

DEMOCRACY AND THE FUTURE OF NATIONS

Challenges for disadvantaged women and minorities

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SINGLE MARKET WITH MULTIPLE STATES

The major question of this volume is whether nation-states have a future. There is no doubt that nations will have a future, but the characteristics of nation-states will undoubtedly change. Whether or not these political entities remain states as well as nations will depend on how much each can retain of its own self-determination; some will succeed at this more than others.' The imperatives of new international trade agreements provide the impetus for the proliferation of minimalist states whose major function for the international regime will be to control their own people to ensure that they conform to international trade rules. This role for the state coincides with the other functions of the state associated with Reagan and Thatcherite neo-liberal policies, functions which do not go much beyond the administration of justice and, most importantly, the protection of property. Even the traditional justifications for state formation, which in Canada involved moving the mail and national defence, are being gradually abandoned.

The objective of this chapter is to show how the ways in which the free trade agreements Canada has recently entered into will negatively affect equality-seeking groups' democratic options? The situation in Canada is not unique, but it can be instructive for other countries because Canada has experienced the consequences of trade liberalization for a longer time than have most other countries.

Just as women and other disadvantaged groups have begun to understand the ways in which they might be influential in redistributing power, the locus of power has changed and, once again, these people are excluded. So, as women, aboriginals and people from ethnic minorities gain seats in Parliament, are appointed to various courts and are more visible in public forums, these bodies become less and less responsible for the decisions which shape the boundaries for economic and social existence. Just as these groups begin

to understand how to manoeuvre and be effective within a nation, the nation itself loses its effectiveness and the target for political action is nebulous.

The equality granting and redistributive aspects of modern 'democracy' have been elusive, but there has, nevertheless, been more power accorded to traditionally disadvantaged groups in recent years. This power has been recognized through public discourse which has had a subtle effect on changing the collective subconscious in thinking about rights. However qualified one must always be in making claims for success, there does seem to be a recognition publicly that women and minorities should not be excluded from democratic organization. While these groups are still denied formal power, they have managed to assert themselves frequently enough to be granted some type of recognition as political actors.³ And however critical these groups have been of the state and its actions, they none the less understand the significance of collective action for being able to effect redistributive activities through social policy. That is, there is a recognition of the necessity to use political power to bring about a social order which would not occur without state intervention.⁴ This activity is guided by objectives and goals which do not coincide with the objectives of profit-maximization on the market. My contention is that these equality seeking groups will have considerably fewer avenues for influencing social policy under the new free trade agreements and that the redistributive features which now exist will contract with the withering of nation-state power and the absence of supranational institutions capable of enacting redistributive social policy.

Two important changes in the relationship between the state and economic activity have occurred with the new trade agreements, and both severely limit the ability of social policy to temper, or modify, the actions of international capital. First, through the FTA and NAFTA, a single market has been created which places corporate behaviour in the advantageous position of being beyond the regulatory control of a single state. As has been frequently noted by free trade critics, these trading agreements grant unprecedented rights to corporations with the main aim being the facilitation of capital mobility. At the international level, there are new institutions of governance, but the scope of these institutions is limited to market-supporting activities: they deal primarily with issues relating to ensuring capital mobility.⁵ So unlike the nation-state, which over time has developed institutions (through social policy) to temper the harshest consequences of the 'free market', in the international context of the FTA and NAFTA there is no institutional mechanism through which this can occur. We are then left with a single market without a single state to discipline it.

Second, the institutions to balance or control market power remain at the national level, but ultimately with much less power than they had when the market and the state occupied one space, i.e. within a nation. The limits of nation-state power over market activity in these circumstances are in some

way obvious. As nations compete for the favours of capital, the ability to exert any type of discipline over corporate behaviour comes into direct conflict with the increased mobility of capital. Unless all nations, party to an agreement, behave in the same way with regard to corporate discipline, the corporations will not be disciplined at all. Any one nation, by acting on its own, will be disadvantaged by behaving in a stricter way. Since there is no mechanism for the nations to act collectively, individual state action is critically weakened. But this new advantage for capital is not only generated through the market mechanism itself. Equally important are the measures which are explicitly expressed in the trade agreements which place strict limits on the future development of social policy within nations. These are measures which specifically circumscribe state action while at the same time create greater freedom for the private sector.

