

Implementing International Human Rights Commitments: The Difficulties of Divided Jurisdiction

David Schneiderman¹

"Our associational life is something that has to be argued about. . ."
Michael Walzer, 1992

Introduction

This paper addresses the difficulty of adhering to international human rights standards where jurisdiction is divided between two levels of government. According to Canada's constitutional regime, those commitments which Canada has made internationally require implementation domestically. As jurisdiction is divided, the implementation of these commitments turns on which level of government -- federal or provincial -- has been allocated authority under the constitution (both its text and its interpretation by courts).

So far as the rest of the world is concerned, the difficulty of divided jurisdiction should pose no problem as it concerns human rights. Both levels of government are expected to adhere to international human rights commitments -- the internal organization of the domestic state is no defence to a breach of international treaty law (Scott 1995: 82). The Committee on Economic, Social and Cultural Rights in its Concluding Observations acknowledged the argument that Canada's "complex federal system presents obstacles to implementing the Covenant." The Committee, sensitive to this fact, recommended nonetheless that both federal and provincial governments coordinate their activities and fulfill their human rights obligations in so far as they fell within their respective areas of competency.

The fact of federalism is complicated by the unruly presence of what we call "globalization." The interconnectedness of the world and apparent diminution in state sovereignty have made implementing international human rights commitments more urgent yet more difficult. New mechanisms of international oversight, like the United Nations Committee on Economic, Social and Cultural Rights and the Committee on Civil and Political Rights, ask countries to account for their compliance (or lack of compliance) with international human rights instruments. Yet living up to human rights commitments, particularly socio-economic rights, is made more difficult by the fact that states are limiting their ability -- in regional trade agreements like the North American Free Trade Agreement (NAFTA) -- to initiate legislation as regards economic matters. The redistributive capacity of states is undermined, and their ability to guarantee adequate and minimal standards of living is impaired.

The almost unanimous response of governments in Canada to the challenges posed by economic globalization -- spending reductions, repeal of national standards, privatization, and the withdrawal of the state -- suggests that federalism is not quite the impediment to coordinated

¹ Associate Professor, Faculty of Law, University of Toronto. A paper prepared for the National Consultation on Human Rights, Human Rights Linkages Initiative, Ottawa, November 26-27, 1999. With apologies to J.A. Corry.