

Do Women Need a National Government? Portents and Prospects for Social Policy in a Decentralized Federation

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ABSTRACT

This article presents a critique of recent policy discussions about the decentralisation of social programs in Canada, arguing that such discussions neglect the impact of decentralisation on poor women and children in particular. The paper goes on to advocate a form of social corporatism or "social partners"--with women as a key constituency to set standards for federal and provincial programs.

RÉSUMÉ

Cet article présente une critique des discussions sur les politiques récentes en faveur de la décentralisation des programmes sociaux au Canada, qui soutiennent que ce genre de discussions négligent l'impact que la décentralisation a sur les femmes et sur les enfants pauvres en particulier. Cet exposé se poursuit en recommandant une forme de corporatisme social ou "partenaires sociaux" -- avec les femmes comme composantes importantes pour établir des normes des programmes fédéraux et provinciaux.

My country is not a country, it is ten provinces...

A critical assessment of the current proposals for decentralization of control over social programs is urgently needed in light of the First Ministers' conference of the summer of 1996, and the attention paid to policy proposals advocating a radical decentralization of the federation.¹ Voices preaching disentanglement of federal and provincial responsibilities, greater decentralization of the design and delivery of programs, and the end to federal transfers and federal meddling, are becoming louder.² At the same time, these advocates usually call for internal trade barriers and barriers to the mobility of people to be brought down. Making people "free to move," replacing a social union with an economic one, they argue, will best provide for the economic well-being of citizens of this country. Some would go further, saying provinces should not have to adhere to any rules regarding social programs at all, but only to "national guidelines" (Greenspan and Laghi, 1996).

The debate in policy circles and in the media appears to accept the inevitability of decentralization (Courchene, 1996a; Taylor, 1996):

all that needs to be decided is if it will be moderate or more radical in scope. These propositions, this article argues, should not be accepted without scrutiny, especially not without considering the impact on the constituencies these programs are meant to serve and who are traditionally left out of the debate: the poor, and in particular, poor women and children.³ What is also striking about the debate and discussion surrounding decentralization is the lack of critical reflection of what radical decentralization means and whether alternatives exist to outright decentralization. It is time to bring these issues and concerns back into the debate.

The question of who will regulate, and who should regulate, in an era of straightened economic circumstances is an important one. The provinces have argued that since the federal government has substantially decreased funding, notably with the introduction of the *Canada Health and Social Transfer* (CHST), it should no longer be able to put the same conditions on spending those monies. Premiers have contested the efforts of Ottawa to reduce financial support for social programs while still continuing to police them. All provinces are demanding that they must

have more authority to spend funds as they see fit in order to deal with the federal cutbacks.

At the same time, decentralization is seen as a means to demonstrate the workability of federalism to Quebeckers. The suggestion, then, is to replace cooperative federalism and federal government "policing" with executive interprovincialism (Dupré, 1985). If the federal government is no longer providing the same level of funding, and is hesitant to use its spending power any further, then, the radical decentralists propose, it should vacate the field entirely. Supporters of decentralization suggest we move not just to perforated sovereignty, but to pure sovereignty for the provinces, with some powers delegated up to the federal government. This connotes a radical shift from a "federation" to a "confederation."

How does this debate relate to feminism and women's concerns? Feminist scholars have long argued that the traditional welfare state poses numerous problems (Gordon, 1990; Sassoon, 1992). Some have characterized the traditional welfare state as excessively regulatory, centralist, rigid, and inflexible, with policies which often do not respond to the diversity of individuals and communities utilizing these services (Howse, 1995).

However, the current push for decentralization of social programs in Canada should not be considered a positive development for women. As I will argue, women are the losers in the current fight over the restructuring of the social safety net. First, cuts in transfer payments and consequent reductions in benefits have meant increases in poverty levels (Gadd, 1997; National Council of Welfare, 1997), particularly among women and children. Poverty is especially high among single mothers as well as among elderly women (Moore and Rosenberg, 1996), single women, and, as Jackman (1995) notes, aboriginal women and women with disabilities. In addition, women are heavily employed in the public sector, which is being reduced in an effort to save costs (Bakker, 1996). Moreover, governments have been slow to implement programs such as pay equity and employment equity which are designed to improve women's equality in the workforce. The

Conservative government in Ontario, for example, has recently cancelled employment equity programs. Programs and services of benefit to women are often the ideological and economic terrain for battle between governments, as the fight between Alberta and Ottawa over facilities fees, discussed below, reveals.

Second, what is being pushed for is not simply a reconceptualization of who should deliver programs, but whether any government should deliver these programs. Current suggestions to radically alter the terms of federalism are also trying to reconceptualize the role of the state or states (if we conceive of provinces as states) and to privatize responsibility for social services.

Some researches point to the inevitability of these phenomena, suggesting an integrating global economy inevitably causes a splintering global polity (Courchene 1996b). Does this mean, then, that we should embrace the idea of radical decentralization of social programs, giving the provinces greater say in setting standards? What are the alternatives to decentralization?

The current policy debate seems to suggest only two choices: continued involvement of the federal government and lobbying for increased commitments, or radical decentralization to the provinces, with the federal government no longer giving money (just tax points) and therefore also no longer imposing standards. In this article a third alternative is proposed: making the people who are consumers of the programs the enforcers of standards. This article argues that both the debate and control over social programs should be removed from their territorial focus: that of the provinces versus Ottawa. It suggests that new actors, representing constituency concerns -- business, unions, social service associations, women's groups, as well as governments -- should be the key decision makers and standard setters in social security. The article advocates a form of social corporatism, or "social partners" to replace federal and provincial standard setters, with women as a key constituency to be included.

