

THE SCOPE AND LIMITS OF ASYMMETRY IN RECENT SOCIAL POLICY AGREEMENTS

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Foreword

The federal Liberal Party's 2004 general election platform heavily emphasized issues that are mainly subject to provincial competence under the constitution (e.g. health care, child care, cities). Since the federal government lacks the authority to implement detailed regulatory schemes in these areas, acting on these election commitments frequently requires federal-provincial-territorial (FPT) agreements.

A controversial question that arises when considering all intergovernmental agreements is whether they should treat all provinces and territories similarly or whether the agreements should be expected to differ from one province/territory to another. This issue of symmetry or asymmetry arises at two levels. The first is whether all provinces should be and should be viewed as "equal" in legal and constitutional terms. The second relates to the political and administrative level and the intergovernmental agreements it generates. When should Canadians expect all provinces/territories to be treated similarly in these agreements and when should difference be the rule?

Given this political context, it is timely to reconsider the factors that are relevant to the issue of symmetry and asymmetry. We are doing this by publishing a series of short commentaries over the first half of 2005. These papers will explore the different dimensions of this issue- the historical, the philosophical, the practical, the comparative (how other federations deal with asymmetrical pressures), and the empirical. We do this in the hope that the series will help improve the quality of public deliberation on this issue.

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INTRODUCTION

The September 2004 Federal/Provincial/Territorial Health Accord raised both hopes and consternation with its reporting elements that committed the Quebec government to slightly different procedures than the other provinces. After the unpopularity of the asymmetric elements of attempted constitutional reforms, particularly in terms of recognizing Quebec's distinctiveness, this agreement represented a return to a minor tradition of "political asymmetry", understood as the federal and provincial governments developing policies where the roles and responsibilities of each would vary from province to province. The Health Accord could be seen as an extension of precedents such as the Canada Pension Plan/Quebec Pension Plan compromise, the Cullen-Couture agreement in Immigration, or more modest use of the opting-out mechanism under Pearson in the mid-1960s. While Alain Noël perceptively noted that the 2004 agreement was a very limited instance of asymmetry compared to such examples, informed opinion in both Quebec and the rest of the country understood that formal political asymmetry was back on the agenda for the first time in more than a decade.¹

To grasp the weight and potential of the 2004 agreement, it helps to place it in the context of recent federal-provincial agreements in the health, employability, disability, housing, and child policy fields. These agreements reflect a new form of federal governance where the federal government's leadership is defined in different terms than in the shared-cost programmes of the post-war era that built the welfare state in areas such as health, social assistance, disability, training and housing. Under this new form of governance, the federal government is less concerned with ensuring that provinces adhere to strict conditions or broader national standards, but more interested in setting agendas and steering reform. This new governance involves a greater formal acceptance of asymmetry in terms of provincial variation in programme design, and makes striking slightly

¹ Alain Noël, "Déblocages," *Policy Options*, November 2004, 48.

different deals with Quebec relatively costless for the federal government. This asymmetry nevertheless has its limits, as it depends upon provincial acceptance of the federal government's involvement in policy fields constitutionally assigned to the provinces, and some commitment to the agenda and direction that it sets. The degree of hierarchy between federal and provincial governments that results is difficult to tease out: on the one hand this new governance does not require the same degree of provincial buy-in as the agreements that built the major programmes of the Canadian welfare state in the 1950s and 1960s, yet on the other hand it allows the federal government to participate in re-engineering the content, delivery and goals of programmes in provincial jurisdiction while its proportionate share of total programme costs generally remains below the levels of the late 1970s or early 1980s.

A FEW WORDS ON FEDERALISM AND ASYMMETRY

Federalism, understood to refer to a broad range of political systems combining self-rule and shared rule, is by definition open to asymmetry. By ensuring powers of self-rule at the level of constituent units, it is accepted that different units may employ that power in different ways and towards different ends. In the case of formal federations like Canada, numerous asymmetries exist in how provinces legislate within their fields of jurisdiction. Even where Canada-wide standards or shared principles with important symbolic weight exist, as with the *Canada Health Act*, or with the Canada Assistance Plan pre-1995, observers noted the existence of ten distinct health systems, and what Boychuk calls "patchworks of purpose" in social assistance.² This "respect for diversity" inherent in federalism also introduces asymmetry in policies and citizen rights as compared to the symmetry one would expect in a centralized unitary state. Where you live affects your social rights and responsibilities. This asymmetry is nevertheless counterbalanced by federal government attempts to create some semblance of a pan-Canadian social space (for

instance, through national standards, or by equalizing revenue raising capabilities). In other words, federations contain a certain amount of *mundane* asymmetry simply from assigning some responsibilities to provinces, but the extent of this asymmetry is affected by how the federal government intervenes to achieve some policy integration. The use of the term "mundane" is used not to downplay its importance and significance, but to highlight the fact that a fair amount of asymmetry should be expected in the normal functioning of a federal system.

