demand from Quebec, one to which the federal government refused to accede until after the 1995 referendum. Despite being established province by province, the agreements work in basically the same way. In exchange for ending its involvement in training and for transferring

money, the federal government extracts promises from each province about how it will administer the programs, so as to guarantee access for the types of workers targeted by the federal government.

In general, then, this first vision of managing the social union sees enhanced provincial involvement in the setting of standards. The provinces seek to end federal unilateralism, but continue to recognize a role for the central government, even in areas of sole provincial jurisdiction. Consultation is key.

The 1996 Report to Premiers stressed the need to reduce confusion over the division of powers, end duplication, and generate more efficiency. Indeed, flexibility is the watchword. Speaking at the beginning of the meeting of which he was the host, Ralph Klein said, "What we've [sic] advocating is a rebalancing of federal responsibilities to allow provinces the flexibility to deliver services, but in accordance with national guidelines²²." In the 1997 communiqué about non-social policy areas, which announced the coming fight with Ottawa over the environmental accord, the goals of rebalancing roles and responsibilities were defined as delivering services at an affordable price, demonstrating that federalism is flexible, and allowing Canada to compete internationally²³.

The federal government, in turn, committed itself in the February 1996 Speech from the Throne to limit the use of its spending power in areas of provincial jurisdiction:

The Government will secure Canada's social union for the future and will adapt our federal arrangements as necessary to meet current challenges and to prepare for the next century. The Government is open to new ways and new directions to pursue our values. In particular: The Government will work with the provinces and Canadians to develop by mutual consent the values, principles and objectives that should underlie, first, the Canada Health and Social Transfer and, building on this, the social union more generally.

This formulation reflects the ascendancy within the Canadian government and the bureaucracy of those who prefer that Ottawa use the tax system to redistribute income and leave program delivery to the provinces and service delivery to the market²⁴. As the deficit disappeared and pressure mounted within the Liberal party for new spending, a more hands-off approach gained prominence, as the 1997 Throne Speech indicated. As a result, the premiers arrived in Ottawa in December prepared to remind the Liberals of their campaign promises, and to push in a united front for new intergovernmental institutions²⁵.

In doing so, they could always remind Prime Minister Chrétien that if he did not agree to negotiating the framework agreement, they might move to endorse a more radical position on how to manage the social union.

The Provinces Take Responsibility for the Social Union

This second scenario involves a dramatic shift in governmental powers and a complete overhaul of policy practices. Basically, the federal government would be sidelined. This vision of a social union surfaced suddenly, just before the meeting in Jasper, and was endorsed by the premiers of Ontario and Alberta, although their colleagues did not go along with them. This provincialist position leaves any development of pan-Canadian standards to interprovincial negotiation and goodwill. Such thinking sat comfortably with these two provinces' own preferences for disengagement from social provision and less government activity in general. They were seeking the space to implement what Mike Harris calls the "common sense revolution," bringing more private and third-sector provision of social services and reduced state spending.

Expressed best by one of its major advocates, Ralph Klein, the proposal would bring the "replacement of what he calls federal standards with guidelines—or national standards—to be worked out among the provinces... 'It's not a matter of wrestling away powers [from Ottawa],' Mr. Klein said, 'It's a matter of restoration of constitution authority,

authority that was ours in the first place. I mean, this country is not a union. This country is a confederation. Right²⁶?' ”

Elaboration of this scenario of interprovincialism was done by Thomas J. Courchene, in the working paper prepared for the Ministry of intergovernmental Affairs of Ontario and released the week before the Jasper meeting. *ACCESS. A Convention on the Canadian Economic and Social Systems* makes a clear case for giving all responsibility for social policy to the provinces and developing any pan-Canadian norms via a Convention on the socio-economic union. Such a Convention would be a political space in which provincial governments could commit themselves to maintaining certain standards, all the while deciding individually how to deliver programs. Only an “interim model” of a Convention would include federal-provincial co-operation and co-determination. The fully operational variety would be one with no role for the federal government in health, welfare, and education. Tax point transfer would replace the CHST and other transfers from the federal government to the provinces.

