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CANADA IN THE 21ST CENTURY

III. RESPONDING TO THE CHALLENGES

INSTITUTIONS AND GROWTH — FRAMEWORK POLICY AS A TOOL OF COMPETITIVE ADVANTAGE FOR CANADA

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III. RESPONDING TO THE CHALLENGES

INSTITUTIONS AND GROWTH — FRAMEWORK POLICY AS A TOOL OF COMPETITIVE ADVANTAGE FOR CANADA

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PREFACE

AS A NEW MILLENNIUM APPROACHES, Canadians are going through a time of dramatic economic change. Markets are becoming global, and economic activity across nations is becoming increasingly integrated. Revolutionary developments in computer and communications technology are facilitating globalization, and are also altering a great deal the workplace and the lifestyles of Canadians. At the same time, largely as a consequence of the information revolution, knowledge-based activities are becoming increasingly important within the Canadian economy and the economies of other industrialized nations.

These and related major transformations of the economic environment invite a comparison with the Industrial Revolution of the 1800s. As in the earlier time, major structural changes are giving rise to uncertainties. Firms and workers are struggling to find their place in the new economic order. Canadians collectively face the question of whether their nation's physical, human and institutional resources will provide a firm foundation for continued prosperity. Many see Canada's prospects as being much less secure than in earlier years, when the country's rich natural resources played a major role in shaping the Canadian economy.

To examine fully the medium to longer-term opportunities and challenges of these developments, the Micro-Economic Policy Analysis Branch of Industry Canada asked a group of experts to provide their "vision" for Canada in the 21st Century on a number of important issues. Each author was required to undertake two formidable tasks: first, to identify major historical trends and develop scenarios to illustrate how developments in his/her respective area might unfold over the next ten to fifteen years; and second, to examine the medium-term consequences of these developments for the Canadian economy.

The papers coming out of this exercise are now being published under the general heading of "Canada in the 21st Century". This series consists of eleven papers on different aspects of Canada's medium-term outlook. The papers are divided into three major sections. The first section, *Scene Setting*, focuses on important developments that are going to shape the medium-term economic environment in Canada. The second section, *Resources and Technology*, looks at trends among some important components of Canada's wealth creation and considers the actions needed to ensure that these factors provide a firm foundation for continued prosperity. The last section, *Responding to the Challenges*, explores individual, corporate and government responses to the medium-term challenges and offers some options for an appropriate course of action.

As part of the third section, *Responding to the Challenges*, this paper by Professor Ronald Daniels, of the University of Toronto, examines the challenges governments face in creating an institutional framework that supports growth in the context of the major changes underway in the economy. The author believes governments are under increasing pressure to establish an institutional and policy framework that is competitive with other jurisdictions. The author identifies four broad requirements of a competitive legal and institutional landscape: a stable government and currency; strong but limited governments — which, as a result of their reduced scope of activities, are less vulnerable to rent seeking by vested interests; high investments in education; and framework policies that reduce the market transactions costs incurred by individuals and firms.

SUMMARY

THE PAPER EXAMINES THE DESIGN of Canadian institutions in light of the modern challenges confronting the Canadian economy and it evaluates the broad, institutional lessons of modern growth theory for framework policy in Canada.

The first part of the paper canvasses the new institutional economics and sets out those principles of institutional design which are widely acknowledged among individuals and institutions advising developing nations as catalysts for economic growth. The key components of a competitive legal/institutional landscape include a stable government and currency, a strong but limited government, high investments in education, and a transaction-cost reduction orientation in framework policy. Not only have these principles been demonstrated as essential for growth in developing nations but they can also be effectively applied to the Canadian scene.

The second part reviews Canada's track record in framework policy over the past 10 to 15 years, highlighting changes that impact the neutrality of framework policy and comparing those changes to the principles canvassed in the second section. Overall, changes in the taxation system, competition law, intellectual property and trade policy have been largely consistent with the creation of distribution–of–power arrangements between and among various levels of government in order to create a stable political climate that is also responsive to the voice of the public. Nevertheless, there are a number of problems that must be addressed including the distortive effects of Canadian competition policy and the need to adopt competition enhancing policies in recently deregulated sectors.

The third part of the paper outlines the pressures currently being experienced in Canada. Challenges of globalization, demographic change, unstable and highly fractious inter-governmental relationships, and pressing fiscal constraints are all working to complicate the adoption of efficient framework policies and corresponding institutions .

The fourth part applies the development theory principles and sets out a series of institutional recommendations designed to facilitate the adoption of a responsive framework policy for Canada. The paper makes the following recommendations:

- The creation of distribution–of–power arrangements between and among various levels of government in order to create a stable political climate that is also responsive to the voice of the public.
- The creation and maintenance of a strong, independent bureaucracy which is professional, merit–driven, resistant to corruption, and committed to broad public accountability. This expert bureaucracy will be

especially important in the next decade as the state is forced to achieve significant reductions in public expenditures.

- A more rapid divestiture of Crown assets in order to achieve the goal of a more limited government. Canadian governments will have to invest greater energy in determining privatization priorities and then in constructing streamlined and effective instruments for implementing these goals.
- The creation of an elaborate institutional regime that supports a public/private partnership in a range of different policy areas. Such a regime would be designed to develop an environment conducive to the transfer of services and activities from the public to the private sector.
- The continued acknowledgment of the importance and persistence of public goals and values in a setting of increased market reliance. Policy-makers must not lose sight of the central role for government in creating a foundation for market interactions that is perceived as legitimate.
- That the state promote and nurture citizen capacity for risk-taking. The existence of state-sponsored insurance distortions which thwart individual initiative must be overcome since citizen willingness to make economically rational investments in physical, financial, and human capital is what underlies an institutional regime oriented to the provision of neutral framework policy.

The conclusion of the paper notes the role of political forces in frustrating the adoption of value–enhancing institutional changes. Certain groups who will be subjected to concentrated losses as a result of the proposed changes can be expected to lobby vigorously for policies and arrangements designed to mitigate the impact of these changes. The key challenge for policy-makers is to develop mechanisms that address the costs of economic change without thwarting the capacity of markets to make those changes in the first place.

INTRODUCTION

FOR DECADES, ECONOMISTS IN THE DEVELOPED COUNTRIES have been (understandably) concerned with the determinants of economic growth. After all, economic growth enables citizens to enjoy gains in material prosperity, and governments to support the distribution of goods and services that constitute the core obligations of the modern welfare state. However, despite considerable attention to the issue, it is widely accepted that, in comparison with other areas of economic inquiry, economists still lack a robust theory that identifies and explains the determinants of economic growth across nations (particularly when they enjoy similar resource endowments). For instance, neoclassical theory, the cornerstone of economics in the postwar period, has been unable to explain differing growth rates across nations. The theory implies that, as nations accumulated capital, the rate of growth would slow because of diminishing marginal returns on capital. Further growth would only be possible through technological progress, which was exogenous to the model. The implication for less developed countries (LDCs) was that, with their low initial capital stock, they should have high growth rates given a high marginal productivity of capital.

However, the empirical data did not validate this claim. In general, LDCs continued to fall behind industrialized nations as a whole, while a subset of the LDCs enjoyed growth far outstripping that of any developed nation.[1] The long-term growth rate in per-capita GDP of the fastest-growing newly industrialized countries (NICs) has averaged 6 to 7 percent per year; this is much higher than the 2 to 3 percent per year achieved in recent years in the industrialized world.[2] If the wealth of industrialized nations was due simply to an abundance of technology, capital and skills, it still would not explain the condition of poor nations. Technological capital is easily transferable and financial capital naturally gravitates toward high-return opportunities.[3] In recent times, even skills have been able to migrate across borders. In fact, migration from poor to rich nations should result in a decrease in the marginal productivity of labour in industrialized nations because of the standard assumption of diminishing returns. However, this has not occurred.[4] The inescapable conclusion is that neoclassical growth theory has overlooked an element critical to the wealth of nations.

Modern growth theory has attempted to fill the gap by introducing two new assumptions. First, technological progress was explicitly addressed in the model. Second, the standard economic assumption of perfect competition was eliminated, introducing innovation and rent seeking as driving forces. A main conclusion of modern growth theory was that, other things (namely, human capital and government policy) being equal, poor nations could potentially grow faster than rich countries. Therefore, the main finding is of primary importance to institutional design in Canada: *economic agents do not always act in an optimal manner because of differences in institutions and policies*.[5] Economic performance is significantly determined by the structure of incentives, delineated by national boundaries. Neoclassical theory implied that voluntary bargaining should internalize externalities as long as transaction costs were not too high. That is, the Pareto efficient outcome should be reached regardless of the initial distribution of entitlements. Under the modern theory, however, it is acknowledged that inefficient institutions can severely distort this process, while "good" institutions can serve as foundations of growth and development.

This paper examines the design of Canadian institutions, focusing on framework policy, the financial system, labour, education and social assistance. The aim is to cast light on the challenges confronting the Canadian economy as it struggles to meet the demands posed by a number of interrelated factors: globally integrated goods, services, and capital markets; government fiscal constraint; rapid technological innovation;[6] the changing nature of work; and the organizational structure of the modern corporation.[7] The key is designing institutional arrangements that create incentives for private (corporate and individual) players to make risky investments that yield a strong, long-term return. In this context, the desired end-state is "neutral framework policy."

While reliance on market imperatives is an inherently political decision, the implementation of neutral framework policy requires an apolitical orientation for market confidence and efficiency reasons. The aversion to political imperatives arises from a belief that politicized institutions are susceptible to the public choice notion of "capture" by vested interests and inefficient governance incentives. This approach sees government as having not an impoverished but rather a circumscribed role focused on ensuring the free functioning of markets; governments must confidently step in where market failures exist, and must allow Canadians to compete on an equal footing in the global marketplace.

