Unfinished Economic Business and Extra-Constitutional Reform

by

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Chapter 6:

Abstract

The purpose of this thesis is to investigate the dynamic economic relationship between federal and provincial governments within the Canadian federation. This is of importance because the fiscal balance between the federal and provincial governments has changed greatly since the Constitution Act, 1867. Modern social programs such as health and education are expensive endeavors for provinces to finance alone.

The provinces currently hold exclusive jurisdiction rights to health and education, according to the division of powers under the Constitution Act, 1867. However, the federal governments massive revenue generating capacities have allowed them to influence these areas of provincial jurisdiction. This is of problematic nature since the federal government and the provincial governments have different goals.

The Constitution Act, 1982 did not alleviate the stresses relating to the division of powers under the Constitution Act, 1867. In years since the Constitution Act, 1982, the federal government and the provinces have attempted to clarify the division of powers through the failed Accords – Meech Lake and Charlottetown. Moving forward, it appears unlikely that mega-constitutional reform will occur. This makes it unlikely that the Constitution will be amended to settle the division of powers and the economic union. I argue that the power struggle over jurisdiction will likely continue until the Constitution is amended to accommodate modern Canadian socioeconomic circumstances. Extra-constitutional agreements between the provinces and the federal government are inconsistent and favor the federal government because of its large revenue-generating capacity

Chapter 1: Introduction

In the years following the failure of the Meech Lake and Charlottetown Accords, Canada has struggled to find a consistent balance of powers between the federal and provincial governments. Two failed constitutional amendments – the Meech Lake and Charlottetown Accords – have led to many extra-constitutional agreements between the federal and provincial governments in regards to spending powers and taxation. The massive revenue-generating capacity of the federal government has enabled it to influence areas of exclusive provincial jurisdiction.

For various reasons, both the Meech Lake and Charlottetown Accords failed at the ratification stage. Had either been ratified, it would have given provinces the ability to provide programs within their jurisdictions with relatively little federal intrusion. The Constitution Act, 1867 currently divides powers between federal and provincial governments while the Constitution Act, 1982 contains some relevant economic provisions. Since 1867, however, the Canadian economy and society have evolved to a point where the division of powers within Canada has become an issue of federal-provincial tension.

This thesis will examine the needs of Canadian citizens and the most effective way to allocate governmental responsibilities with reflection on the Constitution Act, 1982, the failed accords, and extra-constitutional legislation. Chapter 1 contains the introduction to the topic. Chapter 2 introduces key concepts relating to equity and efficiency. Chapter 3 outlines Canadian constitutional history as it relates to federal-provincial fiscal relations leading up to the Meech Lake Accord. The division of powers

under the Constitution Act, 1867 is introduced and the equalization clause of the Constitution Act, 1982 are examined.

Chapter 4 deals with the Meech Lake Accord. Under the Meech Lake Accord, the governments tried to bring Quebec into the constitution. Among other things, the impact of the Meech Lake Accord would have significantly altered the foundations for federal-provincial fiscal relations. The effects of decentralization are discussed. Chapter 5 examines the Charlottetown Accord and the Economic and Social Union section and compares its fiscal impacts with the Meech Lake Accord.

Chapter 6 examines the federal spending power under the Constitution Act, 1867. The federal spending power has created a vertical fiscal imbalance, which has historically allowed the federal government to intrude in areas of provincial jurisdiction. Extra-constitutional reform from before the failed Accords is examined. The reforms include the *Hospital Insurance and Diagnostic Act, 1957*; *Medical Care Act, 1966*; *Federal-Provincial Fiscal Arrangement Act, 1967* and the *Established Programs Financing Act, 1977*.

Chapter 7 deals with extra-constitutional legislation in the post-Charlottetown era. By examining extra-constitutional agreements between the federal and provincial governments, I will identify a trend regarding federal transfers and provincial autonomy. The extra-constitutional agreements examined are the *Canada Health and Social Transfer* and the *Social Union Framework Agreement*. The economic union is also examined. The *Agreement on Internal Trade* and federal securities regulation will be examined from an efficiency point of view. Finally, chapter 8 contains a roadmap for future federal-provincial fiscal relations.

Chapter 2: Efficiency, Equity, and the Canadian Federation

Broadly speaking, there are those who believe a limited amount of government intervention is desirable, and those who believe in an activist government. Those who believe in limited government intervention favor efficiency over equity, while those who believe in a large government, favor equity over efficiency. Their disagreements are based mostly on their value judgments. Regardless of which camp one falls into, there is no right or wrong ideology.[1] In normative economics (the evaluation of alternative economic outcomes), policies are deemed to be effective based on the extent that they improve the well-being of individuals as judged by the individuals themselves. Different policies affect different people in different ways, however. Therefore, a sort aggregate wellbeing must be determined when making policy choices. Unfortunately, this is extremely tough to observe and evaluate.

The competitive market with its decentralized decision-making is viewed as an efficient resource allocation that should be relied upon whenever possible.[2] There are, however, many ways in which the common market will fail to achieve beneficial outcomes for certain people and the government must correct for these market failures. The degree to which the government should intervene in the market economy in order to fix market failures is widely debated. In Canada, the political and economic mood dictates that the government should redistribute wealth among individuals and levels of government. Government interventions, such as progressive tax, expenditures, and transfers, are of an equalization nature because they take from the better off and redistribute to the less well off. Although the government does promote efficiency in

[1] Robin W. Boadway and Paul A.R. Hobson, *Intergovernmental Fiscal Arrangements in Canada* (Toronto: Canadian Tax Foundation, 1993), 15.

[2] Ibid., 16.

some regards, such as the protection of private property, their main economic concern is promoting equity through redistribution. The process of redistributing from the rich to the poor can only is usually accompanied by some loss in output; the greater the redistribution is, the greater the loss is.[3]

The federal government aims to promote *horizontal fiscal balance* as they intervene in the economy. Horizontal fiscal balance refers to a province's fiscal capacity relative to that of other provinces. The presence of horizontal fiscal imbalance is apparent when the same "tax effort" generates different levels of revenues across provinces, due to the different economic circumstances on various tax bases.[4] Difference in access to certain revenue sources such as natural resources also explains differences in fiscal capacity. Citizens of a federation have the right to certain publicly provided services regardless of where they live.

The distinction between vertical and horizontal equity should also be clarified as because these are the two main forms of redistribution. Economists suggest that individuals who are equally well off before taxes should be equally well off after taxes. This is referred to as *horizontal equity*, which the government hopes to maintain as they redistribute wealth. While horizontal equity is concerned with the equal treatment of equals, *vertical equity* is concerned with the unequal treatment of unequals. This involves careful consideration of how much redistribution the public sector should undertake as money and services are transferred from the well off to the less worse off. This requires a value judgment since a trade-off between equity and efficiency occurs as a result of financial redistribution within the Canadian federation.

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[3] Ibid., 18.

[4] Paul A.R. Hobson and France St.-Hilaire, *Reforming Federal-Provincial Fiscal Arrangements: Toward Sustainable Federalism* (Ottawa: Renouf Publishing, 1993), 17.

Chapter 3: Constitution Act, 1982 and the Run-Up to the Meech Lake Accord

3.1 Division of Powers Under the Constitution Act, 1867

The British North America Act served as Canada's Constitution and came into effect on July 1, 1867. It was later called the Constitution Act, 1867. The Act established the framework for many institutions in Canada including the federal structure, the House of Commons, the Senate, the justice system, and the taxation system. Of primary importance for intergovernmental fiscal relations were Sections 91 and 92. Section 91enumerated several explicit jurisdictions of the federal government. The federal government was given exclusive jurisdiction in matters such as public debt and property, the regulation of trade and commerce, money and banking, and criminal law. Most importantly for this discussion, the federal government was permitted to raise money by any form of taxation under Section 91. This reflected the dominant ideology at the time of confederation that the federal government would never resort to direct taxation in any case. Direct taxes, such as income and corporate taxes, are taxes paid directly to the government.

Section 92 defines the exclusive rights of provincial legislatures. Provinces are given exclusive jurisdictions within the province in matters relating to property and civil rights, hospitals (indirectly), the management and sale of public lands, and the administration of justice. In terms of taxation, provinces are given the right to impose only direct taxation within the province to raise revenue for provincial purposes. Provinces are also given control of municipal institutions. Section 93 gives the provinces exclusive jurisdiction in the area of education, and Section 95 provides for joint federal-

provincial responsibility in the areas of agriculture and immigration, with federal laws taking precedence in the event of conflict.

3.2 Problems of the Constitution Act, 1867

It was during the First World War (1914-1918) that an emergence of a distinctive Canadian self-image developed. During this era of national unity there was a realization that the country could not find its identity solely within an imperial framework. Despite the lack of consensus on who Canadians were and what values ought to be reflected in their constitution, it became clear that constitutional reform was needed. Olling and Westmacott state in reference to the Constitution Act, 1867 that "…the existing constitutional and political arrangements no longer adequately reflected or expressed the main social and economic forces which are at work in our country."[5] In terms of economic arrangements, mega-constitutional change entered the forefront of Canadian society in the post-World War Two era, as citizens began demanding extensive social programs such as welfare, education, and healthcare. All of these services were of provincial jurisdiction, but only the federal government had the money to adequately fund them.

Although the Maritime and western provinces had historically voiced their displeasure with their constitutional position, Quebec drove the first round of mega-constitutional change during the 1960s and 1970s.[6] At this time, the province of Quebec was experiencing profound socio-economic change – often referred to as the Quiet Revolution. At the level of social observation, Canadians outside Quebec began to

[5] R.D. Olling and M.W. Westmacott, *The Confederation Debate: The Constitution in Crisis* (Toronto: Kendall/Hunt Publishing Company, 1983), 2.

[6] Edward McWhinney, *Canada and the Constitution 1979-1982*, (Toronto: University of Toronto Press, 1982), 3.

recognize that in many areas, Quebec was clearly a distinct society, nation, and people. Quebecers had their own history, language, legal system, ethnicity, desires, and attitudes. Yet, viewed through the constitutional lens of federalism, Quebec was simply another province.

At the same time, Canada was suffering through a period of stagflation (rising unemployment combined with inflation). The OPEC cartel began to raise oil prices in 1973 and the federal government proved to be largely incompetent in dealing with economic recession. As described by McWhinney:

> …The nature and character of the constitutional great debate changed from one in which Quebec had seemed pitted against Ottawa and English-speaking Canada as a whole, to a pan-Canadian confrontation in which all the provinces seemed to be joining together to make a common war against the federal government."[7]

Clearly the forces of constitutional change were gathering in Canada. In 1980, Prime Minister Pierre Trudeau promised constitutional change if Quebec voted "no" to separation in the Quebec referendum. Quebec eventually did vote "no" and Trudeau was eager to deliver on his promise, not just to Quebec but also to the rest of the Canada.

The provinces of Canada were granted extensive jurisdictional powers and responsibilities under the Constitution Act, 1867. At the time of Confederation, the majority of government expenses were incurred at the federal level on projects such as railroads. In comparison, education and health care were relatively minor expenses in 1867. Although the Constitution Act, 1867 addressed the issues of taxation and expenditure between federal and provincial jurisdiction, it was neither as precise nor as functional as it could have been. By the time constitutional change was in order in the early 1980s, it was clear that greater reform was needed to create a more effective

[7] McWhinney, 4.

federalist state. For example, the fathers of confederation never contemplated the government being so active in areas such as unemployment, healthcare, and education. The failure to foresee these issues while creating Sections 91, 92, and 93 led to a vertical fiscal imbalance within the Canadian federation. *Vertical fiscal imbalances* occur when one level of government collects more revenue in taxes than it spends, while another level of government collects less money in taxes than it spends.

Under the Constitution Act, 1867, constitutional change was to be approved by both Houses of Parliament in Britain.[8] But by the 1980s, an ever-decreasing level of 'anglophilia' meant that British Parliamentary approval was a mere formality and was no longer regarded as an important step in the modernizing of the Constitution Act, 1867. For reasons of culture and national identity, it was time to patriate the Constitution Act, 1867 and officially make it a truly Canadian document.

3.3 Constitution Act, 1982

On April 17, 1982, upon the proclamation of Queen Elizabeth on Parliament Hill, the new Canadian Constitution Act was enacted after being signed by all Canadian provinces except for Quebec. The 1982 Constitution Act contained seven parts: Canadian Charter of Rights and Freedoms; Rights of the Aboriginal Peoples of Canada; Equalization and Regional Disparities; Constitutional Conference; Procedure for Amending Constitution of Canada; Amendment to the Constitution Act, 1867; General.[9]

Part I, the Canadian Charter of Rights and Freedoms, entrenched key individual rights for Canadians, ensuring that these rights could not be eroded by legislation or the

[8] Keith Banting and Richard Simeon, *And No One Cheered: Federalism, Democracy & the Constitution Act* (Agincourt, Ontario: Methuen Publications, 1983), 177.

[9] "Canada Act, 1982," *The American Journal of Comparative Law* 32, no. 2 (Spring 1984). JSTOR, http://www.jstor.org/stable/840467

courts. While many sections of the Charter of Rights and Freedoms have not induced any significant social, political, or economic changes in Canada, several sections of the Charter of Rights and Freedoms have significantly impacted the daily lives of Canadians and the fabric of Canadian life.

Part V of the Constitution Act, 1982, dealt with the amending issue. Section 38(1)(b) states that, in order for an amendment to occur, it must be authorized by "resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, fifty percent of the populations of all the provinces."[10] This process, the result of a hard-fought agreement between the federal and provincial levels of government, gave Canada the power to patriate the constitution and to begin to exercise complete control over its own constitution.

