

P o l i t i c y

# OPTIONS

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	<b>Editorial Information/Information rédactionnelle</b>	<b>2</b>
<i>Gordon Osbaldeston</i>	<b>Dear Minister:</b> A letter to an old friend who has just been appointed to the federal cabinet	<b>3</b>
<i>Mark Boudreau</i>	<b>The Next Energy Crunch:</b> We are living in a fool's paradise of low prices for energy. When they shoot up—and they will—we must be ready.	<b>12</b>
<i>Shirley B. Seward and Kathryn McDade</i>	<b>A New Deal for Immigrant Women:</b> Group statistics, which show immigrant women doing well in Canada, mask serious problems. Here are some solutions.	<b>15</b>
<i>René R. Gadacz</i>	<b>Charter Politics:</b> The Charter of Rights has politicized the courts. Now we have to find ways to make the voices of the less powerful heard in the new system.	<b>19</b>
<i>Jim Henderson</i>	<b>Groupthink Must Go:</b> The Meech Lake Accord is badly flawed, and many legislators oppose it—but at their peril. We need reforms to restore their independence—and change the deal.	<b>21</b>
<i>Free Trade</i>		
<i>Deborah Coyne</i>	<b>Dealing Into Disintegration:</b> The bilateral trade arrangement with the United States threatens the capacity of Ottawa to act for Canada	<b>24</b>
<i>Julius H. Grey</i>	<b>Trading Away Freedom:</b> You don't have to be a nationalist to oppose the free trade deal. Common sense, not patriotism, makes the case.	<b>29</b>
<i>Jim MacNeill</i>	<b>Letter: Words About a Picture</b>	<b>31</b>
<i>Louis Musto</i>	<b>The Case for Spending:</b> Restrictive monetary policies multiplied both debt and unemployment in the 1970s. Now, we're at it again.	<b>32</b>
<i>Eric Kierans</i>	<b>A Review Essay: A Public Purpose</b> by Tom Kent	<b>34</b>
	<b>En Résumé</b>	<b>37</b>
	<b>In Summary</b>	<b>39</b>
	<b>CARTOONS:</b> <i>Todd 15, Blaine 21, Raeside 24</i>	

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# DEALING INTO DISINTEGRATION

*The bilateral trade arrangement with the United States threatens the capacity of Ottawa to act for Canada*

BY DEBORAH COYNE

**C**ANADA IS A DIFFICULT country to govern at the best of times. Yet throughout our history we have achieved social and economic progress, while successfully accommodating our diversity, whether linguistic, cultural or regional, and building a coherent nation.

This success is directly related to our federal structure of government and the division of legislative powers between two jurisdictions—federal and provincial. The dynamic creative tension and competition between the two orders of government in key areas of public policy has led to progressive public action that has helped to shape a diverse yet compassionate society.

But this is contingent on strong national leadership and the recognition that Canada is much more than a sum of its parts. The federal government is not simply one of 11 governments. We elect it to play a critical role in pursuing the national interest and in building the bonds that strengthen the national community and our sense of national identity. This includes protecting and promoting our basic rights and freedoms now guaranteed under the Charter, and protecting and promoting the interests of the weaker provinces and regions. To further these goals requires, among other things, the implementation of national social programs, economic development strategies and regional development initiatives. All of this has permitted us to maintain our distinctiveness *vis-à-vis* the United States.

Our approach to domestic issues is much less doctrinaire or ideological



than that of the United States. Canadians generally believe that the government can and should play an active role in society and the economy to reduce inequality and promote distributive justice. We do not subscribe to the "magic of the marketplace" approach to policy and do not draw sharp lines between the public and private sectors.