The approach must be qualified in two respects. First, an ongoing dilemma will involve resolving the tension between institutional autonomy and institutional accountability, balancing the need for sufficient flexibility in the decision-making process with responsibility to the public at large. Second, since the ultimate goal is improved growth, policy prescriptions that are not neutral will be required in situations of market failures or where a rational argument can be made that the benefits of a tailored policy will convincingly outweigh the costs of market distortion.

In the first part of the paper, I examine economic theory and development literature to set out certain principles of institutional design that are now generally recognized by individuals and institutions giving advice to developing nations, and that are applicable to the Canadian case. Next, I briefly review Canada's track record in framework policy over the last 10 to 15 years, highlighting changes that affect the neutrality of framework policy and comparing those changes to the principles enumerated previously. In the third part of the paper, I outline the pressures currently being experienced in Canada (particularly with regard to the forces of globalization, demographic change and pressing fiscal constraints) that will help define institutions in the 21st century. In the fourth part, I apply the development theory principles and set out a series of institutional recommendations designed to facilitate the adoption of a responsive framework policy for Canada.

Last, in the conclusion I focus on the role of political forces in thwarting the adoption of value-enhancing institutional changes. This issue has particular importance given the market-promoting orientation of neutral framework policies. Because such policies facilitate open and robust market choices, they are also associated with Schumpeter's gale of creative destruction, meaning that highly concentrated and politically destabilizing costs are visited on certain groups. Not surprisingly, groups adversely affected by certain market outcomes can be expected to use their access to the political process to try to prevent change. Laws and institutions are not produced in a vacuum, and if Canada is to meet head-on the challenges of globalization, it will have to address the character of the political arrangements necessary to facilitate the adoption and retention of market-oriented framework policies.

What Makes Institutions and Government Strong?

The central finding of the new institutional economics and development literature is the observation that legal and institutional design matters in determining the growth rates of different countries. In other words, in a setting of high capital mobility, countries are essentially competitors for the patronage of footloose investors, whose support generates significant economic benefits for citizens in the form of jobs and wealth gains. The role of competition between governments in determining the complexion of policy has long been recognized in the literature on domestic structures of government. In particular, proponents of decentralized power arrangements in federal countries have argued that such arrangements generate benefits for citizens because the threat of interjurisdictional migration by marginal voters will make governments more attentive to the needs of citizens as a whole.

One of the most celebrated instances of such arrangements is corporate law in the United States. Law and economics scholars have argued that intense competition between states has produced a more innovative and responsive corporate law product than would have resulted from centralized production.[8] Indeed, Delaware's dominance in the American charter market is understood as the by-product of a corporate law regime in which laws and supporting legal institutions together generate a chartering regime conducive to low transaction costs for investors.

While the virtues of governmental competition in the form of laws and corresponding institutions has been recognized in the literature on corporate law, its application to other policy areas and to the international context came only later. Because of significant barriers to the movement of capital and people, it was difficult to see how governments could actually compete for resources. It was also difficult to see much scope for governmental competition since policy is a bundled good and citizens are unable to consume products on a selective basis within jurisdictions; residence in a given jurisdiction means consumption of a wide range of legal and institutional products, some of which may be desired while others are not. Nevertheless, with the increase in factor mobility resulting from the decline in trade and capital barriers, the scope for national competition in legal and institutional products was seen to increase. Accentuating the trend was the growing interest of countries in all parts of the world to court private capital. As industrialized countries struggle to cope with growing public deficits, their willingness to support public investment in developing and newly liberalizing countries has correspondingly decreased.

If the character of institutions and laws is an important determinant of capital patronage, the obvious question is which laws and institutions best attract scarce private capital. It is here that the contribution of modern growth theory is most instructive. Essentially, the components of a competitive legal/institutional landscape can be distilled into four basic components: a stable government and currency; strong but limited government; high investments in education (human capital); and a transaction-cost reduction orientation in framework policy.

Political Stability

The first and most basic condition for growth is stability of the currency value and the political climate.[9] Conditions of certainty are necessary to encourage investment in physical and human capital. In the absence of such certainty, private investors will worry about their capacity to recoup the value of their investments.[10] Concern over government opportunism is particularly acute when large up-front investment is required in non-mobile assets having lengthy payback periods. The concern is that government will debase or, at worst, appropriate the value of a party's investment through legislative or administrative changes to the country's legal/institutional regime. Alternatively, a host government might decide to inflate its currency in order to make its exports more competitive or to deal with mounting public debt. Such action comes at a cost: to the extent that a government develops a reputation for opportunistic appropriation, it loses the capacity to lure new investors to the country. In a setting of high dependence on external investment, such behaviour should normally be constrained by the prospect of retaliation in later rounds of play.

The risks of opportunistic appropriation can, of course, be mitigated through a number of contractual mechanisms. For instance, parties may agree to accelerate their payback periods for investment or may insist on a range of "hands-tying" techniques, such as restrictions on the use of assets, bonding and reporting requirements. Nevertheless, each of these options entails a cost. The adoption of short payback periods may distort the optimal use of assets or may result in inadequate levels of investment in asset maintenance (because investors fear that they will not capture the value of their investments). Alternatively, hands-tying mechanisms may unduly constrain the way in which the asset is used, thereby limiting the investor's capacity to respond to changing market conditions. In the end, a credible commitment to regime and currency stability is valuable. If investors know the rules of the road up front and are able to count on their being respected by a host government, the cost of capital to that borrowing country will be lowered. As a consequence, the demand for capital will increase, thereby supporting more of the spin-off benefits to the country as a whole.

While there is a need for certainty, the normative task of determining an appropriate level of legal and institutional certainty is not easy. On the one hand, it is easy to say that governments should not be able to appropriate projects purely for financial gain. Take, for instance, investment in a large physical infrastructure project such as an airport or water treatment plant. If the sole reason for appropriation is the desire to exploit the *ex post* benefits of what was a risky *ex ante* investment, the legal regime should work to constrain such action. On the other hand, if government wants to change its legal/institutional regime in order to support legitimate policy goals that accompany the economic development of countries (e.g., protection of employees from occupational health and safety risks, general environmental regulation), the need for certainty should not be overriding — even if there is a risk to the stability of the investment regime.

Strong, Limited Government

A strong but limited government is another essential ingredient for growth.[11] For example, large undisciplined governments in developing nations have been linked with poor economic performance and the creation of incentives for vested interest groups to pressure for maintenance and enhancement of resource transfers.[12] In this respect, the problems of developing and newly liberalizing countries are no different from those encountered by mature industrial democracies where value-reducing rent seeking exists (in the form of lobbying and other types of activities undertaken by citizens to influence politicians and bureaucrats). To guard against the adoption of policy that benefits single-interest groups at the expense of the general public, governments need to reduce the number of levers they have over economic decisions made within the economy. Accordingly, governments have been found to be most successful when they limit themselves to supplying true public goods, such as internal public order, the judiciary, basic public health, education and monetary stability (all discussed in more detail later in this article). To function effectively, a strong but limited government must match incentives and policy across both public and private organizations by creating intelligent framework policy.[13] That is, governments need to provide the framework necessary for rational market decisions, and also to shape the necessary social and political consensus that allows these decisions to be viewed as legitimate.[14]

Generally, it is assumed that one of the core elements of a limited government is the divestiture of formerly public enterprises into private hands. However, although privatization is a viable option, the evidence from the Czech Republic, Hungary and Poland suggests that, even without actual privatization, firms that face a credible threat of privatization and/or have a hard budget constraint imposed engage in market-driven profit-maximizing behaviour.[15] Thus, the core element of enterprise reform is to make all companies — whether public or private — subject to market forces and open to competition.[16] This includes eliminating direct government subsidies to industry, as well as "soft" financing options such as leniency in payment of arrears to government and inter-enterprise financing between state-owned firms.[17]

A central problem in this context is resolving the tension between institutional autonomy and institutional accountability. Whether regulatory agencies, state-owned enterprises or the central bank, institutions require a modicum of flexibility to operate efficiently in a dynamic market setting.[18] However, it is equally important that government institutions pursue clear, stated public goals rather than an alternative agenda, whether it is empire building or inefficient operation. Accountability can take several forms, including direct linkage to the political process (i.e., an elected central bank governor), local micro-level mechanisms or simply provision to customers of enhanced opportunities for exit.[19] Design of accountability mechanisms is often difficult since simple, quantifiable performance measures can create perverse incentives.[20] For example, cost minimization standards for power plants can cause insufficient attention to be paid to maintenance and safety. In the context of a regulatory agency, Trebilcock and I have previously argued that one way to resolve this tension is by clearly specifying macro policy goals and allowing day-to-day operation to be left in the hands of the regulated entity.[21] Under this approach, macro goals are relatively easier to monitor and sufficient flexibility is left with the regulated entity to deal with and adapt to market forces. The task of achieving a balance is thus crucial to the success of any government institution.

Well-defined property rights are critical to any limited government as many formerly public functions are transferred to the private sector and also because well-defined property rights significantly influence the behaviour of market participants across many contractual relationships. In terms of initial legislation, the experience of developing nations has revealed that property rights can be created only against a background that is already structured by non-legal interactions.[22] That is to say, government cannot simply institute property rights in a modern economy because most property rights are only marginally enforceable by government. The legal system is designed to deal with only a thin layer of aberrations. The basis of property rights is the credibility of the government. Successful governments in developing nations have thus created incentives and self-enforcing mechanisms.[23] Olson referred to the bottom-up demand as “civic capital,” as it is effectively a key institutional resource of a nation and leads to optimal private ordering and realization of the gains from trade.[24] Civic capital is necessary as many valuable property rights in an industrial economy are intangible.

