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# *A Social Charter for Canada*

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Canadians are asking for a lot when they ask for a redesigned Constitution. They want (and need) a Constitution poetic enough to reflect what it means to be Canadian, yet practical enough to solve real problems, a document to cope both with the demands of the present day and with the needs of the future, and a legal framework for the evolution of the social contract. Furthermore, constitutional design has real and important implications for the type of society Canada will become. Hence we argue that a revised Canadian Constitution should reflect enduring Canadian social values.

The constitutional reform process is no abstract exercise. It is proceeding in real time, articulated by real personalities, encumbered by real history, and has a real deadline. An important aspect of this reality is the fact that the present federal government, which is, of necessity, intimately involved in the process of constitutional reform, carries the baggage of the failed Meech Lake process. Furthermore, it is not trusted by a significant fraction of the population to protect distinctively Canadian social values. If a new round of constitutional reform is to be successful, these handicaps cannot be ignored; hence both the process and the results must recognize the need to safeguard basic values visibly and credibly.

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Social policy is a key aspect of Canadians' self-image as a "kinder, gentler" society within North America. Social policy is central to the relationship between the modern state and its citizenry and it presents, in a federal state, some of the most difficult problems of jurisdictional responsibility.

Thus, this essay focuses on the need for a social charter. We emphasize, however, that proposals for such a document cannot be considered in isolation. If other parts of a revised Constitution contain what some call an economic charter of enhanced guarantees for the free flow of goods, services, capital, and labor, one implication is a decreased role for the democratic process in restraining the impact of market forces. Those who think that they are likely to be adversely affected thereby will want some credible guarantee that their interests will not be irreparably damaged by constitutional reform. Hence, the stronger the guarantees involved in an economic charter, the stronger the demands will be for a credible social charter. To some extent, therefore, the exact form that a social charter takes must depend on the form that other parts of the Constitution take. But it is essential for the political acceptability of the process as a whole that guarantees for the market process be matched by guarantees for social and economic rights.

Throughout this essay, we stress three major themes:

- The rapidity of social and institutional change in modern societies implies that a specific division of responsibilities for the achievement of social goals can rapidly become obsolete. Hence, a Constitution that aims at providing an enduring legal framework should directly express, at least in general terms, enduring social values. When the pace of change was slower, as it was in 1867, one could envisage a Constitution whose only function was to divide legislative powers between federal and provincial jurisdictions. In the twenty-first century, such a Constitution would be rapidly outpaced by events.
  - The effective expression of individual legal and political rights requires a minimum level of social and economic standing. (It is not clear, for example, how the homeless can derive much
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practical benefit from a general legal right to personal privacy or how they can effectively participate in political life.) Over time, the concept of individual rights has broadened as the concept of citizenship has expanded. We think it is time for Canada to recognize constitutionally that “the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.”<sup>1</sup>

- Entrenching the rights of individuals to adequate levels of basic necessities means entrenching the social responsibility of the Canadian community to all its members. Conceptually, acceptance of a social responsibility differs from acceptance of individual rights. The word “responsibility” invokes connection and caring among the individuals living together in a community, while “rights” suggests self-interested individuals’ fighting for what is owed to them. In practical terms, the main difference between the two concepts is that many disadvantaged Canadians may lack the information, self-confidence, or financial resources necessary to claim their rights. We do *not* argue that all members of the Canadian community have to be treated in exactly the same way — Canadians are simultaneously Canadians *and* Québécois, native people, or members of other provincial or ethnic communities. There are valid cultural, economic, or social reasons why different policies are appropriate in different contexts and in different subnational communities. Yet all Canadians have a right, as Canadians, to expect that the end result of these different policies will be access to basic necessities for everyone.

The plan of this essay is as follows. First, we lay out some of the major social and economic trends — trends in household composition, labor market institutions, poverty, and inequality — that have changed and will continue to change the shape of Canadian society and thus the demands made on social policy.

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1 United Nations, General Assembly, Resolution 32/130 (1977).

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The second section outlines some of the reasons why a social charter is now an essential part of the constitutional reform process. They include the policy demands that social and economic trends imply for government as well as the likelihood that constitutional reform will produce some devolution to the provinces of administrative responsibility for social policy.

The third section discusses alternative forms that a social charter might take. Each has significant advantages and disadvantages; we suggest that the critical issue is that a credible and effective charter be adopted. (We hope that this essay helps to start a debate on the nuts and bolts of how this can best be accomplished.) The final section suggests that a Canadian social charter should guarantee the right to adequate food, clothing, shelter, health care, and education.

## **Recent Canadian Social and Demographic Trends**

Table 1 presents selected demographic and labor market trends to highlight the changing characteristics of Canadian society that underlie the ever-changing demands on the country's social institutions. The first part of the table indicates the changing pattern of family types in Canada. In 1961, 65 percent of Canadian families were of the traditional variety — husband-and-wife couples with only the husband earning income. By 1986, this household type represented only 12 percent of all families; couples with both spouses employed in the paid labor market had come to represent the most common type of Canadian family. Single-parent families had also become significantly more common, an increase that can be attributed to a rise in the number of children born to never-married mothers as well as to a sixfold rise in the divorce rate.

It is clear that social policy designed with the image of the male breadwinner/female homemaker in mind is no longer appropriate for Canadian society. Moreover, if the pace of change in family structure continues at the same rate as has characterized the recent past — and there is every reason to expect that this will be the case

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**Table 1: Demographic and Labor Market Trends in Canada, 1951–86**

	1951	1961	1971	1981	1986
<i>Distribution of family types (% of total)</i>					
One earner, husband only	–	65	32	16	12
Two earners, both spouses	–	14	36	49	52
Single-parent families	–	6	9	11	13
Other families	–	16	23	24	23
Divorce Rate (no. per 100,000 population)	37.6	36.0	137.6	278.0	244.4
<i>Labor market</i>					
Unemployment rate (% , unadjusted)	2.4	7.2	6.3	7.5	9.5
Part-time jobs (% of labor force)	4.0	7.8	12	13.5	15.5
<i>Labor force participation rate (%)</i>					
All women	24.1	29.5	39.4	51.7	55.1
Married women	11.2	22.0	37.0	50.5	56.1
<i>Female/male earnings ratio</i>					
All earners	–	–	0.469	0.535	0.574
Full-time, full-year earners	–	–	0.597	0.637	0.658

Sources: Statistics Canada, *The Labour Force*, Cat. no. 71-001, various issues; M. Eichler, *Families in Canada Today* (Toronto: Gage, 1988); M. Gunderson, L. Muszynski, and J. Keck, *Women and Labour Market Poverty* (Ottawa: Canadian Advisory Council on the Status of Women, 1990); and M. Baker, *The Family: Changing Trends in Canada* (Toronto: McGraw-Hill Ryerson, 1987).

— the policies and institutions designed to accommodate the pattern of family types observed in Canada today will have to change at least as substantially in the next 30 years as they have in the past 30.

