

8 Equity and efficiency in a decentralized federation: the role of a social charter

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Introduction

Section 8.1 of this essay discusses the context surrounding the current debate on a Social Charter in Canada - in particular the political culture of Canadian constitution making and the economic implications of entrenching social rights. Section 8.1.1 emphasizes Canada's inheritance of the British parliamentary tradition and the potential for expanding the current constitutional language of Sections 15 and 36 of the Constitution of Canada. Section 8.1.2 then discusses the equity and efficiency implications of common standards in social policy, as well as the Canadian system of equalization payments to poorer provinces which makes these common standards possible.

Section 8.2 then addresses the details of the recent proposals of a Parliamentary Committee for the entrenchment of a 'Social Covenant'. It emphasizes that the goals enumerated in the proposed Social Covenant express commonly held political aspirations, and are, for the most part, both definable and deliverable. However, the generality with which social rights are specified cannot be considered in isolation from the mechanism created to enforce those rights, since it is the detailed enforcement of rights which gives practical content to formal generalities. Given the weakness of the proposed enforcement mechanism, it is highly unclear how much practical impact the proposed social covenant will have.

Section 8.3 discusses the lessons which the Canadian experience may have for European integration. If the efficiencies of an economic union

are desired, common social standards are a pre-requisite. Either an effective Social Charter voluntarily constraining local governments or a strong central government can create and maintain common standards.

8.1 The context surrounding the current debate on a Social Charter in Canada

8.1.1 *Constitutional language and debate in Canada*

Until 1982, Canada's primary constitutional document was in fact called the 'British North America Act', an act of the Parliament of the United Kingdom, originally passed in 1867. Historically, Canada emerged as a federation of self-governing colonies which gradually assumed increasing independence from Britain. Given the federal nature of Canada, some document specifying the assignment of jurisdictional responsibility between the federal and provincial governments was inescapable, but the British parliamentary tradition also implied that much of the Canadian constitution was in fact unwritten and that there were no specific guarantees of individual citizenship rights.

It was only in 1982 that Canada formally assumed the power to amend its own constitution and entrenched a Canadian Charter of Rights and Freedoms. The reason why formal patriation did not occur much earlier is that decades of federal/provincial constitutional conferencing had not produced (and indeed did not produce) agreement on the details of an amended constitution. The underlying sources of constitutional tension in Canada remain - (in particular, the special status of Quebec) and new tensions have emerged (e.g. the constitutional status of aboriginal peoples). The outcome of the current round of constitutional negotiations therefore remains very much in doubt.

Constitutional entrenchment of 'The Canadian Charter of Rights and Freedoms' in 1982 has proven to be extremely popular. Indeed, Cairns (1988) coined the phrase 'Charter Canadians' to express the idea that the shift from a document which spelled out relationships between governments to a document which also began to spell out the relationship between the citizen and the state has enhanced a sense of pan-Canadian identity, at the expense of provincial loyalties. All the same, the 1982 document is incomplete in that only the traditional political and legal rights have been given constitutional protection. Although proce-

dural equality is required under Section 15(1),¹ this can represent 'an equal right to nothing'. Canadian governments may now be sued in the courts if a benefit available to some citizens is not made available to all citizens, but faced with an 'all or nothing' choice and the costs of extending benefits to provide universal coverage, there is no legal barrier which prevents governments from choosing 'nothing'.

However, in Canada, as in most other industrialized countries, the idea of 'citizenship rights' has evolved into a set of expectations considerably broader than simply the enforcement of the right to judicial due process, individual Freedom of Speech, etc. Canadians expect to receive public services from government, and to pay taxes to finance those services. 'Equity' within the Canadian federation requires that no part of the federation should be systematically disadvantaged by the general operations of government. As Section 36 of the Constitution Act, 1982 states:

- 36 (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the provincial governments, are committed to:
- (a) promoting equal opportunities for the well being of Canadians;
 - (b) furthering economic development to reduce disparity in opportunities; and
 - (c) providing essential public services of reasonable quality to all Canadians.
- 36 (2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure the provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

¹ Section 15(1) states: 'Every individual is equal before and under the law and has the right to the equal protection and the equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.' Section 15(2) states: 'Subsection 1 does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individual or groups ...'