PAST PRACTICE

The history of the welfare state in Canada

is one of the federal and provincial governments recognizing that many constituencies were neglected in the smattering of provincial programs that had developed in the earlier part of this century. If one did not meet the criteria for a targeted social program, or did not fit the category of "deserving," then one fell through the cracks, or had to rely on church or charitable groups (National Council of Welfare, 1995). Many assessments of need were based on criteria damaging to women. If a woman was divorced instead of widowed, for example, her claim to entitlement changed. Pensions programs or allowances for sole-support mothers established by the western provinces and Ontario in the early part of this century had very strict eligibility criteria (Strong-Boag, 1979: 27).

The inter-war period can also be characterized as a time of decentralized welfare programs (Banting, 1987: 60). Several provinces had initiated social programs like Workers' Compensation legislation in Ontario and Mothers' Allowances. The only federal program that emerged in this period was a very limited and cost-shared old age pension scheme set up by Liberal Prime Minister Mackenzie King in 1927.⁴ The federal government did not believe that it should assume a role in social security, even going so far as to relegate the care of disabled veterans from World War I to private charity (Morton, 1995).

The changes initiated by the federal and provincial governments in the 1960s were designed not only to consolidate and nationalize programs, but also to take the arbitrariness out of assessments of need. It meant that for the first time a number of previously neglected groups became eligible for social assistance and other services, and a number of new programs for women and families, such as child care, were instituted.

The development of these joint programs also acknowledged that provinces could not pay for services on their own. As Banting points out, programs like:

Mothers' Allowances represented an unwelcome glimpse of the future. The costs of providing support for this

relatively small group graphically highlighted the potential costs of grappling with the full range of income security needs emerging in Canadian society. As a result, provincial governments were anxious to avoid welfare commitments, and continued to insist on municipal responsibility for relief efforts (Banting, 1987: 61-2).

Provinces struggled to provide for even the piecemeal programs that were set up. Banting argues that the costs of wholly-funded provincial programs such as Mothers' Allowances caught the provincial governments by surprise. "Expenditures greatly exceeded initial estimates, and rose dramatically throughout the 1920s, a fact which redoubled the reluctance of poorer provinces to take the plunge and slowed the spread of Mothers' Allowances in eastern Canada for almost a decade" (1987: 61). Under section 91 of the *Constitution Act*, 1867, broad powers of taxation to fund such programs, both then and now, lie with the federal government, not the provinces, so the provinces could not do much to raise revenues to provide these programs.

World War II and the post-war period, in contrast, can be characterized as that of a semi-centralized welfare state (Banting, 1987: 60). After the war, most Western industrialized governments acknowledged that more had to be done to prevent economies from returning to pre-war Depression conditions (Blake, 1995: 246). In Canada, the federal government, first under Conservative Prime Minister R.B. Bennett, but primarily under Liberal Prime Minister Mackenzie King, began to develop labour legislation based on the U.S. *Wagner Act*, and Keynesian-style full employment policies through the use of fiscal and monetary mechanisms. The federal government also introduced a grants program to equalize the programs offered by provincial governments throughout Canada. The federal Liberals successfully negotiated with the provinces to introduce federal unemployment insurance (UI) in 1940, after the Conservative government's *Employment and Social Insurance Act*, 1935 was found unconstitutional.⁵ The federal

Liberal government under Mackenzie King introduced the *Family Allowances Act* in 1944 under the authority of the federal spending power. Implemented in 1945, it was the first universal social program in Canada.⁶

The federal government had also put forward proposals in 1945 to cost-share medical and hospital insurance and to take over responsibility for old age pensions; however it could not reach agreement with the provinces on revenue sharing (Blake and Keshen, 1995:4). It was not until the 1950s, then, that the federal government went ahead with some of its proposals and set up four categorical assistance programs in the 1950s for specific people in need.⁷ Again, these programs were targeted, basing funding eligibility on the cause of need and thus continuing to demarcate between deserving and undeserving. The federal government also introduced health grants to the provinces in 1948, and aid to universities in 1952 (Pal, 1985: 9).

The early 1960s marked the beginning of the universalization of Canadian social assistance programs and a movement away from the deserving/undeserving basis of funding. This period of government policy development can be considered state-driven as opposed to society-driven (Burt, 1990; Mahon, 1996: 19-20). The form these programs took was determined by federal government officials, in consultation with the provinces.

In 1963, the federal government worked with the provinces to consolidate and expand the categorical programs, which led to the establishment of the *Canada Assistance Plan* (CAP) in 1966. The CAP was intended to expand social service delivery and to make it more efficient.

Through the CAP, the federal government introduced cost sharing of a number of welfare programs, including child care expenditures. It rolled in the categorical programs that were already in existence and extended funding to "all those in need or likely to be in need," thereby shifting the philosophical basis for assistance from the cause of need to the fact of need. The government also introduced a preventative aspect to the programs as it extended assistance not only

to the poor but also to those who, save for government assistance, would become poor.

Under the CAP, the federal government agreed to cost-share any new programs created by the provinces after 1965. It also agreed to cost-share the delivery of new services including salaries (but not overhead). The provinces were still responsible for the set up and operation of services, as well as for eligibility and spending levels. However, it became advantageous for the provinces to expand social services and to get involved in service delivery as no ceiling existed on the amount of federal government cost-sharing. For every dollar the provinces spent, the federal government would contribute an equivalent amount. This system guaranteed the provinces long-term and automatic funding which required no negotiations. The open-ended funding system continued until 1990 when the federal government imposed a cap on CAP.

The degree of federal-provincial cooperation required to establish such a program, especially in the context of Quebec sensitivities to federal intrusion into provincial welfare jurisdiction, makes a program like the CAP a remarkable accomplishment. In addition, federal government leadership as well as federal government funding was needed to get the national programs in place. This period thus marked an era of cooperative federalism and federal government leadership that were crucial to getting national social programs established.

