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This is one of six volumes being published by the Institute of Intergovernmental Relations related to the Canadian Social Union. Three of the volumes compare the way in which different federations handle various aspects of social policy. These volumes, including this one edited by David Cameron and Fraser Valentine, should be of interest to those who study comparative federalism and comparative social policy. The other three volumes are based on a series of case studies of how Canadian governments manage intergovernmental relations in particular areas of social programming.

The work for this series began in 1997, well before the 1999 signing of the Social Union Framework Agreement. Even at that time, as a result of the substantial cuts in federal fiscal transfers to the provinces, it seemed that a new set of relationships was going to be required between federal and provincial governments in order to improve both the quality of social policy in Canada and the health of the federation.

In conceiving of the volumes for this series, two considerations were paramount. The first was that there was relatively little empirical literature on the way in which federal and provincial governments relate to one another, and to citizens and interest groups, in designing and delivering social programs. Yet it is at the level of programs and citizens, as much as at the level of political symbolism and high politics, that the social union is in practice defined. To help fill this knowledge gap, we thought it appropriate to design a series of case studies on the governance of Canadian social programs. And to ensure that the results of the case studies could be compared to one another, the Institute developed a research methodology that authors were asked to take into account as they conducted their research. This methodology built on earlier work by Margaret Biggs in analyzing these governance relationships from the perspective of their impact on policy, federalism, and democracy.

The second consideration was that Canadians were insufficiently aware of how other federations handle these same kinds of social program relationships. As a result, we thought it important to recruit authors from different federations who could explain the governance of social policy in their countries. This volume thus compares the way in which five different federations deal with disability policy.

While the research for these volumes was under way, a series of roundtables and workshops (nine in total) was held. Those invited included officials from provincial and federal governments, representatives from stakeholder groups and individuals from the research community as well the case study authors. The purpose of these roundtables and workshops was to review and comment on the Canadian and comparative case studies. I thank the numerous participants in these events for helping the authors and editors with their work.

This series received financial assistance from the federal government and the governments of New Brunswick, Ontario, Saskatchewan, and Alberta. An advisory committee that included officials from these same jurisdictions as well as from academe also assisted in the development of the project. In fact, it was this committee that helped in the selection of the three social sectors that are the subject of this series: disability, labour market, and health.

The 1999 Social Union Framework Agreement is open for review early in 2002. The agreement stateTJ 0 -1mcrr(re)18.4(vie)30.3(w prcesps iell“einsaresigndif)35

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This volume is one of a series of studies exploring the ways in which different federations handle social policy. The focus of this comparative volume is on disability policy from the experience of five federations: Australia, Belgium, Canada, Germany, and the United States. Our primary interest in undertaking a comparison was to gain an understanding of the impact of alternate federal regimes on the disability sector, and on persons with disabilities.

common set of evaluative principles across the federations. Next, the authors revised their papers based on the information from the workshop. Finally, with the revised papers in hand, the editors completed an evaluative essay comparing the experiences in each of the federations. This volume is the product of that process.

The editors would like to thank each of the authors for their thoughtful analyses of a complex topic. As well, thanks to the various federal and provincial officials who provided useful comments at various points in the preparation of this volume. Finally, we wish to extend a special thanks to Harvey Lazar and his colleagues from the Institute of Intergovernmental Relations, Queen's University. At the Institute of Intergovernmental Relations, both Patti Candido and Mary Kennedy provided administrative support in the preparation of the

All modern democratic states have fashioned policies and programs in response to the needs of persons with disabilities. They vary, however, from nation to nation. Our interest in this study lies with five federal regimes — Australia, Belgium, Canada, Germany, and the United States — and the approach they have taken to disability.

This volume tries to answer two general questions: (i) In the five countries under review, what impact has federalism had on disability policy and programming? and (ii) Has disablement — including its international, organizational, political, and attitudinal dimensions — affected the operation of federalism in the five countries studied, and, if so, in what ways?

These are not easy questions to answer, for reasons that will be made clear in the course of this introductory chapter. Nevertheless, based on our comparative assessment, we summarize our broad findings below.

With respect to the impact of federalism on disability policy and programming, we uncovered the following three general findings: first, at the level of broad philosophy, the values that underlie policy-making and the general policy orientation to disabled persons at any particular historical moment, neither federalism nor the specific type of federal regime appears to make much difference. The understanding of disablement, and the beliefs about what could and should be done about it, do not vary substantially from one federal regime to another, and, indeed, do not appear to vary widely between many federal and non-federal regimes. It is our impression that there is a broad policy environment which is widely shared among most modern democratic states of all types.

Second, with respect to the formulation of disability policy, however, the federal reality lies at the heart of this process in the countries we examined, and the policy-making function assumes its character from the distinctive federal arrangements that each country displays. The means employed to transform policy goals into political decisions, government programming, and public initiatives are profoundly shaped by the fact that they are occurring within a federation and by the particular kind of federal regime within which they are occurring. Clearly, policy-making in a federation will be quite different from policy making in a unitary state; equally, policy-making in the German federal context, with its concept of "joint tasks" and its strong intrastate institutions, will be quite different from policy-making in Canada, where interstate bargaining between powerful federal and provincial executives composes the heart of the policy nexus. The distinctive institutions and processes which characterize the given federal system define the policy-making system by which community aspirations and objectives in the disability field are mediated.

Third, as for policy outputs in the disability field, we found striking variations among the five federations in program design, in the choice of delivery vehicles, and in administrative organization. While we would not argue that federal differentiation offers the only explanatory factor in understanding these differences, it is clear that the distinctive character of the federal regime makes a significant difference. This will become clear as we examine and compare each of the five federations.

What of our second question, which asks about the impact of disablement on the five federations under review? We have found that the existence of disablement and the public response to it has had very little impact on the nature and functioning of the five federations under study. Examining the disability policy field in comparative terms has uncovered a partial explanation for this pattern.

While most individuals will experience some form of disablement during their lifetime (especially as one ages), there is a common perception that disability does not affect everyone in society. Disability is often understood as a phenomenon which affects only a minority of a nation's population. Matters

As we said at the outset, the impact of the disability policy field on the nature and functioning of the federal regimes in Australia, Belgium, Canada, Germany, and the United States appears to have been minimal. On the other hand, the federal systems in the five countries have affected the disability policy field in many different ways — not at the level of basic philosophy and general policy orientation — but at the level of policy design and program implementation. The chapters that follow explain how and why this is so. They offer a detailed examination of the nexus between federalism and disability policy in Australia, Belgium, Canada, Germany, and the United States.

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Evolution of Disability Thinking

What does it mean to be disabled, or to have a disability? For over a century, any debate in response to such a question would necessarily be framed within the discourse of biomedical science. Disability was about functional limitation which sometimes, through medical intervention, could be ameliorated to attain a level of so-called “normal” functioning. Today, however, questions about the proper understanding of disablement may provoke a different analysis: one that actively examines the social, political, and legal constructions that attempt to give meaning to the experience of disablement.

The evolution of disability thinking has a long, complicated, and overlapping history. Thus, it is useful to divide the general history of disability across western industrial nations into three basic periods: (i) institutionalization (1600s–1900s); (ii) medicalization (1900s–1970s); and (iii) post-medicalization (1970s–present), see Table 1.[1] Prior to the early 1900s, people with some forms of disability — deaf, blind or so-called insane individuals, for instance — were put in institutions provided by religious orders, charities, the community, or the state. The goal was education or training, as well as protection and hiding the “seriously” disabled away from so-called “normal” people.[2]

The second period, medicalization, took a foothold during World War I. It was during this period that a new relationship emerged among the state, the increasingly powerful medical profession, and persons with disabilities. The state required healthy men to fight the war and doctors seized the opportunity to increase their authority by assuming the responsibility for telling the state who were “fit.” Across all nations, the war significantly increased the number of persons with disabilities, and, because their disabilities had resulted from the performance of their citizenship duties, the state assumed some

recently in North America, televized charity telethons. It became clear, therefore, that although the commitment to rehabilitation increased the mobility of persons with physical disabilities, it also reinforced “dependency” assumptions about persons with disabilities. Further, the rehabilitation and reintegration processes marked by this period were often not extended to all kinds of disabilities, in particular persons with cognitive disabilities, nor did these processes focus on the economic needs or political concerns of persons with disabilities.

In the third period, post-medicalization (1970–present), movements *of* persons with disabilities advocating

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and the World Program of Action (WPA) concerning Disabled Persons which was associated with the United Nations Decade of Disabled Persons (UNDDP), 1983–92. The IYDP defined its goal as nothing less than “full participation and equality” of persons with disabilities and the elimination of the barriers they face. The UN’s establishment of a trust fund with $1 million to pay for projects concerning disability issues in various member countries, albeit limited, represented the first time the international community took concrete action on disability issues. Governments of some countries responded with domestic no intergovernmental data collection system that systemically requests countries to submit national disability statistics from censuses, surveys, and registration systems for use at the international level.[18]

The lack of reliable comparative data on the incidence and prevalence of disability has not gone unnoticed by the WHO and the UN. Beginning in the mid-1970s, the international community began calling for the production of comparative and standardized statistical information on disability and disablement. Most of the work at the international level has focused on achieving standardization through the development of guidelines and technical manuals from which domestic governments could implement statistical collection techniques. Obstacles at the domestic level — the variability of screening rates, the nature of the questions asked, and the manner in which questions are interpreted by domestic governments — have made achieving a level of international standardization difficult.