The Courchene document is founded on two key pillars: subsidiarity and interprovincial co-operation²⁷. It, as well as a number of other recent pronouncements from non-governmental bodies, deploys the concept of “subsidiarity.” This notion, borrowed from Catholic Europe, justifies the division of labour between family and state and local and national governments according to criteria of efficiency. Only that which cannot be effectively provided by the family should be provided by the state; only that which local governments cannot provide should be in the domain of the national government. One might, of course, discuss and dispute the definition of the subsidiarity principle in these documents. The central point to note, however, is that no matter the definition, subsidiarity is *not* a principle that sits easily within the traditions of Canadian-style federalism. Here, the Constitution, not efficiency, determines which government has jurisdiction. A turn to the principle of subsidiarity would mark a sea change in the very principles of Canada’s federalism.

Secondly, according to the Courchene document, interprovincialism without enforcement mechanisms would be sustainable, on the

one hand, because of “Canadian values,” and on the other, because electoral competition would force provinces to get into line with the “best practice” as perceived elsewhere²⁸. For his part, Ralph Klein was chary of any new enforcement mechanisms:

I'm advocating common sense, not controversy... You do it through conciliatory measures. You do it through negotiations and so on. And you do it by behaving yourself. You want to be part of this Confederation, then you play by the rules. I mean that's common sense and that's what makes this country great²⁹.

As yet, there are no examples of policy-making according to the ACCESS model. It was effectively criticized in Jasper by opponents of both the neo-liberalism of the Klein and Harris Tories and by the smaller, less well-off provinces. In particular, the premiers of Newfoundland, New Brunswick, and Saskatchewan were sceptical. They feared that exclusion of the federal government from the social policy realm would put an end to interprovincial transfers, thereby leaving them without sufficient funds to finance their own programs. Indeed, Brian Tobin of Newfoundland came close to accusing Alberta and Ontario of advocating an end to such cross-regional redistribution³⁰.

They also feared being placed at the mercy of the larger and richer provinces, who would impose their preferences on the others. In general, these provinces — two governed by Liberals and one by a New Democrat — looked to the federal government to express the values of all Canadians³¹.

Despite the scepticism, the ACCESS model has attracted a lot of attention in non-governmental circles, provoking debate that has both legitimized it and smoothed out some of the rough edges. For example, Judith Maxwell and her Canadian Policy Research Network jumped off from the ACCESS discussion to argue for new institutions and citizenship practices in managing the social union. Despite the reference to Courchene, these would basically conform to the first position on managing the social union described here. Nonetheless, others were willing to contemplate taking the more radical steps of

cutting the federal government out altogether, and certainly Premier Klein, angry over the federal government's actions around the Kyoto environmental summit, and Premier Harris both arrived in Ottawa in December 1997 bound and determined to force concessions from the Liberal government. They would talk of ACCESS if they had to, in order to make the federal government move.

What they did win was an agreement from the Liberals to negotiate mechanisms for tying the federal government's hands in the future. This concession to negotiations was added to the list of successes currently topped by the NCB. Just as the Free Trade Agreement established an inter-governmental dispute settlement mechanism, so too will the Provincial/Territorial Council on Social Policy Renewal be pressing Ottawa in 1998 to accept one for intergovernmental relations within Canada³².

If such an institution were to be established and rendered functional, Canadian federalism would look very different from the postwar model, characterized by Ottawa's initiative and leadership and provincial subordination. It would, in effect, formalize intergovernmental relations that blur constitutional distinctions. Principles of subsidiarity and processes of consultation and negotiation would replace the Constitution as the mechanism that determines policy responsibility. It is worth observing the institutions that have brought the discussion to this point. They are bilateral, involving negotiations between two partners, the provinces/territories and Ottawa. Practices of co-chairing policy discussions, again for example around the Children's Agenda, are also dualist.