3.4 Equalization Effects of the Constitution Act, 1982

Part III of the 1982 Constitution Act addresses equalization and regional disparities. The key provision is Section 36, which states:

> 36.-(1) Without altering the legislative authority of Parliament or the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to
>
> a) promoting equal opportunities for the well-being of Canadians;
>
> b) furthering economic development to reduce disparity in opportunities; and
>
> c) providing essential public services of reasonable quality to all Canadians
>
> (2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably

[10] Ibid.

comparable levels of taxation.[11]

The provisions of Section 36 have two main effects on governmental responsibilities and obligations. Firstly, Section 36(1) declares that equality is a national objective that is shared jointly by the federal and provincial governments. This is important because much of what the federal government does has an equity dimension to it. Thus, to the extent that the federal government has an interest in the equalization of provincial programs, Section 36(1) could be used as an additional means for federal intrusion in areas of exclusive provincial jurisdiction or as a means of revenue transfer to give provinces greater autonomy. Additionally, Section 36(1) adds equality of opportunity as a dimension of equality to be provided by federal and provincial governments. This goes beyond a commitment to the provision of reasonably comparable public services at reasonably comparable levels of taxation. Thus although, Section 36 has a national equalization effect, it also provides another lever for the federal government to use in order to gain access to areas of exclusive jurisdiction through conditional grants.

This has historically been a way for the federal government to influence areas of exclusive provincial jurisdiction such as healthcare and education. In doing so, the federal government has pointed to Section 106, which allows the federal government to use its revenues on matters deemed to be in the public interest. Secondly, the POGG clause (Peace, Order, and Good Governance), gives more general justification for federal spending in areas of provincial jurisdiction.[12] Section 36 of the Constitution Act, 1982

[11] "Canada Act 1982 and Constitution Act, 1982," *The American Journal of Comparative Law*, 32, no. 2 (Spring 1984). JSTOR, http://www.jstor.org/stable/840467

[12] Boadway and Hobson, 7.

gives the federal government a third justification for encroaching on areas of provincial jurisdiction.

Prior to the Constitution Act, 1982, the concept of equalization had not been enshrined into the constitution. Equalization payments are transfers from the federal government to the poorer provincial governments to facilitate their ability to provide reasonable services at reasonable costs. With the support of equalization payments, provincial governments were formally required to provide their citizens with basic services without raising taxes to an inappropriate level.[13] Although, equalization payments in various forms were very common prior to 1982, they were not formally recognized under the constitution. Equalization payments are unconditional grants and, therefore, are not an intrusion of the federal government in areas of exclusive provincial jurisdiction. Section 36 promoted both equalization payments and conditional grants.

Equalization payments are cash payments made in Canada from the federal government to provincial governments in order to offset differences in available revenue or in the cost of providing services. They are necessary to promote *horizontal fiscal balance* within the federation. Horizontal fiscal balance refers to a province's fiscal capacity relative to that of other provinces. The presence of horizontal fiscal imbalance is apparent when the same "tax effort" generates different levels of revenues across provinces, due to the different economic circumstances on various tax bases.[14] Difference in access to certain revenue sources such as natural resources also explains differences in fiscal capacity. Although provinces are primarily responsible for providing these services, it is the ultimately the federal government's responsibility to assure these benefits

[13] Thomas J. Courchene, *The BNA Act to the Constitution Act, 1982*, (Kingston, Ontario: Queen's University, 1983), 2.

[14] Hobson and St. Hilaire, 17.

because of the aforementioned vertical fiscal imbalance. Both conditional and unconditional grants can be used to offset horizontal imbalances within the Canadian federation.

3.5 Unfinished Business of the Constitution Act, 1982

The most glaring weakness of the Constitution Act, 1982 was the failure to bring Quebec into the new Act and this was the major reason behind the constitutional renewal titled the Meech Lake Accord. Quebec's signing of the Constitution Act, 1982 was needed not for practical purposes, but as a tangible expression of determination of Canada's members to remedy Quebec's constitutional isolation.[15] Quebec's inclusion would re-establish the foundations of true federalism in which all governments fully support the Constitution that governs them. Winning over Quebec's support in a renewed constitution, however, would require a difficult power balance between Quebec, Canada, and the rest of the provinces.

From a fiscal arrangements point of view, the Constitution Act, 1982 failed to address the vertical fiscal imbalance within the Canadian federation. Even after the Constitution Act, 1982, the provincial governments were still largely dependent on federal transfers and grants in order to provide public services as prescribed under the Constitution Act, 1867. The vertical fiscal imbalance existing within the Canadian federation blurred the division powers and created conflict between federal and provincial governments. The provinces fought to maintain power within their areas of jurisdiction but struggled to do so without sufficient revenue. A greater fiscal balance was needed within the Canadian federation if it were to perform effectively and consistently.

[15] Gil Remillard, "Quebec's Quest for Survival and Equality Via the Meech Lake Accord," in *The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord*, ed. Michael D. Behiels, 28 (Ottawa: University of Ottawa Press, 1990).

Chapter 4: The Meech Lake Accord

4.1 Introduction

The Meech Lake Accord was a failed set of amendments to the Canadian Constitution. Negotiated in 1987 by Prime Minister Brian Mulroney with the ten provincial premiers, the Accord was an attempt to bring the province of Quebec into the Constitution Act, 1982. Because the Constitution Act, 1982 was not signed by Quebec, it was considered to be illegitimate, although still a fully operational constitutional document. The absence of Quebec's signature represented a divide within the federation.

Quebec's provincial government at the time, the Parti Quebecois, government asked for greater autonomy in matters relating to economic and cultural policies. They wanted to be defined as a "distinct society" and receive greater autonomy within the federation. The Accord offered many concessions to Quebec and moderate powers to the rest of Canada (ROC), such as: recognition of Quebec as a "distinct society"; a constitutional veto for Quebec; increased provincial powers with respect to immigration; more reasonable financial compensation to provinces that chose to opt out of federal programs; and provincial input in appointing Supreme Court judges.

Under the Meech Lake Accord, Prime Minister Brian Mulroney and the provincial premieres offered to Quebec most of what it had asked for. Not surprisingly, Quebec Premier Robert Bourassa and his nationalist colleagues were enthusiastic about signing such a great deal for the nationalist political and bureaucratic elites of Quebec.[16] Bourassa agreed to the Accord because he believed that the distinct society clause would take precedence over the Charter of Rights and Freedoms, where those rights and

[16] Michael D. Behiels, "Introdution," in *The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord*, ed. Michael D. Behiels, 5 (Ottawa: University of Ottawa Press, 1990).

freedoms competed with Quebec's attempts to build an autonomous francophone province within Confederation. Furthermore, some of the PQ leadership saw the provisions given to Quebec in the Meech Lake Accord as a backdoor route to separatism.[17]

Many others, however, were critical of the "distinct society" clause. For example, former Prime Minister and negotiator of the Constitution Act, 1982, Pierre Trudeau, emphasized: [the distinct society approach is really] "a fast track towards sovereignty association. When a province becomes distinct…it seeks more powers to maintain that difference, it is really saying that a measure sovereignty is being transferred from the national government to the provincial government."[18] Although the degree to which the "distinct society" clause would have altered Quebec-federal relations is unknown, former Prime Minister Trudeau's concerns about Quebec's "distinct society" threatening the Canadian union would later be adopted by several provincial premieres, much to the chagrin of Quebec nationalists.

Instead of rejecting the Meech Lake Accord because of the "distinct society" clause given to Quebec, the Premieres from the rest of Canada (ROC) used the opportunity to negotiate greater powers for themselves and their provinces. Because Quebec received so many concessions under the Accord, the other provincial premieres were placed in a strong bargaining position. Under the Accord's decentralized vision of Confederation, the premieres demanded and received: the constitutional recognition of the equality of provinces; the right to propose appointees to the Supreme Court and the

[17] David Milne, *The Canadian Constitution: The Players and the Issues in the Process That Has Led from Patriation to Meech Lake to an Uncertain Future* (Toronto: James Lorimer & Company, Publishers, 1991) 213.
[18] Ibid., 217.

Senate; the right to sign individual immigration agreements with Ottawa; and the right to opt out, with full compensation, of shared cost programs introduced by the federal government at the provincial level.[19]

The Meech Lake Accord, if enacted, would have completed the unfinished business of the Constitution Act, 1982.[20] The agreement appealed to Quebec nationalists and appeased the provincial premieres. Also, the Accord was touted as demonstrating a "mature and confident Confederation, whose governments are guided by principles of mutual respect and balanced strength."[21] Although Quebec would have received extra powers under the Meech Lake Accord, the legitimacy of national institutions would have been strengthened by giving all provinces a say in appointments to key institutions, and putting in place intergovernmental mechanisms to coordinate economic policies.[22]

After the Meech Lake negotiations, all of the provinces had informally agreed to the Accord. Because of the nature of the ratification process, all federal and provincial legislatures involved were required to formally sign off on the Accord within three years. But as the deadline for provincial ratification approached, support for the Meech Lake Accord began to crumble. Newly elected governments in Newfoundland and Manitoba were not satisfied with the Accord because of the "distinct society" clause for Quebec. The three year ratification period passed with Newfoundland and Manitoba failing to sign the Accord.

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[19] Behiels, 6.

[20] Lowell Murray, "The Constitutional Politics of National Reconciliation," in *The Meech Lake Primer: Conflicting Voews of the 1987 Constitutional Accord*, ed. Michael D. Behiels, 13 (Ottawa: University of Ottawa Press, 1990).

[21] Ibid., 24.

[22] Ibid., 25.

4.2 Section 106: Decentralization

The Meech Lake Accord would not have altered the vertical fiscal imbalance within the Canadian federation because revenue sources and division of powers remained the same, but it would have created greater decentralization. This would have given more flexibility and autonomy to provinces in regards to spending federal money. Section 106 states:

> The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared cost program that is established by the Government of Canada after the coming force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

If provinces did not want to participate in national programs within provincial jurisdiction, they would have been able to opt-out with full compensation as long as they provided a compatible program. This would have seriously limited the potential impact of the federal government's spending power in federal-provincial initiatives such as the *Hospital Insurance and Diagnostic Act, 1957*, and the *Established Programs Financing Act, 1977* (to be examined in chapter 5).

By granting the provinces more autonomy in their implementations of public programs, the Meech Lake Accord would have created a greater degree of decentralization within the federation. It would have weakened the potential for Canadians to share common privileges and benefits of being citizens, regardless of where they lived in Canada. Under the Accord, the federal government would not have been able to sponsor a national health care program, such as the *Social Union Framework*

Agreement, with the same uniformity as it does today. All the federal government would have been able to do under the Accord would be to declare the "national objectives" it hoped to achieve.[23]

Had the Meech Lake Accord been adopted, the degree of decentralization in the Canadian confederation would have created a more efficient implementation of public programs, but would have reduced equitability across the country. Under the Accord, provinces which opted out of national cost sharing programs would have been required to provide programs which were only "compatible" with federal objectives in order to receive federal funding. In this context, the term "compatible" simply means "capable of existing together."[24] Thus, under the Meech Lake Accord, the only power of the federal government in federal-provincial programs, would have been to fund provincial programs in a manner that made them "capable of existing together," in the achievement of specified "national objectives." This would have significantly reduced the federal government's ability to promote equity for all Canadians in terms of the social services they received.

As further evidence of the Accord's debilitating effect on future national programs, Johnson points to the opting-out clause offered to provinces. For example, suppose the federal government were to seek an amendment to the constitution that would see the federal government regulate private pension plans in Canada. (This might be desirable to ensure portability of pension plans and to reduce the pension funding stress placed on private industry.) Because pension regulation is currently primarily

[23] A.W. Johnson, "The Meech Lake Accord and the Bonds of Nationhood," in *Competing Constitutional Visions: The Meech Lake Accord*, ed. Katherine E. Swinton and Carol J. Rogerson, 148 (Toronto: The Carswell Co. Ltd., 1988).

[24] Ibid., 148.

within provincial jurisdiction (except for federal government employees and federally regulated industries), any province not in agreement with the amendment would be entitled to "reasonable compensation."[25] This would provide another incentive for provincial governments to oppose constitutional amendments and to prevent the federal government from entering into its provincial affairs. Each province across Canada would subjectively determine the efficiency-equity trade-off that they wished to establish within their area of jurisdiction. Thus, Canadians across Canada would have been treated differently by their governments.

The opponents of Section 106A of the Meech Lake Accord foresaw a doom and gloom scenario for Canada because they believed that a strong central government is necessary for nation-building: without it, we will be left with a patchwork quilt of substandard national social and economic programs.[26] However, it is unlikely that the quality of services from province to province would have varied this substantially. Section 36 of the Constitution Act, 1982, which defines equality as a national objective, would influence the interpretation of Section 106A of the Meech Lake Accord. Because almost all nationally funded social programs have an equity dimension, the federal government could use Section 36 to justify the interpretation of the spending power clause of the Meech Lake Accord toward its favor.

Decentralization and differentiation in services between provinces is not necessarily a bad thing for national unity and equity. Given the country's size and diversity, the outlook and priorities of any given region may vary markedly from other

[25] Ibid., 150.

[26] Deborah Coyne, "The Meech Lake Accord and the Spending Power Proposals: Fundamentally Flawed," in *The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord* ed. Michael D. Behiels, 246 (Ottawa: University of Ottawa Press, 1990)

regions. A system of provincial governments with the power to adjust national programs to local needs is more likely to respond to regionally diverse needs than is the federal government. While a central government can afford to overlook the preferences of certain regions, a regional government cannot afford to do so.[27] Thus, although, it is likely that public services and programs would vary increasingly across Canada under the Meech Lake Accord, this would have allowed provincial governments to provide services compatible with national objectives but also flexible enough to meet regional preferences. Section 106 would have allowed the efficiencies of decentralization to persist, while Section 36 would have worked as an overarching security net to ensure that a fair degree of equality persisted across the federation.

