

Securing the Social Union

A Commentary on the Decentralized Approach

Steven A. Kennett

Research Paper No. 34

**Institute of
Intergovernmental
Relations**

**Queen's University
Kingston, Ontario
Canada K7L 3N6**

Canadian Cataloguing in Publication Data

Kennett, Steven Alexander, 1960-

Securing the social union : a commentary on the decentralized approach
(Research paper, ISSN 0840-4690 ; no. 34)

Co-published by the School of Policy Studies, Queen's University.

Includes bibliographical references.

ISBN 0-88911-767-5

1. Canada – Social policy. 2. Federal-provincial relations – Canada.
I. Queen's University (Kingston, Ont.). Institute of Intergovernmental
Relations. II. Queen's University (Kingston, Ont.). School of Policy Studies.
III. Title. IV. Series: Research paper (Queen's University (Kingston, Ont.).
Institute of Intergovernmental Relations) ; no. 34.

HN107.K45 1997 361.61'1'0971 C97-932394-0

Research Papers/Notes de recherche

Research Papers/Notes de recherche of the Institute of Intergovernmental Relations are scholarly publications on a broad range of subjects touching on federalism and related social, political, and economic issues. All contributions to this series are peer-reviewed. The series is a continuation of the earlier *Institute Discussion Papers*, but has been renamed in order to distinguish it from a new companion series entitled *Reflections/Réflexions*. The latter are more tentative or experimental than the *Research Papers/Notes de recherche*, and in general are more given to the presentation of argument.

Les *Research Papers/Notes de recherche* publiées par l'Institut des relations intergouvernementales sont l'oeuvre de chercheurs s'intéressant à divers aspects du fédéralisme, relatifs aux questions sociales, politiques et économiques. Tous les manuscrits présentés dans le cadre de cette collection sont soumis, au préalable, à un comité de lecture. La collection actuelle constitue l'un des deux nouveaux volets qui ont remplacé les précédents *Institute Discussion Papers*. La collection *Reflections/Réflexions*, contrairement aux *Research Papers/Notes de recherche*, accueille avant tout des contributions empiriques et privilégie également tout motif de réflexion pouvant prêter à la discussion.

CONTENTS

<i>Foreword</i>	v
<i>Sommaire</i>	ix
<i>Abstract</i>	xi
<i>Disclaimer</i>	xiii
I. INTRODUCTION	1
II. SETTING THE STAGE: KEY ARGUMENTS, ISSUES AND CONCEPTS	4
Rationale for National Principles or Standards	5
Competing Federalism Values: Diversity versus National Integration	7
National Principles and Standards in Canadian Social Policy	9
Social Policy and the Economic Union	10
Negative and Positive Integration	11
Parliamentary Sovereignty and Enforceability	12
III. THE COURCHENE PROPOSAL	13
The Objective: A Strong Social Union	13
The Evolution of Social Policy and the Federal Role	13
Preconditions for a Decentralized Model	15
Courchene's Heroic Assumption: The Provinces' Capacity to Develop National Social Policy	15
IV. INTERGOVERNMENTAL COLLECTIVE ACTION AND BARGAINING: WHY INCENTIVES MATTER	16
The Incentives for Intergovernmental Cooperation: Policy Interdependence through Negative and Positive Externalities	17
Obstacles to Collective Action	20

	The Bargaining Dynamic	23
	The Politics of Collective Action in Canadian Federalism	26
	Case Studies in Collective Action	29
	Summary	33
V.	THE ARGUMENT FOR A FEDERAL PRESENCE IN NATIONAL SOCIAL POLICY	34
	Decentralization and the Social Union	34
	The Case for the Federal Spending Power	35
	International Experience with National Standards	38
	Preconditions for an Effective Federal Role	39
	Summary	40
VI.	STRATEGIES FOR PROMOTING INTERGOVERNMENTAL COLLECTIVE ACTION: THE INTERNATIONAL ANALOGY	41
	The Promise of Incremental Collective Action	41
	General Features of International Cooperation	43
	The Role of International Institutions in Facilitating Collective Action	45
	The International Analogy and Institutions for the Social Union	47
	Advantages of a Federal Fall-Back Position	49
	Summary	51
VII.	SPECIFIC ISSUES AND OPTIONS FOR SECURING THE SOCIAL UNION	52
	Overcoming the Unanimity Constraint	52
	Addressing Collective Action Problems	55
	Enforcement Mechanisms and Sanctions for Non-Compliance	57
	Summary	62
VIII.	CONCLUSION	63
	NOTES	65

FOREWORD

The last two years have seen the emergence of a major debate about the future of the Canadian social union. In the *Report to Premiers* in December 1995, the Provincial-Territorial Council on Social Policy Reform and Renewal laid out a *Statement of Principles* and a *Framework and Agenda for Change and Renewal*. The First Ministers' Meeting (FMM) that followed in June 1996 signalled the federal government's support for much of what had been included in the provincial-territorial report. Since then, there have been both intensive intergovernmental dialogue and a program of action toward the future direction of social programs in Canada — much of the focus concentrating on improving relations and policy outcomes at the sectoral level.

Even before the FMM, the federal government had indicated a readiness to do business differently with the provinces. In its 1996 Speech from the Throne, Ottawa committed to refrain from further use of the spending power to create new federal-provincial shared-cost programs in areas of exclusive provincial jurisdiction without the support of a majority of the provinces. Ottawa also undertook to compensate any non-participating provinces if they undertook comparable programs.

Since that FMM, there have been a number of important milestones in this process, including: the establishment of a Federal-Provincial-Territorial Ministerial Council to oversee the work program; the creation of a new National Child Benefit, which is an integrated and coherent federal-provincial initiative to tackle child poverty, in large measure by reducing barriers to work for low-income families with children; the signing of a new generation of bilateral federal-provincial agreements (eight agreements have been signed) on labour market development that enable the provinces to assume an expanded role in labour market programming and that have the potential to provide a more coherent and integrated set of federal and provincial services to clients; and the establishment of federal-provincial working groups to determine the scope for rationalizing the myriad of federal and provincial programs for people with disabilities and to explore the creation of a National Children's Agenda. The provincial and federal governments are also working together in a number of other sectors, including health, as well as on larger overarching issues like the principles and institutions that are required for successful social policy reform and renewal.

The social union is not a constitutional concept. Rather, it is an idea about "sharing" arrangements among Canadians. As such, it is open to differing definitions. For some, it is a dangerous idea because it suggests the possibility of an enlarged role for the federal government in social programs even though, under the division of powers in the constitution, the provinces have a much greater role than does Ottawa in relation to social matters.

Yet the idea that Canadians should have similar social rights and obligations, regardless of the province in which they reside, has resonance with many Canadians. In turn, this led my colleague, Tom Courchene of Queen's University, in a report for the Ontario government, to propose a way of strengthening the social union through "A Convention on the Canadian Economic and Social Systems" or what he dubbed ACCESS. ACCESS came in both "interim" and "final" models. In the final model, he proposed that much of what is now either federal or federal-provincial in the economic and social union be replaced by enhanced federal-provincial and especially interprovincial approaches to securing the socio-economic union.

The Courchene proposals made the headlines. Once the initial political reaction was over — and it ranged from very positive to scathing — there was a need for a more considered evaluation of these ideas. To achieve this, the Institute of Intergovernmental Relations organized a symposium in the autumn of 1996. The outcome was a stimulating debate, the results of which were published in 1997 under the title *Assessing ACCESS: Towards a New Social Union*.

Since then, the Institute has remained actively engaged in the debate on the future of the social union. In May we sponsored a wide-ranging symposium on this topic, with contributions from both academics and senior public servants. This year's *Canada: the State of the Federation* book includes three chapters that explore different dimensions of this issue.

It is therefore fully in keeping with our ongoing interest in the social union that the Institute publish this monograph by Steven A. Kennett of the Canadian Institute of Resources Law at the University of Calgary. Kennett offers the most careful and detailed reaction to date to the ACCESS proposals. Indeed, Courchene has remarked to me that Kennett has a much better understanding of ACCESS than do most of its critics.

Kennett sees the challenge to making ACCESS work as a challenge of "collective action." Characterizing Courchene's assumptions that this problem can be overcome as "heroic," Kennett acknowledges that it is impossible to predict with certainty whether Courchene's optimism will prove to be correct. Nonetheless, Kennett believes that understanding the intergovernmental incentive structure helps to shed light on this issue. He suggests a framework for understanding the incentive structure, some of it from writings on international environmental relations, and he uses it to tackle such issues as incentives to free ride, incentives to cheat and transaction costs. He concludes that a measure of scepticism is in order when

evaluating the claim that the provinces, acting largely on their own, can provide the leadership required for a strong social union.

Kennett then turns his attention to concrete options for implementing the social union agenda, reviewing the case for a federal presence in pan-Canadian social policy and examining alternative strategies for promoting intergovernmental collective action. While measures to strengthen social Canada through a decentralized approach are identified, Kennett concludes that the need for a federal role should not be underestimated.

Events since Courchene wrote his text and Kennett did his first draft, suggest that there is support in recent experience for both perspectives. The leadership that the provinces have provided during the current round of intergovernmental discussions regarding social policy renewal suggests that they are able to do more collectively than many had anticipated. That several of the outcomes have entailed federal-provincial collaboration may speak to some of the considerations raised in this monograph by Kennett.

I wish to thank Valerie Jarus, Mark Howes, and Mary Kennedy for preparing this book for publication and, finally, the Government of Saskatchewan and the Government of Canada (Human Resources Development and the Privy Council Office) for their financial support in assisting with this publication. However, the views expressed here are those of the author only and not necessarily those of the sponsoring governments.

Harvey Lazar
Director
November 1997

SOMMAIRE

Des propositions pour une approche plus décentralisée à la préservation de l'union sociale ont été au centre d'un vigoureux débat concernant la politique sociale au Canada. Les partisans de la décentralisation argumentent que la coopération inter provinciale et fédérale-provinciale peut remplacer l'adhésion unilatérale fédérale comme force agissante derrière l'union sociale. Les propositions les plus radicales enlèveraient en grande partie le gouvernement fédéral de l'arène de la politique sociale. Cette monographie apporte une critique détaillée du modèle décentralisé, en mettant particulièrement l'accent sur l'influent et controversé essai ACCESS par l'économiste Thomas J. Courchene de l'Université Queen. La prémisse de base de cette critique est que le développement et la mise en application de principes nationales ou standards à travers des mécanismes inter provinciaux ou fédéraux-provinciaux représentent un important problème d'action collective. Par conséquent, les chances d'accomplir ce résultat dépendent des motivations sous-jacentes dont fait face les gouvernements et les mesures qui sont prises pour changer ces motivations.

La monographie commence en révisant les principaux arguments, questions et concepts qui informent le débat au sujet de l'union sociale du Canada. Les éléments clés des propositions de Courchene sont alors résumés, en mettant particulièrement l'accent sur son objectif qui est de préserver une union sociale solide, les hypothèses concernant la capacité provinciale de développer une politique sociale nationale.

La monographie examine ensuite les motivations intergouvernementales qui, on argumente, va déterminer la possibilité de réalisation du modèle décentralisé. L'attention est portée aux motivations pour la coopération intergouvernementale, découlant de l'interdépendance et l'externalisation des politiques, et aux obstacles à l'action collective, notamment dans le contexte des négociations intergouvernementales et des politiques du fédéralisme canadien. Deux études de cas sur l'action collective intergouvernementale sont aussi révisées. Cette analyse apporte la base pour le scepticisme concernant la déclaration que les provinces peuvent façonner une union sociale solide.

Les sections suivantes de la monographie considèrent un nombre d'options spécifiques afin d'implanter l'agenda de l'union sociale, commençant avec une révision de l'argumentation en faveur d'une présence fédérale dans une politique sociale nationale. Alors qu'il existe de bons arguments à l'appui de la participation

fédérale, autant la capacité que la crédibilité doivent être maintenues si le gouvernement fédéral est pour jouer un rôle constructif. En se tournant vers la dynamique intergouvernementale, la monographie révisé des stratégies de promotion de l'action collective intergouvernementale qui ont servies au niveau international. L'accent est particulièrement mis sur le rôle des arrangements institutionnels qui facilitent la coopération intergouvernementale. La monographie considère aussi plusieurs questions et options précises visant à préserver l'union sociale.

La conclusion souligne l'importance de préserver l'union sociale canadienne et le besoin de prudence en s'orientant vers une décentralisation et une dépendance aux mécanismes intergouvernementaux grandissantes. Deux recommandations suivent. Premièrement, l'importance du modèle de contribution du gouvernement fédéral devrait inclure des mesures pour surmonter les obstacles à l'action collective intergouvernementale qui pourraient empêcher l'entente initiale et la conformité continue. De la preuve que les provinces ont le vouloir et la capacité de préserver l'union sociale est requise avant que des pas soient pris, des pas qui pourraient affaiblir la capacité de la fédération de façonner une politique sociale nationale.

ABSTRACT

Proposals for a more decentralized approach to securing the social union have been at the centre of a lively debate regarding social policy in Canada. Advocates of decentralization argue that interprovincial and federal-provincial cooperation can replace federal unilateralism as the driving force behind the social union. The more radical proposals would largely remove the federal government from the social policy arena. This monograph provides a detailed critique of the decentralized model, focusing particularly on the influential and controversial ACCESS paper by Queen's University economist Thomas J. Couchene. The key premise to this critique is that the development and enforcement of national principles or standards through interprovincial or federal-provincial mechanisms represents a significant collective action problem. Consequently, the likelihood of achieving this result depends on the underlying incentive structure facing governments and the measures that are taken to alter those incentives.

The monograph begins by reviewing the principal arguments, issues and concepts that inform the debate about Canada's social union. The key elements of Couchene's proposal are then summarized, focusing particularly on his objective of securing a strong social union and his assumptions regarding provincial capacity to develop national social policy.

The monograph then examines the intergovernmental incentive structure that, it is argued, will determine the workability of the decentralized model. Attention is directed to the incentives for intergovernmental cooperation, arising from policy interdependence and externalities, and to the obstacles to collective action, notably in the context of intergovernmental bargaining and the politics of Canadian federalism. Two case studies of intergovernmental collective action are also reviewed. This analysis provides the basis for some scepticism regarding the claim that the provinces can fashion a strong social union.

The following sections of the monograph consider a number of specific options for implementing the social union agenda, beginning with a review of the case for a federal presence in national social policy. While there are good arguments supporting federal involvement, both capacity and credibility must be maintained if the federal government is to play a constructive role. Turning to the intergovernmental dynamic, the monograph reviews strategies for promoting intergovernmental collective action that have been used at the international level. The

focus is particularly on the role of institutional arrangements in facilitating intergovernmental cooperation. The monograph also considers several specific issues and options for securing the social union.

The concluding section underlines the importance of securing the Canadian social union and the need for caution in moving toward increased decentralization and reliance on intergovernmental mechanisms. Two recommendations follow. First, the significance of the federal government's contribution to national social policy should not be underestimated. Second, proposals for a decentralized model should include measures to overcome the obstacles to intergovernmental collective action that may inhibit both initial agreement and ongoing compliance. Evidence that the provinces have the will and the capacity to secure the social union is required before steps are taken that may weaken the federation's ability to fashion national social policy.

DISCLAIMER

This paper is based on a memorandum prepared under contract for Saskatchewan Intergovernmental Affairs. The analysis and conclusions that it contains are, however, those of the author alone and are not intended to represent the views of Saskatchewan Intergovernmental Affairs.

SECURING THE SOCIAL UNION

A COMMENTARY ON THE DECENTRALIZED APPROACH

I. INTRODUCTION

The current strains on Canada's political, economic, and social fabric reflect a complex and fluid constellation of factors. The globalization of markets, structural economic change, the secessionist threat from Quebec, ongoing federal-provincial tensions, and the politics of fiscal restraint are among the principal public policy challenges facing Canadian society and its political institutions. The impact of these interrelated factors is pervasive, but their combined effect is particularly evident in the area of social policy.

The many manifestations of globalization and structural economic change — notably the information revolution — have implications that extend well beyond economic policy and patterns of trade to include significant aspects of social policy, notably in the fields of education, training, and social security.¹ The challenge facing Canada in social policy and other areas affected by globalization and the transition to knowledge-based wealth generation is twofold: to determine the appropriate policy responses and to deliver those responses in the context of a relatively decentralized federal system of government.

As Canada endeavours to adapt to the new economic realities and significant changes at the global level, it must also confront the internal threat of secession by Quebec. This threat appears likely to dominate the national political agenda in the run-up to the next (final?) referendum. Few if any federal policy initiatives, particularly in an area as sensitive as social policy, will be without a national unity angle.²

Added to the unity crisis — and in part as a response to it — are pressures from the other provinces for a “rebalancing” of governmental roles and responsibilities within the federation.³ The “rebalancing” agenda gives rise to numerous important policy issues, but perhaps none are more contentious than those relating to social policy. The policy cocktail in this area includes not only Canada's traditional blend of federal-provincial jurisdictional rivalry but also issues of social

justice, economic efficiency, fiscal capacity, interregional and intergenerational equity, the appropriate role of government in society, and the relationship between the social safety net and Canadian identity — a complex and potentially volatile mixture.

Finally, the politics and economics of deficit (and debt) reduction continue to be major sources of pressure on social policy.⁴ Fiscal restraint has resulted in significant downsizing of government, including both reductions in the public service and cutbacks in funding to a variety of social programs. The fiscal climate has also altered the intergovernmental incentive structure in certain respects as governments seek to limit potential liabilities and off-load responsibilities in some areas, as opposed to pursuing a more conventional strategy of competing for jurisdiction.⁵

In the face of these external and internal pressures, the observation is commonly made that the status quo, whether defined in social policy terms or from the broader perspective of Canada's federal system as a whole, is either unstable or quite simply unsustainable.⁶ General agreement on this point has yet, however, to translate into consensus on where to go from here.

One response to the challenge of managing Canada's federal system in the current turbulent environment is to place increased emphasis on decentralization and intergovernmentalism.⁷ The core idea is that certain of the key issues confronting Canada can best be addressed by shifting decisionmaking responsibilities to the provinces and by developing policy through cooperative federal-provincial or interprovincial processes, as opposed to federal unilateralism or independent and uncoordinated provincial action. This approach can be seen as responding, in varying degrees, to the implications of globalization and economic restructuring, the unity crisis, the pressures for "rebalancing," and the fiscal constraints confronting both orders of government. The need for cooperative arrangements in the context of policy interdependencies, the promise of greater efficiency in service delivery, and the hope that a combination of cooperation and decentralization will address the concerns of soft nationalists in Quebec and critics of "intrusive" federal jurisdiction elsewhere in the country all underlie the strategy of decentralization and intergovernmentalism.

A key question raised by this strategy concerns its implications for the Canadian political, economic, and social union.⁸ In particular, can decentralized intergovernmentalism maintain the level of pan-Canadian integration that is necessary for Canada to function as a single — if regionally differentiated — political, economic, and social entity? In practical terms, this question directs attention to the role of pan-Canadian (or national⁹) principles and standards in specific areas of public policy, notably social policy. Evidence that this issue has emerged onto the political agenda is found in the communiqué and background papers emanating from the 1996 Annual Premiers' Conference (APC). One of the key recommendations was to direct officials "to design options for [intergovernmental] mechanisms and processes to develop and promote adherence to national

principles and standards."¹⁰ The focus of this recommendation was social policy, an area where national standards — such as they exist — have largely been the result of unilateral exercise of the federal spending power.

The debate on this issue was stimulated by the release, just prior to the APC, of a paper written by Thomas Courchene for the Government of Ontario [hereinafter the ACCESS paper].¹¹ Courchene's paper sets out two models for the development of national social policy: an "interim" approach that retains significant continuity with current arrangements and a much more decentralized model that would see provincial¹² governments exercising predominant, and possibly exclusive, control over the development of social policy in Canada. Courchene characterizes his proposal as "a federal-provincial and, in places, an interprovincial approach to securing the socio-economic union" which, he argues, "represents a sharp break from our postwar tradition where Ottawa was both the standard-setter and enforcer of the internal common market."¹³

The development of decentralized intergovernmental approaches to securing the social union received further attention at the 1997 APC. In particular, the Provincial/Territorial Council on Social Policy Renewal tabled an options paper that included a discussion of elements of federal-provincial-territorial and provincial-territorial cooperation and an overview of intergovernmental mechanisms that could be used to maintain and strengthen the Canadian social union.¹⁴ The statement on social policy renewal released at the close of the APC indicated that the premiers (except the premier of Quebec) had agreed that "the Council on Social Policy Renewal should negotiate with the federal government a broad framework agreement on the social union to address cross-sectoral issues such as common principles, the use of the federal spending power and new ways to manage and resolve disagreements."¹⁵ Specific national social policy issues discussed at the APC included federal off-loading, work on a national child benefit, federal-provincial financial arrangements, a national children's agenda, and a national mobility initiative.¹⁶ The 1997 APC thus confirms that intergovernmental efforts to define key elements of Canadian social policy — possibly including national principles or standards — are likely to continue.

The purpose of this commentary is to explore a number of the underlying issues raised by the search for effective intergovernmental mechanisms for developing national social policy, particularly in light of Courchene's proposal for a decentralized approach to securing the social union. The argument developed here is that attention to the broader intergovernmental incentive structure is essential if one is to evaluate the merits of proposed interprovincial or federal-provincial mechanisms for the establishment of national principles or standards. There is little point in plunging into the minutia of enforcement mechanisms and decision rules without first identifying the obstacles to an intergovernmental approach and determining the extent to which — and in what ways — these obstacles can be overcome.

The basic premise of this monograph is that the development and enforcement of national principles or standards through interprovincial or federal-provincial mechanisms represents a significant collective action problem, particularly if the threat of unilateral federal action is withdrawn. The heroic assumption underlying Courchene's proposal is that this collective action problem can be overcome. It is impossible to predict with certainty whether his optimism in this regard will prove to be correct. Nonetheless, a clear understanding of the intergovernmental incentive structure serves two purposes. First, it provides a basis for reasoned scepticism regarding the interprovincial model for securing the social union. As such, it supports the case for a federal role, at least as a fall-back position. Second, it is essential for the design of effective intergovernmental institutions if the federal role in social policy is, in fact, to be significantly diminished. The discussion that follows pursues both lines of enquiry, exploring the obstacles to intergovernmental collective action and reviewing the means by which a decentralized approach to securing the social union might be implemented. The objective is to advance the debate on Canada's social union by setting out an analytical framework for evaluating current proposals and examining, in light of this framework, some practical suggestions for moving forward.