The second part of Table 1 reflects changes in the labor market. Corresponding to the dramatic increase in the percentage of husband-and-wife families with two labor market participants, labor force participation rates almost doubled for all women from 1951 to 1986 and shot up more than fivefold for married women during the same period. For many households, the addition of a second labor market income helped to offset the negative consequences of high unemployment and stagnating real wages. As Dooley argues, much of the difference in poverty rates between married-couple families and single-parent families results from the increasing labor force



**Table 2: The Incidence of Poverty  
In Canada, 1971, 1981, and 1986<sup>a</sup>**

	1971	1981	1986
		(percent)	
National			
Family	15.9	12.0	12.3
Individual	37.6	37.4	34.3
Atlantic, family	26.4	16.6	15.8
Quebec, family	17.7	14.8	15.3
Ontario, family	11.2	9.9	8.7
Prairies, family	20.9	11.3	12.9
British Columbia, family	12.0	9.4	13.3
Head over 70			
Family	39.1	13.6	9.9
Individual	65.3	61.6	44.9
Single parent (female head)	—	44.3	43.7
Couple plus unmarried children	11.8	8.9	9.6
Poverty odds <sup>b</sup>	6.8	6.4	5.3
Working poor families <sup>c</sup>	46.6	44.7	42.0

<sup>a</sup> Statistics Canada low-income cutoff: for 1971, using 1967 base; for 1981 and 1986, using 1978 base.

<sup>b</sup> Ratio of poverty rate for nonelderly families with head working zero weeks to poverty rate for nonelderly families with head working 50 to 52 weeks.

<sup>c</sup> Percentage of all poor families with head working 20 or more weeks in a year.

Source: Statistics Canada, *Income Distributions by Size*, Cat. no. 13-207, various issues.

participation of married women.<sup>2</sup> Yet, increased labor force participation also means that many women face a double day of work, inside and outside the home.

Today, a majority of households rely on the earnings of women as well as the earnings of men. Unfortunately, earnings for the two groups continue to be highly inequitable. Overall, Canadian women received less than three-fifths of what Canadian men received in

2 M.D. Dooley, "Changes in the Market Work of Married Women and Lone Mothers with Children: 1973-1986" (Department of Economics, McMaster University, 1990, Mimeographed).



1986. Even women employed full time, full year earned less than two-thirds of what men earned.<sup>3</sup>

Table 2 reports some basic data on trends in the incidence of poverty in Canada. The 1971–86 period saw some small reductions in national poverty rates, but progress largely stopped in 1981. For many groups, in fact, poverty rates increased between 1981 and 1986. The recession of 1981–82, the continuation of high unemployment, and a series of public policy measures restraining transfer payments meant that progress in the reduction of poverty ceased or even reversed.

In 1986, more than one in ten Canadian families and one in three unattached individuals received incomes less than the Statistics Canada low-income cutoff. Smeeding, Torrey, and Rein report that 15.5 percent of all children in Canada are poor.<sup>4</sup> Current institutions and policies have failed to meet the basic income needs of a significant number of the country's youngest citizens.

Is this because it would cost "too much" to eliminate poverty? Phipps calculates that, in 1986, Canada's "poverty gap" — the amount required to bring the income of all Canadians up to the poverty line — was about 1.04 percent of gross domestic product (GDP).<sup>5</sup> To put the figure in perspective, one can note that 1986 consumer expenditure on alcohol amounted to 1.07 percent of GDP.<sup>6</sup>

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3 Notice that the rate of change in female/male earnings ratios in Table 1 is markedly less than the other changes noted there.

4 T. Smeeding, B.B. Torrey, and M. Rein, "Patterns of Income and Poverty: The Economic Status of Children and the Elderly in Eight Countries," in J.L. Palmer, T. Smeeding, and B.B. Torrey, eds., *The Vulnerable* (Washington, D.C.: Urban Institute Press, 1988).

5 S. Phipps, "Measuring Poverty among Canadian Households: Sensitivity to Choice of Measure and Scale," *Journal of Human Resources* (forthcoming).

6 Ibid. Some would argue that any program to eliminate poverty through income transfers would lead to massive reductions in work effort as the currently employed attempted to take advantage of the program. We argue, based on accumulating econometric evidence, that this is unlikely to be a significant problem. Most recent Canadian and U.S. studies find the wage and income elasticities of labor supply to be very close to zero. Most people with jobs work the number of hours required of them. Few would quit to live on a poverty-level income. For recent surveys of Canadian estimates of labor elasticity, see S. Phipps..

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If one considers the incidence of poverty by region, it is clear that between 1971 and 1986 the improvement in poverty rates among families in Atlantic Canada and the Prairie provinces was substantially greater than the national trends. Yet, the incidence of poverty for families in Atlantic Canada was 1.75 times that of families living in Ontario in 1986, and the differential is little improved today.

The outstanding success story in poverty policy has been the dramatic reduction in the rate of poverty among older Canadians. Increased transfer payments through the Guaranteed Income Supplement plus the advent of the Canada Pension Plan and Quebec Pension Plan (CPP/QPP), reduced the incidence of poverty among older families from two in five in 1971 (well over twice the national rate) to one in ten in 1986 (well below the national rate).

On the other hand, two of the most dismal failures of poverty policy have been the continued high incidence of poverty among female-headed, single-parent families and among native Canadians. With a poverty incidence of 45 percent in 1986, single-parent households were 3.5 times more likely to be poor than the average Canadian family. This fact, in combination with the growing number of female-headed, single-parent households has led to concern about the growing feminization of poverty in Canada.<sup>7</sup> Native Canadians also continue to experience poverty far more frequently than non-aboriginal Canadians.<sup>8</sup>

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Note 6 - cont'd.

... "The Impact of the Unemployment Insurance Reform of 1990 on Single Earners," *Canadian Public Policy* 16 (1990): 252-61; and D. Hum and W. Simpson, *Income Maintenance, Work Effort and the Canadian Mincome Experiment* (Ottawa: Economic Council of Canada, 1991).

7 See Dooley, "Changes in the Market Work"; M. Gunderson, L. Muszynski, and J. Keck, *Women and Labour Market Poverty* (Ottawa: Canadian Advisory Council on the Status of Women, 1990); and D.P. Ross and E. R. Shillington, *The Canadian Fact Book on Poverty — 1989* (Ottawa: Canadian Council on Social Development, 1989).

8 It is important to note that the usual surveys used to construct measures of poverty in Canada leave out native Canadians living on reserves and Canadians living in institutions. Thus, we have very limited information concerning the specific poverty experiences of groups that other evidence indicates continue to be among the poorest in the country. We could not find, for example, incidence figures directly comparable to those reported in Table 2.

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**Table 3: Income Inequality:  
Quintile Shares of Total Money Income before Tax  
for Families and Unattached Individuals, 1951–86**

	1951	1961	1971	1976	1981	1986
Quintile 1 (poorest)	4.4	4.2	3.6	4.3	4.6	4.7
Quintile 2	11.2	11.9	10.6	10.7	10.9	10.4
Quintile 3	18.3	18.3	17.6	17.4	17.6	17.0
Quintile 4	23.3	24.5	24.9	24.7	25.2	24.9
Quintile 5 (richest)	42.8	41.1	43.3	42.9	41.8	43.0

Sources: L. Osberg, *Economic Inequality in Canada* (Toronto: Butterworths, 1981), p. 11; and Statistics Canada, *Income Distribution by Size in Canada, 1987*, Cat. no. 13-207, p. 143.

