## DUE PROCESS AND FAIRNESS

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number of doctors eligible to bill OHIP in any given area of the province contains no criteria for determining either what is an appropriate supply of doctors or, if there are more doctors than the allowed "quota," which doctors will be eligible and what procedures must be observed before a doctor is found ineligible (Schedule H, section 24, adding section 29.3 to the *Health Insurance Act*).

To summarize, we should be deeply concerned by the absence from Bill 26 of basic procedural safeguards of administrative justice for individuals and of government accountability to the public at large. I, for one, do not accept that Ontario's fiscal problems can be solved by introducing government by management-style command and increasing the province's democratic deficit.

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ESSAY

# CIVIC SOCIETY AND STATE REFORM IN CANADA: BOWLING ALONE?

BY TERRY SULLIVAN

Robert Putnam used the image of Americans bowling alone to symbolize consequences of the shrinking civic tradition in the United States. His work is used to confirm neo-conservative views that government is an optional extra and that what really matters is the vitality of private, non-governmental social and economic institutions. But there is another dimension to his concept of civic society. It is the evidence that effective government, a civic tradition of community compromise and mutual concern go hand in hand.

The concept of civic society is rich in its implications. It includes those community associations that underlie our public life, and the extent to which citizens behave toward each other in a civilized manner. Some associations are short-lived, like political parties, or sports clubs. Some are more institutionally and historically rooted, like universities or cultural groups. Others are linked more to our home and work communities. Government, too, has a special responsibility to nurture civic society, particularly for the delivery of public services that support the sick and vulnerable in our society.

We Canadians have not fully assimilated the importance of the civic quality of Canadian society for our future. In crucial respects, Canadian civic society parts company with that of our American cousins. In Canada, our tradition is built on the positive exchange between all levels of government and community associations. This difference may well enable Canadians to cope with the harsher realities of the smaller state. In Putnam's empirical work, regions in Italy with a strong tradition of compromise and mutual concern produce governments that work more effectively. This results in a virtuous cycle of social capital that generates prosperity for all. Why is this the case?

*It is wrong for Canadians to swallow the idea that government is weak and enfeebled, and that in some 21st century De Tocquevilleian fantasy, neighbours will spontaneously rise up to look after each other.*

### CIVIC SOCIETY AND THE FEDERATED STATE

The civic order in Canada rests on foundations discernibly different from those in both the English and the American traditions. Canada possesses neither the historical experience of the British nor the revolutionary experience of the Americans. The positive exercise of parliamentary power is accepted to a degree unthinkable in the congressional south. The restraints on Canadian governments relate more to the regulation of linguistic and interregional conflict than to ordering the conflict between the individual and the state, and they are perfectly compatible with the vigorous public pursuit of collective purposes. Why is private philanthropy such a central part of American progressive life while it is a much less important factor in Canada, and less important still in the United Kingdom or Europe? Why are out-of-state university tuition fees an accepted reality in the United States, when their equivalent, with no regulatory support whatsoever, is entirely absent in Canada? Public policy analysis would be hard put to explain such matters. They appear to have something to do with the noticeably different forms of civic tradition in Canada, the United States, and Britain. Here, then, are four postulates about civic society and the Canadian state:

> Government is both the creature and the creator of civic society, and national programs are both the manifestations of civic society and agents of maintenance or change in civic society. In Putnam's explanation of why some regional governments in Italy work better than others, civic communities tended to produce governments that work better and propel virtuous cycles of prosperity associated with "community capital."

Unlike its American counterpart, the government in Canada, at least for the moment, still gives expression to a broad spectrum of community values. It is wrong for Canadians to swallow the idea that government is weak and

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enfeebled, and that in some 21st century De Tocquevilleian fantasy, neighbours will spontaneously rise up to look after each other.

The nation-state system may be embattled and restructured, but there is nothing remotely competitive to replace it. Yet there is a new party at the table. The uncivic regime of international trade and finance has increasingly important impacts on domestic social policy and programs, and, indeed, on the evolution of civic society in nation states.

