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The Paradox of the Social Union Framework Agreement

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The Backgrounder in Brief

The core rationale for the Social Union Framework Agreement lies in principles advanced by the provinces: circumscribing the federal spending power; codetermination of national standards; recognition of the constitutional division of powers; and the importance of normalizing Quebec's role in intergovernmental relations. Yet, as drafted, the agreement emphasizes federal government concerns at the expense of provincial autonomy and accountability. The agreement is worth preserving for a further three years with the aim of strengthening its provincial principles. If it ends up providing cover for major unilateral federal spending in provincial areas, however, the agreement should be scrapped.

About the Author

John Richards served as a member of Allan Blakeney's New Democratic Party government in the Saskatchewan Legislature from 1971 to 1973. Trained as an economist, he is Professor of Business Administration at Simon Fraser University, Phillips Scholar in Social Policy and Fellow-in-Residence at the C.D. Howe Institute, and a frequent writer and commentator on public policy issues.

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In February 1999, ten of eleven first ministers signed the Social Union Framework Agreement (SUFA). Quebec's Lucien Bouchard did not. The signatories agreed that, by February 2002, they "will jointly undertake a full review of the Agreement and its implementation" (see the box on the following page).

SUFA deals with rules that determine how governments manage social programs, a matter of concern to all Canadians. At the same time, the overwhelming majority of Canadians are unaware of SUFA's existence, and the few who do know of it are largely indifferent about its fate.

Explaining this paradox requires that I briefly trace the events leading to the signing of the agreement. I then offer two reasons SUFA's impact has so far been inconsequential: an overemphasis on technical evaluations at the expense of parliamentary accountability, and a failure to accommodate divergence and experimentation among Ottawa and the provinces in their conduct of social policy. I conclude by recommending that SUFA be left in place as a minor "step in the right direction"[1] and that its review date be postponed by another three years.

The Background to SUFA

In the 1960s and 1970s, Ottawa and the ten provinces launched many new social programs, the most prominent and expensive of which was medicare. The result was the creation of a Canadian welfare state comparable in generosity to the average prevailing among the industrialized countries.

By the early 1990s, two problems loomed large. First, after a quarter-century of life, many social programs were in dire need of reform. Given the extent of federal-provincial entanglements, however, it was far from clear which order of government should be saddled with the inevitably controversial task of program redesign. Second, despite a rising ratio of tax to gross domestic product, the Canadian public sector had been in consistent deficit since the mid-1970s. By the recession of the early 1990s, both orders of government were running serious deficits.

At the time, neither Ottawa nor any of the provinces appeared able to construct a political coalition on behalf of policy reform and fiscal redress. Ten years on, fiscal redress has been realized, largely through the development of greater respect for the division of powers and smaller intergovernmental transfers. Moreover, both orders of government undertook independent initiatives to cut their respective program spending and increase taxes.

The first to pursue this painful agenda were the governments of the prairie provinces. For its part, over the life of the 1993–97 Parliament, the federal government protected spending on core social programs (old age security and aboriginal programs) but cut all others, including intergovernmental transfers, by about a fifth. Ottawa left equalization intact but combined the other two major

I thank Bill Robson and Finn Poschmann for critiquing an earlier draft. They obliged me to mount a better defense for keeping the Social Union Framework Agreement alive — albeit I am unsure whether it has convinced them.

1 As Greg Marchildon's (2000) defense of the compromise was titled. At the time he wrote the article, Marchildon was deputy minister to Saskatchewan premier Roy Romanow and among the senior officials involved in negotiating the SUFA text.

The Social Union Framework Agreement (abridged)

1. Principles

Canada's social union should reflect and give expression to the fundamental values of Canadians — equality, respect for diversity, fairness, individual dignity and responsibility, and mutual aid and our responsibilities for one another.

Within their respective constitutional jurisdictions and powers, governments commit to the following principles:

- ensure access for all Canadians, wherever they live or move in Canada, to essential social programs and services of reasonably comparable quality;
- respect the principles of medicare: comprehensiveness, universality, portability, public administration, and accessibility;
- ensure adequate affordable, stable and sustainable funding for social programs.