It is possible to entrench rights to physical property in a nation’s constitution. However, intangibles critically depend on credibility and respect for those particular rights.[25] For example, in terms of minority shareholder protection, legal rules generally provide a fallback position and are not applied on a day-to-day basis. If every minute detail in shareholder relations were prescribed, the flexibility required to succeed in a dynamic market would be impaired. Rapaczynski put this point very clearly: “An effort to subject these decisions to a set of legal rules would be like prescribing the number of visits that a husband must pay to his mother-in-law; it would eviscerate the benefit of the whole relation.”[26]

By and large, the strong consensus within the economic literature is toward the adoption of open markets. It is true that many East Asian nations have successfully used trade policy strategically to promote the development of entirely new industries from the ground up. They have done so via the protection of infant industries through trade barriers and mechanisms such as subsidies, licensing, tax breaks and financing incentives. However, the critical point is that the adoption of these policies is directed toward export promotion rather than import substitution; hence the use of protection is necessarily time-limited.[27]

To encourage the accumulation of productive resources, incentives should be designed to encourage saving. This is effectively a public good: personal and business saving creates capital to fund future investment. The notion of setting incentives is of much importance in the social assistance area. Eliminating disincentives to work and simplifying eligibility criteria are easy and proven ways to improve the welfare system.[28] In addition, the World Bank has advocated an increased role for NGOs via tax advantages and other incentives, since these organizations can encourage local participation in social assistance activities and provide a more efficient delivery mechanism than the traditional government apparatus.[29] Health care could also be revamped, but not entirely privatized, to encourage competition between NGOs and true private institutions. Government-funded operations should be financed based on health outputs/outcomes and not on inputs (i.e., do not fund hospitals by the number of beds or patient-days as this creates incentives for lengthier stays and unhelpful treatment).[30]

Successful labour market policies in both the developing and developed world have focused on creating a more flexible and active labour market.[31] The two key principles to successful labour market reform are allowing markets to freely determine wages and employment and minimizing adverse incentives. This includes placing strict time limits and ceilings on unemployment insurance so that workers have a strong incentive to update skills.[32] Payroll taxes should be shared by workers and employers; this will minimize the chance of either party's demanding new benefits as both will directly bear the cost of new transfers.[33] Equally important are labour mobility provisions so that labour can quickly and easily move to its highest value-added use.[34]

A significant concern is the elimination of other policies with significant moral hazard problems. The most obvious examples in this area are deposit insurance schemes; these have been demonstrated to perversely increase risk in the financial system as incentives for investor monitoring become limited.[35] Wherever regulatory mechanisms are called for, they should be both disciplined and transparent to prevent capture by vested interests. Competition policies are a case in point. A body regulating natural monopolies and policing antitrust violations was found to be most successful when operating at arm's length from vested interests.[36] Overall, the approach toward regulation is to respond to market demand for such things as legal institutions. Experience has shown that bottom-up demand is driven by macro-economic stability, open markets and private-sector development.[37]

Investment in Education

A third lesson is the need to focus on investment in education. An education focus helps build useful skills and complete the human capital market.[38] As *The Economist* notes, "...human capital ... has been found to matter." Various statistical analyses have shown that countries with significant amounts of human capital relative to their physical capital are likely to grow faster than those with less. Many economists argue that this was a factor in East Asia's success: in the early 1960s the Asian tigers had relatively well-educated work forces and low levels of physical capital.[39] Indeed, most economists agree that "broader policies of encouraging education ... mattered more" than "micro-level encouragement of particular kinds of investment."[40] For example, one study suggested that if Korea had had Pakistan's low school enrollment rate in 1960, its 1985 per-capita GDP would have been 40 percent lower.[41] The desirability of high up-front investments in education have been confirmed in the developed world, where academic studies repeatedly demonstrate the existence of private and public returns from such investment.

Reduction in Transaction Costs

Finally, reduction in transaction costs is also necessary to ensure that market transactions are not distorted and to allow realization of all possible gains from trade.[42] This includes the elimination of restrictions on firm registration, employment, operations, and access to foreign capital and payroll taxes.[43] Tax policies can dramatically increase transaction costs. In newly liberalizing countries, Sachs found that tax rates in excess of 20 percent lead to high evasion and a high degree of unproductive behaviour.[44] In contrast, low, flat value-added tax rates limit unproductive rent-seeking behaviour and reduce evasion.[45]

Framework Policy: Where Have We Been and Where Are We Now?

To apply these ideas to Canada, the starting point is a brief review of the current status of framework policy in this country. Although a detailed discussion of each element of the framework is beyond the scope of this paper, this section will highlight elements of tax, competition, intellectual property and trade policy that advance or frustrate the goal of achieving neutral framework policy and the four principles enumerated above.

Overall, changes in the taxation system, competition law, intellectual property and trade policy have largely been consistent with the move toward neutral framework policy. In the areas of corporate, sales and income tax, Canada has moved closer to the goal of a neutral taxation system. First, although income tax rates remain relatively high, market pressures have roughly eliminated differences in national corporate tax rates, attenuating tax-driven rent-seeking behaviour on the part of corporations. Corporate taxation rates in most Western industrialized nations are a relatively uniform 45 percent as a result of the international mobility of capital.[46] Although regional discrepancies exist, combined Canadian corporate tax rates averaged 46 percent in the early 1990s.[47] Thus, at the broadest level, the corporate tax regime is neutral between nations. Second, the Goods and Services Tax (GST) has moved closer to the ideal of a visible, non-distortionary, generally applicable value-added tax model by levying the same rate on a wide range of goods; it thus differs from the higher-rate, selective and invisible federal Manufacturers' Sales Tax that it replaced. Third, the introduction of three broad tax brackets for personal income tax has moved Canada closer to the goal of a non-distorting flat tax. Given that a flat-tax regime is likely to be politically unacceptable for distributional reasons, a three-tiered system is probably a second-best outcome. The broad changes to the tax system have thus been consistent with a move to a neutral framework policy orientation that reduces transaction costs.

The competition policy revisions made in the mid-1980s have begun to address the concerns of Canadian businesses competing in a global marketplace. Although many Canadian industries are relatively oligopolistic, they are still relatively small on a global scale. Accordingly, the *Competition Act* envisaged Canadian industries as part of a global marketplace.[48] The Act has advocated a policy that supports competition not for its own sake but rather to promote efficiency and adaptability in the Canadian economy, two key prerequisites to higher growth rates. This approach is thus consistent with the mandate of strong but limited government, since the stated objective is to intervene in situations of market failure (e.g., abuse of dominant position).

Globalization, rapid technological change and an attempt to move Canada toward a knowledge-based economy have had a profound impact on Canada's intellectual property regime (IPR) in the last decade, sparking the adoption of an IPR designed to support higher research and development trends. This is a marked departure from an IPR that was predicated on a resource-driven economy with a branch plant mentality.[49] Four broad shifts have strengthened the neutrality of intellectual property framework policy and enhanced incentives for growth. First, Canadian intellectual property law has been broadened in the last several decades and now includes distinct protection for patents, industrial designs, copyrights, trademarks, integrated circuit topographies and plant breeders.[50] Second, 1989 changes in the patent regime dealt with the high cost of obtaining patents. This was especially burdensome for small enterprises (which might have to spend over $6,000 and wait about four years to obtain a patent) as it acted as a barrier to the implementation of new ideas. The government has included "fast track" provisions if it is proven that delays would not be in the public interest or would prejudice the applicant's rights. Third, responding to pressures of globalization, legislation passed in 1993 has modified the patent filing system to make it similar to U.S. procedures.

Fourth, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) under the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), will effectively turn ultimate governance of Canada's IPR over to the World Trade Organization (WTO) since any member nation is required to use its domestic legal regime to enforce the agreement.[51] Under TRIPs, a domestic violation can lead to multilateral countermeasures in any WTO-governed area, including trade in goods and services.[52] Thus, the domestic IPR is becoming harmonized with international norms, increasing certainty and consistency and thereby creating conditions that are making Canada more attractive for investment.

Canadian trade policy has been relatively successful in providing a level playing field for Canadian business by reducing transaction costs and limiting the role of government. Over the last decade, Canadian trade policy has focused on achieving secure access to the United States as well as international markets, and ensuring the adoption of a set of regional and global rules that would allow Canada's trade grievances to be dealt with in a more fair and impartial manner than the country's relative power would imply.[53] The three main mechanisms were, of course, the 1988 Canada–U.S. Free Trade Agreement (FTA), the 1992 North American Free Trade Agreement (NAFTA) and the 1995 agreement concluding the Uruguay Round of the GATT.

The core principles governing these treaties are those of Most Favoured Nation and National Treatment. Their net impact is to give Canada any advantage garnered in any future negotiations between the United States and any of its other trading partners, without having to be a party to the discussions or providing any additional concessions; they also ensure that imported goods, foreign investors and applicable foreign services are treated no less favourably than domestic suppliers.[54] Finally, the creation of the WTO for governance and dispute settlement is a hopeful sign for Canada since a supra-national body may be in a better position to protect the country's interests vis-à-vis larger nations. As a result, Canada has been able to pursue open, export-friendly policies and at the same time to experience higher wages, rising employment and broader social policies without any loss of cultural diversity.[55]

It is interesting that Canada's membership in international agreements may also do more to open up interprovincial trade than any federal-provincial wrangling might accomplish. Howse noted that the threat of retaliation from trading partners is a strong incentive for provinces to work with Ottawa to comply with international trade law.[56] Thus, as shown by the Asian tigers, government policies geared toward openness are strong, positive incentives for business to expand and also innovate in ways that can satisfy global, rather than simply domestic, demand.