The reason for quoting Section 36 in its entirety is that it is the main focus of current discussions of the entrenchment of social rights in the Canadian constitution. As it is now written, Section 36 does not specify what an 'essential public service' is, and the 'commitment' of federal and provincial governments under 36(1) is hedged with great qualifications. As a consequence, there is now some doubt as to the 'justiciability' of 36(1). Furthermore, equalization payments to provincial governments under 36(2) remain subject to unilateral amendment by the federal government.

Nevertheless, Article 36(1) does express the normative value of 'equality of opportunity' which is both an objective of great symbolic importance in North America and an objective whose practical implementation would require far reaching social changes. Advocates of a social charter in Canada want to provide some specificity to the idea expressed under 36(1c) that some public services of reasonable quality are 'essential' to all Canadians. They also want to ensure that existing standards are not eroded over time by a process of competitive 'social dumping' by the provinces. Since other sections of the constitution assign responsibility for education, social assistance, labour relations and, in general, 'property and civil rights' to the provinces, the essential issue is how to reconcile common standards of programme quality with decentralized design, delivery and administration. Section 8.1.2 of this paper will argue that the attainment of common standards in essential public services necessarily requires a system of intergovernmental transfer payments to poorer provinces, but in addition some enforcement mechanism is required to prevent competitive 'social dumping'.

In Canada, the major institutions of the welfare state are much more recent in origin than in most European countries (e.g., national health insurance and state pension plans both date from the late 1960s). Historically, in policy areas such as health care or social assistance, the implementation of national programs depended on federal government initiatives in areas of provincial legislative responsibility - i.e. the federal government made available federal funds for those provinces which implemented programs meeting broadly specified national objectives. The threat of withdrawal of these federal funds is a powerful potential sanction deterring provinces from diverging from common standards. (However, it is noteworthy that Canadian legislation provides only a few, fairly broad criteria to define 'national standards'.)

Despite their relatively recent origin, social programs have become deeply entrenched in Canadian political culture. Self-congratulatory comparisons to the health care and social assistance systems of the

United States are a staple item of the Canadian political diet and the possible erosion of Canadian social distinctiveness was the major feature of a searing national debate on the 1988 Free Trade Agreement with the US.

For the past decade, Canada's federal government has faced a serious financial deficit, and there has been a continual emphasis on retrenchment in the entitlements of social programs and repeated efforts to reduce the rate of growth of transfer payments to the provinces and of direct federal expenditures. This withdrawal from the federal role in current social programs has occurred at the same time as some provinces (especially Quebec) have demanded the right to opt out, with full financial compensation, of any future federal cost sharing initiative. Furthermore, Quebec has demanded a substantial increase in the provinces' areas of legislative authority. The congruence of pressures to further decentralize an already highly decentralized federation has created the widespread fear of a 'patchwork Canada' with wide variations in social program entitlements. The pressure to entrench a social charter in the current Canadian constitutional round is both a response to these decentralizing forces and an attempt to specify more fully the existing language of Section 36.

8.1.2 Economic implications of common social standards

In Canada, the provinces are constitutionally responsible for the delivery of health, education and social services. Given the increasing importance of these services over the last 40 years, most of the growth of government in Canada has occurred at provincial and local levels. Indeed, total spending (including transfers) of the federal government actually fell from 17.2% of GDP in 1951 to 16.7% of GDP in 1989, while expenditures by the provincial/local/hospital sector increased from 11.9% of GDP to 22.6% (Ip, 1991:50).

As Table 8.1 indicates, federal transfers are extremely important to maintaining a rough equality among provinces in their ability to deliver public services. Column of Table 8.1 presents the 'own source' fiscal capacity of each province - i.e., the revenue which can be raised within each province by the application of a standardized tax rate to the tax bases of each province. 'Equalization' payments are the transfers from the federal government made in order to bring the revenues of the poorer provinces up to the average of 5 'representative pro-

vinces'² on a per capita basis. Column 3 ('EPF Cash') represents the per capita transfers of cash from the federal government designated for 'established programme financing' - i.e. post-secondary education and national health insurance. These transfers perform a crucial enforcement function since under the Canada Health Act, they must be withheld from provinces which infringe the general criteria of the national medicare system. Column 4 represents transfers under the Canada Assistance Plan - a 50% cost sharing by the federal government in the social assistance expenditures of provincial governments.³

² The five 'representative provinces' are Quebec, Ontario, Manitoba, Saskatchewan and British Columbia. Thirty-three separate revenue sources are identified separately. Oil rich Alberta is excluded from the calculation of the standard for fiscal equalization. 'Equalization' refers only to revenues - there is no consideration of possible differences in costs of service provision or differences in needs for particular services.