The monograph is organized as follows. In Section II, a number of general arguments, issues and concepts are briefly discussed in order to provide the background and points of reference for the subsequent sections. A brief review of key points in Courchene's ACCESS paper is the subject of Section III. Section IV sets out the general incentive structure surrounding intergovernmental collective action and bargaining and provides illustrative examples. In Section V, the argument is made for a federal role in setting and enforcing social policy standards. The discussion then turns, in Section VI, to the lessons for the interprovincial model that can be drawn from the international realm. Section VI also describes a proposed hybrid approach, which promotes interprovincial cooperation to secure the social union but retains a federal fall-back position. In Section VII, a number of more specific issues and options for the decentralized model are reviewed. A brief conclusion is contained in Section VIII.

II. SETTING THE STAGE:

KEY ARGUMENTS, ISSUES AND CONCEPTS

The purpose of this section is to review briefly a number of arguments, issues, and concepts that provide the essential background to the discussion that follows. The topics examined are: the rationale for national principles or standards, competing federalism values, experience with national principles and standards, social policy and the economic union, negative and positive integration, and the implications of parliamentary sovereignty for the enforceability of intergovernmental agreements.

RATIONALE FOR NATIONAL PRINCIPLES OR STANDARDS

The rationale for national principles or standards in social policy is based on three values: efficiency, equity, and identity. In addition, the commitment to interregional equalization that is central to the Canadian social union promotes the value of national unity. A brief discussion of these values highlights the benefits to be achieved by securing the social union and the risks of a failure to do so. The provincial analogues of these national values are also noted.

The efficiency argument focuses largely on the implications of social policy for the internal common market. For example, provincial adherence to principles of accessibility and portability in social programs contributes to the efficiency of the national labour market by lowering barriers to mobility.¹⁷ Furthermore, agreement on common standards may reduce or eliminate labour market distortions that might be introduced by differential social policies, such as significant variations in levels of benefits.¹⁸

The equity argument for national principles and standards can be stated in terms of what Peter Leslie calls the "sharing community."¹⁹ Some commonality in social programs across the country, it is argued, affirms that Canadians are concerned about the well-being of their fellow citizens and are committed to providing basic equality of social services and the attendant equality of opportunities in all regions. Furthermore, as Robin Boadway has argued, section 36 of the *Constitution Act, 1982* commits both the federal and provincial orders of government "to at least part of the national equity agenda, including providing equal opportunities, reducing disparities and providing essential public services to all Canadians."²⁰ In its strongest form, the equity argument supports both interregional fiscal redistribution (equalization) and some measure of substantive equality in social service entitlement for all Canadians.

The identity argument for securing the social union is that key components of social policy underpin Canadians' sense of national distinctiveness and cohesion. Charles Taylor has argued that a commitment to "collective provision" helps explain "why we are and want to remain a distinct political unit."²¹ Collective provision as a fundamental principle of social policy thus provides a rationale for Canada as a separate political entity in North America and represents, for many citizens, a key element of what it means to be Canadian.

Taylor argues that, in addition to contributing to our sense of national *identity*, Canadians' commitment to collective provision also supports the objective of national *unity* through equalization: "The solidarity of collective provision, which within each regional society generates such programs as Medicare, can be seen as finding its logical expression in a solidarity of mutual help between regions."²² The centrality of collective provision to the Canadian social union thus reflects the importance of interpersonal and interregional equity as independent values within our political community, constitutes a defining feature of our identity, and serves as an instrument of national unity.

The operationalization of these values occurs through the identification and establishment of what Courchene terms the "rights on the social policy front that ought to be inherent in Canadian citizenship."²³ Although it is possible that these rights would emerge independently and spontaneously in each province, the case for national principles and standards rests on the view that a systematic attempt to establish certain core social policy entitlements is a worthwhile undertaking given the importance of these entitlements to individual Canadians and their economic and political role in unifying and defining Canadian society. This collective process of establishing national principles or standards for social policy could be achieved through federal unilateralism, federal-provincial cooperation, interprovincial agreement, or some combination of the above. The underlying values give an indication of what these principles or standards are intended to achieve and what they might look like, but they do not provide much assistance in determining the preferred means of establishing them.

It should be noted that the values of efficiency, equity, and identity can cut both ways in relation to the desirability of national standards. The less economic interdependence between a province and the rest of Canada, the less it will be concerned with inefficiencies in the economic union introduced by differing social policies. Consequently, the cost of participation in a national social policy regime in terms of foregone provincial autonomy may, from the provincial government's perspective, outweigh the economic benefits. Similarly, those who define the "sharing community" primarily or exclusively in provincial terms may be unsympathetic to the goal of national principles and standards in social policy. Finally, the role of social policy in fostering the identity of — and loyalty to — the political community may not be lost upon provincial governments. To the extent that these governments seek to foster a provincial, as opposed to pan-Canadian, consciousness among their residents, they may view control over social policy as a useful policy instrument. Furthermore, initiatives aimed at fostering a pan-Canadian identity might be viewed as being in competition with their preferred provincial focus.

This analysis is especially relevant to Quebec. The Parti Québécois rhetoric regarding the distinctive social democratic "*projet de société*" in Quebec, particularly in contrast to Ottawa's preoccupation with deficit cutting and the conservative social agendas of the Harris and Klein governments in Ontario and Alberta, suggests the potential use of social policy as a tool for building provincial, as opposed to pan-Canadian, identity. The Parti Québécois clearly has no interest in fostering a pan-Canadian identity for residents of Quebec, a fact that may underlie its opposition to any federal role in social policy (beyond serving as a conduit for equalization payments).

From the perspective of promoting Canadian unity, the national and provincial manifestations of the efficiency, equity, and identity arguments point to the same conclusion: a pan-Canadian approach to social policy is a key means of strengthening the Canadian political community. Recognition that the identity argument may, in provincial hands, cut against the Canadian social union also explains why

a federal role, or even a pan-Canadian approach based on intergovernmental cooperation, may be opposed by governments whose primary objective is to foster the provincial political community which they depend on and govern. While the clearest example of this provincial attitude is the separatist government of Quebec, elements of it may be found in other provinces as well.

COMPETING FEDERALISM VALUES: DIVERSITY VERSUS NATIONAL INTEGRATION

The case for national principles or standards outlined in the previous section is based on the values of economic integration, a sharing community, and national identity, all defined in pan-Canadian terms. While these values are undoubtedly central to Canadian federalism, they are in dynamic tension with the values of diversity and pluralism that provide the basic rationale for federal as opposed to unitary government. This tension cannot be glossed over by those promoting national standards. The need to accommodate institutionally entrenched values of diversity and pluralism sets limits on what can be expected of national integration of policy initiatives and underlines the need to be clear about the rationale for a federal (i.e., federal government dominated) or national (i.e., federal-provincial or interprovincial) approach to securing the social union.

The importance of these competing federal values has been highlighted by Donald Lenihan in the context of the Agreement on Internal Trade (AIT). Noting that some commentators blame the weaknesses of the AIT on "provincial parochialism," he suggests that this criticism "fails to do justice to the dilemma that some trade barriers pose for provinces and, in particular, to the tension between Canadians' twin commitments to diversity and a strong economic union."²⁴ According to Lenihan, the promotion of national interests in the economic union confronts the problem of parties to the agreement whose *raison d'être* is to promote and protect local interests.²⁵ Consequently, when strengthening the economic union comes at the expense of provincial autonomy, support for harmonization initiatives will be forthcoming only if provinces see the benefits as outweighing the costs in terms of their provincial priorities. Lenihan concludes that the challenges for advocates of a stronger economic union are to define the objectives of economic integration in a federal, pluralist state and to "clarify how these objectives are to be balanced against legitimate provincial goals that promote federalism."²⁶ The same challenge confronts those who seek to secure the social union.

The importance that Canadians attach to the federalism values of diversity and pluralism is, of course, in part a reflection of the objective differences in social and economic circumstances from one region to the next. These differences constrain policy integration or harmonization aimed at strengthening the economic and social union. Daniel Schwanen has observed, for example, that the vastly different societal and economic conditions and challenges facing the respective provinces mean that "creating uniform standards for the sake of easier mobility

could just as easily be detrimental to the welfare of Canadians as beneficial.²⁷ As Schwanen notes, the challenge is to reconcile the obligations of membership in the economic and social union with differences based on needs and circumstances.²⁸

The centrality of competing federalism values to the social union debate has two important implications. First, determining the appropriate degree of integration within the Canadian economic and social union is a fundamentally political question. There is no objective formula for determining what degree of integration is desirable, or even necessary, if Canada is to constitute a distinct and cohesive economic and social space. In the end, it is up to Canadians, expressing their preferences in federal and provincial elections, to choose between the maximization of provincial autonomy and diversity in social policy and the establishment of a social union that supports the efficient operation of the Canadian economic union, delivers a commonly-defined measure of interregional and interpersonal equity, and provides a substantive basis in pan-Canadian policy for one component of Canada's national identity.

Second, the tension between national integration and provincial diversity at the level of federalism principles has implications for the design of institutional arrangements for securing the social union. The references in social union discourse to the "interpretation" and "enforcement" of national social policy principles or standards suggests that the objective is a rules-based system to police government behaviour. One difficulty immediately evident with a rules-based approach is the notion of a "principled" basis for striking a highly political balance between integration and diversity.²⁹ As a matter of institutional design, an admittedly crude distinction might be drawn between principled, rules-based decisionmaking (the judicial function) and the aggregation and reconciliation of competing interests and values (the political function). Merging these two functions would appear to place enormous demands on the institution or mechanism charged with developing, interpreting, and enforcing the rules. Furthermore, this role confronts directly the institutional (federal government versus provincial governments) and value-based (social and economic integration versus diversity and regional autonomy) tensions that lie right at the heart of the federal system.

While this analysis may appear to be pitched at a relatively high theoretical level, it has very practical implications for the task set out by the Annual Premiers' Conference in relation to the development of, and promotion of adherence to, national principles and standards. The highly political nature of the issues at stake means that governments may be reluctant to delegate their decisionmaking power to arm's length bodies (e.g., panels of experts). An intergovernmental approach to securing the social union requires agreement at the political level on what exactly is to be secured. Significant progress in this area is needed before anything resembling a judicial approach to interpreting and promoting adherence to national principles or standards for social policy will be attainable. Whether the critically important political agreement can be achieved will, it is argued, depend very much on the incentive structure confronting the individual parties to intergovernmental negotiations. This question is returned to in more detail below.

NATIONAL PRINCIPLES AND STANDARDS IN CANADIAN SOCIAL POLICY

National standards have a significant place in the mythology of Canadian social policy. The specialist literature is full of references to national standards, often with little specific elaboration. In addition, the rhetoric of opponents of decentralization contrasts the status quo with a "checkerboard Canada" where social policy entitlements vary dramatically from province to province. An understanding of the current reality in relation to national standards is, therefore, important when setting out an agenda for policy development in this area.

The best-known national "standards" are the provisions in the *Canada Health Act* that require public administration, comprehensiveness, universality, portability, and accessibility.³⁰ These provisions are, however, more accurately described as principles than standards. As Harry Beatty notes: "Comprehensiveness, portability and accessibility are not as strong conditions as might first appear, as no strong requirements are placed under [the *Canada Health Act*] ... on what health services must be insured."³¹

Other national standards were included in the Canada Assistance Plan (CAP), but some of these were removed with the replacement of CAP by the Canada Health and Social Transfer (CHST).³² One standard that was maintained is the prohibition of length-of-residency requirements for access to social assistance. Conditions that were eliminated included the CAP provision that any Canadian who has no other source of income can qualify for financial assistance regardless of the cause of that need. The implication is that income testing of benefits, wage supplementation, and most versions of workfare — which did not qualify for CAP support — can now be implemented under the CHST.³³ The result, according to Courchene, is that "the provinces now have full flexibility to pursue active labour market strategies and all provinces will soon be experimenting with alternative approaches to the transition from welfare to work."³⁴ This increase in provincial policy flexibility is consistent with the "independent laboratories" argument for decentralization within federal systems and does not necessarily preclude pan-Canadian policy convergence over the long term. The oft-cited example is the development of medicare in Saskatchewan and its subsequent adoption by all other provinces and by the federal government (through the *Canada Health Act*). In the short run, however, the loosening of restrictions in the CHST increases the likelihood of interprovincial differences in Canadians' social policy entitlements.³⁵

Even where some national principles have existed, social policy delivery in Canada has never been uniform.³⁶ As Courchene notes, under CAP "the provinces ... [were] *already* actively determining — and redetermining — which categories of need are most 'deserving.'"³⁷ Furthermore, he points out that "CAP made no attempt to impose standards of any sort."³⁸ The result was that wide variations in the level of welfare benefits across the country were observed, and apparently tolerated by Canadians, under CAP.³⁹

In other areas of social policy, national standards and principles are non-existent. For example, there have never been formal national standards in the area of post-

secondary education.⁴⁰ In fact, apart from uniformity resulting from federal programs, Canada has no social policy standards in the sense of requirements of a minimum level of benefit or service provision. Furthermore, regional variations in entitlements are found in employment insurance, a key *federal* social program. The national dimension of social policy in Canada is thus based on general principles, such as those contained in the *Canada Health Act* and the prohibition on length-of-residency requirements for social assistance, as opposed to specific standards.

This approach to securing the social union, which undoubtedly reflects the competing pull of federalism values against arguments for greater policy standardization and integration, appears likely to continue. For example, Courchene has argued that a new social policy arrangement between Ottawa and the provinces should be contingent on the provinces' signing on to a set of CHST principles that would establish minimum conditions on matters such as access, coverage, and appeals and, more importantly, would attempt "to minimize the interprovincial externalities of the various provincial systems."⁴¹ One example that he cites is the prohibition of out-of-province tuition fees. The social union as envisaged by Courchene is therefore underpinned by certain basic principles, some of which might generate relatively specific rules and prohibitions. His dream of greater "positive integration" (discussed below) might, however, entail more emphasis on common standards.

The strongest case for national standards, in the sense of minimum levels of benefits, would arise if the argument could be substantiated that labour market mobility was being impeded by differential social entitlements (e.g., welfare rates) or provinces were engaging in social dumping. Even if national minimum standards reduced the variation in entitlements, they would not prevent provinces from providing more generous benefits, which could affect the incentives for interprovincial mobility.

SOCIAL POLICY AND THE ECONOMIC UNION

The parallels between the social and economic unions run throughout the debate on national principles and standards for social policy. This intertwining of issues is explained by two factors: functional interrelationships and procedural similarities.

First, there are close interrelationships between economic and social policy. In a passage that is particularly interesting in light of his subsequent position on decentralized social policy, Courchene has argued that:

With knowledge at the cutting edge of competitiveness, *aspects of social policy become indistinguishable from economic policy*. Regardless of what the constitution may say, it is inconceivable that the federal government will be relegated to the sidelines in terms of social policy if national competitiveness is at stake.⁴²

The social and economic policy link, according to Courchene, is through the formation of human capital, the factor that he sees as fundamental to the viability of

high-wage economies.⁴³ Social assistance programs (welfare and unemployment insurance) along with education and training are all directed toward enhancing human capital and promoting the entry (or re-entry) of individuals into the work force. This labour market nexus explains why the efficiency of the economic union is heavily dependent on the operation of the social union.

The close relationship between the economic union and social policy is also noted by Schwanen, who observes that economic integration and interprovincial mobility may constrain the ability of provinces to set their own social standards.⁴⁴ Conversely, he notes, "large differences in social standards can hinder useful interprovincial mobility; it can also generate mobility that is not justified on the basis of available economic opportunities."⁴⁵ Schwanen cautions, however, that the need for a common authority or effective intergovernmental agreements in order to secure the benefits of Canadian economic citizenship (e.g., the ability to make beneficial exchanges throughout the economic union) is different than the rationale for common social standards, where interprovincial transactions are not so important. In his view: "Common rules and standards across the country ... are not essential to the conduct of effective social policy in each province in the way they are a necessary underpinning of common economic citizenship."⁴⁶ This point is significant in light of the argument, discussed below, that governments enter cooperative agreements, which in some measure constrain their autonomy, in order to gain greater control over *domestic* policy outcomes that are affected by the decisions of others. To the extent that social policy is less vulnerable to disruption by external factors than is economic policy, the incentives to accept the constraints implied by the social union may be less than those leading provincial governments to secure the economic union.

The second parallel between the economic and social unions relates to the policy process: in both cases the pan-Canadian objectives could be achieved (to varying degrees) through federal unilateralism or through intergovernmental processes, either federal-provincial or interprovincial. The experience with the AIT as an intergovernmental mechanism to strengthen the economic union thus invites comparison with proposed national social policy initiatives. The AIT is reviewed briefly below.

Policy interrelationships and similar process issues thus underlie the connection between strengthening the economic union and developing national principles and standards for social policy. As a result, the discussion in this paper frequently moves back and forth between economic union and social union examples.

NEGATIVE AND POSITIVE INTEGRATION

The distinction between negative and positive integration is important to the debate about the strengthening of Canada's social union.⁴⁷ Negative integration refers to a series of prohibitions on behaviour deemed to be inconsistent with the social union. For example, the prohibition of provincial length-of-residency

requirements for income support programs is a measure promoting negative integration. Positive integration, however, involves the development of harmonized or complementary social policies. It requires that governments undertake positive action to strengthen the social union.

Courchene's vision for "social Canada" calls for greater positive integration than currently exists. This proposal has important implications for his analysis of the appropriate locus of policy development. Courchene argues that the federal government can only deliver negative integration through a series of prohibitions; "A full-blown social union also requires 'positive integration,' and this has to come from the provinces."⁴⁸ The need for active provincial involvement in order to achieve positive integration is an important reason why Courchene promotes a decentralized model for social Canada. It should be noted, however, that he continues to view negative integration as being critical to social Canada "since guarantees of portability and transferability do serve to link the various provincial programs into national ones."⁴⁹

The policy prescription is therefore greater provincial involvement to promote positive integration, while maintaining the prohibitions essential to negative integration. This approach, in turn, raises three questions for the decentralized approach to securing the social union: (i) Can negative integration be maintained without federal enforcement? (ii) Is there a federal role in encouraging provincial action in the direction of positive integration (perhaps through joint federal-provincial initiatives)? and (iii) What arrangements are required to encourage interprovincial action to promote, establish, and enforce the degree of coordination needed for positive integration? The analytical framework developed in subsequent sections of this paper is intended to provide a starting point for answering these questions.

Achieving greater positive integration in social Canada is an ambitious goal. As Albert Breton notes in a commentary on the AIT, the harmonization of laws, regulations, and practices that is implied by positive integration raises in its starkest form the tension between the requirements of economic integration and the value of diversity implicit in federalism.⁵⁰ Courchene's proposal is thus a double-edged sword: the promise of decentralization that he offers the provinces is premised on a commitment to "positive integration," which implies greater harmonization (i.e., uniformity). To make this approach work, some of what provinces receive in the form of greater powers will have to be sacrificed on the altar of harmonization. The key question is thus whether Courchene's interprovincial model for building social Canada can reconcile these conflicting approaches, or whether centrifugal forces unleashed by decentralization will gain the upper hand in the absence of a strong federal presence.

PARLIAMENTARY SOVEREIGNTY AND ENFORCEABILITY

The final general point to be made is simply that intergovernmental agreements in Canada are not legally binding and cannot be made so without constitutional

amendment.⁵¹ The principle of parliamentary sovereignty dictates that Parliament and provincial legislatures cannot bind their successors. Furthermore, the federal Parliament cannot oblige provincial legislatures to take actions in areas of provincial jurisdiction. There is little point, therefore, in speculating on the "legal" obligations of provinces to comply with social policy principles or standards arrived at through intergovernmental negotiations or prescribed by the federal government in the form of conditions on funding. Enforcement is restricted to various means of increasing *incentives* for compliance. The enforceability issue thus comes down to three questions: (i) What means are available to induce compliance? (ii) Are these means in the hands of the federal government, the provinces (either individually or collectively), or some combination of the two? and (iii) Will they be effective in securing the social union?

III. THE COURCHENE PROPOSAL

Courchene's ACCESS paper received extensive coverage in the popular press and has been the subject of considerable specialist scrutiny.⁵² Consequently, there is no need to review in detail the arguments and proposals contained in that paper. Several key elements should be noted, however, since they are essential to understanding and evaluating his proposal for a decentralized approach to securing the social union.

THE OBJECTIVE: A STRONG SOCIAL UNION

In the ACCESS paper, and throughout his earlier writing, Courchene consistently advocates a strong social union for Canada. In fact, he argues that a greater provincial role in developing national social policy will actually *strengthen* the social union by promoting positive, as opposed to merely negative, integration (as discussed above).⁵³ There is nothing in Courchene's analysis to suggest that he would advocate a decentralized approach if the result would be to undermine and fragment the social union.

THE EVOLUTION OF SOCIAL POLICY AND THE FEDERAL ROLE

Courchene introduces the ACCESS paper with an assumption and a question:

The assumption is that social policy is undergoing substantial, indeed unprecedented, decentralization and the question is: how, in light of this decentralization, do we Canadians reconstitute our internal common markets in the socio-economic arenas?⁵⁴

The themes are thus decentralization *and* reconstitution. In other words, Courchene takes greater decentralization as a given, but looks for means to ensure the integrity of the social union.

Courchene's preferred means to secure the social union is to bring the provinces "more fully and more formally into the key societal goal of preserving and promoting social Canada."⁵⁵ This prescription is, in turn, based on his conclusion that the federal government's capacity to secure the social union is diminishing. In particular, he states that the result of reductions in cash transfers under the CHST is that Ottawa "is losing both its moral authority and its financial capability for enforcing unilateral top-down standards."⁵⁶ Furthermore, changes in social policy itself make the federal role less appropriate. According to Courchene:

Ottawa is not really a player in the social policy design and delivery game. It has no option except to leave this to the provinces. Thus, while transfers, subsidies, principles, fines and the like were appropriate in terms of initially creating our social network, these instruments are ill-suited in terms of forging the needed national or interprovincial integration of this 'second-round' of social program design. This would be true even if there were no cuts and caps and freezes to federal-provincial transfers. The provinces must rise to the citizen and societal challenge by accepting a larger responsibility for preserving and promoting social Canada.⁵⁷

The case for Courchene's decentralized approach thus rests on his views concerning the evolution of social policy and his (related) assumptions regarding the limitations of federal capacity. It should be noted, however, that in the ACCESS paper and his other writing he is equivocal about the extent of federal involvement that is possible and desirable.