In spite of the positive changes, several challenges still exist. For instance, a problematic element of competition policy is that it is a "controlled system of discretionary, case-based micro-economic governance" rather than "a transparent rules-based regime for ensuring competition."[57] Consequently, the current competition regime can potentially distort the efficient functioning of markets as it introduces added uncertainty in the form of unclear rules and the potential for inconsistent and unpredictable government intervention. Another related challenge for competition policy is ensuring that newly deregulated sectors of the Canadian economy — including energy, telecommunications and transportation — are subject to competition-enhancing policies.

In addition, although the GATT and NAFTA ideals are designed to encourage a level playing field, a continuing concern is the tendency of the United States to bypass GATT mechanisms and instead engage in unilateral action under Section 301 of its 1988 *Omnibus Trade and Competitiveness Act*, as well as its strategic use of "hub-and-spoke" agreements.[58] Institutional challenges in this area revolve around the development and support of strong, supra-national dispute resolution mechanisms such as the NAFTA Trade Commission and the WTO.

Pressures on Framework Policy in the Future

Canada has enjoyed considerable success in adopting a market-oriented set of framework policies and institutions over the past several years. Nevertheless, the challenges of globalization, the needs of an ageing population, unstable and highly fractious intergovernmental relationships, and fiscal restraint will doubtless complicate the task of developing an effective institutional and policy matrix. In this part, I briefly review the pressures that will complicate adoption of efficient framework policies and corresponding institutions. I then advance a number of principles and policy recommendations designed to ensure that future Canadian governments are able to respond to these pressures in a principled and coherent manner.

There are several (frequently cited) pressures that will confront future Canadian governments and will complicate the task of adopting neutral framework policies. First is the fiscal pressure that has been experienced by federal and provincial governments in Canada. As the cost of servicing previously incurred public debt rose, the ability of governments to satisfy legitimate demands for public services has correspondingly declined in the early to mid-nineties and made it increasingly difficult for government to intervene through traditional spending instruments.[59] The danger, however, is that government will respond to these pressures by moving its political goals off-budget. Instead of actually restraining the public's demand for public goods and services, governments may deploy different instruments (namely, regulation) to satisfy particular interest groups. And while the regulatory instrument may be vastly inferior to an initiative that is on-budget (in terms of its ability to achieve standard public goals), its lack of transparency may make it an extremely attractive instrument to financially strapped politicians. The obvious risk is that such regulatory initiatives will undermine neutral framework policies.

Another pressure has to do with increased globalization. As markets have become more closely integrated, consumer sovereignty has correspondingly increased. Shifts in consumer preferences, whether induced or otherwise, will directly translate into dramatic shifts in firms' competitive advantage. Firms will be forced to respond to these market changes through re-alignment of product lines and production functions. In concrete terms, these changes mean that the stability of a country's manufacturing base will diminish, as will the stability of firms' employment relationships. In the future, a worker will not be able to rely on one immutable skill set and one stable employment relationship for the duration of his or her career. Instead, workers will be required to change jobs a number of times over their careers, they will have to constantly invest in skills upgrading, and they will have to secure social security and insurance benefits through first-party rather than firm coverage.

The key question is how adept private markets will be in providing the necessary support for this new environment. Human capital markets, for instance, have historically been less than perfect in making adequate levels of capital available to individuals wishing to invest in human capital. Similarly, policies aimed at insuring parties for unemployment (including job retraining) are beset by endemic moral hazard and adverse selection problems that subvert the provision of comprehensive insurance. The concern is that if private markets are not capable of providing these benefits, pressure will be placed on government to make the assistance available (in the form of loans for education and retraining, and forward-looking adjustment assistance for displaced workers). However, in a setting of fiscal retrenchment, it is unclear how government will pay for these enhanced services.

Of course, at another level, one can imagine that pressure will build for more vigorous and targeted industrial policy interventions that go well beyond the maintenance of neutral framework policies and the reduction of adjustment costs borne by displaced workers. In the past, spurred on by erroneous notions of comparative advantage in “picking winners” or (a more cynical interpretation) driven by political pressures to “bail out” firms in politically sensitive industries or regions, governments have extended financial credits to firms to support their operations. As the changes wrought by globalization are felt by specific firms or industries, this pattern of targeted assistance is bound to re-emerge as a temptation for popularly elected governments.

Another pressure that will confront Canadian governments is the growing level of dissatisfaction with existing distribution-of-power arrangements. As governments of all stripes are forced to cope with mounting pressures of globalization, an ageing population (which places increased demands on a variety of public services), fiscal re-balancing and so forth, there will be continued pressure on the underlying structure of distribution-of-power arrangements. These pressures are bound to become more acute as the continental economic market strengthens and as Canada sees East–West linkages give way to regional trading blocs, often organized on a North–South axis.

These pressures manifest in a number of ways: a growing reluctance of the “have” provinces to subsidize the “have-not” provinces, resistance to the imposition of national standards that are not accompanied by an appropriate level of federal transfers, and mounting interest in the development of a distinctive social policy matrix to be implemented at the provincial level. At the same time there are the imperatives of national participation in a global economy, particularly in the international negotiation of various treaties concerning the country’s economic obligations. These require strong national representation but, given constitutionally enumerated provincial responsibilities, the federal government has limited capacity to implement treaties. The impact on political stability is obvious and profound.

Prescriptions for Future Development of Framework Policy

Institutional and Policy Responses

Governments are bound to face pressures in responding to the imperatives of a new global order. The question for Canadian policy makers is how to design institutions so as to promote the adoption of neutral framework policies that have the effect of supporting and facilitating market-driven adjustments.

Division-of-Power Arrangements Predicated on Citizen Preferences

A discussion of institutional design in Canada should start by examining the distribution-of-power arrangements between various levels of government, in order to create a stable political climate that is also responsive to the wishes of the public. It is clear that over the last several years an inordinate amount of time and energy has been focused on devising ways, primarily constitutional in nature, of achieving a more responsive governmental structure. A striking feature of the debate over the distribution of powers is the extent to which it has been dominated by simplistic paradigms involving different arrangements — asymmetric or symmetric federalism, centralization or decentralization — without conceding the reality that quite different arrangements are suitable in different policy areas.

The key is to focus on the development of sound policy in response to citizen preferences and then to allow for the possibility that in some areas this will require policy responsibility to be remitted to lower levels of government (indeed, lower than the provinces) and in other areas to higher levels of government, namely, the federal government or supra-national institutions. In other words, distribution-of-power arrangements, like all institutional arrangements, are not ends in themselves but rather instruments; they are to be assessed for their ability to facilitate the development of policies and programs that are responsive to citizen and community preferences.

While citizen preferences should be paramount in any plan to re-configure distribution-of-power arrangements, it is necessary to contemplate a broader array of instruments to support the delivery of sound policy than what we have at present. For instance, greater attention should be paid to the possibilities for extra-constitutional mechanisms to shift governmental power so that it is closer to citizens having shared preferences. In some cases, this will almost certainly mean decentralization of policy-making responsibility, though not necessarily to governments; the suitable institutions may be not-for-profit community organizations. The crucial task is to ensure that effective means exist for citizens to express their preferences, and then to ensure that mechanisms exist for holding governmental or quasi-governmental agents accountable to these groups.

Central elements of an accountable public policy regime are thus transparency and appropriate opportunities for public participation in policy making. To the extent that new mechanisms are required for reconciling governmental interests in policy making, the goal is not to buttress non-transparent decision making through old-style executive federalism arrangements. In this regard, recent work I have done with two of my colleagues (Michael Trebilcock and Robert Howse), on the role of HIV in national blood supply systems, argued that highly fragmented and non-accountable decision-making structures contributed to a lack of responsiveness on the part of Canadian institutions responsible for the collection, processing and distribution of blood (measured in terms of the adoption of screening and treatment methodologies).[60]

What precise implications does this paradigm have for the development of framework policy? First, the central goal for politicians and other parties concerned with the basic apparatus of government should be to re-insert substantive policy considerations into the debate. That is, instead of ruminating on the nuances of distribution-of-power arrangements in some abstract way, it is more productive to start with a definition of sound policy outcomes in a given area, and then to ask whether there is any reason to move policy responsibility up from the lowest level of government (presumably the one closest to citizen preferences). Considerations such as externalities, economies of scale and non–regionally concentrated preferences would work in favour of vesting responsibility in a higher level of government.

Second, the fact that much of framework policy is directed toward economic policy does not necessarily mean that there is no scope for decentralization and concomitant experimentation in policy development. As a number of commentators have argued, in an economy focused on the development of human capital, social and economic policy become fused with one another[61] — meaning that areas that are within the purview of provinces (such as education, health and welfare) are part and parcel of framework policy. It would simply be unfathomable for principal responsibility over these matters to be remitted to the federal government. However, as mentioned earlier, in light of the growing importance of supra-national institutions and policies in shaping the Canadian policy environment, it is essential that the federal government enjoy a clearer mandate to negotiate and enforce agreements in these areas so as to improve the country's international bargaining position.