> National and provincial governments are now more limited by international trade agreements, money markets, and the forces of international capital.

For governments like Canada, which carry high debt loads, it takes just one of Moody's senior analysts in New York, Vincent Truglia, to drive the Canadian dollar down and interest rates up by signalling concern about Canada's debt. Albert Friedberg of Friedberg Mercantile, a currency expert, caused a run on the Canadian currency in January 1995 by suggesting the country would not tackle its debt without a massive crisis.

Canada, like governments everywhere, attempts to cope with the immense tensions of accountability to voters and to the forces of international capital, often unsuccessfully. To an extent previously unthinkable, the uncivic force of international capital is constraining the actions of sovereign states. A strong civic tradition acts as a buffer and counterweight to the selfish interests of international money markets.

> Civic society in Canada is different from civic society in the United States. We embrace *Peace, Order, and Good Government* in contrast to *Life, Liberty, and the Pursuit of Happiness*. Section 1 of the 1982 *Charter of Rights and Freedoms*, which limits individual freedoms to those justifiable in a free and democratic society, has no American parallel. Section 33 of the Charter (the Notwithstanding Clause) is an important hedge on individualism that can be exercised by the federal or provincial governments.

Canada's parliamentary system concentrates political power, rather than dispersing or constraining it, as is the case in the United States. More than any other section, the provisions for equalization and regional disparities in section 36 of the Charter compel a unique, arguably non-justiciable, but unequivocal national obligation to redistribution through a territorially based system. It was the only major transfer whose allocations were protected in the 1995 federal budget.

During the 1992 constitutional reform discussions, a new concept, the Social Charter, was proposed for inclusion in section 36. Polls commissioned by both the Ontario and federal governments confirmed the Social Charter as the most popular single element of the failed Charlottetown reform package. Had the Social Charter passed, it would have strengthened the unique place for civic society in the Constitution, alongside language, the separation of powers, and other uniquely Canadian features. The elites viewed the Social Charter as an ephemeral extra; a majority of Canadians saw it as fundamental to Canadian identity.

> Canada's network of national programs is rooted in much more than the federal spending power and the now-fading policy activism of the national government. Social policy emerged out of social needs and popular pressures emanating from the Canadian community that the federal government served.

The activist role of the national government arose from specific historical circumstances, the Depression, the growth of Ottawa during World War II, the post-war boom, and the development of the Keynesian state. Many important social policy innovations originated in the provinces, and while some have become national in character, others have not. An example of the former is health care in Saskatchewan; CEGEP system, and the Quebec Pension Plan in Quebec exemplify the latter. These civic traditions are still forces to be reckoned with in many provinces.

It is significant that new state forms and policy innovations are emerging at the level of regional health authorities. These authorities are developing to oversee the largest and most important social program — medicare. Although these decentralization initiatives share the common goals of downward transfer of a smaller spending envelope, and increased local control, there is considerable experimentation in the manner in which they are evolving from province to province. These authorities hold promise as laboratories for a more deliberative approach to health-related spending choices.

Civic associations are also changing outside of government. There are changing realities for professional organizations; our tradition of strong trade unions; farmers' organizations; and our important home-grown private sector, voluntary sector, cultural, religious, social democratic, and popular sector actors. In Canada, these groups continue to be active in both provincial and national debates and mobilization campaigns, even as their financial support is under threat. Even though Canada's civic traditions are distinct from those in the United States, there is no room to be complacent in the face of major spending reductions in national programs.

*Within a decade, federal cash is going to run out for the CHST spending program, leaving the federal government hobbled, with little moral or political authority in setting national programs. In the larger provinces, this is already the assumed reality.*

## MAJOR TRANSFER REFORM AND DOWNWARD PRESSURES

The 1995 federal budget specified conditions for the transfer in the Canada Health and Social Transfer (CHST) — that is, the program criteria of

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the *Canada Health Act* and no residency requirement for social assistance. Within a decade, federal cash is going to run out for the CHST spending program, leaving the federal government hobbled, with little moral or political authority in setting national programs. In the larger provinces, this is already the assumed reality.