This mundane form of asymmetry stands beside the more commonly studied one that I will call "political asymmetry," in the sense of providing one province, or group of provinces, greater autonomy than the others. In the Canadian case, this has most often been discussed in terms of the right of provinces to opt-out of joint programmes with funding, and whether that right comes attached to conditions. However, the side-agreement to the 2004 Health Accord also fits in this category in allowing a province to participate in the agreement, but on distinctive terms. We should not rush to assume that political asymmetry is always more significant than the mundane. For instance, the degree of difference between the organization of Quebec's and Ontario's health systems, attributable to the basic workings of federalism, will scarcely change with the 2004 Accord. In looking at recent federal-provincial policy agreements, one must keep both the mundane asymmetry of federalism and political asymmetry in sight, since both are being redefined by the new form of federal governance.

RECENT SOCIAL POLICY ACCORDS

The arguments sketched out above can be filled in by looking at recent social policy agreements in such fields as health, disability, child-care, housing and labour markets.³ These agreements vary between policy fields and over time in terms of what they stipulate, and the extent to which they are the prelude to more formal bilateral agreements, but they reflect an

² Gerard Boychuk, *Patchworks of Purpose* (Montreal: McGill-Queen's University Press, 1998).

³ I would like to thank Mario Levesque for his research assistance.

evolution in the federal government strategy for maintaining a degree of pan-Canadian integration compared to the post-war shared cost programmes. Federal-provincial summit negotiations now tend to produce framework agreements setting out broad principles and a menu of policy priorities and commitments. While provinces have a wide degree of flexibility in allocating resources and defining programme parameters across and within these priorities, they do commit to informing the public of their plans, to collecting and monitoring information about results, and to communicating with the public. Accountability for the use of federal monies is ensured both through the recognition of the federal contribution in provincial reports, and through provincial publics holding their governments to account for outcomes. Some examples from a variety of different policy fields are discussed below. It is worth noting how the spirit of the 1999 Social Union Framework Agreement (SUFA) hangs over these various agreements. Although the SUFA itself has not directly served as a document regulating federal-provincial relations, it captures important elements of multilateral intergovernmental initiatives in specific sectors. These features include the importance of developing framework agreements, the emphasis on developing forms of accountability (especially to citizens), and the use of the spending power only after achieving substantial provincial agreement (although federal unilateralism persists outside these agreements).

(a) Labour Market

The Labour Market Development Agreements, reached between 1996 and 1998, represent an early and incomplete example of this new form of federal governance. These agreements contain a large degree of mundane asymmetry, in that they define eligible provincial labour market initiatives very broadly (i.e. that they be similar to those defined under Part II of the *Employment Insurance Act*, which would include almost any employability measure the provinces were already running at that time for their social assistance recipients). Provinces can offer very different packages of measures across the fields of wage subsidies,

self-employment assistance, training loans/grants, hiring subsidies, and supplementation of UI recipient earnings. The agreements also contain limited political asymmetry in two senses. First, the Quebec agreement exempted it from the EI Act-Part II definitions. Second, some provinces negotiated full devolution of labour market services, whereas others developed co-management agreements with the federal government. All provinces were nevertheless required to report on a set of standard performance measures including the number of clients served, the number of EI clients returned to work and savings to the EI account, although these reports were not to citizens but to the federal government.⁴

(b) Children

The National Child Benefit supplement provides another example of new federal governance and its tolerance for mundane asymmetry. Provinces agreed to reinvest monies clawed back from social assistance recipients in a variety of priority areas such as children's benefits, earned income supplements, child care, early childhood services, healthy benefits and work incentives for parents. This flexibility was regulated by accountability provisions that required Provincial and Territorial governments to share information about implementation and evaluation, and to report outcomes to their citizens. The September 2000 Early Childhood Development Agreement similarly involves significant provincial autonomy, allowing provinces to invest federal money in four broadly drawn priority areas (e.g. healthy pregnancy, early childhood development and care, parenting and family supports). Accountability again focused both on public reporting, and on working together in

⁴ Thomas R. Klassen, "The Federal-Provincial Labour Market Development Agreements: Brave New Model of Collaboration?" in Tom McIntosh (ed.) *Federalism, Democracy and Labour Market Policy in Canada* (Kingston: School of Policy Studies, 2001); Rodney Haddow, "How Ottawa Shrivels: Ottawa's Declining Role in Active Labour Market Policy," in Leslie Pal (ed.) *How Ottawa Spends 1998-99* (Toronto: Oxford University press, 1998).

developing joint indicators and sharing information and best practices. The 2003 Multilateral Framework on Early Learning and Child Care continues in this vein as new federal money gives provinces significant leeway to define their own investment priorities, but requires reporting on how money was spent, and on indicators of availability, affordability and quality. The communiqué of the November 2004 Federal/Provincial/Territorial meeting of Ministers responsible for Social Services indicates that this general pattern of setting a framework containing principles, provincial flexibility and accountability measures, will continue to guide intergovernmental negotiations around child care.

