

Canada has been made easier by the establishment of the Charter as the fundamental law of Canada.

Room to Manoeuvre

The structure and substance of the Charter reveals, however, that a degree of legislative policy priority is preserved. First, governments can supercede human rights in those cases where they can demonstrate that a limitation is reasonable (s.1). Second, governments may override certain Charter rights and freedoms under the notwithstanding clause (s.33). Both considerations allow for some degree of policy difference across provincial boundaries in so far as they impact on human rights.

Concern has been expressed, particularly but not exclusively from within the province of Quebec, that the Charter, by imposing national standards in the area of human rights, also requires homogenization of social policy whenever it touches on Charter-protected human rights or freedoms. This resulting uniformity undermines federalism, it is argued, which is designed to enable diversity and experimentation in social policy. The range of social policy choices is narrowed and national standards (meaning those pronounced by the Supreme Court of Canada), are then imposed on provincial legislatures by the Charter's "roving normativism."

There is reason to doubt the strength of this claim. First, the judiciary has not been inclined to accord social rights any recognition under the Charter (Jackman 1993, 1994), though this attitude may be changing (see, for example, *Eldridge*). Second, as mentioned, the limitations analysis enables courts to take into account the value of federalism (such factors as diversity and provincial autonomy) in determining whether a right or freedom is justifiably abridged (Swinton 1990: 342). In my study of cases concerning social and economic rights (both of which ordinarily fall within provincial spheres of jurisdiction), the Supreme Court of Canada appeared to be reluctant to interfere with provincial legislative choices when they concerned social policy (like the receipt of benefits). In these cases, the Court gave priority the value of federalism. In cases concerning the economic union (like mobility rights) the Court was more protective of economic citizenship and accorded a lower priority to the value of federalism. Yet federalism is viewed as an impediment to achieving the full realization of both Canada's social and economic union (Schneiderman 1999). Courts, in this way, issue decisions consonant with the dominant view of the state in an era of globalization -- that there are economic forces, beyond the ability of the nation state to constrain, which mandate a state policy facilitative of the economic productivity at the expense of the social state (Schneiderman 1998b).

Degrees of Uniformity

It also is evident that, in at least some areas, homogenization of social policy will result. To what extent, for instance, may provincial governments pursue a human rights policy independent of that mandated by the Charter? Grounds of discrimination afforded to individuals and groups under provincial human rights codes must now be expected to accord, to some degree, with Charter standards (Greschner and Prescott 1999: 18). As a result of the decision in *Vriend*, for instance, the Alberta Human Rights Code must now be read to prohibit discrimination on the ground of sexual orientation, despite the Alberta legislature having chosen to exclude this ground from the provincial human rights regime. Following a recent decision of the Supreme Court of Canada, as regards the provision of legal aid, provinces are expected to provide legal counsel