³ Provincial legislatures remain freely to specify the details of social assistance regulations, and wide variations have emerged across provinces in benefits payable. The constitutional debate in Canada has been embittered by the fact that Ontario (the largest and richest province) has been particularly hard hit by the recent recession, with 13.9% of the under 65 population now relying on provincial social assistance. However, in 1990 the federal government unilaterally limited growth in CAP transfers to Ontario, Alberta and British Columbia to 5% a year - with massive implications for the Ontario provincial government's deficit.

Table 8.1
Data on fiscal capacity by province 1987-88
(\$ per capita)

Province	Own-source	Equalization	EPF cash	CAP
Newfoundland	2,277.16	1,419.50	393.50	155.60
Prince Edward Island	2,415.19	1,281.50	393.50	170.70
Nova Scotia	2,861.92	834.70	393.50	146.00
New Brunswick	2,681.70	1,014.90	393.50	213.90
Quebec	3,219.00	477.60	393.50	239.80
Ontario	4,078.60	-	335.10	142.50
Manitoba	3,022.73	673.90	393.50	152.20
Saskatchewan	3,402.10	294.50	393.50	154.70
Alberta	5,485.09	-	392.50	186.30
British Columbia	3,914.08	-	401.60	223.20

Source: Federal-Provincial Fiscal Relations and Social Policy Division, Department of Finance, Government of Canada.

Comparability in the actual delivery of provincial public services is generally close, but somewhat uneven. Since the Canada Health Act specifies the common criteria of universality, comprehensiveness, accessibility, public delivery, portability and accessibility (including the non-imposition of user fees), the medicare system has a high degree of national commonality. In education, common norms have emerged from an informal process of inter-provincial coordination, without an explicit federal role. Under the Canada Assistance Plan, federal requirements for cost sharing are limited to procedural requirements. Inter-provincial variation in social assistance generosity is, however, balanced by the relatively greater generosity in poorer provinces of the federal unemployment insurance scheme. Old age security is delivered through a combination of federal transfer payments to individuals (OAS/GIS) and the Canada Pension Plan/Quebec Pension Plan system.⁴

⁴ Quebec administers its only public pension plan, while the other nine provinces have delegated their authority to the federal government - but benefits are entirely portable between both plans.

In considering the personal costs and benefits of inter-provincial migration, individuals can be expected to pay particular attention to those services which are directly relevant to their own particular circumstances. Migration is socially inefficient if it is induced by differences in the policies of provincial governments, rather than by differences in the productivity of individual migrants. Since individuals differ significantly in their use of different government services, it is not enough for the governments of a federal system to provide a package of benefits which are 'on average' comparable across jurisdictions. Common standards in the provision of specific services are important for specific types of families - e.g. comparable educational systems are important for the parents of school aged children, while families with health care problems are particularly interested in the relative comprehensiveness of public health insurance programs. Comparability in the major program areas of health care, education, and old age security, plus the balancing influences of provincial social assistance and federal unemployment insurance, mean that when considering migration to another province, Canadians pay primary attention to the personal economic advantages in pay and job security of inter-provincial mobility.

Inter-provincial migration in Canada is large in magnitude and in economic returns. As Table 8.2 indicates, the gross migration flows in the labour markets of most provinces are in the order of 2% per annum, or more. Cumulated over several years, flows of this magnitude can make very significant differences to the net populations of individual provinces. However, given the high degree of skill specificity which is characteristic of modern labour markets, gross movement is probably a better indicator of the importance of geographic mobility to the detailed matching of jobs and workers.⁵

⁵ Francophone Quebecers historically have not participated much in the flows of inter-provincial migration in Canada. Ontario, the largest province, has drawn population from both inter-provincial and international net migration for many years.

