

Federalism, Democracy and Disability Policy in Canada

by Alan Puttee, ed.

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FEDERALISM, DEMOCRACY AND DISABILITY POLICY IN CANADA,¹ edited by Alan Puttee, was published in 2002 for the Institute of Intergovernmental Relations, Queen's University School of Policy Studies, as the fifth contribution in a six volume "Social Union Series." The project began in 1997, and was ongoing at the February 4, 1999, signing of the Social Union Framework Agreement (SUFA)² between the Canadian federal government and all of the provinces except Quebec.³ One might have expected, therefore, that SUFA would be a prime focus of this book. The fact that it is not is, I think, more of a comment on the failings of SUFA than a criticism of the book. The reality is that SUFA has not had a significant impact on public policy in Canada, whether on disability policy or otherwise. Instead of an analysis of the SUFA as it relates to disability policy, this book provides a general survey of disability policy in Canada, with attention to the history of how it has unfolded. The authors were given the tasks of assessing the impact of present and possible governance structures on: (1) meeting policy objectives; (2) reflecting democratic values; and, (3) respecting federalist principles.⁴

The contributors to this book are drawn from academia (social work and social sciences), community activism, and public policy consultancy. There are six chapters in this book. The introductory chapter, by the editor, Alan Puttee, a policy consultant, is a description of the Social Union Series and of the chapters that follow, offering no separate analysis.⁵ The next chapter, by two social scientists, Marcia Rioux (York University) and Michael Prince (University of Victoria) provides general background.⁶ It outlines the traditional policy perspective on the disabled as the "worthy poor," and the emerging trend towards a human rights perspective, yet with some skepticism about how far the human rights perspective has come. This chapter is a very useful overview, although at a fairly general level of analysis. Interestingly, in spite of the title of the book, federalism is not at all the focus

1. Alan Puttee, ed., *Federalism, Democracy, and Disability Policy in Canada* (Montreal: McGill Queen's University Press, 2002).

2. See First Ministers' Meeting, *A Framework to Improve the Social Union for Canadians* (Ottawa: February 4, 1999), online: Social Union Framework Agreement Review <http://www.socialunion.ca/menu_e.html> (the text of the Agreement).

3. *Ibid.* at vii.

4. Puttee, *supra* note 1 at 1.

5. Alan Puttee, "Federalism, Democracy and Disability Policy in Canada: An Introduction" in Puttee, ed., *supra* note at 1.

6. Marcia H. Rioux & Michael J. Prince, "The Canadian Political Landscape of Disability: Policy Perspectives, Social Status, Interest Groups and the Rights Movement" in Puttee, ed., *supra* note 1 at 11.

of this chapter. Federalism does, however, feature prominently in the remaining four chapters.

The remaining four chapters are the case studies that comprise the core of the book; there is a significant amount of overlap in these chapters. Chapter three, by Michael Prince, is a general review of disability policy in Canada.⁷ Chapter four, by Alan Puttee, is an analysis of disability insurance policies, *e.g.*, workers' compensation, Canada/Quebec Pension Plan disability benefits, employment insurance sickness benefits, social assistance, and automobile insurance.⁸ Chapter five, by Roy Hanes and Allan Moscovitch, both from Carleton University's School of Social Work, analyses disability supports and services.⁹ Chapter six, by Michael Bach, from the Canadian Association for Community Living, deals with community support systems, *e.g.*, community and service agencies and volunteer groups.¹⁰

Throughout the book there is discussion of: (1) the Canada Assistance Plan (CAP), a regime beginning in 1966 in which the federal government cost shared social programs with the provinces; (2) the cap on CAP, the 1990 decision of the federal government to limit its cost sharing with the three wealthiest provinces, *i.e.*, those not receiving equalization (Alberta, Ontario, and British Columbia); and, (3) the 1996 federal government's abandonment of CAP and its replacement with the Canada Health and Social Transfer (CHST). The transition was from federal cost sharing under CAP, which was conditional on meeting federal standards, to mostly unconditional transfers, of a lesser aggregate amount, under CHST. These developments involve a broad range of social policies, not just relating to disability. The comments in this book are mostly the familiar refrains lamenting the retreat from national standards and decreased social spending. The disability focus of this book does not offer any startlingly new insights.

The final four chapters of this book all use a common classification system of federalist regimes:

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7. Michael J. Prince, "Designing Disability Policy in Canada: The Nature and Impact of Federalism on Policy Development" in Puttee, ed., *supra* note 1 at 29.
 8. Alan Puttee, "Reforming the Disability Insurance System: A Collaborative Approach" in Puttee, ed., *supra* note 1 at 79.
 9. Roy Hanes & Allan Moscovitch, "Disability Supports and Services in the Social Union" in Puttee, ed., *supra* note 1 at 121.
 10. Michael Bach, "Governance Regimes in Disability-Related Policy and Programs: A Focus on Community Support Systems" in Puttee, ed., *supra* note 1 at 153.