In 1975, the WHO developed a new conceptual framework within which dearth of comparative disability data, DISTAT was created to collect, consolidate, standardize and integrate national disability data from countries around the world. This process brought together data from national censuses, surveys, and administrative reporting systems on selected issues of disablement. The result was the *Disability Statistics Compendium* (1990) in which a series of tables presented the first set of internationally standardized data of disabled statistics.[22] Although an important contribution to our understanding of disablement across nations, like the ICIDH classifications, the reliability of the data presented in *Disability Statistics Compendium* has been called into question. In fact, the authors themselves concede that because data collection techniques vary from country to country, and the understanding of disablement is variable across nations, the "data quality is highly variable."[23]

Under pressure from persons with disabilities and their organizations, the WHO has undertaken a global initiative to revise the ICIDH. Attempts have been made to broaden meaningfully the classification beyond simply human functioning of the body, to include the individual at the social level taking into account the social and environmental context in which people live. Human functioning and disablement, it is argued, can only be understood against the background of existing social and physical factors. Thus, the revised ICIDH-2 includes a classification of contextual factors (environmental and personal) which affect the experience of disablement for an individual. Although the UN Disability Statistic Division is expected to release updated comparative data on the prevalence of disability around the world, this data is not premised on the updated ICIDH-2 classifications. Thus, the data's variability persists resulting in an inability to answer even the most basic question: How many people with disabilities are there in the population?

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All of the five federations under study are modern democratic states with advanced market economies and high standards of living. All are free societies, active internationally; their governments see themselves as being members of an increasingly integrated international community whose emergent norms and standards merit acknowledgement. All have experienced in their own way the great, shifting patterns of ideas and practices that have swept through the postwar western world: Keynesian economics and the construction of the welfare state; the rise of neo-liberal thinking; the emergence of the objective of fiscal restraint and the often fruitless effort to contain and reduce the social obligations of the state; the recent establishment of fiscal health and economic prosperity;

programming likely. How all of this plays out in the field of disability is the subject of this volume. We will turn now to a brief account of the leading characteristics of the federal systems in each of the five countries insofar as they appear to relate to the matter of disability.[25]

Australia

Australia established its federal system in 1901, bringing together — like Canada — a number of self-governing British colonies. Comprised of six states, a capital region and a Northern Territory, Australia has a population of about 18 million people. Like Canada, it has vast virtually unpopulated regions, and a citizenry concentrated in large urban centres. Despite its predominantly British origins, Australia has, in recent decades, experienced increasing levels of non-European immigration.

Again, similarly to Canada, Australia combines federalism with parliamentary government at both state and Commonwealth levels. The Australian federation, despite its states-oriented origins, has become over the years more centralized, particularly with respect to fiscal arrangements. It has fashioned stronger intergovernmental institutions than Canada has, and has an elected Senate which, however, acts more like a "party house" than a house of effective regional representation.

Belgium

Belgium is quite different from the other federal countries in this comparative study as it has just recently established for itself an explicitly federal constitution, and is thus the youngest federation in our review. Belgium came into being as a unitary constitutional monarchy in 1830. In recent decades, it has been transformed into a federal state by a series of constitutional changes in

German-speaking Communities also have councils that are responsible primarily for cultural and educational matters. Just to make things more interesting, the Flemish Region and Community have effectively amalgamated their operations, and function more or less as a single entity, while the French-speaking parts of the federation have not. While policy incoherence and program complexity are features of all of the countries we examined, the institutional engineering in which the Belgians have engaged in the last three decades has produced a system unrivalled in its opacity for the citizen. This is only increased by the fact that the basic structures of Belgian constitutional life have been in a recurrent state of transformation in the last 30 years, thereby producing real uncertainty and confusion as programs, resources, and civil servants are shifted from one jurisdiction to another.

Belgium is a binational polity. Driven by the desire for greater autonomy of the larger Flemish/Dutch-speaking part of the country, which constitutes 58 percent of the population of just over 10 million, the “federalizing process” has created to a striking degree a federation of watertight compartments:

- little or no information sharing, joint planning or policy coordination;
- limited systems of interregional redistribution and no formal, publicly acknowledged equalization program (this is in part a consequence of having a centralized tax system, and an integrated national public social security system); and
- territorial unilingualism.

Ironically, therefore, though the Belgian federation is the most recent arrival among the cases we have studied, it is also the system that practises classical federalism to the greatest extent.

Canada

Canada is the product of the 1867 union of four British colonies in what was known at that time as British North America: Nova Scotia, New Brunswick, Quebec, and Ontario. Six other provinces joined the Canadian Confederation over time: Manitoba (1870); British Columbia (1871); Prince Edward Island (1873); Saskatchewan and Alberta (1905); and Newfoundland (1949). In addition, there are three northern territories: Yukon; the Northwest Territories, and, since 1999, Nunavut Territory.

Canada was the first country to establish itself as a parliamentary federation; that is to say, as a *federal system* in which the central and regional governments are both constituted according to the principles of *British parliamentary democracy*. This combination has produced strong executive-led government in Ottawa and in the provincial capitals, and that, combined with a weak upper house (Senate), has led to executive domination of relations between and among the federal partners.

Canada was designed in 1867 as a centralized federation, with the key powers of the day vested in Ottawa, and a strong, paternalistic oversight role assigned to Ottawa vis-à-vis the provinces. Despite this beginning, Canada has become in its first 129 years highly decentralized. This is for several reasons: (i) judicial interpretation of the division of powers broadly favoured provincial governments over the federal government; (ii) provincial areas of responsibility, such as health, welfare, and education, which were of little governmental consequence in the nineteenth century, mushroomed in the twentieth, greatly enhancing the role of provinces; and (iii) postwar Quebec nationalism helped to force a process of decentralization, which several other provinces began to advocate, and from which they benefited.

The result is that Canada as a multinational state has powerful and sophisticated governments in Ottawa as well as in the provinces, engaged in nation-building and province-building. This creates both interdependence and competition resulting in elaborate forms of intergovernmental coordination and at times bitter intergovernmental conflict among various jurisdictions (federal, provincial/territorial, and Aboriginal).

In addition, Canada is a multinational state. The polity's historical development has involved three distinct people (or nations): Anglophone, francophone, and Aboriginal.[26] Many of Canada's defining moments in its political history have centred on attempts to renegotiate the terms of the federation among anglophone, francophone, and Aboriginal peoples. Canada's French-speaking population, composed of just under one-quarter of the Canadian population, is largely located in the province of Quebec, although significant francophone populations exist outside the province's borders, chiefly in Ontario and New Brunswick. Quebec is home to a vigorous nationalist movement which has sponsored two referendums in the province on sovereignty. the 1995 referendum brought the country to the verge of collapse. Canada's English-speaking population, totalling more than three-quarters of the population, is chiefly located outside Quebec, although a substantial English-language minority community remains within Quebec. Aboriginal peoples are descended from the nations and peoples who were living in North America when settlers from Europe (and elsewhere) arrived more than 400 years ago. The total population of Aboriginal people in Canada is estimated to be between 720,000 and 1,000,000 people.[27] In the last several decades, the expression of Aboriginal people's right of self-determination has formed an important part of Canadian political discourse.

Germany

Germany's "interlocking federalism" is the polar opposite of the classical federalism or the federalism of watertight compartments which we observed in the Belgium case. It features:

- a distribution of powers giving the central government responsibility for the formation and passage of legislation in most fields and the Länder or states responsibility for nearly all aspects of legislative implementation;
- a highly integrated system of taxation;
- a sophisticated mechanism of fiscal equalization, both horizontally and vertically;
- a federal upper house (the Bundesrat), composed of Länder government representatives, with the power to veto federal legislation affecting the states; and
- a linguistically homogeneous society.

Established on the ruins of the Third Reich in 1949, West Germany became the Federal Republic of Germany with 11 Länder. Reunification in 1990 extended the borders of the Federal Republic eastward, added five new Länder for a total of 16, and expanded the population to more than 80 million people.

The German federal system is marked by intense, continuous intergovernmentalism at all stage.8(lic ea 1949,n/n1tw ous)]TJlicx.978 Tw [nta(The r61c2h in many of the programs of the German federation. The fiscal and economic weakness of the five new Länder of the former East Germany has put a serious strain on this principle, and has encouraged some of the stronger subnational jurisdictions to assert their need for greater autonomy and their belief in greater self-reliance.

There are two other levels of government acting in the social policy field which are worth mentioning. Although the responsibility of the Länder governments, the municipalities play an important, if not powerful, role in this sphere. Also, the European Community has assumed an increasingly significant place in the social-policy life of member states.

United States

The United States is the first, and most enduring, modern federation in the world. Originally comprised of 13 states, the United States has evolved into a federation of 50 states plus two federacies, three associated states, three local home-rule territories, three unincorporated territories, and over 130 Native American domestically dependent nations. It has a population of just over 280 million.