Table 8.2
Inter-provincial migration flows in Canada in 1986-1987
Males and females aged 16-69

	Net	Gross		Move-
		Out	In	ment
NFLD	-1.8%	7,803 (2.11%)	1,673 (0.29%)	2.4%
PEI	+2%	1,073 (1.32%)	1,267 (1.55%)	2.87%
NS	-9%	7,919 (1.4%)	2,705 (0.5%)	1.9%
NB	-4%	7,004 (1.5%)	4,995 (1.07%)	2.57%
Quebec	-.01%	16,217 (0.35%)	15,854 (0.34%)	.69%
Ontario	+36%	22,055 (0.35%)	45,021 (0.71%)	1.06%
Manitoba	+31%	8,524 (1.23%)	10,664 (1.54%)	1.77%
Saskatchewan	-1.3%	12,531 (2.0%)	4,414 (0.71%)	2.71%
Alberta	-1.2%	40,846 (2.6%)	2,008 (1.42%)	4.02%
BC	+3%	18,684 (0.95%)	24,878 (1.27%)	2.22%
Total	0	142,657 (0.8%)	142,657 (0.8%)	1.6%

Source: 1986/87 L.M.A.S. [Osberg/Gordon, 1991]

Table 8.3 summarizes the average difference between inter-provincial movers and non-movers in earnings growth between 1986 and 1987. These figures have not been corrected for the sample selectivity involved in the migration process,⁶ but they do indicate that inter-provincial movers received an increase in earnings during 1987 some 13.7% greater than that received by non-movers, and that this differen-

⁶ For an extended discussion see Osberg, Gordon and Lin (1992).

tial in earnings growth could be explained approximately equally by a greater increase in hourly wages for movers and a greater increase in annual hours of work.

Table 8.3
Returns to geographic mobility
Overall averages males aged 16 to 69

	Inter-provin- cial movers	Non- movers	Difference
Increase earnings 1986/87	22.7%	9.0%	13.7%
Increase hourly wage 1986/87	12.9%	6.0%	6.0%
Increase annual hours 1986/87	9.5%	3.0%	6.5%

The national labour market in Canada is, therefore, quite efficient in generating substantial increases in individual earnings. These gains of migrating individuals reflect the increase in their personal productivity which occurs as they reallocate themselves geographically. In addition to these gains in allocative efficiency, the dynamic efficiency of the Canadian economy is improved because migrants bring to their new region their experience with the technology in use in their region of origin. In a world of fast-moving technological change, much of 'best-practice' technology is in fact embodied in people, and geographic mobility is an essential aspect of the diffusion of technology in a large country.

The efficiency of the national labour market, therefore, is an essential part of the efficiency of the Canadian economic union as a whole. Mobility within the national labour market is based on the general expectation of reasonably comparable public services across Canada, while the ability of provincial governments to deliver reasonably comparable services depends on equalization of the fiscal capacity of provinces, through federal transfer payments to provincial governments.

Entrenchment of a Social Charter can be seen as a mechanism to constrain the decentralized delivery of social policy to that common minimum standard which is necessary for the efficiency of an economic union and the continued cohesion of a political union. However, even if the political union should disintegrate, some equivalent constraint on social policy is probably inevitable, if there is a desire to maintain the free mobility of labour in an economic union. Individual governments always have a financial incentive to decrease the entitlements of the

sick and the poor, both to save money directly and because cost cutting governments may hope that these financial liabilities will emigrate to more generous jurisdictions. The costs of such 'social dumping' to more generous jurisdictions depend on social programmes being residence based entitlements and on the possibility of free movement of people. Since it is free mobility of labour, not formal political status, which is the key issue in social dumping, an independent Quebec would have to choose between having an economic union with the rest of Canada or having unfettered control over social policy. In general, the benefits of an economic union cannot be obtained without (1) constraining the exercise of sovereignty over social policy and (2) providing the resources to deliver comparable services.

Discussions of a Social Charter in Canada are of course, greatly shaped by the unique aspects of Canada's political culture. As neighbours of the United States, greatly influenced by American culture, Canadians were ready to be receptive to the idea of individual rights, enforceable by individuals through the courts, which was entrenched in the 1982 Constitution. Many Canadians tend to interpret the idea of social rights in the same sense, as the rights of individuals which can be claimed by individual appeal to a body with the power of remedy. The 'panel of experts' approach adopted by the Social Charter of the Council of Europe in 1961 has little appeal in the Canadian context, being seen as elitist and possibly manipulable by governments.