Canada used to maintain three national social transfers: Established Programs Financing (EPF), Canada Assistance Program (CAP), and Equalization. The provincial consequences of the CHST, which merged EPF and CAP, look very stark indeed, in the light of changes to the equalization program. The equalization program and the process of equalizing other federal programs have now become the only remaining major social transfers.

Dominion Bond Rating Services reasonably estimated that the CHST cash portion per capita in 1997-98 would be, at the lower end, $361.8 in Alberta, and $375.5 in Ontario, against highs of $541.8 in Quebec (counting their extra tax points) and $483.3 in Newfoundland. The four most populous provinces of Ontario, Quebec, British Columbia, and Alberta take 43 percent, 28 percent, 14 percent, and 10 percent of the hit against their respective national population bases of 38 percent, 25 percent, 12 percent, and 9 percent. By "equalizing" the CHST, the federal government has changed the rules of the game and generated increased selfish interest on the part of each of the "have" provinces.

These changes are creating a crisis in the national commitment to equalization that could ultimately propel the depopulation of poorer regions of the country as their services erode under a more limited revenue base. There is also imminent danger that provinces other than Quebec will force Ottawa to open up the tax collection agreements and give the provincial governments greater flexibility over their own tax revenues. This is another force working to pull the provinces apart.

These developments have other consequences for the vulnerable in Canada. In the moral economy of worthiness, there is now a real dilemma. Do we give priority to the homeless and indigent, or to health and education services for the children of the civic middle? Alberta's newly found $500 million budget surplus is being used to restore kindergarten and health care services, not social assistance. Other governments will soon balance their budgets. Then there will be every opportunity to consider once again some nationally specified, base-income standard. Given the failure of the Social Security Reform to produce a new national social program, it is not wistful to press for a progressive and comprehensive national income security reform, based on an active labour market policy and job creation. The looming challenge for civic society in this country is to discourage the commodification of labour and prevent downward wage competition as the model for global competitiveness.

## CIVIC REBIRTH OR RETREAT FOR CANADA?

As government cuts begin to touch people where they live in Canada, three responses are possible, reflecting our indigenous civic traditions.

The first reaction leads not to stronger communities, but to the growth of selfish elites who cannibalize the public spoils of a shrinking government. In this scenario, the communities let the cuts wash over and watch the growth of co-payments for a variety of services. With privatization and the smaller role of government, rent-seeking elites will take every opportunity to enrich themselves at the public's expense. A narrow preoccupation with such private wealth creation will further undermine Canada's communitarian tradition of civility and compromise. What is at risk is the renewal of our social capital and, counterintuitively, some of our competitive advantage.

*We may have been mistaken to think that social programs depend exlusively on the activism of the federal government, when the civic quality of Canadian society is at the heart of these programs.*

A second possible response is the kind of angry push-back against neo-liberal cutbacks that is being seen in France, and appears to be developing in important ways in Ontario. Staid Tory Ontario may be changing its colours more than we might imagine. Rotating community strikes are under way, and the threat of a provincial public service strike is looming. The preservation of Ontario's civic values is at the core of the oppositional movements. Indeed, the presence of these civic traditions will lead to more unrest and conflict.

Last, some communities will work to create a positive, albeit smaller, role for the government. In such communities, not only will a smaller government be reshaped in the character of the community, but community institutions outside government will be strengthened. This is what civic renewal is about. Local communites can do more, when they have the social capital they need. Rebuilding social capital is what the civic tradition is about. This requires defending the communitarian merits of public programs that are being reduced.

We may have been mistaken to think that social programs depend exlusively on the activism of the federal government, when the civic quality of Canadian society is at the heart of these programs. We have a robust tradition as civic tinkers; let our neighbours to the south worry about solitary bowling.

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