The United States is a diverse society, with large Black and Hispanic minorities. In addition, there is significant regional variation in political culture across the federation, with state and local governments playing important roles in the life of the country.

The American federal institutions are based on the principle of separation of powers between the executive and legislative branches. The institutions of the presidency and Congress provide for a complex web of checks and balances. Congress includes a Senate in which the states are equally represented with members elected directly (since 1912).

The fundamental structure of American federalism is the product of the US Constitution, enacted in 1789. In its original conception, the United States was a strong example of classical federalism. The Constitution grants the government a series of enumerated governing functions, but given the strong distrust of central authority in American political culture, the states have substantial governing rights as well. In particular, the tenth amendment to the Constitution, known as the Reserve Clause, holds that all powers not specifically delegated to the national government are reserved to the states.

In the twentieth century, however, a series of constitutional interpretations has resulted in an increase in the relative power of the national government.

The exercise of this power has directly affected the development of disability policy, including civil rights protections. In particular, the fourteenth amendthe federalism dimension is the degree to which the institutions and processes of federalism are more or less salient in the general political life of the country as compared to other institutions and processes, such as the party system, the legislative system, the political versus the judicial process, the specific constitutional foundations, and so forth. We contend that federalism is less salient in Australia, Germany, and the United States, and, relatively speaking, more salient in Belgium and Canada. We justify this contention below.

The classification criterion we have selected for the disability dimension is the degree of policy comprehensiveness, that is to say, the degree to which a coherent and coordinated range of services and supports addressing the needs of persons with disabilities is established in the given country. Assessing this is not a simple task, given the complexity of the policy environment in the five federations and the different ways in which the policies are embedded in the social and cultural life of the given countries. Nevertheless, it is our opinion, based on the country chapters contained in this volume, that Belgium, Germany, and the United States have developed a more comprehensive array of policies and programs to respond to disability than have Canada and Australia. Belgium, Germany, and the United States each works in its own distinctive way, but our sense is that, in aggregate, they have moved further down the policy track than either of the other two.

That this must be a tentative judgement, rather than a categorical conclusion, is evident from the following observation. While the articulation of legislation, policy, and programs specifically directed at disability is more advanced in the United States than in Canada, a disabled person — faced with the abstract choice of whether, as a person with a disability he or she would rather live in the United States or in Canada — might, in fact, rationally choose Canada. This is only paradoxical on its face, because persons with a disability have needs that extend beyond their disability, and such a person might quite reasonably prefer to inhabit a country with a more fully developed range of social supports which provide broader protection to the individual in the various circumstances in life that he or she might confront. A disabled American without health care might look with envy at a disabled Canadian with public health care and personal supports, even though the response to disability in Canada is probably thinner than it is in the United States.

Let us turn now to a more detailed review of what emerges from the five country studies.

The Development of Disability Policy

Our comparison reveals that the development of disability policy is influenced by both the diverse political cultures and institutional complexities in each of the federations. In each federation, however, the disability policy domain has also been shaped by negative and patronizing stereotypes, as well as the stigma associated with what it means to have a disability, that is, to be "not quite" human.[28] Although international organizations, such as the UN, as well as persons with disabilities, have challenged these stigmatizing attitudes, the impact of stigma on the development of disability policy has been pronounced and difficult to overcome.

In Australia, Canada, and the United States, the development of the disability policy domain can be clearly traced back to the history of negative attitudes — fear, pity, stigma — attached to persons with disabilities. As both Stephen Percy and Sherri Torjman suggest respectively, in the United States and Canada most of the policies and programs in place to support the particular needs of persons with disabilities were established in an incremental fashion. Often these policies were simply add-ons to programs that did not have issues of disability as a central focus when they were conceived. The assumption was that persons with disabilities would not be part of the mainstream of society, nor the mainstream of institutions. Consequently, the structures established, the education system and the labour force, for instance, were not designed to be inclusive of those with disabilities.

Since the 1970s, however, persons with disabilities have been demanding their rightful place in the mainstream of society. Canada, in 1982, included disability as a protected ground in its *Charter of Rights and Freedoms.* Germany and South Africa have also added disability as a constitutionally protected ground: Germany in 1994 and South Africa in 1996.

In each of these three countries, the emergence of disability rights movements has pushed their respective governments to respond to the demands of persons with disabilities by broadening our understanding of what constitutes disability policy. Our comparison confirms that overcoming the historical impediments of the policy domain, especially by accommodating the demands of persons with disabilities, has been difficult and the response by governments

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The disability policy domain has developed somewhat differently in Belgium and Germany. This is explained, in part, because disability policy is an assumed component of a mature welfare state.

Like Belgium, Germany's political culture has more directly influenced the development of disability policy. The German system of interlocking federalism, its embedded commitment to a social federal state, and the concept of uniformity of living conditions (or social equity) has directly affected the development of disability policy. As Ursula Muench notes, the commitment to a social federal state is the foundation upon which a sophisticated and compre-

Among the federations studied, Belgium is the only country that applies a single, broad, and uniform definition of disability. This definition, in turn, serves as the foundation for the development and implementation of disability policy. It is important to note that, while Belgium applies a uniform disability definition across each of the three orders of the federation, this uniformity emerged, not because of a focused commitment among the federated entof .s4U2(T)-i2(es

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Para-governmental, quasi-autonomous funds have been a key policy instrument for the delivery of services to disabled persons, as they have been in Germany. The 1960s, under the unitary Belgian system, saw the most important developments in the field: the creation in 1963 of a national rehabilitation fund for persons with disabilities; the creation in 1967 of a fund responsible for the medical, residential, and pedagogical care of persons with disabilities; the passage in 1969 of a comprehensive *Income-Support Act* for disabled persons. The rehabilitation fund was financed by an extra premium on certain kinds of insurance policies; since the insurance business was in a period of expansion at that time, the resulting increases in revenues permitted the expansion of services to the disabled. The federated entities have continued to use the fund model as the policy instrument in acquitting their responsibilities in this field; each has established a para-governmental fund responsible for the implementation of most of its disability policies.

With federal devolution, starting in the 1980s, the policy picture has become very complex. The federal government, which retains responsibility for social security, continues to provide income-replacement and integration allowances for the disabled. In addition, aspects of its responsibilities in other social security programs, in employment policies, in the taxation and justice systems, in transportation and in public utilities regulation address the needs of disabled citizens. The communities have the broadest mandate, given that

under public law, subject to government supervision, but which manage their affairs themselves. Employer/employee boards are responsible for management. These are large-scale insurance funds in which the benefits are linked to the contributions made. Their mandates differ, focusing, for example, on workers' compensation, on pension insurance and on rehabilitation, but each has a responsibility for a dimension of the disability landscape. As major investment vehicles, their regulation and location matter greatly to regional economic development in Germany. The charitable organizations, composed of volunteers as well as professional staff, play a significant role in the field of disability, generally filling in the gaps left by public policy. There are five leading associations of private welfare work, three of which have a religious orientation. Self-help groups have become increasingly important in recent years, partly

In the United States, as in Australia and Canada, disability supports and

In recent years, the Canadian federation has further decentralized — the provinces have assumed greater flexibility and control over health, postsecondary education, social assistance, and labour market training. Each of these policy areas directly affects the lives of Canadians with disabilities. The Canadian disability movement has raised public concerns about further decentralization because it views this move as a threat to national standards. As Torjman notes, since the enactment of the *Charter of Rights and Freedoms* (1982), disability policy has been viewed through a so-called “citizenship lens,” not simply from the perspective of a particular policy area, such as health or education. Thus, at a symbolic level the federal government’s role, at least outside Quebec, is seen as central in all disability policy discussions. In many respects, the federal government is viewed as a leader in protecting the citizenship rights of Canadians with disabilities.

At the same time, however, the federal government has sought to appease provincial concerns in the area of social policy by adopting a more decentralized, yet collaborative approach known as the Social Union Framework Agreement (1999). As Torjman notes, while we do not yet know the full impact of the Social Union Agreement, this new collaborative approach could positively benefit disability-related policy areas, such as attendant care. In addition, it could establish some principles aimed at national coordination in these areas. There is evidence of other collaborative measures in the area of disability policy, at least in principles and vision. In terms of concrete policy changes, however, very little progress can be measured. This has left the many persons with disabilities uneasy and fearful of potential changes.

Torjman focuses on three policy and program areas affecting Canadians with disabilities: *personal supports* which “enable persons with disabilities to live independently in the community”; *employment programs* comprised of vocational rehabilitation and training supports; and finally, *income programs* which provide financial assistance to workers on both a permanent and temporary basis. Other important policy areas include: human rights, transportation, and communication. This basket of programs is summarized in Table 3.

It is important to note that, while under stress, the Canadian system of universal health care has had a significant and positive effect on the lives of persons with disabilities. In many ways, access to health care has created a system of quasi-national standards. These standards, however, are quite unlike the standards created through the *Americans with Disabilities Act* (1990). Unlike the ADA, which established a set of enforceable national standards, the *Canada Health Act* (1984) has five, broadly conceived criteria affirming the

efforts by governments to rationalize roles and responsibilities in the disabilities policy and services area; and more emphasis on the part of governments at all levels to reduce their role in direct service provision and to become funders and/or purchasers rather than providers, of services, in line with government-wide microeconomic reforms and national competition policy.

