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THE MEECH LAKE ACCORD AND THE FUTURE OF THE WELFARE STATE

Linda Trimble

During the three year ratification process there was a great deal of discussion about how the opting out provision of the Meech Lake Accord (section 106A) would affect the welfare state. For many critics of the Accord, such as the Canadian Council on Development, the National Anti-Poverty League and the Canadian Day Care Advocacy Association, the opting-out clause was worrisome. These groups feared the opting-out provision would impede the federal government's ability to pursue important social goals, such as the implementation of a national day care policy. Should they, and others concerned with the future of the welfare state, be breathing a collective sigh of relief now that the Accord is dead? Absolutely not. In fact, both those who were concerned about the impact of the Accord on the development of the welfare state, and those who supported the opting-out provision in the name of economic efficiency, were barking up the wrong tree. As usual, they were barking up the tree of federalism.

This paper presents the following rather controversial position: with respect to the welfare-state issue, many observers, especially political scientists, have not been able to see the forest for the federalism tree. I will discuss the spending power provision of the Accord, briefly outlining the two opposing positions. I will then argue that while these arguments represent important debates about the nature of federalism in Canada, they are largely irrelevant to the future of the welfare state. In this case, what matters when talking about the future of the welfare state is not the Meech Lake Accord or its demise, or any formal constitutional change which reflects current federal-provincial arrangements, but what governments *actually do*.

Federalism is not a negligible factor in the design and delivery of social welfare policies in Canada. This is so because the provinces have jurisdiction over welfare-state issues such as health care and social assistance but do not have the taxation powers which would allow them to pay for the programs. This problem has been addressed in two ways. First, responsibility for two welfare state issues (old age pensions and unemployment insurance) has been transferred to the federal government via constitutional amendment. Secondly, the federal government has helped the provinces

out by using its "spending power"; the federal government has transferred funds and tax room to the provinces to pay for health and welfare policies.

The federal government has exercised varying degrees of control over shared-cost programs by setting conditions on the transfer of funds. The *Canada Health Act* provides for reductions in transfers to provinces which permit extra billing. On the other hand, the *Canada Assistance Plan* (CAP) is usually viewed as a shared-cost program which sets only a few conditions,¹ but it depends on your perspective. For instance, battered women's shelters couldn't get CAP funding until the plan was altered to include a category called "homes for special care". In other words, even though shared-cost programs may not impose conditions on provincial governments, they may contain provisions which shape program delivery.

Of course provincial governments do not mind getting the money from the federal government, but are irked by the conditions. The government of Québec has been a vocal opponent of federal incursions, via the spending power, into areas of provincial jurisdiction, and persuaded the federal government in 1964 to allow the provinces to "opt out" of a large number of shared cost programs. The opting-out provision of the Meech Lake Accord simply "constitutionalized" what was already political convention. It explicitly recognized the use of the spending power in areas of exclusive provincial jurisdiction, and it provided "reasonable compensation" to any province which chose not to participate in a national shared cost program established by the central government, so long as the province carried on a "program or initiative that is compatible with the national objectives" (the proposed *Constitution Act, 1987*, s. 106A).

Supporters of the Accord argued that it reflected the political and economic realities of the day while opponents asserted that the *Constitution* should enshrine ideals rather than stark realities. Let us examine both positions; first, the pro side. Commentators like Tom Courchene² argued that it would protect the federal spending power from legal challenge and allow the federal government to set national standards, thus acting as a centralizing force. Also,

Courchene argued that the opting-out clause would encourage the design and implementation of new, efficient and innovative shared cost social programs. In other words, it would provide security, by recognizing the spending power, but would allow for flexibility. Courchene asserted that this flexibility was critical because, in future, the state of the economy (not the *Constitution*) would determine the future of the welfare state. Economic factors, especially globalization of the economy and the fiscal crisis of the state, are pushing governments towards interdependence and towards developing more efficient ways of delivering existing programs. For Courchene, section 106A provided the perfect balance; it would allow for national leadership while providing flexibility in program delivery.

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Critics of the opting-out provision did not share his optimism. Opponents of the Accord felt that the provision would spell an end to new federal initiatives in social policy. The Canadian Advisory Council on the Status of Women (CACSW), for instance, argued that the clause would virtually eliminate the possibility of a comprehensive, universal child care program with national standards.³ Even if new programs were initiated, said the CACSW and others, opting out would allow for considerable regional variation in standards and delivery.

I share the critics' concern about the likelihood of new shared-cost programs, but agree with Courchene that the *Constitution* is not, and will not be, the determining factor. The spirit of Meech Lake was quite evident in federal government policy-making even when the Accord was but a glimmer in Brian Mulroney's eye. The Conservative government has not introduced new spending power initiatives (and few social policy initiatives) and has taken an approach to social policy which encourages decentralization and regional variations in approach. There are two stark examples of this: day care policy and the abortion law.