TRADE AGREEMENT LIMITS ON SOCIAL POLICY

The limits imposed on social policy by the trade agreements undermine the redistributive goals of disadvantaged groups. While the objectives and practices of the welfare state have often been in conflict with the objectives of equality-seeking groups, the very existence of mechanisms to collectively provide services did, in many cases, provide the very tools which were necessary to facilitate the politics of redistribution. It is a mistake to think that because the welfare state retained many of the features of the patriarchal state that it has not been critical to the development of democratic participation for disadvantaged groups. It is also a mistake to hope that the equality-seeking activity it engendered can survive and can be re-adapted to fit other state forms, particularly ones with even more market-oriented structures. As the very strength of national and sub-national governments is eroded through trade agreements, the location for political action for equality-seeking groups evaporates and so, too, does the possibility for democratic participation for disadvantaged groups.

Supremacy of free trade in Canada

The Canada-US Free Trade Agreement was enacted in Canada in a way which set this legislation above all other laws in Canada, including legislation enacted in the past, as well as that which governments may wish to enact in the future. So all Canadian legislation has to conform to the requirements of a trade deal. The US legislation implementing free trade did not elevate this law above all others. For them, it was just another piece of trade legislation which could be constrained by other American laws.

The supremacy of this law has profound implications for Canada as a nation-state. While the media, business and government tend to focus on regulatory aspects of trade in the free trade agreements, these laws are about

much more than trade. They are primarily about establishing what constitutes appropriate economic and social activity to support a specific idea about how an economy should function. The implications of this are significant because it establishes one method of economic and social development as supreme, what we commonly know as the 'unfettered market'. This means that the kinds of debates that have occurred in Canada about the function of the economic system, and the concomitant distinctions which have fostered political parties with different goals and methods of achieving them, will be extinguished. No longer will there be much point to arguing, for example, whether the public or private sector would be a superior vehicle for certain types of action or whether supply management is the best way to deal with agricultural problems. All the crucial debates on these issues will be removed from decision-making at the national level and will be argued (if at all) through the supranational agencies set up by the agreements. As ideological issues are removed from national politics, the homogenization of political parties will be secured, the substantive debates about the ideas of how the country should proceed will vanish and more and more elections will be fought over political trivia.

The criticism of free trade in Canada has tended to focus on how the economic regulations will constrain government from acting on behalf of people's economic interests.⁶ Many of the ways which Canada has organized its economy are distinct and reflect the ways in which its people have had to deal with unique conditions. The list of Canadian practices which must change to meet new international trade requirements is huge: to accommodate NAFTA alone, twenty-seven major pieces of legislation needed to be amended totalling 4,300 pages of text. All of this occurred without public scrutiny of legislative changes.⁷ The problem now is that many of the things which made sense in the context of life in this country are seen as inappropriate ways of behaving and become illegal if trade is to continue.⁸ These economic consequences have been explained often and will not be dealt with in this chapter, although they are undoubtedly important in limiting democratic decision-making.

NAFTA and the public sector

NAFTA is distinct from other trade agreements in that it goes much further in securing the rights of capital than does any other trade document and significantly reduces the ability of nation-states to use the public sector for redistributive action. This last feature ultimately may be the most significant in curtailing democratic decision-making within nations. The new requirements for the public sector, while unique in NAFTA and going much further than anything ever attempted in any trade agreement, are an extension of the logic of the ideology of the 'unfettered market' and are likely to be precedent-setting elements for new trade agreements in the future.⁹

NAFTA is an economic document in which the characteristics of the private sector are treated as the norm while public institutions are treated as anomalies. This anomalous position is reflected in the language of the document: anything in the public sector is referred to as a 'non-conforming measure'.¹⁰ The underlying assumption of NAFTA is that the less government, the better, although certain kinds of activities are specifically named as functions which no nation can be prevented from providing, as long as the way in which this is done is consistent with the provisions of the agreement. These include functions such as 'law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care'.¹¹ Because public institutions are affected throughout this complex agreement, it will take some time to fully understand all of the implications of providing these services in ways which are 'not inconsistent' with the agreement.¹² Nevertheless, there are certain ways in which the public sector is required to behave which are startling departures from any previous treatment in a trade agreement. The most notable is the requirement that commercial objectives be the principle under which government monopolies perform their functions. The departure from current practice is remarkable because it requires that public programmes be re-shaped to reflect a commercial approach to service provision.

