

THE FEDERAL SPENDING POWER IN

never, especially medicare, have become part of

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to legislate" (GOC 1969a, p.4).³ How can the federal government spend money outside its areas

the Provinces, or are raised by them in accordance with the special Powers

leading constitutional authority, has suggested that the federal spending power, "*a power which is nowhere explicit in the Constitution Act of 1867,*"

One Consolidated Revenue Fund, to be appropriated for the Public Service of Canada in the Manner and subject to the

make laws."⁴ For another example, Section 96 of the Australian Constitution permits the federal government to "grant financial assistance to any State on such terms and conditions as the Parliament thinks fit."⁵ If the Canadian

power as "uncertain" (1981, p.1).⁶ We must now turn our attention to the judicial interpretations of the spending power.

Judicial Interpretation of the Federal Spending Power

the Employment and Social Insurance Act case of 1937. In that case, the Judicial Committee of the Privy Council rejected the federal government's contention that a spending power can be inferred

In light of the JCPC's decision, the federal government tried to defend the spending power as "gift-giving."¹² Peter Hogg suggests that there might be some merit to this position:

In sum, the federal parliament has declared its right to spend money in areas outside its jurisdiction, although the constitution does not provide the federal government the authority to make such a declaration.¹⁶ While the federal government has tried to avoid using the spending power unilaterally, Ottawa has frequently employed it despite objections from Québec.

government requires autonomous legislative, taxing, and spending powers.¹⁸

While Wheare's definition of federalism has a venerable heritage, a number of scholars have considered his strict separation of the two orders of government to be anachronistic (Riker 1975, p.103). Anthony Birch modified Wheare's

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The federal government evidently stopped