This vision of the role of government and the relationship between the individual, state and society is clearly reflected in our Charter of Rights and Freedoms. The Charter blends an emphasis on individual freedom with respect for community values. It requires us to take into account cultural, religious and linguistic communities in interpreting the rights guaranteed to individuals. In sharp contrast to the

American Bill of Rights, the Charter also reflects the belief that there need not be any contradiction between state regulation and individual liberty and that freedom where appropriate is enhanced by our public institutions and state action. This is most obvious in the broad guarantees of equality, minority language and education rights, mobility rights and our commitment to multiculturalism, all of which are then subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In addition, our Constitution now entrenches the principle of equalization and the affirmative commitment of all governments to promote equal opportunities for the well-being of all Canadians. The impact of the Charter and our new Constitution on Canadian society and our collective psyche as a people is far-reaching and enduring, and must not be underestimated.

As in our domestic affairs, a strong federal government is critical to sustaining our internationalist tradition and ensuring our coherence in our external affairs. Indeed, Canadians are more accurately described as internationalists, rather than nationalists or continentalists. In other words, we define ourselves in terms of our activities in the international arena in all spheres but, notably, those of peace and security, international development, human rights, environmental protection and trade and financial affairs. This basic attribute will be further strengthened as our society becomes ever more multicultural in nature.

Unlike Americans, for whom the world is effectively North America, and who still exhibit a strong isolationist streak in their international outlook, Canadians have always looked beyond North America not only for our economic well-being through international trade, but also to maintain our distance from and resistance to absorption into our giant neighbour to the south. This has permitted us to benefit from our proximity but at the same time to pursue our own course of social and economic development and maintain our distinct identity and unique set of values.

Maintaining our distance from the United States has been the key to our ability to play an important role on the world stage. We belong to the major leagues such as NATO, the OECD and the Group of Seven, but we are perceived by other middle-powers and developing countries as a nation that shares many of their values and aspirations and that can understand their fears and sense of vulnerability. We are able to act as a credible interlocutor both between the developing and developed worlds and between East and West and as a constructive facilitator of peaceful international change.

The critical question that must be asked in 1988 is whether the balance of federal and provincial power and the degree of national leadership manifested are adequate to respond to current external and domestic pressures and challenges. In particular, we must carefully assess whether the impact of the bilateral trade agreement on this balance and the capacity for effective national leadership is positive or negative. It is this assessment, not sterile economic statistics, that should determine whether or not the deal is in the national interest.

According to the federal government and other proponents, the bilateral trade agreement will have little, if any, impact on the shape of the Canadian federal system. They say that the agreement deals overwhelmingly with matters under federal jurisdiction, notably international trade, and that it does not affect the distribution of legislative powers between the federal and provincial levels of government. It is simply a limited economic arrangement to secure access to the U.S. market for Canadian exporters. The federal government therefore asserts the constitutional right to sign and implement the agreement unilaterally. (Only the provisions

## Will the deal wreck the federal-provincial power balance?

dealing with wine are acknowledged to be subject to provincial jurisdiction, thereby requiring provincial implementation.)

In sharp contrast to this view, opponents of the bilateral trade deal argue that it will profoundly alter the shape of the Canadian federation and the balance of power between the federal and provincial governments. The deal deliberately sets us on a course of economic development that seriously weakens political authorities at all levels and shifts power to private economic actors. It reflects the assumption that we should simply rely on impersonal market forces to ensure an efficient allocation of resources and minimize government intervention.

According to Ontario's attorney-general, Ian Scott, the deal really represents a constitutional document. "Like a Constitution, the scope of the agreement is all embracing. It touches on virtually all aspects of governmental activity.... The agreement imposes new constraints on what Canadian governments can do for people in the future, and the erosion of our ability to govern ourselves will be difficult to reverse." Thus it is a debate about people and to whom, if anyone, they may look for the social and economic policy they require. Scott emphasizes that under the trade deal Canadians will be unable in a practical sense to call on *any* government to do any of the things prohibited by the agreement.

From this perspective, the bilateral trade deal is seen as inevitably drawing us towards economic integration with the United States and the harmonization of key policies as we strive to create a so-called "level playing field" for Canadian and American businesses. When this is combined with the substantial weakening of both the federal and provincial governments as a result of the constraints set out in the agreement, it means that the future course of economic and social development will be increasingly orchestrated south of the

49th parallel. It means an end to our distinctive international personality, to our distinct Canadian identity and our eventual absorption into the United States.