In his earlier commentary on the CHST, Courchene argued that federal cash transfers should be maintained at a significant amount (\$12.5 billion) precisely in order to preserve federal leverage to secure the social union.⁵⁸ In the ACCESS paper, Courchene specifically endorses the need for "federal flexibility" through the use of the spending power.⁵⁹ The implication is that some meaningful fiscal leverage will, and should, be retained by the federal government. Finally, Courchene describes the *provincial* challenge of implementing his decentralized model for social Canada and the implications for the *federal* role in the following terms:

it seems clear that the provinces would have to take the lead role. Specifically, one way would be to convert the principles in their *Report to Premiers* into a workable interprovincial accord on the social union. They will also have to design a mutual-recognition accord for skills transferability and they will probably have to undertake something more than a best-efforts approach to implementing the provisions of the AIT. Beyond all of this, they will probably have to commit themselves to a Convention embodying all of this as well as an appropriate enforcement and dispute-resolution mechanism. *But if they can accomplish this, then the pressure for compliance falls on Ottawa. If the internal socio-economic union is secured, there is no longer any rationale for federal cash transfers to the provinces as an enforcing mechanism.*⁶⁰

The key point is in the last sentence. The rationale for federal enforcement disappears *after* the provinces have demonstrated their ability to secure the social and

economic union, not before. Implicitly, the need for a federal role as ultimate guarantor of social Canada remains until a number of important conditions are met.

PRECONDITIONS FOR A DECENTRALIZED MODEL

Courchene's proposal constitutes, in his own words, "a highly decentralized approach to securing the internal common market."⁶¹ A careful reading of the ACCESS paper indicates, however, that he is far from advocating that this approach be adopted unconditionally. In fact, he specifies a number of significant preconditions for turning responsibility for national social policy over to the provinces. Several of these conditions are set out in the passage quoted in the previous section. Elsewhere in the ACCESS paper, Courchene identifies the following preconditions:

- decentralization requires that the externalities or pan-Canadian components of subsidiarity be addressed via an interprovincial accord that would embody principles and standards as well as measures to guarantee mobility and portability;⁶²
- "A stronger commitment to provisions guaranteeing the economic union is a *sine qua non* for enhanced decentralization and is an essential ingredient of the full ACCESS model";⁶³
- the *quid pro quo* for a provincialized version of unemployment insurance (integrating skills training, etc.) is "interprovincial mutual recognition of skills accreditation and certification so that training becomes fully mobile across provincial boundaries";⁶⁴
- mechanisms will be required that allow for information-sharing at a minimum and perhaps some formal policy coordination;⁶⁵
- the message that the social union can only be created with the active participation of the provinces must be communicated to citizens;⁶⁶ and
- interprovincial mechanisms for securing the internal union must be binding on the provinces — "this puts a premium on issues relating to compliance, enforcement and remedies."⁶⁷

Meeting these conditions clearly constitutes an ambitious intergovernmental agenda.

COURCHENE'S HEROIC ASSUMPTION: THE PROVINCES' CAPACITY TO DEVELOP NATIONAL SOCIAL POLICY

Given the preconditions noted above, it can hardly be said that Courchene is presenting an unqualified case for his decentralized model. He is, however, holding out that model as the preferred route for securing Canada's social union. The key

assumption upon which the viability of this model depends is that the provinces have the ability, working together, to adopt a national vision of the social union and to transform that vision into workable principles and standards. Courchene does nothing to mask this heroic assumption:

Essentially, the view of the federal government and, I suspect, the view of Canadians generally, is that the provinces will never get their act together, i.e., they will never subject their 'provincial' interests to the national interest and, therefore, the attempt at creating a workable Convention will come to naught. As long as this perception prevails, the federal government presumes that it can count on citizen support for a strong central role, even a unilateral central role, in monitoring and policing the internal socio-economic union. This is a very questionable presumption on Ottawa's part, since the vacuum left by the disappearing status quo is quickly and surprisingly coming to be filled by creative provincial initiatives.⁶⁸

Courchene is strong on arguments that the status quo is disappearing, but his evidence that provincial initiatives are filling the vacuum is somewhat weaker. Two of the principal recent initiatives are the AIT and the *Report to the Premiers* on social policy. Interestingly, Courchene argues that even his "interim" model should involve "commitments to reinforce the economic union, probably via best efforts measures to deliver on various provisions of the [AIT]."⁶⁹ The implication is clearly that much remains to be done in implementing and fleshing out the AIT. As for the *Report to Premiers*, he finds the principles "impressive" but argues that provinces should provide assurance that they will not back away from them;⁷⁰ the approach he recommends is to convert these principles into a "workable interprovincial accord on the social union."⁷¹ Courchene's case that provinces are filling the vacuum in terms of securing the economic and social union — as opposed simply to taking more control over intraprovincial policy instruments — is therefore less than overwhelming.

A major focus of the rest of this paper is to evaluate Courchene's heroic assumption regarding the provincial role in developing and ensuring adherence to a national vision for social Canada. This analysis involves some general comments on the collective action dilemma facing the provinces and more detailed discussions of the case for a continuing federal role and the means available to foster interprovincial cooperation. Specific enforcement mechanisms, including those proposed by Courchene, will be discussed toward the end of this paper.

IV. INTERGOVERNMENTAL COLLECTIVE ACTION AND BARGAINING: WHY INCENTIVES MATTER

The argument presented in this section is that the problem of provinces "getting their act together" is much more than a matter of inadequate political will, easily overcome once provincial premiers recognize the merits of social Canada and the importance of their role in securing its foundations. In fact, achieving interprovincial agreement on — and adherence to — national principles and standards for

social policy faces an impressive series of obstacles. The objective here is to outline the incentive structure that, it is argued, constitutes the operational environment for a decentralized approach to securing the social union. To begin, the incentives for intergovernmental cooperation are briefly reviewed, highlighting the problems posed by positive and negative externalities. The discussion then turns to general obstacles to collective action, key features of the intergovernmental bargaining dynamic, and the politics of collective action within Canadian federalism. Finally, two case studies of intergovernmental collective action are briefly reviewed.

THE INCENTIVES FOR INTERGOVERNMENTAL COOPERATION: POLICY INTERDEPENDENCE THROUGH NEGATIVE AND POSITIVE EXTERNALITIES

If the argument for a decentralized approach to securing the social union is to carry the day, it must provide a convincing answer to the following question: Why would the provinces voluntarily agree to restrictions on their policymaking autonomy in the area of social policy? A reasonable point of departure for answering this question is the assumption that governments will invest effort in cooperative processes and agree to principles or standards imposing mutual constraints only when they obtain clearly identifiable benefits by doing so. In particular, as Andrew Moravcsik has argued, "governments have an incentive to co-operate where policy coordination *increases their control over domestic policy outcomes*, permitting them to achieve goals that would not otherwise be possible."⁷² This incentive structure exists when actions in one jurisdiction affect the policies or residents of another. These policy interdependencies are commonly referred to as positive and negative externalities. Positive externalities occur where policies confer benefits in other jurisdictions; negative externalities occur when costs are imposed.

Externalities are problematic for individual governments and from the perspective of broader collectivities. The problem for individual governments is particularly acute in the case of negative externalities, where policies in one jurisdiction impose costs directly on the residents of another or frustrate the policies pursued by the externality-receiving government. In either case, governments may cooperate in order to avoid bearing the costs of their neighbours' policies. Particularly when negative externalities are reciprocal, governments have strong incentives to cooperate. Individual governments may also seek compensation for benefits that they confer on others in the form of positive externalities, especially when these benefits to non-residents are provided at significant cost to domestic taxpayers. Once again, a degree of reciprocity may be necessary to facilitate a cooperative solution, since there may be little incentive for the government benefiting from positive externalities to agree to pay for that which it already receives at no cost.

Intergovernmental cooperation is not, however, the only strategy that can be pursued in the face of uncompensated externalities. Unilateral action may be possible to shield residents from negative externalities or to preclude non-residents

from taking advantage of positive externalities. In fact, as Moravcsik notes, "where unilateral policies can be cost-effectively adjusted to counteract the effects of such a foreign government's policies, little incentive for co-operation exists."⁷³ Given the costs of cooperation, a topic addressed below, there may also be little incentive to address externalities that are viewed as insignificant.⁷⁴ Incentives for intergovernmental cooperation exist, then, when there are significant uncompensated positive or negative externalities that cannot be addressed cost-effectively through unilateral action and when the bargaining relationship between parties — a topic addressed below — is conducive to a mutually advantageous agreement.

From the broader perspective, the problem with positive and negative externalities is that they may lead to policies that appear rational to the government pursuing them but are suboptimal for the collectivity as a whole. Jurisdictions will tend to provide too low a level of policies that create positive externalities because they receive no benefit (economic or political) from the advantages conferred on residents of other jurisdictions. In the absence of provincial reciprocity or a compensation mechanism, the province providing the externality may be inclined either to cut the program in absolute terms or to restrict access by non-residents. The consequences of these measures may include the creation of barriers to interprovincial mobility, the exclusion from certain programs of people who could benefit from them, or the foregoing of potential economies of scale in the production of benefits or services. Conversely, jurisdictions able to externalize costs may produce too high a level of policies from an overall perspective because the interests of those bearing these costs are not fully incorporated into the decisionmaking process. Without a mechanism to internalize externalities, this over- or underprovision is likely to persist.

The collective costs of positive and negative externalities may provide an incentive for intergovernmental cooperation. Cooperative solutions are difficult to achieve, however, because externality-producing behaviour often produces concentrated benefits for individual governments and more diffuse costs for the collectivity as a whole. The incentive structure facing individual governments may also resemble a prisoner's dilemma, where the rational strategies of each government lead to decisions that are suboptimal from the collective perspective. As a result, the intervention of a level of political authority that is responsive to the needs of the collectivity as a whole may be required to establish the principles and standards of behaviour for individual members.

The general phenomena arising from policy interdependence due to externalities can be observed in several areas of social policy. The problem of positive externalities in social policy is illustrated by employment training and placement services.⁷⁵ In designing its training program, a province has little incentive to take account of employment opportunities in other provinces and it receives no compensation for the productivity gains in other provinces that result from its program. For example, a province such as Newfoundland is unlikely to be enthusiastic about generating and disseminating Canada-wide labour market information and

paying for training programs to enable its residents to move to Ontario or Alberta to find employment. Although such a policy might lighten the welfare load in Newfoundland, it would clearly confer a significant (and uncompensated) positive externality on the other provinces. The absence of these labour market policies in Newfoundland may, however, have adverse consequences for the efficiency of the economic union if there are structural causes of unemployment in Newfoundland and greater economic opportunities elsewhere. Newfoundlanders will be less likely to pursue these opportunities if they are uninformed about job prospects in other provinces and lack the technical skills to take advantage of them. The tendency, therefore, is for Newfoundland to provide a level of mobility-enhancing information and training that is suboptimal from the national perspective.

Labour market policies are not the only area of social policy where suboptimal outcomes may be the result of uncompensated positive externalities. Another example is postsecondary education. As Kenneth Norrie observes, "Educated workers are more mobile interprovincially, so are likely to receive their training in one province and spend their working lives in others."⁷⁶ Provincial governments may therefore be tempted to restrict expenditure on students who are likely to take their human capital elsewhere, perhaps by charging differential tuition fees to out-of-province students. The result, however, is to restrict the educational opportunities available to Canadians and possibly to reduce the ability of the post-secondary institutions across the country to benefit from economies of scale and the creation of national centres of excellence.

Externalities may also arise through the provision of social assistance. Norrie notes that "Unemployed workers frequently move among provinces in search of jobs, or back to their home province when laid off."⁷⁷ Costs are borne by the benefit-providing jurisdiction, while the tax revenue associated with employment accrues elsewhere. Here again, provinces might be inclined to restrict benefits or limit eligibility in order to reduce these costs. In Norrie's words: "Provincial governments have little incentive to plan their social policies with the residents of other jurisdictions in mind."⁷⁸ In a decentralized system, the resulting policies may undermine national efficiency and equity goals by impeding mobility and opening gaps in the social safety net.

A strong case can be made, therefore, that positive externalities may distort the allocation of resources from the perspective of the federation as a whole. In particular, certain efficiency-enhancing policies may be provided at a suboptimal level. Roger Gibbins comments that the concern, in areas such as training and education, "is not with precipitous reduction in provincial support, which is unlikely, but with the gradual erosion of support in those areas where spillover effects are most pronounced."⁷⁹ Recognition of the potentially harmful effects of this erosion of support may provide the incentive required for provinces to develop intergovernmental mechanisms to secure the social union.

Provincial social policies may also create negative externalities. For example, a systematic policy of social dumping, whereby welfare recipients are encouraged

to move to other jurisdictions, introduces distortions into the labour market and may precipitate retaliatory beggar-thy-neighbour policies, the cumulative effect of which is to fragment the economic union. One response to the social dumping issue is to establish common minimum standards for social security programs, thereby reducing interprovincial differentials and the resulting mobility incentives. The social union could also be secured by prohibiting provinces from imposing barriers to mobility — such as length-of-residency requirements — the effect of which is to impose direct costs on potential migrants and general efficiency costs on the federation as a whole. Finally, formal rules and procedures to prohibit social dumping might be adopted, following the model of intergovernmental trade agreements.

A principal objective of a national approach to social policy is therefore to address efficiency problems posed by policy interdependencies in the form of externalities. Negative integration may be furthered through prohibitions of externality-producing behaviour and positive integration may be promoted where the absence of harmonization undermines policy effectiveness. In this context, common rules of behaviour and coordinated policies *may in fact increase control over domestic policy outcomes when compared with unilateral measures*. It is only where the cost-benefit analysis yields this result that governments are likely to submit voluntarily to the constraints of a common policy regime.

This incentive structure would appear to open the door for interprovincial cooperation to establish national social policy, particularly where negative externalities are significant and reciprocal or where significant collective costs may result from suboptimal provision of policies that confer positive externalities. Even on the assumption that provincial policy is self-interested in the sense of focusing primarily on domestic outcomes, interdependencies create an incentive to cooperate. However, other factors come into play that complicate this picture. These factors relate to the general obstacles to collective action, the dynamics of intergovernmental bargaining, and the politics of collective action. Each of these topics will now be addressed in turn.

OBSTACLES TO COLLECTIVE ACTION

The obstacles to interprovincial or federal-provincial collective action relate primarily to the incentives for non-cooperation that confront individual governments. Many of these obstacles are general problems for individual or institutional collective action, and therefore are not unique to the intergovernmental context. As stated by Elinor Ostrom: “The central question ... is how a group of principals who are in an interdependent situation can organize and govern themselves to obtain continuing joint benefits when all face temptations to free-ride, shirk, or otherwise act opportunistically.”⁸⁰ This section briefly describes three general obstacles to collective action: incentives to free-ride, incentives to cheat, and transactions costs.

The free-rider problem arises when governments see opportunities to reap the benefits of the actions of others without bearing the costs. For example, governments benefiting from positive externalities, such as employment training or post-secondary education provided by other jurisdictions, have little reason to enter negotiations that could require them to make compensatory payments. In addition, governments may be reluctant to commit themselves to costly collective action if they see opportunities to free-ride on the efforts of others. Incentives to free-ride may prevent negotiations to address collective problems from even beginning if every party adopts a "wait and see" approach, hoping that others will take the initiative in providing leadership or laying the groundwork for collaboration.

Incentives to cheat occur where there are gains from undercutting agreed standards. These incentives are likely to be particularly strong where there are opportunities to gain a competitive advantage or to avoid costs. Cheating is also more likely if it can go undetected or unpoliced. When it is detected, however, cheating on common standards may be only viable as a short-term strategy, since the effect may be to destabilize the common regime. As Ostrom notes: "No one wants to be a 'sucker,' keeping a promise that everyone else is breaking."⁸¹ In fact, even the risk of cheating may be enough to induce strategic behaviour, through which common principles or standards are rapidly undermined. The possibility of cheating may therefore be an impediment to collective action in the first place, or it may undermine collective arrangements once they are in place.

Cheating in the social policy area may take the form of social dumping, where governments seek to off-load social assistance costs by lowering benefits sufficiently to encourage out-migration of recipients. Cheating on common standards might also occur where, for example, principles of accessibility by out-of-province residents to health care and education are eroded through financial or other barriers to mobility. In addition to undermining specific common principles or standards, the incentive to cheat may trigger a more general dynamic, commonly referred to as a "race to the bottom."

The "race to the bottom" argument is, in essence, that competition — whether to attract investment or to off-load social policy obligations — will lead governments to reduce taxes, regulatory requirements, and levels of service, thereby producing a downward spiral in social security benefits and other programs. This dynamic is a classic collective action problem since a mutually agreed common standard — which would put a stop to the downward pressure — may be difficult to achieve where such a standard would not be enforceable and individual jurisdictions would face incentives to cheat in order to obtain short-term advantage. In the absence of an agreement among potentially competitive jurisdictions, the other way of putting a stop to this problem is intervention by a higher political authority. In Canada, this authority is the federal government.

The likelihood that competitive cost-cutting will result in a race to the bottom in the absence of centrally-enforced, national standards for social policy is, however, a matter of considerable debate. It has been argued in the American context,

for example, that decentralization is not likely to result in a race to the bottom in program funding and regulatory standards because “economic competition among the states to attract business would become based on excellence of public services — high quality of education, infrastructure, and skilled work force — instead of tax and regulatory burdens.”⁸² This analysis conceded, however, that a federal role is required: (i) in solving problems that spill over state lines; (ii) in cases where states would not have the incentive to undertake programs that would benefit other states; and (iii) in areas where national uniformity would be important for effective functioning of markets.⁸³

The competitive advantage provided by excellence in social services may not, however, be equally present in all areas of social policy. For example, the incentives to undercut benefit levels for income support programs were addressed in a US study that looked at the impact of welfare rates on the residential choices of poor people.⁸⁴ The authors concluded that residential choices were influenced by the level of welfare benefits available in different states and that states took their competitive relationships into account when setting welfare policies.⁸⁵ In particular, states tended to decrease benefits that were comparatively high and also to lower benefits when the percentage of poor people in the state increased.⁸⁶ Levels of social assistance may therefore be driven down as states compete with each other to avoid becoming “welfare magnets” that would attract poor people by virtue of their relatively generous programs. In order to prevent this risk of a downward spiral in social assistance, the authors concluded that welfare assistance levels should be set by the federal government.⁸⁷

These findings may not, of course, be directly transferable to Canada. The higher population density and greater number of states may make interstate mobility less costly in the United States than is interprovincial mobility here. Furthermore, the incentives observed in the context of welfare may not affect all areas of social policy. Nonetheless, the example of US “welfare magnets” highlights an argument for national standards — whether federal, federal-provincial or interprovincial in origin — and also shows how the interprovincial incentive structure may work against such standards in the event that cheating becomes a viable strategy.

The final set of general obstacles to collective action are the transactions costs associated with cooperation. Quite simply, negotiating agreements and ensuring their effectiveness is costly. These transactions costs include the costs of identifying issues, obtaining and distributing information, establishing agendas, negotiating bargains, codifying agreements, and monitoring and enforcing compliance.⁸⁸ If these costs are too high, governments may decide that entering into negotiations is not worth the effort. A decentralized approach to securing the social union should therefore be sensitive to the disincentives that may result from high transactions costs and should propose means, where necessary, to address this problem. As will be discussed below, one of the key roles of intergovernmental institutions is to lower transactions costs by producing and distributing information, providing bargaining forums, and reducing uncertainty.

General problems of collective action are therefore likely to arise in the context of an intergovernmental approach to securing the social union. These problems may be obstacles to initial agreement and may, if they are not neutralized, serve to destabilize any intergovernmental arrangement that is put in place. One common solution to collective action dilemmas is to move the locus of decision-making and enforcement from the individual members of the collectivity to a higher authority. The collective action problem thus provides one line of argument for a federal government role in social policy. If a decentralized approach is preferred, other approaches to addressing collective action incentives will have to be developed. Before considering possible solutions to collective action problems, however, additional challenges for decentralization and intergovernmentalism will be noted.

THE BARGAINING DYNAMIC

The decentralized model for establishing and enforcing national social policy principles and standards moves policy development into the realm of intergovernmental negotiations. Predicting whether these negotiations will succeed in generating a policy regime capable of securing the social union is difficult because of the many variables that may affect bargaining processes. These variables include: "the nature of the alternative policies and coalitions, the level and symmetry of information, the extent of communication, the sequence of moves, the institutional setting, the potential for strategic misrepresentation of interests, the possibility of making credible commitments, the importance of reputation, the cost-effectiveness of threats and side-payments, and the relative preferences, risk-acceptance, expectations, impatience and skill of the negotiating parties."⁸⁹ Some of these variables can be manipulated through institutional means (for example, improved information-sharing), while others arise from the basic interests, attributes, and strategies of the parties.

Analyzing this constellation of factors in the context of interprovincial or federal-provincial social policy negotiations is a complex task. However, three elements of the likely bargaining dynamic are examined here: differing vulnerability to externalities; alternative coalitions and opting-out; and linkages and side payments.

The premise that governments cooperate primarily in order to enhance control over the domestic agenda leads to the conclusion that support for cooperation to address externalities will vary among governments. Governments that can sustain effective policies autonomously may be less likely to cooperate, while those that are vulnerable to negative externalities have an incentive to support intergovernmental coordination.⁹⁰ In addition, governments that produce negative externalities (but are not vulnerable to them) or that benefit from the positive externalities of others may be inclined to free-ride on others' policies rather than cooperate. According to Moravcsik, economic interdependence creates unambiguous incentives to cooperate only where "the policies of two or more governments create

negative policy externalities for one another, and unilateral adjustment strategies are ineffective, inadequate or expensive."⁹¹

This analysis has important implications for the value to different governments of cooperation on matters of social policy. Moravcsik argues that "policy coordination will typically be sought particularly by smaller governments, with little control over their domestic markets and high economic interdependence, and by those, generally with high levels of domestic public goods provision, whose policies are particularly vulnerable to disruption."⁹² Since policy coordination is a response to interdependencies and externalities, it is not surprising that governments that are the most vulnerable to external pressures would tend to be most supportive of a bargaining approach that offers some protection.