4.3 Efficiencies of Decentralization

The decentralizing effect of Section 106A of the Meech Lake Accord likely would have promoted efficiency in the delivery of services. In effect, provinces act similar to competitors in a private marketplace. In many instances, particularly in areas of exclusive provincial jurisdiction, cost efficiency is better achieved at the delivery level in the provinces rather than by the federal government.[28] Information on technology, products, and financing tends to reside at the provincial level, promoting innovation and experimentation among the provinces. A further incentive for cost minimization within provinces comes from competition between provinces and markets. In his experiences working with the governments of Ontario and Quebec, Pierre Fortin observed that greater

[27] Andrew Petter, "Meech Ado About Nothing? Federalism, Democracy, and the Spending Power" in *Competing Constitutional Visions: The Meech Lake Accord*, ed. K.E. Swinton & C.J. Rogerson, 189 (Toronto: The Carsell Co. Ltd., 1988).

[28] Pierre Fortin, "The Meech Lake Accord and the Federal Spending Power: A Good Maximin Solution" in *Competing Constitutional Visions: The Meech Lake Accord*, ed. K.E. Swinton & C.J. Rogerson, 219 (Toronto: The Carsell Co. Ltd., 1988).

centralization establishes a monopoly, and, with it, higher costs and higher taxes.[29] In contrast, decentralization brings more competition, lower costs and lower taxes.

Global economic efficiency requires that the provision of public goods and services should pass two tests: minimum unit cost and maximum satisfaction of preferences.[30] The Meech Lake Accord would have passed both of these tests. The costs of national programs would have dropped due to the increased regional focus and the competition and innovation that would have resulted from the provinces' ability to vary national programs. Satisfaction as a whole with the delivery of services would have risen as the provinces were freed to vary programs to meet regional demands.

Some degree of horizontal equity would have been lost, however. As provinces receive greater autonomy in the delivery of their services, naturally the quality of services will vary increasingly from province to province. For instance, if one province is able to more efficiently provide healthcare than another province, then persons who are equally well off in different provinces prior to taxes being levied, will not be equally well-off after the levy of taxes. This occurs because the persons in the worse off province must either pay a higher rate of taxes to receive a comparable healthcare program, or they pay the same amount of taxes and receive a healthcare program of lesser quality.

4.4 Interpreting the Term "Reasonable Compensation"

The "reasonable compensation" to be transferred by the federal government to non-participating provincial governments under the Meech Lake Accord could come in many forms. Obviously, cash compensation is a prime example. Tax points are another way the federal government could provide reasonable compensation. Although this

[29] Ibid., 219.
[30] Ibid., 219.

method of compensation is more difficult because tax points are no more than potential revenue, Peter Hogg believes that transferring tax points from the federal government to provincial governments is a legitimate form of compensation under the Meech Lake Accord.[31]

How much compensation is reasonable under the Meech Lake Accord would also need to be determined. If a non-participating province were to operate a similar program that is equivalent in cost to the national program, then the province's compensation would have been equal to whatever the province would have received had it chosen to join the national program.[32] If the province's program were more or less costly than the national program, then compensation would not have adjusted accordingly. First, suppose a province's program is more costly than the national program. In this case, the compensation would remain the same and the province's discretionary choice to put more provincial resources into the program would not have entitled it to additional provincial aid. In contrast, if a province's program were to be less costly than the national program, a lesser contribution from the federal government would have been "reasonable." The federal government's flexibility in providing "reasonable compensation" does not provide provinces with any fiscal windfalls in committing more or less money to implementing their own public programs.

4.5 Conclusion

Section 106 of the Meech Lake Accord would have significantly limited the effects of the vertical fiscal imbalance within the Canadian federation. Although revenue generating capacities and division of powers remained at the status quo, provinces were

[31] Peter Hogg, "Analysis of the New Spending Provision" in *Competing Constitutional Visions: The Meech Lake Accord*, ed. K.E. Swinton & C.J. Rogerson, 161 (Toronto: The Carswell Co. Ltd., 1988).
[32] Ibid., 161.

guaranteed much more autonomy within their areas of exclusive jurisdiction. Conditional grants, the ultimate intrusive weapon of the federal government imbalance, would have been blunted under Section 106.

There is a sound basis for arguing that the decentralization inherent in Section 106A of the Accord promoted a more mature, flexible and efficient federalism in which national programs could be delivered at the local level with more attention to local needs. It is, in fact, the variations in the delivery of national programs that promote efficiency, by enabling provinces to compete and seek innovation. Over time, this type of competition enables the provinces and federal government to evolve better programs, rather than relying on a centralized, "one size fits all" model. The overall equalization effect of programs across Canada would have diminished. However, Section 36, which enshrined equalization, would not have permitted a significant erosion of national standards and equalization. Nonetheless, the decentralizing effects of the Meech Lake Accord would have promoted greater efficiency, but less equity within the Canadian federation. Ultimately, the Meech Lake Accord never came into fruition and its true impacts will never fully be knows.

Chapter 5: The Charlottetown Accord

5.1 The Belanger-Campeau Report, the Allaire Report, and A Citizen's Forum

Quebec's 1991 Belanger–Campeau Report was produced by the Commission on the Political and Constitutional Future of Quebec. The mandate of the Commission as set out in section 2 of the Act was to "examine and analyze the political and constitutional status of Quebec and to make recommendations in respect thereof."[33] The Commission was appointed in response to the failure of the Meech Lake Accord in order to redefine Quebec's Constitutional stance. The Commission heard from 235 groups and individuals and held many public forums between November 6 1990 and January 23 1991.

While the Belanger-Campeau report was a document of the National Assembly of Quebec, the Allaire Report represented the policy positions of the Liberal Party of Quebec. The Allaire Report, "A Quebec Free to Choose," was conducted in a similar manner as the Belanger-Campeau Reports and reached many of the same conclusions but offered more Constitutional solutions.[34] The Constitutional Committee of the Liberal party of Quebec, chaired by Jean Allaire, developed audio and video presentations of the full-range of constitutional alternatives and presented them to every constituency in Quebec. Additionally, the Allaire Committee consulted with prominent business leaders and academics to receive well-rounded input. The Report was published January 29, 1991. It recommended that 22 areas of federal jurisdiction or jurisdiction shared between the two levels of government be transferred to areas of exclusive provincial jurisdiction.

Both reports called for a disentanglement of federal and provincial roles, extensive decentralization and the elimination of the residual federal spending powers.

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[33] Mollie Dunsmuir, "The Belanger-Campeau and Allaire Reports," *Research Branch of the Library of Parliament*, 1991: 1.

[34] Ibid., 3.

The reports would have clearly involved a significant redistribution of powers and federal-provincial fiscal relations. Most interestingly, the Allaire Report recommended a restructuring of equalization payments, which emphasized assistance for investment in physical infrastructure, transportation, and communications, as opposed to the traditional emphasis on the provision of public services.

Towards the end of 1990, the Mulroney government, stung by the failure of the Meech Lake Accord, unveiled "A Citizen's Forum on Canada's Future." The Forum was composed of its chairman, Keith Spicer - an academic/journalist then serving as chairman of the Canadian Radio-television and Telecommunications Commission - and an advisory group of eleven other Canadian notables. The forum was an opportunity for people from all regions, primarily the ROC to be heard regarding their visions for the future of the country. In all, over 400,000 Canadians were heard.[35] The Forum concluded that: "For most participants outside Quebec, Quebec's presence in confederation cannot be bought at the price of damaging or destroying those things they value most about the country, and in particular, must not be bought by sacrificing individual or provincial equality."[36] However, on many other issues, the ROC appeared to be divided, which foreshadowed how difficult a consensual resolution would be.

The independent research of both Quebec and the ROC laid the foundation for an extremely complicated integration process once the Charlottetown talks began. The two regions had separate consultation processes, which would make the agenda setting process difficult to mesh later. Compounding the delicateness of the situation was the fact that the only point of consensus among the ROC was that they did not want to grant

[35] Peter H. Russell, *Constitutional Odyssey: Third Ed.* (Toronto: University of Toronto Press, 2004), 163.

[36] *Citizen's Forum on Canada's Future* (Ottawa: Minister of Supply and Services 1991), 16.

Quebec special powers. The separate consultations leading up to the Charlottetown Accord highlighted just how divided the Canadian federation was on many critical issues.

5.2 Introduction to the Charlottetown Accord

Like the Meech Lake Accord, the Charlottetown Accord was a failed set of amendments to the Canadian Constitution. The Charlottetown Accord attempted to bring Quebec into the Constitution and resolve long-standing issues regarding federal-provincial division of powers. The second round of negotiations for the Accord was dubbed "Canada's round" because of its incorporation of a broad range of issues. For example, the Business Council on National Issues was commissioned to examine issues pertinent to the constitution from a private sector perspective. [37]Aboriginal-Canadians were also invited to express their constitutional desires.

Since the Meech Lake Accord dealt with certain issues central to Quebec, there was no way another round of constitutional reform dealing primarily with Quebec would gain public support in English-speaking Canada. As described by Peter H. Russell: "The rest of Canada, to put it mildly, was not impressed. It was in no mood to get down on its knees to seek a reconciliation with Quebec."[38] Unlike the Meech Lake Accord, public discussion of constitutional options preceded constitutional negotiations for the Charlottetown Accord. By the spring of 1991, provincial, territorial, and aboriginal sides of the negotiation were beginning to coalesce. Briefly stated, the provinces consulted their citizens and reflected their opinions in numerous federal-provincial meetings during the spring and summer of 1991. On September 24, 1991, the federal government released its constitutional proposals in the form of a glossy book entitled *Shaping Canada's*

[37] Adam Harmes, "The political Economy of Open Federalism," *Canadian Journal of Political Science*, 40, no 2 (2007).
[38] Russell, 163.

Future Together. Although they did not necessarily form the basis of the new agreement, their broad provisions are worth outlining. The contents of the core package fell under seven headings:[39]

1. *Canada clause* A clause to be inserted at the beginning of the Constitution stating "who we are as people." A long list of proposed contents included recognition of Quebec's special responsibility to "preserve and promote its distinct society."
2. *Distinct society* A clause to be inserted in the Charter of Rights stating that the Charter shall be interpreted in a manner consistent with the preservation and promotion of Quebec as a distinct society and the preservation of Canada's linguistic duality.
3. *Charter changes* The Charter of Rights would be amended to guarantee "property rights." The section permitting legislatures to override certain sections of the Charter would be changed so that its use requires the consent of sixty per cent of members of the legislatures instead of fifty per cent.
4. *Aboriginal self-government* A general aboriginal right to self-government would be entrenched in the Constitution. Up to ten years would be allowed to define the scope and limits of self-government.
5. *Senate reform* Senators to be elected with "more equitable provincial and territorial representation. The Senate should not be a confidence chamber or have any role in financial legislation, and would have only a suspensory veto on "matters of national importance." In all other issues, it would have full legislative powers.
6. *Supreme Court of Canada* When vacancies occur, appropriate provincial and territorial attorneys-general would submit lists of five nominees. The federal government would appoint the Justices from such lists.
7. *Economic union* (3 parts) All three parts would require the agreement of the federal government and seven provinces representing fifty per cent of the population.
    a. *Section 121* The free-trade clause in the original constitution should prohibit restrictions on the free movement of "persons, goods, services and capital." The federal Parliament should be able to exempt a federal or provincial regulation from this prohibition.
    b. *Section 91A* The federal government should be given a new power to enhance economic union on any matter it declares "to be for the efficient functioning of Canada."
    c. *Division of Powers* Several recommendations were put forward to provide a more flexible, better coordinated, and more decentralized federation. The proposal included a complete federal withdrawal from manpower training and partial withdrawal from six other fields

[39] Russell, 171.

> (tourism, forestry, mining, recreation, housing, and urban affairs). Federal spending in areas of exclusive provincial jurisdiction would be more limited than under the Meech Lake Accord by being made subject to the consent of seven provinces with fifty per cent of the population rule, with compensation being made to opting-out provinces that meet national objectives.

The package was wide-ranging and contained something for almost everyone. After all, a wide variety of different interest groups from across the country expected appeasement. Quebec received, for the most part, its five conditions from the Meech Lake Accord. The proposals also provided some of the decentralization of federal authority that all Canadian provinces sought to achieve. Aboriginals were given a right to self-government and provinces outside of Central Canada received the Senate reform they desired. It is surprising, however, that the federal government was prepared to offer Quebec a special responsibility to "preserve and promote its distinct society" as well as a "distinct society" clause to allow it to override the Charter of Rights and Freedoms when the rest of Canada was clearly opposed to such a power.

5.3 The Economic and Social Union Proposals

Economic issues had a central place in the federal government's development of its constitutional proposals in 1991. The federal government had two general goals: to constitutionalize property rights and to strengthen the economic union among provinces.[40] The government addressed the first issue by proposing an amendment to the Charter of Rights and Freedoms. The second concern was more delicate because it involved a relinquishment of powers by the provincial governments. The federal

[40] Christopher P. Manfredi, "On the Virtues of Canadian Constitution: Why Canadians Were Right to Reject the Charlottetown Accord" in *Rethinking the Constitution: Perspectives on Canadian Constitutional Reform, Interpretation, and Theory*, ed. Anthony A. Peacock, 41 (Toronto: Oxford University Press, 1996).

government developed fifteen proposals to address the issues of economic union among provinces, the most important of which were those promoting a Canadian common market. Under the federal government's proposal, the common market clause would have been broadened to include persons, goods, services, and capital. The proposed amendment would have prevented federal and provincial governments from contravening the principle of free economic union by law or practice.[41] It would have permitted the free market to take its course throughout the entire country, by limiting government intervention in business. This included more free market practice across the nation in terms of business within provinces and interprovincial trade. Exceptions would have been allowed for reasons of national interest, regional development, and most notably to further the principle of equalization.