(c) Disability

The new form of governance gained greater visibility with the 1997 Multilateral Framework on Employability Assistance for People with Disabilities (EAPD). The EAPD contained much mundane asymmetry, giving provinces great flexibility in choosing services across a number of fields, including pre-employment support, short-term assistance and ongoing active employment supports. Provinces were charged with drawing up 1-3 year implementation plans that would be the basis for a bilateral cost-sharing agreement with the federal government, and would be made accountable to consumers and the general public through reporting on agreed results indicators. Alongside this reporting, provinces would participate in policy learning through ongoing evaluation activities, with the federal government (HRDC) acting as a clearinghouse of best practices. This latter role provided one means of federal steering, as did the agreement as a whole, as it consecrated the tendency towards basing rehabilitative services on employability measures. In addition to the mundane asymmetry present in the agreement, it also contained some political asymmetry, in that Quebec refused to sign onto the framework, although it then negotiated its own bilateral deal with the federal government.

The EAPD was renewed in 2003 with the signing of the Multilateral Framework for Labour Market Agreements for Persons with Disabilities (LMAPD). The LMAPD framework

reiterated the basic points of the EAPD, although it was more detailed in terms of spelling out priority areas, defining the contents of annual plans and accountability indicators, and was linked to directives on carrying out evaluations.

(d) Housing

In November 2001, a Federal/Provincial/Territorial Framework for bilateral Agreements Aimed at Affordable Housing heralded the return of federal involvement in this field of provincial jurisdiction. The Provincial/Territorial Ministers had called in August for an agreement that provided a great deal of flexibility and that recognized Provincial/Territorial priorities. This was worked into a framework setting out principles, as well a series of programme parameters. While these laid out some detailed rules, a very wide range of provincial initiatives (construction, renovation, home ownership, rehabilitation, rent supplements and supportive housing programmes) qualified. In 2003 and 2004, Provincial/Territorial Ministers attempted to spur additional federal investments by proposing further frameworks of principles to guide provincial policy design and delivery. The November 2004 Federal/Provincial/Territorial meeting of Housing Ministers decided to use these principles to guide current and future housing initiatives as well as bilateral negotiations. Housing initiatives to date show signs of mundane asymmetry, particularly with fewer of the planning and reporting requirements to contain the resulting diversity. However, it is worth noting that the federal presence remains small and limited in this field at present.

(e) Health

Finally, health policy agreements have also taken the framework form, and combine a fair degree of mundane asymmetry with federal steering. Federal health reinvestments in February 1999, September 2000 and the February 2003 agreements were quite flexible about how provincial governments spent the money within their existing health systems, although the 2000 and 2003 agreements tried to force provinces to spend in particular envelopes

(e.g. diagnostic equipment, primary health reform, catastrophic drug coverage). Each reinvestment thus entails more federal steering. This moved from accepting the Premiers' promise to spend the money on health in 1999 to more elaborate provisions about reporting and elaborating outcome indicators in 2003.

The 2004 agreement, set out in "A 10-Year Plan to Strengthen Health Care" follows in this vein. The governments again agreed to a broad statement of principles, followed by commitments to develop solutions to specific problems like waiting times, human resources, home care and primary care reform. The agreement binds governments to develop plans for overcoming these problems, to report annually to citizens on their progress, and to share best practices amongst themselves. Once again, the agreement provides a fair degree of flexibility, albeit with federal involvement in setting agendas and steering reform. The 2004 side-agreement setting out how the agreement is interpreted for Quebec, introduces an element of political asymmetry in providing Quebec greater flexibility in defining its plans to meet certain problems and in providing for different reporting requirements (i.e. reporting to the Quebec Health Commissioner rather than to the Health Council). This is nevertheless a thin political asymmetry, since the side-agreement underlines that Quebec will continue to work with the other provinces in developing indicators and sharing best practices, and that it will largely work on the same reform priorities.