2. Mobility within Canada

All governments believe that the freedom of movement of Canadians to pursue opportunities anywhere in Canada is an essential element of Canadian citizenship.

Governments will ensure that no new barriers to mobility are created in new social policy initiatives.

Governments will eliminate, within three years, any residency-based policies or practices which constrain access to post-secondary education, training, health and social services and social assistance.

3. Informing Canadians — Public Accountability

Canada's Social Union can be strengthened by enhancing each government's transparency and accountability to its constituents. Each government therefore agrees to:

- monitor and measure outcomes of its social programs and report regularly to its constituents on the performance of these programs;
- share information and best practices to support the development of outcome measures, and work with other governments to develop, over time, comparable indicators to measure progress on agreed objectives.

4. Working in Partnership for Canadians

Governments...agree to...collaborate on implementation of joint priorities when this would result in more effective and efficient service to Canadians.

5. The Federal Spending Power — Improving Social Programs for Canadians

The use of the federal spending power under the Constitution has been essential to the development of Canada's social union....

intergovernmental transfers (Established Programs Financing and the Canada Assistance Plan) into one smaller block grant called the Canada Health and Social Transfer (CHST). It also increased eligibility requirements for employment insurance (EI), and insisted on Canada / Quebec Pension Plan premium increases to recover the financial integrity of this program.

As late as 1995, many premiers were still denying the precarious condition of the country's public finances. To their credit, they did more than grumble about cuts in federal transfers contained in Finance Minister Paul Martin's budget of that year. In late 1995, they issued a modest manifesto (Ministerial Council 1995) —

Conditional social transfers have enabled governments to introduce new and innovative social programs, such as medicare, and to ensure that they are available to all Canadians....

The Government of Canada will consult with provincial and territorial governments at least one year prior to renewal or significant funding changes in existing social transfers to provinces / territories....

With respect to any new Canada-wide initiatives in health care, post-secondary education, social assistance and social services that are funded through intergovernmental transfers, whether block-funded or cost-shared, the Government of Canada will:

- work collaboratively with all provincial and territorial governemtns to identify Canada-wide priorities and objectives;
- not introduce such new initiatives without the agreement of a majority of provincial governments.

A provincial / territorial government which, because of its existing programming, does not require the total transfer to fulfill the agree objectives, would be able to reinvest any funds not required for those objectives in the same or a related priority area.

When the federal government introduces new Canada-wide initiatives funded through direct transfer to individuals or organizations for health care, post-secondary education, social assistance and social services, it will, prior to implementation, give at least three months' notice and offer to consult.

6. Dispute Avoidance and Resolution

Governments are committed to working collaboratively to avoid and resolve intergovernmental disputes. Respecting existing legislative provisions, mechanisms to avoid and resolve disputes should:

- be simple, timely, efficient, effective and transparent;
- allow maximum flexibiilty for governments to resolve disputes in a non-adversarial way;
- provide for appropriate use of third parties for expert assistance and advice while assuring democratic accountability by elected officials.

7. Review of the Social Union Framework Agreement

By the end of the third year of the Framework Agreement, governments will jointly undertake a full review of the Agreement and its implementation and make appropriate adjustments to the Framework as required. This review will ensure significant opportunities for input and feed-back from Canadians and all interested parties, including social policy experts, private sector and voluntary organizations.

prepared by a committee that included representatives of every province except Quebec — that rediscovered the significance of the constitutional division of powers. The manifesto called for the expansion of areas of specific provincial and federal responsibility in place of "ad hoc federal / provincial involvement" and for the encouragement of a smaller area of "cooperative federal / provincial involvement" (see Figure 1).