The Federal Spending Power and 'Nation-

"[t]he case for a federal spending power for the

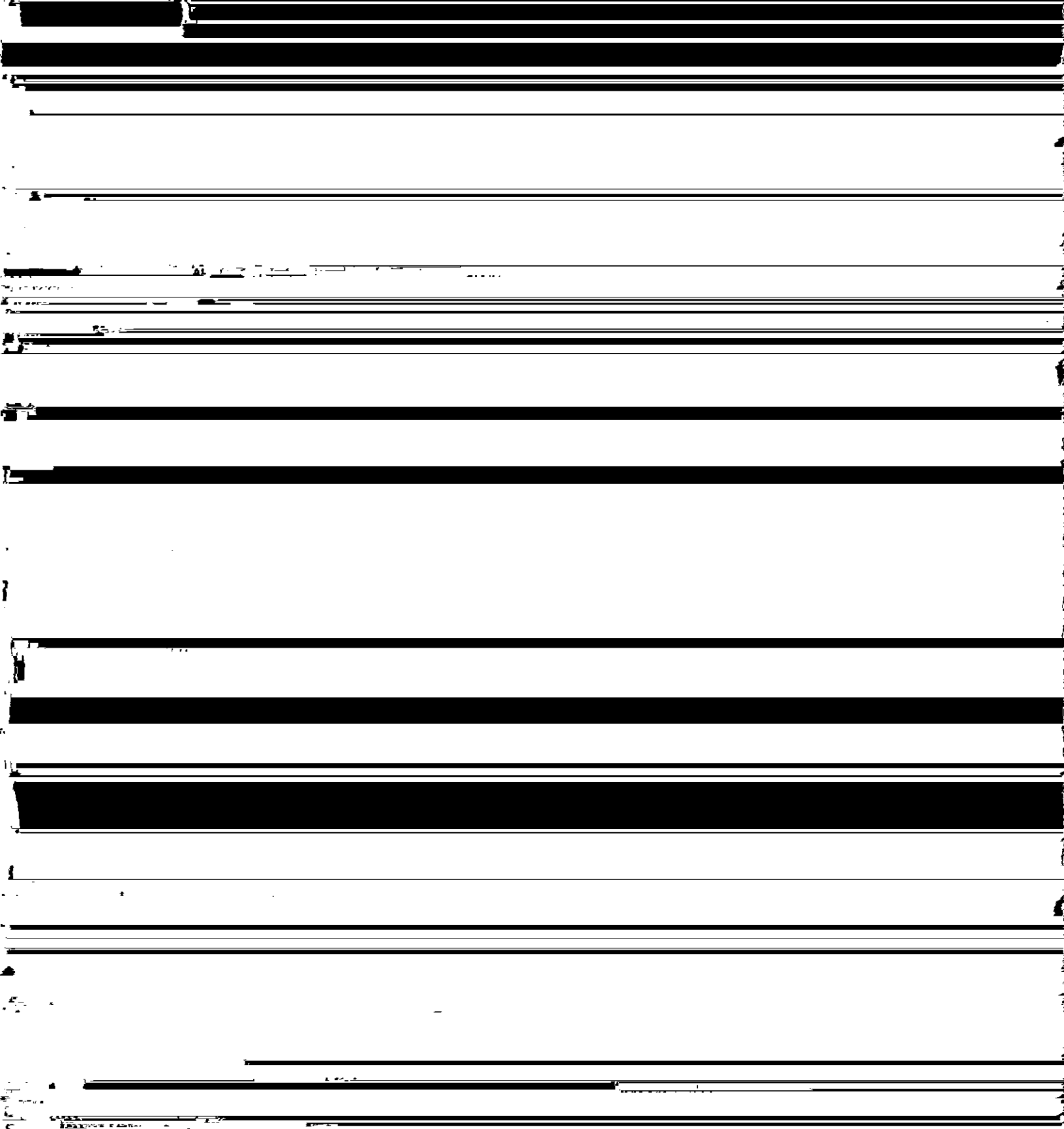
The federal government has attempted to

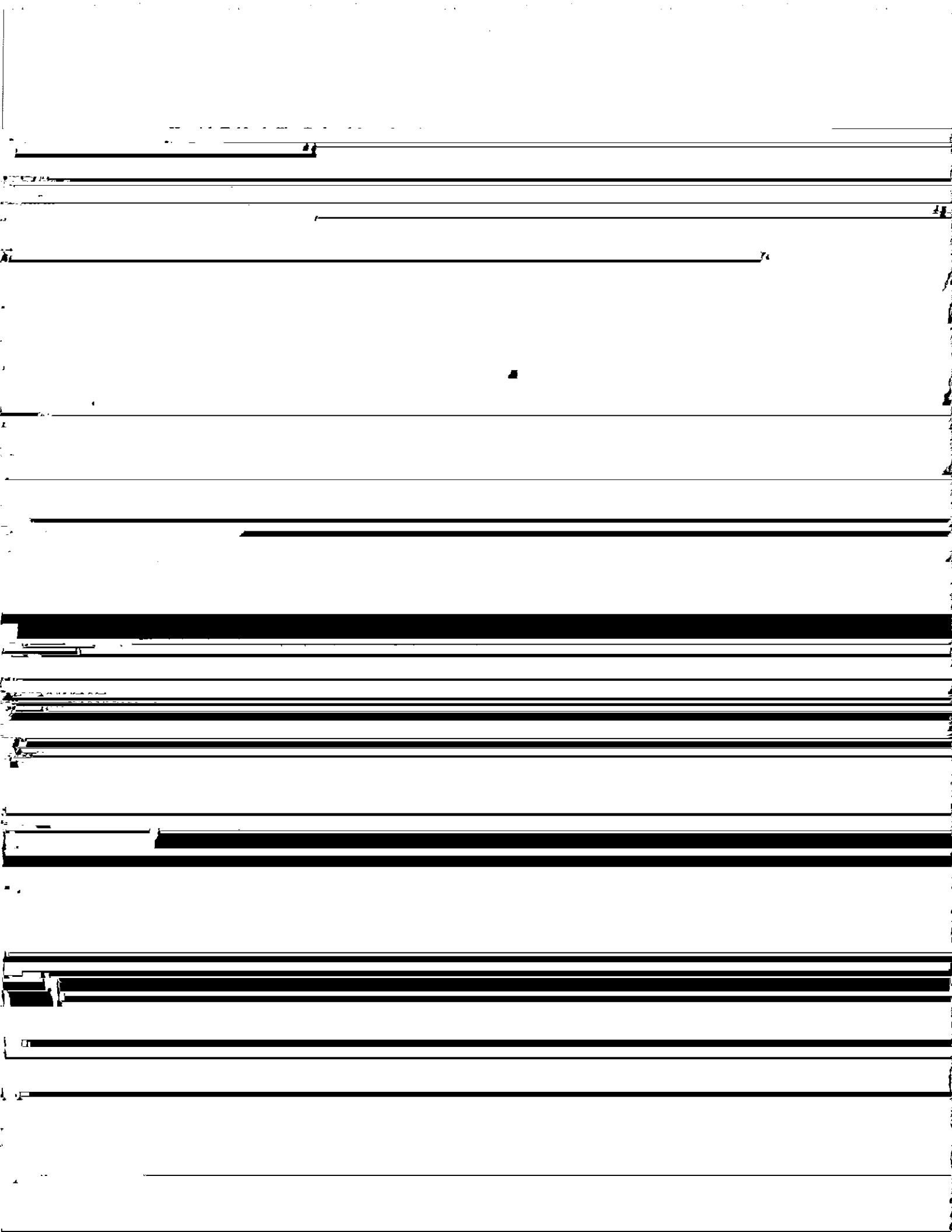
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established programmes without the spending power has thus been sought since the





programs and the federal role in governing these programs. The framework established in the Charlottetown Accord for the expenditure of government money similarly reflected the growing appreciation of an activist central government. The spending power provisions of the

agreement declares that "[t]he use of the federal spending power under the Constitution has been essential to the development of Canada's social union." The agreement permits the federal government to continue using its spending power to establish new social programs in areas of

obtaining the agreement, "to me this is how Canada should work and how it does work best."³⁰

The Social Union agreement of 1999

more. From Confederation to the Quiet Revolution, political leaders from Québec have insisted upon sovereignty in their sphere of jurisdiction, and sufficient resources to make that

psych to the consternation of the Québécois.³³ As rejection of diversity. Unity without diversity is

government was able to prove the constitutionality of the spending power in a court of law, there cannot be any doubt that it violates the federal principle. As Lord Atkin concluded, if the federal spending power was constitutional, it "would afford the Dominion an opportunity to

While many Québécois now reject federalism in favour of independence, public opinion polls in Québec continue to indicate that "renewed federalism" is still the preferred constitutional

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