The two institutional impetuses-- cooperative federalism and state-led social program development -- did not connote a desire on the part of governments to achieve equality for women. The effect of such programs, though, was to improve the lives of women and children. Mahon argues that the government can be characterized as exhibiting "state feminism" during this period. This means, "the state acts to incorporate a definition of women's concerns into policy without significant pressure or input from women's groups" (Mahon, 1996: 21). For example, monies for child care were agreed to as part of the CAP, largely without the pressure of a child care lobby, which only developed in the late 1970s and 1980s. Even the national child care conferences,

one in 1971 and the other in 1982, were sponsored by the federal Department of Health and Welfare along with the Canadian Council on Social Development. Women did not have a real say in how the programs were structured or developed, although women's groups and child care advocacy groups did begin to lobby for child care programs that would not be welfare focused.

In 1971, the federal government agreed to introduce maternity benefits under the unemployment insurance program. Thus, the federal government can be credited with developing this program for women. At the time, provinces were unwilling or unable to set up maternity benefits. The federal government decided to include maternity benefits under UI because it was a way for it to introduce a program that really fell under provincial jurisdiction. The program is placed under Unemployment Insurance for this reason, rather than because it is the best way to structure the program (Burt, 1990: 202-3).

Thus many feminist scholars credit the federal government's activism in particular (Brodie, 1996: 8) and a general willingness on the part of both levels of government to cooperate (and to intervene in the economy and polity) for the expansion of the Canadian welfare state and improvement of benefits for women and children. Nonetheless, governments can be criticized for not involving women in the design and implementation of these programs.

Clearly, too, there was a willingness on the part of the provinces to enter these arrangements -- recognition which is not made in the current decentralization debates. Had the "Fathers" of Confederation foreseen the needs of the 20th century and the welfare state that would develop when they were drafting the constitution, would they have been so quick to hand over full authority over social matters to the provinces? Or would they have claimed those powers as matters of national importance that could be most efficiently and effectively handled under federal jurisdiction, or even shared jurisdiction, as they saw the need for shared jurisdiction in the areas of agriculture and immigration?

Given as well the lack of "Mothers" at the table, who may have had other ideas regarding the

division of jurisdiction, can we adhere so rigidly to the division of jurisdiction laid out in 1867? A flexible interpretation of the original 1867 arrangements was necessary, and acceptable, in order to establish a welfare state. Why is that not possible now?

THE CURRENT IMPASSE

1) *The change in fiscal relations*

It would appear, according to the rhetoric of politicians at least, that a commitment to the welfare state remains strong. However, while the key actor of the 1960s -- the federal government -- continues to declare its support for a strong social union, in practice it has little power and little political will left to ensure it.

One of the keys to provincial willingness to cooperate with the federal government in the past in setting national standards was the promise of federal monetary involvement. Cooperative federalism, then, and with it national standards, may no longer be a viable principle. In the past, a federal purse that specified what monies had to be spent on which services could force the recalcitrant provinces to spend where they may not have wanted to. Two conditions have pressured the federal government to move away from such a role: increasing federal deficits and the problem of Quebec (Gibbins, 1996: 7).

The federal government insists that it has run out of cash. By 1993 and the election of the federal Liberal party, the federal deficit had reached \$40.5 billion or approximately 7 per cent of GDP, and the gross national debt was approximately 94 per cent of GDP (OECD, 1995). Faced with a threatened credit downgrading by Moody's Investor Services, in the 1995 budget the federal government announced that as of 1 April 1996 it was ending its shared-cost welfare and social assistance programs. Instead it would introduce a block fund called the *Canada Social Transfer* (renamed the *Canada Health and Social Transfer* in the legislation or CHST) which would roll together existing block funding for Medicare and post-secondary education (*Established Programs Financing* or EPF) with welfare and social programs. The government also announced

cuts to provincial transfers of \$2.5 billion in 1996-97 and \$4.5 billion in 1997-98, on top of \$1.5 billion announced in the 1994 budget. It was estimated that federal funding would decline from about \$30 billion in spending on CAP and EPF to about \$27 billion for the first year of the CHST (1996-97) and \$25 billion for the second (National Council of Welfare, 1995:10).

The creation of the CHST brings to an end the federal conditional grants set up under EPF and CAP. The CHST is a block transfer: all monies will go to provincial Consolidated Revenue Funds. The monies are not earmarked. This therefore ends federal restrictions on the way money is spent on specific programs, with two exceptions. The provinces cannot impose a certain residence period as a condition for receiving assistance. If they do, all or part of the cash portion of the new CHST could be withheld. Second, all the provisions of the *Canada Health Act*, 1984 will continue to apply, including providing "universal comprehensive, accessible, portable, and publicly-administered" programs (National Council of Welfare, 1995: 9-10).

However, other conditions that used to exist under the CAP no longer apply. In order for provinces to receive federal funding, all people who could prove to be in need had to be eligible for financial assistance; the level of financial assistance granted had to take into account the individual's budgetary requirements; all individuals had the right to appeal decisions denying financial assistance; and no individual could be forced to work in order to receive assistance (Jackman, 1995). None of these provisions remain.

The funding mechanism under the CHST has changed as well. Under CAP, federal spending occurred only after the provinces had incurred a cost for a particular benefit. The CHST, in contrast, is a controlled expenditure program so it no longer guarantees a 50/50 cost-shared arrangement on assistance programs to all provinces, but rather pays out funds as the old EPF program did. Federal contributions are paid in cash and tax points, calculated according to a very complex formula and granted as a block fund. As a result of the decreased funding, all provinces are

demanding greater flexibility in dealing with their spending.

Provincial funding for health care and less so for education will probably remain a priority for the provinces, which means that savings will be made in the area of welfare. Welfare costs, unlike health and post-secondary education costs, vary from year to year, and are counter-cyclical expenditures; that is, they are inversely related to the strength of the economy. The CHST funding formula will be calculated based on economic growth, which is precisely why it is a poor determinant for spending on welfare. There will therefore likely be a significant loss of funding for welfare and social services under the CHST compared to CAP (National Council of Welfare, 1995: 13-16).