Despite ideological differences among the provinces, a fragile consensus emerged that managing the Canadian "social union" required a more explicit set of rules binding on both orders of government.[2] In late 1997, Ottawa accepted the provinces' invitation to negotiate what ultimately became SUFA. By June 1998, the provinces had prepared their negotiating agenda, in the form of a second manifesto (Provincial Consensus 1998). Never published, the manifesto circulated widely among those engaged in federal-provincial relations. It deplored "the practice of Canadian federalism [which] has, over time, confused the roles and responsibilities of the two orders of government." It called for each order to give the other written notice of major program changes, for joint priority setting and reporting of program outcomes, for joint mechanisms to replace unilateral federal interpretation of national standards, and for a set of co-decision rules to govern Ottawa's use of its spending power in areas of provincial jurisdiction.[3]

Although Quebec did not participate directly in preparing the Provincial Consensus, the manifesto was compatible with mainstream opinion among Quebec federalists and moderate sovereigntists. In nonconstitutional terms, the document embodied the decentralist view of the federation prevalent in the era of Mulroney and Bourassa. At the August 1998 first ministers' meeting, Quebec Premier Lucien Bouchard undertook a *beau risque* and explicitly endorsed it.

Meanwhile, Ottawa prepared its own negotiating agenda. It included improved provincial guarantees on interprovincial mobility and legitimation of the federal exercise of its spending power in areas of social policy. More significant than specific agenda items was the "spirit" with which Ottawa pursued negotiations with the provinces. Given the deep animosities that pitted federal Liberals against provincial governments in Toronto, Edmonton, and Quebec City, Ottawa sought to minimize constraints on its autonomy.

Federal negotiators used both stick and carrot to persuade the provinces to abandon much of their agenda.

Federal negotiators used both stick and carrot to persuade the provinces to abandon much of their agenda. The stick was a threat to wage ideological battle by charging the provinces with gutting social programs — a threat that had a pronounced impact on Ontario's Progressive Conservative government, which faced the near-term prospect of a hard-fought election campaign (it was returned to office in the June 1999 election). The carrot was an increase in CHST transfers, made feasible by the success of Ottawa's exercise in fiscal redress. In the final negotiations, the provinces succumbed, ironically leaving Premier Bouchard as the only first minister still endorsing an interprovincial draft that, a week earlier, had been a "provincial consensus." As Lazar (2000, 29) discreetly summarizes, "there are few commentators who will dispute the notion that provincial governments backed away from a large part of their negotiating position in return for additional federal money." Admittedly, SUFA put some constraints on Ottawa's unilateral ability to spend and to impose standards on the provinces pursuant to such federal legislation such as the *Canada Health Act* (see the box on pp. 2–3, sections 5 and 6), but the constraints are exceedingly modest.

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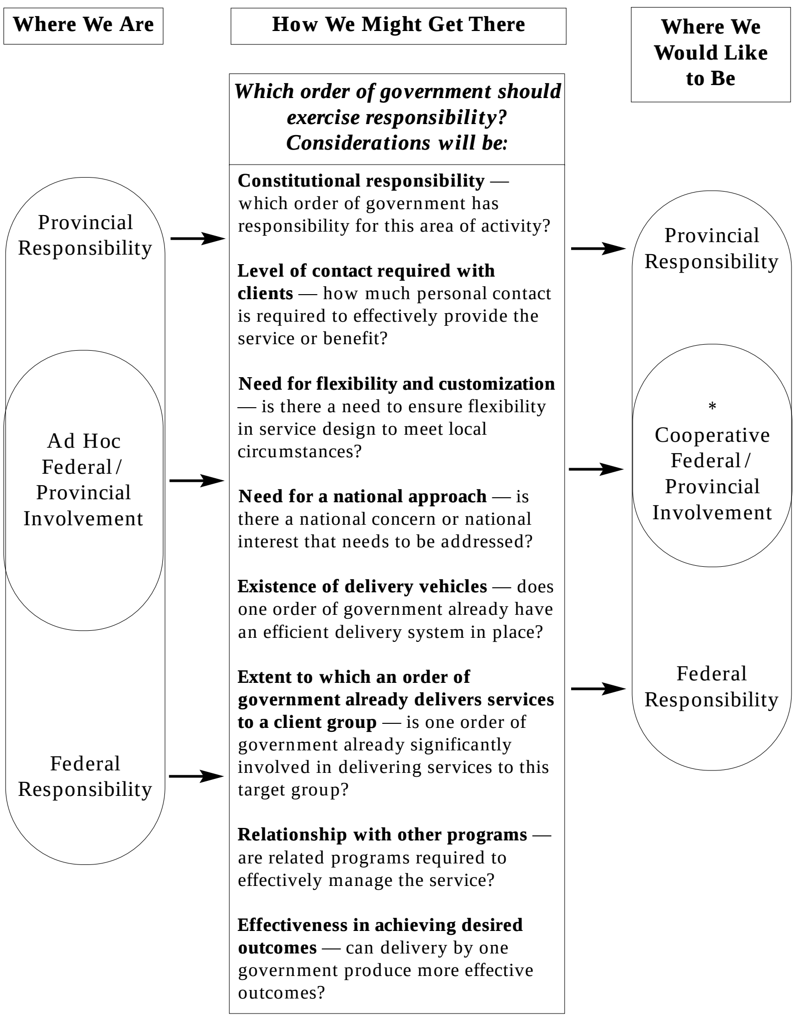
2 A document that helped define the emerging consensus was the ACCESS report, commissioned by the Ontario government (Courchene 1996).

