Comparing Medically Assisted Dying and Cannabis in Canada:

Policy Innovation and Incubation in the Federation

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Abstract: This article analyzes the implementation of policies for Medical Assistance in Dying (MAID) and Cannabis in Canada in order to assess how well the federalism is working. The analysis addresses two connected research questions: "Does the source of policy change matter?" and second, "Are policy solutions limited or broadened by having multiple institutions and governments and different citizen communities involved?" To answer the these questions, the paper uses three themes from Weaver's synthesizing analysis of the corpus of Martha Derthick's work on federalism and policy implementation. The paper concludes by suggesting that the answers to the research questions present troubling findings for the operation of the Canadian federal system, findings consistent with Derthick's observations.

Introduction

Two significant social policy changes that have occurred in Canada since the election of the Trudeau Liberal government appear quite different in substance and form and yet together offer striking insights into the operation of the Canadian federal system. One of the first challenges faced by the newly elected Liberal government was the implementation of medically assistance in dying (MAID) under strict deadlines imposed by the Supreme Court of Canada. A second challenge, the implementation of the Liberal election promise to decriminalize the use and possession of cannabis, seemed less urgent and more within the control of government choice and decision-making. While the former issue was placed on the federal government agenda by a prominent Supreme Court of Canada decision, *Carter vs the Queen*, striking down the criminal code provisions prohibiting assisting suicide to the extent that they interfered with the medical practice of hastening death under restrictive conditions, the issue of the legalization of cannabis arose from the election promise but was foreshadowed by the Supreme Court decision (R v. Smith 2015) striking down the criminal code provisions to the extent that they impeded medical use of cannabis and by a series of superior court decisions relating to the cultivation and use of cannabis. Both policies were undertaken by the federal government with significant ramifications for provincial and territorial jurisdiction. Both issues involve controversial and sensitive areas of social policy that engage moral claims and have the potential to delegitimize government if they are mishandled.

An examination of how these two contentious policies are being implemented across jurisdictions provides insights into how well the federal and provincial and territorial orders of government are working together. The federal government has developed a national framework with national standards and principles while the provinces have responded with their own regulatory and legislative schemes. In both cases, the governments are struggling to deliver coherent, efficient and effective services. How well are they doing? If the policy promise of the Canadian federation is to encourage policy innovation and incubation across federal, provincial and territorial jurisdictions within a framework of national equity and common principles that serve citizen interests, is this promise being realised in the implementation of

the cannabis and medical assistance in dying (MAID) policy areas? More specifically, this paper answers two research questions:

1. Does the source of policy change matter? Does the motivating force affect the timing, nature of negotiations, range of solutions considered and final legislative form and substance for policies implemented across jurisdictional lines?

2. Are policy solutions limited or broadened by having multiple institutions and governments and different citizen organizations and communities involved? Are citizen interests being well-served?

To answer these questions and assess their implications for the federal promise, the paper uses criteria derived from Kent Weaver's analysis of the corpus of Martha Derthick's work on federalism and policy innovation. According to Weaver, Derthick understood the nuances policymaking in a federal system and that "policy is the result of an interplay of complex and constantly evolving forces" (Weaver 2017, 188). He then identifies seven recurring themes in her work that help us better understand the implementation of policies in a federation and suggests some important additions for this task. This paper uses three of the seven themes as a means of ordering the comparison of the two policies rather than offering a comparative narrative of the two policies. This thematic and selective comparison is followed by a discussion relating the findings to the two research questions and a conclusion that links those answers to the federal promise.

Three Themes on Policy Implementation in Federal Systems

1. *Policymaking involves the interaction of enduring yet evolving patterns of constraints and actions of individuals (Structure and Agency)*

A recurring and important theme in Derthick's work is understanding how "policy is made by the actions of individuals *navigating* through these institutional constraints, not simply being buffeted by them" according to Weaver (2017, 189). He notes the key role that Presidents and senior officials played in initiating social security and Medicaid policies in the US. Derthick refers to Lyndon Johnson and his executive staff as "men who wanted results in a hurry" (Derthick 1972, 4; Weaver 2017, 189). She is not espousing a "great man" theory of history but rather exposing the way in which individuals can influence the course of events by using the institutional tools available to them and speed up or slow down policy developments. This insight into the development of two key policies in the US also sheds light on the power of the Presidency when it is focussed on achieving particular results in the federation.