DEFENDING THE FEDERAL PRINCIPLE

The Parti Québécois government of Quebec has not accepted any of this new dualism. It wants tax point transfers, not the NCB. It did not concur with the 1996 Jasper documents prepared by the other nine provinces and the territories, nor did it endorse the position presented in the Courchene Report. It also abstained from the consensus in 1997 at St. Andrews, as it did in St. John's in January 1998. It has vehemently criticized Chrétien's Millennium scholarships as another intrusion. The

reason for these objections and abstentions is quite simple: any negotiations with the federal government over its participation in education, health, and social welfare contradict longstanding objections to federal incursion into areas of provincial jurisdiction. Quite simply, Lucien Bouchard's position is that neither the federal government nor the other provinces have a legitimate constitutional role in setting Quebec's standards in social policy.

Nor is an interprovincialist solution *à la* ACCESS any more enticing for Bouchard. Even if the federal government were kept from intruding on provincial jurisdictions, the notion of "national standards" is not acceptable to the Premier of Quebec. "L'interprovincialisme n'est pas mieux que le fédéralisme dans la mesure où le Québec sera soumis à la loi de la majorité³³." If his long-term scenario is one in which governments representing two peoples act separately to express their own visions of social solidarity, in the short term his announced strategy is to defend the Canadian Constitution of 1867.

In all these meetings with his fellow premiers, Lucien Bouchard's position is often interpreted as nothing more than sovereigntist posturing, designed to play to supporters at home. His fellow premiers accuse him of trying to advance sovereigntist politics. They claim he is simply putting up a smokescreen that will prevent Quebec voters from seeing that federalism is actually moving in the decentralized direction that the premiers, for their part, believe many Quebecers want. Roy Romanow of Saskatchewan reiterated the position in December 1997, accusing Bouchard of being "trapped by his ideology³⁴."

This is the wrong end of the stick. The issue is not who, if anyone, is more "ideological" than anyone else. It is, rather, that the discussions over three years about managing the social union have moved the nine provinces and territories toward a consensus about intergovernmental relations that marks a shift away from classic federalism. The current government of Quebec does not, however, subscribe to this consensus. It definitely leans in the direction of a "watertight" definition of the division of powers, while the others more willingly accept the view of "interdependency³⁵."

In all of this, it is crucial to recognize that the future is being made *now*; it is not on hold for the next referendum or election. Like the other provinces, Quebec is undertaking its own social policy reforms. For example, just in the area of the “children’s agenda,” Quebec announced its own child tax credit program, as well as a massive overhaul of child-care services. In the case of the latter, it substantially reinforced the non-profit sector rather than the for-profit market. The government now guarantees all children space in regulated child care at the cost to their parents of five dollars a day. At the same time, Quebec has called on Ottawa to hand over more of the Employment Insurance funds so that it can further extend its parental leave program³⁶. This position is similar to that on the NCB, for which Quebec wants tax points rather than federal spending. It has done all this with no attention whatsoever to whether these programs will conform to pan-Canadian practice or standards. Thus, as the NCB and provincial “reinvestment” is occupying the rest of Canada, citizens in Quebec are getting their own quite different family policy.

It is perhaps worth noting that such practices hark back to an earlier moment of “co-operative federalism,” that of the middle 1960s. Canada was moving toward a kind of asymmetrical federalism. These years produced “opting out,” in which Quebec chose to take its portion of pension funds and money for postsecondary education, for example, and to establish parallel programs.

Nor do the other governments seem shocked by this asymmetrical federalism, which has emerged without much fanfare. The other premiers continue to invite Quebec to their meetings. Lucien Bouchard continues to come and then to stand apart. The others then amicably continue to build their social union while Quebec builds its. Despite all the rhetoric of “ten equal provinces,” asymmetry in the relationship between Quebec and the rest of Canada might become the norm.