One can think of paid employment as a necessary but not sufficient condition for the non-elderly to avoid poverty. The line labeled "poverty odds" in Table 2 reports the ratio of the incidence of poverty among non-elderly families whose head did not work in the previous year to the incidence of poverty among similar families whose head worked 50 to 52 weeks. Those families without an employed head were about six times more likely to be poor than those families whose head was employed full year. It is apparent, however, that the differential is diminishing over time, no doubt reflecting the emerging polarization of the wage structure.<sup>9</sup> And although participation in the paid labor market dramatically reduces a family's chances of being poor, it remains true that more than 40 per cent of all poor families have significant labor force attachment.

Table 3 presents an overview of the distribution of money income among Canadians from 1951 to 1986. Hiding behind these aggregate numbers are the complex processes by which labor market earnings, transfer payments, and capital income are determined and by which individuals are combined into households whose sizes

<sup>9</sup> The Economic Council of Canada reports that 27 percent of the labor force in 1967 had earnings that could be categorized as "middle-income". By 1986, only 22 percent of the labor force could be classified in this way. See Economic Council of Canada, *Good Jobs, Bad Jobs: Employment in the Service Economy* (Ottawa: Supply and Services Canada, 1990), p. 15.

vary over time — not to mention the thorny theoretical issues involved in constructing a measure of aggregate inequality.<sup>10</sup> Nevertheless, the basic lessons of Table 3 are fairly robust. As others have noted,<sup>11</sup> given the fairly dramatic changes that occurred in Canadian society between 1951 and 1986, it is remarkable how little change there was in the aggregate distribution of money income. One can discern a slight improvement in the income share of the poorest quintile, a change largely reflecting the improvement in the relative economic position of retirees mentioned earlier. Households in the second and third quintiles slipped in their relative shares of aggregate income, but there is no discernible trend to a lesser share for the richest fifth of the population.

In part, the relative constancy of the Canadian income distribution reflects the role of transfer payments in mitigating adverse shocks to market earnings — shocks such as unemployment, which, as Table 1 indicates, increased dramatically over the 1951–86 period. In part, too, the constancy of the income distribution reflects the counteracting influences of a variety of social trends, such as increased female labor force participation rates, the rise in divorce rates, and the decline in family size. In addition, successive waves of boom and bust and inflation and deflation had partially offsetting effects on the real and nominal values of labor and capital income streams.

The poorest fifth of Canadian households has always depended heavily on transfer payments. The second quintile is increasingly dependent on transfers as well. In 1973, it received 19.8 percent of its income from transfer payments; by 1989, the figure had increased to 30.4 percent.<sup>12</sup> This increased dependence of lower-middle-income

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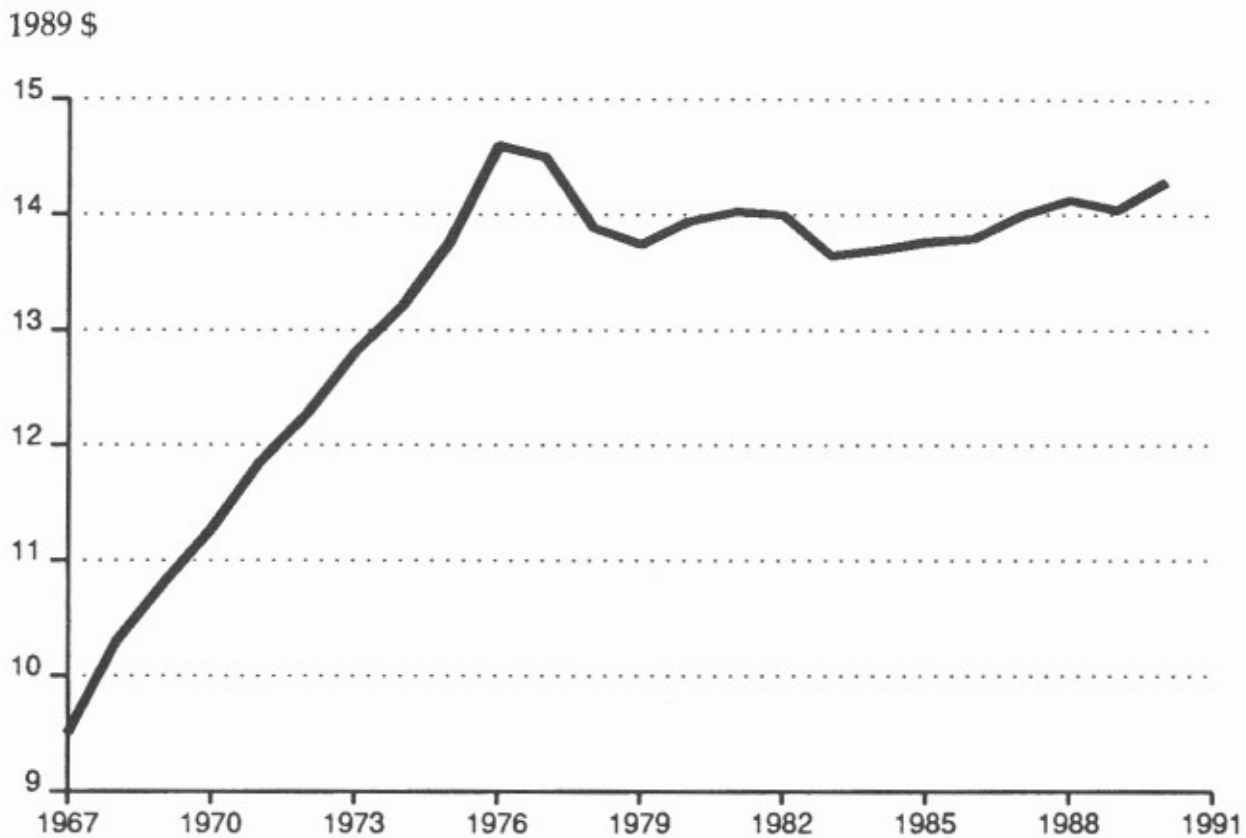
<sup>10</sup> These issues are discussed in more detail in L. Osberg, *Economic Inequality in Canada* (Toronto: Butterworths, 1981); and S. Jenkins, "The Measurement of Income Inequality," in L. Osberg, ed., *Economic Inequality and Poverty: International Perspectives* (Armonk, N.Y.: M.E. Sharpe, 1991).

<sup>11</sup> For example, M. Wolfson, "Stasis amid Change — Income Inequality in Canada 1965–1983," *The Review of Income and Wealth* 32 (1986): 337–370.

<sup>12</sup> Economic Council of Canada, *Employment in the Service Economy* (Ottawa: Supply and Services Canada, 1991), p. 149; and Statistics Canada, *Income Distribution by Size in Canada 1989*, Cat. no. 13–207.

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**Figure 1: Real Hourly Wages in Canada, 1967–90**

Sources: Calculations by the Economic Council of Canada based on data from Statistics Canada's Labour Force Survey and its Labour Division.

families on transfer payments largely reflects the decreased capability of labor market participation to shield families from poverty, which reflects in turn the stagnation in real hourly wages and increased unemployment of the past two decades.<sup>13</sup>

Figure 1 graphs real average hourly wages and salaries in Canada between 1967 and 1990. The late 1960s and early 1970s saw substantial increases, but the last 15 years were characterized by stagnation. Moreover, stagnation in *average* hourly earnings does not reveal the increased polarization of the wage structure or the steady decline in the proportion of all workers earning between 75 and 125 percent of the median wage.