The policies of cannabis and MAID provide an interesting contrast in understanding the potential impact of prominent policy-makers and especially the Prime Minister on policy implementation in the Canadian federation. In the case of cannabis, Justin Trudeau repeatedly had made an election commitment to the decriminalization of cannabis despite it being a policy that directly engages key areas of provincial jurisdiction. He clearly stated "The Liberal Party is

committed to legalizing and regulating marijuana," “right away,” within “a year or two” in its mandate (Elliott 2015). He named it as a priority for his government given the failure of the past policy of criminalization. As a result, he was personally identified with the policy. Like Lyndon Johnson, he “wanted results in a hurry,” understanding the short time limit governments have to achieve major policy changes. As a highly popular and newly elected Prime Minister, Trudeau also understood he had to act quickly if he were to get the provincial and territorial premiers onside and acting within their jurisdictions. The issue has been one of the top priorities when he has met with the Premiers through to 2018.

By 2017, he was being called on this commitment to cannabis legalization and needed to act. He complied with his own two year deadline by introducing the bill in April 2017. Although he left the introduction of the bill in the House of Commons up to his Minister of Public Safety - the venerated and veteran politician - Ralph Goodale, to his point-man on the policy - former police chief and MP - Bill Blair, and to his Minister of Justice and Indigenous leader Jody Wilson-Raybould, the Prime Minster made public appearances with Blair to explain and defend the legislation (Kirkup 2017; VICE 2017). In late 2017 and early 2018, Trudeau equivocated on the July 2018 deadline but after he received criticism for vacillating, he reaffirmed the deadline in repeated public statements (Hatzitolios 2017; Canadian Press 2018; Courtenay 2018). Given that the policy is a priority of the Prime Minister, it has moved through the policy process quickly, demonstrating the navigational abilities of a Prime Minister in meeting institutional constraints both within the federal government and across jurisdictional lines.

However, the course of actions also reveals the limitations of individual agency, especially in a federal system. Trudeau could not act alone. He used the institutional mechanisms and processes in place to ensure that the policy would move forward expeditiously. Given that the introduction of cannabis is controversial and contentious, he carefully chose the lead spokespersons to add legitimacy to the legislation. Ralph Goodale is a well-respected political veteran from Saskatchewan who understands the policy process and how to get things done. Bill Blair, as a former police chief from Ontario, could speak to the policing issues with authority, reassuring Canadians who were less enamored of the bill that the legal issues would be handled well. Judy Wilson-Raybould, as a lawyer and as an Indigenous woman from British Columbia, reinforced the impression that the legal aspects would be well-handled, the concerns of Indigenous leaders would be considered, and children would not be made more vulnerable under the new regime. To assist in obtaining provincial support, in addition to having key Ministers from different provinces lead the process, Trudeau early on enlisted the assistance of Premier Kathleen Wynne and the Ontario government, a government which has moved very quickly on its legislative and regulatory framework for the implementation of the cannabis policy. She was also a strong voice within the Council of Federation as the provinces and territories discussed the policy change. The optics and people were important in gaining broader public support and provincial and territorial acceptance for a controversial policy.

Similarly, the Trudeau government created a high profile Task Force on Cannabis Legalization and Regulation to conduct public hearings and advise on a policy framework based on the evidence. The Task Force was well-constructed to represent key vantage points and provide

legitimacy to the policy. The Chair was a former highly-regarded Liberal Cabinet Minister from Alberta, Anne MacLellan, and the Vice-Chair was an Associate Professor from McGill with extensive research experience and publications on cannabis. The Task Force report was well-researched and carefully written to reflect public opinion and provide clear direction to the government on its legislation (Canada 2016). This added credence to the federal government legislation which conformed closely to the advice of the Task Force.

In sum, Trudeau identified the issue as a priority for his government, made it a personal priority, and then navigated the institutional waters using the tools available to him to ensure it would succeed. He has proven adept but the policy is not in the clear. Currently in the Senate, the policy is meeting with some challenges over the time frame. The Manitoba government has made a submission as recent as May 22 requesting more time to implement the policy properly. This submission echoes the November 2017 report of Canada Premiers' (P/TWG 2017). The structure of the federation, may cause unwanted delays for the Trudeau time frame as the province react in the ways discussed below.