WHERE DOES THIS LEAVE US?

As Roy Romanow recognized in the quotation that heads this chapter, intergovernmental relations were at a Rubicon in 1997. Nine provinces succeeded in their goal of pushing the federal government, if not across to

the other side, then at least toward a fording place. All of the provinces, except Quebec, by acting together compelled Ottawa away from its longstanding stance of “senior” government. The trade-off was accepting its continued role in areas of provincial jurisdiction. Eventually this might lead to intergovernmental institutions in the social policy realm that both recognize and limit the legitimate role of Ottawa in areas of provincial jurisdiction.

However, as Budget 1998 (and the Throne Speech before it) showed, Ottawa remains reluctant to take the plunge and institutionalize fully any new model of intergovernmental relations. Therefore, with respect to the new federal scholarships, provincial officials were reduced to denouncing the measures and Paul Martin’s refusal to transfer more money to the provinces. They could neither halt the new program nor influence the government’s spending decisions for the famous post-deficit era.

Moreover, even limited “successes” on the institutional front, such as the provinces claimed to have achieved in December 1997, should not blind Canadian citizens to the fact that none of these intergovernmental partnerships has, as yet, generated anything resembling a “social union.” Both the economic and the more social definitions of the social union presented at the start of this chapter count on it to become an expression of pan-Canadian values. For the advocates of securing the social union this means that social policies in all the provinces should bear a strong family resemblance to each other, and to the values that past citizenship regimes expressed and to which Canadians remain attached. The notion is that intergovernmental consultation and cross-provincial learning will induce commonality as well as commitment. So far, however, no province has demonstrated much interest in treating Quebec’s new family policy as “best practice” and competing to match it, so as not to lose out in the electoral stakes, as the ACCESS model would have us expect. Rather, and despite the high-level discussions of a Children’s Agenda, each province is redesigning its own policies according to its own current ideological preferences. There are, in fact, no incentives to co-ordinate in the NCB regime or elsewhere in the post-CHST era.

Therefore, for all the talk of how to manage it, the actual output of the social union is very limited. The NCB leans strongly in the direction of individualism; provincial reinvestment in services is yet to come. The Children's Agenda is still a gleam in the intergovernmental eye; cross-provincial differences remain immense. The lack of progress in achieving the pan-Canadian standards hoped for by proponents of the social union is not simply the result of the absence of a clear agenda in the second mandate, however. As the Liberals now set out to spend some money to re-establish Ottawa's relevance for the country's future, they have to live with the consequences of their actions in their first mandate. Then, determined to "decentralize" as much for reasons of fiscal policy as for national unity, they provoked nine provinces to band together and forge a common cause as rarely before. They also left some space for Quebec to advance its own model of federalism as well as its own social policy agenda. That history cannot simply be erased. The very forces unleashed in the first mandate may prevent that.

- 1 Cited in Edward Greenspon, "Premiers Wonder Which PM They'll Face," *The Globe and Mail* [Toronto], December 9, 1997, A5.
- 2 As G. Bruce Doern and Mark MacDonald document, the AIT brought a substantial reduction of the power of provincial governments. They lost much more than the federal government gave up, in part, we would say, because Ottawa had already given away a great deal in the FTA and the NAFTA. They also describe the agreement as representing "a considerable penetration into domestic policy agendas and institution building by the globalization-led liberalized international trade agenda." "The Liberals' Internal Trade Agreement: The Beginning of a New Federal Assertiveness?" in Gene Swimmer, ed., *How Ottawa Spends 1997-98: Seeing Red: A Liberal Report Card* (Ottawa: Carleton University Press, 1997), 135-58.
- 3 This paper was produced for the Ministry of Intergovernmental Affairs of Ontario in 1996 and played a major role in discussions at the Premiers' meeting in Jasper that year. This quotation is from that version of the paper. A more accessible version is Thomas J. Courchene, "ACCESS: A Convention on the Canadian Economic and Social Systems," *Canadian Business Economics*, 4, 4 (1996), 3-26.
- 4 *Building Blocks for Canada's New Social Union* (Ottawa: CPRN, 1996), 1. See also Judith Maxwell, "Governing Canada's Social Union," *Canadian Business*