Data on average hourly earnings also fail to indicate the growth in nonstandard employment. The Economic Council of Canada

<sup>13</sup> For a survey of these trends, see Economic Council of Canada, *Employment in the Service Economy*, especially ch. 8.

reports, for example, that since 1975, at least 30 percent of new jobs created in most provinces were part-time jobs.<sup>14</sup> As well, there has been significant growth in short-term work — jobs of less than six months' duration — and in the self-employment of individuals who do not in turn have employees. Finally, temporary-help agency work tripled in the 1980s alone. Together, these forms of nonstandard employment constituted about half of all new jobs created between 1981 and 1986, and they now constitute nearly 30 percent of total employment!

These changes in the Canadian labor market mean that an increasing number of workers are not the full-time/full-year employees for whom the social insurance programs of the Canadian welfare state, such as CPP/QPP and unemployment insurance (UI), were designed. These changes in the institutional structure of the labor market can have significant effects on governmental responsibilities and the federal-provincial split. If there is no work available, for example, workers who are self-employed or have insufficient hours or weeks of work are not eligible for UI (a federal program) and must apply for provincial social assistance benefits. Workers whose entire work history is characterized by nonstandard employment are generally not eligible for private pension benefits at the end of their working lives and so must turn to public benefits, federal and provincial. Such problems are particularly acute for women, who constitute a large fraction of nonstandard employment.

### *Socio-Economic Change and Constitutional Design*

What does all this have to do with constitutional reform? The data illustrate the extent to which governments have (or have not) delivered on the social contract underlying Canadian society. Social and

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<sup>14</sup> The exceptions were Alberta, Prince Edward Island, and Ontario. See Economic Council of Canada, *Good Jobs, Bad Jobs*, pp. 11–12.

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economic change can produce a mismatch between inherited social policies and institutions and the current needs of citizens. A static view of policies and institutions can fail to meet the basic economic and social needs of citizens living in a dynamic world. Hence, social policy must evolve if the social contract is to continue to be fulfilled. And since social policy is central to the Canadian self-image as a "kinder, gentler" society within North America, the Constitution must include a mechanism to ensure that basic Canadian social values are safeguarded, throughout these changes.

We emphasize that the existing Canadian "welfare state" has not been an abject failure. Indeed, it has had some outstanding success. Myles notes, "In all post-war capitalist democracies, economic responsibility for the maintenance of the elderly has been assumed by the state."<sup>15</sup> And as Table 2 indicates, Canadian governments have made substantial progress in meeting the needs of the older population, both through the expansion of targeted transfer programs and through the provision of services, such as medical care, that are disproportionately consumed by the elderly.

The social changes of the past 40 years, however, have also created challenges that have been less successfully met. One of the historic promises of capitalism has been economic progress. In a pure capitalist system, workers may not receive any direct share in profits, but the appeal of socialism is blunted if capitalism can deliver on the promise that real wages will rise over time. In the 1950s and 1960s, the standard of living of the Canadian working class did indeed rise as real average hourly wages increased. For the past 15 years, however, real average hourly wages have been essentially stagnant. Meanwhile, social and economic policy have become increasingly out of step with the realities many Canadians face every day.

The easiest way to see what has happened is to consider how and why the Canadian welfare state has developed. Although pure capitalism has never really existed in Canada and the state has

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15 J. Myles, *Old Age and the Welfare State: The Political Economy of Public Pensions* (Lawrence, Kan.: University Press of Kansas, 1989), p. 1.

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always been involved in economic affairs, the ideology of the 1920s stressed *laissez-faire*. The experience of the Great Depression of the 1930s and the evident success of wartime economic planning discredited the idea of a minimal state and set the stage for a postwar expansion of the welfare state. This expansion was founded on a particular underlying vision of the new social contract. The centerpiece was the maintenance, via Keynesian aggregate demand management, of full employment in a capitalist market economy. It was expected that technical progress and capital deepening would produce rising real wages while social insurance programs would provide both security of income for individual workers and automatic stabilizers for the macroeconomy during business cycle fluctuations. UI and other social insurance programs, such as workers' compensation, were not particularly intended to be anti-poverty programs. Rather, their focus was the maintenance of individual consumption during unavoidable periods of low earnings; hence they were to be run on insurance principles.

Family allowances were to assist in meeting the financial burden of large families and thus support consumption. But social assistance payments were to be limited to those households that could not supply labor to the paid labor market, such as those of widows, orphans, and the disabled. The expectation was that the typical household would contain a single (male) earner, working full time, full year from age 18 to age 65. With a minimum wage underpinning the wage distribution, upward pressure on average wages from the union movement, and selective use of tariffs to protect declining industries, prime-aged (male) workers would, it was thought, keep their families out of poverty by full-time, full-year work. And all this was conceived of as occurring within a Canadian economic space, in which intergovernmental transfers to the Atlantic and Prairie provinces were, in large part, compensation for protected markets enjoyed by Ontario and Quebec manufacturers.

From a constitutional perspective, this model had the convenient feature of clear jurisdictional responsibility. Social insurance and social assistance programs were seen as serving different client

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populations and were delivered by different levels of government. By constitutional amendment, UI became a federal responsibility, while the provinces retained jurisdiction over social assistance. The federal government assumed a role in child welfare policy through the family allowance system, but in an era of housewife mothers the crucial need was seen to be financial, and the solution carried no implication for education, which remained a purely provincial responsibility. Although the system was modified over time — for example, the federal government shared in the costs of social assistance under the Canada Assistance Plan after 1966 — federal and provincial roles remained relatively unentangled.

One needs only to list the features of this vision of the Canadian economy to recognize both its continuing appeal for some sectors of society and its dissonance with current social and economic reality. The 1980s and early 1990s have been characterized by levels of unemployment higher than the country has experienced since the Great Depression, yet the focus of macroeconomic policy is firmly fixed on the prevention of inflation rather than the reduction of unemployment. The UI program has moved well away from insurance principles and has become, particularly in some rural regions, a pillar of the income-maintenance system. The whole idea of a “family wage” earned by a single (male) worker in each household is now both socially discredited and increasingly atypical — today’s norm is the dual-earner household. With this shift has come a very slight increase in the average cash income of Canadian families — because two workers supply more paid working hours than one. But the greater cash incomes of dual-earner households are partially at the expense of unpaid household production and family life, a change that is particularly burdensome to women, many of whom work a double day as they continue to take primary responsibility for home and child care in addition to their paid employment. Governments are pressed to provide transfer payments to households that are unable to provide two workers to paid employment. And since the majority of families have little time left for work in the home, society is under pressure to compensate for the decline in

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services previously provided there.<sup>16</sup> Polarization of the wage distribution and an increased rate of plant closures and layoffs have also produced increasing insecurity for many workers, even those with many years of service. And the globalization of trading patterns has increased the pressure on Canadian society for policy harmonization with other nations and decreased the country's ability to shelter declining industries and regions from international competition.