3 Most of these proposals were not new but could be found in various official reports issued over the past two decades. For example, the provinces' call for co-decision mechanisms governing the imposition of national standards and Ottawa's use of its spending power in areas of provincial jurisdiction were a variation on the proposals set out by the Mulroney government in the wake of the defeat of the Meech Lake Accord (Canada 1991, 41–42).

Figure 1: Clarifying Federal-Provincial Responsibilities for Social Programs



Source: Ministerial Council 1995.

The informal links between Quebec and the other ten senior governments have grown disturbingly weak over the past two decades. The provinces hoped SUFA would help to reintegrate Quebec into normal federal-provincial relations. In persuading Premier Bouchard to accept the Provincial Consensus, they made progress, but it was short lived, and both the Parti Québécois and the Quebec Liberal Party have rejected the SUFA document as written.[4] Having opted for the politics of *la chaise vide* throughout the past decade, Quebec has itself mostly to blame for its diplomatic isolation. But a share of the blame also lies with Ottawa, which used unduly aggressive tactics to break the provincial coalition, and with the other nine provinces, which abandoned their core agenda and took the cash.

What's Wrong with SUFA

Whatever the political compromises surrounding its birth, SUFA's supporters claim it was, as noted above, a "step in the right direction" — that the age of classic federalism, characterized by the division of spending powers into watertight compartments[5] is *passé*; so too the traditional Quebec position that the other provinces can collaborate with Ottawa as they wish provided Quebec can asymmetrically opt out of areas of social policy with full financial compensation.

What should we make of this line of argument? There is, admittedly, something to it — when the provinces first proposed rules for managing the social union, they obviously recognized the desirability of an area of "cooperative federal / provincial involvement" (see Figure 1). On the other hand, SUFA's defenders ignore two fundamental flaws with the agreement as drafted.

4 For the most recent rationale for the Quebec Liberals' rejection of SUFA, see the party's constitutional report (Quebec Liberal Party 2001).

5 This maritime image comes from Lord Atkin's statement in the 1937 *Labour Standards* decision: "While the [Canadian] ship of state now sails on larger ventures and into foreign waters, she still retains the watertight compartments which are an essential part of her original structure" (quoted in Russell 1982, 130).

Technical Program Evaluation

First, the logic of SUFA is to rely on technical program evaluation, but this ignores the ever-present pressure on politicians to design inefficient social policy as means to accommodate interest groups.

During the 2000 federal election campaign, the Liberals promised to roll back certain provisions of the 1996 EI reform. It was good politics: by all accounts, relaxing access to EI was a significant reason for the near-doubling of the number of Liberal MPs in Atlantic Canada relative to the 1997 election. But it was bad policy: the pre-1996 EI regime, most analysts agree, contained too many incentives for people in high-unemployment regions to opt for low-skill seasonal work, to avoid training, or to stay where they were instead of migrating to jobs in other regions. Such electioneering undercut the legitimacy of federal officials who tried in good faith to give credibility to SUFA, and it confirmed that the agreement enjoyed only ephemeral status in the Prime Minister's Office.