At the same time, however, Canada inherited the British parliamentary tradition, a political culture which insists on political responsibility for political decisions. Across the political spectrum, there is a profound mistrust of the potential consequences of delegating the interpretation of 'social rights' to the court system. Critics of a justiciable social charter emphasize that judges are unelected and socially unrepresentative, and that the court system is slow, expensive, and unable to rule on the larger implications of a series of case by case decisions. Canadians are also not envious of the litigiousness of American society, and are therefore cautious about the further extension of fully justiciable rights.

8.2 A 'Social Covenant'

The most authoritative, and most specific, proposal for the entrenchment of social rights in the Canadian constitution is contained in the recent report of the Special Joint Committee of the Senate and House of Commons, tabled February 28, 1992. Popularly known by the names of

its joint chairs as the 'Beaudoin/Dobbie' committee, it contained representatives of all recognized political parties, and reached unanimous agreement on the addition to Section 36 of a 'Social Covenant and Economic Union' clause (see Appendix). Since such an amendment to the constitution requires the agreement of the federal government and seven provinces representing fifty percent of the population (and is part of a larger set of negotiations also involving issues of aboriginal self-government, Senate reform, the amending formula and the division of powers) the whole issue remains under discussion by provincial and federal governments. Nevertheless, it appears likely that something along the lines recommended by the Beaudoin/Dobbie Committee may eventually be enacted.

If one compares the proposals of the Beaudoin/Dobbie Committee to such classic statements of social rights as the United Nations Universal Declaration of Human Rights, one of the striking differences is the explicit parallelism between free market principles and social rights which is established in the Canadian proposals, compared to the omission of economic considerations from the UN document. The Beaudoin/Dobbie Committee was very explicit in arguing 'clearly, the ability of governments to deliver social programmes is linked to the ability of the economic union to generate wealth. And just as clearly, Canadians are committed to both.'

However, in thinking about social rights, one wants to know: 'What rights are being proposed? How specific is the definition of rights? How are these rights to be enforced?' The Beaudoin/Dobbie proposals cover a wider range than many other constitutional expressions of social rights (in that environmental issues are mentioned) but they are framed in fairly general language. The enforcement mechanism proposed is explicitly political - indeed the committee prefers the language of 'commitments' and 'goals', rather than 'rights' arguing that 'although such goals are appropriate subjects for constitutional recognition, elected governments should retain the authority to decide how they can best be fulfilled.'

The inclusion of environmental issues represents a clear change in public consciousness, compared to such earlier statements of social rights as articulated by the United Nations (1946) or the Council of Europe (1961). However, the contradictions inherent in the concept of human environmental rights are immediately apparent. Canadian governments are to 'protect and preserve the integrity of the environment in an economically sustainable manner' but what can be meant by the 'integrity of the environment', given that humanity has always been an

integral part of global and local ecosystems? What can one mean by preserving/protecting 'in an economically sustainable manner'? Since rights must be both definable and deliverable if they are to have an effect, there is every likelihood 'environmental rights' will primarily affect the rhetoric of future Canadian debates on environmental issues.

By contrast, a commitment to a health care system that is comprehensive, universal, portable, publicly administered and accessible mirrors language which is already in use in federal legislation (the Canada Health Act). Similarly, the jurisprudence which already surrounds existing social assistance legislation, especially the Canada Assistance Plan, can be used to interpret the commitment to 'adequate social services and benefits' and 'reasonable access to housing, food, and other basic necessities'. Although each province (and the federal government) has its own legislation regulating collective bargaining, there is a very substantial degree of commonality in the Canadian industrial relations system - hence the commitment 'to protect the rights of workers to organize and bargain collectively' can be interpreted, in concrete terms, with reference to an existing body of legislation and precedents. The commitment to providing 'high quality public primary and secondary education' is necessarily vaguer, since debates on the quality of education seem to be a worldwide phenomenon. However, comparison studies to other jurisdictions at least provide a benchmark for assessment, (e.g. IAEP, 1992) and the existing degree of access to post secondary education provides a context to the aspiration for 'reasonable access'. In short, existing legislation and practices provide an interpretive context for the generality of much of the proposed 'Social Covenant'.