All these changes mean that the old mechanisms by which Canadian governments attempted to deliver on the social contract are increasingly inappropriate. Basic needs and social values change slowly, however. In 1991, as in 1951, there is a basic expectation that families should, if at all possible, support themselves economically through productive work.<sup>17</sup> Equal opportunity for all Canadians remains a basic social value. It is widely held that the full-time, full-year employment of the adult members of the household should provide a "decent" standard of living. It is also expected that people

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16 For example, in a society in which the typical family has two parents, only one of whom is in the paid labor market, the other parent is available for child care, so the responsibilities of government in that area can be limited to financial assistance (such as family allowance) and the provision of formal education. Although current social and economic trends have rendered this model of the division of responsibilities obsolete, the needs of children have not changed. They continue to need both care and instruction, services that some families — particularly poor, two-earner couples and single parents — find increasingly difficult to provide. Social institutions have to change to cope with the new realities of day care needs. How these changes will take place raises important issues of equity — both between the generations and between members of the same generation — and efficiency.

A complicating factor is that the dividing line between day care and education is totally arbitrary. A constitution that attempts to impose such a distinction and assigns the former responsibility to federal child welfare policies and the latter to provincial ministries of education will become increasingly inappropriate for social needs. Hence, we argue that, in a world of rapid change, underlying social objectives should be constitutionally specified.

17 Ideas about who should support themselves through paid employment have, however, changed substantially over time. In an earlier era, women with young children were not expected to participate in the paid labor market. Married mothers were expected to rely on their husbands' earnings, single mothers on state (or family) support. Current attitudes have changed in favor of labor market participation by both married and single mothers.

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should be able to turn to the community at large for assistance in the event of unemployment, sickness, disability, or other loss of livelihood in circumstances beyond their control. But although these expectations continue and produce increasing pressures on governments to provide transfers and services, the economic context is characterized by increasing fluidity of employment situations and heterogeneity of household types.

## **Why a Social Charter?**

How can Canadians continue to uphold their basic social values in a changing world? What constitutional mechanism would offer some guarantee that the process of constitutional reform would not, perhaps inadvertently, jettison values they wish to maintain? We argue that guaranteeing the social and economic rights of Canadians through the adoption of a social charter is necessary to ensure the fulfillment of the social contract in a rapidly changing society. It is precisely because change is so rapid, in both social institutions and the economic environment, that the Constitution needs a clear statement of the objectives of social policy. The division of jurisdictional responsibility that is appropriate for today's environment may be highly inappropriate in the future. A mechanism is needed to ensure that governments can, and do, continue to deliver social policy that reflects Canadians' underlying values.

## **Diversity and Citizenship**

One major advantage of a charter of social rights is that, in a rapidly changing world, it would provide a mechanism of redress for groups whose peculiar combination of circumstances does not fit within the existing set of administrative regulations of the jurisdiction in which they happen to reside. Some constituencies of the social welfare system have political visibility and political clout and can enforce their claims through political influence on the legislative process.

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Others are too small, too socially stigmatized, or too unorganized to influence the political and bureaucratic processes effectively.<sup>18</sup>

When the old categories of the welfare state no longer fit the reality of social and economic trends and when those trends are changing with increasing rapidity, there is an increasing danger that individuals will slip through the cracks of the social welfare system. If, at the same time, there is substantial devolution to the provinces of administrative responsibility for social policy and labor market development programs, people will slip through at different rates in different places because each province will have its own particular system evolving at its own pace, making its own errors and recording its own particular successes. The inequities such a system would produce would be undesirable in themselves. They would also carry political implications. If actual outcomes differ substantially across provinces, at what point does the idea of a common citizenship begin to erode irreparably?

Canadians want to maintain both the idea of their common citizenship and the special characters of their communities within Canada. The entrenchment of social and economic rights would be an important element of a common core definition of Canadian citizenship, but different communities within Canada could, and should, find different routes to meeting these common objectives. For example, for cultural or social reasons, aboriginal communities may want to use a mechanism different from that considered appropriate elsewhere to ensure that all their members have adequate food, clothing, and shelter. The government of Quebec has long insisted that the cultural survival of its distinct population requires a distinctly different approach to education. None of this would be

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<sup>18</sup> For example, a decreasing proportion of the elderly live within the extended family. The Canadian state has responded to this change in needs by assuming greater responsibility for their care — but the elderly constitute a large voting bloc. What social mechanism is in place to protect the interests of children in a world increasingly characterized by single parents who have little parental time available? Many economically disadvantaged groups do not have sufficient political power to lobby for necessary institutional or policy changes and need the protection of a social charter.

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threatened by an overarching requirement that *all* Canadians have the right to adequate food, clothing, shelter, education, and medical care.

The fact that different mechanisms can satisfy the same fundamental rights would ensure that the diversity that is so much a part of Canada would be unthreatened. Simultaneously, the requirement that these rights must be respected for all Canadians would serve as a unifying value from sea to sea — an important plus in a country that wants to preserve both unity and diversity.

## Guarantees for Markets and for People

A social charter is also required because private market transactions are increasingly unable to meet the economic needs of many Canadians. As the Economic Council of Canada concludes, "The labour market is offering economic security to fewer Canadians."<sup>19</sup> Such a trend can only be exacerbated by constitutional reform that prohibits government interference with the operations of the market. Thus we argue very strongly that the Constitution should provide protection of the free market only on condition that effective guarantees for social and economic rights are received in return.

Those who say that we are mistaken in our economic analysis and that greater constitutional protection for market forces would have great benefits for the poor should, we suggest, have the courage of their convictions. If greater reliance on market forces would in fact generate greater market incomes for the currently disadvantaged, the guarantees of a social charter would simply be superfluous. Its protections would be something like the payment-for-damages clause in a standard apartment lease. If the tenant causes no damage, the clause has no effect, but meanwhile it has provided the landlord with the peace of mind required to rent the apartment. If freer markets really would produce socially acceptable outcomes, the

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<sup>19</sup> Economic Council of Canada, *Good Jobs, Bad Jobs*, p. 17.

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policies to produce such markets would generate a set of market incomes sufficient for all Canadians to purchase adequate food, clothing, shelter, and so on; in that case, the importance of the social charter would lie in the fact that its assurances enabled the transition to freer markets to occur. Since agreement is required either to rent apartments or to embed freer markets and since neither landlords nor workers are generally willing to proceed on faith alone, some set of guarantees is needed.

## The Broadening Concept of Citizenship

A constitution sets out the framework of the legal relationship between citizens and the state; implicitly, it defines the idea of citizenship. Over time, that idea has evolved and broadened. Thus, a third major reason for the adoption of an explicit charter of social rights is that it would both express and help to realize an idea of citizenship that is in keeping with the views of Canadians today.

During the nineteenth century, in Canada as in other parts of the British empire, the definition of citizenship was gradually extended to include all men as property qualifications for the exercise of the franchise were whittled away and eventually abolished. In this century, women secured the right to vote and to participate fully in political life, and in the past 30 years Indians on reservations gained similar rights.<sup>20</sup>

The concept of citizenship has expanded in scope as well as in eligibility. At the time of Confederation, there was no expectation that individuals had any particular right to medical care or social assistance. Indeed, universal, publicly financed medicare only was introduced in the late 1960s. Yet by now it has become so deeply entrenched in the expectations and self-definition of Canadians that it would be considered unconscionable for anyone in the country to

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<sup>20</sup> Although obtaining these rights of political participation is certainly an advance, it is clear that they have not brought with them the power necessary to improve the social and economic circumstances of many women and aboriginal peoples.