Third, even if provinces (or lower levels of government) have principal responsibility for delivering policy in these areas, the federal government may still have an important role to play in co-ordinating policy across governments so as to limit the scope for adverse external effects, and an equally important role in building support for provincial competition and experimentation. A vigorous federal role would also be focused on ensuring that the experience of jurisdictions is shared so that all might benefit from provincial or lower government experimentation. In the case of the European Union, for instance, common minimum standards were required before countries would agree to liberalize their markets in certain areas (e.g., financial institutions). Since it is difficult to produce these arrangements through consensus-based decision-making models, central leadership must forge the conditions necessary for subsequent governmental competition.

A Strong, Independent Bureaucracy

Whatever the level of government charged with a specific policy area, the bureaucracy responsible for delivering that policy must be professional, merit-driven, resistant to corruption and committed to broad public accountability — key qualities of a strong, limited government. The role of the bureaucracy in Canadian policy formulation will be especially important in the next decade as the state is forced to achieve and maintain significant reductions in public expenditures while ensuring the delivery of humane and effective policy in a number of areas.

Compounding the challenges facing the bureaucracy is the growing volatility and polarization of electoral politics, and the resultant problems in ensuring policy stability. Illustrating the trend is the record of the last three elections for the Ontario Legislature, won successively by the Liberals, the NDP and the Conservatives. Such shifts give added importance to a stable, expert bureaucracy possessing accumulated expertise in a range of policy areas. Finally, as fiscal restraint requires government to rely more and more on private industry for delivery of public goods and services, there will be a correspondingly increasing need for policy makers to understand the structure and operation not only of public-sector institutions but also of private-sector institutions and decision-making structures (presumably on the basis of work experience in that sector).

The capacity of Canadian governments to support such an expert bureaucracy has been undermined by constraints on public-sector remuneration. Remuneration is a product of a number of factors: job security, cash compensation and sundry job perquisites (e.g., status).[62] In the case of senior public managers, the typical employment contract is predicated on relatively lower levels of compensation in favour of higher job security and perquisites. As Kelman has argued, many public-sector managers are drawn to public service because it offers the ability to serve the public weal, to champion public ideas and to reap the benefits of these public-regarding activities.[63] Over the last several years, however, the level of remuneration in the Canadian public sector has dropped. Further, as the recent layoffs in federal and provincial governments have shown, job security can no longer be counted on as a core feature of the public-sector employment relationship. Exacerbating matters are the salary freezes (or, in some cases, rollbacks) and promotion caps that have been implemented. The lack of promotion opportunity is especially significant in view of the government's inability to implement precise performance-based compensation arrangements, as a result of difficulties in specifying appropriate benchmarks for bureaucratic performance. In contrast to for-profit organizations, it is difficult to state clearly what the priority ought to be for public-sector employees (to do good? to be fair?); as a consequence, tailored pay-for-performance schemes are difficulty to implement.[64] Another difficulty is the lack of bureaucratic rejuvenation. A recent study by Ekos Research demonstrates the magnitude of the problem: the effect of the salary constraints is to limit the capacity of Canadian governments to hire new employees. Currently, 60 percent of public servants within the executive category are in the 45-to-54 age bracket. By the year 2005, the percentage will be 70 percent.[65]

According to some commentators, the fact that there have been reductions or, at least, constraints in public-sector remuneration is uncontroversial given the putative rents (i.e., the commonly accepted cost structures) within the public sector that are absent from the private sector. The rent from public-sector employment is alleged to be as high as 24 percent for public-sector employees.[66] However, this figure has been contested since higher levels of education, experience and unionization could explain the difference in gross salary rates. In any event, the existence of a historical differential does not negate the impact of the various salary constraints on public-sector morale and productivity. With growing complexity in public policy making, the need for an expert, independent bureaucracy could not be greater. If Canada is to ensure a competitive policy framework, greater energy and effort will need to be expended on securing improvements to the public sector's human resources policy.

More Rapid Divestiture of Crown Assets

As discussed in the first part of the paper, another key component of a competitive policy and institutional environment is the minimization of state ownership in the productive sector of the economy, to achieve the goal of a more limited government. In comparison with a number of member countries of the Organization for Economic Co-operation and Development (OECD) — for example, the United States, Switzerland, Japan and Australia — Canada has had historically high levels of state ownership. In 1986, the Economic Council of Canada reported that government-owned and -controlled companies accounted for 26 percent of the net fixed assets of all Canadian corporations in 1983. While these firms accounted for less than 5 percent of the total employment in the country, they accounted for 35 percent of government employment at that time. In some sectors of the economy (e.g., communications, hydro-electricity, transportation), government employment has been close to 80 percent of the total.

Recognition of the efficiency gains from private-sector ownership and investment has led a number of governments in Canada to privatize a range of assets. Over the period from 1983 to 1994, there were 102 privatizations of assets. Of these, reports Stanbury, "Only a handful of large and important federal and provincial Crown corporations had been privatized."[67] Of the 102 privatizations, the median size was less than $20 million, although 15 of the 37 largest non-financial Crown corporations were privatized in the period. Stanbury has concluded that the assets first sold by Canadian governments were those most conducive to private-sector ownership. That is, they were assets with a revenue stream that came close to covering the costs of capital. By and large, the mechanism for Canadian privatization has been the asset sale. To a lesser extent, governments have used large public share distributions in some of the larger privatizations to transfer control over assets to the private sector (e.g., Air Canada, Petro Canada, Canada Development Corporation and Cemco). Notably, in these wide-distribution sales of Crown corporations, the selling government typically imposed restrictions on share transferability and/or foreign ownership.

While the Conservative government of Brian Mulroney and several provincial governments made some headway on the privatization of Crown assets, it is useful to examine why more vigorous privatization was not pursued in Canada over the last two decades, especially considering the success of other governments (namely, the Thatcher Conservatives) in transferring state assets. This issue has important bearing on the capacity of future Canadian governments to effect further reductions in state ownership. If the problem is ideological (i.e., the country is ambivalent about privatization), mere tinkering with the instrumentalities of privatization will not make a difference. On the other hand, if the problem is technical (i.e., Canadian governments have not yet been able to devise an effective regime for the rapid transfer of state assets to private ownership), the prospects for more vigorous privatization are enhanced.

Arguably, rates of privatization have been slower in Canada for both normative and technical reasons. At one level, until the election of several neoconservative provincial governments, Canadians did not appear to exhibit the same enthusiasm for private ownership as counterparts in other developed countries. The claim has long been made that Tory political traditions have made Canadians more amenable to high levels of public ownership. However, it is hard to fathom that such an ideological predisposition to public delivery could explain the pattern or indeed the persistence of public ownership in a number of different industries. If this explanation had historical relevance, its application to Canada in the 21st century seems strained.

A more likely explanation for the sluggish pace of privatization in Canada lies in a number of design issues. First, there are difficulties in determining which assets should be privatized. The decision to privatize requires politicians to make hard choices that will often offend concentrated interest groups: employees who fear layoffs and lower wages, consumers who fear higher prices (particularly where cross-subsidies are involved) and senior managers who fear for their jobs. Making the choices is harder if political will and policy expertise are lacking. Take the case of the privatization of liquor distribution systems.

As West has found, the Alberta experience showed that, while prices dropped and hours of operation improved (thereby benefitting consumers), these changes were accompanied by significant wage reductions for public employees.[68] From a political perspective, decision makers may rationally eschew such hard choices, particularly when the benefits are speculative and long-term. An example is the privatization of hydro-electric assets. As Michael Trebilcock and I have argued with regard to the privatization of Ontario Hydro, the political costs of privatization (in terms of an immediate reduction in the stated book value of generating assets) may well outweigh the long-term economic benefits of private-sector delivery (in the form of more rational management of, and investment in, generating assets).

Second, in many cases of privatization, the government may come to believe that it must ready the assets for privatization through extensive predivestiture rationalization and restructuring of operations. It is claimed that the only way to ensure that the assets are purchased by the private sector (or, at least, purchased at an appropriate price) is by making extensive changes to operations in the form of alterations to the employment relationship (layoffs, changes in working conditions), capital structure (reduced levels of indebtedness) or plant and equipment (retirement of obsolete equipment). However, unless there is some distinct public-sector advantage (perhaps addressing highly contentious political issues such as termination of cross-subsidies to various consumer classes) in initiating these changes, in all likelihood, the task of rationalization of production is better left to the private sector, which will presumably pay a premium to the vendor to represent some sharing of the gains from restructuring.

A third reason for the slow pace of privatization in Canada is that the task of transferring assets is often complicated by competing governmental goals for privatization. Privatization is a broad term that embodies a number of discrete policy objectives: government revenue enhancement, enhanced economic efficiency, fragmentation of political power, and compensatory justice.[69] Because these goals often conflict with one another, the precise way in which policy makers construct a privatization program will favour one or two goals at the expense of others, creating political obstacles to reform. In the case of electrical utility privatization, the desire for revenue to offset fiscal pressures may lead the government to give assurances that entry barriers will be maintained for a stated period, enabling the purchaser to extract monopoly rents. Keeping such barriers ensures that the price of the assets (reflected in the expected future income stream) is maximized. However, a privatization program motivated by such objectives entails obvious costs to efficiency objectives. If entry barriers are maintained, the monopoly will entail dead-weight social costs.

Alternatively, if government is committed to a privatization program that ensures the broadest possible public participation in the assets (through widespread share distribution schemes), certain political goals will have been advanced. On the other hand, such a share distribution promotes the development of corporate ownership structures that, according to Berle and Means,[70] involve the separation of ownership and control. Even more troubling is the fact that restrictions on subsequent share transfer or on the formation of voting blocs effectively stymies efforts at corporate control, thereby exacerbating the problem of accountability. Finally, to court employee support for privatization, public officials may structure the sale of assets in such a way as to provide employees with equity shares in the privatized corporation. While certain political or ethical goals may thereby be advanced, again there is a cost to efficiency objectives: employee leverage over the board of directors may lead to more severe conflicts about the distribution of corporate income — whether to employees as wages or to shareholders as equity. From a design perspective, policy makers must make an early determination of which public policy goal is paramount and must then devise an appropriate privatization program.