In contrast, MAID was an orphan policy. Neither Former Prime Minister Stephen Harper nor the current Prime Minister Justin Trudeau were strong proponents of the introduction of physician assisted dying in Canada. The issue of the right to medical assistance in dying burst onto the federal and provincial legislative agenda following the 2015 SCC decision in *Carter v. Canada*.[1] In that case, Justice Lynn Smith of the British Columbia Supreme Court had accepted the argument that both the issue and Canada had evolved since *Rodriguez* and struck down section 241 of the *Criminal Code of Canada* to the extent that it prohibited medically assisted suicide but suspended her decision for one year to give Parliament time to find a legislative solution to this difficult issue. Justice Smith provided policymakers with detailed guidance for a legislative scheme to allow medically assisted dying but left the final form of the legislation up to the legislators. The SCC agreed with Justice Smith that the sections of the criminal code that prohibited assisted suicide were overbroad and in conflict with the *Canadian Charter of Rights and Freedoms*. The SCC made its own recommendations for legalizing medically assisted suicide while retaining the criminal code provisions for aiding and abetting suicide in other circumstances. Like Smith, the SCC recognized that a complex regulatory regime would be required to implement the changes and suggested that the courts would need to demonstrate some deference regarding the scheme adopted by Parliament and the provincial legislatures. The SCC gave the federal government a year's grace in determining the proper policy response to the decision.

As the clock ticked towards the February 2016 deadline, the federal Conservative government dithered, striking a parliamentary panel to study the issue and handing off the issue to the new government. After the federal election, the newly elected Trudeau Liberal government dragged its feet, applying to the court for a six month extension of the deadline. In response, the SCC granted a four month extension to allow for time lost due to the election but held the governments' feet to the fire of implementation. In the final months of this revised deadline, the Liberal government introduced legislation into the House of Commons where it passed just

[1] *Carter v. Canada (Attorney General)* 2012 BCSC 886, 287C.C.C. (3d) 1, 261 C.R.R. (2d) 1.

before the deadline expired. At the provincial level, only Quebec had enacted a legislative scheme of medically assisted suicide by treating the issue as a health concern. The other provinces and territories jointly sponsored a report on medically assisted suicide and have since followed the federal legislation with regulatory and other legislative and non-legislative actions. The governments were forced to act to pre-empt a policy vacuum and possible regulatory chaos as a consequence of the SCC striking down the criminal code provisions.

Unlike the cannabis legislation, MAID progressed through the policy channels to implementation without a singular champion. The federal government and provinces were both driven to respond by court edict and worked simultaneously to ensure the policy came into effect. Had cannabis not had Trudeau as its advocate and had MAID not been forced onto the government agenda by the SCC decision, neither might have been driven forward. While a champion, then, is not an absolute requirement for a policy to advance since institutional imperatives may drive the issue forward, it may be critical if a policy is contentious and not on the government agenda at the federal and subnational level. Cannabis, however, does lay bare the power of the Prime Minister to deliver policy in the federation expediently if not effectively as the examination of the implementation challenges in the next section suggests.

2. *Policymakers do not pay sufficient attention to implementation challenges. The challenges are compounded where public interactions are a key component of organizations' responsibilities.*

Weaver confirms Derthick's general finding that policymakers do not pay sufficient attention to implementation challenges when designing policies and this can have "disastrous consequences for government agencies and the public. Driven by relatively short windows of opportunity provided by the election cycle, politicians will rush policies and "frequently are unable to resolve conflicts over policy or distribution, or simply unable to figure the best way to resolve a difficult set of trade-offs" (Weaver 2017, 189). As a result, they use vague language or delay resolution of particular problems. The consequences of this inattention include "unclear policy direction in statutes, poorly thought-out deadlines and timelines, brinksmanship between the federal government and the states, and coordination difficulties between agencies and levels of government" (Weaver 2017, 190). Weaver suggests that these implementation problems have not improved over time.

The cases of cannabis and MAID lay confirm that these implementation problems are just as evident in the Canadian federal system. In both cases, the federal government has been operating on relatively short timelines in the design of the policies, with cannabis by the choice of the Prime Minister and in MAID by the deadline imposed by the SCC.