The agreement specifically requires that 'any government monopoly' (this is the term for any state-run programme) must act 'solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale'.¹³ 'In accordance with commercial considerations' is defined as behaviour which is 'consistent with normal business practices of privately-held enterprises in the relevant business or industry'.¹⁴ This provision constrains any public corporation, or agency, from acting as an agent of government economic or social policy which is inconsistent with profit-maximizing behaviour, a requirement which ultimately undermines the logic of public institutions themselves, i.e. that they provide goods and services in a way which the private sector cannot or would not."

This NAFTA chapter dealing with state enterprises and monopolies purports to include all competition policy; however, the contrast between the treatment of public and private monopoly action could not be more distinct. The first two paragraphs under the Competition Law dealing with the private sector, talk about the importance of co-operation between the parties to enforce competition law in the free trade area, but this amounts to nothing more than consulting 'from time to time about the effectiveness of measures undertaken by each Party'. While the anti-competitive market activities of the public sector are proscribed, those of the private sector are merely suggested: this section specifically states that NAFTA cannot be used to pursue a dispute with regard to private anti-competition action.' The

contrast in treatment between the public and private highlights the distinction between the NAFTA institutions which are created to support private market activity and institutions which are absent with regard to its regulation.

The privatization ratchet

NAFTA permits existing public institutions to continue, but it will be extremely difficult, if not impossible, for new public programmes to be established. Technically, instituting new programmes is permissible and the agreement provides exemptions for future 'non-conforming measures' to various programmes which otherwise would be in contravention of national treatment and other types of requirements." However, initiating a new programme would be virtually impossible because of hurdles, unprecedented in international trade agreements which the FTA and NAFTA have established to place the public sector's action under scrutiny. NAFTA includes a series of clauses (replicating those which exist in the FTA) which would place the new programme in a position of being scrutinized by trading partners and if any of the partners' corporate interests are threatened, could be ultimately prohibited from being instituted. Before any new programme begins, the trade agreements require that written notification to trading partners must be given. Then any international business interests that would be affected would have recourse to seek redress through dispute settlement granted in an annex on Nullification and Impairment.¹⁹ As in the FTA, NAFTA requires that any shift in activity from the private to the public sector would require the payment of compensation for all losses to the private sector.²⁰ This would make the cost of any new programme in Canada prohibitive, considering the extent of US corporate involvement in the Canadian economy. Any government in the future that wanted to establish, for example, a national disabilities scheme or a dental programme, would have to pay out huge sums to international insurance providers. This provision in the FTA has already had the effect of prohibiting the Ontario government under the New Democratic Party from carrying through on its election promise to provide public auto insurance in that province. The auto insurers, who largely represented US corporations, demanded either compensation, which would have made the public programme absurdly expensive, or withdrawal of this action. The Ontario government decided to withdraw its proposal after considerable pressure from the US. This compensation requirement would not share the same impact in the US as it does in Canada because Canadian service providers are virtually non-existent in the US market, while US service providers occupy considerable space in Canada.

The FTA was the first international trade agreement to provide a comprehensive treatment of cross-border trade in services and this has been extended to NAFTA. This gives international service providers the right of establishment and the right of national treatment, something which used to be

applied only to trade in goods. The right of establishment gives a corporation the right to operate in the country without having to adhere to specific performance requirements. The right of national treatment does not require that a firm actually be located in the country to bid on service contracts or to conduct any type of business on a 'non-discriminatory' basis. As in the FTA, this feature of NAFTA greatly expands the scope of cross-border trade in services since any service firm need not invest in either a physical presence or local employment in order to be able to sell services in the Canadian market." In the past, the limits of technology restricted service provision to firms located in a specific area, but since space is no longer a barrier to many types of service provision, this right of national treatment in services increases the competition for private sector providers. But even more importantly, it greatly enhances the stakes for international service providers to make incursions into the public sector's provision of services and to challenge any new programmes which could restrict the private market for service delivery.