With the exception of environmental issues, the issues addressed in Canada's proposal for a 'Social Covenant' can also be found in other social charter statements - but those of the Council of Europe (1961) or the United Nations (1946) also contain much more specificity on the regulation of conditions of employment than is proposed for Canada. Canada's focus is, primarily, on the delivery of public services. In this sense, it speaks to the issues addressed in Section 8.1, of ensuring the efficiency of the national labour market and the equity of citizens in their relationship to the state. The underlying vision of the Canadian state implicit in these proposals is that of the provider of essential services and the maintainer of a social safety net. The Canadian proposals do not emphasize the potential role of the state as regulator of the justice of market relationships between private individuals and firms.

This vision of the role of the state is probably uncontroversial in Canada, but the enforcement mechanism is more problematic. Cana-

dians are familiar with the language of individual rights, but are also not over-enamoured of the court system. Yet faith in politicians is also low. Enforcement of the goals to which governments are committed in the proposed Social Covenant falls far short of the enforcement of the social rights of individuals which many Canadians expected to find in a social charter.

Along the continuum of possible enforcement mechanisms, Beaudoin/Dobbie represents the extreme with the least teeth. One could have argued that courts could make findings of fact (i.e. that individual social rights have or have not been delivered) while legislatures could still retain the responsibility for policy design (i.e. how to deliver social rights). In this framework, individuals would really have a common set of 'meta-rights' to effective social *policy*, while the different communities within a federation would have the right to design policies in the locally appropriate way.

Alternatively, if the concern is the cost and unequal access of courts, one could have used a system of 'quasi-courts' to enforce social rights (such as Canada's existing system of Human Rights Commissions, which enforces rights to non-discriminatory treatment). If one is concerned with preserving underlying political accountability, the remedies which are proposed by provinces found to be in non-compliance with a Social Charter could be subject to appeal to an arbitral panel, either composed of provincial governments or provincial representatives in a reformed Senate.

The Beaudoin/Dobbie Committee report represents the continuation of the long Canadian political tradition which says that constitutions are primarily mechanisms for the organization of government, not institutions for the maintenance of the rights of individual citizens. However, although the proposed additions to Section 36 are within the British parliamentary tradition of the supremacy of elected officials, they would co-exist in the constitution with the justiciable provisions of the Charter of Rights and Freedoms, whose final interpretation is left to the courts.

Canada voted in 1977 for UN General Assembly Resolution 32/130;⁷ which stressed recognition of the interdependence of politi-

⁷ which stated: (a) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights; (b) The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; ...

cal, civil and social rights. However, this recognition is missing from the Beaudoin/Dobbie report. Certainly, the goals expressed in an expanded Section 36 will have less force than the court-enforced civil and political rights specified under Sections 1 to 34.

Indeed, there are significantly fewer 'teeth' in the proposed Social Covenant than in existing federal legislation, which provides for financial penalties for provinces which do not meet common standards in health insurance. It is probable that the unnamed review agency which is to assess the performance of governments in meeting the goals of the Social Covenant will have some effect on the tenor of future political debates in Canada. However, it is far from clear that such political pressures will be strong enough, in an increasingly decentralized federation, to maintain common standards in social policy delivery. Since Section 8.1 has argued that the maintenance of such common standards in social policy underpins both the efficiency of Canada's national labour market and the perceived equity of the Canadian polity, strengthening of the enforcement mechanisms of the proposed Social Covenant appears highly desirable.

8.3 Lessons

A Social Charter can be seen as a mechanism for reconciling the need for local design and delivery of appropriate social policy in a culturally diverse federation with the pressures for common social standards which are inherent in a larger economic union. Politically, a Social Charter offers a way of enhancing the rights of individuals while fostering a sense of common identity in a larger polity. However, the Canadian debate on a Social Charter is also an example of the difficulties involved in reconciling the British Parliamentary tradition of the supremacy of elected officials with the concept of constitutionally entrenched individual rights.

The Canadian case is also an example of the importance of common social standards to the efficiency of an economic union. Both in the static gains of allocative efficiency and in the dynamic gains of diffusion of technology, free movement of labour is an essential aspect of an effective economic union. However, labour mobility patterns will be distorted if the personal benefits of social policy diverge widely within a federation. Some system of transferral of resources is required if sub-national jurisdictions are to be able to deliver a common standard of social policy and some enforcement mechanism is required to ensure that they actually do so.

In Canada, the financial strength of the federal government enabled it to create a system of common standards, in part through unrestricted equalization payments to poorer provinces and in part through conditional cost-shared programmes. The current financial weakness of the federal government, plus some provinces' demands for a greater autonomy, create the possibility that the present system of national standards will unravel. If so, the efficiency of the national labour market will suffer, and the sense of equity underlying continued political cohesiveness will also be at risk.