- *unilateral federalism*, where the federal government, without provincial approval, attaches conditions to financial transfers to provincial governments in an area of exclusive provincial jurisdiction:
- *classical or disentangled federalism*, where each order of government acts independently in its areas of constitutional competence; in areas where each has jurisdiction and chooses to exercise it, the two orders of government act independently of the other;
- *collaborative federalism*, where the two orders of government, recognizing their interdependence, act jointly with no undue reliance on “carrots or sticks”; and
- *interprovincial collaboration*, where there is a working relationship among provinces with no federal involvement.¹¹

Reality, however, is not so simply split into separate categories. Although the authors do not engage with each other on their different interpretations, there are some marked discrepancies among them. Whereas Michael Prince and Alan Puttee categorize CAP as an example of co-operative federalism,¹² Michael Bach characterizes the financial arrangements as “collaborative with some unilateral federal conditions,”¹³ noting some unilateral federal conditions that thwarted community participation in disability supports.¹⁴ At the other end of the spectrum, Roy Hanes and Allan Moscovitch characterize CAP as primarily unilateral federalism, with some elements of co-operative federalism.¹⁵ It is all a matter of emphasis and perspective. CAP was a conditional, shared cost program negotiated with the provinces, but with the strings of the federal spending power as the ultimate means of federal control. The negotiation part sounds like co-operative federalism, but the use of the federal spending power, to attach conditions on provincial spending in areas of provincial jurisdiction, sounds like unilateral federalism. The glass is either half empty or half full, depending on how you look at it. A similar difference in vantage points is evident in the characterization of the CHST. Michael Prince characterizes it as unilateral, focussing on how it was implemented, while Michael Bach characterizes it as disentangled, focussing on the effect of the removal of federal conditions.¹⁶

The results of the case studies in this book are hardly earth shattering. As Roy Hanes and Allan Moscovitch acknowledge: “Disability issues have undoubtedly not been decisive in the debate on the changing roles of the federal and provincial governments.”¹⁷ Alan Puttee candidly remarks: “This chapter has briefly described the disability insurance system and has come to what amounts to the usual conclusions with respect to the system’s policy

11. Hanes and Moscovitch, *supra* note 9 at 128.

12. Prince, *supra* note 7 at 56; Puttee, *supra* note 8 at 95.

13. Bach, *supra* note 10 at 159.

14. *Ibid.* at 162.

15. Hanes and Moscovitch, *supra* note 9 at 129.

16. Prince, *supra* note 7 at 56; Bach, *supra* note 10 at 158–59.

17. Hanes and Moscovitch, *supra* note 9 at 137.

problems.”¹⁸ The reform proposals are also quite modest. For example, Alan Puttee suggests a consolidation of existing insurance schemes into a “Comprehensive Disability Insurance Plan (CDIP)...for all labour force participants (and perhaps others).”¹⁹ The casual reference to “and perhaps others”²⁰ is quite remarkable, given the barriers to labour force participation that many of the disabled encounter, as noted by Marcia Rioux and Michael Prince.²¹ In light of those barriers, limiting the proposed CDIP to labour force participants would seem to raise a problem deserving significant attention.

One aspect of this book is quite astounding. Although I was certainly not expecting legal analysis from a group of non-lawyers, I was amazed to discover that at least this group of non-lawyers thinks they are immune from legal citation. Throughout the book, statutes are referenced by name, without any citation at all. Although references to court decisions are understandably rare, they are referred to without either case name or citation.²² Michael Prince characterizes classical federalism as being described by the courts as “watertight compartments,”²³ without identifying the *Labour Conventions*²⁴ case as the source, and without noting the modern rejection of such a rigid formulation.²⁵ There are also quotes from a budget speech²⁶ and references to a report of the Auditor General²⁷ without proper citation. Furthermore, there are repeated references in the book to the “Charter Challenges Program,”²⁸ rather than to the actual name, which is the “Court Challenges Program.”²⁹

A more substantive error in relation to the *Charter*,³⁰ is the remarkable claim made by Roy Hanes and Allan Moscovitch, in commenting on the CHST: “The result is that the federal government has only minimal input in the realm of supports and services *outside its role as protector of the rights of people with disabilities under the Charter of Rights and Freedoms*” [emphasis added].³¹ It boggles the mind that serious academics, writing in a book on federalism,

18. Puttee, *supra* note 8 at 112.

19. *Ibid.* at 104-5.

20. *Ibid.* at 105 (Repeated at 110 with “some” added before “others”).

21. Rioux and Prince, *supra* note 6 at 15.

22. See e.g. Prince, *supra* note 7 at 47-48 (the citation of *Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525, 83 D.L.R. (4th) 297 is nowhere to be found in the discussion of the Supreme Court of Canada’s decision regarding the cap on CAP).

23. Prince, *supra* note 7 at 30.

24. *Canada (A.G.) v. Ontario (A.G.)*, [1937] A.C. 326 at 354, 1 D.L.R. 673 (P.C.).

25. See e.g. *General Motors of Canada Limited v. City National Leasing*, [1989] 1 S.C.R. 641 at 669, 58 D.L.R. (4th) 255.

26. Prince, *supra* note 7 at 35.

27. *Ibid.* at 42.

28. Puttee, ed., *supra* note 1 at 6, 20, 26, 56, 58.

29. See the *Court Challenges Program of Canada*, online: Court Challenges Program <<http://www.ccp-pcj.ca>>.

30. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982 (U.K.) 1982*, c. 11 [Charter].

31. Hanes and Moscovitch, *supra* note 9 at 130.

could so fundamentally misconceive the mechanism for enforcing *Charter* rights. I cannot fathom how Hanes and Moscovitch got the idea that the *Charter* trumps federalism.³²

This last comment notwithstanding, this book is generally a good description of disability policy in Canada. If, however, one is looking for challenging new ways of thinking about disability policy in Canada, this book is a disappointment.

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32. See *Reference Re Bill 30, An Act to Amend the Education Act (Ontario)*, [1987] 1 S.C.R. 1148, 40 D.L.R. (4th) 18; *R. v. S.(S.)*, [1990] 2 S.C.R. 254, 41 O.A.C. 81, 57 C.C.C. (3d) 115 (the Supreme Court of Canada has been very clear that it does not).