There is some illusion of protection for existing public services from the cross-border trade in services in that normal activities in the public sector are allowed to continue, but they can do so as long as they are performed 'in a manner which is not inconsistent' with the agreement." But even should the commercial rules which now govern services be met, there are still limits to what can be legitimately part of the public sector. Everything at the federal level which is to be exempt from the agreement's understanding of what will be covered in cross-border trade in services has been specifically listed in an annex to the agreement.²³ Governments at the provincial and state levels have until January 1996 to list all of their regulations or legislation to be exempt from cross-border rules.²⁴ Anything that is not explicitly named will fall into the 'open for transnational competition' category or it must be amended to conform to NAFTA requirements. As any trade negotiator knows, listing exemptions in this way limits protection: something crucial could be overlooked, or even more importantly a new need may arise in the future. Also, there is the possibility that a local or provincial government may deliberately exclude programmes it wants to privatize. Because of the nature of the trade agreements, most specifically the enormous difficulty of moving anything from the private to the public arena, these programmes could not be re-instituted by another government in the future.

All of these measures, with regard to services, produce what some commentators refer to as a 'ratchet-effect', a mechanism that allows government action to move in one direction (towards privatization) and never to reverse. In other words, an initially protected government service can become more open to transnational bidding, but government is prevented from moving it back to the protected category. It is important to realize that this does not apply only to whole programmes that are privatized, but to any part of public services that are contracted out as well. Once a service has been opened up to tendering and given out, then a decision to bring this service

'in-house' would be subject to the same challenge as a new programme. The practical implications of this are enormous, particularly in times of economic restraint when many aspects of government services are being privatized as ways of dealing with government debt. If this privatization turns out to be less advantageous than expected, there will be no turning back to previous conditions. Privatization involves much more than shifting something from the public to the private sector; rather, it involves a whole transformation of the activity." The shift from collective to individual responsibility for services changes their very character and the nature of their delivery. The result is less a redistributive system than one which 'targets' benefits: only those who can afford help will have access to the private sector and only those who are perceived as the 'deserving poor' can expect benefits from the state.

Democracy and the state in Canada

These new constraints on the actions of the public sector and the restrictions on initiating expansive types of social institutions can be made effective through two different routes. Governments could be forced to comply through direct challenge by way of the trade disputes settlement mechanisms. But matters would likely only get to this stage should a government (most likely a provincial or state government) directly want to challenge the right of the federal government to make laws over its jurisdiction. This would have been possible, for example, in Ontario's dilemma over auto insurance. However, few states or provinces will have the stamina required to proceed with this type of challenge. Rather, self-censorship will be the most likely route for enforcement of the new controls over state action. Because the political elites currently in power essentially concur with the notion that the less state the better, they will have little taste for the effort it would take to stand up to these provisions. As a result, no public exposure will occur to dramatize the ways in which the free trade agreements impinge on the ability of the public sector to meet its obligations to people. Any programme will be simply presented as 'too costly', without proper explanation of why it will cost too much, which is exactly what happened when Ontario withdrew its proposal for public auto insurance. The trade agreements, as originators of restrictions on social policy, recede from view.

The kinds of policies which are in place now were put there through a democratic process, however imperfect. Whenever anyone wanted to change these practices, usually some kind of public debate needed to take place and Parliament was forced to deal with the interests of various people who would be affected by the changes. Now, economic and social policy can be challenged through international trade law. These are laws that are interpreted and enforced by people on a plethora of supranational panels who are not elected and who do not have to respond to people, since individuals within a country have no access to them. The public can neither influence them nor

can it determine who will hold these positions. Whenever decisions are made that people cannot influence, democratic rights are in jeopardy. As more and more is occurring in the international arena, where the public have no advocates and no representatives, people's ability to influence their own conditions is diminished.

The shift in relationship between the state and the economic system as a result of the free trade agreements is changing the very concept of citizenship. Citizenship for individuals has been restricted to nations at the same time that world citizenship has been awarded and confined to corporations. With citizenship for individuals limited to nations, corporations then become the only citizens with full rights of mobility, participation and representation. Some attempts are being made by public sector groups to make the various supranational panels established by the FTA and NAFTA more accessible. A US group, Public Citizen, in its brief to the United States Trade Representative on NAFTA's implementing procedures, called for open meetings and open records of decisions for all NAFTA-related committees and working groups.²⁶ This has not occurred, and the public has no ability to present its position on issues or even to have access to records so that the reasoning behind various positions, or indeed, even how the various cases were argued, can be understood. The secrecy of the supranational decision-making groups violates fundamental democratic rights for citizens.

