
Democracy, Affordability, and the Social Charter: A Reply

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It is always interesting to read what people think you said. The comments by John Richards and William B.P. Robson are especially interesting because they contrast so sharply with what Shelly Phipps and I actually do say in our contribution to this volume. Their comments are, however, extremely useful, in part because they so clearly identify three major misconceptions about a social charter.

- A social charter is *not* about “big government.” It *is* about socially acceptable outcomes. Adopting a social charter does not imply choosing a specific means to attain socially acceptable outcomes — it just requires that they be attained. As Phipps and I note, a government might believe that the abolition of rent controls and the elimination of zoning restrictions would produce such an increase in the housing supply that the private market would provide all needed housing. If these policies worked, they would be *entirely* in compliance with a social charter that included the right to adequate housing. If they did not work, they would have to be changed — presumably, policies that do not work *should* be changed. Much of the space in Robson’s and Richards’ comments is devoted to attacking “big government.” Both argue that the market mechanism is a more effective means for meeting housing needs than is big government. Neither appears to recognize that such an argu-
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ment implies that "small government" would be able to comply with a social charter.

- Contrary to assertions by Richards and Robson, a social charter would *not* force homogeneity of social policy across Canada. Phipps and I are careful to point out that a social charter would impose a common set of criteria on social outcomes — for example, adequate food, clothing, shelter, health care, and education — corresponding to a common core definition of the rights of Canadian citizenship. But specific jurisdictions would be entirely free to meet (or exceed) those criteria in the way most appropriate in their particular context. For example, it is highly unlikely — for social, cultural, and economic reasons — that the same housing policies would be appropriate in isolated aboriginal communities as in downtown Toronto. What a social charter *would* require is that in both communities some set of policies be in place such that people are not forced to sleep in the streets.
- Entrenching a social charter in the Constitution does *not* mean, as Richards and Robson suggest, the end of politics and the beginning of rule by judges. I thought that Phipps and I were fairly clear in saying that there is a range of enforcement mechanisms for a social charter and that we hoped to start a debate on the nuts and bolts of how a social charter should best be enforced. Both Richards and Robson, however, focus on a *specific* enforcement mechanism — namely, full justiciability. Although Havi Echenberg and Arthur Milner, in their contribution to this volume, support the idea that the existing court system should be used to enforce the provisions of a social charter, this mechanism is *not* endorsed elsewhere — either by the Ontario discussion paper that both Richards and Robson cite in other contexts or, indeed, by us.

In my view, the existing court system may not be the best place in which to assess social charter rights because existing courts come with a particular adversarial structure and with particular rules of evidence and judicial standing, and without an independent re-

search capacity. If the existing courts are to be used, I would argue that they should be limited to findings of fact — that is, the determination of whether or not social charter rights have been infringed — and the assessment of jurisdiction. The design of remedies is appropriately left to the political system.

Space does not permit a complete listing of all the points of disagreement that Phipps and I have with Richards and Robson. In some cases, there are clear errors of fact. For example, contrary to Robson's assertion, it is not true that there has been "increasingly generous income support for the jobless" — all the post-1971 reforms to the *Unemployment Insurance Act*, most recently in 1989, have decreased the generosity of the UI system. Other issues are more general. For example, Robson draws an untenable distinction between "negative" and "positive" rights on the basis that the former constrain state action, while the latter require resources, which must be raised by taxation. However, many of our existing civil rights entail financial obligations for government — for example, the right to a fair trial may require the state to pay for legal counsel and court interpreters. The U.S. constitution prohibits "cruel and unusual punishment," but this negative phrasing of individual rights could be positively phrased as a right to humane punishment, if convicted. Whether phrased positively or negatively, expenditure is required, since more prisons must be built when existing prisons become overcrowded.

In addition, there are misinterpretations by Richards and Robson. For example, I thought Phipps and I were fairly clear in saying that the *historical* origin of interprovincial transfer payments was, in part, compensation for the protected markets that Central Canada enjoyed in the Maritimes and in Western Canada, but this historical justification is increasingly irrelevant in a free trade environment. Evidently, Richards interpreted us differently.