The flip side of this coin is that larger and more self-sufficient jurisdictions will, all things being equal, be less likely to seek cooperation or will be better able to dictate the terms and conditions for any cooperative arrangement.⁹³ Since they are less vulnerable to externalities and exercise greater control over domestic policy outcomes, they can more credibly exercise the threat of non-agreement to strengthen their bargaining power. If no agreement is possible without consensus among all parties, the need to compromise with the least forthcoming government can tend to drive outcomes toward the lowest common denominator.⁹⁴

It is not true, of course, that more autonomous governments will always be resistant to intergovernmental cooperation. In Europe, for example, Germany and France have acted as motors of integration, although it should also be noted that support for the European Union is very strong in some of the smaller countries as well. Governments of large and relatively autonomous political entities may support integration in certain circumstances either as a means of extending their spheres of influence or because their economies are well placed to take advantage of broader market access. Some of the same factors may come into play in negotiations relating to the social union, although the advantages associated with economies of scale in production that may be realized through economic integration do not seem to have obvious parallels in the field of social policy.

Regardless of the advantages that larger provinces may see in pursuing a strong social union, it seems likely that smaller provinces that are vulnerable to policy externalities will be systematically disadvantaged in interprovincial negotiations. As a result, they may seek a federal presence in order to counter the weight of the larger provinces. The search for consensus in interprovincial negotiation will also tend to push outcomes toward the preference of the party that is most resistant to strong (and constraining) social policy principles or standards. In particular, governments that can credibly threaten to stay out of cooperative arrangements may, somewhat ironically, be in the best position to determine the nature of any arrangements that are established. It is not obvious that these are the governments most committed to a strong social union.

One way of overcoming the bargaining power of a hold-out government is to form an alternative coalition and threaten exclusion. In effect, this breaks the

tyranny of consensus decisionmaking. Furthermore, the threat of negative externalities from the coalition may induce the hold-out to compromise. While this strategy may increase the possibility of agreement, it also distributes bargaining chips unequally. Moravcsik states that it favours governments of larger entities, the participation of which is essential in forming a viable coalition, and governments that have preferences close to the group median and are therefore in the best position to form part of a range of coalitions.⁹⁵

An additional complication for the alternative coalition strategy is that, in certain circumstances, exclusion may actually confer a benefit or provide an opportunity to free ride. As Moravcsik observes:

Where free trade is assured, ... governments with low social standards often have an incentive to free ride, rather than to compromise on common harmonized standards. This helps explain why the threat of exclusion was powerless to block the British government's striking last-minute "opt-out" of social policy at Maastricht. Exclusion from the social policy provisions of the Maastricht Treaty, insofar as it had any effect at all, promised to make British firms *more* competitive on a European market from which they cannot be excluded. The adoption of high EC [European Community] social protection standards is thus likely to be possible only through linkage or side payments.⁹⁶

This observation illustrates another connection between the social and economic union. To the extent that adherence to national principles or standards in the social union imposes a competitive disadvantage, free trade guarantees may actually undermine efforts to secure the social union.

The final sentence in the above-quoted passage refers to the use of linkage and side payments to overcome the free-rider problem. Each of these options warrants a brief comment.

Issue linkage or log-rolling involves making concessions in areas where parties' preferences are weak in exchange for gains in areas of strong preferences. It is most effective "where two countries have highly asymmetrical interests in various issues, which permit each to make concessions valuable to the other at relatively low cost."⁹⁷ The outcomes of multiparty negotiations will thus depend on the range of issues on the table, the distribution of policy preferences, and the opportunities for mutually advantageous bargains.

While it may facilitate intergovernmental agreement, log-rolling also has several limitations. First, the linkage of issues in a single package may create various coalitions of winners and losers. Problems may arise if the losers are politically mobilized and cannot easily be compensated. According to Moravcsik:

Package deals tend to create winners and losers in *all* countries that are party to them. Where domestic gains and losses produced by linkage are only imperfectly fungible through compensation across issues, linkage becomes a complex and politically risky strategy. Since losers tend to generate more political pressure than winners, for a domestic trade-off to be tolerable, adjustment costs to important domestic groups must be moderate, or substantial compensation must be paid.⁹⁸

At the very least, reliance on linkage as a strategy for lubricating mechanisms of collective action requires careful execution if it is to succeed. Canada's recent history of constitutional negotiations provides ample evidence of the perils of miscalculation in this regard.

Side payments involve providing inducements to hold-out parties to agree to common principles or standards. These payments may be compensatory, redistributing some benefits from winners to losers, or they may simply be financial incentives to encourage recalcitrant parties to agree. While side payments may be bilateral or multilateral, it may be easier to coordinate and distribute such payments centrally. One argument for a continued federal role in establishing national social policy principles and standards — even in the context of an interprovincial process — is that the federal government may be the most efficient instrument for making the side payments necessary to secure agreement.

The bargaining dynamic that develops around intergovernmental negotiations to secure the social union will therefore have important implications for the outcome. In particular, it appears likely that those governments most supportive of a strong social union will be in the weakest position to ensure that one is achieved and that there will be strong pressure to reach a lowest-common-denominator outcome as the price of consensus decisionmaking. This analysis may be criticized, to be sure, as taking too narrow a view of the incentives facing governments. Even if relative autonomy makes certain governments less sensitive to the efficiency rationale for social Canada, they may still exhibit a commitment to equity or identity values that leads them to support a strong social union. Alternatively, social union objectives may become inseparable from broader strategies relating to the economic union or national unity. Coalition formation, issue linkage, and the use of side payments may also facilitate collective action, although each of these approaches clearly has its own risks and limitations. Given all of these variables, the precise bargaining dynamic that is likely to emerge in social union negotiations is difficult to predict with any confidence. This issue cannot, however, be ignored in evaluating the decentralized model for building social Canada. Furthermore, there are good reasons to believe that this bargaining dynamic will not necessarily be conducive to strengthening the social union.

THE POLITICS OF COLLECTIVE ACTION IN CANADIAN FEDERALISM

The general obstacles to collective action and successful multiparty bargaining are increased when negotiations take place in a complex political setting such as Canadian federalism. Different political imperatives, the power of concentrated interests, and the general problem of focusing provincial decisionmakers on national issues may impede interprovincial agreement.

To begin, coordinating multiparty negotiations and securing agreement are complicated by the fact that parties are independent governments subject to quite different political imperatives. In particular, governments may:

- be motivated by ideological considerations or overriding political objectives — as is the case for a separatist government in Quebec — rather than by more narrowly-defined rational self-interest;
- experience (and measure) costs and benefits of cooperation or non-cooperation in different ways;
- engage in intergovernmental strategic behaviour and linkages, which may generalize conflicts in one area to negotiations on otherwise unrelated topics;
- operate on different decisionmaking timetables (dictated by other domestic policy priorities, electoral considerations, etc.); and
- redefine their interests and priorities following elections.

These obstacles to federal-provincial and interprovincial collective action will increase the difficulty of reaching agreement on a common set of national social policy principles and achieving the harmonization of provincial programs that would follow.⁹⁹ As demonstrated by the fate of the Meech Lake Constitutional Accord, even when intergovernmental agreements are reached they can be derailed by changing political circumstances.

The politics of collective action are also complicated by the fact that governments are not fully autonomous negotiators, but rather respond to political pressure. It is a commonplace proposition of public choice theory that costs or benefits conferred on concentrated interests are more politically salient than those that are widely distributed.¹⁰⁰ Furthermore, potential costs may elicit a stronger political reaction than potential benefits. When the costs of policies are concentrated on particular sectors and the benefits are spread throughout society, effective opposition can be expected. While this interest group dynamic does not always work against economic and social integration, the risk of blockage arises where governments would be required to forego policies that benefit clearly defined domestic constituencies in exchange for more intangible gains (e.g., improved efficiency of the economic union). In fact, decentralization may increase the blocking power of concentrated interests generally to the extent that they have greater leverage over provincial governments than they do at the federal level.

Even if there is a convergence of values and priorities, political timetables can be coordinated, and the blocking power of concentrated interests overcome, the challenge remains to induce provincial governments to view issues, such as social policy, from a national perspective. The obstacles to provinces' adopting a national perspective, either individually or collectively, are summarized by Alan Cairns in his discussion of political responses to the possibility of secession by Quebec. After explaining why the federal government cannot easily prepare itself for a postsecession world, he turns to the provinces. His analysis is worth quoting at length because it clearly articulates the argument that, even when facing the prospect of national dismemberment, provinces are unlikely to rise above their particular interests.

The provincial governments outside Quebec, acting either collectively or individually, are incompetent to speak for an English-speaking rest-of-Canada waiting eagerly or reluctantly to be born. Their concern is with the provincial jurisdictional dimension of our existence as a people. Further, each of them speaks only for a limited territorially restricted segment of a future Canada-without-Quebec. They are thus doubly incapacitated, by jurisdiction and territory, from assuming a Canadian leadership role. They are conditioned by tradition to be provincial and by electoral constraints not to deviate from tradition....

Occasional exceptions to the contrary, there is little recent evidence to encourage the belief that the premiers of the rest-of-Canada will rise above their provincial ambitions to speak for a Canadian constituency. A Canada-without-Quebec fashioned by provincial hands would not do justice to the Canadian dimension....

It is futile to deprecate their behaviour. They are simply doing their provincial job in response to the powerful shaping cues of federalism which make concern for the whole someone else's responsibility. Accordingly, to look to the provincial governments outside Quebec to speak for and to the national dimension of a Canada-without-Quebec is to be guilty of a constitutional oxymoron. It is also to subscribe to a modern version of the compact theory by which what the rest-of-Canada holds in common is attributed to provincial government generosity.¹⁰¹

If Cairns is right that the potentially destabilizing — not to say disastrous — consequences of a vote by Quebec to secede cannot elicit a collective response from provincial leaders in the rest of Canada, one might ask how likely it is that these leaders will adopt a common approach to the much more mundane task of securing the economic and social union. Furthermore, what is demanded of them in the latter task is not a collective response to an external threat, but rather a willingness to impose restrictions on their own actions in order to promote the common good. The incentives for inaction would appear to be even stronger.

This argument can, of course, be turned on its head, at least normatively. Courchene may be right that Canada is facing a secular trend of increasing decentralization, resulting from the fiscal and other forces shaping social policy. The threat of secession by Quebec raises the possibility of even greater centrifugal pressures, particularly if the result is to undermine the authority of the federal government. Provincial leadership may therefore be essential if Canada, or the rest-of-Canada, is to hold together as a political community. From this perspective, interprovincial cooperation in securing social Canada *should* be encouraged as a means of affirming the existence of a viable national community and defining its principal characteristics. This normative basis for supporting Courchene's vision of a strong but decentralized social Canada does not, however, provide much assurance that the objective can be achieved.

To conclude, the recipe for successful collective action in a federal state includes a high level of political convergence among governments, an ability to overcome the resistance of concentrated interests that oppose agreement, and a willingness of provincial governments to adopt a national perspective on issues of common concern. None of these ingredients can be taken for granted in relation to the Canadian social union.

CASE STUDIES IN COLLECTIVE ACTION

The discussion of collective action to this point has focused on identifying general principles and incentive structures and exploring their implications for a decentralized approach to securing the social union. What remains to be done is to examine two case studies which, it is argued, lend support to the collective action framework of analysis. These case studies are the AIT and the Government of British Columbia's decision to adopt a length-of-residency requirement for social assistance.

The Agreement on Internal Trade

Commentators on the AIT can generally be divided into two categories. In the first are those who, while acknowledging the AIT's shortcomings, argue that it is an important first step in establishing a rules-based system for reducing barriers to trade.¹⁰² These commentators think, or hope, that the AIT will lead to a virtuous circle of cooperation, where success builds on success and general commitments pave the way to more specific obligations. It is too early in the life of the AIT to determine if this optimism is well founded.

In the other category are commentators who argue that the AIT is so full of loopholes, vague commitments, and agreements to agree that it will achieve little, if anything. From this perspective, the AIT indicates the futility of looking to interprovincial negotiations to promote national objectives. David Cohen presents this view as follows:

It has been argued that the fragmentation of markets, duplication in program delivery, excessive enforcement and compliance costs associated with federalism could, in theory, be overcome by *ex post* negotiations between provinces. With few exceptions, these negotiations, perhaps because they are so visible, or perhaps because the losses to well-organized producer interests would be so visible and highly focused, may not occur. The Internal Trade Agreement, in so far as it represents what one could expect from *ex post* negotiations, confirms that voluntary agreement[s] designed to adjust to the costs of federalism do not, in reality, offer Canadians very much at all.¹⁰³

Cohen's assessment of the AIT suggests that the possibility of accelerating centrifugal tendencies is perhaps the most serious long-term risk with moving too quickly toward exclusive provincial control over the social union. He attributes the weaknesses of the AIT to increasing decentralization within Canadian federalism, the inability of the federal government — for practical and political reasons — to take unilateral action to create a common market in Canada, and “the need to offer substantial benefits to all ten provinces in a multi-lateral bargaining process.”¹⁰⁴ His conclusion is that provincial distrust of the federal government, mutual distrust among certain provinces and the increasing focus on international, as opposed to interprovincial, economic activity has produced a situation where

“the national economy, like other national institutions, fails to receive the support it requires.”¹⁰⁵ Two messages can be taken for efforts to secure the social union. The first is a warning: the AIT provides little evidence that interprovincial bargaining can protect national values. The second message is a call for action: unless decisive action is taken to strengthen national institutions — including the social union — that have the potential to unite Canadians, increasing centrifugal pressures may become irresistible.

The institutional weaknesses of the AIT, particularly when contrasted with the European Union (EU), have also been noted by several commentators. In their view, the institutional machinery provided by the agreement “may not be adequate to the task of inducing governments to agree on the host of issues that remain outstanding.”¹⁰⁶ This analysis is summarized as follows:

The [EU] ... relied on the European Commission, a body independent of member governments but assisted in some cases by industry or other interested groups, to draft directives and regulations, which were to be adopted, by qualified majority, by the European Council of Ministers. In addition, the EU countries had committed themselves, in a number of specific areas, to a “default rule” of mutual recognition of standards in the event that they could not agree on harmonizing measures, and that commitment has proved to be an effective incentive to make progress in removing barriers.

In contrast, the Canadian agreement leaves the technical work of removing barriers to sectoral committees of ministers or civil servants who, it must be pointed out, are often in charge of administering the very barriers that the agreement seeks to remove. The Secretariat seems to have a purely administrative role in this exercise, and does not have the resources to draft proposals for the harmonization of standards. Furthermore, any decision to remove a sectoral barrier will effectively require unanimity, and there is no agreed-on “default rule” in the event that governments do not live up to their commitment to liberalize further. As [Alex] Easson ... comments,

“One is tempted to observe ... that [the] principal objective [of the authors of the agreement] seems to have been to identify those aspects of the EEC Treaty that have proved most successful in eliminating barriers, and then to ensure that similar provisions are *not* adopted in Canada.”¹⁰⁷

The role of intergovernmental institutions in encouraging collective action is a topic that will be returned to below. So also will issues of decision (voting) and default rules. The point here is that the AIT does not inspire confidence in the ability of intergovernmental negotiations in Canada to fashion effective institutions for collective action.

A final point on the AIT is its relationship to social policy, particularly through the labour market. Michael Trebilcock and Rambod Behboodi argue that the absence in the AIT of a prohibition against social dumping is troubling in light of problems within the EU resulting from Britain’s exclusion from the Social Protocol of the Maastricht Treaty.¹⁰⁸ In particular, they indicate that several businesses

have relocated to Britain to take advantage of laxer labour laws, and that Italy may follow Britain's lead in stepping outside the social policy constraint. While acknowledging that the argument for a uniform level of social protection across Canada "is at best utopian, and probably ... misguided," Trebilcock and Behboodi express concern about the failure of the AIT to produce a procedure for coordinating social policymaking.¹⁰⁹ In their view: "There is a danger that social dumping will emerge as a tool of industrial policy."¹¹⁰ The AIT's weakness in this respect provides further evidence of the obstacles to the interprovincial approach to securing the social union.

British Columbia's Length-of-Residency Requirement

The Government of British Columbia's decision in 1995 to impose a length-of-residency requirement for welfare provides an interesting case study for examining the interprovincial incentive structure relating to the social union.¹¹¹ British Columbia's restriction on social assistance accessibility was in clear contravention of the Canada Health and Social Transfer (CHST); it is also relatively uncontroversial that measures of this type are inconsistent with the fundamental principles underlying the social union. Nonetheless, British Columbia had this restriction in place for over a year before an agreement to abandon it was reached with the federal government. This agreement involved the lifting of federal fiscal sanctions, imposed for non-compliance with the terms of the CHST.

The length-of-residency requirement was justified as a response to interprovincial externalities: a movement of welfare recipients from other parts of Canada to British Columbia that may have been attributable to a constellation of factors that made British Columbia attractive to migrants (e.g., job prospects, climatic conditions, or higher welfare benefits) or to conscious decisions by one or more other provinces to off-load welfare recipients onto British Columbia (i.e., social dumping). The Government of British Columbia defended the restriction as necessary to protect its taxpayers from the excessive burden of increased welfare costs that could, ultimately, undermine the provincial welfare system.¹¹²

Characterized this way, the situation raises a classic externalities problem, the response to which is individually rational (British Columbia acts to protect itself) but collectively harmful (further fragmentation of the Canadian economic and social union). The question then arises whether there were incentives for British Columbia and the other provincial governments to take collective action to protect social Canada.

The political and economic incentive structure can be summarized as follows:

- the length-of-residency requirement conferred direct benefits on people who reside, vote, and pay taxes in British Columbia by containing welfare costs;
- the Government of British Columbia therefore had good political and economic reasons to pursue policies, such as this one, which benefit these individuals;

- those who were directly affected by this restriction were individuals in other provinces who moved — or might have moved — to British Columbia for any number of reasons and who might have required social assistance for a period of time after the move;
- these people had little or no political weight in British Columbia and were unlikely to be able to lobby the other provinces where they were residing to pressure the Government of British Columbia to ease the restriction since it is unlikely that a provincial government would be inclined to expend political effort on behalf of those who want to leave the province;
- although the policy clearly restricted labour mobility in Canada, thereby imposing a cost on the economy as a whole, this cost was highly diffuse and hard to measure and there was no clear provincial constituency (in British Columbia or elsewhere) that was likely to be mobilized in response to it;
- the Government of British Columbia was unlikely to be concerned with the possibility of other provinces imposing similar restrictions, since those who would have been directly affected were poor people in British Columbia who wanted to leave the province — not a particularly strong political lobby;
- British Columbia's relative size in the federation and the strong north-south and Pacific rim orientation of its economy may mean that its government is not overly preoccupied with strengthening the Canadian social or economic union.

If this is an accurate summary of the prevailing incentive structure, there is little in it to suggest that the Government of British Columbia would have been likely to reverse its policy in response to pressure from other provinces, even in the unlikely event that such pressure were to materialize. In fact, there was no evidence that other provinces were willing to allocate time and political capital to challenging this policy. Other provincial governments probably saw little domestic political advantage from pressuring British Columbia on this issue, even if effective means of applying pressure could be found. Furthermore, provinces may have been reluctant to create a precedent that might, at some time in the future, lend support to intergovernmental pressure to alter their respective policies. Finally, as Cairns observed of the post-referendum context,¹¹³ perhaps the provinces are not accustomed to thinking about the national interest; they have provincial mandates and constituencies, and those people concerned with national issues can appeal to the federal government.

An argument can thus be made that British Columbia's length-of-residency requirement illustrated how the interprovincial incentive structure may undermine the social union. A provincial response to this direct attack on the fundamental mobility principle underlying the social and economic union was not to be expected, and did not occur. Furthermore, the incentive structure that explains this lack of response also casts doubt on the likelihood of provinces agreeing voluntarily to a national principle prohibiting length-of-residency requirements,

adhering to such a principle over the long term if it is agreed to (particularly if there is a perception of social dumping from other jurisdictions), or agreeing to an effective enforcement mechanism.

One response to this argument might be that interprovincial action to meet this threat to the social union was not forthcoming precisely because there are no institutions to channel that action. Rather than supporting the argument that such institutions are unlikely to emerge, the British Columbia case underlines the need for them. Furthermore, it may be that provinces are still looking to the federal government for action, rather than following Courchene's advice and taking direct responsibility for the social union. Pressure groups may also have failed to make this mental shift.

There is an inherent circularity in this debate that can, ultimately, be resolved only by watching events unfold. It is impossible to be certain whether the incentives that currently inhibited a provincial response to British Columbia's restriction on mobility would be overcome by an interprovincial agreement of the type advocated by Courchene, or whether these same incentives will ensure that a meaningful interprovincial guarantee of the social union will never see the light of day. Nonetheless, the Government of British Columbia's actions in this area and the apparent lack of response on the part of other provinces do not inspire confidence in the decentralized approach to securing the social union. As noted above, it appears that federal action — both fiscal sanctions and concessions in subsequent bilateral negotiations — was required to bring about a policy reversal.

In the meantime, however, the threat to social Canada posed by this scenario may be significant. Courchene's ACCESS paper advocates immediate adoption of his "interim model" in order "to establish a new, temporary, status quo" while negotiations are ongoing.¹¹⁴ In his view: "If this does not come to pass, the recent conflicts with Alberta over health and with British Columbia over welfare will begin to multiply, and not only in the 'have' provinces."¹¹⁵ The implication is clear: social Canada is at risk.

SUMMARY

The discussion in this section argues that governments may face a variety of incentives to act in ways that inhibit the reaching of mutually beneficial agreements. Incentives to free-ride or cheat, transactions costs, unequal vulnerability to externalities, and the political context of intergovernmental bargaining all mean that outcomes that may appear desirable from the perspective of the collectivity as a whole may not be produced by a decentralized process that depends on the negotiation and implementation of agreements by individual governments. Collective action theory cannot, of course, predict with certainty whether provinces will in fact cooperate to establish and adhere to the principles and standards needed to secure the social union. Factors other than those noted above may, in practice, be determinative of intergovernmental action under certain circumstances. The

framework of analysis outlined in this section does, however, provide an explanation of some of the principal obstacles to bringing about collective action of the type required by Courchene's decentralized model. Furthermore, experience with the AIT and British Columbia's length-of-residency requirement are in important respects consistent with the collective action analysis of interprovincial behaviour.

This analysis leads to two conclusions. First, prudence would seem to dictate that strategies to strengthen the social union not rely solely on an interprovincial approach, at least not until this option has proven itself to be effective. Second, efforts to promote an interprovincial or federal-provincial model as an alternative to unilateral federal action should explicitly recognize the obstacles to collective action and design institutional arrangements to overcome them. The implications of both these conclusions are explored in the following sections.