The federal legislation on cannabis is still under scrutiny in the Senate of Canada at the time of writing. However, there have been ongoing implementation concerns with the [roposed legislation. In July 2017, the Premiers announced a Provincial-Territorial Working Group on Cannabis Legalization (P/TWG) to "identify common considerations and best practices to

cannabis legalization and regulation, guided by the objectives of reducing harm, protecting public safety, and reducing illicit activity" (Canada's Premiers 2017a). In the same press release, they noted issues that need to be resolved including:

- Road Safety and enforcement mechanisms
- Preparation and training for distribution network
- Taxation arrangements and cost coverage
- Public education campaigns
- Supply, demand and relationship to black market

The press release also noted that the premiers "are concerned the federal timeline may be unrealistic, given the issues listed."

The November Report of the Working Group was comprehensive and informative. It reviewed key areas of cooperation and difference among the governments, especially between the federal and provincial and territorial governments. The Working Group Report noted that substantial progress had been made by the provinces and territories towards developing their own policy frameworks but "the extent to which these systems will be fully implemented and operational (as opposed to scaling up incrementally) by July 2018 remains uncertain" (P/TWG 2017, 42). The report continued on to observe that discussion between the provinces and territories were ongoing but in "those areas, there are certain key issues where meaningful progress has not been made, additional federal resources may need to be committed, or change in the proposed federal approach may be required." In the next paragraph, it stated that there are "several areas where more concerted, high level advocacy efforts by Premiers and Ministers may be warranted in order to achieve resolution by July 2018" including:

- Clarity on the supply and demand of licit cannabis with potential measures in place by April 1, 2018;
- A formal tracking system to enable regulation and monitoring of cannabis in place by April 1, 2018;
- An approach to taxation that more accurately reflects the costs of implementation borne by the two levels of government rather than the 50/50 splits proposed by the federal government;
- A federal commitment to address resource requirements for drug-impaired driving;
- Greater F/P/T collaboration on public education and awareness activities;
- Assurances that concerns with the federal approach to ticketable offences are addressed before the bill is passed.

The report went into detail regarding the need for a reliable, coordinated full seed to sale tracking system, the policing concerns including drug-impaired driving and home cultivation under the federal approach, the unworkability of the ticketing system for judicial records, and the problems with a lack of supply of cannabis at implementation. Public education and awareness remained key concerns given the ambiguity of research on the health effects of

cannabis, particularly for youth (McEachern 2017). In December 2017, the Premiers reiterated these concerns (Canada's Premiers 2017). Clearly progress was at best slow.

The federal government responded through the working groups to many of these concerns. It allocated new funds to ensure the provinces and territories had more resources for implementation, education and awareness activities, policing costs, and a larger share (75%) of tax revenues gleaned through cannabis sales (Finance Canada 2018, 177-178). However, despite these inducements, in late May 2018 serious concerns remained outstanding with the federal legislation. For example, on May 22, Manitoba announced that it had made a submission to the Senate Committee on Social Affairs, Science and Technology expressing its view that "outstanding concerns must be addressed prior to legalization coming into effect" including:

- Health and safety risks associated with a short implementation timeframe;
- Needed road safety measures
- Resource pressures from added law enforcement
- A reliable and resourced seed to sale tracking system
- The time required to prepare retail operations
- Coordination and resourcing of public education

While it noted that the province has taken a leadership role and made significant progress in preparing for legalization, it questioned the possibility for responsible management under the federally imposed time pressures (Manitoba 2018a, 2018b). As the Prime Minister's deadline approaches, serious implementation problems require address.

As in the case of MAID discussed below, implementation is varied and uneven across the country despite federal guidelines and principles. For example, while most provinces will restrict recreational cannabis usage to 19 and over, Alberta and Quebec will allow its use at 18. Most jurisdictions will have public outlets run by their liquor commissions or boards. Quebec will have a government-run agency that is new. BC, Nunavut and Yukon will have a mix of public and private retailers. Alberta, Saskatchewan and Manitoba will have private retailers and Newfoundland will have a public system and then phase in private retail (Alam 2018; Tencer 2018). The role of municipalities and their share of revenues will vary. Quebec is contesting the four plant per household allowance in the federal legislation as too difficult to enforce. Provincial policing and justice guidelines will also be subject to provincial discretion, and so on. While this allows for diversity and customization to meet provincial differences, it may also lead to legal and political challenges and uncertainty in consumer minds. Coordinating responsible government agencies has prove to be complex and fraught with difficulties both within each jurisdiction as well as across the country as the lists of outstanding issues attest. The implementation designs are influenced by provincial and territorial discussions and experiences with alcohol and tobacco but much remains uncertain.