One could go on, but there are three main themes to the comments of Richards and Robson that should be stressed: their confusion of ends and means, their concerns about affordability, and their stated worries about the democratic process.

Both Richards and Robson confuse ends (such as adequate health care) and means (such as emphasis on preventive medicine or emergency wards). This confusion is exemplified in Robson's conclusion, where he states that Canadians may in future want to change the way in which health care — or unemployment insurance or postsecondary education or housing — is delivered. The important point, however, is that, after a social charter has been put in place, governments would be as free to experiment with new modes of program delivery as they are now. The difference is that a social charter would provide an additional mechanism for asking "Is it working? Do these changes, *in fact*, imply that Canadians' access to health care — or education or housing — is being maintained?" A social charter would specify a criterion for deciding whether a policy is "working" — namely, that, whatever other objectives are also satisfied, the end result must be that all Canadians have access to adequate food, clothing, shelter, health care, and education. A social charter would also require that something be done if policies are not working. By itself, however, a charter neither forbids social policy experimentation nor dictates the form of remedies for failed experiments.

Richards and Robson devote considerable attention to the issue of affordability. As already noted, a social charter does not dictate the means by which such social objectives as a minimum adequate standard of living should be produced. Some would argue that stimulative macroeconomic policies have the biggest impact on the rate of poverty, while others would emphasize improved training to enable the poor to gain access to employment. Ensuring that jobs are available, and that poor people have the skills to fill them, is undoubtedly a more effective policy to reduce poverty than simply transferring income.

It is still useful, however, to keep in mind orders of magnitude. Straightforward cash transfers to erase the poverty gap may be the most expensive available policy, but such transfers — that is, the total additional cash required to eliminate poverty — would only amount to about 1.04 percent of gross domestic product (GDP). Canada is a rich country; it could afford to spend 1.04 percent of its GDP on such

rich country; it could afford to spend 1.04 percent of its GDP on such a goal. Alternative policies that could have the same effect are also possible, at a lower cost. Although Phipps and I compare the poverty gap of 1.04 percent of GDP with the 1.07 percent of GDP that Canadians now spend on alcohol, it would probably be more appropriate to compare the size of the poverty gap with the 2 percent increase in GDP that, according to Okun's law, Canada would obtain if unemployment were to decline by one percentage point.

Both Richards and Robson argue that a presumed increase in taxes¹ would undermine what Richards calls "the willingness of people to produce wealth." It is true that higher taxes imply a decline in the net return to an additional hour of labor supply and that social programs contain disincentives to work. That is why Phipps and I, along with other economists, have extensively analyzed the determinants of the wage elasticity of labor supply and the responsiveness of labor market behavior to social programs such as unemployment insurance.² We have examined a number of specific segments within the Canadian population and looked carefully at interactions between the tax system and other social programs, while controlling

1 Richards offers an argument, which I frankly cannot understand, that a social charter would mean that governments would not want to save money. With or without a social charter, however, the incentives to economize would remain the same. A dollar saved on one program would always be a dollar that does not have to be raised from taxation or that can be spent on an alternative use.

2 Examples of our work include: L. Osberg, "Behavioural Response in the Context of Socio-Economic Micro-Analytic Simulation," Statistics Canada, Analytical Studies Research Paper 1 (Ottawa, April 1986); idem, "Is It Retirement or Unemployment? The Constrained Labour Supply of Older Canadians," *Demographic Review* (Canada, Department of National Health and Welfare) (1988); S. Phipps, "Quantity Constrained Household Responses to Unemployment Insurance Reform," *The Economic Journal* 100 (1990): 124-140; idem, "The Impact of the Unemployment Insurance Reform of 1990 on Single Earners," *Canadian Public Policy* 16 (1990): 252-261; idem, "Behavioural Response to UI Reform in Constrained and Unconstrained Models of Labour Supply," *Canadian Journal of Economics* 24 (1991): 34-54; L. Osberg and S. Phipps, "Quantity Constraints in the Analysis of Labour Supply," Dalhousie University Working Paper 89-04 (Halifax, N.S., 1989, Mimeographed); idem, "On Integrating Income Tax and Unemployment Insurance in Models of Labour Supply" (Dalhousie University, Halifax, N.S., March 1992, Mimeographed); and idem "Large Sample Estimates of Labour Supply: Results with Quantity Constraints," *Oxford Economic Papers* (forthcoming).