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be denied needed medical care because of inability to pay. Nevertheless, such basic expectations are unprotected by any constitutional guarantees.

## Social Rights in International Law

Fourth, Canada's international rhetoric has long recognized the validity of a social charter. Canada endorsed the Universal Declaration of Human Rights; its article 25 declares,

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>21</sup>

Thus, the idea of guaranteeing social and economic rights is far from new.<sup>22</sup>

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<sup>21</sup> United Nations, Universal Declaration of Human Rights (December 10, 1948). Canada also voted in favor of the 1977 United Nations General Assembly Resolution 32/130, which states:

- (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; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development; and
- (c) All human rights and fundamental freedoms of the human person and of peoples are inalienable.

The United States and the United Kingdom refused to support Resolution 32/130.

<sup>22</sup> See H. Echenberg and B. Porter, "Poverty Stops Equality, Equality Stops Poverty: The Case for Social and Economic Rights," in R.I. Cholewinski, ed., *Human Rights in Canada: Into the 1990s and Beyond* (Ottawa: Human Rights Research and Education Centre, 1990).

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The Council of Europe adopted a social charter in 1961. It may not be entirely coincidental that many European countries have been more successful than Canada in meeting the economic needs of their citizens.<sup>23</sup> Although Canada does appear to be a kinder, gentler nation than the United States (where 22.4 percent of children were poor at the beginning of the 1980s), it does not compare well with most European countries.

## Personal and Social Responsibility

Fifth, adoption of a social charter might constitute a step in the direction of making a reality of the Canadian self-image of a caring nation. Of course, Canadians also think of themselves as a self-reliant and adaptable lot. Individuals have a responsibility to contribute productively to society, to the extent that they can, in a rapidly changing world. In aggregate, it is the acceptance of this responsibility that will determine the flexibility and productivity of the Canadian economy and its ability to deliver an acceptable standard of living. For individuals, acceptance of this responsibility is an important element in maintaining self-respect and the respect of the wider community.

Yet, as we have already noted, a large proportion of the poor already work hard for their poverty. Some who are disabled simply cannot work. Many of the unemployed cannot find jobs of any type. Although we ourselves strongly believe in the work ethic, we also recognize that it is unfair to demand the impossible. Moreover, we believe there is a consensus that social responsibilities are not conditional on good behavior. We doubt that many Canadians would argue that an individual who has not "worked hard" or "behaved nicely" all year should starve in the streets or die of an untreated illness.

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23 For example, during the 1979–82 period, 4.9 percent of children in West Germany were poor, 5.0 percent in Sweden, 7.8 percent in Switzerland, but 15.5 percent in Canada. Smeeding, Torrey, and Rein, Table 5.6. See also T. Smeeding, M. O'Higgins, and L. Rainwater, *Poverty, Inequality and Income Distribution in Comparative Perspective: The Luxembourg Income Study* (Washington, D.C.: Urban Institute Press, 1990).

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In our view, Canadians all have a social responsibility to ensure that every member of the community has the necessities of life.<sup>24</sup> This emphasis on social responsibility and its expression as constitutional guarantees for the social and economic rights of all citizens may involve a slightly different way of thinking than has been employed by constitutional designers in the past, one that emphasizes caring and responsibility rather than fair rules of the game for individual players. This way of thinking may seem slightly unfamiliar to some men — and men have always been the principal designers of constitutions — but it is consistent with “feminine” attitudes toward morality.<sup>25</sup> At present, it may not be feasible to entrench commitments of social responsibility in the legal language of a revised Constitution. Yet it would be consistent with past thinking to extend individual rights to include social and economic rights. Some may argue that such rights are vaguer than the more traditional political and civil rights, but surely this perception arises only because the idea of social and economic rights is newer. Certainly, if Canadians wish to design a Constitution that defines them as a caring people, it must guarantee all citizens access to the minimum standard of living that allows full participation in society — and thus the effective claiming of civil and political rights.

## A Pragmatic Note

Finally, one can argue pragmatically for the adoption of a social charter in Canada at this time because without such a charter no constitutional deal may be possible. Many Canadians do not trust the current federal government to maintain national institutions and standards in social policy; they feel that their interests and their sense of what Canada is about may be at risk in the constitutional reform process. Unless it is crystal clear that these *are* being protected, the

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<sup>24</sup> The idea of community rights and responsibilities — most notably in the area of linguistic rights — has long been part of the Canadian constitutional tradition.

<sup>25</sup> See C. Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982).

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magnitude of the alienation makes it likely that the process will fail. The extent of Canadians' disillusionment with politicians in general and the federal government in particular is such that they will be unlikely to accept general political statements about the "sacred trust" of social policy. Rather, they will look for guarantees that are more binding.<sup>26</sup>

## How?

The Canadian constitutional tradition has been deeply influenced by both U.S. and British models, as well as responding to the country's unique needs. The idea of the supremacy of Parliament came from the United Kingdom and the ideas of federalism and the entrenchment of individual rights from the United States. To some extent, these principles are contradictory, and the tensions of those contradictions find expression in never-ending disputes over federal and provincial jurisdiction and in the continuing controversy over the notwithstanding clause in the 1982 Constitution. Canadians have also evolved their own constitutional arrangements, such as executive federalism, to cope with the regional tensions of the federation, and their constitutional tradition has always had to deal creatively with the reality of two major linguistic groups. In the future, Canadian constitutional tradition will have to be even more innovative to accommodate the legitimate concerns of native peoples, who have been excluded for so long from meaningful participation.

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26 Some people in Ottawa may be tempted to think that the Meech Lake strategy, of increasing the perceived cost of failure of negotiations in order to force agreement, might work this time around if the stakes involved are higher and if the deadline for ratification is shorter. Although it is possible to imagine that a sufficiently great sense of national crisis might produce a federal-provincial agreement, one would have to be dreaming to think that it could be rammed through seven legislatures plus the Senate without a huge public outcry. Moreover, even if ratification were forced through, the game would continue. Hardline separatists in Quebec will never accept "renewed federation" and would remain alert for slights. And future political debates would surely provide such slights if a substantial number of citizens of the rest of Canada felt that their vision of the country had been compromised in order to keep Quebec in Confederation.

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As we suggested earlier, one can think of the Constitution as the legal framework for the evolving social contract. Such a framework is only partly a means of constructing efficient arrangements for the operation of government. It is also partly an expression of mistrust of government. The framers of the U.S. constitution wrote significant limits on what that country's governments were allowed to do because they did not trust them to remain within the limits of the social contract as it then existed. Of course, the individual rights listed reflected the contemporary, fairly narrow idea of citizenship, which effectively excluded many people, notably slaves and women.