Fundamentally, the efficiency and continued cohesiveness of an economic union requires free mobility of labour and common social standards. A strong central government with the financial power to implement cost-shared programmes can create a system of common standards - and one could imagine the EEC assuming such a role, over time - but the system is vulnerable to shifts in the financial health of levels of government. Alternatively, an effective Social Charter could maintain a system of common standards - either among provinces or among nations.

If Quebec becomes formally independent, it will have to choose between accepting constraints on its domestic social policies and remaining a part of an economic union with free mobility of labour. Either as a treaty between independent states or as an agreement among provinces of a federation, the adoption of an effective Social Charter is an alternative to a strong central government - if one also desires the advantages of a wider economic union.

Postscript

After this paper was written in May, 1992, the provincial premiers and the federal government reached agreement on a proposed set of constitutional amendments. The 'Charlottetown Accord' of August, 1992 included a section on 'the social and economic union' which adopted, word for word, the language of the Beaudoin-Dobbie committee describing social and economic rights, as listed in Articles 36.1 and 36.2 of the appendix to this paper. However, the Charlottetown Accord weakened the potential for effective enforcement of these revisions by referring to them as 'policy objectives' rather than 'joint commitments' of governments and by leaving the 'mechanism for monitoring' to be established at a later date.

The Charlottetown Accord was a long and complex document, which proposed significant changes to legislative representation in the

Senate and House of Commons, substantial devolution of powers and a new order of aboriginal self-government, but the detailed wording of the constitutional language of the Accord was not available until well into the referendum campaign which followed. In an atmosphere of widespread mistrust of government, the magnitude, complexity and uncertainty of the Accord's proposed changes produced widespread opposition. In October, 1992 it was convincingly defeated in a nationwide referendum. Constitutional reform immediately disappeared from Canadian public discussion.

Nevertheless, the issues which precipitated the Canadian constitutional debate - especially the role of Quebec - remain unresolved and it is clear that the debate will, at some point in time, be reopened. The debates of 1991/92 have placed social rights on the agenda for future constitutional renewal of Canada and an important principle has been established - the principle of symmetry between economic rights for the free movement of goods, persons, services and capital and social rights for the provision of health care, education, social services and collective bargaining. The importance of common social standards to the continued cohesiveness of the political union and to the equity and efficiency of the economic union have also been recognized. However, the crucial issue of the enforcement mechanism remains problematic.

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Appendix The Social Covenant and the Economic Union

The title to Part III of the *Constitution Act, 1982* would be amended to read 'THE SOCIAL COVENANT AND THE ECONOMIC UNION' and the following sections would be added to Part III:

Social Covenant

- 36.1 (1) Parliament, the legislatures and the territorial councils, together with the government of Canada and the provincial and territorial governments, are jointly committed to
- (a) providing throughout Canada a health care system that is comprehensive, universal, portable, publicly administered, and accessible;
 - (b) providing adequate social services and benefits to ensure that all Canadians have reasonable access to housing, food and other basic necessities;
 - (c) providing high quality public primary and secondary education to all persons resident in Canada and ensuring reasonable access to post-secondary education;
 - (d) protecting the rights of workers to organize and bargain collectively; and
 - (e) protecting and preserving the integrity of the environment in an economically sustainable manner.

Review agency

- (2) The [*intergovernmental agency to be established*] shall review, assess and report on the performance of the federal, provincial and territorial governments in meeting the goals of the Social Covenant stated in subsection (1).

Economic Union

- 36.2 (1) Parliament, the legislatures and the territorial councils, together with the government of Canada and the provincial and territorial governments are jointly committed to
- (a) working together to strengthen the Canadian economic union;
 - (b) free movement of persons, goods, services and capital; and
 - (c) the goal of full employment; and
 - (d) ensuring that all Canadians have a reasonable standard of living.

Review agency

- (2) The [*intergovernmental agency to be established*] shall review, assess and report on the performance of the federal, provincial and territorial governments in meeting the goals of the Economic Union stated in subsection (1).

Tabling of reports

- 36.3** The reports of the [*agency*] under subsection 36.1(2) or 36.2(2) shall be laid before Parliament, the legislatures of the provinces and the councils of the territories.