The key Australian intergovernmental institutions — the Special Premiers' Conferences and the Council of Australian Governments — played a pivotal role in securing agreement between the Commonwealth and states/territories on a major national reform agenda for Disability Policy and Services Delivery. In 1991, leaders and representatives agreed to proceed with rationalization of roles and responsibilities of disability services; they signed the *Commonwealth/State Disability Agreement* which was the first national framework for disability services. It allocated responsibility to the Commonwealth for employment services and to the states for accommodation and support services. The *Commonwealth Disability Services Act* was passed, providing for Commonwealth funding to the states to cover services transfer and growth of services costs, and laying out the division of responsibilities. Complementary state legislation followed.

These reforms occurred while Australian governments were in the midst of vigorous efforts to reduce government spending and enhance Australia's international competitiveness, leading many to view with a degree of scepticism the alleged success of the current reform agenda in disability. Those with severe or multiple disabilities have often been moved out into the community without sufficient resourcing or provision of appropriate supports; with the result that, for women carers in particular, quality of life has deteriorated. Those with similar disabilities may be treated very differently under state and Commonwealth compensation schemes and those marginalized by structural changes such as labour market changes limiting employment opportunities, may be pressured to bear individual responsibility for their misfortunes.

Australia, then, burdened with a system of disability policy and programs which has been historically fragmented, has made real efforts in the last decade to create an integrated national approach to disability, using the central instruments of Australian executive federalism. Unfortunately, as Hancock notes, this thrust has occurred in the midst of neo-liberal restraint exercises and efforts to cut back on the roles and responsibilities of Australian governments, limiting, in the opinion of many, the practical effects of this laudable reform effort.

Role of Disability Organizations/Movement

Our comparison reveals that disability organizations play an important role in each of the five federations. The purpose and scope of these organizations, however, can be divided into two groups. First, in Australia, Canada, and the United States, “rights frameworks” have spawned a network of disability organizations considered to be a part of the disability rights movement. These organizations form a society-based political movement, and since the 1970s have pushed forward the disability domain by attempting to influence the direction of policies and programs. In Belgium and Germany, however, disability organizations do not appear to be politically salient, that is, associations that form an organized movement vis-à-vis the state. This is explained, in part, because the “social federal state” model coupled with the development of a mature welfare state has truncated the growth of disability rights organizations which focus on advancing individual civil and political rights. Instead, self-help and service organizations have prominence in the federations whose role is largely defined by assisting individuals navigate the complexity of services and supports.

In Canada, the federal government has played a central role in supporting the development of the Canadian disability rights movement. Since the late-1970s, the federal government has provided core funding to a broad spectrum of disability organizations. These organizations have, in turn, attempted to influence the direction of disability policy at the federal level. The movement has had some success in influencing the “ideas” associated with disability policy development. In particular, governments have adopted new policy frame-

Torjman notes that in the contemporary period, the Canadian disability community is focused on the impact of new intergovernmental regimes on disability programs and policies. The movement continues to advocate for a strong federal presence in the disability policy domain to ensure national standards. Canadians with disabilities are, as Torjman observes, "fearful that the federal government will abandon its leadership role in the name of constitutional conciliation and will be less prepared to take action that protects citizens' rights or introduce programs that will provide direct assistance to any given population."

Similar to Canada, Americans with disabilities view the federal government as providing an important leadership role in advancing and protecting individual rights. Thus, the US disability rights movement, while fragmented, is a significant national political force. Although a series of federal statutes paved the way for the legal precedents found in the ADA, it was the disability rights movement that created the political force necessary to ensure its passage. A broad coalition of disability organizations, as well as the labour and women's movement were important actors in pressuring Congress and the White House for its passage.

At the national, state, and local levels, the movement is recognized politically. It plays an important role in monitoring and enforcing the implementation of the ADA. Moreover, the legal wing of the disability movement is an active participant in presenting the US Supreme Court with briefs on important, precedent-setting cases. As more and more cases are litigated concerning disability issues in employment, transportation, and public accommodation, this is becoming a central function of the American disability rights movement.

The picture in Germany is very different from that which prevails in North America. In North America, one has the sense of the disability community confronting the state — federal, state, and municipal governments — in an effort to have their needs addressed. In Germany, the state is the regulator and ultimate back stop, but the bulk of the management and administration of the system of support is done by intermediary institutions: large-scale insurance funds, charitable organizations, and to some extent self-help groups. Thus, disability groups seem, to a greater extent than in Canada and the United States, to be part of the system rather than a force outside the system applying pressure on it. In addition, the link between self-help groups and political parties appears to be much closer than is the case in North America.

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[9] Sandra Carpenter, “Disability: Towards the Transparent,” *FUSE*, 14, 3 (1991):25.

[10] Evelyn Kallen, *Label Me Human: Minority Rights of Stigmatized Canadians*

[21] For a more detailed discussion of DISTAT, see *United Nations Disability Statistics Data Base, 1975-1986: Technical Manual*, Statistical Papers, Series Y, No. 3. (New York: United Nations Publication, 1990).

[22] See *United Nations Disability Statistics Compendium*, Statistics on Special Population Groups. Statistical Papers, Series Y, No. 4 (New York: United Nations

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Organization, *Is the Law Fair to the Disabled?* WHO Regional Publications, European Series No. 29. (Copenhagen: World Health Organization, 1998), pp. 341-42.

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In Australian disability policy, the 1980s and 1990s saw a raft of reforms aimed at a national approach. This focused on better coordination between tiers of government dealing with disability, along with better coordination between various government departments at Commonwealth, state, and local government levels and the non-governmental sector. Disability is variously defined, but generally refers to a range of physical, intellectual or social conditions, that may be encompassed by World Health Organization (WHO) definitions of disability, impairment or handicap.[1] In terms of policy provisions and service needs, this includes a diverse range of people, including the infirm aged, those incapacitated for work because of injury or illness, and those unable to work or in need of services, due to various forms of incapacity. Reforms during the 1990s brought a more coordinated approach to disability services and active labour market policies for those previously deemed incapacitated for work; along with supports for independent living for the infirm aged and disabled, and their carers.

In intergovernmental terms disability policy is a complex and challenging area. By its very nature, it is intersectoral, involving all levels of government, both for-profit and not-for-profit non-governmental sectors; making demands on a range of program areas: in particular, income security, housing, health, community services, workers' compensation, aged care, child care, transport, and labour market programs.

Recent reforms to disability policy occurred in a broader policy context of deinstitutionalization and community integration of aged care and the care of those with mental illnesses and intellectual and physical disabilities. Over

block-grant model with total devolution to the states (favoured by the states) and a functional split with shared responsibilities, Australian governments opted for the latter.[6] The 1991 *Commonwealth-State Disability Agreement* (CSDA) was a watershed in intergovernmental relations on disability. It made the Com-local government, is set up under state constitutions and laws but has no formal recognition in the Australian Constitution.[7] Described by Emy and Hughes as "a perennial source of tension and debate in Australian politics," federation, they say, was a "pragmatic compromise between the need to cede just enough power to the centre to create a viable Commonwealth government, while leaving the States with sufficient responsibilities for them to agree to join the new union."[8] The founders of Australian federalism intended it would preserve a regional form of government in which states are free to pursue their own policies and the Commonwealth acts "where national interest requires national uniformity."[9] Commenting on Australian federalism, Galligan argues that rather than separate and distinct governments with separate jurisdictions and policy responsibilities, the "basic principle of design is concurrency, with the Commonwealth and the States having, for the most part, shared roles and responsibilities in major policy and fiscal areas," with overlap and duplication "grounded in the underlying Constitutional system."[10] "By world standards, Australian federalism exhibits a very high degree of concurrence."[11]

Thus, given that very few powers are heliaustof 1xclusiely by the Commonwealth government,[12] Australian federalism does not reflect a simple hierarchical model. The relationship is in the main, concurrent with only some separate and eclusive areas of jurisdiction. Regarding these areas of Commonwealth jurisdiction, of relevance to disability policy, the Commonwealth has power oer social-security matters: disability (formerly invalid) pensions and age pensions (section 51(xxiii)) and over-provision of maternity allowances, widows' pensions, child endowment, unemployment, benefits to students and family allowances (section 51(xxiiiA)).

For historical reasons, the Commonwealth government has control over income taxation, the major source in Australia of government revenue. Although the Commonwealth's taxation power is a concurrent power under section 51 (ii) of the Constitution, the Commonwealth took over the levying of personal income tax during World War II, and a uniform tax scheme came into effect in 1942. After 1946 the Commonwealth decided to continue uniform taxation with tax reimbursement grants to the states; a practice that continues to the present day.