In sum, the hurried timeline of the federal government has left a number of serious questions around implementation unanswered. Coordination has been difficult and federal-provincial brinksmanship is in evidence. The health and safety concerns could have disastrous or at least serious consequences for provincial actors implementing the policies. The story of MAID bears some striking similarities. But unlike MAID, the final deadline for implementation is uncertain. The most likely scenario is that the deadline will turn out to be a "stretch deadline" with implementation delays and phase-in strategies.

In the rush to implement a MAID policy in Canada, the federal government designed a policy framework that closely adhered to the tolerance of the public for this new practice. For example, the nomenclature changed from "assisted suicide" or "medically assisted suicide" to "medically assisted dying" or "physician-assisted dying". This renaming distinguishes the practice from prohibited acts of assisting a suicide, and adds legitimacy to the new practice by explicitly associating it with the respected medical community and with "dying" rather than the more loaded term "suicide" (Brock 2012, 2013). The practice can only be exercised under very strict conditions that include a grievous and irremediable condition identified by two medical practitioners, a foreseeable death and clear consent by the service recipient (Brock 2017).

However, there were serious implementation problems that were not resolved. First and foremost, the legislation did not fully address three areas of difficulty: advanced directives authorizing MAID; requests made by mature minors; and, requests made where the underlying cause is a mental illness. The legislation was silent on the first and last of these items. While the federal legislation specified that a qualified person had to be 18 years of age, this age is deemed arbitrary and is at variance with the SCC language, the provincial and territorial report on MAID, and the legislation that had been enacted in Quebec prior to the federal legislation (Brock 2017). These three areas were contentious and sensitive areas in public opinion causing public support to vary depending on how they were handled (Brock 2012, 2013). Rather than resolve them, the legislation provided for independent review of these three issues to commence 180 days after implementation of the legislation (Canada, 2018a). The federal government has announced that the Council of Canadian Academies will conduct the reviews and they are on schedule to report by end of 2018. In the interim, many Canadians in these situations will be deprived of equal access to the service.

Second, there were significant points of unsettlement that may bode future problems. One omission concerned public funding. The federal legislation does not go as far as the P/T Report in guaranteeing access to the service for persons in remote and rural communities through virtual medical consultations for example, or to persons who wish to avail themselves of the service in another jurisdiction, and does not mandate provincial and territorial funding (P/T Report, 25). These matters venture into provincial jurisdiction and they may all be dealt with as part of a future intergovernmental accord regarding implementation and provision of the service or by provincial and territorial regulations as seems to be happening now.

Another problem concerns the definition of a medical condition rendering one eligible for medical assistance in dying. The SCC deliberately kept its definition of grievous and irremediable narrowed

to the facts of the *Carter* case, did not specify that death must be foreseeable, and did not address other circumstances. In contrast, the federal legislation specifies that the disease be "serious and incurable," the patient be "in an advanced state of irreversible decline," and that "natural death has become reasonably foreseeable." The Quebec legislation is closer to the federal legislative language by requiring an "incurable illness" and that the person be "in an advanced state of irreversible decline." The P/T Report is closer to the language of the Supreme Court decision, stating that the phrase "grievous and irremediable medical condition" should not be defined, and instead recommending provincial regulators develop decision-making tools to assist the medical practitioners reviewing requests for assisted death (34-5). The language of a foreseeable death is vague and open to interpretation. These differences may render federal and Quebec legislation and provincial regulations vulnerable to legal challenges by introducing distinctions among citizens desiring the service (Canadian Association for Community Living 2016; Pothier 2016; Harding 2016; Downie 2016). It certainly complicates the practice for practitioners. While discretion is necessary in providing such an important service, contours around that discretion provide more certainty to practitioners and limits legal vulnerabilities. As Derthick observed, vague language instead of clear guidelines becomes the answer when the centre lacks the knowledge of frontline challenges.