Women, minorities and the disadvantaged are confronting a very nasty political reality: this is the experience of even less democratic participation than in the past. These groups will not have less formal participation in government bodies because it is probable that this form of representation will increase as it did in the last federal election in Canada, but real decision-making power will continue to elude these groups even if political struggles, which give the illusion that genuine power struggles are occurring, persist. Probably the best example of this is the feminist campaign against the Canadian constitutional changes proposed through the Charlottetown Accord. (This Accord was one in a series of attempts to bring Quebec into the Canadian Constitution.) One of the major reasons women's groups rejected this Accord was because it would destroy the federal system of providing and initiating social programmes and would shift the Canadian social system more towards the US model. Women's groups felt strongly that the ability of the federal government to deal with social issues was crucial for redistributive initiatives nationally. On this issue women, through the National Action Committee on the Status of Women, were critical to the debate. The rational and impassioned arguments which were presented had considerable public influence, especially for the progressive people of this country who had been inclined to go along with the Accord because it had been supported by all the provinces, all three political parties, business and labour. But women could, and did, give thoughtful people reasons to vote against it.

The intent here is not to imply that this action was misguided or ineffectual

- equality-seeking groups must respond whenever their rights are threatened and usually are not in a position to pick their issues. My point, rather, is that activities like this can be overwhelmed by the conditions of the trade deals. There can be an illusion of effectiveness on national issues when in reality the issues themselves are superseded in international forums. In this case, the privatization of social programmes, which was perceived as a likely outcome of the decentralization of powers through the Charlottetown Accord, is propelled forward by the trade deals. When the over-arching legislation, which affects social policy, is the various forms of free trade agreements, efforts to influence legislation at the national level will ultimately require more effort than the results will justify. The future is very likely to generate a state which, surprisingly, considering its past resistance, will be increasingly tolerant of minority rights under formal manifestations of democracy. Even radical departures from past experience, such as self-rule for aboriginal peoples, could emerge in the near future. But this will occur only because these formal rights are not perceived as a real threat to international competition, and the most significant areas of power for any group will be contained by the requirements of formal trade agreements.

THE FUTURE: IS A CHANGE IN THE TRAJECTORY POSSIBLE?

There are possibilities in the future for the role of the state as a protector of different interests of people throughout the world, but states which assume this role will do so only through intense pressure from the people within them. Only through a true democratization of the state itself so that it reflects its people's will can there be any hope for the development of social policy which can exert any discipline on the market at the international level. The likelihood of this happening in Canada appears remote now. This is not because people have acquiesced to the future which has been mapped out by its governments and business leaders. In Canada, the protests against the FTA and NAFTA had the effect of making people acquainted with the problems of free trade, but they were ineffectual in being able either to stop the agreements or change their most damaging aspects even though the majority have been opposed to them. When political rights are whittled away bit by bit, and when the structures of control are so removed from visibility as they have been through these trade agreements, the possibilities for the dramatic kinds of political action which would be necessary to change the trajectory of the global markets evaporate. For many in Canada, it is difficult to see what the options are now and how the might of international corporations could be harnessed. Our most persistent dilemma is that it does not seem to make much sense to continue to argue for national sovereignty when the state itself does not respond to popular sovereignty.

The implementation of NAFTA and the signing of the GATT are not the

end of a process. The signing of the agreement was not done with public support and it continues to receive little support. We, in Canada, may be forced to learn to live with free trade, but for a good portion of the world the confrontation is just beginning. Trade liberalization is identified with colonialism, for good reason. Therefore, it is not surprising that poorer countries are experiencing considerable opposition to it. In October 1993, more than half a million farmers staged a day-long rally in Bangalore, India, in what was the largest public display anywhere in the world against the new proposals for the ordering of world production through the General Agreement on Tariffs and Trade. Earlier in the year, 1,000 farmers had broken into the main office of Cargill in Bangalore and made a bonfire of its office documents. In March, 200,000 farmers staged a demonstration in Delhi and in July farmers burned down a Cargill seed plant under construction.²⁷ On NAFTA's inauguration date, 1 January 1994, peasants in the state of Chiapas, Mexico, seized a city and three towns through armed conflict which resulted in over a hundred people dead. They were protesting against NAFTA, which they characterized as 'the death certificate for the indigenous people of Mexico'.²⁸ Since then, the collapse of the peso and the dramatic decrease in real incomes have made the trade agreement's threat to the survival of some even more pressing.