Regarding concurrent areas, section 51 of the Constitution of Australia lists 40 subjects or heads of power on which the Commonwealth Parliament may pass legislation, but in which it exercises power concurrently with the states. However, Commonwealth law prevails in instances of conflict. Concurrency brings its own challenges. As Painter observes, "there are no constitutionalised mechanisms for pooling governments' law-making or executive authority to deal with these shared functions. Practical exigencies in fulfilling constitutionally sanctioned functions bring governments together, but at the same time the Constitution sets them apart as distinct political entities. This is one reason for the rich complexity of administrative and political machinery of intergovernmental relations."[13]

Financial: Commonwealth Transfers to the States

Of the five provisions in the Constitution that were set up at the time of federation to deal with the consequences for states of uniform Commonwealth duties, only one, section 96, is still operative and all Commonwealth/state transfers are made under section 96. This section permits the Commonwealth to give

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further reducing aggregate SPPs as part of the reform agenda outlined under the 1999 Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations.

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and have the capacity to authorize exemptions from the *Trade Practices Act.*[35] These committed the governments to implement significant reforms, aimed at breaking down barriers to competition within and between public and private sectors, starting with electricity, gas, and road transport.

COAG has dealt with a wide range of issues including microeconomic reforms, social policy, environmental issues, intergovernmental administrative issues, and regulatory reform issues. Its effectiveness in implementing intergovernmental reform on an unprecedented scale is attributed to the commitment of Labor prime ministers (Hawke and Keating) and senior ministers within these governments, to the reform agenda and the strategic placement of COAG's Secretariat within the Office of Prime Minister and Cabinet.[36]

Painter points out that although the Commonwealth could go some way on economic reform, constitutional limits mean that states control large sections of essential industry and infrastructure (such as housing, services, transport, and energy) and are thus an integral partner in implementing national reforms. States often "possess both the jurisdictional competence and the administrative capabilities" to implement national agendas.[37] From a states' perspective, COAG is seen as a potential "circuit breaker" on Commonwealth centralization of government processes and an ongoing forum separate from traditional Premiers' Conferences. However, the Commonwealth was often seen as setting the agenda: given "its dominant fiscal position and its advantage in occupying the high ground of 'the national interest."'[38]

COAG's success might be perceived as uneven, emphasizing

Post 1996: The National Commission of Audit

Given its centrality to the national reform of intergovernmental relations under the Howard government, elected in 1996, the National Commission of Audit merits brief examination. The report of the Commission expressed its concerns about the involvement of multiple levels of government, calling for a critical review of these arrangements.[40] The report was critical of government management and reinforced the need for greater productivity, accountability, efficiency, and "value for money." This coincided with the Howard government's commitment to small government and neo-liberal governance, realized in its downsizing of the Commonwealth Public Service from 350,400 to 244,200 people between 1996 and 1999 (a negative growth of –30.3 percent compared to cuts of –7.9 percent under Labor's last four years of government from 1992 to 1996).[41] The National Commission of Audit acknowledged that it may be impractical to cede responsibility entirely to one level of government. It argued that in such cases the Commonwealth could be required to set and monitor national standards with the states delivering the program services in line with these required standards. The Commission observed, however, that even with clear purchaser-provider delineation, it would be difficult to avoid pressures for state involvement in standard-setting or requests for additional funding and it would also be difficult to avoid Commonwealth involvement in program delivery as a way of verifying costs. The Commission concluded that there is no easy solution to this problem, but argued that where practicable, it is best to avoid multiple levels of government involvement. It therefore pressed for a review of all programs involving multiple levels of government.

The Commission identified cost-shifting as a major problem and argued that the allocation of related programs over different levels of government is a design defect that facilitates cost-shifting and even promotes incentives to engage in such practices. Accordingly, it put forth some program design principles to reduce cost-shifting.[42] It also laid down principles to apply to Commonwealth-state funding arrangements:

- for programs entirely the responsibility of the states, funding should be in the form of GPPs, allowing the states allocative discretion between specific programs;

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- where Specific Purpose Payments are considered necessary, the Commonwealth should focus on specifying policy objectives and establishing improved accountability frameworks and give the states greater freedom in deciding program delivery. This would facilitate a reduction in the number of SPPs by grouping together or “broadbanding” SPPs which are directed at broad outcomes for particular groups. This would reduce administrative duplication, overlap, and inefficiency.

The National Commission of Audit was thus sympathetic to states’ claims about the costs of duplication and the desirability of clear allocation of responsibilities; opting for an arm’s-length role for the Commonwealth of setting national frameworks rather than delivering services itself. It took the strong view that the Commonwealth should not be involved in service delivery and thus set the scene for the radical outsourcing of government services.

As shown below, considerable effort to refine intergovernmental relations on disability policy has followed from the 1990s onwards.

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Australians with a disability constitute a significant proportion of the Australian population and are a diverse group with regard to disability and need for, and use of, services.[44] Disability groupings (categorized on the basis of underlying impairment, disabling condition or cause, drawing on WHO categorizations) are used in Australia to differentiate activity restrictions and needs; with the main categories being: psychiatric, intellectual and other mental, sensory and physical.[45] Physical disabilities dominate, comprising 14.4 percent of all Australians; followed by sensory disabilities (2.1 percent), disabling conditions affecting intellectual abilities (1.4 percent), and psychiatric disabilities (1.4 percent).[46]

In 1998, 3,610,300 people (out of a national population of approximately 18.6 million) reported a disability; with 53.8 percent male and 46.2 percent female and 66 percent aged less than 65.[47] At this general level, more than half reported they did not need assistance, many were in the labour force and most of those needing assistance received it from their families. Rates of profound and severe activity restriction were lowest for those aged 15 to 34 and increased from 35 onwards, with higher rates of profound restriction for those over 70.

Between 1993 and 1998, the proportion of the total population reporting profound or severe core activity restriction had increased from 2.1 to 3.4

percent. Although this may partially reflect increased identification of people with disability, other explanations focus on population growth, the aging of the population, more people with disabilities (e.g., disabilities acquired through accidents) the shift toward community-based services rather than institutional care for older people and young people with a disability, pressure from early discharge in the acute care (hospital) sector and some changes in definitions used by the Australian Bureau of Statistics.[48] Rates of disability among indigenous Aboriginal and Torres Strait Islander peoples are higher (about double) those for the population generally and these groups have lower life expectancy than other Australians. However, rates of severe or profound disability are lower than expected for people from non-English-speaking backgrounds — especially the more recently arrived. This factor is related to immigration screening.[49]

Over the last two decades, the labour force participation of people reporting a disability has improved, although it remains lower than for the non-disabled population.[50] Women with disabilities earn less than their male counterparts, are less likely to be employed and have less access to labour market programs.[51]

The consideration of disability takes place within the context of population change, changes in aged care residential policy, increasing size of the potential target group, the aging of the target group, and the increasing number of Australians with disabilities living in community settings.[52] With aged care, these concerns are magnified in light of population projections of absolute and relative growth of those aged over 65, from 10.5 percent of the population in 1991 to 22 percent in 2041. Various surveys over time put the age standardized prevalence rate of “profound or severe” disability (used to establish dependency among the elderly) at 17 to 18 percent averaged over the 65 plus age groups. However, inferences that those over 65 represent a drain on the public purse require closer scrutiny. The more crucial variable is the proportion aged 80 or over, who are at greater risk of more costly illness and infirmity. The number of Australians aged over 80 will more than double in the decade from 1986 to 2006; with their proportion of the population increasing from 2 to 4 percent.[53] The other salient point is that gender combined with age, is an important determinant of the likely need and use of formal and informal care. Older women are more likely to enter residential care than older men — a probability of 0.76 for women and 0.48 for men aged over 80.[54] This reflects the fact that older men are more likely than women to have a spouse who will care for them at home. At the same time, increased participation of women in the workforce has diminished the family’s capacity to provide high levels of unpaid care. Family fragmentation, geographic separation, and increasing female participation in paid work contribute to this diminished capacity and to increased demands on government for provision of support services.

Carer-focused policy is becoming more prominent as the contribution of the unpaid caring of family and community is realized. The 1998 Australian Bureau of Statistics survey of Disability, Agency and Carers recorded 435,527 people were primary carers for a person with disabilities, requiring assistance on a continuing basis. The majority were women (71 percent) and about one in five was aged over 65. Just over half those cared for were over 65 — indicating that disability and caring needs are not just concentrated among the aged.[55]

In terms of income support for people with disabilities, concerns about increasing numbers receiving Invalid Pensions led to its replacement by the Disability Support Pension in 1991, which supported 577,000 Australians in June 1999 (about 15 percent of the 3.7 million people reporting a disability). Rather than 85 percent permanent incapacity for work requirement for the Invalid Pension, the Disability Support Pension requires a minimum 20-percent impairment and an inability to work for at least 30 hours a week at full wages for at least the next two years. This is referred to as the "continuing ability to work" test. This means that significant numbers who fulfil the impairment criteria do not receive the pension as they have a significant capacity for work. However, the steady increase in pension recipients post-1991 indicates the role of broader factors: in particular, the impact of structural changes to the labour market marginalizing unskilled, semi-skilled, and older workers. At the same time, the increased employment participation of women has decreased the family's capacity to provide unpaid care. Even given an aging population, many see labour market factors as the main driver of the increasing proportion of people on income support due to disability. Prominent among new claimants for Disability Support Pensions are males aged 55 to 64, with musculo-skeletal impairments resulting from prolonged years of manual labour. At the point of writing, compared with unemployment benefits, Disability Support Pension payments give higher remuneration (as they are indexed to average weekly earnings rather than the consumer price index), they are subject to an income rather than the stricter asset test, they are subject to a taper to the assets test (rather than a straight cut-off), benefit from a Pensioner Concession Card, are not deemed to be taxable income (other income support payments are taxable), and avoid the activity or work tests applied to the unemployment New Start Allowance.