The economic union was an attempt to achieve greater economic efficiency within the Canadian federation. Canada's economic union was at question. Was Canada ten separate economies free to create their own mobility laws? Or was Canada one large economic union with a common market where goods, services, people, and investment could move freely? This was a critical decision for the economic union of Canada. At stake was the efficiency of the economy. If barriers were permitted to exist, then resources would not be allocated as efficiently as possible within the federation. Caveats to the free trade were included in order to avoid aggravating regional disparities and to promote equity.

5.4 The Charlottetown Consensus

On August 28, 1992, after several months of intense inter-governmental meetings, the federal and provincial governments released a final draft of the proposed

[41] Ibid., 51.

constitutional amendments. The draft, entitled *Consensus Report on the Constitution: Charlottetown*, would have provided the foundation for the formal legal resolutions of the Accord, to be submitted to Parliament and the legislatures.[42] The report contained six sections addressing specific issues: (1) Unity and Diversity, (2) Institutions, (3) Roles and Responsibilities, (4) First Peoples, (5) The Amending Formula, (6) Other Issues.

Similar to the Meech Lake Accord and the federal government's *Shaping Canada's Future Together*, there was a concerted effort to appease the political class of Quebec and bring Quebec into the Constitution Act, 1982. The Meech Lake Accord, which unraveled in 1990, was the blueprint for bringing Quebec into the constitution under the Charlottetown Accord. The five Quebec-specific elements of the Charlottetown Accord and the proposals set out in *Shaping Canada's Future Together* resembled those of the Meech Lake Accord, with one exception – a hedged recognition of Quebec as a distinct society.[43] Through the Citizen's forum and other public opinion arenas, it was clear that the ROC would not support an Accord which could be seen as giving Quebec special status in order to preserve its linguistic and cultural identity.

Of all the proposals in the final draft, the provisions pertaining to federal spending in section three were the most significant since they would have, if materialized, profoundly modified the functioning of Canadian federation. The Charlottetown Accord would have altered the federal spending power in three respects: Canada-wide shared cost programs; exclusive provincial jurisdiction in certain fields; and the future establishment of a "framework" to guide the use of federal spending power in all areas of exclusive provincial jurisdiction.

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[42] *Consensus Report on the Constitution: Charlottetown*, August 28, 1992.

[43] Richard Johnston, "An Inverted Logroll: The Charlottetown Accord and the Referendum," *Political Science and Politics* 26, no. 1 (1993). JSTOR, http://www.jstor.org/stable/419503.

Similar to the Meech Lake Accord, the Charlottetown Accord attempted to deal with the dilemma of the vertical fiscal imbalance by offering a Canada-wide shared-costs program model with "reasonable" compensation for provinces that chose to opt out. Once again, compensation would be provided only to provinces that opted out of federal programs within exclusive provincial jurisdiction and such compensation would only be available to provinces if they implemented a program that was "compatible to national objectives."[44] This would have created a more efficient use of fiscal money, yet the decentralization would have limited the ability for Canadians to share common benefits as a result of diminished horizontal equity.

The Accord also included a provision that would have recognized exclusiveness of provincial powers in some areas, and would have forced the federal government to constrain the exercise of spending that is "directly related to the fields of exclusive provincial jurisdiction.[45] These fields would have included labour-market development and training, forestry, mining, tourism, housing, and recreation, as well as municipal and urban affairs. This recognition of exclusive provincial jurisdiction in certain fields would have enabled the provinces to mitigate the distorting influence the federal government in these areas. Clearly, this provision would have created a decentralizing effect on the Canadian union since each province would have achieved full autonomy over areas of exclusive provincial jurisdiction and all areas "directly related" to them. A diminished role for the federal spending power would therefore work against equity goals.

5.5 Canada's Social and Economic Union

[44] Jacques Fremont, "The Charlottetown Accord and the End of the Exclusiveness of Provincial Jurisdictions" in *The Charlottetown Accord, the Referendum and the Future of Canada*, ed. Kenneth McRoberts & Patrick Monahan, 96 (Toronto: University of Toronto Press, 1993).

[45] Ibid., 95.

Section I, B(4) of the Charlottetown Consensus contained provisions for Canada's Social and Economic Union that had yet to be drafted. The Social and Economic Union included a commitment to nation-wide standards such as universal healthcare, access to education, and the right for workers to unionize. The Section included the following goals:

- Providing throughout Canada a health care system that is comprehensive, universal, portable, publicly administered and accessible;
- Providing adequate social services and benefits to ensure that all individuals resident in Canada have reasonable access to housing, food, and other basic necessities; [and]
- Providing high quality primary and secondary education to all individuals resident in Canada and ensuring reasonable access to post-secondary education.

The policy objectives set out in the provision on economic union should include, but not be limited to:

- working together to strengthen the Canadian union;
- the free movement of persons, goods, services and capital;
- the goal of full employment;
- ensuring that all Canadians have a reasonable standard of living; and,
- ensuring sustainable and equitable development

The new Social and Economic Union section was a watered-down version of what the federal government had originally proposed. Their efficiency orientation was tempered by a commitment to equity goals. It further established the principle of equalization by declaring that all Canadians were entitled to receive relatively equal social services.

The promotion of free movement of persons, goods, services, and capital promoted efficiency by allowing the common market of Canada to efficiently allocate Canada's economic resources. Thus, to the extent that Canadians were treated relatively equal in regards to the types of services and programs they received, the Social and Economic Union section would have allowed for a more efficient use of Canada's resources by eliminating barriers and allowing Canada to function as one common market. It is unclear, however, what degree of balance between equity and efficiency would have been acceptable under the Charlottetown Accord.

5.6 Conclusion

The Charlottetown Accord was put to national referendum on October 26, 1992 and was defeated. There are many reasons why Canadians rejected the Charlottetown Accord. Many Canadians did not want to cede additional powers to Quebec as they saw it as a threat to national unity. If Canadians believed Pierre Trudeau was correct in stating that granting Quebec special status was a backdoor to separation, then it is understandable why they would vote "No" to the Accord. These are people who believe in national equality and national unity, and were not willing to trade those qualities for their own regional enhancements.

Jeffrey Simpson believes that years of political frustration drove many Canadians to vote "No."[46] People took out their anger by kicking their constitutional baby. If, in fact, this is true, then it is an illegitimate reason to vote "No." The Charlottetown Accord was an opportunity to enhance the strength of the nation. It may have had a decentralizing effect, but it afforded more regional flexibility. Overall, the provinces would have gained

[46] Jeffrey Simpson, "The Referendum and its Aftermath," in *The Charlottetown Accord, the Referendum and the Future of Canada*, ed. Kenneth McRoberts & Patrick Monahan, 194 (Toronto: University of Toronto Press, 1993).

autonomy in many crucial areas by receiving substantial financial aid from the federal government with few strings attached. This would have allowed the provinces to respond to regional needs instead of having the federal government's "one size fits all" programs imposed within their jurisdictions. In effect, Canadians in all regions would have received a better quality of public services. In regards to the common market and social union, it is unclear what balance would have been struck between efficiency and equalization. However, there is no doubt that the removal of economic barriers would have created a more efficient economic union.

Regardless of why Canadians voted "No" to the Charlottetown Accord, they must now face the consequences that major constitutional reform is unlikely to occur anytime soon. The failures of the Meech Lake and Charlottetown Accords have ruined the mood for major constitutional change in Canada. The federal government still maintains massive revenue-generating capacity while the provinces are stuck implementing massive social programs. They require federal transfers and are thus subject to federal conditions. In extra-constitutional fiscal arrangements after the Charlottetown Lake Accord, provinces must negotiate with a weaker hand due to the vertical fiscal imbalance within the federation.

Had the Charlottetown Accord been ratified, it would have limited the federal spending authority in fields such as healthcare and social programs in the same manner as the Meech Lake Accord. The provinces stood to gain guaranteed funding from the federal level with far fewer strings attached than in the past. Thus, the effects of the vertical fiscal imbalance would have been blunted. The federal government's large spending

powers would continue to compromise the country's efficiency in regards to social programs in exchange for greater equity.

Moving forward, the issue of economic union would need to be addressed. If Canadians wished to forge a strong economic union, they would need to eliminate barriers within the federal state. Economic barriers between provinces distort the common market by not allowing the most efficient allocation of resources. The barriers that prevent efficient allocation of resources create an even greater horizontal fiscal imbalance within Canada by not allowing resources to fully capitalize on the economic efficiencies of different regions. Although the Charlottetown Accord failed to receive ratification, many of its elements would remain on the agenda for federal-provincial negotiations to be resolved through channels other than constitutional amendment.

Chapter 6: The Federal Spending Power

6.1 Introduction

In comparison to other federalist states, Canada is a very decentralized country in terms of fiscal responsibilities on both the expenditure and on the tax side. Provincial governments are given jurisdiction of important areas such as health and education under the Constitution Act, 1867. An important component of federal-provincial fiscal arrangements has been conditional grants by the federal government. *Conditional Grants* are financial transfers made from the federal government to the provincial governments only if certain conditions are met. The federal government uses this as a means to influence areas of provincial jurisdiction. Despite the fact that the Constitution Act, 1867 grants province exclusive jurisdiction in the areas of health and education, the federal government has used conditional grants to provide incentive for provinces to run their programs in a manner that satisfies national interest.

Despite the intent of the design of the Constitution Act, 1867, the provinces have become equal in economic weight to the federal government due to the prominence of spending in areas of health, education, and welfare in the post-war period. For example, the ratio of federal spending to provincial spending fell from 1.71:1 in 1950 to 0.78:1 in 1999. Over the same period, the ratio of federal tax revenues to provincial tax revenues fell from 3.68:1 in 1950 to 1.25:1 in 1996.[47] It is this mismatch in revenues and responsibilities which requires provinces to accept conditional grants. Provincial governments lack the taxation authority under the Constitution to fulfill all their jurisdictions without financial assistance. This has led to conditional grants, which allows federal intrusion into areas of provincial jurisdiction.

[47] Boadway and Hobson, 5.

Vertical fiscal imbalances occur when one level of government, in this case the federal government, collects more revenues than it spends and the provinces collect less than they need to spend.[48] The Constitution Act, 1867 created a vertical fiscal imbalance by giving the federal government greater revenue generating capacities than it needed and conversely constraining provincial revenue generating capacities to levels incapable of fulfilling its duties without financial assistance. The ensuing consequence of this fiscal imbalance has been the intrusion of federal governments in areas of provincial jurisdiction.

The Meech Lake Accord and the Charlottetown Accord both suggested that the use of federal spending power be restricted. The overall effect of the Accords is unclear since they both legitimized federal spending power and restricted its effectiveness. Nevertheless, the Accords would have limited the federal government's influence in areas of provincial jurisdiction by weakening their spending power. However, the failure of the Accords left federal-provincial fiscal relations at the status quo of the Constitution Act 1867, and the Constitution Act, 1982. Therefore, if federal-provincial fiscal arrangements were to be clarified in a post-Accord era, the agreements would have to be agreed upon extra-constitutionally.

Critical issues remained due to the vertical fiscal imbalance within the federation. A clearer division of powers was needed but this would require a balance between economic equity and efficiency within the federation. The provinces sought to receive greater autonomy in the implementations of their programs. In turn, this would promote greater economic efficiency. On the other end of the spectrum, the federal government is

[48] Paul Boothe, *Finding a Balance*, *Renewing Canadian Fiscal Federalism* (Toronto: C.D. Howe Institute, 1998), 6.

concerned with national equity and promoting equal opportunity for the Canadian federation. However, upon reviewing federal-provincial fiscal arrangements that were constructed within the current Constitution, it becomes evident that the vertical fiscal imbalance places the federal government in a position of power and the provincial governments in a position of weakness.

Additionally, greater efficiency within the economic union was sought after by the federal government in order to achieve greater economic efficiency. Similar to the Social and Economic Union section of the Charlottetown Accord and other economic agreements between governments, a balance would need to be struck between equity and efficiency within the federation. Essentially, the history of federal-provincial fiscal arrangements consists of a trade-off between efficiency and equity, dictated by the federal government's willingness to relinquish power within areas of provincial jurisdiction.

6.2 The Hospital Insurance and Diagnostic Act

The Hospital Insurance and Diagnostic Act was the federal government's first attempt to publicly finance hospitals and health care brought about by a leftward shift in the moods of Canadians. National health insurance was a social movement rather than an economic movement. Supporters of free health care considered it unacceptable that people should go without health treatment because of poverty or poor financial planning.

During the 1940s, Saskatchewan and British Columbia introduced public hospital insurance. Because of the popularity of the programs, and because of the necessity to increase hospital insurance in all parts of the country, the federal government decided to promote public hospital insurance in all parts of the country. National hospital insurance

scheme negotiations began in 1956. In 1957, the St. Laurent government passed the Hospital Insurance Diagnostic Services Act and declared it effective beginning June 1 of that year. Under the act, grants-in-aid were made available to provinces with universal, publicly-administered plans for general hospital fare as soon as six provinces with the majority of the Canadian population were willing to participate. However, the Liberal government was defeated in June 1957 before the scheme was in operation. The new Diefenbaker government eliminated the six province requirement to facilitate the entrance of five provinces into the program on June 1, 1958.[49] Newfoundland, Manitoba, Saskatchewan, Alberta, and British Columbia were the first to enter the program. Prince Edward Island, Nova Scotia, New Brunswick, and Ontario entered in 1959 while Quebec waited until 1961.

In order to be eligible to receive federal funding, the provinces were required to meet certain conditions laid down in the act. In-patient hospital benefits that provinces were required to provide included: ward level accommodations and meals for as long as physicians considered necessary, nursing services, standard diagnostic procedures, operating rooms and standard surgical supplies, and appropriate drugs.[50] Additionally, the benefits were required to be uniform for all citizens of the province. This is a prime example of federal intrusion into areas of provincial jurisdiction due to the vertical fiscal imbalance.

[49] A. Milton Moore, J. Harvey Perry and Donald I. Beach, *The Financing of Canadian Federation: The First Hundred Years* (Toronto: The Canadian Tax Foundation, 1966), 61.