These very different views of the impact of the trade deal on the shape of the Canadian federation reveal competing visions of Canada that reflect very different assumptions about our future evolution as a nation, the role of government and the relationship between the individual and the state within our federal structure. The deal cannot therefore be considered as simply an economic arrangement that should be judged primarily by whether or not it makes Canada stronger economically. It is not simply a matter of trading more securely with the United States. Rather, as Mitchell Sharp incisively points out, the widespread misgivings about the trade agreement relate not to the economic consequences, but to the significant impact on our sovereignty and our scope for independent action.

In assessing the impact of the trade deal on the federal-provincial balance and our capacity for national leadership and independent action, it is important to examine the interaction with the government's key constitutional initiative—the Meech Lake Accord. The noted sociologist Raymond Breton has commented that the Meech Lake Accord, on the one hand, emphasizes the provincial level of social organization and bolsters provincial institutions. The bilateral trade agreement with the United States, on the other hand, promotes and bolsters institutional development at the continental level. The dangerous result, however, is the neglect of Canadian social development on a distinctly national level. To our peril, we are wrongly assuming that there is no need to "preserve and promote" Canada and we are denying the important federal role in preserving and promoting provincial and regional communities.

The combined impact of the bilateral trade deal and the Meech Lake Accord is likely to result in a blurring of our international personality as provincial governments play more prominent roles both in national policy and in international affairs. Critical policies on national and international issues will be reduced to the lowest common denominator of rival provincial interests.

The decentralizing influence of the bilateral trade deal is highlighted by

Richard Simeon. In his view, the deal not only weakens political authorities by shifting power to private economic actors, but also constrains federal economic powers such as fiscal and monetary policy instruments and tariffs, without equal constraints on provinces. Ottawa will simply become less important both for the provinces and for the private sector. It will become difficult to think coherently about an economic entity called Canada much less one whose destiny could be guided by a central government.

Equally disturbing for our ability to direct our future course of economic and social development is that our leaders have not recognized that efforts to improve our national economic performance depend increasingly on the co-ordination of policies for which the provinces are at least in part responsible. These policies include education, training, the integration of our employment and social assistance policies, child care, parental leave—all critical to human resource development. They include an effective national telecommunications policy to assist us in the transition to the global electronic society; and the assertion of a credible national presence in our financial markets such as through the long overdue creation of a national securities commission which, in today's world of instant globalized capital flows, is an important element of sovereignty. Finally, they include the establishment of national environmental protection programs to follow through on the Brundtland Report's recommendations for a course of sustainable economic development.

Effective national leadership is clearly critical in guiding the necessary federal-provincial negotiations and ensuring meaningful progress on all these fronts. We need a strong federal government able to insist on minimum national standards for new social and economic programs. We need a federal government willing and able to rise above the pressures of special interest groups, business or professional, groups that generally prefer the *status quo* and that try too often to stalemate federal-provincial negotiations by playing off the provinces against the federal government. Unfortunately, it is all too likely that the Meech Lake Accord and the bilateral trade deal will make such leadership illusory.

Equally, as our ability to pursue greater social justice, to eliminate poverty and unemployment, to reduce

## **W**e will lose our credibility and moral authority.

regional disparities and to narrow the widening gap between more affluent and poorer Canadians is gradually eroded, we will lose our credibility and moral authority on the international stage.

Before committing ourselves to the continentalist option, another factor to consider is the importance of trade among Canadians as a carrier of cultural values and interpersonal links. Indeed, many argue that we would be much better off had we put as much effort into eliminating the many interprovincial barriers to trade within Canada as we have into bilateral negotiations with the United States. Similarly, we must recognize that our ability to pursue a national energy policy, such as the creation of a national hydro-electricity grid that would reduce the need for potentially destructive nuclear power plants, and our ability to control foreign investment and reduce disturbing levels of corporate concentration is essential to the maintenance of our national identity and sovereignty. It is what bolsters our commitment to sharing, to regional development, to inter-regional equalization.