V. THE ARGUMENT FOR A FEDERAL PRESENCE IN NATIONAL SOCIAL POLICY

If the prospects for securing the social union through a decentralized process are, at best, uncertain, one response is to look to a continuing role for the federal government in establishing and enforcing national principles and standards. This section presents the case for this federal role, beginning with the argument that greater decentralization in fact increases the need to strengthen the social and economic union. The arguments for continued use of the federal spending power are then set out, followed by a brief review of a comparative study of the international experience with national standards. Finally, the key preconditions for an effective federal role in securing the social union are noted.

DECENTRALIZATION AND THE SOCIAL UNION

A theme running through much of the literature on fiscal federalism and social policy is that greater decentralization should be accompanied by increased attention to the fundamental underpinnings of the economic and social union. Two arguments are commonly made to support this proposition.

The first is that the centrifugal pressures inherent in decentralization risk eroding the benefits of the economic and social space. For example, Boadway sees increasing pressures to engage in "beggar-thy-neighbour policies on both the tax and expenditure sides of their budgets" as provinces become more self-sufficient.¹¹⁶ In particular, he notes indications of this tendency in the areas of tax incentives and holidays, restrictions on out-of-province students, and welfare changes in some provinces.¹¹⁷ The argument is that, with increasing decentralization, these pressures need to be controlled through rules that ensure the negative integration of the Canadian economic and social union.

The second argument is that policy interdependencies will continue, regardless of decentralization. Consequently, coordination is necessary if policies are to be

effective. The result, according to Schwanen, is that: "decentralization must mean increased efforts at 'vertical' cooperation on policies, so that each level of government can more effectively discharge its responsibilities *vis-à-vis* not only its constituents but the union as a whole."¹¹⁸ In other words, measures to enhance positive integration are also essential in the context of greater decentralization.

The implication for the provinces is that the policy decentralization and rationalization of roles and responsibilities implicit in the "rebalancing" of Canadian federalism is a two-way street. As Schwanen notes: "With the provinces taking or regaining greater control over a wide range of previously shared policy areas, it will be important that they interact with the federal government and each other to increase these policies' compatibility with national goals."¹¹⁹ In the area of economic relationships, for example, he argues that: "as government responsibility for policies affecting Canadians' economic well-being become more diffuse, there needs to be greater cooperation and a stronger subscription to a range of reciprocal obligations on the part of all members of the economic union."¹²⁰ The same prescription applies in the area of social policy.

This argument does not necessarily lead to the conclusion that the only guardian of national interests is the federal government. However, it does underline the need for attention to the national dimension of social policy in the context of decentralization. Applying the subsidiarity principle, devolution to the lowest level of government capable of achieving the policy objective implies that certain matters may also move upward to supraprovincial institutions (either federal or national) where they cannot be addressed adequately by the provinces acting individually or collectively. The extent to which a federal role is necessary to ensure a national perspective on social policy must therefore be evaluated.

THE CASE FOR THE FEDERAL SPENDING POWER

The debate about the use of the federal spending power has generally been pitched at the level of constitutional law and federalism theory: Is the federal government's use of conditional grants to influence policies in areas of provincial jurisdiction consistent with the constitutional division of powers and with the values underlying Canada's federal system? In the literature on fiscal federalism and social policy, however, the federal spending power is frequently assessed in more instrumental terms. This literature is replete with endorsements of the federal spending power as a means of establishing and policing national standards. A brief survey provides the essence of this line of analysis.

In a study prepared for the Macdonald Commission, Claude Forget considered federal-provincial harmonization in a range of social policy fields. He argued that "the harmonization of social policies cannot result spontaneously from the identification of the need" and that an effective, but constrained, central authority is therefore necessary.¹²¹ In addition, Forget maintained that the federal spending power was the only method that had yielded results in terms of social policy

harmonization and that it had also enabled the federal government to act as a disseminator of innovation in that field.¹²² While he supported federal unilateralism as essential to ensuring harmonization where the need is greatest, Forget argued that federal use of the spending power should be confined to legitimate harmonization objectives, as opposed to extending into the details of program design and serving as a pretext for centralization.¹²³

A strong instrumental argument for the spending power has also been made by Robin Boadway and Frank Flatters. They begin with the proposition that an important rationale for federal-provincial transfers "has to do with the fact that in a decentralized federation, the federal government may retain a legitimate interest in the overall design of some provincial expenditure programs for reasons of national efficiency or equity."¹²⁴ In particular:

The economic justification for using the spending power is that there are national objectives that can be attained by encouraging provinces to incorporate particular federally-defined standards into some of the expenditure programs under their jurisdiction, standards that they would not necessarily have an incentive to meet on their own initiative (but that collectively they might agree with).¹²⁵

The key point in the Boadway and Flatters analysis is that the spending power constitutes a direct means of overcoming the collective action incentive structure that may impede provincial adherence to common standards, even when the provinces recognize the desirability of a common approach. Without the federal leverage provided by the spending power, Canada would risk losing the efficiency and equity advantages that provide the essential rationale for a common political and economic space.

Boadway and Flatters do not, however, promote the federal spending power as a means of blanket centralization. They argue, in fact, that: "The ability to use the spending power in a sense increases the case for decentralizing the provision of public goods and services, since it allows the benefits of decentralization to be achieved without unduly compromising national efficiency and equity."¹²⁶ Judicious use of the spending power to secure national values is therefore consistent with significant decentralization in social policy delivery. As Boadway and Flatters note, it remains "a matter of judgement as to how extensively the spending power should be used and what sorts of political or constitutional limitations should be placed on its use."¹²⁷

Boadway has also defended the use of the spending power on the basis of the equity objectives contained in section 36 of the *Constitution Act, 1982*. This section formally commits both federal and provincial orders of government to promoting equal opportunities, reducing disparities, and ensuring that all Canadians receive essential public services of reasonable quality. While the federal commitment in section 36 might seem inconsistent with the provinces' legislative responsibility in the area of social policy, Boadway argues that: "The spending power is what reconciles the joint federal-provincial responsibility for achieving

equity through the provision of public services in areas of provincial responsibility."¹²⁸

In a commentary on recent federal budgetary policy, Boadway reiterated his view that abandonment of the spending power would remove leverage to induce provincial compliance with the principles contained in the *Canada Health Act* and would preclude federal participation in other areas of social policy reform, such as welfare, where a more harmonious and rational system is desirable.¹²⁹ He argued that the 1995 federal budget and the establishment of the CHST will significantly reduce the federal government's ability to shape social policy through the spending power:

What is most striking about the approach of the federal government is the new-found faith in the power of interprovincial negotiation as a means of achieving objectives of a national nature, objectives that are rightfully the responsibility of the federal government. To me that is an abdication of responsibility.¹³⁰

This comment focuses directly on the use of interprovincial processes to generate national policies which, as noted above, is central to Courchene's proposal set out in the ACCESS paper.

Courchene has also commented extensively on the appropriate federal role in social policy. Significantly, he has consistently supported retaining federal leverage, through the use of the spending power, even while proposing a stronger provincial role in national social policy. In an article published in 1994, he presented an extensive discussion of the need to restructure social Canada from the program level up. He concluded that:

In all of this, however, there is one aspect of the existing set of fiscal relations that must survive in one form or another, namely the preservation and enhancement of the economic and social union. Currently, the spending power plays a critical role in this process. Preserving the integrity of the personal income tax system (e.g., the prohibition of beggar-my-neighbour tax provisions) is accomplished largely through the exercise of the federal spending power. So are the provisions relating to portability and the lack of residency requirements on the social union front. Were the ideal social policy restructuring to involve further asymmetry or further decentralization, the case for an effective social and economic union would presumably become all the stronger. To be sure, the exercise of the spending power is not the only way to deliver a social and economic union: I have long adhered to the principle that for programs to be national they need not be central. *But until other effective provisions are put in place to guarantee the internal socio-economic market, Ottawa should not abandon the leverage associated with the exercise of the spending power.*¹³¹

Courchene's argument, which is repeated in the ACCESS paper discussed above,¹³² is that abandonment of federal leverage should only occur after the social and economic union is effectively guaranteed by other means.

Courchene considered the consequences of a premature abandonment of the spending power in a monograph-length evaluation of the CHST published in 1995.

Consistent with the fundamental objective underlying the ACCESS paper, he affirmed his strong commitment to a "full-blown social union" and argued that "positive integration" requires action by the provinces.¹³³ However, he continued to endorse a federal role through the spending power, arguing that a failure to maintain federal cash transfers at a "substantial" level "could send the 'national' aspects of Social Canada in a tailspin."¹³⁴ In Courchene's view, "a free fall of cash transfers under the CHST could trigger a free-for-all in the 'have' provinces, over which Ottawa would have precious little leverage."¹³⁵ He concluded, therefore, that "cash transfers *must* be maintained."¹³⁶

It would be misleading to suggest that support for the spending power is unanimous among social policy and fiscal federalism specialists.¹³⁷ Nonetheless, there is a significant body of opinion that this federal role is an essential component of social Canada. Even Courchene argues that it should not be abandoned until other means of securing the social union are in place.

INTERNATIONAL EXPERIENCE WITH NATIONAL STANDARDS

The case for a federal role in enforcing national standards is supported, at least in the Canadian context, by a study prepared in 1991 by the Institute of Intergovernmental Relations (IIGR) at Queen's University for the Government of Ontario. This study, entitled *Approaches to National Standards in Federal Systems*, reviewed the experience with national standards in the United States, Switzerland, Canada, Australia, and the Federal Republic of Germany.¹³⁸

The IIGR study looked specifically at the use of interprovincial and interstate mechanisms to establish national standards. Only three examples were cited.¹³⁹ The first is the Swiss "Concordat," a voluntary agreement among cantons that has typically been used to ward off centralizing initiatives of the federal government by introducing a coordinated intercantonal position or program. The second is the German interl ander treaty, used to address matters that fall under L ander jurisdiction but require a degree of country-wide coordination. Finally the report discusses the uniform state law movement in the United States.

Three general models for enforcing national standards were identified: legislative, judicial, and popular control.¹⁴⁰ It is relatively clear that only the first of these options is viable, at least for the foreseeable future, in relation to Canadian social policy. As to particular legislative enforcement techniques, the report identifies two federal instruments: conditional grants, particularly in the area of spending programs; and federal preemption in regulatory areas.¹⁴¹ The report does not, however, provide examples of effective interprovincial or interstate enforcement mechanisms.

The IIGR study concludes that the most effective means for achieving national standards are: "(1) constitutional amendment to pass jurisdiction to the federal government; (2) conditional fiscal transfers; and (3) preemption of constituent legislature law in the case of current powers."¹⁴² Instruments of revenue

equalization, charters of rights, and interstate instruments such as agreements or uniform law were considered to be somewhat less effective.¹⁴³ The finding that effective national standards generally require direct action by the federal government is confirmed by the report's assessment of the intergovernmental approach:

The processes of executive federalism in parliamentary federations do not seem in recent years to have been as effective overall in achieving national standards, except where they are directly fused with the federal legislative process, as occurs with the German Bundesrat. Also less effective largely due to their infrequent use would be interstate control mechanisms.¹⁴⁴

The IIR study thus provides little support for the decentralized, intergovernmental approach establishing national standards in federal systems.

PRECONDITIONS FOR AN EFFECTIVE FEDERAL ROLE

The case for a federal role in social policy is premised on the credibility and capacity of the federal government. In order for the spending power to be an effective tool for securing the social union, the federal government must establish itself as a reliable partner and it must have sufficient fiscal leverage to shape provincial policies. The division of powers ensures that the federal government can at best hope to bring a national perspective to social policy decisions; it cannot displace the provinces from primary responsibility for program design and delivery.

The notion of a renewed commitment to "partnership" is promoted in the Group of 22 proposals entitled *Making Canada Work Better*.¹⁴⁵ This document calls for a rejection of federal and provincial unilateralism and "a concerted and co-ordinated effort by all levels of government to preserve and promote our social and economic union and to manage interdependence."¹⁴⁶ The following suggestion is offered regarding the federal role:

Perhaps most intriguing is the possibility that the federal government could embrace partnership wholeheartedly and *invest* in both enhanced legitimacy ... and an improved reputation for fairness and evenhanded behaviour (for example, through the principle of fiscal equality). Then, over time, the other partners might be willing to entrust the federal government with a larger enforcement and mediation role in meeting common goals and regulating the economic union. After all, from a pure efficiency standpoint and at least as a theoretical proposition, enforcement by the federal government is probably superior to enforcement by tribunals or panels of experts. While all of this would require a sea change in the attitudes of many people, in the long-run, such a system might provide the greatest benefits to Canadians, as well as the most durable union.¹⁴⁷

The "partnership" theme underlines the point that unilateral changes in federal funding and a policy of off-loading fiscal responsibilities will likely poison federal-provincial relations in the area of social policy and undermine the legitimacy of federal action. The passage just quoted also has interesting broader implications.

In contrast to the secular trend toward decentralization identified by Courchene, the Group of 22 suggests that, under some circumstances, the pendulum could swing back toward a greater direct federal role in securing the economic and social union.

Use of the federal spending power also requires leverage in the form of conditional cash grants. There does not appear to be a consensus regarding the level of grants necessary to retain leverage or the likelihood that this threshold will be met in the coming years.¹⁴⁸ Clearly, predictions in this area are difficult since the federal commitment to funding can vary over time. The most recent numbers are an \$11 billion floor established in the federal budget and a *Red Book* promise of a \$12.5 billion floor for fiscal year 1998-99. If the federal government is in fact through the worst of the deficit-reduction era, it may have considerable discretionary funds in the future that could be used to provide conditional grants to the provinces for social programs.¹⁴⁹ The potential therefore may exist for increased use of the spending power to support a federal role in social policy.

SUMMARY

This section has presented the case for a continuing role for the federal government in securing social Canada. In particular, it has highlighted the need to strengthen the social union in the context of a decentralized federal system, reviewed commentary on the use of the federal spending power, and summarized findings on the comparative experience with national standards in federal systems. Finally, credibility and capacity were noted as two preconditions for an effective federal role. Measures to strengthen both of these attributes may be required.

The arguments reviewed here and the discussion of collective action issues in the previous section suggest that some scepticism is warranted regarding Courchene's claim that an interprovincial model for building social Canada is workable. Nonetheless, is it impossible to refute *a priori* his argument that, in the absence of the federal government, the provinces would feel compelled to invent a mechanism that would ensure compliance with principles underlying the social union. Courchene clearly believes that they would, and goes further by suggesting that putting the provinces at the centre of the national policy process would result, in the end, in an improved social union by virtue of greater positive integration. Furthermore, he has asserted that "excessive reliance on the federal spending power as the principal instrument of a social union has served to down play and even impede the equally important need to harmonize and promote fuller horizontal integration of Social Canada."¹⁵⁰ Regardless of collective action theory or specialist support for the spending power, the only true test of Courchene's proposed approach will be its ability to deliver concrete results.

If the decentralized model receives provincial support and if the federal government is either unwilling or unable to assert a strong presence in guiding national

social policy, the challenge facing those who support pan-Canadian standards and principles is then to make this model work. The following two sections provide some comments on how this objective might be accomplished.

VI. STRATEGIES FOR PROMOTING INTERGOVERNMENTAL COLLECTIVE ACTION: THE INTERNATIONAL ANALOGY

The decentralized approach proposed by Courchene requires provinces to agree on principles and create institutional arrangements capable of securing the social union. While obligations created in this way would not be legally binding, they would nonetheless have to constrain government action in order to be effective. This interprovincial process is analogous to international negotiations and agreements in that it requires governments to address problems arising from policy interdependencies and externalities in the context of obstacles to collective action and a weakness, or absence, of means to enforce agreements. Some lessons may therefore be drawn from the international context regarding the strategies available to facilitate intergovernmental solutions to collective problems.

This section examines the international analogy from several perspectives. First, it considers briefly the argument for incremental collective action based on the development of international legal regimes. The subsequent two sections review the findings of a study of international responses to environmental problems, looking first at the general features of international cooperation and then turning to institutional strategies for collective action. The particular challenges of developing the institutional arrangements required for an economic or social union are then considered. Finally, a hybrid approach to securing the social union is suggested. This approach could build on the positive lessons from the international context, while retaining the benefits — from the perspective of facilitating collective action — that are provided by a democratically elected central government within a federal system.

THE PROMISE OF INCREMENTAL COLLECTIVE ACTION

Perhaps the most general use of the international analogy in relation to intergovernmental approaches to securing the Canadian social (or economic) union is to point to experience with incremental collective action. The process whereby sovereign states establish common rules of conduct is often an incremental one. Agreement on general principles, in the form of a convention or framework agreement, may be followed over time by more specific protocols that establish increasingly precise obligations and demonstrate a greater commitment to compliance on the part of signatories. The analogy with this pattern of international cooperation provides the basis for a relatively optimistic assessment of modest intergovernmental measures to strengthen the Canadian economic union, notably the AIT,

and suggests that small steps toward agreement on the underpinnings of the social union might lead to greater progress down the road.

Applying the international analogy to the AIT, for example, Patrick Monahan argues that this agreement has the long-term potential to reduce existing barriers to free trade, not so much because of its particular provisions but rather by virtue of "the recognition that internal trade in Canada ought to be subject to a set of binding norms."¹⁵¹ Drawing on the experience with the General Agreement on Tariffs and Trade, he argues that: "Once a rules-based regime has been established — even if the substantive requirements of the rules are initially quite modest — a foundation has been laid for future construction."¹⁵² The same pattern might be observed with an interprovincial agreement aimed at securing the social union. Perhaps initial agreement on general principles will lead eventually to firm national standards, just as initially general international commitments in the area of trade have paved the way for a more sophisticated set of standards, accepted practices, and dispute-resolution procedures.

This international analogy should, however, be treated with considerable caution since it contains little analytical content and may be heavily influenced by a selection bias in favour of successful cooperation. For every international success story, how many framework agreements languish in obscurity, never leading to meaningful obligations? Without a systematic analysis of both successes and failures in international cooperation, it is difficult to determine whether the gradual emergence of rules-based regimes in certain areas is attributable to a general tendency to move from framework to specific agreements, or rather to particular features of the policy issues and contexts where cooperation was achieved. The incentives for key players to reach agreement in international trade negotiations — notably the economies of scale in production that can flow from market access — may not have parallels in interprovincial discussions on the social union.

The flip side of the "success builds on success" argument is that failure may lead to failure. The reasons to worry about adherence and enforcement in the context of the intergovernmental model — notably the incentives facing governments to cheat or free-ride — suggest that one cannot assume that agreement to vaguely worded commitments will trigger a vicious circle of self-reinforcing and increasingly specific cooperative measures. A vicious circle of non-cooperation and non-enforcement is also possible. In order to understand the basis for successful international cooperation, a more sophisticated analysis is required.

A particularly useful discussion of the conditions under which sovereign states may reach agreements that constrain their individual autonomy in order to address common problems is contained in a book edited by Peter Haas, Robert Keohane, and Marc Levy titled *Institutions for the Earth: Sources of Effective International Environmental Protection*.¹⁵³ In introductory and concluding essays, bracketing a number of case studies dealing with examples of international environmental cooperation, the editors explore in some detail the reasons for success in international rule-setting and in obtaining compliance.

GENERAL FEATURES OF INTERNATIONAL COOPERATION

On the basis of their examination of intergovernmental cooperation in the international realm, Haas et al. identify five general features of the international incentive structure and the institutions that emerge as a result. These features relate to the determinants of cooperative behaviour, the relationship between parties, the general role of institutions, the connection between international institutions and domestic politics, and the obstacles to effective international action. Each is relevant to the challenges of achieving interprovincial cooperation within Canada.

First, despite the avowedly institutional focus of their analysis, Haas et al. conclude that the primary determinant of state behaviour in the international realm is domestic political pressure.¹⁵⁴ This conclusion does not mean that, in their view, institutional factors are irrelevant. Rather, it implies that the role of intergovernmental institutions in the world of sovereign states cannot be divorced from the domestic political contexts. Haas et al. observe, for example, that "the institutions that have given rise to the most dramatic changes in collective policy making are those that were able to apply constructive channels for such domestic pressure to reach governments."¹⁵⁵

This conclusion is consistent with the principal theme of this paper: the search for effective intergovernmental mechanisms and processes for developing, interpreting, and enforcing national standards or principles requires, at the outset, attention to the incentives that determine whether governments will cooperate or not. In the Canadian social policy context, the key question raised by this conclusion is whether there is likely to be sufficient domestic (intraprovincial) political pressure, focused at the provincial level, to induce provincial governments to take the lead in establishing, monitoring, and enforcing the social union.

The second important point noted by Haas et al. is that a principal determinant of international cooperation is the dynamic between "laggards" (countries that have low standards and are resistant to collective policies) and "leaders" (countries that willingly sign and comply with treaty commitments, and often go further than these commitments require).¹⁵⁶ Most international agreements proceed by way of consensus and governments that cannot accept the emerging consensus have the option of choosing not to participate in the agreement. The result is a "least-common-denominator system [that] frequently confers great blocking power to laggard states."¹⁵⁷ The capacity of laggards either to block rules or to insist on weak ones means that leaders (and international institutions) are essential to pushing forward international cooperation. The characteristics commonly exhibited by leaders are intense domestic pressure, advanced domestic policies, and vulnerability to disproportionate damage.¹⁵⁸

A similar dynamic is likely to emerge in interprovincial negotiations, where the requirement of consensus decisionmaking has been criticized as promoting a lowest-common-denominator approach to collective action. The decentralized approach to securing the social union is likely to reveal leaders and laggards among

the provinces. As in the international context, strong leadership from some parties will be required if this process is to succeed.