[50] Francis d'A. Collings, "National Hospital Insurance in Canada," *Published Health Reports (1896-1970)* 74, no. 12 (1959): 1050.

The Act involved a commitment by the federal government to reimburse a particular fraction of allowable provincial expenditures in a given area.[51] Federal contributions to provincial plans were different than most conditional grants because the percentage of overall cost assumed by the federal government varied from province to province.[52] The federal share consisted of 25% of the national average per capita cost, plus 25% of the per capita cost of services provided in the province in question. The federal government also deducted any money that provinces charged to patients for services. The provinces chose to pay for their part of the service in many ways such as sales tax and income and property taxes. Alberta and British Columbia chose to use direct patient charges for hospital services to discourage patients from using the hospital facilities unnecessarily.

The formula was designed to exert an equalizing influence on hospital standards across Canada. In his analysis of the program in 1959, Collings provides a numerical example to demonstrate the equalization influence.[53] Suppose the average per capita cost of inpatient services in Newfoundland was $17.17, and $24.84 for the rest of Canada. Newfoundland then receives 25 percent of its per capita cost ($4.29) and 25% of the Canadian per capita cost ($6.21) for a total of $10.50 per capita. Then suppose Ontario has a per capita cost of $26.60. They receive $6.25 plus $6.21, totaling $12.86 per capita. Ontario receives a larger absolute amount per capita, but a smaller proportion of total cost per capita. Since the provinces with the lowest per capita hospital costs were also the poorest, the formula gave the greatest assistance to the provinces with the lowest fiscal capacity.

[51] Davenport, 121
[52] Moore, 61.
[53] Collings, 1050.

Public hospital expenditure was a very expensive endeavor and this laid heavier proportionate burdens on the revenues of the poorer provinces. It was realized that the scheme would not get off the ground in poorer provinces with without special stimulus. The poorer provinces faced exceptionally large start-up costs in terms of implementing a bureaucracy and construction infrastructure. Over time, their marginal costs were expected to approach the national average. In 1959, the federal government contributed more than 70 percent of the costs in the poorest provinces, and between 45 and 50 percent in the wealthier areas with well-developed services.[54] On a per capita basis, the federal government granted significantly more money to the poorest provinces than to the wealthiest provinces.

The Act was significant for reasons other than equalization and public health concerns. It was a declaration that the public health is a matter of national concern.[55] It launched the federal government into a field that was constitutionally settled as being within provincial jurisdiction. Because the Act was established as a grant-in-aid program, the federal government is involved in a genuine health program and not merely for transferring nationally collected funds to the provinces.

The provinces needed federal help in financing a program within an area of exclusive provincial jurisdiction so the federal government responded by offering conditional grants. This created uniform hospital insurance across the federation, regardless of regional needs. The national hospital insurance program also helped reduce the horizontal fiscal imbalance. It did so by offering citizens from all regions of Canada

[54] Collings, 1051.

[55] Malcolm Taylor, "The National Hospital Insurance Act," *The University of Toronto Law Journal* 12, no. 2 (1958): 300.

uniform hospital insurance, regardless of the relative wealth of their provincial governments.

6.3 Medical Care Act, 1966

The Medical Care Act was passed by the federal government in 1966 and extended the medical care scheme to cover physicians' services. It was essentially a system of federally sponsored but provincially operated compulsory medical insurance guaranteeing residents of every province reimbursement for physicians' medical services according to established schedules. The conditional federal grant to each province was initially set at 50% of the national per capita expenditure. Similar to the Hospital Insurance and Diagnostic Act, the Medical Care Act, 1966 proved to be a form of regional equalization. Ontario, one of Canada's wealthiest provinces at the time complained that its grant covered only 44% of its costs. Newfoundland, Canada's poorest province at the time, received a grant which more than paid for its entire program.[56]

Regardless of the provinces' economic position, many felt obliged to join the optional program. The magnitude of the federal grants and the massive public support left provinces with no other choice but to accept. Although public health was not a matter of federal jurisdiction, Ottawa was able to sway the provincial governments because of its revenue generating capacities and the vertical fiscal imbalance. As Malcolm Taylor has observed: "Such is the power of the federal purse even in areas outside of constitutional jurisdiction."[57]

The conditional grant-in-aid had undesirable steering effects upon provincial decision-making. Federal funding covered only certain medical services. As a result,

[56] David C. Hawkes and Bruce G. Pollard, "The Medicare Debate in Canada: The Politics of New Federalism," *Publius* 14, no. 3 (1983): 187.

[57] Ibid., 187.

there was an incentive to emphasize more costly health care services at the expense of more efficient and effective services to treat the same illnesses. For example, active treatment in hospital beds was covered by the scheme, whereas nursing home charges were not.[58] As a result of this, provincial health care agencies emphasized more costly curative health care services instead of preventative and rehabilitative medicine. More provincial flexibility within the national program would have created a more efficient use of tax dollars. The Medical Care Act, 1966 is a perfect example of the federal government's extending its economic activities into areas of provincial jurisdiction in order to promote equity and uniformity across the country. The cost of this equity was a significant loss in efficiency.

6.4 Federal-Provincial Fiscal Arrangements Act, 1967

Cost sharing in post-secondary education was introduced under the Federal-Provincial Fiscal Arrangements Act, 1967. The original agreement was a 50 percent open open-ended cost sharing for post-secondary education expenditures.[59] The federal contribution consisted of a combination of income tax points and cash transfers. Between 1968 and 1972, the cash part of the transfer alone quadrupled from $108 million to $451 million.[60] In response to the rapid increase in spending, the federal government terminated the open-ended feature and placed an annual increase maximum of 15 percent for the federal grant.

[58] Ibid., 187.

[59] Paul Davenport, "Hard Times and the EPF: The Funding of Health and Post-Secondary Education Since 1977," *Department of Economics and Canadian Studies* – McGill University, 127.

[60] Ibid., 127.

6.5 The Established Programs Financing Act, 1977

During the 1970s, the federal government was concerned about over-spending in the areas of post-secondary education and healthcare by both provincial government and the federal government. The federal government was concerned that provincial governments were under the impression that they were spending 50 cent dollars under the cost sharing agreement. Additionally, provincial complaints about rigidity in the system and lack of flexibility concerning spending priorities led to a series of intergovernmental meetings.[61] The result of the meetings was a new formula pertaining to federal-provincial fiscal arrangements titled the Established Programs Financing Act of 1977.

The Established Programs Finance was a complex funding arrangement, so only its general overview will be provided here.[62] The new arrangement was a shift from direct cost sharing to block funding. With block funding, the federal government simply transfers a predetermined amount to the provinces. The amount each province receives in compensation becomes independent of its expenditures.

Under the new block funding agreement, the provinces were given two new sources of revenue to replace conditional grants. First, provinces were given increased tax room – 13.5 points of the personal income tax schedule and 1.0 point of the corporate income tax schedule, equalized for provinces with smaller tax bases up to the national value. Second, provinces were given block cash payments. In 1977-78, these payments amounted to 50 percent of the federal conditional grants paid out in 1975-76. Provinces also received $7.63 per capita. Additionally, transfer payments were linked to GNP

[61] Hawkes and Pollard, 187.

[62] Malcolm C. Brown, "The Implications of Established Program Finance for National Health Insurance," *Canadian Public Policy* 6, no. 3 (1980): 525.

growth.[63] The payments were intended to help offset provincial expenditures in post-secondary education, medical insurance, and hospital insurance.

The Established Programs Financing Act gave provincial governments greater autonomy in determining how they spent money received from the federal government. They were, however, required to meet some minimal constraints imposed by the federal government.[64] With federal payments no longer linked to provincial expenditure, provinces had less incentive to spend on health and post-secondary education. As in many fiscal arrangements within exclusive provincial jurisdiction, there is often a negative relation between the amount of finances that provinces receive from the federal governments and the amount of autonomy they receive in spending the finances.

The federal government enacted this deal primarily as a way to curtail its mounting budget deficits.[65] Federal restraint in the cost-sharing program was impossible as long as federal spending power depended on provincial decisions. Under the cost sharing agreement, provinces essentially spent 50 cent dollars that the federal government was obliged to match. Federal restraint in the cost-sharing program was impossible as long as federal spending power depended on provincial decisions. Typically, block funding lowers the amount of the financial commitment of the federal government and makes spending more predictable as well.

Paul Davenport believes that conditional grants were introduced in 1957 as a way to attract provinces into the program, but once the program was established, the federal

[63] "Canada Health Act," Health Canada. http://www.hc-sc.gc.ca/hcs-sss/medi-assur/cha-lcs/transfer-eng.php

[64] Boadway and Hobson, 68.

[65] Davenport, 120.

government had the ability to distance itself from the program.[66] Thus, the federal role was not to provide an enduring incentive for the support of national interest, but simply to help and promote start-up costs. In fact, the title of "established program" is derived from the concept that once a program is established, conditional grants are no longer necessary.[67]

Table 6.1:[68] Expenditure on medical care and on services of general and allied special hospitals in Canada (1961$)

	Medical Care		**Hospital Care**	
Year	**$ transferred by federal government**	**Average annual growth rate (%)**	**$ transferred by federal government**	**Average annual growth rate (%)**
1955	230,212		381,717	
1960	359,326	9.31	639,278	10.86
1965	506,558	7.11	1,048,027	10.39
1970	794,115	9.40	1,746,383	10.75
1975	1,041,931	5.58	2,588,002	8.18

Table 1 shows that provincial expenditure on medical care and hospital expenditures in real dollars increased yearly from 1955 to 1975. From 1955 to 1975, federal hospital expenses increased from $381,717 to $2,588,002. Under the cost-sharing agreement, the provincial governments were taking advantage of what was a relatively generous fiscal arrangement granted by the federal government. By ending the cost-sharing agreement and implementing block funding, the federal government was able to lower its financial liabilities to the provinces.

[66] Davenport, 128
[67] Davenport, 128
[68] Brown, 526.

By granting provinces more decision-making ability in the medical and hospital fields, a greater variation in the quality of service will occur. Paul Davenport concludes that, "if there is a true national interest in encouraging adequate levels of expenditure in these particular areas [post-secondary education, medical and hospital], then the abandonment of cost sharing was probably a mistake."[69] Under the EPF Act, 1977, provinces were no longer required to follow strict schedules set out by the federal government to receive their conditional grants. However, Davenport's concerns were exaggerated. The greater provincial flexibility in expenditure allowed them to spend their money more efficiently. The fact that they never had fewer conditions attached to their federal grants allowed them to focus on the most efficient way to treat patients, instead of treating patients in a way that was forced upon them by federal schedules. Thus, in this case there was a tradeoff: horizontal equity was compromised in return for greater efficiency in the delivery of the service. Moving forward, this would become a common theme in relation to national programs.

6.6 Canada Health and Social Transfer

Beginning in the fiscal year of 1996/97 the federal government began to integrate the Canada Assistance Plan (CAP)[70] and the Established Programs Financing Act. This was referred to as the Canada Health and Social Transfer Act (CHST). The purpose of the CHST was to "complete the gradual evolution away from cost sharing to block funding of programs in areas of provincial responsibility."[71] Similar to when the federal

[69] Davenport, 120.

[70] The Canada Assistance Plan was federal legislation passed in 1996 that required the federal government to shoulder half the costs of provincial social programs (particularly welfare). The CAP allowed the federal government to set national standards.

[71] Canada, 1994, Department of Human Resource Development, *Reforming the Canada Assistance Plan: A Supplementary Paper*. Ottawa: Supply and Service Canada.

government implemented the Established Programs Financing Act to replace the Hospital Insurance and Diagnostic Act, they were looking to reduce expenditures and improve predictability in their spending. The CHST was an unconditional grant, meaning the provinces could spend the money as they saw fit.

The CHST had an immediate fiscal impact. Beginning in the fiscal year of 1996/97, the provincial governments received $2.5 billion less from what would have otherwise received under previous plans and another $1.8 billion less a year later. This brought their aggregate grants down to a level of $25.1 billion in 1997/98.[72] The budget amounted to a shortfall of $4.5 billion that from the projected level of transfers under the previous arrangements.

In addition to significantly reducing federal transfers to provinces, the CHST also created tension among the provinces because of the scarcity of transfers. Finance Minister Paul Martin declared provincial allocations of the CHST open for discussion in 1997/98. This created a zero-sum game as provinces competed for a fixed amount of transfers. Canadian public policy expert Thomas J. Coucherne called the CHST negotiations "one of the more divisive interprovincial clashes in Canada's history" and a senior British Columbia official likened the negotiations to tossing an uncut piece of meat to ten hungry sled dogs.[73]

One possible method to reduce tension between provinces under the CHST would have been to allocate the payments on a per capita basis. As an experiment, Courchene takes the aggregate of the total transfers made under the 1997/98 under the CHST and divides them in a per capita basis. Not surprisingly, he finds that the big loser under this

[72] Thomas J. Courchene, *Distributing Money and Power: A Guide to the Canada Health and Social Transfer* (Ottawa: Renouf Publishing Company, 1995), 13.
[73] Ibid., 19.

scenario would have been Quebec, with a fall of entitlements of $710 million and Ontario and British Columbia would have gained $41 million each.[74] Although equal per capita CHST transfers seem equitable, it is actually far from it. For example, low income figures can be misleading because they do not reflect the amount of social assistance needed to support people from different regions – a level that would surely be higher in Metro Toronto or Montreal than rural areas. As previously mentioned in regards to health care, many smaller provinces face higher costs per capita in regards to economies of scale. So although equal per capita payments would settle many disputes between provinces, a greater capacity to use subjective judgment is necessary.