As a result, we are already seeing reductions to welfare, rather than in other areas. The Saskatchewan government in February 1996 announced proposed changes in welfare benefits including work for welfare requirements for young people. The Manitoba government, in March 1996, simply slashed welfare benefits for single employable people (Roberts, 1996a, 1996b). The Ontario government introduced mandatory workfare in June 1996. These moves seem designed to get people off the welfare rolls as a way of dealing with funding cutbacks. The Manitoba Family Services Minister, Bonnie Mitchelson, even declared that the welfare reductions were implemented due to reductions in federal transfers (Roberts, 1996b).

Under CAP provisions, such moves would have been open to challenge. Under the CHST, however, the only condition still in place is the prohibition against imposing a residency period as a condition of eligibility for social assistance. One chilling example of the kind of provincial/federal struggles that this leads to, and the effects on women and women's rights, is the fight over funding of semi-private clinics in Alberta. In January 1995, the federal Health Minister, Diane Marleau, ordered Alberta and other provinces who allowed clinics to charge facility fees, to stop the practice by 15 October, arguing that the facility fees were a violation of the *Canada Health Act*. The Alberta government

resisted pressure to eliminate the facility fees, accepting a loss of about \$400,000 per month in transfer payments from October 1995 to May 1996 to fight the federal government (Laghi, 1996). It went so far as to threaten to stop funding abortions that were not deemed by doctors to be "medically necessary" (Canadian Press, 1995; McInnes, 1995a; Mitchell, 1995a, 1995b).

That move, although coming from pressure from pro-lifers within the Conservative caucus, was also clearly designed on the part of the Alberta government to assert its control over health care funding.

2) *The problem of Quebec*

The federal government's continued role in social programs is also in question given the continued demands on the part of federalists in Quebec to completely vacate the field of social policy. The federal government has had to respond to these demands, especially in light of the near-success of sovereigntists in the 1995 referendum. Quebec federalists have long argued for greater provincial control over social programs as they feel the province can better provide services and respond to cultural concerns.

As a means to mollify Quebec nationalists, the federal government is moving away from the use of the federal spending power, its chief instrument in the area of social policy. Some have speculated that the establishment of the CHST block funding is to demonstrate the flexibility of federalism.⁸ The 1996 speech from the Throne, as part of its strategy regarding Quebec, announced that the government "will not use its spending power to create new shared-cost programs in areas of exclusive provincial jurisdiction without the consent of a majority of the provinces." It further stated that "any new program will be designed so that non-participating provinces will be compensated, provided they establish equivalent or comparable initiatives" (Canada, House of Commons, 1996: 4). That is, provinces that do not want to participate can opt-out with fiscal compensation.

The provinces are trying to push the federal government further. They do not want the federal government to be collecting the money and

then giving it to them, even unconditionally. Some want the federal government to leave the field entirely and give provinces the tax points, which are worth more because they fluctuate more than a straight cash amount. Clearly the era of cooperative federalism that led to the creation of national social programs has ended. What should come in its place?

THE PROVINCES' PROPOSALS

The radical decentralists propose that if the federal government no longer provides adequate funding for social programmes, then it should vacate the field entirely. Some premiers argue that national standards could be set by the provinces and need not be dictated by the federal government, a suggestion designed to replace cooperative federalism and federal government "policing" with "executive interprovincialism."

How will executive interprovincialism work in practice? Contrary to some of the premiers' assertions (Greenspon, 1996), it would appear that the provinces have not proven capable of maintaining national standards, particularly in the area of welfare. Instead, we are seeing different rules in place in different provinces, a competition between provinces to reduce welfare rolls, and a movement away from standards that once were deemed acceptable. A number of provinces are engaged in the rollback of welfare benefits, to the detriment of claimants (Gadd, 1997). And, despite the assertions of the Quebec government that it would maintain higher levels of social programs, the Quebec government's willingness to spend money on social programs is as dependent on resources and the leader in power as other provinces, as demonstrated in the May 1996 budget. Further, we should observe that an ideological impetus often underlies the cutbacks (Brodie, 1995).

The question also arises of how new national social programs to help women and children, such as child care, could emerge under executive interprovincialism. Child care activists knew after the 1995 budget and the announcement of the CHST that the vision of a national child care program was doomed, as the CHST meant the

federal government could no longer dictate on what the provinces spend the money. More than ever, new social programs require the political will of the provinces. Can we believe the provinces, under executive interprovincialism, will be capable of providing new services, or even maintaining services already in place?

The answer is, obviously they cannot. Despite the fact that the provinces had the ability to expand programs such as child care under CAP with guaranteed matching funds from the federal government, and all but Ontario, Alberta and B.C. were still guaranteed matching funds from Ottawa after 1990, none chose to develop a comprehensive child care program. What executive interprovincialism seems designed to do, rather, is give the provinces the option to choose which services to offer, which services they deem necessary (and morally palatable), and not to develop new programs and much-needed services like child care.

Many point to the example of Saskatchewan and its experimentation in health care provision before there was a national health care program as an example of how the provinces can be social program innovators. But in order for provinces to be able to continue to "experiment" with the delivery of new social programs, they would need the mechanisms the federal government has at its disposal to raise revenues: fiscal policy, and in particular, taxation power. Provinces do not have the fiscal levers necessary to greatly expand social programs. Thus we will require an even more radical devolution of taxation power if we go the route of full provincial control over social programs.⁹

Can provincial governments be trusted to ensure national standards? They really have no incentive to do so because they answer only to their provincial constituents, not to those in other provinces. And one province cannot interfere with what goes on in another province. Under executive interprovincialism, what means could be used to prevent the provinces from totally exiting social program provision? The idea of executive interprovincialism is based on relations among equal partners. How then can one province force another to adhere to a certain set of standards?

(Gibbins, 1996: 10)

In fact, it would be in the provinces' interest to reduce programs as much as possible, insofar as it does not provoke an electoral outcry. And provinces could target those who are least able to speak out. In fact, it would be advantageous to abandon the social field first in order to compete with other provinces (Howse, 1996: 11).