To many in Canada today, the idea of entrenching individual rights in the Constitution and enforcing those rights through the court system is appealing, since they also do not trust government always to deal appropriately with the rights they consider important. The social contract of the 1990s is, however, far more inclusive than the social contract of 200 years ago, both in who is considered a full citizen and in what full citizenship means. Hence, the constitutional entrenchment of citizenship rights is more complex now than it was two centuries ago. Furthermore, some Canadians oppose, on principle, the entrenchment of individual rights because it may produce an increasingly litigious society in which more of the real decisions are made by unelected judges and in which constitutional practice evolves on a case-by-case basis, unfettered by coherent design or by the concerns of society in general.<sup>27</sup>

An alternative model is that of the United Kingdom, where Parliament is supreme. There is no limit to its power to intervene as

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<sup>27</sup> All the same, one must recognize that Canada already has a Charter of Rights and Freedoms and policy setting by judicial interpretation. The problem is that the current set of judicial interpretations of social policy is driven by a very narrow list of rights, essentially involving procedural equity and the right to nondiscriminatory treatment — which can be satisfied by “an equal right to nothing.” Hence, one hears Ottawa bureaucrats talk of “Charter-proofing” legislation. (Although it might be socially desirable to provide, for example, financial assistance through CPP to widows under age 65, it would be expensive to provide such benefits to widowers or to all people, yet the Charter says one cannot discriminate on the basis of sex or marital status.) The current Charter is already producing increased litigiousness and judicial policy setting, although within a very narrow concept of rights.

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it pleases, so the legislative process can give immediate expression to *any* desired changes in the social contract. If one parliament goes beyond the social consensus, it can be replaced and its decisions repealed by the next one. The flexibility of the parliamentary system and its potential for continual revision of the social contract can be viewed as either facilitating the effective expression of popular will or as opening the door to renegeing on the social contract and continual social and political instability.

In a federal state, such as Canada, the necessity of dividing jurisdictions among levels of government imposes some constraints on each parliament, federal or provincial, and creates a powerful role for the judiciary, that of arbitrating disputes over jurisdiction. Indeed, one might have thought that the necessity of obtaining federal-provincial agreement for changes in social policy would function as a quasi-guarantee of stability in social legislation. However, the federal government's revisions to Established Programs Financing and the Canada Assistance Plan indicate that in practice the social policy framework can be substantially altered by unilateral federal action.

Canadians who have little mistrust of government intervention in market processes and few anxieties about social and political instability tend to be impressed by the flexibility of the parliamentary tradition and to argue that constitutional arrangements in a federal state should be mostly about the division of jurisdictional responsibility, with a minimum of constitutional restrictions on governments' authority to solve problems of equity and efficiency as expeditiously as possible. Those who are concerned that governments may renege on their commitments to decent living standards for the economically disadvantaged, on the other hand, argue for constitutional entrenchment of social and economic rights.

The *Constitution Act, 1982* blended both the U.S. and the British traditions, and part of the current process of constitutional review is essentially a debate on which elements should receive greater emphasis in a new Constitution. But it should be clear that Canada can choose a social charter that follows either the U.S. or the British

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model or an alternative that falls somewhere in between. Thus, the argument about having a social charter need not depend on preferences, for example, for a more or less litigious society. The following sketches of how a social charter might work illustrate the range of possibilities available.

## The Panel of Experts Approach

The social charter adopted by the Council of Europe in 1961 represents a more administrative route than the judicial enforcement of the U.S. model or the parliamentary supremacy of the British approach. Participating countries agreed to ratify a core of articles plus a minimum fraction of all articles proposed.<sup>28</sup> The operation of the European charter involves three stages: (1) every two years, participating countries must report on progress made with respect to each of the charter provisions; (2) country reports are evaluated by a team of social experts; and (3) both progress reports and expert evaluations are sent to a political board with representation from each of the member countries.

The European charter has the advantage of not requiring expensive litigation and a lengthy appeal process. Furthermore, it avoids the setting of social policy on a case-by-case basis; expert evaluations can consider the impact of each case or design features of the system as a whole. Such a form is likely one of the most easily

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<sup>28</sup> These included, among others, the right to work (article 1); the right to just conditions of work (article 2); the right to fair remuneration, including "the right of men and women workers to equal pay for work of equal value" (article 4); the right to organize (article 5); the right of children and young persons to protection (article 7); the right to protection of health (article 11); the right to social security (article 12); the right of the family to social and economic protection (article 16); and the right of mothers and children to social and economic protection (article 17).

The decision to allow participation on the basis of at least a minimum commitment to the social charter was taken to encourage a maximum number of countries to agree to the charter. In the Canadian context, this mechanism might encourage all provinces to agree on the idea of a social charter even if unanimity could not be obtained on all items.

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acceptable a social charter could take,<sup>29</sup> especially in its minimum participation version. Disadvantages include the possibility of limited effectiveness and thus limited support from those who are currently suspicious of elected governments.

### A Social Rights Commissioner

A variant of the European model would be to replace the three-tier evaluation process with a social rights commissioner reporting annually to Parliament on the attainment of the objectives of a social charter. Canada already has a number of models for such an institution: consider, for example, auditors general and human rights commissioners. The effectiveness of the process would depend on the social rights commissioner's having the authority to investigate potential breaches of social and economic rights even in cases for which no claim has been filed. Such investigative authority seems especially important for disadvantaged groups, such as women and natives, that have had limited success in effectively claiming these rights in the past.<sup>30</sup>

A potential problem with this approach is the possibility of political patronage in appointments. As in the case of the federal auditor general, however, this difficulty could presumably be overcome — for example, through requiring that the appointment be approved by an all-party committee.

### A Fully Justiciable Charter

Alternatively, one might argue for a fully justiciable charter. This choice would be the most likely to avoid current suspicions of elected officials. Such a charter could increase believability in its effective-

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<sup>29</sup> That is, most easily acceptable by provincial governments.

<sup>30</sup> An example of the importance of this investigative authority can be found in the early history of Canadian equal pay legislation. Despite the presence of laws on the books, individuals made few successful claims.

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ness by making it possible for groups disadvantaged by some new policy to take court action against the government or governments involved. Again, however, it is important to remember that some currently disadvantaged groups are uncomfortable with and/or have inadequate access to the legal process.<sup>31</sup>

If fully justiciable social and economic rights were embedded in a new Constitution, the costs would include an increased propensity to litigation in social policy issues, some degree of judicial uncertainty, and a tendency for social policy to evolve as the result of a series of case-by-case decisions, rather than as the result of an overall design. The benefits, however, would include court recognition of individual cases, even cases of very unusual individuals. Those whose situation may simply not be perceived, even by the best-intentioned social policy planner, would have an avenue of redress. Another final advantage of operationalizing a social charter through the courts is that the legal process offers an established procedure for weighing conflicting claims, though decisions would ultimately depend on the judge.

## Justiciable Right to Effective Policies

A fourth option is to conceive of social and economic rights as the justiciable right to effective *policies* that maintain constitutionally specified social and economic entitlements for all citizens. Each individual would have the right to turn to the court system for a finding of fact that effective policies had not been implemented. The courts would be limited to findings of fact and jurisdiction — that is, whether the constitutional entitlements of citizens were or were not being met and which level (or levels) of government was responsible. With this version of a justiciable charter, the courts would not be in the business of prescribing remedies, other than requiring that

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<sup>31</sup> Women and natives, two groups that experience substantial economic disadvantage, are often heard to complain that the current legal system does not deal fairly or appropriately with their concerns.

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government come up with an effective policy; hence, policy design would remain a political function.