These considerations should lead to a critical review of the assumptions underlying the trade agreement that there is no particular value in having Canadians trade with one another, in having a national energy policy, in exerting some control over capital flows into and out of the country, and that free market forces will best ensure an efficient allocation of resources. Such assumptions seem seriously at odds with Canadian traditions and experience.

Ironically but not surprisingly, one of the foremost proponents of the trade agreement in Quebec and someone who is also one of the most dedicated separatists, Jacques Parizeau, is all too aware of the dangers that the agreement poses to the Canadian federation. But he and others, such as Claude Morin, see a very real opportunity for Quebec to achieve a different sort of sovereignty in

the context of free trade, something that will be facilitated by the special powers accorded to Quebec under the Meech Lake Accord. According to Parizeau, once a free trade area in North America is set up, "No premier of another province could thereafter come to Quebec in the midst of a referendum campaign and say 'if you vote this way, no commercial deal with us.' I suppose we'd say 'It really doesn't matter, old boy.'"

In any event, Parizeau acknowledges that Quebec is not as threatened by free trade as is the rest of Canada. A large segment of industries in Quebec—notably cultural—has never interested Americans, and there are many fewer U.S. subsidiaries located there. Quebec business also feels secure against American investment due to the very active public sector involvement and assistance from the Quebec government in building a strong financial and economic base in the province. Finally, Quebec also feels reasonably secure in cultural matters since, again unlike in the rest of Canada, there is a language barrier whether Americans or English-Canadians are involved.

While the bilateral trade deal may not in a strictly legal-constitutional sense alter the constitutional powers of either level of government in Canada, in a *practical* sense it will severely constrain the scope for public action and compound the decentralizing disintegrative forces built into the Meech Lake constitutional accord. Consider, for example, energy issues.

A major issue for the 21st century will be how to pursue sustainable economic development and respect for our environment as set out in the path-breaking Brundtland Report. A crucial instrument of any such development strategy will be a clean and safe energy policy. Of particular importance for Canada is the development of hydro-electric power and how best to encourage the *non-nuclear* option in the absence of an acceptable method of storing nuclear waste and adequate safeguards to prevent accidents like Chernobyl and Three Mile Island.

Quebec is currently fixated on realizing its premier's dream of "power from the north" and the construction of vast new hydro-electricity projects. It is now busy concluding long-term contracts with the United States, the most recent being a \$17 billion deal to sell 1,000 megawatts over 20 years to New York. In agreeing to pay three times more than

the power costs in Quebec, Governor Cuomo acknowledged the desirability of buying cleaner energy from Quebec rather than relying on coal-fired hydro plants and nuclear plants.

Yet Canadians have been slow to come to the same realization. Ontario Hydro, for example, estimates that Ontario is running out of cheap hydro-electricity sites to develop and, without imported power, will be forced to rely on more nuclear or acid-rain generating, coal-fired plants to meet Ontario needs at the turn of the century. The option of buying up to 4,000 megawatts of long-term power (30 years) from Quebec is being pursued but by its own admission Ontario Hydro is worried about the loss of jobs and investment to another province, the loss of security of supply, and the high cost and public dislike of high transmission lines.

Such parochial concerns of a provincial utility are understandable and legitimate, and are shared by other provincial bodies that see energy policy as an important tool of economic development. But the pursuit of narrow provincial interests will not contribute to the national interest in safer, cleaner and cost-effective energy.

What is now required is strong national leadership in establishing a national electricity grid, something that has been discussed from time to time in recent years. Such a grid would serve the interests of all Canadians in security of energy supplies and reasonable electricity prices, and should allow Newfoundland a way out of the disastrous 1969 contract with Quebec under which Hydro-Quebec owns about 34 percent of the Churchill Falls project and takes most of the power at a tenth of current market value. The federal government should also take the lead in promoting, among other things, research into and development of ambient temperature superconductors—technology that is now within our grasp—that will permit much more efficient underground transmission and energy storage systems.