A third observation of Haas et al. is that the distinctive functions of international institutions involve modifying the incentive structure facing governments rather than policing compliance through the administering of sanctions. Their case studies revealed little evidence of rule enforcement by international institutions.¹⁵⁹ Rather, monitoring environmental quality and national policy measures were more important institutional activities. Haas et al. therefore conclude that international institutions "do not need enforcement powers to succeed, and it is unrealistic to hope that governments will grant them such powers."¹⁶⁰ Through monitoring and other means, these institutions operate by "promoting reevaluation of state interests" rather than by attempting to force behaviour that states view as contrary to their interests.¹⁶¹

The absence of a strong enforcement function for international institutions thus reflects the constraint imposed by state sovereignty, a characteristic that is paralleled by the inability of intergovernmental agreements to constitute binding constraints on Parliament or provincial legislatures. As a practical matter, Canadian governments also exhibit the same resistance to enforcement mechanisms as do states in the international realm. Consequently, it may be more fruitful — and realistic — to consider how intergovernmental institutions can alter the incentive structure that will determine how provincial governments treat their social union obligations, rather than searching for enforcement mechanisms that will magically transform statements of good intentions into binding obligations. This topic is returned to below.¹⁶²

The importance of domestic political pressure and the lack of formal enforcement powers underlie a fourth general observation by Haas et al. While institutions must respect the legal integrity of the sovereign state:

the most effective institutions penetrate the state politically to a high degree. Such penetration often makes use of political allies outside the formal institutional apparatus. Indeed, intergovernmental organizations can be expected to be more effective as catalysts for transnational networks of nongovernmental organizations and transgovernmental linkages among sympathetic governmental bureaucracies, than as independent actors.... International institutions do not supersede or overshadow states. They lack resources to enforce their edicts. To be effective, they must create networks over, around, and within states that generate the means and the incentives for effective cooperation among those states.¹⁶³

Success depends, therefore, on the ability of institutions to shape domestic decisionmaking, rather than on the power to force compliance.

If interprovincial cooperation on national principles or standards requires this institutional dynamic, the question is whether the necessary network is operating, or can be made to operate, at the provincial level. The challenge for institutional design is to foster a provincially-focused locus of support for national social policy.

Finally, Haas et al. identify the principal obstacles to effective international action. They conclude that three major factors inhibit environmental cooperation

among sovereign governments: "low levels of concern about the environmental threat, lack of capacity to manage it, and the inability to overcome problems of collective action."¹⁶⁴ All of these factors have parallels within federalism, notably in the area of social policy. To overcome these obstacles through a decentralized process of intergovernmental cooperation, some measure of institutional support may be required.

THE ROLE OF INTERNATIONAL INSTITUTIONS IN FACILITATING COLLECTIVE ACTION

Haas et al. define institutions as "persistent and connected sets of rules and practices that prescribe behavioural roles, constrain activity, and shape expectations."¹⁶⁵ They observe that: "Governments establish international ... institutions in order to respond collectively to problems that they have not been able to solve without institutional support."¹⁶⁶ Since sovereign states are generally not subject to binding supranational authority, voluntary submission to international constraints and obligations is required and establishing effective sanctions for enforcement is problematic. Governments must therefore be convinced that collective action is desirable and the durability of the regime requires continuing compliance in the face of incentives to free-ride or cheat.

Haas et al. argue that effective international action requires favourable conditions in three fundamental areas: (i) level of concern, (ii) contractual environment, and (iii) capacity. In each area, they offer some insights into the role that institutions can play.

The focus on level of concern follows from the primacy of domestic political pressure in shaping incentives for cooperation. Governments' level of concern with collective issues must be sufficiently high to prompt them to devote scarce resources to problem solving. This concern, in turn, is typically generated by political action within societies, usually through individuals or groups identifying problems and demanding action on them.¹⁶⁷ According to Haas et al., institutions can increase state concern by:¹⁶⁸

1. providing information about the problem (particularly where states either do not understand the nature of the problem or fail to recognize its implications for their own interests);
2. magnifying public pressure (often through a network of international institutions, governments, non-governmental organizations, media, and industry groups);
3. focusing normative pressure on states, notably by promoting the establishment and reinforcement of international principles and norms of behaviour;
4. influencing how states express their concern at the international level (e.g., providing means for weaker states to get their concerns on the table in ways that cannot be ignored, playing an agenda-setting role, and giving proponents

of action more influence, through leadership roles, than they would have in an anarchic international system); and

5. increasing concern by linking issues, promoting log-rolling and increasing pressure on governments to act through direct incentives (financial aid, trade sanctions) or indirect means (diplomatic pressure suggesting linkages with other areas).

A high level of concern is a principal factor motivating governments to allocate time, money, and political capital to overcoming obstacles to collective action and finding cooperative solutions to common problems. Raising concern involves not simply sensitizing political leaders and officials to these problems; domestic political pressure is also essential, and institutional arrangements have a contribution to make in this regard.

The second institutional role identified by Haas et al. is to contribute to creating a hospitable contractual environment for the resolution of collective issues through intergovernmental agreement. The basic elements of a favourable contractual environment are the ability to communicate effectively and to make credible commitments. Institutional mechanisms contribute by reducing the transactions costs of making and keeping bargains. Specific means of improving the contractual environment include:¹⁶⁹

1. creating bargaining forums in which information about the problem and about potential areas of agreement is shared, thereby reducing transactions costs of negotiations;
2. facilitating regular interactions among participants, which can help to encourage a process of reciprocity and make commitments more credible — for example, by establishing timetables for action, regular policy reviews, and other mechanisms whereby states reveal their intentions, respond to the actions of others, and demonstrate repeatedly their commitment to solving the problems at hand;
3. creating an iterated decisionmaking process that leads to more developed cooperation and more precise rules and procedures as interests are discussed, reasons for concern are investigated, possibilities for joint regulations are explored, and coalition-building processes lay the groundwork for an effective collective response;
4. providing monitoring and verification services, which make it easier to strike agreements by making commitments more credible and by providing some guarantees that non-compliance will be detected; and
5. reducing the domestic costs of agreement by serving as scapegoats, enabling governments to transfer blame for costly adjustments.

Attention to the contractual environment thus addresses obstacles to collective action, including transactions costs, that inhibit intergovernmental agreement. It also provides the degree of mutual confidence that is necessary for both collective

while the political risk is small, insofar as each delegated decision is relatively insignificant."²⁰²

The enforcement function within the Canadian social union has traditionally been played by the federal government, acting through instruments such as the *Canada Health Act*, CAP, and the CHST. Federal leverage in these areas appears to be based on a combination of moral suasion, political pressure — reflecting the fact that many Canadians continue to support a federal role in policing programs such as medicare — and the use of the spending power to penalize provinces that violate national principles or standards. In this sense, Canada has had a supra-provincial enforcement mechanism, analogous in some respects to the supranational role played by central institutions of the European Union.

A key question for the decentralized approach to securing the social union is whether an enforcement function is required and, if so, in what form. Alberta's Premier Ralph Klein, for one, is on record as rejecting interprovincial enforcement of national standards. Premier Klein's view is that: "I don't think enforcement is a word we like to hear in Canada unless it applies to criminals. And none of us [premiers] are criminals."²⁰³ Confidence that a decentralized approach to national principles or standards is workable in the absence of any means of enforcement is not, however, widely shared among commentators. Gibbins, for example, argues that "without compliance mechanisms, intergovernmentalism may prove to be a hollow shell rather than an effective means of governance for the next century."²⁰⁴ Courchene has also stated that the violation of national social policy principles should be subject to sanction.²⁰⁵ He reaffirms this position clearly in the ACCESS paper, asserting that it is "evident that the only way in which Ottawa could possibly consent to several of these provisions [contained in the decentralized model] is if the interprovincial mechanisms for securing the internal union are binding on all parties and in particular on the provinces."²⁰⁶ In keeping with his decentralist orientation, Courchene's position is that the enforcement process "cannot be put solely in Ottawa's hand — it must be national, not federal."²⁰⁷

Underlying Courchene's faith in provincial or interprovincial enforcement is the view that decentralization will lead to a fundamental shift not simply in how the social union is developed, financed, and delivered, but also in the public and governmental perception of control. One consequence of the CHST, he argues, is that "Canadians have been jolted into the reality that the provinces are increasingly the guarantors of Social Canada."²⁰⁸ The result is that "if things begin to go awry on the provincial front, it is no longer obvious that an appeal to Ottawa is the first-best avenue for recourse."²⁰⁹ Courchene argues that two implications follow, both of which relate directly to the design of mechanisms to promote adherence to, or enforcement of, the principles underlying the Canadian social union. These implications are:

1. "individual citizens and the powerful social policy lobbies will begin to direct their very considerable firepower at the provinces" and

Mechanisms of this type have been proposed for Canada. For example, Schwanen has argued that a body charged with gathering and disseminating information on social policy could facilitate interprovincial comparisons, the result of which would be to "maximize political incentives for voluntary harmonization and reduce problems associated with policy spillovers."¹⁹⁹ Furthermore, such a body could provide information on provincial compliance with the principles and standards embodied in any agreement on the social union. Although lacking direct enforcement powers, a neutral and public body responsible for providing information on social policy performance and reporting on compliance with national principles and standards could have some influence on provincial governments.

Compensation for externalities and the development of means to gather and disseminate information on social policies are examples of specific strategies that might be adopted to address the incentive structure and transactions costs that constitute real impediments to the decentralized model for securing the social union. Whether or not these and other such mechanisms will ultimately be successful is uncertain. Nonetheless, at a minimum advocates of a decentralized approach should be expected to move beyond statements of good intentions and propose concrete measures such as these to address collective action issues.

ENFORCEMENT MECHANISMS AND SANCTIONS FOR NON-COMPLIANCE

Enforcement is a major issue in any discussion of the Canadian economic and social union, presumably because it is generally recognized that there are potentially strong incentives for non-compliance even after an intergovernmental agreement is reached. Enforcement mechanisms, it should be noted, are relevant to the incentive structure required to achieve intergovernmental collective action in the first place, as well as being a means of ensuring that the agreed-to obligations are in fact carried out. Parties have little incentive to devote resources to reaching an agreement if they feel that free-riding and cheating will rapidly undercut any common principles or standards.

As discussed earlier, Haas et al. observe that strong enforcement powers are generally not found in international institutions.²⁰⁰ The experience of the European Union may therefore be a useful model, given its social and economic objectives and its use of supranational powers of enforcement that are highly unusual in the international context. According to Moravcsik, supranational enforcement in the European Union has played an important role in overcoming obstacles to collective action: "Neutral enforcement permits governments to extend credible commitments, thus helping to overcome the almost inevitable interstate prisoner's dilemma of enforcement, whereby individual governments seek to evade inconvenient responsibilities, thereby undermining the integrity of the entire system."²⁰¹ He argues that willingness to submit to enforcement is most likely where "there is a substantive commitment to the achievement of broad goals,

circumstances."¹⁹³ He views provincial internalization of externalities through a compensation mechanism as an alternative to federal standards or the use of the spending power;¹⁹⁴ the attractiveness of this option is that it addresses the externalities problem directly rather than by federal fiat or through an intergovernmental agreement that leaves the underlying incentive structure in place.

In particular, Schwanen has proposed a compensation mechanism for educational spillovers, suggesting that provinces might be given a claim on tax revenue generated by graduates from their universities who settle in other provinces.¹⁹⁵ He also proposes compensation for spillovers in the area of welfare:

A province that cuts back welfare rates may create negative spillovers in another province, which might then feel justified in imposing residency requirements that would impede the efficiency of the economic and social union. One way to deal with this issue would be to have the "sending" province continue to be responsible for these cases, at least for a set period of time. The same concept could apply if a province were to enrich its welfare program and attract recipients from another province.¹⁹⁶

Other commentators have also proposed direct interprovincial transfers as a means to address problems of underprovision or residency restrictions in the context of positive spillovers. For example, Courchene argues that the prohibition of special out-of-province tuition fees for postsecondary education could be accompanied by province-to-province payments (which, he notes, currently exist in some parts of the country).¹⁹⁷

There may, however, be practical obstacles to a decentralized scheme for compensating provinces for interprovincial externalities. Consequently, smoothing out these inequities through a combination of federal carrots and sticks may be preferable to complex and contentious interprovincial mechanisms. Nonetheless, the point here is that promoting adherence to national standards may require some attention to this issue. Federal or interprovincial mechanisms could both be considered.

A second type of obstacle to collective action arises from uncertainty regarding the behaviour of others. As noted earlier, collective action may be impeded by a range of transactions costs — including lack of information — and by the inability of parties to make credible commitments and effectively monitor compliance.¹⁹⁸ The incentive to free-ride or cheat is also increased where there are short-term gains to be made by breaking the rules while others are complying. Furthermore, uncertainty as to whether others are breaking the rules may lead to strategic behaviour to minimize potential loss. The result may be to undermine common principles or standards.

One way to reduce these problems is through mechanisms that generate and disseminate information to assist parties in reaching agreements and to ensure that rule-breaking can easily be detected and publicized. If it can, peer or public pressure may induce governments not to break the rules, and compliance may be more likely in a context where everyone can tell whether or not the others are complying.

Devising strategies to overcoming the unanimity constraint is likely to be an important step in implementing a decentralized approach to securing the social union. Beginning with a minimum viable coalition, establishing majority decision making for certain types of issues, and adopting default positions that make opting out less attractive are all ways of improving the likelihood that intergovernmental negotiations could produce a social union with some substance.

ADDRESSING COLLECTIVE ACTION PROBLEMS

Section IV of this paper sets out a number of obstacles to the type of intergovernmental collective action required for a decentralized approach to securing the social union. The objective here is to explore two strategies that could be used, with or without federal involvement, to address elements of the collective action incentive structure. The first is the use of interprovincial transfers to provide direct compensation for externalities. The second is the adoption of institutional mechanisms to facilitate agreement and encourage compliance with common principles or standards.

As noted above, uncompensated positive and negative externalities pose a significant threat to a decentralized social and economic union for several reasons.¹⁹² To review briefly, governments may implement measures to protect themselves from negative externalities (e.g., migration from other provinces to take advantage of benefits or services) or to reduce costs of externalities (e.g., training programs that benefit residents of other jurisdictions). One policy option is to reduce the level of benefit or service provided, thereby producing a suboptimal level from the overall perspective and risking a "race to the bottom" dynamic. Another is to restrict access to non-residents, thereby impeding labour market mobility and undermining the efficiency of the economic union. For example, a province that fears becoming a "welfare magnet" may either lower benefits levels or impose a length-of-residency requirement for eligibility. The result of this interprovincial dynamic is to undermine substantive social policy standards and fragment the social and economic union. Similar problems could arise in areas such as post-secondary education and employment training. Even where provinces have agreed to collective measures to establish reciprocal access to programs or common standards, ongoing externalities may undermine these agreements. For example, provinces may be reluctant to adhere to national social policy standards (e.g., no discrimination in tuition fees between residents and non-residents) which require them to continue funding programs that create significant positive externalities in other jurisdictions.

One solution to these problems is an interprovincial or federal-provincial mechanism to compensate for positive and negative externalities. Schwanen argues, for example, that this approach should be considered "If Canadians want to maintain and improve the labour mobility underpinning the economic union *and* the provinces' ability to adopt policies and standards best suited to their own

The third point is that progress on the social union in the absence of Quebec could constitute something of a litmus test for the ability of the rest of Canada to "get its act together" and affirm its existence as a viable economic, social, and political community. Given the risk of secession by Quebec and the Government of Quebec's continuing disengagement from institutions of federalism, there is much to be said for pan-Canadian policy initiatives aimed at strengthening ties within the rest of Canada.

The second means available to address the unanimity constraint is through the design of intergovernmental decision rules and default positions. In both areas, lessons can be learned from the European Union.

The choice of decision rules is between a unanimity requirement, which provides maximum protection to state sovereignty but makes agreement difficult by conferring a veto on every party, and a majority standard which lowers the threshold for progress but requires that parties accept the political risk of having measures forced upon them against their will. The recent pattern in the European Union has been for initial agreement on general principles to be subject to a unanimity requirement.¹⁸⁹ Once these principles are in place, specific measures require only a qualified majority (with votes allocated to each country weighted according to a population-based scale). It is generally recognized that the decision to free the Council of Ministers from "the tyranny of the unanimity requirement" has resulted in a much more productive decisionmaking process.¹⁹⁰ One reason is that parties may have greater incentives to seek compromises if they do not have veto power and if remaining outside the consensus reduces their influence on policy outcomes.

The incentive structure created by a unanimity rule for decisionmaking can also be affected by the default position in the event of non-agreement. The key issue is whether a failure to agree results in the status quo, or some other default position that materially alters the positions of parties. It has been noted, for example, that the default rule of mutual recognition of standards (e.g., professional qualifications) has promoted harmonization in the European Union.¹⁹¹ This result accords with the argument made earlier that governments engage in cooperation in order to maximize control over domestic policy outcomes. A refusal to cooperate in developing common standards may increase autonomy if the result is the status quo of non-recognition. However, once countries are obliged to recognize each others' standards automatically if harmonization is not achieved, they clearly have greater control if they contribute to developing a common approach.

Mutual recognition as a default position could thus serve both negative and positive integration. A commitment to recognize professional or technical certification in other provinces, for example, would preclude an important set of barriers to training and labour market mobility and would thereby strengthen the economic and social union. It would also promote positive integration since governments that are significant importers of goods or services would be likely to support a common approach as a means of achieving greater control over certification and standard setting.

signs of success, pressure will quickly increase on the other governments to join the club.

While Courchene lists several good reasons why governments may want to buy into the benefits of the social and economic union, the incentive structure is not as unambiguous as he suggests. As discussed above, provinces that are more autonomous in economic terms and less vulnerable to social policy externalities may feel less pressure to join in.¹⁸⁶ Since these are likely to be the largest and wealthiest provinces, the initial support of at least some of them may be necessary for any viable coalition. Another important element of the incentive structure is the possibility that exclusion from the social union may in fact confer positive externalities, in the sense of rendering non-members more economically competitive because they are freed from the constraints of common principles and standards.¹⁸⁷ This problem will be accentuated if provinces retain the benefits of the economic union while remaining outside the national social policy framework, or if their trade is sufficiently oriented north-south or to the Pacific rim, that they view other provinces primarily as economic competitors rather than as partners. Despite these obstacles, however, seeking support of a minimum viable coalition may be the only realistic way of making relatively rapid progress on establishing and implementing social union principles that are more than simply the lowest-common-denominator product of a unanimity decision rule.

The minimum viable coalition approach is also attractive because asymmetry or opting-out of the social union may be essential to making any progress at all in a context where one party to negotiations, the Government of Quebec, has strong political reasons to block measures that would demonstrate the success of inter-governmental processes within Canada and visibly strengthen the Canadian political union. The report on national standards in federal systems prepared by the Institute of Intergovernmental Relations argues that certain types of standards may only be achievable, or may be more easy to achieve, on the basis of a nine-province "national" standard with an opt-out for Quebec.¹⁸⁸ If the choice is no progress or less than 100 percent coverage, the latter is preferable.

The option of proceeding with social union negotiations in the face of a likely opt-out by Quebec warrants three further comments. First, opting out, whether for Quebec or another province would likely require some assurance that there are no significant free-rider problems. For example, evidence that an opting-out province was able undercut national standards while maintaining the benefits of the economic union could quickly undermine the arrangement.

Second, a Quebec opt-out would reduce somewhat the usefulness of a social union initiative as part of a national unity strategy, unless a significant number of Quebecers could be convinced that their government's decision was contrary to their best interests. The decision to opt out might, of course, become a partisan issue within Quebec, as did the decision by Britain to opt out of certain social provisions agreed to by the European Union. Under this scenario, progress on the Canadian social union could be a plus for federalists in Quebec and a change in government could result in a reversal of the decision to opt out.

reasons. First, in the event that agreement is not reached among the provinces, the capacity is retained within the federation to establish the basic principles necessary to maintain the social (and economic) union. Second, the federal fall-back position in the event of inadequate provincial action to secure the social union may increase the likelihood of agreement on effective measures, since provinces will realize that a failure to agree may result in unilateral federal action.

VII. SPECIFIC ISSUES AND OPTIONS FOR SECURING THE SOCIAL UNION

The arguments developed in the earlier sections of this paper provide a basis for scepticism regarding the viability of the decentralized model for securing the social union and an indication of what could be done to make this model more likely to work. This section narrows the focus to three more specific topics raised by a decentralized approach to reconfiguring social Canada: overcoming the unanimity constraint; addressing particular obstacles to collective action; and enforcing an intergovernmental agreement on the social union. While far from inclusive of all important issues, these topics provide a starting point for developing and evaluating intergovernmental strategies for securing the social union.

OVERCOMING THE UNANIMITY CONSTRAINT

One of the principal challenges facing the intergovernmental approach to securing the social union is the difficulty of achieving a convergence of values, preferences, and priorities among the respective governments.¹⁸³ The requirement of unanimity for intergovernmental agreement increases the number of policy and political variables to be coordinated and also creates incentives for governments to threaten to veto as a means of securing an agreement more favourable to their respective interests. Furthermore, the experience of the European Union suggests that abandonment of the unanimity requirement for decisionmaking is necessary for significant progress in securing economic and social integration among independent governments.¹⁸⁴ It seems very likely, therefore, that a decentralized strategy for securing the Canadian social union will need to include means of overcoming the unanimity constraint on decisionmaking. Two options can be considered. The first is to move forward on the basis of a minimum viable coalition and the second is to fashion institutional arrangements that permit majority decisionmaking on certain issues.

The first option seeks to address the dynamic between leaders and laggards noted by Haas et al. and, in particular, to neutralize somewhat the blocking power that a unanimity rule accords to the latter. As Courchene points out, it may be easier to generate interprovincial momentum to secure the social union if a few provinces show leadership, rather than expecting everyone to sign on at the outset.¹⁸⁵ Courchene is confident that once the process is initiated and shows some

unilateralism is the default position (a concept discussed below), provinces may be convinced that a failure to adopt a common approach will result in the initiative shifting to the federal government, rather than a reversion to the status quo. This scenario may push them to agree on meaningful measures to secure the social union, if for no other reason than to preclude federal action.

Aside from the complaints of any provinces whose objective is simply to assert exclusive jurisdiction and worry about the economic and social union later, the strongest objection to this approach might be the argument, implicit in Courchene's analysis, that the very presence of a federal fall-back might let the provinces off the hook. Given the possibility of federal intervention, the social policy lobby might continue to look to the federal government first and provinces might be reticent to assume their responsibilities, preferring to let their federal counterparts take the heat. While this scenario cannot be discounted, the alternative of moving directly to the purely interprovincial model implies a leap of faith that seems unwarranted at this time. Just as political institutions should be designed with a jaded view of human nature, measures to secure the social union should allow for the very real possibility that a consensual interprovincial approach may not be attainable, at least not at first instance.