Ottawa is, of course, hardly alone in distorting social programs to accommodate interest groups. But the example serves to illustrate the naïveté of SUFA's placing so much faith in technical evaluations and its excluding references to the division of powers and parliamentary accountability. Technical program evaluations are worth doing, but they are usually done with a lengthy lag relative to the policy innovation and, for obvious reasons, potentially embarrassing research is usually conducted at arm's length from government.

Does parliamentary accountability work? To paraphrase Winston Churchill on the virtues of democracy, it may be the worst of all possible means of program evaluation — except for the alternatives.

There is no way to prevent politicians from distorting social programs, but the indispensable way to contain distortion is the time-honored principle, dating back at least to Magna Carta, that the king not spend without consent from those paying the taxes. In the context of Canada's parliamentary democracy, this means that a cabinet may increase transfers to the seasonally unemployed in, say, Atlantic Canada provided elected representatives from elsewhere in the country give their assent.

Does parliamentary accountability work? To paraphrase Winston Churchill on the virtues of democracy, it may be the worst of all possible means of program evaluation — except for the alternatives.

Encouraging Uniformity

The second fundamental problem with SUFA is that it encourages uniformity by discouraging provincial innovation independent of Ottawa or of other provinces.

SUFA does not explicitly preclude provincial experimentation, but it is hardly friendly to it. The agreement seeks to ban any provincial policy that could be interpreted as a constraint on mobility (section 2). It stresses intergovernmental collaboration (section 4) and extols the importance of federal initiatives by means of Ottawa's spending power (section 5). Reference to "best practices" (section 3) is an indirect invitation to provinces to innovate, but a tepid one. Throughout the document lurks the danger of *la pensée unique* — reliance on a single policy response to any given problem.

Relative to US states, Canadian provinces have preserved greater fiscal and entrepreneurial independence from the central government. The most important reason is probably Quebecers' collective refusal to endorse a unitary state. Here, I leave aside the cultural and linguistic reasons underlying Quebec public opinion and stress that Quebec's exceptionalism has provided *all* Canadians an important benefit in the context of social policy. Provincial accountability to provincial legislatures and 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 culturally diverse country.

Consider two contemporary examples.

Poverty Policy

Long-term poverty, particularly among families with children, is a significant problem. During the 1990s, the federal government put in place the National Child Benefit System (NCBS), a generous program of transfers targeted on such families.[6] Since this program entails federal-provincial collaboration, supporters of SUFA often cite it as the prototype for future innovations. But Alberta, although it participated in the NCBS, chose to place its major anti-poverty emphasis elsewhere — on inducing the poor to seek work. To achieve this goal, the province made access to welfare benefits markedly more difficult for those classified as employable.

Alberta's success is illustrated by the dramatic statistic that just 2 percent of the province's population received general welfare in 2000. That is one-third the national average.

Alberta's success is illustrated by the dramatic statistic that just 2 percent of the province's population received general welfare in 2000. That is one-third the national average. Reduction in welfare use did not increase the provincial poverty rate, which, at the end of the decade, was equal to the national average. Employment rates in poor neighborhoods of Calgary and Edmonton are well above those of comparably poor neighborhoods in other western cities. On the other hand, the depth of poverty among those who remain poor is slightly deeper than the national average. Almost certainly, Canada has benefited from Alberta's acting as a social laboratory in devising independent anti-poverty policy over the 1990s.

Medicare

The second example comes from health policy. The combination of intense pressure by health providers for higher incomes, expensive new technologies, and increased patient expectations has created a syndrome of political crisis around medicare. Yet SUFA has proved to be irrelevant as framework around which to coordinate reforms.