Of course, in addition to the CHST, the federal government continued to provide equalization payments to the "have not" provinces. Equalization payments, lumped together with CHST, made up the bulk of federal-to-provincial transfers. Figure 2 shows the combined allotment of CHST and equalization payments that occurred between 1993 and 1999. A sudden drop in federal transfers to provinces occurred immediately after the CHST came into effect in 1996/67. Clearly, the "have not" provinces, which were highly dependent on transfers from the federal government, struggled to provide adequate services for their respective populations. However, even the richer provinces such as Ontario struggled to provide adequate social services under the CHST. In regards to the lack of payments received under the CHST, former Ontario premier Mike Harris declared that the federal government was responsible for the largest funding cut in Canadian history.[75] The shortage in funds led to emergency room overcrowding, shortages of

[74] Ibid., 19.

[75] David Spurgeon, "Canada Faces Healthcare Crisis," *British Medical Journal* 320, no. 7232 (2000): 400, http://www.jstor.org/stable/25187133

nurses and doctors, and complaints by doctors of overwork. At one point, eight out of ten Canadians believed the health care system had reached a level of crisis.[76]

Figure 6.1:[77] Equalization and block grant allotments 1993-1999 ($billions):

	EPF + CAP	**Equalization**	**Total Transfers to Provinces**
1993-94	18.8	8.1	26.9
1994-95	18.7	8.6	27.3
1995-96	18.5	8.8	27.3
	CHST	**Equalization**	
1996-97	14.7	9.0	23.7
1997-98	12.5	9.7	22.2
1998-99	12.5	9.6	22.1

Because only the federal government had the ability to generate enough revenue for such massive public programs, the onus was clearly on them to be more generous to the provinces if social programs were to return to an acceptable level of quality. The CHST represented a strange twist in federal-provincial fiscal relations: instead of using its massive spending power to invade provincial jurisdictions, the federal government chose to drastically reduce its expenditures and allow provincial programs to suffer and lose their uniformity.

The premiers were becoming increasingly inpatient. For example, former Alberta premier Ralph Klein threatened to introduce private hospitals for major surgeries in order

[76] Ibid.

[77] Robin Boadway and Ronald Watts, *Fiscal Federalism in Canada* (Kingston: Institute of Intergovernmental Relations, 2000), 67.

to take the financial load off the public system.[78] Federal officials were extremely critical of the proposal because they felt it would lead to a two-tier health care system. However, the provinces were desperate for money and it was clear that reform of the system was necessary.

Essentially, the CHST was a great sacrifice of equity in order to promote greater efficiency by tightening budgets. Social policy institute Caledon Institute believed that: "Low-income Canadians…will bear the brunt of the 1995 budget. Apparently, the needs of the poor have basically become a drag on the economy."[79] Clearly, the CHST lacked a vertical equity dimension as the poor bore the brunt of the federal cutbacks. The federal government's refusal to adequately fund social programs highlights the dangers of the vertical fiscal imbalance within the federation. The provincial governments do not have the revenue sources to fully undertake their economic responsibilities. They are therefore dependent on the economic mood of the federal government as it relates to provincial implementing programs.

[78] Spurgeon, 400.
[79] Thomas J. Courchene, *Redistributing Money and Power,* 3.

Chapter 7: Extra-Constitutional Economic Reform in the Post-Charlottetown Era

7.1 Social Union Framework Agreement

On February 4 1999, the federal government and all the provincial and territorial governments except Quebec agreed to a "Framework to Improve the Social Union for Canadians." The Framework Agreement consisted of seven chapters: 1) principles; 2) mobility within Canada; 3) informing Canadians – public accountability and transparency; 4) working in partnership for Canadians; 5) the federal spending power – improving social programs for Canadians; 6) dispute avoidance and resolution; and 7) review of the Social Union Framework Agreement. To remain within the scope of this study, the focus will remain on chapter 5: the federal spending power – improving social programs for Canadians.

The agreement marked a crucial step in the battle between federal and provincial governments because it legitimized the federal government's view on spending power, in return for only minor concessions. The jurisdictions subject to the rules of the Framework Agreement were health care, post-secondary education, and social assistance and social services. The Framework Agreement made the federal spending power "essential" for "[pursuing] Canada-wide objectives" and only restricted the new power minimally.[80]

Quebec did not participate in the negotiations. After the 1995 referendum, Quebec refused to participate in negotiations that dealt with issues under provincial jurisdiction.[81] The Framework once again isolated Quebec and confirmed Canada's willingness to redefine the country without seeking their input. In relation to Quebec, the Framework

[80] Alain Noel, "General Study of the Framework Agreement," in *The Canadian Social Union Without Quebec: 8 Critical Analyses*," ed. Francesca Worrall, 9 (Ottawa: The Institute for Research on Public Policy, 2000).

[81] Junichiro Koji, "The Social Union Framework Agreement: Competing and Overlapping Visions of Canadian Federalism," *National Library of Canada*, 2002.

Agreement had a similar affect as the Constitution Act, 1982 because both agreements were signed without Quebec's approval. The Framework agreement was a setback for Quebec because it further institutionalized the divergence between Quebec and the rest of Canada.[82] From a Quebec nationalist point of view, the impasse further highlighted the lack of cooperation and coordination between Quebec and the rest of Canada. The situation provided Quebec with an opportunity to affirm its own priorities and policies.

The cornerstone of the Framework Agreement is the provinces' and territories' explicit and almost unrestricted recognition of the legitimacy of federal spending power within fields of exclusive provincial jurisdiction. It stated that federal spending is limited to "essential to the development of Canada's social union." Editorialist Michel Venne describes the Framework Agreement as "an ode to the federal spending power. It almost invites Ottawa to use it more and more."[83] Because Canadians currently demand such extensive public services and programs from the government, many social programs fall under the description of "essential to the development of Canada" and are thus subject to federal intrusion under the Framework Agreement.

In previous negotiations regarding to spending powers, such as the Meech Lake Accord and the Charlottetown Accord, provinces were given the opportunity to opt-out and receive reasonable compensation. The Framework Agreement echoed this principle because provinces that adhered to "Canada-wide objectives" would receive funds and would be required to "reinvest any funds not required for the objectives in the same or related priority area."[84] This is different from the Mecch Lake Accord, where provinces who independently provided adequate programs in the same field were free to spend their

[82] Noel, 9.
[83] Ibid., 12.
[84] Ibid., 12.

compensation money as they saw fit. So although the Framework Agreement echoed previous constitutional amendments in this area, it did so to a minimalist extent.

The provinces appear to get the short end of the stick under the Framework Agreement, but they were motivated by the desire to ensure that they received adequate fiscal transfers from the federal government. The CHST of the 1990s, which dealt with health care and post-secondary education left provinces with inadequate funds to handle the services demanded by their residents. In essence, the provinces were willing to trade off some of their autonomous decision-making for more tax and cash transfers. Robson and Schwanen state, "It is clear that the lure of money swayed the nine provinces that signed the deal away from their previous unanimous stance in favor of restraining the spending power."[85] Once again, the vertical fiscal imbalance acted as leverage for federal intrusion in areas of provincial jurisdiction.

Of course, the provinces tried to interpret the Framework Agreement as much to their advantage as possible. One of the most fundamental tensions with the Framework Agreement is that federal and provincial governments place varying degrees of importance on different provisions. Although the agreement is generally an ode to federal spending, the provinces attach great weight to Section 5, which provides constraints on the federal spending power.[86] Ultimately, the provinces did receive much greater financial concessions under the Framework Agreement in relation to the cuts of the CHST. In 1999, for example, the provinces (including Quebec) succeeded in acquiring an additional $11.5 billion from the federal government.[87]

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[85] Koji, 2002.

[86] Harvey Lazar, "The Social Union Framework Agreement: Lost Opportunity or New Beginning?" *School of Policy Studies: Institute of Intergovernmental Relations*, 2000.

[87] Koji 2002.

The provinces also received the right to refuse any new Canada-wide initiatives proposed by the federal government with federal funds. New federal programs were subject to the approval of a majority of the provinces. As seen in the past with programs such as the Hospital Insurance and Diagnostic Act, the public can sway the spending areas of their provincial governments. When the federal government is offering to fund public programs that the public demands, it is difficult for provinces to justify why they are choosing not to implement the programs in question. Moreover, existing provincial programs within the new Canada-wide programs must conform to the agreed Canada-wide objectives. Thus, a greater degree of uniformity across Canada comes into effect.

The overall effect of the Framework agreement has been debated among academics. Keith Banting sees the Framework Agreement as "a modest institutionalization of the process."[88] He believes that the Framework Agreement added some structure to the federal-provincial debate in regards to spending powers but lacks the teeth to add great structure. David Banner, a former adviser in the Privy Council in Ottawa, is also a modest supporter of the agreement. He likens the effect to the Meech Lake Accord and states that all provinces are eligible to receive federal funding for their programs as long as they meet the "Canada-wide objectives."[89] He is content that the term "Canada-wide objectives" can be interpreted in a manner that would not result in stringent or even distorting affects on the provinces.

In contrast, many academics question the validity of the Framework Agreement. For instance, Robson and Schwanen, an economists at the C.D. Howe Institute, are concerned that six provinces that comprise of just fifteen percent of the population could

[88] Ibid.
[89] Ibid.

impose Canada-wide standards on the rest of Canada by agreeing to a federal program. This hardly seems democratic and it gives the federal government easy access to impose national programs throughout the entire country. For instance, the federal government could introduce Canada-wide programs by appealing to smaller, poorer provinces. This clause allows the federal government an easy route if they choose to implement national programs of an equalizing nature.

The Framework Agreement also did not impose regulation in regards to what criteria federal programs must meet before they could become Canada-wide programs. For example, the Charlottetown Accord stated that if federal spending power is used in areas of exclusive provincial jurisdiction, it must: a) contribute to the pursuit of national objectives; b) reduce overlap and duplication; c) not distort and should respect provincial priorities; and d) ensure equality of treatment of the provinces, while recognizing their different needs.[90] These are stringent standards that the federal government must adhere to before implementing Canada-wide programs. In contrast, the Framework Agreement contained no such clauses that limited the federal government's ability to spend money in areas of exclusive provincial jurisdiction. The provinces would have therefore been more vulnerable to intrusion of federal spending under the Framework Agreement that the Meech and Charlottetown Accords did not allow.

The Framework Agreement gave the federal government additional spending powers by permitting them to make direct transfers to individuals and to organizations in order to promote equality of opportunity, mobility, and other Canada-wide objectives. Under the Meech Lake and Charlottetown Accords, direct government spending to individuals and organizations was not permitted. This clause granted the federal

[90] *Consensus Report on the Constitution: Charlottetown*, August 28, 1992.

government an extremely broad range of powers to exercise within areas of provincial jurisdiction. Unlike transfers directly to the provincial governments, transfers to individuals and organizations do not require consent provincial governments.[91] This gave the federal government an opportunity to circumvent the desires of the provincial governments by spending federal money in areas of health care, post-secondary education, and social services and social programs whether or not the provinces agree with the initiative. Examples of such transfers to individuals or organizations would include childcare services and stimulus payments to the unemployed.

7.2 Effects of SUFA

The Framework Agreement discouraged innovation among the provinces much more than the Meech Lake and Charlottetown Accords would have. The language of the Framework Agreement did not entirely preclude provincial experimentation, but it did strongly discourage it. Section 2 banned any provincial policy that inhibited interprovincial mobility; Section 4 emphasized intergovernmental cooperation highlighted by the importance of federal initiatives by means of Ottawa's pending power.[92] In regards to autonomy of spending power, provinces were much better off under the Meech and Charlottetown Accords.

A unitary state can benefit many countries in the world. However, a country as large and diverse as Canada benefits from its variations in social programs from province to province. C.D. Howe Institute researcher John Richards emphasizes that "provincial autonomy to innovate in matters of social policy have contributed to Canada's ability to run a reasonably generous — yet reasonably efficient — welfare state in a very large and

[91] Koji, 2002.

[92] John Richards, "The Paradox of the Social Union Framework Agreement," *C.D. Howe Institute* (Ottawa: Renouf Publishing Co. Ltd, 2002), 6.

culturally diverse country."[93]

As an example of provincial innovation in public policy benefitting Canadians, Richards points to Alberta's Poverty Policy of the 1990s. During the 1990s the federal government put in place the National Child Benefit System, which was designed to transfer federal money directly to poor families with children. Although Alberta participated in the program, they chose to spend the federal money to induce people to work, instead of directly handing the money to its citizens deemed to be poor. By 2000, just 2 percent of the province's population received welfare – one third of the national average. Employment rates in poor neighborhoods of Calgary and Edmonton were well above those of comparably poor neighborhoods in other western cities. In turn, the additional workers in the Alberta economy, as opposed to those receiving welfare, stimulated the province's economy. Almost certainly Canada has benefited from Alberta's poverty policy of the 1990s. Under the Framework Agreement, this sort of policy implementation was not possible.

7.3 Summarizing SUFA

The Framework Agreement unquestionably granted the federal government expansive spending powers within certain areas of exclusive jurisdiction. Thus is the power of the federal government when such a vertical fiscal imbalance exists. It resembled the Meech Lake and Charlottetown Accords in many aspects such as the details of the opting-out clause yet the federal government received additional spending powers. Had the Accords been signed, the Framework Agreement would not have been necessary because the provinces would have surely been in a much better financial situation. Ultimately, the provinces' desperate need for funds in the 1990s led them to

[93] Ibid., 6.

sign a relatively lopsided deal in comparison to the proposed constitutional amendments. Additionally, if Quebec, who led the way for the Meech Lake and Charlottetown Accords with aggressive bargaining, had been involved in the Framework negotiations, the provinces would not have been in such a weak bargaining position. During the Accord negotiations, Quebec was a driving force behind provincial powers. The federal financial intrusion that resulted from the Framework Agreement led to a more rigid system of nation-wide programs that impeded provincial innovation and efficiency.