Yet the bilateral trade deal together with the Meech Lake Accord will effectively preclude such desirable national initiatives and destroy our ability in future to mount a credible national energy policy. In establishing a continental energy market, the bilateral trade deal involves an unprecedented surrender of our resources and reflects a total abdication of federal leadership in favour of the short-term aspirations of

## **W**e have abandoned our right to control foreign funds.

producing provinces.

With specific reference to electricity, under the agreement the provinces will be able to make unlimited commitments to the American market and will be able to sell electricity at lower prices in the United States than in Canada. At the same time provincial utilities may not be able to charge Americans more for energy. Such action may infringe the clauses guaranteeing the United States "non-discriminatory access" to Canadian energy supplies (Article 904) and would also be open to challenge under the opaque "nullification and impairment" clause (Article 2011). The latter permits the United States to challenge and retaliate against any existing or future measure that causes "nullification or impairment" of any benefit it reasonably expected to receive under the agreement.

The combined effect of all these concessions is the abandonment of any comparative advantage our hydro-electric energy resources might have given us in the production of goods and services, particularly as a result of the creation of a national grid.

Finally, under the trade agreement electricity is to be treated the same as oil and gas in the event that shortages force one country to ration its exports. This means that any cutbacks must be apportioned equally in both Canada and the United States so that the United States maintains its proportional access to Canadian energy. We are thereby giving up our ability to conserve and use our energy resources for the benefit of Canadians. The prospect of such rationing is already distorting even the limited interprovincial discussions that are currently under way, and has led Ontario Hydro to open bizarre negotiations with Quebec for the purchase of its own hydro generating station in that province in order to try to ensure immunity from emergency rationing.

Clearly, the free trade deal will have a tremendous adverse impact on our ability to develop safer, cleaner energy

options and to pursue sustainable economic development. Any form of meaningful national energy policy becomes illusory.

Another area for priority reform and public action that will be effectively precluded by the trade deal involves major changes to our social support system. Among other things, we need to integrate our social assistance and employment policies and to streamline income support measures so that we can more effectively direct resources into the human side of our welfare state—universally available social services. One useful initiative in pursuit of these goals should be the implementation of a national comprehensive disability insurance scheme.

One effective way to implement such a scheme is for the federal government to encourage all provinces to move to publicly-administered automobile insurance and then integrate it with the already publicly-administered workers' compensation systems, as has already been successfully accomplished in Quebec. Eventually, the appropriate national shared-cost program would be established with national standards similar to those in the Canada Health Act, and compensation would be extended beyond accident-related disability to any disability, however caused.

This is where the trade deal comes in. The investment provisions of the agreement, specifically Article 1605, make the creation of any such public scheme subject to the requirement to provide "prompt, adequate and effective compensation" to the privately-owned companies which might be affected. This will be determined ultimately by an international tribunal and the provinces that would be responsible for initiating the public action would not even have the right to participate in the dispute resolution process. In addition, affected American firms will protest that such public schemes contravene the two key principles in the services section of the agreement: the right of establishment and the right of commercial presence. Finally, challenges can also be mounted under the monopolies provision (Article 2010) and the "nullification and impairment clause" (Article 2011).

Thus, the free trade agreement will constrain the policy options open to both levels of government and deter public action in a whole range of critical areas. Once again, when this is combined with the severe weakening of the

national government as a result of Meech Lake Accord, we will wind up with a checkerboard, balkanized Canada and increasing *inequalities* of wealth and opportunity among Canadians.

A final example of the debilitating impact of the free trade deal involves the significant concessions to the Americans in respect of investment flows and financial services. We have liberalized control of foreign ownership of financial institutions far more than in the United States, and we will not be able to review most new American investment and direct acquisitions.

We have therefore abandoned our right to ensure that foreign investment will be beneficial to our economy and society. At the same time, our failure to obtain our major aim in the trade negotiations—a mutually acceptable definition of subsidies and secure access to the U.S. market—means that there are no incentives to attract even potentially desirable investment to Canada. Foreign businesses will naturally prefer to locate in the larger market and not assume the risk of countervailing duties on exports from Canada.