A fourth reason for slow privatization in Canada (one related to the last three points) is that responsibility for privatization has very often been dispersed throughout the public sector, rather than being concentrated in one lead agency. The benefits of giving a specialized agency or ministry responsibility for privatization is clear: within government, the institution can become an agent for change that may deflect or constrain political opposition to privatization, and it can build expertise in privatization by dealing with a number of public assets.

In sum, in order to support a more vigorous privatization program, Canadian governments will have to invest greater energy in determining privatization priorities and then in constructing streamlined and effective instruments for implementing these goals.

An Institutional Regime Supporting Public-Private Partnership

So far, I have focused on the sale of public assets as an important means of promoting a more vigorous private market. The benefits are unmistakable: if it is done with an eye to wealth objectives, not only will formerly public-owned assets be operated more efficiently but the entire institutional and legal framework in a certain policy area will be rendered more rational. This is because governments will no longer have incentives to tilt the legal and institutional regime toward their own investments. The likelihood of neutral framework policy is enhanced.

However, while the sale of government assets is important in supporting the operation of robust markets, many other services and activities are currently provided by government but could be remitted to the private sector if an appropriate institutional environment was created. For instance, the private for-profit sector could bid on a number of services, including education, social services and waste disposal. Donahue[71] has argued that, while private-sector delivery of public services is hobbled in cases where it is difficult to specify the expected outcomes, there are many public services that do not present such specification problems and that could be remitted to the private sector for delivery. Again, the task is to develop an institutional regime that is conducive to enhanced private-sector involvement but without compromising the government's capacity to work toward legitimate public goals.

The components of such a regime are quite simple. First, there must be some mechanism by which private parties can bid on public assets and services, without having to wait for public invitation.[72] The point of such a process is clear: it would constrain the capacity of the bureaucracy to retain control over public assets and services when private or not-for-profit providers could operate the asset or service in a more efficient or responsive manner. Private parties must be offered adequate incentives to invest resources in searching for government services and assets that could be privatized, as well as incentives to devise proposals for private for-profit or not-for-profit operation. Accordingly, there must be credible assurances that the parties who propose good ideas to government would be able to derive some benefit from them.

However, as Michael Trebilcock and I have argued in the context of public-private partnerships, because a private party comes up with a better way to operate a government asset or deliver a government service, it does not necessarily follow that the party is entitled to obtain control over the asset or service.[73] An appropriate reward for the information supplied could take the form of explicit compensation for the idea, although such a scheme involves thorny issues because the true value of the information is hard to ascertain. In addition, the government department or agency receiving the information will have the incentive to understate the economic value because doing so reduces the incentive of parties to invest in information collection and assimilation, and the development of a pro-active strategy, with the aim of transferring goods or services out of government. It may well be that endemic design issues limit the role of private parties in directly initiating a binding decision by government to tender public goods or services to non-governmental parties. If so, the appropriate response may be, as mentioned earlier, to make one government department or agency responsible for privatization so that it serves as an agent for change within government.

Should a government decide to put an asset or service up to tender (either as a result of private or government initiative), a fair and legitimate bidding and selection process is required. One of the most difficult threshold issues is the question of how government should invite bids for its assets and services. In the traditional procurement model for supplying goods or services to government, government spells out the nature of the project upon which bids are being invited in fairly precise detail. The purpose is to secure the lowest possible price for the good or service in question, assuming that threshold criteria can be satisfied. However, in the newer public-private partnership model, the idea is to capitalize on private-sector creativity and initiative by encouraging the private sector to devise alternative ways of developing a particular project without government interference. To achieve this goal, parties are encouraged to respond to fairly broad project objectives (e.g., to develop a world-class air terminal, or a fixed link between Prince Edward Island and the mainland) without technical specifications being spelled out in advance.

Further, in contrast to the traditional procurement model, where the role of private parties is relatively discrete (e.g., supplying the good or service in question for a fixed contract price based on a cost or cost-plus formula), the public-private partnership model contemplates a much more complex level of government–private sector co-operation involving design, building, financing and operation functions. The benefits of such multi-functional activity are derived from the economies of scope and scale made possible by having one private-sector operator involved in all aspects of production of a specified project or service. The private-sector operator will have cross-functional expertise not available to the public manager, and will have greater incentive to use this expertise if it shares the risks and benefits of the project in question with the public sector.

While there are economic benefits to be derived from public-private partnership, the task of designing an appropriate selection and post-selection contractual regime is confounded by several design complexities. Vague and aspirational project selection criteria, for instance, leave the public sector vulnerable to a charge of partisanship or nepotism in the selection process. Because the price and quality dimensions of proposed projects are not directly comparable to one another, it becomes difficult to demonstrate unequivocally why one project is qualitatively superior to another. This issue was involved in the ill-fated development of Terminals 1 and 2 at Toronto's Pearson International Airport. In terms of the post-selection contractual and institutional regime, there are difficulties in knowing whether public goals (e.g., price regulation in the case of an asset bearing monopoly properties) should be promoted through the contract or through some more formalized exogenous regulatory regime.

In addition, there are serious problems relating to the status of government as a party to the contract. The fear is that government will use its powers to appropriate the benefits of a project that turns out to be very successful. In view of the fact that government can invoke its sovereign powers to breach contracts opportunistically with the private sector, particularly when large up-front investments in highly project-specific assets or services are involved, certain safeguards will be needed to encourage private participation in these projects. As interest in public-private partnership increases as a way of delivering public services, governments will be required to adopt certain important institutional safeguards. The most important of these is independent third-party review of the fairness of a proposed project, focused on both the selection process and contractual terms concluded; this would limit the capacity of government to use alleged process and contractual design defects as a rationale for abrogating a contract.

ACKNOWLEDGING PUBLIC GOALS AND VALUES

IN DESIGNING INSTITUTIONS TO PROMOTE AN ENHANCED ROLE for markets in the delivery of goods and services, policy makers must not lose sight of government's central role in creating a foundation for market interactions that is perceived as legitimate. Technical innovations and growing concern over government competence (to use Wolf's term, "internalities"[74]) are shifting the boundaries between public and private provision and supporting an enlarged role for private delivery. However, the fact remains that externalities, natural monopoly, public goods and distributional concerns still provide a robust rationale for intervention by government. The crucial task is to ensure that government intervenes only in response to legitimate public goals, in a manner that is sensitive to differing public and private capabilities. These objectives may call for a radically different role for government in certain policy areas.

Take, for example, an issue that has not been dealt with in depth so far: the role of government in supporting education and retraining of citizens. In a knowledge-based economy, there may be significant positive externalities from education that justify public investment (informed and civil citizenry). Further, failures in capital markets may limit the capacity of private parties to borrow to support investment in human capital development. In tandem, these concerns support a role for government in education, but not necessarily through the traditional vehicles of state-sponsored institutions. In the case of elementary and secondary schools, for instance, there is growing concern about the lack of accountability implicit in publicly sponsored education, particularly the lack of effective levers to be wielded by parents over schools when the principal mode of recourse is through cumbersome school boards. The belief is that the quality of public education is deteriorating despite high levels of public support (measured in per-capita terms).[75] These concerns are not without basis as international and inter-temporal comparisons have shown that Canadian performance is declining, especially in the higher age groups.[76]

While there are various proposals for reform, the most interesting involve an increase in parental and/or student choice designed to promote enhanced accountability. The most extreme version of such an arrangement is a publicly funded voucher scheme: a voucher for a state subsidy would be issued, and parents could apply the subsidy to a wide array of institutions. The logic of accountability is clear: with parents being given a transferable subsidy, schools would have to be more sensitive to parental preferences or else would lose valuable resources. In the current system, the sole means for influencing school performance is through a cumbersome mechanism that impedes organizational accountability. As Chubb and Moe have argued, under the current system, no matter what the performance record, "No one loses jobs, no bad schools are closed down."[77]

Adoption of mechanisms to promote increased choice would entail significant modification of the current institutional infrastructure for delivering educational services. However, the fact remains that even under a regime of choice, there will still be a need for public oversight and support.[78] This role may take a number of forms: the development of minimum criteria of eligibility to receive vouchers (e.g., commitment to including core civic values in the curriculum), continuous testing and review of schools to provide objective benchmarks for performance, and possibly teacher certification. Without such public oversight, the state could end up supporting educational institutions engaged in activities inimical to widely shared public values (for instance, schools preaching the virtues of discrimination or the value of violence in resolving social tensions). Moreover, without some performance benchmarking, consumers will have limited capacity to make informed choices between competing educational products. A detailed exploration of these issues is well beyond the scope of this paper. Nevertheless, it is fair to say that the task is to design nuanced public intervention forms that serve public values but do not replicate the more obtrusive forms of intervention observed in our current arrangements, which are predicated on government as the sole supplier of all publicly sponsored forms of education.