7.4 Agreement on Internal Trade

The Agreement on Internal Trade (AIT) is an intergovernmental agreement designed to remove barriers to interprovincial trade. The goal of the AIT is to eliminate barriers to trade, investment, and mobility within Canada. The Agreement came into effect on July 1, 1995. The stated purpose of the AIT is to "reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investments within Canada and to establish an open, efficient and stable domestic market."[94] The signing of the AIT represented a milestone in intergovernmental cooperation because it had been on the federal-provincial agenda for at least twenty-five years prior with no agreement. The Constitutional round of the early 1980s provided an opportunity to remove internal barriers by enshrining it into the Constitution, but it ultimately failed to be included in the amendment. The Economic and Social Union section of the Charlottetown Accord was also an attempt to strengthen Canada's economic union. By the mid 1990s, however, it was apparent that recent court decisions indicated that Sections 91(2) and 121 could be used by the federal government to assert

[94] Paul Hobson, "The Canadian Agreement on Internal Trade: Evolution and Summary," 1. http://www.aucc.ca/_pdf/english/programs/cepra/AIT%20by%20PHobson.pdf

greater financial control over the economic union and constitutional reform was not required.[95]

7.5 Evolution of the AIT

Section 121 of the Constitution Act, 1867, often referred to as the "common market clause," guaranteed free movement of manufactured goods across provincial borders. The provinces, however, were able to circumvent the technicalities of the Constitution. For example, agricultural products, freight, and liquor were all subject to mobility barriers prior to the AIT.

The federal government released a set of proposals for Constitutional reform during Charlottetown negotiations. Among the proposals, the federal government sought to broaden the common market clause. Secondly, it was proposed that the federal government be given powers to efficiently manage the economic union. This would have required an extension of the existing section 91.[96] The existing prohibition barriers to the common market would have been extended to include the free movement of services, capital, and labour. Exceptions could have been made for reasons of national interest, regional development, and for federal legislation designed to further the principle of equalization. In exchange for receiving the ability to ensure economic union through section 91A, the federal government was willing to transfer explicit jurisdiction to provinces in other areas such as labour training, tourism, forestry, and mining, recreation, and housing.

[95] Erin Lynn Crandall, Reforming the Economic Union: The Agreement on Internal Trade and Intergovernmental Relations in Canada," 2006, 30.

[96] Hobson, "The Canadian Agreement on Internal Trade: Evolution and Summary," 2.

The AIT eliminates existing barriers and impedes the introduction of new barriers. The AIT incorporates six rules. They are:[97]

- Non-discrimination: establish equal treatment for all Canadian persons, goods, services and investments
- Right of entry and exit: prohibiting measures that restrict the movement of persons, goods, services, or investments across provincial or territorial boundaries.
- No obstacles: ensuring provincial/territorial government policies and practices do not create obstacles to trade.
- Legitimate objectives: ensuring provincial/territorial non-trade objectives which may cause some deviation from the above guidelines have a minimal adverse impact on interprovincial trade.
- Reconciliation: providing the basis for eliminating trade barriers caused by differences in standards and regulations across Canada.
- Transparency: ensuring information is fully accessible to interested businesses, individuals and governments.

There is, however, a provision for exclusions if an economic policy was for equalization purposes. Article 1801 states that: "The Parties recognize that measures adopted or maintained by the Federal Government or any other Party…can play an important role in encouraging long-term job creation, economic growth, or industrial competitiveness or in reducing economic disparities."[98] This allowed for flexibility

[97] Ibid., 6.
[98] Hobson, "The Canadian Agreement on Internal Trade: Evolution and Summary," 7.

within the framework to promote equalization within Canada. Similar to Section 36 of the Constitution Act, 1982, the federal government sought equality across the country.

The AIT had a strong economic efficiency purpose by promoting the mobility of persons, goods, services, and investment. When resources are able to freely locate across an economic union, they locate to the most efficient areas. For example, when citizens choose where to live within a federation, they compare regions not just on the basis of the private incomes and costs they offer but also on the basis of net fiscal benefits (the difference between the value of public services received and taxes paid). The argument is that if a region has large fiscal benefits because of substantial endowment of natural resources or other advantages, people may be induced to move there to capture those benefits, rather than to take advantage of job opportunities.[99] The removal of mobility barriers allows not just workers to move to more efficient areas of Canada, but also investment, goods, and other resources. Ultimately, this Canadian common market will function more efficiently.

The AIT is an important extra-constitutional agreement that promotes efficiency within Canada's economic union. A single market free of barriers to trade strengthens Canada's global economic position. In an era of global trade, a country's economic efficiency is extremely important in order to remain competitive. The AIT is a major realization that Canada can best function as a cooperative economy free of barriers. In turn, the entire country's economy becomes more efficient and Canadian industries can more effectively compete for domestic and international demand.

7.6 Federal Securities Regulation

[99] Paul Boothe, *Finding Balance: Renewing Canadian Fiscal Federalism* (Toronto: C.D. Howe Institute, 1998), 7.

7.6.1 Introduction

Similar to the AIT, federal securities regulation allows Canada's economic union to efficiently allocate its resources. In order for a federation's economy to function efficiently, it is important to have an efficient allocation of investment. In a country as regionally diverse as Canada, different regions use investment capital more efficiently than others. For example, the labour force in Quebec has proven to be relatively less efficient than most other areas in Canada. It is possible, in theory, that barriers within the federation channel investors towards Quebec industries despite the fact they may not be the most efficient use of investment. It is for reasons of efficiency that investment capital within Canada should be allocated throughout Canada's economic union with as little distortion as possible.

The traditional banking, insurance, and securities industry has been transformed drastically over the last several decades as information technology and communication advancements have created a global economy where capital is highly mobile. This has created a very competitive international financial community. Canada has a small share of the global market. Thus, to be competitive Canada must offer efficient and low cost capital.[100] Investment in Canada is important to promote long-term growth. The future improvement in the standard of living for Canadians depends on domestic and foreign investment in Canada. In order to remain competitive in a global capital market, it is imperative that Canada acts as an economic union by harmonizing its regulation policies with the rest of the world. It should also be pointed out that securities regulation is a regulatory issue, not a spending power and programs issue.

[100] Gordon Boissoneault, *The Relationship Between Financial Markets and Economic Growth: Implications for Canada* (Wise Person's Committee, 2004), 47.

7.6.2 The Case for Securities Regulation in Canada

Although the provincial governments are currently occupying the field of securities regulation, the federal government has constitutional jurisdiction to pass comprehensive legislation regulating all capital markets' activity within Canada. In their research, the Wise Person's Committee of the Department of Finance consulted with leading constitutional firms in Quebec, Ontario, and British Columbia. Each firm independently concluded that subsection 91(2) of the Constitution Act, 1867, which deals with the federal government's "general regulation of trade,"[101] gives the federal government paramountcy in regards to securities regulation. The future transfer of securities regulation to the federal government is essentially a foregone conclusion, so this chapter will briefly outline the positives and negatives of a federal regulatory body.

Evidence suggests that Canadian financial markets are not operating as efficiently as they could be. Since 1990, as international portfolios have become increasingly integrated, foreign purchases of Canadian stocks have risen at a much slower rate than Canadian investment in foreign stocks. Given Canada's strong equity markets and the prospects for future growth, the lack of foreign investment in Canada is startling. Each province and territory in Canada currently has securities commissioned at the provincial level, while exchanging information through the informal network of the Canadian Securities Administrators. The provinces originally assumed responsibility for securities regulation in accordance with their constitutional jurisdiction over property and civil rights.[102] At the time, a much larger percentage of securities activity was intra-provincial. However, financial markets which were once local have become national and

[101] Wise Person's Committee, *It's Time* (Department of Finance, 2003), 12.
[102] Boissoneault, 70.

international. Canada is now the only G8 country without a federal securities regulator. Unlike the issue of spending powers and the problem of vertical fiscal imbalances, the securities regulation issue appears to be an issue that can be clearly settled under the current Constitution.

The provincially regulated securities systems do have some advantages. Similar to the decentralization of other provincial programs, the provinces compete and the different techniques promote innovation. The local nature of the regulatory bodies allows for the boards to hear quickly investor complaints and to react quickly to these infractions. The local regulators also become familiar with organizations and investors within their jurisdiction and pay greater attention to situations that they see as problematic.

However, these positives of provincial regulation are significantly outweighed by the negatives. Canada currently suffers from lack of enforcement and inconsistent investor protection. Many provinces invest a majority of their resources in policy and cannot afford to prosecute violators. Differences in statutory enforcement result in inconsistent investor protection across the country. There is also a perception in Canada and abroad that serious conduct violators often go unpunished. In turn, this deters investors from investing in Canada. A federal regulatory body allows for, in a sense, economies of scale where different branches specialize on policy while others focus on investigation and enforcement in a uniform fashion.

The current system is too costly. Issuers and registrants bear increased compliance costs due to the multiplicity of securities regulators and divergent securities laws and administrative practices.[103] Issuing firms must currently be aware of the laws of all their jurisdictions in which they operate or are contemplating operating. They must also file

[103] Wise Person's Committee, *It's Time* (Department of Finance, 2003), viii.

multiple forms, pay multiple fees, and file multiple taxes. These administrative costs are unnecessary and pose high costs for firms seeking investment from across the country. Thus, Canada's international competitiveness is undermined by its regulatory complexity. From a broad perspective, federal securities regulation makes it easier and more attractive for foreign investors to invest in Canada.

7.6.3 Summarizing Federal Securities Regulation

Unlike the division of powers, where I make recommendations towards a more decentralized federation, I believe that a more centralized financial regulatory system would benefit the Canadian economy. A more sophisticated and efficient regulatory body, which promotes Canada as an economic union, would benefit every region of Canada. Unlike public programs such as health care and education, the acquisition of capital is now of a global nature. Investors within the local province often make up a small fraction of total investors. Capital inflows from other provinces and countries raise the national level of investment, which is needed for healthy long-term growth. Similar to the SUFA and the Economic Union section of the Charlottetown Accord, economic barriers must be removed in order for Canada to function as a more efficient economic union.

7.7 Conclusion of Extra-Constitutional Reform and the Division of Powers

Starting from the Hospital Insurance and Diagnostic Act, 1957, the federal government strongly established itself in the provincial jurisdiction of healthcare due to its massive revenue generating capacity. Since then, the federal government has also expanded into other areas of exclusive jurisdiction such as post-secondary education and welfare. Throughout the years, the federal government has been able to use the vertical

fiscal imbalance to influence provincial expenditures. Generally, there is a negative relationship between federal transfers and provincial spending autonomy. As provinces receive more financial aid from the federal government in areas of exclusive jurisdiction, they receive less autonomy in regards to the use of those finances. For example, the provinces received high levels of transfers under the Hospital Insurance and Diagnostic Act, but were forced to follow strict federal schedules. In contrast, the provinces received a relatively high level of autonomy under the CHST, but suffered greatly in terms of financial assistance.

Had the Meech Lake or Charlottetown Accords come into effect, the provinces would have received adequate levels of funding and they would have had the option to opt-out of national programs and still receive "reasonable compensation." However, because the Accords failed, the provinces were forced to negotiate fiscal arrangements without a strong constitutional framework. The lack of provincial guarantees through the constitution allowed the federal government to insinuate itself into areas of provincial jurisdiction due to its revenue generating capacities.

Without Constitutional guarantees, it appears as though the vertical fiscal imbalance in the Canadian federation will dictate the level of federal intrusion in areas of exclusive provincial jurisdiction. History has shown that when the federal government becomes generous with its grants, more conditions are attached. As a result autonomy to implement provincial programs is lost and so is efficiency and innovation. However, as national plans get more rigid, they become more horizontally equitable as people across the nation experience the same programs, regardless of their provinces' wealth. At the other end of the spectrum, the federal government has also shown a tendency to cut

funding to provinces but to appease provinces by allowing greater autonomy and a greater variation in services between provinces. Thus, in a post-Meech and post-Charlottetown federation, there is a tradeoff between vertical equity and horizontal equity.

In contrast to public services, where provincial autonomy creates efficiency, less provincial participation is needed to promote efficiency within Canada's economic union. A more laissez-faire approach as seen under the Agreement on Internal Trade and the upcoming federal securities regulatory body allows for a more efficient allocation of national resources. The free movement of persons, services, goods, and investment allows the Canadian economy to benefit from the horizontal imbalance that exists within the federation. Different areas are able to use different resources more efficiently. It is important to remove provincial barriers in order to allow the free market to take its course within the economic union. In turn, the Canadian economy stands to grow to its fullest extent.

Chapter 8: A Road Map for Further Reform

As long as Sections 91 and 92 of the Constitution Act, 1867 divide taxation powers as they currently do, a vertical fiscal imbalance will exist within the Canadian federation. The provinces diverse revenue generating capacities and their large responsibility to implement public programs will continue to create jurisdictional problems in regards to the division of powers within the Canadian federation. As such, the federal government will continue to push for standardized national programs, as it strives to promote national equity. After the failures of the Meech Lake and Charlottetown Accords, mega-constitutional reform any time in the near future appears unlikely. It is therefore necessary for the Canadian federation to determine a balance of powers within the current constitutional framework for the time being.

It has been determined that provinces cannot generate enough revenue on their own to finance all areas of exclusive provincial jurisdiction and must therefore resort to federal finances in order to provide reasonable programs at reasonable tax levels. This has led to conditional grants, which allow the federal government to influence areas of exclusive provincial jurisdiction. The constitutional framework has been flexible which has allowed for varying degrees of federal financing and federal influences.

Without strong provincial rights protected under the constitution, as would have occurred under the failed Accords, it is imperative that provinces work together to achieve greater influence over their own programs. The fact that SUFA was negotiated without Quebec is of detriment to the rest of the Canadian provinces. As seen in the negotiations of the Meech Lake and Charlottetown Accords, the presence of Quebec has benefited the rest of the provinces because it is a catalyst for decentralization. Moving

forward, it is important for provinces to receive greater flexibility in order to support regional needs and to promote efficiency and innovation. It is therefore important that provinces collaborate with Quebec, instead of pushing it aside, when negotiating with the federal government. It is true that Quebec has special circumstances that command different powers than the rest of Canada. However, the underlying drive for greater autonomy can serve as leverage for the other provinces.