for variations in labor market demand. Yet, our results are, in the end, substantially in agreement with everyone else who has seriously examined labor supply elasticities.³ Our econometric work indicates that if increased transfers were financed by higher taxes, one could expect a 1 percent decline in the after-tax wage to induce a decline of, at most, 0.03 percent in annual hours of labor supply. And I would emphasize that alternative policies — such as lower interest rates to stimulate the economy — produce greater output, lower poverty, and smaller government deficits.

As to the worries expressed by both Richards and Robson about the implications of a social charter for the democratic process, the entrenchment of a social charter would be neither more nor less undemocratic, and neither more nor less carved in stone, than the entrenchment of any other constitutional provision — for example, the constitutional prohibition of interference with the free mobility of capital, labor, services, and goods. Constitutionalization, either of a social charter or of an economic union, implies that other laws must be in accordance with constitutionalized principles and that the amendment of these principles requires the concurrence of the federal Parliament and seven provincial legislatures — representing 50 percent of the population — rather than a simple majority in a federal or provincial legislature. In other words, the decision to entrench either a social charter or a guarantee of economic union in a renewed Constitution represents a setting of priorities — a decision that some issues *should* take precedence and that some policy goals *should* be more difficult to change. Constitutions are like that. One of the roles of a written constitution is to identify those issues that are more central than others; the problem for Canadians is to identify those issues that are most central to their social values.

3 See D. Hum and W. Simpson, *Income Maintenance, Work Effort and the Canadian Mincom Experiment* (Ottawa: Economic Council of Canada, 1991), for a survey of Canadian empirical evidence. For a survey and assessment of the importance of alternative econometric techniques, see A. Mroz, "The Sensitivity of an Empirical Model of Married Women's Hours of Work to Economic and Statistical Assumptions," *Econometrica* 55 (July 1987: 765–799). For an encyclopedic survey, see M. Killingsworth, *Labor Supply* (Cambridge: Cambridge University Press, 1983).

Richards and Robson question whether there is, in fact, a broad consensus on a common core definition of Canadian citizenship that a social charter might help to express, but they provide no evidence. Fortunately, there are some data to suggest that such a consensus does indeed exist. A CTV/*Toronto Star* poll, conducted in October 1991, asked a representative sample of Canadians: "Do you approve or disapprove of a social charter guaranteeing the right to health care, social assistance, and education?" Eighty-five percent of the respondents said that they did (the figure rose to 88 percent in Quebec).⁴

Finally, a word on the possibility of "radical improvement." Robson argues that some people have unconstrained visions and others have constrained visions, but such phrases are not a useful guide to policy decisionmaking. The world is not likely ever to be perfect and a social charter will not make it so. Given that events present us with many unavoidable choices, however, all that an individual or a society can do is to attempt to make the best possible choice among the available alternatives. Entrenching a social charter in the Constitution is an alternative for Canada. Although this would not instantly solve all of Canada's social problems — and may not even produce as many desirable outcomes as Echenberg and Milner suggest in this volume — it would enable better social policy to be made over time than would occur in its absence. Furthermore, without some such clear, credible commitment to the maintenance of distinctly Canadian social values, there is every likelihood that the current process of constitutional renewal will fail, with extremely serious consequences for all Canadians.

⁴ *Toronto Star*, October 15, 1991. Nationally, only 9 percent (6 percent in Quebec) said that they disapproved, while 6 percent had no response.