The strongest protests against the new trade agreements are about food, for very good reasons: the poorest people on this earth lose everything when they lose their ability to feed themselves.²⁹ The new trade agreements designed rules to benefit the highly capital- and energy-intensive agricultural industries in countries where its production, at most, involved only single-digit proportions of the labour force. These rules are devastating for countries where huge proportions of the population rely on farming for their subsistence. Intellectual property rights and agricultural subsidies mean very different things for people whose average life span is twenty years less than that in the industrial world and whose incomes are one-twentieth of those of people in industrialized nations. These international trade agreements are immensely long, complicated documents with many intricate details and will take years for those of us who study them to understand the implications of all of their ramifications. But the poor people of this world, many of whom are illiterate, understand what it means when they can no longer rely on the state to protect them from the encroachment of industrialized agriculture and when they will have to pay these huge companies royalties simply to plant the seeds they have saved from previous harvests. For those critics in industrialized countries who have objected to the principles of the new trade agreements, it is a way of life, a standard of living, sovereignty and democratic integrity which is threatened. For the people of countries like India and Mexico it is more fundamental: a report on the GATT prepared by a panel of judges in India described India's acquiescence to the new trade rules as 'an abdication by the State in respect of its obligations to protect the people's right to life'.³⁰

The protests of these people may be a political avenue for change and a

rallying point for nations which can afford neither to withdraw from the international trade agreements nor to abide by their rules. Certainly, in this round of GATT, the poor countries did not mobilize to see that their interests were protected. But since together they account for about 30 per cent of world trade, any collective move by developing countries could be effective.

The targets for political activity for people in wealthy countries are more nebulous and so far have tended to take two predominant forms. The first focuses on abuses of human rights in other countries and calls on the extension of universal human rights principles through trade pressures.³¹ Through this approach, increased trade is presented as a positive force in the humanizing of dictatorial regimes. Even the uprising in Chiapas has been presented as an occurrence which, because of trade, has gained world attention and, as a result, can bring about changes to these injustices. The undemocratic features of poor countries become the target for action rather than the limits on democracy in wealthy ones which are a result of the new trade agreements. Trade and democracy are interrelated, as is often claimed, but not necessarily with the happy consequences that the supporters of trade liberalization assert. It is the traditional elites in poor countries which engage in trade liberalization who are the beneficiaries, not most people.

This is related to, but is distinct from, the second approach, which is the continued pressure from groups within wealthier countries for international standards on labour and the environment. The target here, as well, is conditions in poor countries, only in this case it is corporate behaviour in poor countries which receives attention. The supplemental agreements in NAFTA on these issues in no way can be considered international standards because they merely require the enforcement of existing laws within each country. The agreements on labour and the environment do not represent any type of supranational institution-building in order to standardize the controls on international business. The substance of each country's domestic law is not affected by these supplemental agreements. But even the meagre requirements to enforce each country's own laws have met with resistance from business groups. In the discussion of the proposed procedures for implementing the labour side accord, US trade associations objected to public hearings as being a part of the process because they are 'too confrontational' and, in particular, did not want any companies party to a complaint named in any public record."

The supplemental agreements on labour and the environment in NAFTA are ineffective and the best hope, as expressed by many environmentalists and trade unionists, is to view these supplemental agreements as stepping-stones for more substantial international regulations in the future. The models most often cited for this are the kinds of social policies which have been associated with the European Community's economic unification. There is much about this approach which gives hope to social activists who see an urgent need both for some focus for international popular sector groups in working together and as a logical way to place international markets under political control.

But as much as one can have sympathy with these objectives, this route will not bring about the kinds of institutions which are necessary to deal with the major power shift which has occurred with free trade.

First, the likelihood of achieving anything like the European agreement with social issues in North America is remote, primarily because of the extreme disparity between economic and social levels in the countries party to NAFTA. And these disparities are likely to be accentuated as other Latin American, and possibly Asian, countries become part of the agreements. Any kind of code of conduct for transnational corporations would run up against the very logic of capital mobility. There is no doubt that these corporations behave less honourably in poor countries than in wealthy. But it is also true that in many places it is the international corporations which provide better wages and working conditions than do indigenous ones. Any code of conduct, were it to be universally applied to rich and poor countries, would have the effect of eliminating disadvantaged countries from international competition.