In any event, the central theme here is that public goals will still persist, even in a new market-oriented policy environment. The key objective for government policy makers is to ensure that government intervention is rational and confined as tightly as possible to legitimate public objectives. In this respect, the adoption of a "least drastic means" approach in instrument choice is appropriate. That is, governments should deploy policy instruments in a way that inflicts least violence on private market interactions. To ensure fidelity to this approach, governments should be required to supply appropriate opportunities for balanced citizen input in public policy making via a number of different administrative safeguards (notice and comment, legislative committee or agency hearings). Further, to avoid the substitution of off-budget regulatory interventions for on-budget programs, various public agencies should be required to undertake some measure of cost-benefit analysis as part and parcel of their deliberations.[79]

Nurturing Citizen Capacity for Risk Taking

Another essential ingredient of an institutional regime oriented toward the provision of neutral framework policy is an underlying willingness of citizens to make economically rational, albeit risky, investments in physical, financial or human capital. Whether in response to innate risk aversion or the development of dysfunctional policy, the modern welfare state has produced a number of programs that thwart individual initiative and risk taking. According to some commentators, the growth of the welfare state's insurance role is not primarily redistributive in nature but rather reflects endemic private-market insurance failures and the need to exploit the benefits of pooling of uncorrelated risks.[80] The difficulty, however, is that state-sponsored insurance may solve some of the pooling problems manifest in a regime of purely private provision but it creates other problems relating to the lack of properly designed co-insurance arrangements for addressing innate moral hazard problems. In other areas, the problem is one of artificial constraints on the ability of citizens to effect optimal insurance arrangements reflecting individualized risk-return trade-offs.

The existence of state-sponsored insurance distortions is manifest in a number of areas. Non–risk adjusted deposit insurance premiums have received considerable attention from commentators concerned about the incentives for excessive risk taking by insured financial institutions and their shareholders.[81] Such insurance distorts investor incentives for efficient monitoring; more generally, it distorts investment in the economy, and increases the risk of failure and consequent intervention by sponsoring governments. In the United States, flat rate–based deposit insurance has been linked to the multi-billion-dollar savings and loans debacle over the last decade. In Canada, distortions arising out of state-sponsored insurance arrangements have impeded the sound development of unemployment insurance policies. Courchene, for instance, has argued that, in its current form, Canada's unemployment insurance scheme fails to deter multiple claims by employees in seasonal industries.[82] Further, the scheme has historically imposed disincentives on searching for work because of the high confiscatory tax rates on claimants' marginal income (above 25 percent of earnings, unemployed workers are taxed at the rate of 100 percent on each marginal dollar of income). Finally, as Robson has found, the current system of pension planning in Canada limits the capacity of individual citizens to construct pension portfolios that reflect individualized risk-return trade-offs.[83]

The government has a crucial role in creating insurance arrangements in a broad array of policy areas that nurture economically rational risk taking. Where possible, these choices should not be made by governments on a global basis. Instead, citizens should be empowered to decide for themselves the nature of optimal trade-offs between risk and return, and between consumption and investment.

CONCLUSION

THE PURPOSE OF THIS PAPER WAS TO EVALUATE THE BROAD, institutional lessons of modern growth theory for framework policy in Canada. Specifically, I argued for several changes to the Canadian institutional environment over the next 10 to 15 years, focusing on federal distribution-of-power arrangements, the structure of incentives within public bureaucracies, the development of more vigorous privatization initiatives (involving assets and services), the need to develop more nuanced and disciplined public intervention that does not encroach on markets, and the need for supporting enhanced risk taking through the modification of government involvement in insurance arrangements.

It is important to emphasize the difficulties encountered in a democracy in adopting institutions and policy directions that, although apparently neutral, have the effect of subjecting certain groups to concentrated losses. As is well established in the public choice literature, where economic losses are highly concentrated, those bearing the losses can be expected to lobby vigorously for policies and institutional arrangements designed to mitigate the impact of change. Where the costs of new policies or institutional arrangements are broadly diffused, the efforts of these groups are more likely to succeed. In these terms, the challenge for policy makers seeking to support the adoption of growth-promoting policies is to develop mechanisms that address the costs of economic change but without thwarting the capacity of markets to make those changes in the first place. As I have argued elsewhere, one way to address this issue is through forward-looking adjustment programs that focus on the need to assist workers (not capital) displaced by change.[84] There are, of course, other ways in which the concentrated economic losses entailed by unanticipated transitions can be managed in a liberal democracy, and the key is to create a policy environment in which humane but hard-headed policy proposals can be put forward, analyzed and ultimately effected.

One fundamental ingredient of a policy environment conducive to change is public support and encouragement for the development of new and responsive policy ideas. Sound policy ideas have public goods properties that require public support if they are to be produced. In these terms the recent trend on the part of both the federal and provincial governments toward curtailing the level of support for applied policy programs (e.g., the Economic Council of Canada, the Ontario Economic Council, federal and provincial law reform commissions) seems extremely short-sighted. To build a strong future, Canada must continue to invest not only in public institutions but also in public ideas.

NOTES

1 Mancur Olson Jr., "Big Bills Left on the Sidewalk: Why Some Nations are Rich, and Others Poor," *Journal of Economic Perspectives*, 10 (1996): 3.

2 In historical terms, these figures suggest that possible growth rates are actually increasing, as the United States grew at an annual rate of only 1.6 percent from 1830 to 1910, a period of heavy industrialization and development. *The Economist*, October 16, 1993.

3 Olson, *supra*, note 1.

4 *Ibid*.

5 Michael Trebilcock, "What Makes Poor Countries Poor? The Role of Institutional Capital in Economic Development," Faculty of Law, University of Toronto (unpublished), May 1996. Also Olson, *supra*, note 1.

6 The rapid pace of technological innovation is well established. Noori and Radford report that over 90 percent of all recorded scientific advances have occurred in the past 30 years. The effective life span of many products has also decreased through planned obsolescence; electronic and high-technology products now have life spans of only several months before they are superseded. Information technology has made it extremely easy to manage large volumes of data, while changes in telecommunications have obviated the need for a local presence to compete effectively in all markets. See Hamid Noori and Russell Radford, *Production and Operations Management*, Toronto: McGraw-Hill, 1995.

7 Production strategies have also evolved. Between the 1960s and the 1980s, the dominant form of manufacturing was — and to some extent still is — mass production. Mass production was premised on growing protected and uncontested markets, long product life cycles and large market segments. See Noori and Radford, *supra*, note 6. In the 1990s there is a move toward mass customization, driven by fragmented markets along with educated consumers who demand products and services that yield high delivered quality and low delivered cost. As in the case of production, sourcing is becoming global: companies, both small and large, are seeking the best products, services and regimes that can reduce costs while improving quality and competitiveness. Each company selects its own balance of global integration versus national customization, depending on the nature of the product and the markets being served. Christopher A. Bartlett and Sumantra Ghoshal. *Managing Across Borders*. Cambridge, Mass.: Harvard Business School Press, 1989.

8 R. J. Daniels, "Should Provinces Compete? The Case for a Corporate Charter Market," *Law Journal*, 36 (1991): 130.

9 Leszek Balcerowicz and Alan Gelb, "Macropolicies in Transition to a Market Economy: A Three-Year Perspective," in *Proceedings of the World Bank Annual Conference on Development Economics 1994*, World Bank, 1995; Stanley Fischer, Ratna Sahay and Carlos Vegh, "Stabilization and Growth in Transition Economies: The Early Experience," *Journal of Economic Perspectives*, Spring 1996; World Bank, *World Development Report 1996: From Plan to Market*, Toronto: Oxford University Press, 1996; and Trebilcock 1996, *supra*, note 5.

10 For instance, countries such as South Korea and Indonesia adopted simple, consistent policies focusing on a limited number of areas, leading to ideal conditions for long-term growth. See Michael Bruno, "Development Issues in a Changing World: New

Lessons, Old Debates, Open Questions," in *Proceedings*, 1995, *supra*, note 9; and World Bank 1996, *supra*, note 9.

11 Jeffrey Sachs, "Growth in Africa: It can be done," *The Economist* (June 29, 1996) 19; and World Bank 1996, *supra*, note 9.

12 World Bank 1996, *supra*, note 9.

13 *Ibid*.; and Balcerowicz and Gelb, 1995, *supra*, note 9.

14 R. J. Daniels and R. Howse, "Reforming the Reform Process: A Critique of Proposals for Privatization in Central and Eastern Europe," *New York University Journal of International Law and Politics*, 25 (1992): 27.

15 Josef Brada, "Privatization Is Transition — Or Is It?" *Journal of Economic Perspectives*, 10 (spring 1996): 67.

16 Andrzej Rapaczynski, "The Roles of the State and the Market in Establishing Property Rights," *Journal of Economic Perspectives*, Spring 1996; World Bank, 1996, *supra*, note 9.

17 *Ibid*.

18 For example, Trebilcock reports that de facto central bank independence is found to have a positive effect on growth in LDCs. Trebilcock 1996, *supra*, note 5.

19 *Ibid*.

20 *Ibid*.

21 Ronald J. Daniels and Michael J. Trebilcock, "The Future of Ontario Hydro: A Review of Structural and Regulatory Options," in *Ontario Hydro at the Millennium*, edited by Ronald J. Daniels, Kingston, Ontario: McGill–Queen's University Press, 1996.

22 Rapaczynski, 1996, *supra*, note 16.

23 *Ibid*.

24 Andrei Shleifer, "Establishing Property Rights," in *Proceedings* 1995, *supra*, note 9. See also Olson, 1996, *supra*, note 1; and Bruno, 1995, *supra*, note 10.

25 Rapaczynski, 1996, *supra*, note 16.

26 *Ibid*.

27 Trebilcock, 1996, *supra*, note 5.

28 World Bank, 1996, *supra*, note 9.

29 *Ibid*.

30 *Ibid*.