An important associated inconsistency concerns the legal responsibilities and indemnification of medical practitioners providing the service. The federal legislation, consistent with the SCC decision and P/T Report, protects medical practitioners who aid in a suicide under the defined conditions from criminal prosecution even if their belief that the legislated conditions are met is an error but is made in good faith as endorsed by the Canadian Medical Association (CMA 2016). However, the two legislative schemes do not protect practitioners acting in good faith from civil and disciplinary proceedings. Furthermore, the federal requirement that any assistance in dying "be provided with reasonable knowledge, care and skill and in accordance with any applicable provincial laws, rules or standards" (s. 241.2(7)) may render practitioners subject to criminal prosecution for breaches of standards of care or policies set by a regulatory body (CMPA 2016, 1-2). The uncertainty caused by this lack of protection is compounded by the varying regulatory and reporting requirements enacted in each jurisdiction as well as the differences in terminology in the federal and Quebec legislation. Medical practitioners may be reluctant to engage in counselling or to provide the service if they feel legally vulnerable owing to the limited indemnification, differing regulations or the prospect of being named in a law suit that challenges restrictions imposed or not imposed in one jurisdiction compared with another one. As the P/T Report observed, many stakeholders said that if health professionals feel they are exposed to liability, they will be much less likely to provide physician-assisted dying" (2016, 26). Certainly this has been the case in Quebec where medical practitioners have already questioned the ability of Commissioners overseeing the practice to review their judgment when those people have never performed a medical aid in dying (Kirkey, 2017). By allowing jurisdictional variations and not providing adequate legal protections for medical practitioners in this critical area of health policy, the federal compromise may be embedding serious faults in the legislated practice of medical aid in dying.

While the federal legislation was being implemented, provinces and territories were struggling to ensure that their regulations and legislations were in place as well. The success of the federal legislation is contingent upon its promise for "a consistent approach to medical assistance in dying across Canada" (Bill C-14, Preamble). The Preamble links this goal to the Canada Health Act and its core principles (public administration, comprehensiveness, universality, portability and accessibility) and indicates that provincial jurisdiction for healthcare must be respected. The P/T Report outlines the need for a pan-Canadian approach much more elaborately (2016, 18-27). However, successful implementation may ultimately depend upon achieving a FPT accord for medical aid in dying with consistent provincial regulations; a difficult task given provincial differences and sensibilities over healthcare, and the added costs to strained provincial healthcare budgets. While the P/T Report lays the foundation for such an accord, actual intergovernmental negotiations are always difficult especially concerning funding and standards (Lazar et al. 2013). No accord has been struck at the time of writing.

Some significant progress in resolving differences across jurisdictions has been made. The federal government website acknowledges the role of provinces and territories and provides links to their webpages on medical assistance in dying. It states that the federal guidelines are not binding on the provinces and that they may create additional laws or rules provided they do not conflict with the Criminal Code. All provinces and territories have webpages with information on medically assisted dying. All jurisdictions have created care coordination services to guide citizens through the process of gaining information. All of the sites reference palliative care options, some prominently. However, there is no consistent approach to linking medical aid in dying to palliative and end-of-life care across the jurisdictions. Only Quebec has legislated for a full spectrum of end-of-life services including doctor-assisted suicide. In contrast, the Nunavut approach emphasizes palliative care. Manitoba stresses a compassionate and respectful approach to end of life decisions. The federal government has not advanced in its intention to link all end-of-life services. Again, no F/P/T accord to ensure equity and efficiency has been reached. Brinksmanship may be inferred from this stand-off.

3. *Federal overreach in objectives and intrusiveness produces a state reaction equally offensive.*

Flowing from the second theme as well as a theme not discussed here that federalism is subject to change and characterized by few fixed principles, is a third theme identified by Weaver. Derthick has a "disdain" for "overreaching by the federal government in both objectives and intrusiveness" (Weaver 2017, 191). He quotes from her at length:

> Separation from local politics and administration … gives federal policy makers licence to formulate ideal, innovative objectives, because the political and administrative burdens of the innovations they conceive will be borne locally. They are free, much freer than local officials, to stand publicly for progress and high principle. Not having ordinarily to decide concrete cases, they do not have to make the compromises that

such cases require. The farther removed they are from the cases, the more principled they are able to be.

The policy at the ground level falls farther away from this ideal over time because the federal government lacks the resources and knowledge to achieve their ideal objectives. The federal government designs more prescriptive solutions that prompt perverse responses by the subnational governments, resentful of the intrusion into their affairs and resetting of local priorities. While federalism should provide a convenient check on the federal government, too often state and local officials respond by "gaming" the rules and regulations or treating the federal government as an "overturned Brinks truck."