The Commonwealth Welfare Review expressed concern about rising expenditure on disability-related income security.[56] Although evincing agreement

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policy debates that the focus on serving the increasing numbers of aged will further marginalize younger people with disabilities. However, it should be noted that given well-documented unmet need for services, these figures are indicative of services and service recipients rather than reflecting needs of the wider population of those with disabilities.

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Funding and Administration

Services for people with disabilities are funded by the following means. (i) Grants from the Commonwealth. Current Commonwealth-state expenditure on disability includes SPPs to states/territories. This includes the HACC program (with 60/40 Commonwealth/state funding) and payment for aged care assessment. (ii) Expenditures by the Commonwealth via the Department of Health and Family Services, under the Disability Program. These include expenditures on employment assistance (an exclusive Commonwealth responsibility), transfer payments under the CSDA;[61] access and participation programs and hearing services.[62]

In addition, other Commonwealth expenditure of a significant nature includes payments of income support in the form of Disability Support Pensions and other payments. (iv) Commonwealth government Specific Purpose Payments direct to local government authorities. (In 1998-99 approximately $150,000 was paid by the Commonwealth to provide services for people with disabilities.[63] (v) Expenditures by state and territory governments; in particular, Injury Compensation Schemes, accommodation and other support, and Home and Community Care services; and (vi) Expenditures by local government and the non-governmental sector (as outlined in Table 1). Funding of various services for people with a disability is complex and relies on a mixed

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or disability service provision; and states differ on spending patterns on disability and on the proportion of expenditure allocated to disability-related services.

The CSDA

- greater expertise and focus by governments;
- capacity for joint governmental approaches to policy, planning and funding; and
- a movement to outcomes approaches.

A number of new problems have emerged since the first Agreement. These include:

- gaps between employment and accommodation service systems;
- a lack of development of service types such as non-employment services and advocacy;
- access inequities across jurisdictions; and
- less cooperation and strategic planning between governments, especially in ways to meet the growing demand for support.

The main issues which commanded broad assent in community forums and submissions following the *Interim Report* were:

- concern about the extent of unmet need for services and supports for people with disabilities;

various forms of government-funded activity necessary to support people with disabilities and their primary carers without which neither of these groups would be able to maintain a reasonable quality of life or have access to the opportunities and environments available to other Australians."[68]

As outlined in the review, the broad aims of the CSDA were (i) to establish a framework for the rationalization of administration of disability services by the Commonwealth and the states, and (ii) to develop national systems of integrated services to ensure access for people with disabilities to appropriate services which meet their individual needs.[69] However, the review is critical that the focus has been almost entirely on the former; with significant progress and a national approach with networked delivery through public, community and private service arrangements, emphasizing "accountable, contestable and cost-effective outcomes." The review goes on to state that "the complexity of this service area is probably unique. What other service area demands the same capacity to work across a relatively large number of distinct program areas as well as many provider organisations of different sizes and types?"[71]

The CSDA funded 6,174 services nationally in 1998: with 41 percent accommodation support services, 22 percent community support services, 14 percent employment support services, 14 percent community access services, and 8 percent respite services for carers of people with a disability."[72]

Given the breadth of disability policy and service provision, the next section focuses on three brief case studies: employment assistance, Workers' Compensation, and Home and Community Care. The issues involved with a Commonwealth funded and delivered program, an area of state jurisdiction, and a joint Commonwealth-state funded program will be discussed.

Case Study 1: Employment Assistance Program for People with Disabilities

Under Commonwealth-State Disability Agreements the Commonwealth is responsible for employment services for the disabled (and the states for all other services including accommodation services). Special assistance to facilitate the employment of people with a disability was the subject of recommendations of the 1995 Baume report and an integral part of Labor's *Working Nation* active labour market policy (and before that, Commonwealth Disability Services).

However, from 1 May 1998, in line with National Competition Policy, the Commonwealth government moved into a competitive market for the delivery of all government-funded employment services, including services for those with a disability. The government's Commonwealth Employment Service (employing over 10,000 workers) was terminated and replaced by a new corporatized body, Employment National, which was established to compete with both commercial and not-for-profit non-government providers. All job-placement services wer

Case Study 2: Workers' Compensation – A State Responsibility

Services for injuries in the workplace are a state responsibility, whereas Disability Support Pensions are a Commonwealth responsibility. On the face of it, whether responsibility for looking after a disabled person is a state or a Commonwealth matter should be straightforward; depending on whether or not the injury was work-related. However, this overlooks problems in determining whether an injury is work related (as e.g., with slow onset of injury or

It relies substantially on a partnership model of government funding that in turn depends upon existing (women's) informal support networks in light of government's deinstitutionalization of aged and disability care. HACC funds are divided between the eight states and territories and then distributed by over 2,000 provider organizations nationwide.

Government policy has been driven by the twin objectives of the social benefits of maintaining people within the community and of cost-savings from transferring care of people with disabilities, the frail, and the dependent aged from long-term residential care to care within the community. Government has attempted to limit growth in nursing home bed numbers and has promised increased funding for community services; although unmet need for services for those with disabilities and their carers and government cuts to social and community services are sensitive issues.[83]

Some of the problems and policy challenges raised by the focus on HACC are outlined below and include shortfalls in appropriate levels of funding; the impact of tighter targeting, but increasing levels of unmet need; access to services; the impact of contracting-out and carers' issues.

Short Falls in Appropriate Levels of Funding

In Australia, the HACC program has not delivered the promised growth, due to lack of appropriate funding; although the 1998 agreement provided some recognition of population and wage-cost growth. At the start of the program, annual growth of 20 percent was promised, a rate that has not been met for the last ten years. The states have not met the matching requirements and the Commonwealth has continued to reduce its allocation.[84] The Commonwealth is committed to retaining a growth rate of 6 percent per annum in HACC funding, but this is partially funded by increased user fees and is well below the promised annual growth rate.[85] There is also the argument that funding for special new programs (such as the Staying at Home Package) has been at the expense of additional growth funds for HACC. However, there has been uneven regional and local distribution of funding; problems as a result of funding

were in critical need of accommodation, accommodation support or respite services; 7,700 people with a severe and profound disability had a carer over the age of 65; and 7,000 carers of people with severe and profound disabilities said that they were unable to access respite care.[95] Significant under-use characterizes people with disabilities from non-English-speaking backgrounds and their carers; and further work is necessary into the needs of Aboriginal and Torres Strait Islanders with disabilities.

In terms of drawing out the broader implications of increased targeting, HACC both illustrates the move toward greater strategic control at the centre, and the complications and potential hazards of service rationalization. Clearly, increasing targeting is leading to bigger holes in the social safety net; with those clearly in need missing out on services, resulting in greater pressure on the community sector.

Access to Services

The main official criterion for access to both institutional and community serwhere the Kennett government mandated that 50 percent or more of services were to be contracted-out by June 1997 under local government Compulsory Competitive Tendering reforms).

Contracting-out raises issues of variations in standards, commitments, and quality of care, as state government funding flows to local government which then outsources service provision. Contractualism also shifts the goal posts in relation to consumer complaints and quality of service issues, with the erosion of the once essential building blocks of service quality (integration, cooperation, support, and a philosophy of public service and communal benefit). Contractual agreements rely on pre-specified outcome measures and performance appraisals, which frequently favour easily measured quantitative dimensions. Clear specification of outcome measures in the aged and disability care areas is difficult, given the varied client mix, the range of chronic and acute conditions, and varied formal and informal sector services.

At a general level, privatization and contracting-out have significantly shifted the nature of government community care programs and practices from public provision to market management under contractualism with declining budget allocations.[96] While competition may bring value for money, flexibility and choice, this may be at the expense of quality service outcomes and respect for rights and entitlements (such as access and equity considerations), service reliability, standardized quality and geographical availability, of home and community care.[97]

Findings from the *Compulsory Competitive Tendering (CCT) Research Project* on mainly women carers and service users of local government aged and disability services in the State of Victoria, found that contracts were won at the expense of workers' wages and conditions; there were minimal public consultations regarding the introduction of CCT; and some councils referred clients to private (fee-paying) services which they say they cannot afford. Finally, some services were reduc[(c(o)0(e intr)7.)62.]TJ 0 -rds“ty112n.Tw (resuction on th
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community-based services. The state's dependence on families and in particular, on women as carers, is increased with the impact of changes to state-based provision of health care, such as hospital early discharge policies and "hospital in the home" in the acute-care sector and the shift from residential to contracted and privatized aged and community care services. Allocations to HACC and disability services fall far short of meeting a significant fraction of demand.