Even more significant than the political difficulties associated with a unified social policy among wildly disparate nations is the question about the effectiveness of the goal. Wolfgang Streeck has made the important point that whatever has occurred in the European Community is not a step towards a European welfare state and the political control of markets. He argues that the few changes which have resulted in 'harmonizing up' have been exceptional occurrences which will not continue simply because the institutions have not been established to make market discipline legally binding on all partners. Since the Social Charter is not binding, it has 'no consequences for social policy and industrial relations at the national level' and, therefore, is not a building block for the development of international institutions to provide state-like control over capital." Nation-states, in juxtaposition to international corporations, are slow to develop social institutions to humanize the most brutal aspects of 'restructuring'. This approach, the piece-by-piece building of supranational social policy from extremely modest beginnings, is much too long term to be effective in the immediate face of the FTA, NAFTA and GATT.

This does not mean that nothing can be done, but that the solution has much less to do with proscribing behaviour with regard to labour and the environment than in permitting different economic policies and forms of economic and social organization to exist within nation-states. Since uniformity in these issues is the heart of the free trade agreements, there can be no way in which poor countries can compete internationally if they must both abide by the employment and environmental standards of wealthy countries and maintain the same neo-liberal systems without any ways of circumventing the impossible through collective, public policies. The real task for the future is to find ways to democratize nations so that they, on behalf of people, can insist on tolerance for variation in social and economic policy between nations.

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NOTES

- 1 For a discussion of how nations become states, see Charles Taylor, 'Why Do Nations Have to Become States?', in *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism* (Montreal and Kingston: McGill-Queen's University Press, 1993), pp. 40-58.
- 2 These are the Canada-US Free Trade Agreement (FTA) which went into effect on 1 January 1989, and the North American Free Trade Agreement (NAFTA) which went into effect 1 January 1994.
- 3 I am thinking of organizations in Canada like the National Action Committee on the Status of Women and the Assembly of First Nations who have established that they are legitimate advocates for the rights of women and aboriginal peoples and have held crucial roles in constitutional decisions.
- 4 The very essence of social policy is 'to supersede, supplement or modify operations

- of the economic system in order to achieve results which the economic system would not achieve on its own' (T. H. Marshall, as cited by Wolfgang Streeck, 'From Market-Making to State-Building? Reflections on the Political Economy of European Social Policy'. Paper presented at the 89th Annual Meeting of the American Sociological Association, August 1993).
- 5 The exceptions to this in the NAFTA agreement are the agencies established to deal with the labour and environmental supplemental agreements. But these supplemental agreements merely require the enforcement of existing laws within each nation so do not represent new constraints on market action at the international level.
 - 6 Ian Robinson has written a particularly interesting monograph on the constraints of state regulatory powers under free trade in *North American Trade as if Democracy Mattered: What's Wrong with NAFTA and What are the Alternatives?* (Ottawa and Washington: Canadian Center for Policy Alternatives and the International Labor Rights Education and Research Fund, 1993).
 - 7 In contrast to normal consultative procedures for major pieces of legislative changes, the enabling legislation for NAFTA did not involve hearings outside Ottawa and an exceptionally short time limit was set on the debates in Parliament.
 - 8 So, for example, while it made sense for us to ration our use of resources by requiring that a certain proportion of them be used in this country to make things here, this kind of behaviour is not allowed under GATT, the FTA and NAFTA. We can no longer require that a certain proportion of our fish or minerals actually be processed in Canada. Other things deemed unfair are our wheat pools, the transportation system which takes grain from the prairies to the coast, our supply management agricultural systems and many regional development programmes. The intellectual property provisions in the agreements affect our culture and the ability to provide protection from the monopoly control of life forms by large international corporations.
 - 9 The precedence of the FTA was significant for US negotiations in the Uruguay Round of GATT, particularly with regard to the successful inclusion of services and intellectual property rights. For a further discussion of this, see Marjorie Griffin Cohen, *Free Trade and the Future of Women's Work: Manufacturing and Service Industries* (Toronto: Garamond, 1988), ch. 2.
 - 10 NAFTA, Ch. 11, Article 1108: 1(a).
 - 11 NAFTA, Ch. 11, Article 1101: 4.
 - 12 The provision of public services is affected in various chapters throughout the agreement, including chapters of Investment (11), Competition Policy, Monopolies and State Enterprises (15), Intellectual Property (6), Cross-Border Trade in Services (12), Telecommunications (13), Financial Services (14).
 - 13 NAFTA, Ch. 15, Article 1502: 3(b).
 - 14 NAFTA, Ch. 15, Article 1505.
 - 15 For example, it will affect the use in Canada of having public Crown Corporations achieve non-commercial goals such as the conservation of resources or economic development in specific regions. If equality goals for either individuals or regions counter what is perceived as proper 'commercial considerations', they could be challenged. Likewise, any employment enhancement schemes initiated and financed by government corporations (should any government in the future want to pursue a full-employment policy) would almost certainly be considered beyond 'commercial considerations'. Other types of government initiatives could be challenged such as public investment funds. These now exist in the province of Quebec and are viewed with interest elsewhere because of the impact they have had on stimulating investment in that province. No new fund could have goals which (a) focused on regional development; (b) favoured nationally or provincially based business and (c) promoted local employment as the currently established funds do.