- Economics*, 5, 1 (1996), 15-19; Kathy O'Hara, *Securing the Social Union: Next Steps* (Ottawa: CPRN, 1997).
- 5 Paul Martin, Minister of Finance, *Budget Speech* (Ottawa: Public Works and Government Services Canada, 1998), 5.
 - 6 These are the words used in *Social Policy Renewal*, the final communiqué of the 38th Annual Premiers' Conference, St.-Andrews-by-the-Sea, NB, August 8, 1997.
 - 7 Quoted in Rhéal Séguin, "Bouchard Urges Ottawa to Cut Taxes," *The Globe and Mail* [Toronto], December 11, 1997, A4.
 - 8 For a discussion of the distinction between subsidiarity and federalism as decision rules, see Alain Noël, "A True Social Union?" *Direction* (published by the Council for Canadian Unity), August 21, 1997, 1.
 - 9 Edward Greenspon, "Premiers Wonder Which PM They'll Face," A5.
 - 10 O'Hara, *Securing the Social Union*, for example.
 - 11 *The National Child Benefit: Building a Better Future for Canadian Children*, September 1997, Cat No: MP43-372/1997, 10. This publication, available from HRD Canada and nine provincial departments of social services as well those of the Yukon and NWT, acknowledges no author nor publishing department. It is also available from the federal/provincial/territorial Web site: <http://www.intergov.gc.ca/>, where it is described as a document produced by the Federal-Provincial-Territorial Ministers Responsible for Social Services.
 - 12 Sandra Bach and Susan D. Phillips, "Constructing a New Social Union: Child Care Beyond Infancy," in Gene Swimmer, ed., *How Ottawa Spends 1997-98: Seeing Red: A Liberal Report Card* (Ottawa: Carleton University Press, 1997), 235-58.
 - 13 *The National Child Benefit*, 1.
 - 14 The details are described in earlier years' *How Ottawa Spends*, as well as in Gérard Boismenu and Jane Jenson, "La réforme de la sécurité du revenu pour les sans-emploi et la dislocation du régime de citoyenneté canadien," *Politiques et Sociétés*, 30 (1996), 4.
 - 15 This rationalization is quoted by France St.-Hilaire, in an article critical of this withdrawal as unnecessary. See "Le transfert canadien : Fédéralisme renouvelé ou faire d'une pierre trois coups," *Policy Options Politiques*, 17, 5 (1996), 27-31.
 - 16 On December 8, 1997, only a week before the federal-provincial meeting on social policy, the ministers of Finance and Health announced that they would accept the recommendation of the National Forum on Health and increase the floor of cash transfers to \$12.5 billion.