31 *Ibid*.; and Peter Norman, "A 60 Point Strategy for Putting People Back to Work," *Financial Times*, June 8, 1994.

32 World Bank, 1996, *supra*, note 9.

33 *Ibid*.

34 *Ibid*.

35 *Ibid*.

36 *Ibid*.

37 Ibid.; Rapaczynski, 1996, *supra*, note 16; and Oliver E. Williamson, "The Institutions and Governance of Economic Development and Reform," in *Proceedings* 1995, *supra*, note 9.

38 World Bank, 1996, *supra*, note 9.

39 *The Economist* (May 25, 1994) 24.

40 *Ibid*.

41 Bruno, 1996, *supra*, note 10.

42 See Trebilcock, 1996, *supra*, note 5; World Bank, 1996, *supra*, note 9; and Sachs, 1996, *supra*, note 11.

43 Rapaczynski, 1996, *supra*, note 9.

44 Sachs, 1996, *supra*, note 11.

45 World Bank, 1996, *supra*, note 9.

46 Peter Lusztig, Randall Morck and Bernard Schwab, *Managerial Finance in a Canadian Setting*, 5th edition, Toronto: John Wiley and Sons, 1994.

47 *Ibid*.

48 Bruce G. Doern, *Fairer Play: Canadian Competition Policy Institutions in a Global Market*, Toronto: C. D. Howe Institute, 1995.

49 Jeffrey MacIntosh, *Legal and Institutional Barriers to Financing Innovative Enterprise in Canada*, Kingston, Ontario: Queen's University, 1994. The importance of a strong IPR cannot be overstated. In 1989, the OECD reported that a strong IPR would encourage international trade, support the innovation process, encourage technology transfers, promote foreign and domestic investment, improve prospects for competition, and have a positive impact on national creativity. See OECD, "Economic Arguments, 1989," *Lex Mundi Intellectual Property World Desk Reference*, Boston: Kluwer Law and Taxation Publisher, 1994.

50 Trade secrets are matters for provincial law and are governed by the common law.

51 John Gero and Kathleen Lannan, "Trade and Innovation: Unilateralism vs. Multilateralism," *Canada–United States Law Journal*, 21 (1995): 81.

52 *Ibid*.

53 In 1975, the trade sector accounted for 47.2 percent of Canada's GDP. By 1993–95, its share had risen to 54.0 percent, a 14.4 percent increase. Between 1975 and 1995, the average level of taxation on international trade as a percentage of exports plus imports had fallen from 3.7 to 1.2 percent, a very substantial 67.6 percent decrease. However, much of the trade growth has concentrated on the United States. In 1970, the United States accounted for 64.8 percent of Canada's exports and 71.1 percent of our imports. By 1991, the United States accounted for over three quarters of Canada's exports (75.4 percent), although imports decreased to 63.7 percent. In spite of U.S. concentration, the dollar volume of trade has grown in other regions, including a 74 percent increase in exports to China and 1,105 percent increase in imports from that country between 1982 and 1992. Trade with NICs has also increased, with exports rising by 224 percent to Taiwan, 218 percent to Hong Kong and 107 percent to Singapore over the same period. Overall, the dollar volume of Canada's exports has increased by 88.7 percent from 1982 to 1992, while imports have increased by 120 percent. See Gero and Lannan, *supra*, note 51; Fidel Ezeala-Harrison, "Canada's Global Competitiveness Challenge: Trade Performance versus Total Factor Productivity Measures," *American Journal of Economy and Society*, 54, 1 (1995): 57–78; and James Gwartney, Robert Lawson and Walter Block, *Economic Freedom of the World 1975–1995*, Vancouver: Fraser Institute, 1996.

54 For a detailed discussion of the parallel course of these variables, see Daniel Schwanen, "Securing Market Access: Canada's Trade Agenda for the 1990s," C. D. Howe Institute, *Commentary*, 32 (July 1991); and Michael Trebilcock and Robert Howse, *The Regulation of International Trade*, New York: Routledge, 1995.

55 *Ibid*.

56 Robert Howse, "Securing the Canadian Economic Union," C. D. Howe Institute, *Commentary*, 81 (June 1996).

57 *Ibid*.

58 The United States preferred S. 301 instead of the GATT procedure as the latter required non-discriminatory action by the United States. *Ibid*. See also Gero and Lannan, 1995, *supra*, note 51.

59 Because of this debt overhang, for the foreseeable future governments will be required to focus on finding principled ways to allocate the provision of a range of previously unrestricted public goods and services. The belief that governments are capable of providing the same or, even more fancifully, higher levels of public services through efficiency improvements is untenable. As my colleague, Michael Trebilcock, has argued, ultimately fiscal pressures will require governments not simply to select between different means of producing the same levels of goods and services but actually to choose between different goods and services in a way that shows sensitivity to different underlying goals. Michael J. Trebilcock, *The Prospects for Reinventing Government*, Ottawa: Renouf Publishing, 1994.

60 Michael Trebilcock, Robert Howse and Ron Daniels, "Do Institutions Matter? A Comparative Pathology of the HIV-Infected Blood Tragedy," *Virginia Law Review*, 82, 8 (1996): 1407.

61 Brown, David M. and Lazar, Fred, *Free to Move: Strengthening the Canadian Economic Union*, Toronto: C. D. Howe Institute, 1992.

62 P. Milgrom and J. Roberts, *Economics, Organization and Management*, Englewood Cliffs, NJ: Prentice Hall, 1992.

63 Steven Kelman, *Making Public Policy: A Hopeful View of American Government*, New York: Basic Books, 1987. See also Robert Reich, *The Power of Public Ideas*, Cambridge, Mass.: Ballinger, 1988.

64 John D. Donahue, *The Privatization Decision: Public Ends, Private Means*, New York: Basic Books, 1989.

65 Ekos Research Associates for the Public Policy Forum, 1995.

66 Gunderson, Morley and Riddell, W. Craig, *Public and Private Sector Wages: A Comparison*, Kingston, Ontario: School of Policy Studies, Queen's University, 1995.

67 W. T. Stanbury, "The Extent of Privatization in Canada: 1970–1994," paper presented at the Canadian Law and Economics Association meeting, September 1994, p. 21.

68 Douglas S. West, *The Privatization of Liquor Retailing in Alberta*, Centre for the Study of State and Market, Faculty of Law, University of Toronto, 1996. It should, however, be noted that overall levels of employment increased significantly after privatization.

69 Daniels and Howse, 1992, *supra*, note 14.

70 Adolf A. Berle, Jr. and Gardiner D. Means, *The Modern Corporation and Private Property*, New York: Macmillan, 1933.

71 See Donahue, 1989, *supra*, note 64.

72 For a clever analysis of this issue, see Nolan Bederman and Michael J. Trebilcock, "Unsolicited Bids for Government Functions." Centre for the Study of State and Market, Faculty of Law, University of Toronto, WPS 19, 1996.

73 Ronald Daniels and Michael Trebilcock, "Private Provision of Public Infrastructure: An Organizational Analysis of the Next Privatization Frontier," *University of Toronto Law Journal*, 46 (1996): 375.

74 C. Wolf, "A Theory of Nonmarket Failure: Framework for Implementation Analysis," *Journal of Law and Economics* (1979): 22.

75 For example, a 1990 survey by the Canadian Labour Market and Productivity Centre reported that only 42 percent of business leaders and 60 percent of labour believed

that elementary and secondary schools played an adequate role in educating and training Canadians. Also, Canadian Education Association polls between 1979 and 1990 found fewer people rating the school system as "very good." Economic Council of Canada, *Education and Training in Canada*, Ottawa: Canada Communications Group, 1992.

76 *Ibid*.

77 J. Chubb and T. Moe, *Politics, Markets and America's Schools*, Washington (D.C.): Brookings Institution, 1990.

78 These issues are explored in greater detail in M. Trebilcock and R. Daniels, "Choice of Policy Instruments in the Provision of Public Infrastructure," in *Infrastructure and Competitiveness*, edited by J. Mintz and R. Preston, Kingston, Ontario: John Deutsch Institute for the Study of Economic Policy, 1993.

79 See the discussion on the merits of various modes of public participation in rules-making processes in *Responsibility and Responsiveness: Final Report of the* Ontario *Task Force on Securities Regulation*, Toronto: Queen's Printer for Ontario, June 1994.

80 Nicholas Barr, "Economic Theory and the Welfare State: A Survey and Interpretation," *Journal of Economic Literature*, 30 (June 1992): 741. The argument for state-supplied health insurance is as follows: because of adverse selection problems, low-risk insureds will withdraw from insurance pooling arrangements when their actuarially expected losses are less than the average loss of the group that is reflected in the premium charged. The consequence is a steady stream of premium increases (reflecting the increased average expected loss of the remaining pool of insureds) and further withdrawals by the lowest-risk insureds. State-mandated insurance pooling corrects for this problem because it limits the exit options for low-risk insureds.

81 For a review of the economic literature on flat rate–based deposit insurance premiums, see R. Daniels, "Breaking the Logjam: Proposals for Moving Beyond the Equals Approach," *Canadian Business Law Journal*, 22 (1993). See also J. Carr, G. F. Mathewson and N. C. Quigley, "Ensuring Failure," in *Observation 36*, Toronto: C. D. Howe Institute, 1994.

82 Thomas Courchene, *Social Canada in the Millennium: Reform Imperatives and Restructuring Principles*, Toronto: C. D. Howe Institute, 1994.

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84 R. Daniels, "Stakeholders and Takeovers: Can Contractarianism be Compassionate?" *University of Toronto Law Journal*, 43 (1993): 315.

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