- 16 NAFTA, Ch. 15, Article 1501.
- 17 NAFTA, Ch. 15, Article 1501: 3.
- 18 The reservations for future measures are stated in NAFTA, Annex II.
- 19 NAFTA, Ch. 20, Article 2004.
- 20 FTA, Ch. 16, Article 1605; NAFTA, Ch. 11, Article 1110.
- 21 FTA, Ch. 14, Article 1402: 8; NAFTA, Ch. 12, Article 1205.
- 22 This repeats the permission for public services that was granted in Ch. 11 on investment. Ch. 12 on Cross-Border Trade in Services (Article 1201: 3(d)) says 'Nothing in this chapter shall be construed to prevent a Party from providing a service or performing a function, such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care, in a manner that is not inconsistent with this chapter.'
- 23 Ch. 12, Article 1206: 2. For a list of existing practices which Canada has deemed exempt from cross-border trade rules, see NAFTA, Annex I.
- 24 Financial services were treated differently and each province had to list 'any existing non-conforming measure' at the provincial level by the date NAFTA went into force. This was a haphazard process and few provinces had a clear notion of what the implications of this would be, something which, in fact, turned out to be fairly complex. Often just deciding what to identify as needing exemption was a highly political decision. For example, in British Columbia (BC), the province had to decide whether to try to have health insurance exempted from financial services requirements. If health services were named in this instance, it would mean that BC acknowledged that NAFTA had jurisdiction in this area and it would need to argue for an exemption. On the other hand, it had the option of claiming that exemption was not necessary because this issue was not something appropriate to financial services. Oddly, forty-four US states had an additional year to figure out what non-conforming financial measures they wanted to maintain (NAFTA, Ch. 14, Article 1409: 1).
- 25 As Janine Brodie says, they 'become differently encoded, constructed and regulated'. *Politics on the Boundaries: Restructuring and the Canadian Women's Movement*, Eighth Annual Robarts Lecture, York University, North York, Ontario, March 1994.
- 26 'Consumer Advocacy Group Appeals for Democratic NAFTA Procedures', *Inside NAFTA 1*: 2, 26 January 1994, p. 13.
- 27 Martin Khor, *Third World Network Features*, 1 November 1993.
- 28 'Death Toll Rises in Mexico Battle', *Toronto Star*, 3 January 1994.
- 29 The popular sector, even in some wealthy countries, recognizes the dangers of threats to food production. For example, the women's movement in Japan has demonstrated in favour of higher rice prices in order to support farmers' protests against imported cheap rice. Of course, in the Western press this is depicted as a ridiculous political action, but these women understand the relationship between domestic economic security and food production.
- 30 'Former Judges Warn Against Dunkel Package', *Indian Express*, Kochi, 16 December 1993.
- 31 See, for example, Edward Broadbent, 'Human Rights Under Siege from Tyranny of World Trade', *Toronto Star*, 26 April 1994.
- 32 'U.S. NAFTA Labor Rules too Focused on Disputes, Trade Groups Say', *Inside NAFTA 1*: 4, 23 February 1994, p. 6.
- 33 Streeck, op. cit. Streeck points out that the final version of the Social Charter is weaker than the existing ILO conventions and the European Social Charter passed in 1961 by the Council of Europe.