- 17 Gérard Boismenu and Jane Jenson, "La dislocation du régime de citoyenneté canadien et l'évolution du régime fédératif," *Cahiers d'histoire*, 17, 1-2 (1997), 126-46.
- 18 Edward Greenspon, "Discord Dominates Message Coming out of Conference," *The Globe and Mail* [Toronto], December 13, 1997, A10.
- 19 Ministerial Council on Social Policy Reform and Renewal, *Report to Premiers*, Jasper Mountains 1996 Conference. This report begins by detailing the postwar actions and interventions of the federal government and deploring its unilateralism.
- 20 Edward Greenspon and Brian Laghi, "Premiers Give Ottawa Deadline," *The Globe and Mail* [Toronto], August 23, 1996. There were eight areas covered, including health, programs for the disabled, aid to children, and programs for Aboriginal peoples.
- 21 Edward Greenspon, "The New Federalism: Mother Ottawa Cuts the Apron Strings," *The Globe and Mail* [Toronto], February 1, 1997.
- 22 Klein distinguished between "federal standards" set out without consultation and "national standards" resulting from federal-provincial/territorial consultation. Edward Greenspon and Brian Laghi, "Ontario, Alberta Take Aim at Ottawa," *The Globe and Mail* [Toronto], August 20, 1996. The same language is used in the other major report prepared for the Jasper meeting, *Rebalancing Roles and Responsibilities in Non-Social Policy Areas*.
- 23 38th Annual Premiers' Conference, *Rebalancing Roles and Responsibilities*, St. Andrews-by-the-Sea, August 8, 1997.
- 24 Greenspon, "Mother Ottawa Cuts the Apron Strings."
- 25 The Liberal Party of Canada's 1997 electoral platform plumped for more co-operation and partnership. While stating that "the government of Canada has a crucial responsibility to provide leadership at the national level," it also states that "our philosophy of federalism is that the best way for the various orders of government to meet the needs of Canadians is to work together," then going on to cite the 1996 Throne Speech's pledge, the devolution of job training to the provinces, and the National Child Benefit System, in which "the government of Canada is now working with its provincial partners to combat child poverty."
- 26 Edward Greenspon, "Take Charge, Provinces Urged," *The Globe and Mail* [Toronto], August 21, 1996, A4.
- 27 For a critique of these two pillars see Dan Usher, "ACCESS: The League of Nations Approach to Canadian Federalism," *Canadian Business Economics*, 5, 1, (1996), 3-8.

- 28 For a cogent argument from the perspective of an Albertan about why self-imposed “national standards” are unlikely to emerge, see Roger Gibbins, “Decentralization and National Standards: ‘This Dog Won’t Hunt’,” *Policy Options Politiques*, 17, 5 (1996), 7-11.
- 29 The other premiers were extremely sceptical of Klein’s enthusiasm for an “honour system” as the mechanism for decision-making, and were less bothered than he by the notion of “enforcement.” Edward Greenspon and Brian Laghi, “Harris, Klein Shake Up Federation,” *The Globe and Mail* [Toronto], August 24, 1996.
- 30 Greenspon and Laghi, “Ontario, Alberta Take Aim at Ottawa.”
- 31 Brian Laghi and Edward Greenspon, “Premiers Kill Ontario’s Plan,” *The Globe and Mail* [Toronto], August 22, 1996.
- 32 The agenda for negotiation, to be completed by July 1998, between the provinces, represented by their Council on Social Policy Renewal, and the federal government is to establish: a set of principles for social policy; collaborative approaches to the use of the federal spending power; dispute settlement mechanisms; ground rules for intergovernmental co-operation; and processes for clarifying roles and responsibilities within various social policy sectors. The Council for Canadian Unity, “Renewing Canada’s Social Union,” *Direction*, December 18, 1997.
- 33 Katia Gagnon, “Mike Harris soupçonne Ottawa d’avoir manœuvré dans les coulisses pour torpiller le rapport Courchesne [sic],” *La Presse* [Montreal], August 24, 1996.
- 34 Rhéal Séguin, “Ottawa Assaulting Provinces’ Status, Bouchard Charges,” *The Globe and Mail* [Toronto], December 12, 1997.
- 35 The Liberal party of Quebec, in its recent policy documents, expresses support for a position on the social union that is quite close to that being promoted by the other nine provinces, although it continues to advocate its own agenda with respect to constitutional recognition of Quebec’s distinctiveness. For a summary see Jean-Marc Fournier, “Recognition and Interdependence: A Quebec Federalist Proposal,” *Direction* (Council on Canadian Unity), 5, February 3, 1997.
- 36 Jane Jenson, “Les réformes des services de garde pour jeunes enfants en France et au Québec vues de l’institutionnalisme historique,” *Politique et sociétés*, forthcoming 1998.