SUMMARY

The international analogy provides a message of both hope and caution to advocates of a decentralized approach to securing the social union. Evidence from the international realm confirms the conclusion of Haas et al. that "state sovereignty is not incompatible with international progress in solving difficult problems."¹⁸² There are, however, significant obstacles to be overcome if autonomous governments are to be motivated to engage in effective collective action. The core prescriptive message of Haas et al. is that properly designed institutions can assist in overcoming the obstacles to collective action in the international — and, by implication, interprovincial — context. In particular, these institutions should focus on increasing the level of concern with common problems, improving the contractual environment, and ensuring adequate capacity. The objectives are to ensure the domestic political pressure needed to induce governments to devote resources to problem solving, and to lower obstacles, such as transactions costs, that may stand in the way of agreement.

Even if these strategies succeed in facilitating interprovincial cooperation to secure the social union, it remains to be seen whether intergovernmental institutions capable of driving social and economic integration can be put in place and, if they can, whether their "democratic deficit" presents a serious problem. The fact that Canada already has democratically elected central institutions underlines again the potential for a useful federal role in social policy and suggests a hybrid model that fosters interprovincial cooperation but retains federal capacity for unilateral action as a fall-back position. This approach is desirable for two

The federal fall-back could be further tempered by a federal-provincial mechanism to trigger sanctions for non-compliance with social union principles or standards. This approach would make the enforcement mechanism more collective, but also more cumbersome. Furthermore, it cannot alter the fact that the federal government's ultimate authority to take unilateral action cannot be constrained by an intergovernmental mechanism.

The suggestion of an intergovernmental approach with a federal fall-back position is very much in line with Courchene's proposal. As noted above, his ACCESS paper and previous writing make it clear that there are significant preconditions to adoption of the decentralized model.¹⁷⁸ In particular, Courchene expects solid guarantees of the social union, in the form of clear evidence that the provinces are willing and able to assume a national role in social policy. The argument here is that the agenda for social policy reform should formalize this precondition.

This option may well meet resistance from the more decentralist (and economically self-sufficient) provinces. It appears particularly well suited, however, to the interests of smaller provinces that have a greater stake in social and economic integration within the Canadian union and that may, as noted above,¹⁷⁹ find themselves at a disadvantage in interprovincial bargaining. In addition, it has two other advantages.

First, as noted by Haas et al., the sovereign state model virtually gives up on enforcement because of the reality that governments will not agree to bind themselves in that way.¹⁸⁰ This is a problem for reaching agreements because a key means of improving what Haas et al. refer to as the contractual environment is to address the problem of making credible commitments. According to Ostrom:

External coercion is a frequently cited theoretical solution to the problem of commitment.... The presumption is made that if individuals commit themselves to a contract whereby a stiff sanction ... will be imposed by an external enforcer to ensure compliance during all future time periods, then each can make a credible commitment and obtain benefits that would not otherwise be attainable.... The immediate issue is that a self-organized group must solve the commitment problem without an external enforcer. They have to motivate themselves (or their agents) to monitor activities and be willing to impose sanctions to keep conformance high.¹⁸¹

If provinces are to "self-organize" to secure the social union, the onus is on them to demonstrate sufficient commitment in the areas of monitoring and enforcement to ensure compliance. In the meantime, the federal government could backstop the process by playing a supraprovincial enforcement role that has no parallel in the international context. This advantage should not be cavalierly dismissed, particularly in the absence of clear evidence that the conditions for successful international collective action can be replicated in the context of interprovincial negotiations regarding the social union.

The second general advantage of the federal fall-back option is that it may provide the stimulus necessary to induce the provinces to cooperate. If federal

between the Canadian and international contexts. Canada already has a supra-provincial, democratically elected body in place: the federal Parliament. While provinces are largely sovereign within their own jurisdictions and the federal power to intervene directly in social policy delivery is limited by the constitution (and, as noted above, by fiscal constraints), the significance of a directly elected national level of government should not be underestimated. Since such a body already exists, one might question the need to go through a complex intergovernmental negotiation to invent another one in order to develop, implement, and enforce national principles for social policy.

The democratic legitimacy of Canada's federal government has, of course, been subject to criticism on the grounds of inadequate regional (or provincial government) representation at the centre. Nonetheless, its "democratic deficit" is nowhere near as great as that of an intergovernmental institution along European lines. Consequently, institutionalizing an interprovincial approach to developing and enforcing national social policy may involve not simply reinventing the federal government wheel, but also replacing it with a less democratic variant. This analysis suggests a strategic option for those who seek to secure the social union but are sceptical of the interprovincial model. Perhaps greater effort should be directed to making the federal government a more acceptable and effective guarantor of social Canada. In this regard, reference can be made to the passage from the Group of 22 quoted above¹⁷⁶ and to the arguments made earlier that enhanced credibility and capacity are essential if the federal government is to play a key role in social policy.¹⁷⁷

ADVANTAGES OF A FEDERAL FALL-BACK POSITION

The place of the federal government within the Canadian political system provides an opportunity to fashion a hybrid approach to intergovernmental collective action that is superior in important respects to the options available in the international realm. While this approach would not rely on federal unilateralism at first instance, neither would it put all of Canada's social union eggs in the interprovincial basket. This hybrid approach could be summarized as follows: collective decisionmaking and enforcement if possible; federal unilateralism if necessary.

Under this approach, an interprovincial (or federal-provincial) process would be put in place to develop and implement principles and, where appropriate, standards designed to secure the economic and social union. It would be acknowledged from the outset, however, that the federal government retains its capacity — constrained as it may be in constitutional, political, and fiscal terms — to initiate unilateral measures should a satisfactory agreement not be reached. The federal prerogative to speak for — and act on behalf of — the national interest would therefore be held in reserve as a fall-back position. Given the untested assumptions underlying the fully interprovincial model, retaining this option seems only prudent.

for institutional design. In particular, it has been argued that social and economic unions require institutions for common governance, as opposed to mechanisms designed simply for policy coordination and policing rules of common behaviour. This argument is supported by the development of the European Union. According to Peter Leslie, the European experience shows that:

an integrated economy can *only* be built by creating a capacity for joint decision making. *In other words, economic integration cannot proceed far unless member states share quite a broad range of powers by allocating decision-making authority to supranational institutions in which they may be outvoted from time to time, or unless — as in a federal system — decision-making power in key economic areas is constitutionally vested in an order of government that encompasses the whole territory.*¹⁷²

The same conclusions arguably hold for social policy integration.

The question, then, is whether the ambitious agenda of strengthening the economic and social union can be achieved without recourse to an authoritative national body that can override the unanimity constraint and impose, or direct, enforcement measures in instances of non-compliance. From this perspective, the AIT precedent is not encouraging. One of the principal criticisms of that agreement is that it lacks the institutional structure that is essential to achieving a progressive lowering of internal barriers to trade. In particular, critics point to the need for a secretariat with adequate resources, a measure of independence from the parties, and the ability to take initiatives.¹⁷³ A similar institutional structure may be required to secure the social union and provide the needed coordination between social and economic policy.

The European Union is the prime example of reliance on supranational institutions to facilitate greater integration between independent states. In this respect, it differs markedly from most international legal and institutional arrangements. Its mechanisms for common governance have, however, been criticized for their lack of direct democratic accountability. This issue, already a familiar one in Canadian federalism, might well be accentuated under the decentralized approach to the social union.

As Leslie has observed, the European model shifts important decisionmaking to intergovernmental or supranational fora, notably the Council of Ministers and the European Commission. Both institutions have considerable power, reflecting the ambitious social and economic union objectives that they are mandated to pursue. The objection to adopting this model in Canada, according to Leslie, is that: "Complaints about the non-democratic character of 'executive federalism' would be multiplied a thousandfold if an EC-type governmental system were established here."¹⁷⁴

The challenge illustrated by the European experience is thus twofold: (i) to create the supranational bodies needed to further economic and social policy integration among independent states and (ii) to address the democratic deficiencies of these intergovernmental institutions.¹⁷⁵ This challenge highlights a key difference

decisionmaking and the willingness to accept constraints on autonomy in order to further the common good.

The third institutional function, relating to promoting adequate national capacity to comply with international requirements, is discussed by Haas et al. in terms of north-south transfers and institutional strengthening through international development assistance.¹⁷⁰ The principal analogy in Canadian social policy is fiscal capacity, addressed primarily through equalization (for horizontal redistribution) and conditional or block grants (to address vertical imbalances). In addition, however, institutions can enhance political capacity "by providing a public commitment to a set of norms and principles, which domestic proponents of adjustment measures can use in attempting to overcome their opponents in funding and turf battles."¹⁷¹

All three institutional roles noted by Haas et al. have potential implications for the decentralized approach to securing the social union. Within the Canadian context, as in the international realm, governments may require institutional support in order to overcome collective action obstacles to resolving common problems. If provinces are to assume a leadership role in strengthening social Canada, there may be a need to supplement normal political processes with institutional arrangements able to foster concern with securing the social union and to improve the contractual environment for intergovernmental cooperation and agreement. The lessons that Haas et al. draw from the international context provide an agenda for institutional development within Canada. One part of the challenge facing advocates of a more decentralized approach to social Canada is to transform that agenda into concrete action. Progress in this respect would be a significant step forward in providing a basis for confidence that decentralized intergovernmentalism may actually deliver on the vision of greater provincial autonomy within a reinforced social and economic union.

THE INTERNATIONAL ANALOGY AND INSTITUTIONS FOR THE SOCIAL UNION

The discussion of the international model to this point has focused on how cooperation among sovereign political entities can be fostered through institutional mechanisms designed to overcome obstacles to collective action. The international context is not, however, perfectly analogous with the situation facing Canadian provinces. It is arguable that the degree of integration sought in the context of the Canadian social and economic union goes beyond that found in most international legal regimes and therefore requires a different type of institutional underpinning. If the required institutions are created through intergovernmental means, however, they may suffer from what has come to be called a "democratic deficit."

Establishing a social and economic union is clearly a more ambitious undertaking than reaching agreement on specific measures to address, for example, an international environmental problem. The scope of this agenda has implications

2. "if one province is intent on fragmenting Social Canada in one way or another, other provinces cannot stand idly by, since this can easily degenerate into a negative-sum game."²¹⁰

On closer analysis, both of these options for promoting compliance appear far from fail-safe.

A recurring theme in the debate about provincial adherence to principles underpinning the social union is that public pressure will keep potential cheaters and free-riders in line. Courchene promotes this view strongly, stating that:

While not in any way tending to downplay the importance of the AIT, the fact of the matter is that the citizen appeal with respect to the economic union is likely to be minimal compared to the appeal [of] ... a convention on the social union or a convention guaranteeing free flow of occupational training across provinces. In other words, the pressures on all governments to abide by the provisions of conventions in these areas will be intense, if not overwhelming.²¹¹

This scenario warrants careful scrutiny. As noted in the discussion of British Columbia's length-of-residency requirement, public concern as a motivating factor for enforcement cannot be taken for granted. How many people are interested in and informed about the implications of provincial policies for the social and economic union? How will public pressure to comply with social union obligations be brought to bear on provincial governments? Is the distribution of diffuse and concentrated costs and benefits across interest groups conducive to a mobilized coalition in favour of preserving the social union? For how many voters in provincial elections will social union issues be a determining factor in their electoral choice, and what is the likelihood that provincial parties will offer them meaningful alternatives on these issues?

The key issue is whether intraprovincial pressure to strengthen the social union will become politically salient. If protectionist policies produce concentrated, if short-term, benefits within a province while the costs are more diffuse, spreading across the whole country, public choice theory suggests that fragmentation of the social union is likely to result. There is also some evidence that people respond more to protect themselves against costs than to take advantage of benefits. Finally, provincial governments have been known to run elections against Ottawa and voters, notably in Quebec, have sometimes supported national and provincial parties with starkly different visions of federalism. No attempt will be made here to analyze thoroughly the implications of these factors in terms of the provincial political constituency for the social union. All that can be said with certainty is that, while support for the social union could be generated through provincial political processes, this support cannot be assumed.

In addition to relying on general political pressure for enforcement, a public role in securing the social union might be institutionalized through a public complaint mechanism, such as an independent ombudsperson, or public access to dispute resolution procedures.²¹² The latter has been included in the AIT, although a request for government action is a precondition and there is a screening process

(to eliminate frivolous and vexatious complaints) that is undertaken by an appointee of the government against whom the complaint is lodged. Other than this example, Canada has little experience with direct citizen involvement in enforcing intergovernmental agreements.²¹³ Reliance on the courts to this end appears limited to cases where the agreements are embodied in statutes and individuals can establish standing.²¹⁴

A citizen role in monitoring and enforcement, whether through an ombudsperson or a dispute resolution mechanism, can be justified on the grounds that individuals, corporations, and non-governmental organizations have a direct stake in the social union. Furthermore, private individuals or groups may not be inhibited by intergovernmental pressures when asserting their rights. For example, a person who is denied social assistance because of a provincial length-of-residency requirement could bring forward a complaint against the province imposing that restriction. As discussed above, provincial governments may have little incentive to pursue this type of claim in defence of the integrity of the social union.²¹⁵

The ultimate success of this approach would depend on the willingness of governments to respond to findings of non-compliance. The Canadian experience with ombudspersons indicates that, in some circumstances, publicity and the risk of embarrassment may alter government behaviour. Whether this would be the case in the context of social union principles or standards remains to be seen.

Courchene also argues that, with the shift to an interprovincial as opposed to federal paradigm for building the social union, provinces will no longer stand for action by other provincial governments that dismember social Canada. In his view:

The best recent example is Quebec's protectionist approach to Ontario construction workers' plying their trade in Quebec. Ottawa refused to get involved. Ontario finally decided to respond with some rather draconian countervailing provisions. Within days, a compromise was struck. To be sure, this may not be the ideal way to promote an internal socio-economic union, but it can be effective.²¹⁶

Whether this example can readily be generalized, however, is open to question for three reasons.

The first is an issue of constitutional law. The effectiveness of provisions for retaliation in the AIT have been questioned on the grounds that provincial legislation aimed directly at impeding interprovincial trade would be unconstitutional.²¹⁷ This argument does not necessarily reduce the scope for retaliatory measures to zero. Assuming that the measures which are to be retaliated against are constitutionally valid, it might be argued that another province would not be constitutionally barred from enacting identical restrictions. However, the doctrine of colourability suggests that, without a clear rationale other than the restriction of interprovincial trade, even reciprocal retaliatory measures might be vulnerable. In addition, the imposition of identical restrictions by another province may not be an effective measure simply because of asymmetry in economic interdependencies. In this instance, a more general type of retaliation might be necessary, and constitutional obstacles would increase.

Second, the tit-for-tat retaliation illustrated by the Ontario-Quebec dispute depends on a balance of power between adversaries. Ontario may be able to force Quebec's hand, but would the same outcome be achieved if Quebec's protectionist restrictions affected workers in PEI, Newfoundland, or Saskatchewan? Given the considerable disparities in economic clout between the provinces and the highly variable economic relations among them, reliance on retaliation of this type would benefit, at best, only the larger provinces, and then only in situations where the target province is in a position of vulnerability.

Third, the example of protectionist restrictions on construction workers may not be a good illustration of the collective action problems at the core of a decentralized social union. In this instance, the costs of Quebec's policies were focused on a discrete, well-organized, and relatively powerful constituency in Ontario. Faced with competition from Quebec firms in Ontario, no opportunity to compete in Quebec, and federal inaction, this constituency had strong incentives and obviously the political wherewithal to elicit a response from the Ontario government.

Erosion of the social union, however, may take the form of barriers to mobility, cheating on standards, and free-riding that confer direct political or economic benefits on a domestic constituency but impose costs more diffusely, perhaps by diminishing the overall efficiency of the economic union, fragmenting the sharing community, or undermining the social policy underpinnings of Canada's identity. In these cases, how likely is it that provinces will take strong action? Absent an influential domestic constituency that is directly affected, will provinces engage in retaliation, expending political and moral capital and risking an escalating round of countermeasures, in order to defend the *principle* — and the diffuse but nonetheless significant benefits — of the social union?

In fact, it is arguable that the construction workers case is not the "best recent example" of provinces enforcing social Canada but, rather, something of an anomaly because of the balance of economic power (i.e., economic integration and mutual dependency) between Ontario and Quebec and a fact that Quebec's measures had a significant adverse effect on a clearly defined and well-organized constituency in Ontario. A more typical example of the problems of interprovincial enforcement of the social union may be British Columbia's length-of-residency requirement on social assistance. Is it likely that Alberta would initiate "draconian" retaliatory measures to induce British Columbia to change this policy? Could Saskatchewan realistically hope to exert pressure on British Columbia in this regard? Would British Columbia have cared if Alberta or Saskatchewan had retaliated by restricting the entitlement of migrants from British Columbia to social assistance? If a negative answer to these questions is at least possible, if not probable, then there are grounds for scepticism regarding Courchene's claim that provinces "cannot stand idly by" while fragmentation of social Canada degenerates into a negative sum game.

Courchene's "bottom line" enforcement mechanism appears to be exclusion from the social *and* economic union. Citizens and businesses in provinces found to be violating national norms would face the loss of their rights under his proposed

intergovernmental convention.²¹⁸ The “enormous political and economic cost” of this sanction is one reason why non-compliance is “an implausible, if not impossible, result.”²¹⁹

Developing and implementing this mechanism would confront a number of legal and practical hurdles that cannot be fully analyzed here. To begin with, as noted above, there is a question of whether provincial retaliation of this type would be constitutional. Another issue is what sort of body would be able to make the determination of non-compliance. Would it be made up of independent experts, as suggested by Courchene, or would a majority vote of the provinces be required to trigger sanctions?

The exclusion option resembles in some ways the principle of mutually assured destruction. Courchene’s hope seems to be that compliance with established norms will be virtually guaranteed because the consequences of non-compliance are so drastic. This position raises two questions. If he is right, would provinces voluntarily restrict themselves in this way? If he is wrong and non-compliance becomes an issue, what *would* the consequences be of measures to exclude an entire province, even temporarily, from the economic and social union?

This scenario raises another analogy with the nuclear balance of power. While mutually assured destruction may have contributed to preventing nuclear war, the nuclear hammer was ineffective in stopping a host of smaller conflicts precisely because it was too strong a sanction to be credibly threatened. Courchene’s exclusion model might also suffer the same defect of being too powerful to be effective.

Enforcement remains, therefore, a difficult and perhaps intractable problem for the decentralized approach to securing the social union. If a truly interprovincial approach is to be adopted, perhaps there is no alternative but to follow the international model described by Haas et al. whereby hard-edged enforcement is foregone in favour of a variety of institutional mechanisms designed to focus domestic political pressure on non-complying governments and convince decisionmakers that adherence to international principles and rules of conduct is, in fact, in their long-term interests. The other alternative is to follow the European model of supranational enforcement which, in the Canadian context, appears most likely to lead to a federal government role of some sort. The challenge of enforcement in a fully decentralized version of Canada’s social union suggests, once again, the value of a federal fall-back position in the event that short-term incentives to cheat and free-ride overcome general statements of good intentions and a longer-term vision of the collective benefits of a unified Canadian social and economic space. If hard-edged enforcement is really a precondition to securing the social union — as even Courchene seems to agree — federal government involvement seems unavoidable.

SUMMARY

Successful implementation of the decentralized model for securing the social union will require more than good intentions and broad statements of principle.

Recognition of the obstacles to achieving national objectives through a decentralized process should lead to specific strategies to ensure an incentive structure conducive to intergovernmental agreement on the principles necessary to preserve and strengthen social Canada. This section has examined practical measures that have been proposed to overcome several of the principal obstacles identified earlier in the paper. Proceeding on the basis of a minimum viable coalition and adopting majority decisionmaking for some issues could weaken the unanimity constraint on intergovernmental decisionmaking and reduce the risk of a lowest-common-denominator outcome in social union negotiations. Compensation mechanisms for externalities and an independent institution for collecting and disseminating information and monitoring compliance with agreements could lower barriers to intergovernmental collective action and increase the likelihood of adherence to agreed principles and standards. Finally, several options for enforcing social union obligations were considered, although there seems to be little likelihood of a hard-edged enforcement mechanism for principles or standards arrived at through an interprovincial process. One option is to follow the international model and seek to foster positive incentives and political pressure to make compliance more likely. Another is to resort to "supraprovincial" enforcement by the federal government, most likely through the spending power.

The issues and options reviewed in this section are but a subset of those that require attention if meaningful progress on securing the social union is to be achieved through a decentralized intergovernmental process. While measures such as those reviewed above cannot guarantee success, they illustrate the type of practical response that is called for if this model for social Canada is to have any prospect of realization.

VIII. CONCLUSION

The challenge of securing the social union is one of the preeminent public policy issues currently facing Canada. How this challenge is met will be a significant determinant of the country's ability to adapt to a rapidly changing domestic and international environment. It will also constitute a measure of Canadians' capacity and resolve to confront a range of external and internal threats to our political, economic, and social structures. The stakes are particularly high if one accepts Courchene's argument that, with the increasing strength of north-south economic ties in North America, along with the economic pull of the Pacific Rim, "what binds Canada east-west is more and more a 'social policy railway' than an 'economic policy railway'."²²⁰

This monograph has examined the proposal to reconstitute the social union using a two-pronged strategy of decentralization and intergovernmentalism. The point of departure is Courchene's ACCESS paper, the most cogent recent statement of this strategy. While Courchene is the most articulate and effective proponent of the decentralized model, he is far from alone in advocating a reexamination

of the delivery of social policy within Canada's federal system of government. The decentralized approach to social Canada appears to enjoy significant backing in certain provincial capitals and remains very much on the current intergovernmental agenda. In addition, the arguments for greater decentralization and intergovernmentalism in the area of social policy reflect a more broadly-based response to the current strains on Canadian federalism.²²¹

The objectives of this monograph are twofold: to evaluate critically the decentralized approach to securing the social union and to consider some of the practical issues that will need to be addressed if that approach is to be implemented. The analytical framework proposed here focuses on the collective action incentive structure that, it is argued, will ultimately determine whether or not national social policy objectives can be achieved through a decentralized process of intergovernmental negotiation. The practical responses to this incentive structure are drawn primarily from the experience in the international realm and from specific proposals designed to facilitate intergovernmental cooperation.