The 1988 federal child care policy carefully avoided treading on provincial turf.⁴ Even if the spending elements of the policy had been implemented (and they were not), they would not have addressed the fact that there is incredible variation in child care policy and services across the country. Alberta claims to have more day care spaces than are required⁵ while families in the Atlantic provinces rely heavily on unlicensed, unregulated "family home" care.

Alberta provides subsidies for profit centres while other provinces (such as Ontario) only subsidize non-profit facilities. Each province sets its own regulations and standards for licensing and staffing. The Mulroney government's *Canada Child Care Act* clearly reflected an unwillingness to impose national standards or objectives.

Similarly, the federal government's abortion strategy is notable for what it will not do; the difference is that this piece of legislation is likely to be passed into law. In 1988, the abortion legislation was ruled in contravention of section 7 of the *Charter* largely because access to therapeutic abortion committees was not provided equally across the country. The new legislation (Bill C-43) simply puts abortion back in the *Criminal Code* and does not address the access problem. Bill C-43 states that a woman may obtain an abortion if one doctor concludes that continuation of the pregnancy would harm her psychological, mental or physical health. The bill does not undercut the provinces' substantial power to regulate abortion by regulating the provision of health care services (by refusing to insure this service or by refusing to pay for abortions done in clinics). It is interesting to note that the government of Canada chose not to use the *Canada Health Act* to ensure access to this medical service.

To sum up this argument, opponents of the opting-out provision cannot rest easily now that the Accord has failed. Clearly, the approach to social welfare policy which so disturbs the critics of the provision is being taken regardless of its inclusion in the *Constitution*. The "opting-out" provision is not necessary for the federal government to opt out of new welfare state initiatives and to deny responsibility for filling in gaps in existing programs.

Other opponents undertook a wider analysis, arguing that the Meech Lake Accord would entrench the traditional political agenda (the politics of region, language and culture) and would prevent a new political agenda (social reform, human rights and equality issues) from taking root. I don't think we need a constitutional amendment to solidify the territorial nature of Canadian federal-provincial relations. Alan Cairns and Donald Smiley have both argued that the nature and processes of Canadian federalism have promoted political debate of territorial issues at the expense of issues which cross-cut territory, such as class issues (poverty), aboriginal self-government, and gender equality.

Does the failure of the Accord mean that those who want to see a shift in policy emphasis (from traditional to non-traditional issues) should be happy? Again, absolutely not, for two reasons. First of all, the Accord simply reflected the reality in Canada: territorial and jurisdictional issues dominate the political agenda. Secondly, what all of

the observers, critics or supporters, have overlooked is the fact that the welfare state in Canada is a mess. Supporters of the Accord spoke of delivering existing policies more efficiently (cutting costs). Opponents spoke of the need to extend the welfare state. An underlying assumption among both camps is the assumption that the welfare state actually works. There is ample evidence that the programs for which Canadians pat themselves on the back cost a great deal but do not solve the problems we expect them to solve. That the social safety net doesn't catch a lot of people is illustrated by the dramatic increase in the use of food banks. Another increasingly obvious fact is that existing social welfare programs do not address the feminization of poverty. Recently, the National Council on Welfare reported that women without partners, be they single, widowed, divorced or separated, are not likely to be economically independent.⁶

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The future of the welfare state will not be determined by constitutional amendments which tinker at the margins of jurisdictional issues. The future of the welfare state will be determined by public policy. There is an urgent need for a re-thinking of existing policies. Policies currently on the books don't provide a social safety net and in fact are more like a box of band-aids used to patch up the unfortunate millions who aren't caught. Many existing policies seem to be aimed at perpetuating problems rather than solving them. For example, providing minimal assistance (below the poverty line) to single mothers simply perpetuates the cycle of poverty and adds to the food bank line-ups.

Our obsession with the nuances of federal-provincial relations leads us to ignore equally important political variables. A great deal more attention must be paid to public policy itself, as the future of the welfare state depends on the development of social policies with forward-looking goals, and on their proper implementation, not on the Meech Lake Accord or any future constitutional negotiations.

Linda Trimble, Department of Political Science, University of Alberta.

1. Keith Banting, "Federalism, Social Reform and the Spending Power" (1988) 14 *Canadian Public Policy* S81-92.
2. Thomas J. Courchene, "Meech Lake and Socio-Economic Policy" (1988) 14 *Canadian Public Policy* S63-80.
3. Canadian Advisory Council on the Status of Women, *Brief to the Special Joint Committee of the Senate and of the House of Commons on the 1987 Constitutional Accord* (Ottawa, 20 August 1987) at 15.
4. See Susan D. Phillips, "Rock-A-Bye, Brian: The National Strategy on Child Care" in Katherine A. Graham, ed., *How Ottawa Spends, 1989-90* (Ottawa: Carleton University Press, 1989).
5. However, 75% of these spaces are in "for profit" centres.
6. National Council of Welfare, *Women and Poverty Revisited* (Ottawa, 1990).

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