In sum, these frameworks point to the federal government honing new tools for ensuring some degree of pan-Canadian social policy integration. These tools are, at least on the face of them, weaker than the post-war national standards. They certainly do not have the provincial governments preparing detailed financial statements to send to Ottawa in order to qualify for cost-sharing. Indeed, given the federal Finance department's opposition to open-ended cost-sharing, these new agreements limit federal contributions to set amounts. Given more circumscribed financial participation and more diffuse means of enforcing accountability, the federal government now shows greater

tolerance for provincial diversity, in the sense of different provinces emphasizing different parts of the federal agenda, for instance with some choosing to invest early childhood development monies in child care, and others in healthy pregnancy. At least for now, provinces are required to report to their citizens, and not to the federal government, and federal funding does not ride on obtaining particular results. What counts is that provinces sign onto the agenda set by the federal government, and agree to participate in an ongoing policy-learning process through public reporting, the development of performance indicators, and the spread of best practices. This is clearly a softer form of federal control than the use of national standards, but it is perhaps a more effective form when the goal is to lead the reform of the programmes and institutions inherited from the post-war era, rather than to create new branches of the welfare state. For instance, others have noted that the *Canada Health Act* does not provide the federal government with much leverage in renewing the health system, except by vetoing particular courses of action. The Health Accords, in conjunction with the deployment of pilot projects and new centres of expertise, do allow the federal government to portray itself as a reform leader, and to encourage all provinces to move in largely the same direction.⁵

Federal leadership based on an agenda setting and steering role may have a greater tolerance for mundane asymmetry in the precise policy mix in a given field. What matters is that the provinces are being steered in the "right" direction. This tolerance for mundane asymmetry is likely to give rise to greater political asymmetry, within certain bounds. If the federal aim is to steer provincial efforts, agreements that set out a different configuration of accountability and reporting requirements do

⁵ See also Gérard Boismenu and Peter Graefe, "The New Federal Toolbelt: Attempts to Rebuild Social Policy Leadership," *Canadian Public Policy*, 30, 1, 71-89; Denis Saint-Martin, *Coordinating Interdependence: Governance and Social Policy Redesign in Britain, the European Union and Canada*, Research Report F141 (Ottawa: Canadian Policy Research Networks, 2004), 30-37.

not fundamentally undermine federal leadership. It is one thing to opt-out of a shared-cost pan-Canadian programme and demand compensation to be used for a competing initiative, and another to tinker with reporting relationships. In the first case, the federal pan-Canadian project of assuring some harmonization through national standards is directly put into question. Maintaining federal leadership in this case requires refusing the demand for asymmetry, or limiting it through regulations forcing provinces to spend their compensation on similar programmes meeting similar objectives. In the latter case, the federal government achieves its agenda-setting goals, even while responding more creatively to the variable geometry of Canadian provinces. This may explain the federal government's acceptance of political asymmetry in the 2004 Health Accord, the 1996 Labour Market Development Agreements, and the EAPD framework.

While this new form of federal governance makes more space for political asymmetry, it is still a truncated one. The federal government is unlikely to extend political asymmetry where that means surrendering its participation in steering social policy development. It is hard to envisage it agreeing to demands for opting-out with compensation either for provinces defending a strong version of classical federalism (in the sense of the strict respect for the constitutional division of powers,) or for provinces that are in fundamental disagreement with the policy principles and directions set out in particular frameworks. Political asymmetry appears likely only in cases where provinces agree to accept federal steering and the basic premises of the policy framework.

CONCLUSION – THE 2004 HEALTH ACCORD IN CONTEXT

While the 2004 agreement is too recent to make strong predictions about the possible extent and meaning of political asymmetry, a few tendencies can be inferred. First, the asymmetry of the 2004 agreement fits with a shift in federal-provincial governance seen in other social policy agreements. As the federal government assumes more of an agenda-setting role, and defines accountability in terms of

frameworks and action plans more than national standards, it comes to embrace a greater degree of mundane provincial asymmetry in joint programmes. In this context, where the precise policy mix already varies across provinces, the additional asymmetry of Quebec doing its reporting in a different manner is less likely to run against opposition either within the federal government or in English Canadian public opinion. Indeed, where Quebec develops unique reporting mechanisms, it may open itself up to more public accountability by making this aspect visible. This is nevertheless a thin form of asymmetry. It will work only as long as Quebec is willing to follow the broad lines of policy development and debate in the rest of the country and to accept an important federal agenda-setting role in core areas of provincial jurisdiction. While this appears to work in the context of the current Charest government, it is not clear whether this would prove to be a workable formula under a government, be it Parti Quebecois or Liberal, with a stronger emphasis on developing Quebec's autonomy and more imagination in setting a different social policy agenda than the one found in the Rest of Canada. In this sense, the 2004 agreement speaks both to the promise of new federal-provincial relationships in terms of being able to develop agreements that fit the variable geometry of the Canadian political community, and to the limits of this asymmetry in terms of the federal government's refusal to surrender its leadership role in steering policy development in fields of provincial jurisdiction.