A RECONCEPTUALIZATION OF THE DEBATE

In the past, there has been a happy coincidence of the federal government being ideologically committed to and financially willing to expand social programs. The one advantage of having two levels of government involved in the funding and regulation of social programs is that one level--currently the federal government--can act as an enforcer of standards when another level refuses to adhere to national standards or regulations. However, inasmuch as the federal government has played this role, it may not much longer. If federalism fails or has failed to provide the mechanism to sustain standards and levels of benefits in social programs, we must find another mechanism to ensure social programs continue in this country, regardless of where one lives, or what the ideological bent of the current government is. For those of us who believe Canada is a social as well as an economic union, we must enter and reclaim the debate about social programs on behalf of citizenship. If citizenship rights are no longer being protected through the mechanism of the federal spending power, then we need to introduce a new mechanism. Furthermore, since national governments themselves no longer have levers at their disposal to regulate social programs, rather than leaving it up to the provinces to police each other, a new regulatory actor is needed. If not the national government, and not the provinces, whom?

Some would suggest the courts. Even if we accept the principle that social policy is a provincial responsibility, the way the issue should be framed is not over national standards but over rights of citizenship. One could read the Charter as

conferring rights to benefits from government as well as protection from government, or for protection of the basic necessities of life. The court route may be a way of ensuring governments provide a certain minimum level of economic or welfare benefits to individuals.

Many point to clauses already existing in the Charter that could be used to argue for a social basis to citizenship (Howse, 1996; Jackman 1988, 1993, 1994, 1995). Clearly section 6 of the Charter protects mobility rights and can be used to fight the imposition of residency requirements. Other possible clauses are section 7, which guarantees a right to life, liberty and security of the person; section 15(1) which could be read to include the poor as deserving of equal protection and equal benefit of the law without discrimination; section 15 (2) which allows governments to enact affirmative action programs for disadvantaged people; and even section 36 of the Constitution Act, 1982, which articulates a commitment on the part of governments to "(a) promote equal opportunities for the well-being of Canadians; (b) furthering economic development to reduce disparities in opportunities; and (c) providing essential public services of reasonable quality to all Canadians." It may be possible to interpret the equalization principle as equalization for all individuals within Canada.

Four single mothers in Ontario attempted to use the Charter to challenge the Ontario's government's reversion to the "spouse in the house" rule which the Conservative government implemented in 1995, in a case called *Falkner v. Ontario* (Geller and Jaffer, 1996). The rule, passed as part of the General Welfare and Family Benefits Regulations, mandates that couples are to be immediately considered spouses and therefore be ineligible for welfare as singles or as sole support parents. The legislation, the lawyers argued in the court challenge, targets the poor as it forces them to become instant spouses and apply for welfare together. Before this law was enacted, couples were entitled to live common law for three years before being held responsible to provide financial support to the other or to the other's children. The women challenging this law argued it was an invasion of their privacy under the Charter.

Women are seen as targeted under the rule as the vast majority who lost benefits since October 1995, when the new rule came into effect, were women.¹⁰

The four women lost their challenge of the Ontario legislation at the Ontario court level, Canadian Press, 1996b). Given the ad hoc and slow nature of the court process, it cannot be the only option. And it is less of an option because of the limited reading of positive, or social rights given by judges under the Charter.

The failings of the Charter as an instrument for enforcing positive rights points to the need for something like a citizens' Social Charter that is justiciable (Bakan and Schneiderman, 1992; Echenberg et. al., 1992). Such a development is not likely, however, as it would involve a constitutional amendment even beyond what was attempted in the Charlottetown Accord. There is little likelihood of any constitutional changes of that scale to be attempted in Canada in the foreseeable future.

A THIRD WAY

With what does that leave us? This paper has argued that social services should be seen as an issue of citizenship, not solely of federalism. It proposes, then, making the people who are consumers of the programs the enforcers of standards. After all, provinces, or provincial leaders are not the most representative of public opinion. Let us also not forget the people engaged in discussion on the future of social programs are the same band who brought us the Meech Lake and the Charlottetown Accords, and were judged by the population to be unrepresentative of the citizens of Canada.¹¹ How much less are they unrepresentative as the consumers of the services?

Many people refer to the subsidiarity principle guiding European Union social policy under the Maastricht Treaty as an example for Canada to follow (Courchene, 1996a, 1996b). The principle of subsidiarity is that "both the undertaking of political decisions and the implementation of their effects should, in the interests of democracy and justice, be performed at that level of government which is most immediate

to the people whom those decisions affect, only being transferred to a higher level in the interests of efficiency" (Green, 1994: 290).

Subsidiarity is an attractive doctrine for those who feel a higher level of authority should only be given responsibility for matters with which lower levels of authority can no longer deal. But we should look at how subsidiarity works in practice in countries which support the principle. In Germany, for example, administration of the health care system, pensions, accident insurance, child support, welfare, and so on, is not carried out by the national government, nor by the state governments, but rather by about 1,800 social security and health funds. The governing boards of these funds are made up of representatives of business, professional and labour interests, the "social partners." The officials of the funds are elected by their members. These funds have power, for example, to set fee structures for physicians, the investment of pension funds, and the construction and management of hospitals (Conradt, 1996: 230).

In other words, even the German Länder are not considered small enough groupings for the administration of these programs. The German model might suggest the new actors that can emerge to have decision-making authority in the area of social programs. In Europe, positive collective rights are enforced by parties, as well as trade unions and employers' associations. Room must be made in Canada for these new actors, the provinces and federal government becoming then just one of a number of state actors.

Jackman (1995: 403-4) recommends that because women have distinct needs and particular disadvantages, governments should increase opportunities for women to be involved in the design of welfare programs and that these programs should be accountable to women who use them. She recommends this could be enforced legislatively, by adding a clause to the Federal-Provincial Fiscal Arrangements Act which governs the CHST that the provinces recognize "the need to increase opportunities for women to participate in welfare design and reform, and the need to make programs and services more accountable to the women who use them" (404).