The legalization of cannabis and MAID both intruded significantly into provincial jurisdiction. Even though the initial act of the federal government was to change federal law, the criminal code, the change held important implications for provincial headings of power and skewed provincial priorities. In the case of MAID, the provision of that service took precedence over the expansion of hospice and palliative care. Although both were promised as part of the suite of legislative reforms, little coordinated action has occurred. Quebec remains the sole jurisdiction which links the full end-of-life services (Brock 2017). Provinces are now required to submit data on the operation of MAID to the federal government, but the data has been incomplete and uneven across jurisdictions, giving rise to speculation that data might be gamed. Speculation continues that medically assisted deaths are continuing without conforming to the rules set by Ottawa. And, as mentioned above, practitioner concerns with liability and equitable services have not been addressed.

The provinces have been consistent in their careful emphasis on jurisdictional responsibilities. In the case of cannabis, provincial priorities in health, law enforcement, record keeping, public safety are affected. Listen to the Premiers: "provincial and territorial governments are undertaking much of the work associated with cannabis legalization, and are incurring significant costs as a direct result of the federal government's decision" (Canada's Premiers 2017a). Websites and provincial reports clearly outline jurisdictional responsibilities (See for example, Alberta 2018).[2] And, as noted in the earlier sections, the provinces imply that the federal government timeline and understanding of the issue are unrealistic. The federal government made a commitment to a high level policy change without the requisite knowledge of the challenges it posed to police, courts, health workers and educators. In both cases, the provinces have asserted their control over their jurisdiction. In the case of MAID, Quebec has been the most vigilant of provincial jurisdiction restricting federal intervention to addressing a "legitimate public health evil" in its policy framework.

To some extent the provinces have responded in the way Derthick preferred in both cases. They have worked collaboratively with the federal government constructing joint working groups and other bodies to oversee implementation of both policies. In so doing, they have provided their expertise and knowledge to the federal government in fashioning a more realistic policy

[2] It should be noted that the federal website does as well for both MAID and Cannabis.

framework in both cases by pointing out the ramifications of change for courts, police, health services and other matters. In the case of cannabis, they have repeatedly contested the federal timeline as unrealistic. While provinces have been quieter on the costs of medically assisted dying perhaps due to studies projecting it to be a cost savings or cost-neutral in health care (Trachtenberg ad Mann, 2017), the provinces and territories have been adamant with respect to cannabis, stating repeatedly that the federal government must cover the costs of legalization, regulation and reporting of cannabis use. The P/TWG report repeatedly mentions the costs associated with cannabis legalization and the federal responsibility for them: "It is incumbent on the federal government, which initiated legalization and established the intended timeline, to invest the appropriate resources to support implementation" (P/TWG 2017, 42). Despite the increase in federal monies for legalization in the federal budget, the recent Manitoba submission to the Senate repeated the need for federal attention to resourcing pressures. An overturned Brinks truck indeed.

In sum, while the federal and provincial governments work collaboratively and independently to implement MAID and Cannabis, they also validate Derthick's concern that federal overreach produces a state (provincial) response that is equally offensive. Federal policymaking and politics constitute a messy business. In the process, citizens interests may not be served in the best or even a preferred way.

Reflections on MAID and Cannabis and the Federation

Using three of the themes that Weaver identified in Derthick's works on federalism and policy implementation to analyze the legalization of cannabis and medical assistance in dying, yields key insights into the operation of Canadian federalism. The first theme looked at the interaction of agency and structure. The case of cannabis showed that individuals can influence the course of events in the federation by navigating through the institutional constraints. Prime Minister Trudeau made cannabis legalization his priority and then used the institutional mechanisms available to him to drive the policy ahead. His determination to legalise cannabis immediately engaged the provinces since they did not want a policy vacuum in their jurisdictions. However, Prime Minister Trudeau also created the necessary alliances at the provincial level to assist in achieving some policy coherence. The dynamic between agency and structure is unveiled in the process.

By contrast, MAID was an orphan policy with no champion at the senior executive level. It reveals how the institutional imperatives can force federal, provincial and territorial compliance. While both Prime Ministers could slow down the policy, in the end they were powerless against the hard deadline set by the Supreme Court of Canada. Once a policy is mandated, institutional processes take over. Governments act when forced by the threat of a loss of control over their jurisdiction and the SCC is a strong motivator.