## *Conclusion*

Since the political arena is increasingly dominated by the eight-second sound bite and the 30-second television commercial, one has to face the fact that it is not well suited to the task of evaluating complex arguments or adjudicating disputed issues of fact. However, politics is the arena in which broad visions of the future are articulated and conflicting values are traded off. In constitutional design, Canadians should be trying to assign to each particular institution the sort of tasks it can be expected to do well. Any of the social charter options described offers a potential venue for dispassionate, extended analysis of complex evidence outside the political process, but with the exception of the fully justiciable option, the final solution to identified problems is left to the political process, which we feel is best suited to overall policy design.

Whichever version of a social charter is chosen, it should provide individuals with the right to present evidence — to a court, an expert panel, or social commissioner — that policies are not working and to have that evidence carefully considered in an open forum. Additionally, since some groups have historically had little success in establishing claims to their rights, a social charter should allow for the possibility of third-party investigation and representation. If the policies are found to have failed, government would have to revise them, but it would retain the right to find distinctive solutions that fit in with the other social, cultural, and economic imperatives of its community. Canadians could expect a diversity of policy models,<sup>32</sup> but they could also expect that all these policies would have to satisfy

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32 For example, if a right to shelter were entrenched, sincerely held beliefs about which policy actually works might lead some governments to adopt a policy of abolition of rent controls and zoning restrictions while others might opt for more public housing.

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a core list of objectives, in addition to any other objectives of the community involved.

Whatever the route chosen, it is essential that the process make some provision for the disadvantaged. A community is something more than simply a race for personal, individual success. The existing Constitution enjoins both federal and provincial governments to promote equality of opportunity [article 36(1)], but even if greater equality of opportunity makes the starting line more even, some people are born handicapped or become disabled and are unable to compete economically. These people are still members of the community, and they still have rights, which are the responsibility of all Canadians to protect.

If access to a minimum standard of living for those unable to advance economically is a reasonable requirement in any civilized society, then social and economic rights should be entrenched in the Constitution and explicitly guaranteed. So long as social and economic rights are credibly and effectively guaranteed, the exact form such guarantees take is a matter for discussion. If such rights are not embedded constitutionally, the risk of myopic renegeing on the social contract will remain, and Canadians' sense of national citizenship may become an early casualty of constitutional reform.

## What Rights?

When we speak of a social charter, what do we have in mind? What rights should such a charter enumerate? What degree of specificity should it contain?

As an illustration of the level of generality we have in mind, consider Articles 22 to 28 of the United Nations Universal Declaration of Human Rights (see the appendix).<sup>33</sup> It is instructive to ask

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<sup>33</sup> We are not suggesting, however, that one would wish to adopt that language unamended. The Universal Declaration was written in 1948, before the era of gender-neutral language. Although article 2 specifies that all provisions apply equally to male and female persons, in 1992 one would not write, for example, "economic, social and cultural rights indispensable for his dignity and the free development of his personality."

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whether the substance of these articles has stood the test of time. Those that refer to underlying human needs seem to have retained their validity, while those that refer to the mechanisms by which individuals attempt to fulfill their needs may have become less appropriate as the institutional structure of social and economic life has changed.

Articles 23 and 24, for example, refer to the right to work, to choose employment freely, to receive equal pay for equal work, the right to join trade unions, and to have rest, leisure, and holidays with pay. Article 23(3) specifies the right to remuneration sufficient to ensure the worker a decent standard of life "for himself and his family." Clearly, the single-earner family is envisaged. More generally, the implicit institutional framework is a society in which the vast majority of workers are involved in a wage-labor relationship with a specific employer. It is not clear what these articles can mean if the labor market is increasingly characterized by self-employment.

Article 25, however, refers to the enduring human need for a standard of living adequate for health and well-being, specifically mentioning the primary goods of food, clothing, housing, medical care, and social services, as well as some sort of "security in the event of unemployment, sickness, disability, widowhood, old age or other loss of livelihood" beyond the individual's control. And article 25(2) specifies special consideration for motherhood and childhood, something that can be seen as essential in any society. In our view, article 25 has stood the test of time, since it refers to underlying human needs that do not change and expresses the underlying social value that a civilized society should ensure that all the members of the social community receive the necessities of life.

In thinking about the necessities of life, we agree with Adam Smith, who wrote more than 200 years ago:

By necessities I understand, not only the commodities which are indispensably necessary for the support of life, but whatever the custom of the country renders it indecent for creditable people, even of the lowest order, to be without....Under necessities therefore, I comprehend, not only those things which

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nature, but those things which the established rules of decency have rendered necessary to the lowest rank of people.<sup>34</sup>

Since the "established rules of decency" evolve over time as living standards change, a social charter must use fairly general language. It is the enforcement mechanisms of the charter — either the reports of the social rights commissioner or the court decisions enforcing judicially entrenched social and economic rights — that will give concrete meaning to the concept of a standard of living adequate for health and well-being.

Over time, the general language of a social charter undoubtedly would be supplemented by a succession of findings that traced out its specific implications, in much the same way as successive court decisions in the United States have spelled out the concrete meanings of that country's constitutional prohibition of "cruel and unusual punishment." Over time, evolving case law would reinterpret old precedents in the light of new values and new constraints.

A social charter would affect the terms in which policy debate is cast and would provide greater legitimacy for the concerns of groups, such as the homeless, that now have to struggle to remain on the policy agenda, but a social charter would not end politics. Conflicting views about appropriate policy are an essential feature of democratic political life. In the long term, the function of a social charter would be to articulate general values and to specify the adequacy of existing policy in meeting basic human needs in order to provide a broad guide to the evolution of policy. In the short term, by specifically enumerating the right for housing and medical care, a social charter could help to protect existing rights to medicare and to expand the right of the homeless to some form of shelter.

The Canadian Constitution can be read as already implying some social rights. For example, articles 26 and 27 of the U.N. Universal Declaration of Human Rights refer to individuals' rights to education and to free participation in the social and cultural life

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<sup>34</sup> Adam Smith, *The Wealth of Nations* (1776; reprint E. Cummings, ed., London: University Paperbacks, Methuen, 1961, 2 vol.), p. 400.

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of the community. If the existing article 36(1) of the Canadian Constitution, which refers to the joint responsibility of federal and provincial governments for the equality of opportunity of individual Canadians, were shorn of its qualifying phrases about jurisdiction,<sup>35</sup> the right to education might be considered to be subsumed under the right to equality of opportunity. Similarly, the U.N. provisions that "higher education shall be equally accessible to all on the basis of merit" [article 26(1)] and "everyone has the right freely to participate in the cultural life of the community" (article 27) might be considered particular applications of the existing Canadian Charter rights to nondiscriminatory treatment.

Yet saying that one could derive social and economic rights from Canada's present Constitution really represents another way of saying that the social and economic rights enumerated by the U.N. Universal Declaration of Human Rights are intimately related to the personal legal and political rights already in the Canadian Charter of Rights and Freedoms. Fundamentally, we argue — and Canada has already recognized, in voting for U.N. General Assembly Resolution 32/130 — that "the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible."<sup>36</sup> For this reason and because acceptance of social responsibility is an essential Canadian value, Canada needs a social charter that *explicitly* recognizes the social and economic rights of Canadian citizenship.

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35 "Without altering the legislative authority of Parliament or any of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority."

36 United Nations, General Assembly, Resolution 32/130, b.

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