The costs to carers are often considerable. Economic costs include lost earnings and additional expenses, among others.[98] Over one-third of Australian carers give up paid employment in order to look after an elderly relative.[99] There are the costs of providing extra heating, transport, laundry, food, aids such as grip rails and bath chairs, and other house modifications. It is important to remember in this context that it is the very poorest elderly people who live with their adult children and, given income patterns in families, it is likely that their children will also be at the lower end of the income spectrum.[100] The costs of caring may well involve further pushing carers into poverty.[101]

Community services provide minimal support to family carers. Although the average elderly home-care patient living with his or her family is more disabled than the average frail older person living alone, two of the main forms of domiciliary care — home help and meals on wheels — are often not available to people living with relatives.

A report from the Victorian component of a national study of carers highlighted the problem of jargon-laden information; it also noted the inaccessibility to sand commom thdand outer suburban carers and persisting gaps in suitable respite options f-ers. Noting some of the positive initiatives of a regional carer respite sand co infrastructure, recent neo-liberal reforms, local government amalgamations, increasingly restrictive targeting, cost-containment, and user pays policies "have seemingly all acted to constrain the beneficial impact of the various carer initiatives."[102]

As the review of the CSDA obsanded, in a sector that is under-resourced, complex, and heterogeneous, it is easy to be overwhelmed by the challenges of turning it into a better-managed and fairer service delivery system. As Lindsay obsandes, the disability sand commarea is characterized by duplication, oderlap, and gaps in the provision of, and access to, needed serv com.[103] State/territory and Commonwealth governmentmmare responsible f-unity sand co programs established over many years, which hade edolved in an ad hoc manner in response to needs and demands rather than coherent planning. "The result is a complex, fragmented maze of serv com, each with different

Duplication between governments can undermine effectiveness. Reviews of the CSDA have pinpointed the need for greater flexibility and coordination in service provision, lack of adequate planning, the need to improve assessment and service targeting; overlap and gaps in services, cost-shifting, lack of consistent data across the system, and lack of coordination between related services; significant inequities in service provision between regions and states; and failure to meet demand.[107]

Increasing consumer co-payments are concerning. One area where consumer out-of-pocket expenses are substantial is aids and appliances: with consumers expending over half the costs.[108] With approximately one-fifth of the population with a disability of some kind, this suggests consumers meet a significant proportion of expenses related to dealing with their disabilities.

Disability policy lacks a holistic approach. The CSDA tends to compartmentalize needs and responses with the consequence that services lack integration and inter-agency cooperation and thus waste resources and compound inefficiency. Some states such as New South Wales have proposed the reform thrust of the Coalition government in relation to welfare policy reform and the impact of the new goods and services tax in force from 1 July 2000.

Welfare Reform

Both sides of politics have pursued an economic agenda oriented to smaller government and curbs on social spending; although the differences between Labor and Coalition governments in expenditure growth in health, education, and community services are evident.

security payments."[116] The disability lobby has responded with the reposte that the proposed "participation support" framework for welfare reform needs a major injection of funding from the Commonwealth to achieve participation support.[117] The welfare sector has been vocal in its criticism of the review as victim-blaming and lacking in analysis of broader issues of social exclusion and inequality and poor jobs generation. The review also comes at a time of uncertainty regarding the short and longer term impacts of taxation reform with the implementation of a new goods and services tax (GST).

The New Goods and Services Tax

In terms of Commonwealth taxation, excise duties covered by section 90 of the Constitution, have been interpreted to include broad-based consumption or general sales taxes. This enabled controversial passage of federal legislation in 1999 to implement a new national GST, operational from 1 July 2000.

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In terms of driving a national agenda on disability policy reform, Special Premiers' Conferences and COAG played a pivotal role in securing agreement between Commonwealth and states/territories on a major national reform agenda for disability policy and services delivery. In 1991, leaders and representatives agreed to proceed with rationalization of roles and responsibilities of disability services. There followed state legislation complementary to the *Commonwealth Disability Services Act* agreement about Commonwealth funding to the states to cover services transfer and growth of services costs and a division of responsibilities. The Commonwealth took full responsibility for employment and training and placement services for people with disabilities and the states took responsibility for accommodation support, information services, independent living training, recreation services and respite care; with joint responsibility for planning, priority-setting, and program evaluation.

These changes have come at a time of government undergoing monumental reforms under managerialist administrative changes and microeconomic reform agendas, designed to reduce government spending, and to enhance Australia's international competitiveness. This has entailed a government focus on re-defining policy responsibilities between various levels of government; government attempts to shift responsibilities back onto individuals in ways that are perceived by critics as punitive; reducing Commonwealth involvement in direct service provision by transferring services to the states/territories and to the community sector and to families; and the pursuit of microeconomic reforms based on a purchaser-provider split, contracting-out of services to the private sector, user charging, and public subsidy of privately provided services.

The problems and challenges outlined above are viewed by many with a degree of scepticism about the success of the current reform agenda. Those with severe or multiple disabilities have often been moved out into the community without sufficient resourcing or provision of appropriate supports; with the result that for women carers in particular, quality of life has deteriorated. Those with similar disabilities may be treated very differently under state and Commonwealth compensation schemes and those marginalized by structural changes such as labour market changes limiting employment opportunities, may be pressured to bear individual responsibility for their misfortunes. Commentators charge not only government with responsibility, but criticize service providers, advocates, and peak bodies for thwarting some of the attempts at innovation.

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[1] Apart from references to overseas useage, the term disability is preferred to handicap in Australian policy discussions. Australian Institute of Health and Welfare (AIHW), *Australia's Welfare 1995* (Canberra: Australian Government Publishing Service, 1995), p. 240.

[2] Brendon Gleeson, "Disability and Poverty," in *Australian Poverty: Then and Now*, ed. R. Fincher and J. Nieuwenhuysen (Carlton: Melbourne University Press, 1988), pp. 316-17.

[3] Commonwealth Department of Family, *The Future of Welfare in the 21st Century: What is the Welfare System and Who Uses It?* (Canberra: Commonwealth Department of Family, 1999); AIHW, *Australia's Welfare 1996* (Canberra: Australian Government Publishing Service, 1996); AIHW, *Australia's Welfare 1997* (Canberra: Australian Government Publishing Service, 1997); AIHW, *Australia's Welfare 1999* (Canberra: Australian Government Publishing Service, 1999); Anna Howe, *HACC Status Report for Victorian Local Government* (Melbourne: Municial Association of Victoria, 2000).

[4] The Australian Commonwealth comprises six states (Victoria, New South Wales, Queensland, Western Australia, South Australia, Tasmania) and two Territories, the Northern Territory and the Australian Capital Territory. In subsequent discussion, reference to states will be taken to include territories.

[5] Introduced in 1980, Invalid Pension was replaced by the Disability Support Pension in 1991 under the Labor government's Disability Reform Package.

[6] Martin Painter, *Collaborative Federalism: Economic Reform in Australia in*

[10] Brian Galligan, “What is the Future of the Federation?” *Journal of Public Administration*

[22] General Revenue Assistance is paid as:

Financial Assistance Grants (FAGs) were put in place in 1942–43 to compensate states for Commonwealth wartime levying of income taxation. The level of grants is indexed to annual movements in the consumer price index and projections of population as at 31 December each year.

Special Revenue Assistance Grants to the Northern Territory and the Australian Capital Territory (0.07 of general revenue assistance); and National Competition Payments are conditional on states' compliance with the obligations of the 1995 COAG Agreement (2.3 percent of general revenue assistance).

General revenue assistance to the states comprised 51 percent of total payments to the states in 1998–99 (Budget Paper No. 3, Table 6).

[23] General Revenue Assistance comprises payments to the states with grant distributions based on principles applied by the Commonwealth Grants Commission. Financial Assistance Grants (FAGs) account for 97 percent of general revenue assistance. Horizontal fiscal equalization principles are embodied in the per capita relativities recommended by the Commonwealth Grants Commission, with the aim of improving equity for all Australians (see Costello, *Budget Strategy and Outlook 1997–98,* Budget Papers Nos. 1 and 3). States are not required to use the funds on specific areas of government activity; however, the Commonwealth can stipulate that states meet certain conditions for the receipt of funds. Under the 1995 Agreement on National Competition Policy and Related Reforms, the Commonwealth agreed to maintain a real per capita guarantee of FAGs on a rolling three-year basis, subject to states' progress in the implementation of National Competition Policy, monitored by the National Competition Council. Under the agreement, states are eligible for three tranches of ongoing National Competition Payments; paid on an equal per capita basis, with each state's payments conditional upon the National Competition Council's review of satisfactory progress on the implementation of specified reform conditions in the agreement (see Budget Paper No. 3, p. 12).

[24] Ibid.

[25] James, *Commonwealth Assistance to the States*

[28] Painter, *Collaborative Federalism*, p. 153.