Beyond such legislative changes, though, governments would have to implement structures to solicit participation on the part of affected groups like women and to ensure accountability of these programs to these groups. Perhaps it is time for some truly corporatist¹² structures in Canada, bringing in representatives from groups directly affected by changes in welfare programs. A more corporatist form of feminism, as Mahon points out, would work within the representational system that links organizations in society to the state, such as is seen in Sweden. In Sweden, women's committees choose to work within the party and thus are a lot more influential when that party is in government. In Canada, this lack of "insider" links characterizes women's groups like the National Action Committee on the Status of Women (Mahon, 1996) and weakens women's voices in the design and planning of social programs. This move, to involve affected interests in the planning and implementation of social policy as well as the scrutiny of programs, would not require a constitutional amendment. It would simply require the introduction of new institutional arrangements truly based on "social partnerships."

CONCLUSION

As this article demonstrates, arguments for radical decentralization not only have implications in terms of federalism and national unity, but also the federal-provincial fight for control over social policy. Thus, decentralization has enormous implications for the kinds of policies and programs that will remain in place to help people in need in Canada.

This article has suggested that social policy must no longer be conceived as solely an issue of federalism. The debate over social programs must be moved out of its territorial focus. Provinces are rapidly becoming the most powerful actors in the area of social policy in Canada; we should question whether we want them to be. This paper suggests the alternative is not solely the federal government, however. Clearly government involvement is still required at the federal and provincial levels to negotiate funding for programs. But the actors involved

must expand beyond those representing regional interests alone to include those most affected by the programs: the beneficiaries of these programs. Federalism is not simply a system of rules proscribing or prescribing actions between actors.

Federalism is also an institution embodying structured relations between actors. If federalism is crumbling, what needs to be replaced are not the rules but the institutional actors.

ENDNOTES

1. While the idea of radical change in social program operation has long found support among some academics and politicians, current concern among premiers has arisen especially since the implementation of the *Canada Health and Social Transfer* (CHST) in 1996 and the cuts to federal funding for social programs (Greenspon, 1995b). Social policy discussions were a major focus of both the 1995 and 1996 summer meetings of First Ministers. The 1996 discussions were spurred by the release in August of the working paper written by Thomas Courchene for the Ontario Ministry of Intergovernmental Affairs (1996a).
2. Analysts affiliated with the C.D. Howe Institute have managed to dominate this policy debate. The coverage of Thomas Courchene's recent discussion paper publicized by the Ontario government is but one example. The C.D. Howe has published a plethora of volumes calling for the decentralization of social programs and increasing economic flexibility. See Brown *et al.* (1992); Courchene (1994, 1995a, and 1995b); Leslie *et al.* (1993). Calls, on the other hand, for the federal government to provide stable levels of funding have received less attention. See Greenspon (1995a).
3. In a recent issue of *Policy Options* on national standards, for example, not one article addressed the specific impact on constituencies such as women. Some recommendations were made to concentrate federal policies in areas such as child care, but without reflection on men's and women's differing economic circumstances and differing needs. See Kent (1996). The poverty rate among single-parent mothers was 57 per cent in 1995, vastly higher than any other family category. The child poverty rate was 20.5 per cent in that same year, or 1.4 million children living in poverty. In comparison, the poverty rate among families in general was 17.4 per cent in 1995. National Council of Welfare (1997).
4. The program paid meagre monthly sums to people over seventy who passed a means test. Even so, the scheme was opposed by the Quebec government because "it questioned the moral and social importance of individual responsibility, it implied higher taxation, and it invaded the constitutional jurisdiction of the provinces" (Vigod, 1995: 156).
5. Despite a Judicial Committee of the Privy Council decision in favour of the provinces (*Attorney General of Canada v. Attorney General of Ontario* (Employment and Social Insurance Act Reference), In the Privy Council. [1937] A.C. 355), because most provinces supported the federal program, they agreed to an amendment to the BNA Act to add unemployment insurance to the federal list of powers under section 91(1A).
6. Ursel (1992: 190) argues that the rationale behind the family allowance program, although it was never presented publicly as such, was that it was part of a low wage policy to "subsidize the income of families who could not adequately provide for their basic needs with wages alone." Schulz (1978: 153) argues it was designed to help soften the blow of women returning to their traditional roles after leaving the post-war labour market to men. Regardless of the reason, it marked a clear departure from past targeted social service provision, as well as the involvement of the federal government, although few other universal programs followed until the 1960s.
7. The government passed the *Old Age Assistance Act* in 1951, after the provinces agreed to a constitutional amendment to allow the federal government to act in the pensions field. This legislation was designed to assist low-income seniors aged 65 to 70. It also introduced the *Blind Persons' Act* in 1951 and the *Disabled Persons' Act* in 1954, which shared costs of allowances to the blind and the disabled, and the *Unemployment Assistance Act* in 1956, designed to cover some of the people not eligible for assistance under these other programs (National Council of Welfare, 1995: 2).
8. See the *Globe and Mail* editorial, "Preserving National Standards" (1995), although clearly the richer provinces are to bear the brunt of the cutbacks. This led Quebec Finance Minister Jean Campeau to argue the cuts would in fact boost support for sovereignty in Quebec (Freeman, 1995).
9. The government of Ontario discovered this in early 1997 when it tried to devolve responsibility for social services to the municipalities. Many municipal leaders protested that the only way they would be able to pay for such services is via their limited

power over property taxes. This would have meant vastly different property tax rates in municipalities with greater social service needs. The huge backlash to the proposal made the Ontario government back down.

10. A report in the *Globe and Mail* states that 89 per cent of the 10,000 people cut off social assistance between October 1995 and April 1996 were women (Downey, 1996).

11. Russell (1993) points out as well that the Citizens' Forum on Canada's Future in 1991 found that the majority of the "Rest of Canada." desired a strong central government (165). This highlights again the gap in opinion between ordinary Canadians and elites which should be ignored by the latter at their peril.