Independently of SUFA, provincial premiers are groping toward accepting inevitably controversial institutional innovations in health policy. In their more lucid moments, they allow that the solution is not more federal dollars, and that the *Canada Health Act*'s national standards must not be used to abort experimentation. Over the past two years, Quebec, Saskatchewan, and Alberta have published ambitious reports on reform. Their strategies diverge. All three advocate more reliance on multidisciplinary group practices for ambulatory care, but Alberta advocates increased use of "internal markets" whereby public and private agents compete to provide a service within the constraint of a publicly funded insurance system.[7]

6 Ottawa spends $10 billion annually on targeted transfers for low-income families with children.

7 These provincial reports are available from the Romanow Commission on the Future of Health Care in Canada, Internet website: www.healthcarecommission.ca.

At the premiers' most recent annual meeting, held in Vancouver in late January, the only substantial agenda topic was health care. In the final communiqué, they accepted being bound by the *Canada Health Act* — if broadly interpreted. But the premiers went a step further. Independent of both SUFA and the Romanow Commission, they promised a new Premiers' Council on Canadian Health Awareness. The communiqué noted:

> [It] will have a mandate, budget and full-time staff to gather and disseminate information to Canadians on issues such as health care funding, health services innovation and best practices, human resource planning and management, drug effectiveness and assessment, and statistical comparisons provided by provinces and territories. (Annual Premiers' Meeting 2002.)

Perhaps this new council will merely duplicate the activities of the federally supported Canadian Institute of Health Information. But the emphasis here is on policy and managerial options. With luck, it will enable the kind of policy debate that SUFA has not.

Should SUFA Be Saved?

Although Ottawa brought some ideas — such as a concern for interprovincial mobility — to the SUFA negotiations, the core rationale lay in principles advanced by the provinces between 1995 and 1999. These can be summarized as follows:

- *An unconstrained federal spending power in areas of provincial jurisdiction leads to poor outcomes.* Ottawa's unilateral power to spend — and on occasion to "unspend" — contributed to the persistence of budget deficits and delays in program reform. To be useful, the federal spending power must be circumscribed.
- *To be legitimate, national standards must arise from intergovernmental negotiations, not unilateral federal legislation.* This implies, among other things, an intergovernmental mechanism for resolving disputes over the imposition of standards.
- *A better public recognition of the division of powers would be helpful.* Technical program evaluations and intergovernmental collaboration are good things in general, but they are no substitute for Ottawa and the provinces being accountable to their respective legislatures for programs within their jurisdiction.
- *Normal intergovernmental relations require the active participation of Quebec.* In Quebec's absence, centripetal forces dominate. Fortuitously, Quebec's participation would be feasible if the previous three principles were effectively affirmed.

Arguably, the present text of SUFA is so unbalanced in its weighting of federal versus provincial concerns that it should be allowed to die.

Arguably, the present text of SUFA is so unbalanced in its weighting of federal versus provincial concerns that it should be allowed to die, something to which the premiers alluded at their Vancouver meeting. On the other hand, even if it is of little use, SUFA is doing no great harm. The Quebec Liberal Party has proposed significant amendments to the agreement (2001, 83–98); if elected, it should be encouraged to bring these ideas forward.

Although SUFA is flawed and only a small "step in the right direction," my recommendation is to leave it in place and to set back its review date by another three years. I would recommend scrapping SUFA entirely, however, if, over the next three years, politicians use it to justify major unilateral federal social spending in areas traditionally in the provincial orbit. An example of such use would be an attempt by Ottawa to resolve the medicare debate by offering major conditional grants intended to remove provincial responsibility for managing the program.

"[D]isagreements between men of good faith usually start from the premises of their arguments, and not from the logic whereby they reach conclusions."

— André Burelle

I give the final word to André Burelle, who is among those who have thought hardest about managing the federation. More important than disagreement over wording of any agreement, he concludes, are disagreements over fundamentals: "disagreements between men of good faith usually start from the premises of their arguments, and not from the logic whereby they reach conclusions" (Burelle and Ryan 2000, 121). By and large, senior Canadian politicians are men and women of good faith. Currently, the most powerful first ministers — this applies *a fortiori* to Jean Chrétien and Bernard Landry — are unwilling to examine their premises. Leaders change, however. By 2005, Canadians will have elected new leaders who may be interested in the premises.

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