This is not to suggest that a drastic decentralization would benefit Canada. The power of the federal government under the Constitution is more than strong enough to maintain a united federation. The Agreement on Internal Trade and the upcoming federal securities regulatory body have shown that Canada can act as a single economic union. However, many provincial services can be implemented most efficiently with a greater degree of provincial spending autonomy. In the past, extra-constitutional agreements such as the Established Programs Financing Act have given provinces the flexibility they need to effectively run public programs within their jurisdiction. Unfortunately, the federal government has historically combined increases in provincial autonomy with decreases in financial transfers. Moving forward, it is important for provinces to find a way to combine strong and steady financial aid with an efficient degree of autonomy in terms of implementation of public services. In turn, the federal government can use Section 106, the POGG clause, and Section 36 of the Constitution Act, 1982 to promote a stable degree of equity.

Under the Meech Lake and Charlottetown Accords, it appears as though a significant amount of decentralization would have taken place. However, since the failure of the Accords, public programs of provincial jurisdiction have been erratic in terms of

effectiveness and efficiency. Specifically, the federal government has manipulated the provinces by withholding finances during the Canada Health and Social Transfer era then luring the provinces into much stricter federal schedules under the Social Union Framework Agreement. In the next round of federal-provincial fiscal arrangement negotiations, the provinces must unite with Quebec in order to gain a stronger a voice.

Convincing the federal government to allow a greater degree of decentralization is a difficult political feat in any federation. Canada is a very diverse federation and it is time to match our regional diversity with a more flexible government. The provinces must convince the federal government that the nation does have common goals but there are many ways to reach these goals and each region's means of achieving these goals may vary. As an example, the provinces may point to Alberta's Poverty Policy of the 1990s, which was a resounding success. The underlying concept here should be that reducing poverty is no doubt a nation-wide goal, but economies vary from region to region and it therefore takes different approaches to fix different economies. Under past extra-constitutional legislation that has been of a decentralizing nature, the overall impact on national unity has been minimal at worst. For example, under the Established Programs Financing Act, the effect on national unity was that Canadians no longer were subjected to ineffective treatment procedures that were prescribed by federal schedules. Instead, Canadians received the most effective treatments.

If a greater degree of provincial autonomy is not guaranteed under the Constitution, then it is possible that any extra-constitutional powers that the provinces receive can be pulled back by the federal government at any time. It has been seen in the past that the federal government is capable and willing to cut provincial financing in

order to balance its budget. For this reason, the provinces would be much better off to have their autonomous rights enshrined into the Constitution.

As seen in 1982, the threat of Quebec separation sparks mega-constitutional amendment. Under the Meech Lake and Charlottetown Accords, there were no imminent consequences to the failure of the Accords. If the threat of Quebec separation arises once again, the country must address the issue of Constitutional reform and the division of powers will surely be addressed. It is yet to be seen, however, what political barriers, such as the "special status" clause in the Meech Lake Accord, may stand in the way of renewed federalism. If the provinces are able to negotiate similar opting out clauses as they did in the failed Accords, they stand to be guaranteed a greater amount of autonomy which would allow the various regions of Canada to react more effectively to regional needs. Ultimately, mega-constitutional change is the only way to guarantee that this will occur. It is unfortunate that the failures of the Accords have left such a long-lasting bitter taste of constitutional renewal in the mouths of Canadians and its politicians. Mega-constitutional renewal is the only way to guarantee greater provincial autonomy and it appears this will only occur under the threat of another Quebec succession. Thus, it appears that the further advancement in regards to the regional needs of Canadians will only be met in the event of the threat of a Quebec succession.

If, however, the Canadian political mood suddenly changes, the provinces would be wise to seek greater autonomy without Quebec. Quebec has frequently demanded special powers which have soured the moods of other provinces who want an equal playing field for all provinces. As seen with the Constitution Act, 1982 and the Social Union Framework Agreement, the rest of Canada is not afraid to move on without

Quebec. If constitutional renewal unexpectedly comes about in the near future, and Quebec continues to be the wedge between the rest of Canada and the federal government, then the rest of Canada would be wise to negotiate a more favorable division of powers without Quebec.

One level of government should not, by virtue of its superior fiscal position, inhibit another from carrying out its legitimate constitutional mandate. The division of powers under the Constitution Act, 1867 is clearly outdated and in need of major reform. Either through extra-constitutional reform, or preferably through mega-constitutional reform, a greater degree of autonomy to the provinces would benefit Canadians. As Tom Coucherne reminds us, the national interest is often best achieved by decentralization initiative.[104] The Canadian federation is run most efficiently as an economic union, with local services such as healthcare and education being administered with provincial autonomy. Past experience has shown that legislature of a decentralizing nature has generally proven to be effective and it is time for the political elites in Ottawa to relinquish their quest for federal powers and allow the country to be run in a more effective and efficient manner.

[104] Fortin, 219.

References

Banting, Keith and Simeon, Richard. *And No One Cheered: Federalism, Democracy & the Constitution Act*. Agincourt, Ontario: Methuen Publications, 1983.

Boadway,Robin W. and Hobson, Paul A.R. *Intergovernmental Fiscal Relations in Canada*. Toronto: Canadian Tax Foundation, 1993.

Boissoneault, Gordon. *The Relationship Between Financial Markets and Economic Growth: Implications for Canada*. Ottawa: Wise Person's Committee, 2004.

Behiels, Michael D. "Introdution." In *The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord*, edited by Michael D. Behiels, 3-11. Ottawa: University of Ottawa Press, 1990.

Boadway, Robin and Hobson, Paul A.R. *Intergovernmental Fiscal Relations in Canada*. Toronto: Canadian Tax Foundation, 1993.

Boadway, Robin W., Mintz, Jack M and Purvis, Douglas D. "Economic Implications of the Meech Lake Accord." In *Competing National Views: The Meech Lake Accord*, edited by K.E. Swinton & C.J. Rogerson, 225-235. Toronto: The Carsell Co. Ltd., 1988.

Boadway, Robin W. and Ronald Watts. *Fiscal Federalism in Canada*. Kingston: Institute of Intergovernmental Relations, 2000.

Boothe, Paul. *Finding a Balance: renewing Canadian Fiscal Federalism*. Calgary: C.D. Howe Institute, 1998.

Brown, Malcolm C. "The Implications of Established Program Finance for National Health Insurance." *Canadian Public Policy* 6, no. 3 (1980): 521-532.

"Canada Act, 1982." *The American Journal of Comparative Law*, 32, no. 2 (Spring 1984): 225-239. JSTOR, http://www.jstor.org/stable/840467

Canada, 1994, Department of Human Resource Development, *Reforming the Canada Assistance Plan: A Supplementary Paper*. Ottawa: Supply and Service Canada.

"Canada Health Act," Health Canada. http://www.hc-sc.gc.ca/hcs-sss/medi-assur/cha-lcs/transfer-eng.php

Citizen's Forum on Canada's Future. Ottawa: Minister of Supply and Services 1991.

Collings, d'A Francis. "National Hospital Insurance in Canada." *Published Health Reports (1896-1970)* 74, no. 12 (1959): 1049-1058.

"Consensus Report on the Constitution: Charlottetown." August 28, 1992.

Courchene, Thomas J. *Redistributing Money and Power: A Guide to the Canada Health and Social Transfer*. Ottawa: Renouf Publishing Company, 1995.

Courchene, Thomas J. *The BNA Act to the Constitution Act, 1982*. Kingston, Ontario: Queen's University, 1983.

Coyne, Deborah. "The Meech Lake Accord and the Spending Power Proposals: Fundamentally Flawed." In *The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord,* edited by Michael D. Behiels, 245-271. Ottawa: University of Ottawa Press, 1990.

Davenport, Paul. "Hard Times and the EPF: The Funding of Health and Post-Secondary Education Since 1977." *Department of Economics and Canadian Studies* (Montreal: McGill University).

Fortin, Pierre. "The Meech Lake Accord and the Federal Spending Power: A Good Maximin Solution." In *Competing Constitutional Visions: The Meech Lake Accord*, edited by K.E. Swinton & C.J. Rogerson, 213-224. Toronto: The Carsell Co. Ltd., 1988.

Fremont, Jacques. "The Charlottetown Accord and the End of the Exclusiveness of Provincial Jurisdictions." In *The Charlottetown Accord, the Referendum and the Future of Canada*, edited by Kenneth McRoberts & Patrick Monahan, 93-101. Toronto: University of Toronto Press, 1993.

Harmes, Adam. "The political Economy of Open Federalism." *Canadian Journal of Political Science* 40, no 2 (2007): 417-437.

Hawkes, David C., Pollard, Bruce G. "The Medicare Debate in Canada: The Politics of New Federalism," *Publius* 14, no. 3 (1983): 183-198.

Hobson, Paul A.R. and France St. Hilaire. *Performing Federal-Provincial Fiscal Arrangements*: *Towards Sustainable Federalism*. Ottawa: Renouf Publishing, 1993.

Hogg, Peter. "Analysis of the New Spending Provision." In *Competing Constitutional Visions: The Meech Lake Accord*, edited by K.E. Swinton & C.J. Rogerson, 155-162. Toronto: The Carswell Co. Ltd., 1988.

Johnson, A.W. "The Meech Lake Accord and the Bonds of Nationhood." In *Competing Constitutional Visions: The Meech Lake Accord*, edited by Katherine E. Swinton and Carol J. Rogerson, 145-154. Toronto: The Carswell Co. Ltd., 1988.

Johnston, Richard. "An Inverted Logroll: The Charlottetown Accord and the Referendum." *Political Science and Politics* 26, no. 1 (1993): 43-48. JSTOR, http://www.jstor.org/stable/419503

Koji, Junichiro. "The Social Union Framework Agreement: Competing and Overlapping Visions of Canadian Federalism." *National Library of Canada*, 2002.

Lazar, Harvey. "The Social Union Framework Agreement: Lost Opportunity or New Beginning?" *School of Policy Studies: Institute of Intergovernmental Relations*, 2000.

Manfredi, Christopher P. "On the Virtues of Canadian Constitution: Why Canadians Were Right to Reject the Charlottetown Accord." In *Rethinking the Constitution: Perspectives on Canadian Constitutional Reform, Interpretation, and Theory*, edited by Anthony A. Peacock, 42-60. Toronto: Oxford University Press, 1996.

McWhinney, Edward. *Canada and the Constitution 1979-1982*. Toronto: University of Toronto Press, 1982.

Milne, David. *The Canadian Constitution: The Players and the Issues in the Process That Has Led from Patriation to Meech Lake to an Uncertain Future*. Toronto: James Lorimer & Company, Publishers, 1991.

Moore, Milton A., Perry, Harvey J. and Beach, Donald I. *The Financing of Canadian Federation: The First Hundred Years*. Toronto: The Canadian Tax Foundation, 1966.

Murray, Lowell. "The Constitutional Politics of National Reconciliation." In *The Meech Lake Primer: Conflicting Voews of the 1987 Constitutional Accord*, edited by Michael D. Behiels, 13-27. Ottawa: University of Ottawa Press, 1990.

Noel, Alain. "General Study of the Framework Agreement" In *The Canadian Social Union Without Quebec: 8 Critical Analyses*." Edited by Francesca Worrall, 9-36. Ottawa: The Institute for Research on Public Policy, 2000.

Olling, R.D. and M.W. Westmacott. *The Confederation Debate: The Constitution in Crisis*. Toronto: Kendall/Hunt Publishing Company, 1983.

Petter, Andrew. "Meech Ado About Nothing? Federalism, Democracy, and the Spending Power." In *Competing Constitutional Visions: The Meech Lake Accord*, edited by K.E. Swinton & C.J. Rogerson, 187-202. Toronto: The Carsell Co. Ltd., 1988.

Pinchaud, Robert. "Governments and Cultural Affairs 1867-1977" in *Canada Challenged: the Viability of Confederation*, edited by R.B. Byers and Robert W. Reford, 130-145. Toronto: Canadian Institute of International Affairs, 1979.

Remillard, Gil. "Quebec's Quest for Survival and Equality Via the Meech Lake Accord" in *The Meech Lake Primer: Conflicting Views of the 1987 Constitutional Accord*, edited by Michael D. Behiels, 28-42. Ottawa: University of Ottawa Press, 1990).

Richards, John. “The Paradox of the Social Union Framework Agreement.” *C.D. Howe Institute*. Ottawa: Renouf Publishing Co. Ltd, 2002.

Romney, Paul. “The Nature and Scope of Provincial Autonomy.” *Canadian Journal of Political Science* 25, no 1 (1992): 3-28. JSTOR Arts and Sciences II Collection, http://www.jstor.org/stable/3228947

Russell, Peter H. *Constitutional Odyssey: Third Ed.* Toronto: University of Toronto Press, 2004.

Simpson, Jeffrey. “The Referendum and its Aftermath.” In *The Charlottetown Accord, the Referendum and the Future of Canada*, edited by Kenneth McRoberts & Patrick Monahan, 193-199. Toronto: University of Toronto Press, 1993.

Spurgeon, David. “Canada Faces Healthcare Crisis,” *British Medical Journal* 320, no. 7232 (2000): 400. http://www.jstor.org/stable/25187133

Taylor, Malcolm. “The National Hospital Insurance Act.” *The University of Toronto Law Journal* 12, no. 2 (1958): 300-3003.

Wilson, L.S. “The Socialization of Medical Insurance in Canada,” *The Canadian Journal of Economics* 18, no. 2 (1985): 355-376.

Wise Person’s Committee, *It’s Time* (Department of Finance, 2003).