The analysis presented above suggests that securing the social union through decentralized intergovernmentalism of the type envisaged by Courchene will be very difficult to achieve. An impressive set of obstacles to the decentralized model can be identified, notably the incentives for governments to free-ride and cheat, transactions costs, the bargaining dynamic arising from differing vulnerability to externalities, the risks associated with coalition-building and issue linkage, and the politics of collective action in Canadian federalism. While Courchene's view that these obstacles can be overcome may ultimately prove to be correct, it would appear imprudent to bet the fate of Canada's social union on this outcome. Two general recommendations follow. First, the importance of the federal government's role in securing social Canada should not be underestimated. Its direct involvement in setting and enforcing national principles and standards, notably through the use of the spending power, should at a minimum be kept in reserve in the event that a more decentralized approach proves to be inadequate. Second, a serious attempt to implement the decentralized model will require attention to the underlying incentive structure that is likely to inhibit both initial agreement and ongoing compliance if and when agreement is reached. In particular, institutional support for intergovernmental collective action and specific mechanisms to address problems such as the unanimity constraint and uncompensated externalities should be incorporated into a carefully designed strategy for securing the social union.

If Canadians in favour of greater decentralization and a restriction of the federal role in social policy are as supportive of the social union as is Courchene, they should take to heart his statement that: "The time has come for the provinces to recognize that part of the *quid pro quo* for greater social policy powers must be an enhanced responsibility to ensure that these programs become 'national'."²²² The notion of exchange captured by this quotation implies that any federal withdrawal should be predicated on meaningful guarantees that the Canadian social

union will be preserved and enhanced, not simply on a weak "best-efforts" undertaking on the part of the provinces. A significant provincial commitment to building the social union should be clearly demonstrated before the federation's existing capacity to fashion national social policy, however weak it may appear at the moment, is further eroded.

NOTES

1. See Thomas J. Courchene, *Social Canada in the Millennium: Reform Imperatives and Restructuring Principles* (Toronto: C.D. Howe Institute, 1994), pp. 232-43, 318-19.
2. Harvey Lazar argues that the separatist threat is one of the principal factors underlying recent changes in the federal government's approach to the social union. See Harvey Lazar, "The Federal Role in a New Social Union: Ottawa at the Crossroads," in *Canada: The State of the Federation 1997*, vol. 12, *Non-Constitutional Renewal*, ed. Harvey Lazar (Kingston: Institute of Intergovernmental Relations, Queen's University, forthcoming).
3. The communiqué issued on 23 August 1996 following the Annual Premiers' Conference in Jasper begins as follows: "Premiers, except the Premier of Quebec, agreed that a nonconstitutional rebalancing of roles and responsibilities between federal, provincial and territorial orders of government is an essential part of improving the operations of the Canadian federal system."
4. There are some indications, however, that the improved fiscal positions of the federal government and some of the provinces may signal the end of the era of single-minded preoccupation with debt and deficit reduction. See, for example, David Milne, "Reimagining Canada: Decentralized Federalism by Fate or Will?" in *Assessing ACCESS: Towards a New Social Union*, Proceedings of the Symposium on the Courchene Proposal (Kingston: Institute of Intergovernmental Relations, Queen's University, 1997), p. 38.
5. For a general discussion of federal off-loading, see Courchene, *Social Canada in the Millennium*, pp. 213-31 n.1.
6. See, for example, *ibid.*, p. 6; Roger Gibbins, *Time Out: Assessing Incremental Strategies for Enhancing the Canadian Political Union*, Commentary no. 88 (Toronto: C.D. Howe Institute, 1997), p. 1.
7. For a recent commentary on these themes and their implications for Canadian federalism, see Gibbins, *ibid.*
8. Another important issue, the implications of these proposals for democratic values, is addressed by Gibbins, *ibid.*; see also Roger Gibbins, "Democratic Reservations About the ACCESS Models," in *Assessing ACCESS*, ed. Courchene, p. 41.
9. The adjectives "pan-Canadian" and "national" are used interchangeably in this paper to refer to country-wide principles, standards, initiatives, etc. In particular, these terms are used to signal measures that extend to most or all provinces but are not necessarily the product of unilateral action by the federal government. It is recognized

- that the term "national" has particular significance in Quebec, connoting a collectivity that is centred in, or coterminous with, that provincial community and is defined — depending on one's perspective — in terms of ethnicity, language, or geography. While there might be some merit in removing the term "national" from the English-Canadian federalism lexicon in order to avoid confusion and in recognition of Québécois sensitivities, this term is sufficiently well entrenched in social policy discourse (e.g., "national standards") that it is probably impossible to expunge.
10. 1996 APC Provincial-Territorial Working Group on Social Policy Reform and Renewal, "Issues Paper on Social Policy Reform and Renewal: Next Steps," prepared for the 37th Annual Premiers' Conference, Jasper, Alberta, August 1996, p. 13 (Recommendation 8). This paper was appended to the communiqué issued following the APC.
 11. Thomas J. Courchene, "ACCESS: A Convention on the Canadian Economic and Social Systems," Working Paper prepared for the Ministry of Intergovernmental Affairs (Toronto: Government Printers, 1996), reprinted in *Assessing ACCESS*, p. 77, footnote references are to the original Working Paper.
 12. For simplicity, the words "provinces" and "provincial" in this paper include, where appropriate, the "territories" and "territorial."
 13. Courchene, "ACCESS," p. 2.
 14. Provincial/Territorial Council on Social Policy Renewal, *New Approaches to Canada's Social Union: An Options Paper*, 29 April 1997.
 15. 38th Annual Premiers' Conference, *Social Policy Renewal*, 8 August 1997, p. 2.
 16. *Ibid.*, pp. 3-5
 17. Robin Boadway and Frank Flatters, "Fiscal Federalism: Is the System in Crisis?" in *The Future of Fiscal Federalism*, ed. Keith G. Banting, Douglas M. Brown and Thomas J. Courchene (Kingston: School of Policy Studies, Queen's University, 1994), pp. 33-34. See also, Keith G. Banting, "The Past Speaks to the Future: Lessons from the Postwar Social Union," in *Non-Constitutional Renewal*.
 18. Daniel Schwanen, *Drawing on Our Inner Strength: Canada's Economic Citizenship in an Era of Evolving Federalism*, Commentary no. 82 (Toronto: C.D. Howe Institute, 1996), p. 5.
 19. Peter M. Leslie, "The Fiscal Crisis of Canadian Federalism," in *A Partnership in Trouble: Renegotiating Fiscal Federalism*, ed. Peter M. Leslie, Kenneth Norrie and Irene K. Ip (Toronto: C.D. Howe Institute, 1993), pp. 6-7.
 20. Robin Boadway, "The Implications of the Budget for Fiscal Federalism," in *The 1995 Federal Budget: Retrospect and Prospect*, ed. Thomas J. Courchene and Thomas A. Wilson (Kingston and Toronto: John Deutsch Institute for the Study of Economic Policy and Institute for Policy Analysis, 1995), pp. 103-104.
 21. Charles Taylor, "Shared and Divergent Values," in *Options for a New Canada*, ed. Ronald L. Watts and Douglas M. Brown (Toronto: University of Toronto Press, 1991), p. 56.
 22. *Ibid.*
 23. Thomas J. Courchene, *Redistributing Money and Power: A Guide to the Canada Health and Social Transfer* (Toronto: C.D. Howe Institute, 1995), p. 65.

24. Donald G. Lenihan, "When a Legitimate Objective Hits an Unnecessary Obstacle: Harmonizing Regulations and Standards in the Agreement on Internal Trade," in *Getting There: An Assessment of the Agreement on Internal Trade*, ed. Michael J. Trebilcock and Daniel Schwanen (Toronto: C.D. Howe Institute, 1995), p. 105.
25. *Ibid.*, p. 112.
26. *Ibid.*, p. 113.
27. Schwanen, *Drawing on Our Inner Strength*, p. 5.
28. *Ibid.*
29. For an insightful commentary on the challenge of developing a rules-based system of internal trade within the Canadian economic union, see Lenihan, "When a Legitimate Objective Hits an Unnecessary Obstacle," pp. 112-17.
30. *Canada Health Act*, ss. 8-12. In addition to these five principles, the Act specifically prohibits extra-billing and user fees (ss. 18, 19).
31. Harry Beatty, "Federal-Provincial Fiscal Arrangements: Their Impact on Social Policy and Current Prospects for Reform," *Journal of Law and Social Policy* 3 (1988): 53.
32. Courchene, *Redistributing Money and Power*, p. 69.
33. *Ibid.*, p. 72.
34. *Ibid.*
35. In Courchene's ACCESS paper, pp. 9-10, he argues that "the on-going blossoming of provincial experimentation across a range of fronts is absolutely critical to recreating an efficient and viable social Canada." He adds, however, that "The policy challenge here is to ensure that this experimentation takes place within a framework of 'national' (federal, federal-provincial, or interprovincial) norms or principles." The implication for a decentralized intergovernmental approach to securing the social union is very clear: success depends on agreement regarding the national limits to provincial experimentation.
36. Beatty, "Federal-Provincial Fiscal Arrangements," p. 58.
37. Courchene, *Redistributing Money and Power*, p. 70 (emphasis in original).
38. *Ibid.*
39. *Ibid.* See also, Banting, "The Past Speaks to the Future," Table 1.
40. Claude E. Forget, "The Harmonization of Social Policy," in *Fiscal Federalism*, ed. Mark Krasnick (Toronto: University of Toronto Press, 1986), p.103. The Council of Ministers of Education is, however, currently working on strengthening interprovincial coordination in the areas of testing and the transferability of teaching credentials.
41. Courchene, *Redistributing Money and Power*, p. 94.
42. Thomas J. Courchene, "Canada's Social Policy Deficit: Implications for Fiscal Federalism" in *The Future of Fiscal Federalism*, ed. Banting, Brown and Courchene, p. 97 (emphasis added).
43. Courchene, *Social Canada in the Millennium*, pp. 232-33.
44. Schwanen, *Drawing on Our Inner Strength*, pp. 4-5.
45. *Ibid.*, p. 5.

46. Ibid., p. 4.
47. See Courchene, "ACCESS," pp. 4-5.
48. Courchene, *Redistributing Money and Power*, p. 87.
49. Ibid., p. 90.
50. Albert Breton, "A Comment," in *Getting There*, ed. Trebilcock and Schwanen, pp. 90-91.
51. Katherine Swinton, "Law, Politics, and the Enforcement of the Agreement on Internal Trade," in *ibid.*, pp. 199, 207.
52. See, for example, the commentary collected in *Assessing Access: Towards a New Social Union* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1997).
53. Courchene, "ACCESS," pp. 4-5.
54. Ibid., p. 2.
55. Ibid.
56. Ibid., p. 5.
57. Ibid., pp. 6-7.
58. Courchene, *Redistributing Money and Power*, pp. 59, 63.
59. Courchene, "ACCESS," p. 10.
60. Ibid., p. 36 (emphasis added). The *Report to Premiers*, referred to in this quotation, was prepared in 1995 by the Ministerial Council on Social Policy Reform and Renewal. It includes both a statement of principles and an agenda for change.
61. Courchene, "ACCESS," p. 17.
62. Ibid.
63. Ibid., p. 21.
64. Ibid., p. 20.
65. Ibid., p. 23.
66. Ibid., p. 19.
67. Ibid., p. 17.
68. Ibid., p. 37.
69. Ibid., p. 13.
70. Ibid., p. 16.
71. Ibid., p. 36.
72. Andrew Moravcsik, "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies* 31 (1993): 485 (emphasis added).
73. Ibid.
74. Ibid.

75. Fred Lazar, "Labor Market Policies and the Jurisdictional Distribution of Powers," in *Free to Move: Strengthening the Canadian Economic Union*, ed. David M. Brown, Fred Lazar and Daniel Schwanen (Toronto: C.D. Howe Institute, 1992), pp. 117-19.
76. Kenneth Norrie, "Social Policy and Equalization: New Ways to Meet an Old Objective," in *The Future of Fiscal Federalism*, ed. Banting, Brown and Courchene, p. 167.
77. Ibid.
78. Ibid.
79. Gibbins, *Time Out*, p. 7.
80. Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990), p. 29.
81. Ibid., p. 44.
82. A. Rivlin, quoted in Lazar, "Labour Market Policies," p. 111.
83. Ibid.
84. Paul E. Peterson and Mark C. Rom, *Welfare Magnets: A New Case for a National Standard* (Washington, DC: The Brookings Institution, 1990).
85. Ibid., pp. 5-6.
86. Ibid., p. 6.
87. Ibid.
88. See, Moravcsik, "Preferences and Power in the European Community," p. 508.
89. Ibid., pp. 497-98.
90. Ibid., p. 486
91. Ibid.
92. Ibid., p. 492.
93. Ibid., p. 500
94. Ibid., pp. 500-01.
95. Ibid., p. 503.
96. Ibid., p. 504 (emphasis in original).
97. Ibid., p. 505.
98. Ibid. (emphasis in original).
99. See, for example, the discussion of obstacles to social policy planning in Canada in Forget, "The Harmonization of Social Policy," pp. 145-46.
100. Mancur Olson, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1965).
101. Alan C. Cairns, "Constitutional Change and the Three Equalities," in *Options for a New Canada*, ed. Ronald L. Watts and Douglas M. Brown (Toronto: University of Toronto Press, 1991), pp. 94-95.
102. Swinton, "Law, Politics, and the Enforcement of the Agreement on Internal Trade," pp. 209-10; Patrick J. Monahan, "'To the Extent Possible': A Comment on Dispute

- Settlement in the Agreement on Internal Trade," in *Getting There*, ed. Trebilcock and Schwanen, p. 217.
103. David Cohen, "The Internal Trade Agreement: Furthering the Canadian Economic Disunion?" *Canadian Business Law Journal* 25 (1995): 278.
 104. *Ibid.*, p. 279.
 105. *Ibid.*
 106. Daniel Schwanen, "Overview and Key Policy Issues," in *Getting There*, ed. Trebilcock and Schwanen, p. 11.
 107. *Ibid.*, p. 12 (footnote omitted, emphasis in original).
 108. Michael J. Trebilcock and Rambod Behboodi, "The Canadian Agreement on Internal Trade: Retrospect and Prospects," in *Getting There*, ed. Trebilcock and Schwanen, p. 64.
 109. *Ibid.*
 110. *Ibid.*
 111. British Columbia's length-of-residency requirement is examined from a somewhat different perspective in John Richards, "Reducing the Muddle in the Middle: Three Propositions for Running the Welfare State," *Canada: The State of the Federation 1997*, vol. 12, *Non-Constitutional Renewal*, ed. Lazar.
 112. Andrew Coyne, "B.C. Residency Regulation Unfair" *Calgary Herald*, 5 November 1996, p. A12.
 113. Cairns, "Constitutional Change and the Three Equalities."
 114. Courchene, "ACCESS," p. 16.
 115. *Ibid.*
 116. Boadway, "The Implications of the Budget for Fiscal Federalism," p. 103.
 117. *Ibid.*
 118. Schwanen, *Drawing on Our Inner Strength*, p. 10.
 119. *Ibid.*, p. 14.
 120. *Ibid.*, p. 12.
 121. Forget, "The Harmonization of Social Policy," p. 146.
 122. *Ibid.*, p. 143.
 123. *Ibid.*, pp. 144-45.
 124. Boadway and Flatters, "Fiscal Federalism," p. 33.
 125. *Ibid.*
 126. *Ibid.*, p. 34.
 127. *Ibid.*
 128. Boadway, "The Implications of the Budget for Fiscal Federalism," p. 104.
 129. *Ibid.*, pp. 101-02.
 130. *Ibid.*, p. 105.

131. Courchene, "Canada's Social Policy Deficit," pp. 115-16 (emphasis added).
132. Courchene, "ACCESS."
133. Courchene, *Redistributing Money and Power*, p. 7.
134. *Ibid.*, p. 63.
135. *Ibid.*
136. *Ibid.* (emphasis in original).
137. At the political level, as noted by Harvey Lazar, there appears to be a measure of consensus that some provincial fettering of Ottawa's unilateral right to use the spending power is desirable. See Lazar, "The Federal Role in a New Social Union."
138. Institute of Intergovernmental Relations, *Approaches to National Standards in Federal Systems*, Research Report prepared for the Government of Ontario, September 1991.
139. *Ibid.*, pp. 42-43.
140. *Ibid.*, p. 50.
141. *Ibid.*, pp. 51-52.
142. *Ibid.*, p. 54.
143. *Ibid.*
144. *Ibid.*
145. Group of 22, *Making Canada Work Better* (Montreal, 1 May 1996).
146. *Ibid.*, p. ii.
147. *Ibid.*, p. 19 (emphasis in original).
148. See, for example: Boadway, "The Implications of the Budget for Fiscal Federalism," p. 101; Courchene, *Redistributing Money and Power*, p. 34.
149. Milne, "Reimagining Canada," p. 38.
150. Courchene, *Redistributing Money and Power*, pp. 90-91.
151. Monahan, "To the Extent Possible," p. 217.
152. *Ibid.*
153. Peter M. Haas, Robert O. Keohane and Marc A. Levy (eds.), *Institutions for the Earth: Sources of Effective International Environmental Protection* (Cambridge, MA: MIT Press, 1993).
154. Robert O. Keohane, Peter M. Haas and Marc A. Levy, "The Effectiveness of International Environmental Institutions," in *Institutions for the Earth*, ed. Keohane, Haas and Levy, p. 14.
155. *Ibid.*
156. *Ibid.*, pp. 16-17.
157. *Ibid.*, p. 14.
158. The implications for intergovernmental negotiations of differing vulnerabilities to externalities were noted in the third part of Section IV.

159. Marc A. Levy, Robert O. Keohane and Peter M. Haas, "Improving the Effectiveness of International Environmental Institutions," in *Institutions for the Earth*, ed. Keohane, Haas and Levy, p. 398.
160. Keohane et al., "The Effectiveness of International Environmental Institutions," pp. 23-24.
161. Levy et al., "Improving the Effectiveness of International Environmental Institutions," p. 398.
162. See Section VII, "Enforcement Mechanisms and Sanctions for Non-Compliance."
163. Keohane et al., "The Effectiveness of International Environmental Institutions," p. 24.
164. Levy et al., "Improving the Effectiveness of International Environmental Institutions," p. 398.
165. Keohane et al., "The Effectiveness of International Environmental Institutions," pp. 4-5.
166. Levy et al., "Improving the Effectiveness of International Environmental Institutions," p. 398.
167. Keohane et al., "The Effectiveness of International Environmental Institutions," p. 19.
168. Levy et al., "Improving the Effectiveness of International Environmental Institutions," pp. 399-401.
169. *Ibid.*, pp. 401-04.
170. *Ibid.*, p. 404.
171. Keohane, et al., "The Effectiveness of International Environmental Institutions," p. 23.
172. Peter M. Leslie, *The European Community: A Political Model for Canada?* (Ottawa: Minister of Supply and Services, 1991), p. vii (emphasis in original). A similar conclusion is reached by Schwanen, *Drawing on Our Inner Strength*, p. 12.
173. Schwanen, "Overview and Key Policy Issues," p. 12.
174. Leslie, *The European Community*, p. 39.
175. The argument that intergovernmentalism in general decreases democratic accountability and participation is made by Gibbins, "Time Out," p. 11.
176. Group of 22, *Making Canada Work Better*.
177. See this paper, Section V, "Preconditions for an Effective Federal Role."
178. See this paper, Section III, "Preconditions for a Decentralized Model"; Section V, "The Case for the Federal Spending Power."
179. See this paper, Section IV, "The Bargaining Dynamic."
180. Keohane et al., "The Effectiveness of International Environmental Institutions," pp. 23-24.
181. Ostrom, *Governing the Commons*, p. 44.
182. Keohane "The Effectiveness of International Environmental Institutions," pp. 23-24.
183. Forget, "The Harmonization of Social Policy," pp. 145-46.
184. Leslie, *The European Community*, p. vii; and Schwanen, *Drawing on Our Inner Strength*, p. 12.
185. Courchene, "ACCESS," pp. 37-38.

186. See "The Bargaining Dynamic," in Section IV of this paper.
187. See, for example, the comments on Britain's opt-out from European social union provisions in Moravcsik, "Preferences and Power in the European Union," p. 504 and Trebilcock and Behboodi, "The Canadian Agreement on Internal Trade," p. 64.
188. Institute of Intergovernmental Relations, *Approaches to National Standards*, p. 71.
189. Daniel Schwanen, "Open Exchange: Freeing the Trade of Goods and Services within the Canadian Economic Union," in *Free to Move: Strengthening the Canadian Economic Union*, ed. David M. Brown, Fred Lazar and Daniel Schwanen (Toronto: C.D. Howe Institute, 1992), p. 25.
190. Institute of Intergovernmental Relations, *Approaches to National Standards*, p. 66.
191. Schwanen, "Overview and Key Policy Issues," p. 12.
192. See Section IV, "The Incentives for Intergovernmental Cooperation," in this paper.
193. Schwanen, *Drawing on Our Inner Strength*, p. 15.
194. *Ibid.*, p. 11.
195. *Ibid.*, p. 15.
196. *Ibid.*
197. Courchene, *Redistributing Money and Power*, p. 94.
198. See "Obstacles to Collective Action," Section IV in this paper; and Keohane et al., "The Effectiveness of International Environmental Institutions," pp. 23-24.
199. Schwanen, *Drawing on Our Inner Strength*, pp. 15-16.
200. Levy et al., "Improving the Effectiveness of International Environmental Institutions," p. 398.
201. Moravcsik, "Preferences and Power in the European Community," p. 512.
202. *Ibid.*, p. 513.
203. Quoted in Gibbins, "Time Out," p. 8.
204. *Ibid.*, p. 11.
205. Courchene, *Redistributing Money and Power*, p. 94.
206. Courchene, "ACCESS," p. 17.
207. Courchene, *Redistributing Money and Power*, p. 94.
208. *Ibid.*, p. 91.
209. *Ibid.*
210. *Ibid.*, pp. 91-92.
211. Courchene, "ACCESS," p. 30.
212. *Ibid.*, pp. 33-34.
213. There is also a citizen complaint provision under the North American Agreement for Environmental Cooperation, the NAFTA environmental side-agreement.
214. See, *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607.
215. See the case of BC's length-of-residency requirement earlier in this paper.

216. Courchene, *Redistributing Money and Power*, p. 92.
217. Armand de Mestral, "A Comment," in *Getting There*, ed. Trebilcock and Schwanen, p. 97.
218. Courchene, "ACCESS," p. 35.
219. *Ibid.*, pp. 34-35.
220. Courchene, *Redistributing Money and Power*, p. 86.
221. See, Gibbins, "Time Out."
222. Courchene, *Redistributing Money and Power*, p. 91.