The overall impact of all these concessions and many others in the trade agreement is effectively to cripple the public action and strategic support required to promote domestic investment and to develop more research intensive and export-oriented business in Canada that is essential to improving our productivity and competitiveness. As the former head of the Science Council of Canada Stuart Smith observes, we already have too many foreign owned branch plants that have no mandate to export and that rarely develop or design new higher technology goods. Financial flows, left alone, go to finance real estate and mines, not high technology and research and development.

We have always relied heavily on government action, not market forces, to bring about the needed change in the Canadian economy. Yet under the trade agreement such government action will be open to challenge. This serious undermining of the government's capacity for industrial leadership will be compounded by the effective abandonment of our control of the national financial structure and our ability to influence the channels through which critical financial resources are allocated.

The bilateral trade agreement will fundamentally change the shape of the

Canadian federation and preclude the national leadership required to meet the challenges of the 21st century.

At the international level, Canadians face ever-intensifying interdependence in all spheres and the challenges of adapting to the global technological revolution, shifting away from our reliance on natural resources and certain traditional manufacturing sectors, and improving productivity and competitiveness. The challenges also include dealing effectively with such global issues as arms control, international development and environmental protection.

At the domestic level, we face the challenges of devastating levels of poverty and unemployment, inadequate training and education, stark regional disparities and a widening gap between affluent and poorer Canadians.

To overcome these challenges successfully requires something more than the inadequate patchwork of federal and provincial responses we have seen to date. It requires meaningful, effective public action, not mindless privatization and deregulation. Most importantly, it requires strong national leadership and a strong sense of national spirit and what it means to be Canadian.

Yet since its election, the federal government has failed to provide the national leadership required at this critical stage of our evolution, and has revealed a disturbing lack of national vision. Our government leaders have failed to articulate a national strategy to ensure that Canada will remain in the front ranks of the developed world notwithstanding the intense global rivalry generated by the technological revolution. No one has yet conveyed to Canadians the urgency of the situation and the critical need for an unprecedented degree of collaboration among all sectors in society. No one has yet clearly proposed a set of priorities to further our ideals of social and economic progress.

Instead, we have a federal government consumed with brokerage politics and dominated by narrow business interests. We have been particularly ill-served by the government's patchwork of *ad hoc* energy accords with different regions, an open door foreign investment policy, no real science and technology strategy, no meaningful initiatives to deal with the serious environmental crises now confronting us, regulatory confusion in telecommunications and financial services, and an

unhealthy fixation on our bilateral relations with the United States that inevitably constrains Canadian policy options in a whole range of critical areas.

Most alarmingly, two key government initiatives—the bilateral trade deal and the Meech Lake constitutional accord—will at best freeze our evolution as a progressive, dynamic nation. They will impair Canada's ability to pursue greater justice and equity, both internationally and domestically, and to pursue traditional constructive internationalist goals that are increasingly important in our interdependent world. At worst, they will extinguish Canada as a single, sovereign, bilingual and multicultural nation. Moreover, these initiatives are being undertaken without a mandate from the people of Canada and in a fundamentally undemocratic way.

The challenge for Canadians now is to resist the superficial attractiveness of the bilateral trade deal as the ultimate solution to our problems of industrial competitiveness. Equally, the challenge is to seek other avenues of constitutional change that will better accommodate Quebec's special concerns while maintaining a dynamic balance of federal and provincial powers that will permit the needed national leadership in key areas of public policy.

At the same time, we must take urgent steps domestically to forge new approaches to economic and social development and to improve our quality of life, consistent with our distinctive values and traditions as Canadians. We must also take firm action to break down the many interprovincial barriers to trade within Canada. The time is long overdue for our leaders to demonstrate the necessary national leadership and political will and to assume responsibility for guiding Canada's destiny. ☐

**Deborah Coyne** is assistant professor in the Faculty of Law of the University of Toronto. Educated at Queen's, Osgoode Hall Law School and Oxford, she has practised law in Toronto, has been an associate of the Business Council on National Issues, and Executive Director of the Task Force on the Insurance Industry in Ontario.