12. "Corporatism can be defined as a system of interest representation in which the constituent units are organized into a limited number of singular, compulsory, noncompetitive, hierarchically ordered and functionally differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports" (Schmitter, 1974, 93-4).

REFERENCES

- Bakan, J. and Schneiderman, D. eds. *Social Justice and the Constitution: Perspectives on a Social Union for Canada* (Ottawa: Carleton University Press, 1992)
- Bakker, I. "Deconstructing Macro-economics Through a Feminist Lens." In J. Brodie (Ed), *Women and Canadian Public Policy*. (Toronto: Harcourt Brace and Company, 1996): pp. 31-56
- Banting, K. *The Welfare State and Canadian Federalism*. 2nd ed. (Kingston and Montreal: McGill-Queen's University Press, 1987)
- Blake, R. "Mackenzie King and the Genesis of Family Allowances in Canada, 1939-1944." In R. Blake and J.Keshen (Eds), *Social Welfare Policy in Canada: Historical Readings* (Mississauga: Copp Clark, 1995): pp. 244-54
- Blake, R. and Keshen, J. " Introduction. " In R. Blake and J. Keshen (Eds.), *Social Welfare Policy in Canada: Historical Readings* (Mississauga: Copp Clark, 1995): pp. 1-8
- Brown, D.M., Lazar, F. and Schwanen, D. *Free to Move: Strengthening the Canadian Economic Union* (Toronto: C.D. Howe Institute, 1992)
- Brodie, J. "Canadian Women, Changing State Forms, and Public Policy." In J. Brodie (Ed.), *Women and Canadian Public Policy*, (Toronto: Harcourt Brace and Company, 1996): pp. 1-28
- Burt, S. "Organized Women's Movements and the State." In W.D. Coleman and G. Skogstad (Eds.), *Policy Communities and Public Policy in Canada: A Structural Approach*. (Mississauga: Copp Clark Pitman, 1990.):pp. 191-211
- Canada. House of Commons. Speech from the Throne to Open the Second Session, Thirty-Fifth Parliament of Canada. Debates of the House of Commons of Canada (Hansard, 27 February 1996)
- Canadian Press. "Alberta Retreats in Attempt to Change Abortion Policy." *Globe and Mail*, p. A11. (October 11, 1995)
- Canadian Press. "Welfare Cuts Permanent After Top Court Refuses to Hear Appeal" [CBCA database] n.p.(April 30 1996a)
- Canadian Press. "Spouse-in-the-house Rule Legal " [CBCA database] n.p. (October 29 1996b)
- Claridge, T. "Judges Accept Welfare Cuts by Tories." *Globe and Mail*, pp. A1, A7. (February 9 1996)
- Conradt, D. *The German Polity*. 6th ed. (White Plains, New York: Longman, 1996)
- Courchene, T. *Social Canada in the Millennium: Reform Imperatives and Restructuring Principles* (Toronto: C.D. Howe Institute, 1994)
- Courchene, T. *Celebrating Flexibility: An Interpretive Essay on the Evolution of Canadian Federalism* (Toronto: C.D. Howe Institute, 1995a)

Courchene, T. *Redistributing Money and Power: A Guide to the Canada Health and Social Transfer* (Toronto: C.D. Howe Institute, 1995b)

Courchene, T. *ACCESS: A Convention on the Canadian Economic and Social Systems* (Working Paper prepared for the Ministry of Intergovernmental Affairs, Government of Ontario, 1996a)

Courchene, T. "Chaste and Chastened: Canada's New Social Contract." Paper prepared for conference, *The Welfare State in Canada: Past, Present and Future*, 11-13 April 1996, Mount Allison University.

Downey, D. "Welfare Mothers Hurt by New 'Spouse' Definition, Court Told." *Globe and Mail*, p. A5 (June 12, 1996)

Dupré, J.S. "Reflections on the Workability of Executive Federalism." In R. Simeon (Ed.), *Intergovernmental Relations*. Volume 63 of the research studies for the Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission) (Toronto: University of Toronto Press, 1985): pp. 1-32

Dyck, R. "The Canada Assistance Plan: The Ultimate in Co-operative Federalism." In R. Blake and J. Keshen, (Eds.), *Social Welfare Policy in Canada: Historical Readings* (Mississauga: Copp Clark, 1995): pp. 326-39

Echenberg, H., Milner, A., Myles, J., Osberg, L., Phipps, S., Richards, J., and Robson, W., eds. *A Social Charter for Canada? Perspectives on the Constitutional Entrenchment of Social Rights*. (Toronto: C.D. Howe Institute, 1992)

Freeman, A. "Provincial Dogfight Ahead over Federal Funds." *Globe and Mail*, pp. A1, A10 (March 25, 1995)

Gadd, J. "People on Assistance Fall Deeper into Poverty." *Globe and Mail*, p. A8 (February 11, 1997)

Geller, L. and Jaffer, F. "Challenging Ontario's 'Spouse in the House' Rule." *Kinesis* 8. (July/August, 1996)

Gibbins, R. "Decentralization and National Standards" *Policy Options*, 17, 7-10 (1996)

Gordon, L., ed. *Women, the State and Welfare* (Madison: University of Wisconsin Press, 1990)

Green, P. "Subsidiarity and European Union: Beyond the Ideological Impasse?" *Policy and Politics*, 22, 290 (1994)

Greenspon, E. "Ottawa Quietly Repealing Health Act, Expert Alleges." *Globe and Mail*, p. A4 (May 3 1995a)

Greenspon, E. "Anger at Cuts Boosts Klein's Cause." *Globe and Mail*, pp. A1, A8 (August 25, 1995b)

Greenspon, E. "B.C. Fails to Sway Ottawa Over Its Limit on Welfare." *Globe and Mail*, pp. A1, A6 (December 8, 1995c)

Greenspon, E. "Take Charge, Provinces Urged." *Globe and Mail*, pp. A1, A3 (August 21, 1996)

