

action. The problem of divided authority does not seem to have posed so much of a problem, once a consensus around a set of national goals has been identified (precipitated by federal "leadership" by cutting transfer payments to the provinces). Why not generate a similar consensus around the values of human rights? In asking this question, we should not be tempted to equate economic with social concerns. Rather, the object is to challenge the seeming difficulty posed by federalism in the realm of human rights when these same difficulties appear to dissipate (or are lessened) when it comes to achieving goals consistent with economic globalization and enhancing Canada's competitiveness abroad.

The first part of the paper outlines the division of legislative powers in Canada. This section suggests that, though federalism is not ordinarily concerned with human rights protections, there are features in the design that promote values consonant with a human rights approach. The next part addresses the impact of the Canadian Charter of Rights and Freedoms and the constitutional recognition of Aboriginal and Treaty rights in establishing more uniformity in the area of human rights. Having reviewed some of the difficulties of divided jurisdiction, the next section considers the compounding challenges and obstacles posed by economic globalization. The paper concludes with a discussion of some mechanisms with which to respond (or at least better cope) with some of these challenges. Throughout, the phrase "international human rights commitments," "standards," or "obligations" is taken to refer to the cluster of rights, civil, political, economic, and social, that are the subject of the primary international documents in human rights.

The Constitutional Division of Powers

Fragmenting Power

Dividing legislative authority fragments political power. This makes social change through legislation difficult. Key areas of jurisdiction -- like health, education, welfare, or the uses to which private property are put -- fall primarily under the authority of provincial governments. This means that policy responses to complex and common problems are fragmented, incremental, and often local. But federalism also accommodates social change, as it promotes diversity in social policy responses and encourages experimentation. Both levels of government can pursue similar or differing political agendas, with no one political grouping necessarily capturing all political power. Divided authority blunts the impact of political "extremism" -- on both the left and the right -- and probably has helped to "anchor" Canadian politics near the middle of the political spectrum (Noel, Boismenu, and Jalbert 1993: 186).

Federal powers concern matters national in scope, like international trade, banking, fisheries, and the criminal law. The fiscal strength of the federal government (with the power to tax and spend) cannot ordinarily be used to tread into provincial spheres -- at least not without consent and cooperation. This rigid division of lines of authority means that only through the sharing of political power -- through collaboration and cooperation -- can there be progress in regard to the establishment of national programs and standards that fulfill international human rights obligations. The difficulty of coordinating this kind of collective action would discourage even the most optimistic policy activist.

Federal Power