It was in the second theme that the implementation challenges of policymaking in a federal system were more directly explored. Weaver outlines Derthick's concern that insufficient

attention to implementation challenges in policy design and change can have serious and even disastrous consequences for the public and government agencies. In the case of cannabis, a high level decision by the federal government to make a sweeping policy has had tremendous repercussions for the provinces and territories. Provincial and territorial priorities have been skewed as they have scrambled to adjust to the timeframe set by the federal government. Key issues have gone unresolved as the provinces and territories have repeatedly made clear to the federal government. Interagency has been difficult to coordinate within jurisdictions let alone across them. Training and education remain elusive priorities. The result is brinksmanship looming in the Senate hearings and the possibility of a stretch deadline on implementation. Given that cannabis legalization engages health and safety issues, the consequences may be seen as serious if not disastrous.

MAID is in effect. However, the policy history clearly identifies unresolved issues that have important implications for the public and government agencies. Three key areas remain under study affecting the ability of people to provide advanced directives on end of life care, mature minors to seek a dignified death, and people with serious mental health issues to seek this form of relief. Practitioners have limited liability protection and unclear guidelines to serve them in critical decisions. Access is uneven across the country. Agencies struggle to coordinate the service. No F/P/T accord to provide full end of life care or even more coordination in the service has been despite the promise in the federal legislative preamble. As the issues recedes from the immediate agenda, full interjurisdictional cooperation remains elusive. Canada muddles through in a life-ending area of policy.

Under Weaver's third theme in Derthick's work, the positive story embedded in the two previous discussions emerges. Two major social policy changes are occuring in a federation which naturally gravitates towards incrementalism. The federal, provincial and territorial governments have engaged in extensive cooperation to improve the policy framework and achieve implementation in both cases. Although whether the cannabis deadline will be met remains uncertain, the implementation of legalized cannabis is certain at some point, even if a stretch deadline is the result.

However, there is a cloud to this silver lining. Federal overreach into provincial jurisdiction has provoked provincial opportunism. On the federal side, lack of knowledge and policy levers has resulted in important flaws in the policy frameworks. On the provincial side, resentment over federal intrusiveness has caused some degree of brinksmanship with Manitoba recently calling for a revised timeline and Quebec calling for reconsideration of key parts of the federal policy plan including home cultivation and ticketing of offences for possession and sharing. Provinces have been holding the federal government hostage by demanding a fairer share of tax revenues and more resourcing of the costs incurred by "the federal decision." Intergovernmental relations suffer as tension mount.

From these findings, we can answer our two research questions.

1. Does the source of policy change matter? Does the motivating force affect the timing, nature of negotiations, range of solutions considered and final legislative form and substance for policies implemented across jurisdictional lines?

Yes, the source of policy change matters but only to a certain extent. While the Supreme Court of Canada could hold the governments to its imposed deadline with more certainty than the Prime Minister can, both cases reveal that either source of change can achieve implementation albeit with the possibility of a stretch deadline in the case of a Prime Ministerial edict. Negotiations may be less fraught with posturing and demands for federal resourcing where the deadline is external to the actors but this would need to be verified with further study. The range of solutions is affected by the source of policy change. When the Supreme Court provides policy guidelines, the governments largely adhere to them with concessions to public opinion. In the case of a Prime Ministerial decision, the form and nature of the policy is affected by intergovernmental negotiations through working groups and other consultations and will vary across provinces within fairly broad guidelines. However, in both cases policy coordination and coherence may be affected and difficult to achieve.

2. Are policy solutions limited or broadened by having multiple institutions and governments and different citizen organizations and communities involved?

Policy solutions are broadened by having multiple governments, citizen organizations and institutions involved. The range of options under the implementation of MAID was narrowed by the Supreme Court decision. The service is restricted to provision by medical practitioners under strictly limited conditions. In contrast, the options available for cannabis are much greater as the creation of a variety of public, public and private, and private retail systems indicate. This provides a space for policy incubation and experimentation across the country. Discussions on law enforcement and health concerns seem to be creating the basis for best practices to be identified. However, time will reveal if this is indeed the case.

Conclusion

The promise of the Canadian federation is to encourage policy incubation and innovation across federal, provincial and territorial jurisdictions within a framework of national equity and common principles that ultimately serve citizen needs. Intergovernmental cooperation and discussion on cannabis and MAID indicate that the governments are struggling to live up to this promise. But in these two areas that touch citizen lives so deeply, so much more needs to be done for the ideal, or even the acceptable, to be achieved.

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