Greenspon, E. and Laghi, B. "Ontario, Alberta Take Aim at Ottawa." *Globe and Mail*, pp. A1, A3 (August 20, 1996)

Greenspon E. and McInnes, C. "B.C.-Ottawa Dispute Heats Up." *Globe and Mail*, p. A4 (December 6, 1995)

Howse, R. "Federalism, Democracy, and Regulatory Reform: A Sceptical View of the Case for Decentralization." In K. Knop, S. Ostry, R. Simeon, and K. Swinton (Ed.), *Rethinking Federalism: Citizens, Markets and Governments in a Changing World* (Vancouver: UBC Press, 1995): pp. 273-93

Howse, R. "Find New Ways to Secure Our Union." *Policy Options*, 17, 11-14 (1996)

Jackman, M. "The Protection of Welfare Rights Under the Charter." *Ottawa Law Review*, 20, 257-338 (1988)

Jackman, M. "Poor Rights: Using the Charter to Support Social Welfare Claims." *Queen's Law Journal*, 19, 65-94 (1993)

Jackman, M. "Constitutional Contact with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination Under the Canadian Charter and Human Rights Law". *Review of Constitutional Studies*, 2, 76-122 (1994)

Jackman, M. "Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform." *Canadian Journal of Women and the Law*, 8, 371-410 (1995)

- Kent, T. "How to Strengthen the Welfare State." *Policy Options*, 17, 36-39 (June 1996)
- Laghi, B. "Alberta Gives in to Ottawa on Billing." *Globe and Mail*, pp. A1-A2 (May 31, 1996)
- Leslie, P.M., Norrie, K. and Ip, I.K. *A Partnership in Trouble: Renegotiating Fiscal Federalism* (Toronto: C.D. Howe Institute, 1993)
- Mahon, R. "'Both Wage Earner and Mother': Women's Organising and Child Care in Sweden and Canada." Draft of chapter for the project, "Gender, Public Policy and Women's Organising in Canada and Sweden," forthcoming.
- Mazey, S. "French Regions and the European Union." In J. Loughlin and S. Mazey (Eds.), *The End of the French Unitary State? Ten Years of Regionalization in France (1982-1992)* (London: Frank Cass, 1995):pp. 132-57
- McInnes, C. "Health Ministers, Marleau Fail to Find Common Ground." *Globe and Mail*, p. A7 (September 21, 1995a)
- McInnes, C. "B.C.'s Welfare Recipients Face Stricter Conditions." *Globe and Mail*, p. A13 (November 7 1995b)
- McInnes, C. "B.C. Sues Ottawa for Welfare Funds." *Globe and Mail*, p. A4 (January 24 1996a)
- McInnes, C. "B.C. Moves to Restore Welfare Residency Rule." *Globe and Mail*, p. A4 (October 5 1996b)
- McInnes, C. "B.C. to Abolish Welfare Rule." *Globe and Mail*, pp. A1, A4.(March 6 1997)
- Mitchell, A. "Alberta to Restrict Abortion Access." *Globe and Mail*, p. A1 (September 23 1995a)
- Mitchell, A. "Alberta Surrenders in Clinic Dispute." *Globe and Mail*, p. A2 (October 12 1995b)
- Moore, E.G. and Rosenberg, M.W. *Growing Old in Canada: Demographic and Geographic Perspectives* (Ottawa and Toronto: Statistics Canada and Nelson, 1996)
- Morton, D. "'Noblest and Best': Retraining Canada's War Disabled, 1915-1923." In R. Blake and J. Keshen, *Social Welfare Policy in Canada: Historical Readings* (Mississauga: Copp Clark, 1995): pp. 66-81
- National Council of Welfare. *The 1995 Budget and Block Funding*. (Ottawa: Minister of Supply and Services Canada, 1995)
- National Council of Welfare. *Poverty Profile 1995* (Ottawa: Minister of Supply and Services, 1997)
- Organization for Economic Cooperation and Development (OECD). *Economic Outlook* (Paris: OECD, (December 1995)
- Pal, L. "Federalism, Social Policy, and the Constitution." In J.S. Ismael (Ed.), *Canadian Social Welfare Policy: Federal and Provincial Dimensions* (Kingston and Montreal: McGill-Queen's University Press, 1985):pp. 1-20
- "Preserving National Standards." *Globe and Mail* Editorial, p. A22 (June 16 1995)
- Roberts, D. "Romanow Regime to Reform Welfare." *Globe and Mail*, p. A8 (February 1 1996a)
- Roberts, D. "Single People on Welfare Target of Manitoba Cutbacks." *Globe and Mail*, p. A6 (March 13 1996b)
- Russell, P.H. *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 2nd ed. (Toronto: University of Toronto Press, 1993)
- Sassoon, A.S., ed. *Women and the State: The Shifting Boundaries of Public and Private* (London: Routledge, 1992)
- Schmitter, P. "Still the Century of Corporatism?" *The Review of Politics*, 36, 85-131(1974)
- Schulz, P.V. "Day Care in Canada: 1850-1962." In K.Gallagher Ross (Ed.), *Good Day Care: Fighting For It, Keeping It* (Toronto: Women's Press, 1978): pp. 137-58
- Strong-Boag, V. "'Wages for Housework': Mothers' Allowances and the Beginnings of Social Security in Canada" *Journal of Canadian Studies*, 14, 24-34 (1979)

Taylor, P.S. "Bye Bye Bytown." *Saturday Night*, pp. 19-25 (December 1996)

Ursel, J. *Private Lives, Public Policy: 100 Years of State Intervention in the Family*. (Toronto: Women's Press, 1992)

Vigod, B.L. "The Quebec Government and Social Legislation During the 1930s: A Study in Political Self-Destruction." In R. Blake and J. Keshen (Eds.), *Social Welfare Policy in Canada: Historical Readings* (Mississauga: Copp Clark, 1995): pp. 153-68