[29] By way of brief description of the workings of the Australian political system, Australia has a bicameral system of government with upper and lower houses. Framers of the Australian Constitution saw the Senate as a means of protecting state/territory rights from being dominated by political party influences. But as argued by numerous commentators, in reality, the Senate does not function as a states/territories' house, see J. Warden, "Federalism and the Design of the Australian Constitution," Discussion Paper No. 19. (Canberra: Federalism Research Centre, 1992). For policies to become law, bills must achieve a majority in the Senate as well as in the lower House of Representatives.

[30] FSRC, *Australian Federalism*, p. xxi.

[31] Hawke's New Federalism is important for its commitment to responsiveness to local needs and the needs of regional diversity, delivery of quality cost-effective services (removing duplication between various government levels), a competitive national economy based on "competitive federalism," a guaranteed revenue base that matches states' and territories' expenditure responsibilities and a federation that is accountable through Parliament, see Leader's Forum, *Communiqué* (Canberra: Commonwealth of Australia, 25 November 1994). Four principles mark Labor Prime Minister Hawke's New Federalism: the Australian Nation principle; the subsidiary principle; the structural efficiency principle; and the accountability principle. See Kenneth Wiltshire, "The Directions of Constitutional Change: Implications for the Public Sector," *Australian Journal of Public Administration*, 55, 1 (1996):95-110. While these reforms are mainly discussed as cooperative federalism, Painter notes that recently, state government leaders have articulated a model of "competitive federalism" as a way of justifying their autonomy as a defence against Commonwealth domination of collaborative institutions, Painter, *Collaborative Federalism*, p. 7.

[32] Martin Painter, "The Council of Australian Governments and Intergovernmental Relations: A Case of Cooperative Federalism," *Publius*, 26 (1996):101-20.

[33] F.G. Hilmer, *National Competition Policy: Report of the Independent Committee of Inquiry* (Canberra: Australian Government Publishing Service, 1993).

[34] E. Harman and F. Harman, "The Potential for Local Diversity in Implementation of the National Competition Policy," *Australian Journal of Public Administration*, 55, 3 (1996):111-17.

[35] Governments signed the *Competition Code Agreement,* the *Competition Principles Agreement,* and the *Implementation and Funding Agreement,* commencing 1997–98. These were consistent with the six areas identified by the Hilmer report requiring action to remove barriers to competition in the Australian economy: limiting anti-competitive conduct of firms; reforming regulation that unjustifiably restricts competition; reforming the structure of public monopolies to facilitate competition; providing third-party access to certain facilities essential for competition; restraining monopoly pricing behaviour and fostering "competititve neutrality" between government and private business when they compete. See Hilmer, *National Competition Policy*, p. xvii.

[36] Prime minister and Cabinet played a central role in providing chairs of committees and working groups, drafting reports and communiqués and keeping track of business. See Painter, *Collaborative Federalism*, p. 67.

[37] Ibid., p. 6.

[38] Ibid., p. 89.

[39] P. Hendy, "Intergovernmental Relations," *Australian Journal of Public Administration*, 55,1:111-17, p. 112.

[40] National Commission of Audit, *Report to the Commonwealth/National Commission of Audit* (Canberra: Australian Government Publishing Service, 1996).

[41] L. Hancock and S. Cowling, *A Commitment to Public Service? Trends in Commonwealth Social Expenditure and Employment in the 1990s* (Melbourne: Centre for Public Policy, University of Melbourne, 2000), p. 14.

[42] National Commission of Audit, *Report*, pp. 47-48.

[43] Funding for disability services under the Commonwealth-State Disability Agreement is the major program relevant to disability.

[44] Disability is defined as those "who have any restriction or lack of ability (because of impairment) to perform an action in the manner or within the range considered normal for a human being; and hardship is differentiated into profound, severe, moderate and mild — indicating different levels of need," see Australian Bureau of Statistics, *Disability, Ageing and Carers: Summary of findings*, Cat. No. 4430.0. (Canberra: Australian Government Publishing Service, 1999). Disability referred to the presence of one or more of 17 restrictions, limitations or impairments identified by respondents. Australia follows international classifications of disability; recognizing the three dimensions of disability in the *International Classification of Impairments, Disabilities and Handicaps* followed by the WHO: body structure and function, activity and participation, AIHW,

residents according to care needs and the use of accommodation bonds, charges, and means-tested fees, see AIHW, *Australia's Welfare 1999*, pp. 208-09, 225.

[53] AIHW, *Australia's Welfare 1997*, p. 241.

[54] Ibid., p. 251.

[55] AIHW, *Australia's Welfare 1999*, p. 208.

[56] Commonwealth Department of Family, *The Future of Welfare in the 21st Century*; Women with Disabilities Australia.

[57] Australian Council of Social Services (ACOSS), "Reforming Welfare," *Impact*, February 2000.

[58] AIHW, *Australia's Welfare 1999*; see Appendix, Table 1 for a summary of formal services in Australia relevant to people with a disability and the sectors that provide funding and/or services; also see AIHW, *Australia's Welfare 1997*; Howe, *HACC Status Report*.

[59] Anna Yeatman, *Getting Real,* final report of the review of the Commonwealth-State Disability Agreement (Canberra: Australian Government Publishing Service, 1996).

[60] AIHW, *Australia's Welfare 1999*, p. 227.

[61] Commonwealth-State Disability Agreement (CSDA) funding goes to a mix of state and local governmental and non-governmental auspices. For every $1 of Commonwealth government transfers, state and territory governments received 62 cents; NGCSOs, 37 cents and local governments less than 1 cent, AIHW, *Australia's Welfare 1999*, p. 18.

[62] Department of Finance and Administration, *Portfolio Budget Statements 1998–99*, p. 199.

[63] Costello, *Budget Strategy and Outlook 1997–98,* Budget Paper No. 3, Table A6; Table 5 in the Appendix shows the 1998–99 Commonwealth budget expenditures on the above items.

[64] AIHW, *Australia's Welfare 1999*, p. 16.

[65] Yeatman, *Getting Real.*

[66] Ibid., p. 56.

[67] Ibid.

[68] Ibid., p. xiv.

[69] Ibid., ch. 5.

[70] Ibid., p. 99.

[71] Ibid., p. 100.

[72] AIHW, *Australia's Welfare 1999*, pp. 362-63.

[73] Tony Kryger, *Research Note No. 26 1997–98* (Canberra: Parliament Library, Parliament of Australia, 1998).

[74] Under the first three years of the Coalition government from 1995–96 to 1998–98, Commonwealth outlays on vocational and other education services only rose by 8.1 percent compared to the growth in funding of 66.2 percent under the last four years of the Labor government from 1991–92 to 1995–96. See Hancock and Cowling, *A Commitment to Public Service.*

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[91] AIHW, *Australia's Welfare 1997;* Howe, *HACC Status Report.*

[92] S. Moore, CCT, *Research Project Update* (Melbourne: Department of Management, RMIT, 1997); S. Moore, K. Hooper and I. Silva Brito, *Users' Experience of CCT of Local Government HACC Services* (Melbourne: Carers Association of Victoria, 1995).

[93] ACOSS, *Budget 99*, p. 91.

[94] Yeatman, *Getting Real*, p. xii.

[95] The study pointed out the likely increase in demand and shift in type of services required, with the aging of those classified as having a "severe or profound handicap" [sic] and in receipt of disability support services then aged 46-64 years of age, and the aging of their carers, see AIHW, *Australia's Welfare 1997*, p. 305; and R. Madden *et al.*, *The Demand for Disability Support Services in Australia: A Study to Inform the Commonwealth/State Disability Agreement Evaluation* (Canberra: AGPS, 1996).

[96] J. Alford and D. O'Neill, *Services and Assistance*, AIHW Cat. No. AUS8. (Canberra: Institute of Health and Welfare, 1999); and G. Hodge, *Contracting Out Government Services: A Review of International Literature* (Melbourne: Montech International, 1996).

[97] ACOSS, *Budget 99*; AIHW, *Australia's Welfare 1997*; Alford and O'Neill, *Services and Assistance*; Brian Costar and Nick Economou, *The Kennett Revolution* (Sydney: University of New South Wales Press, 1999); Howe, *HACC Status Report.*

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[112] Hancock and Cowling, *A Commitment to Public Service?*

[113] Andrew Burbridge, “The Polarisation of Families,” paper presented to conference on “Earnings Inequality in Australia: Nature, Implications, Causes and Responses,” Victoria University, 1999.

[114] In the late 1980s about one in seven people of workforce age was in receipt

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solely because they were easy to devolve. In those cases, devolution occurred because it satisfied a call for increased autonomy, or constituted a relatively costless bargaining chip. The area transferred may not have been a priority on the devolution wish-list. Regularly, devolution did not respond to public policy concerns.

This seems to have been the case with the jurisdiction over disability policy. In 1980, matters that affected individuals (such as state services) were devolved to the three cultural Communities (Flemish, French, and German). There were major exceptions to this devolution. The social-security system, for instance, remained federal. Hence, jurisdiction over disability policy, excluding financial allowances which constituted an integral part of the social-security system, were transferred to the Communities. This did not generate a lot of discussion or negotiation. It occurred, and it occurred early on in the federalization process, because it was relatively easy to do. This was not a contentious field of public activity. It affected a limited and relatively powerless group of persons. Moreover, visibility was not such that the federal government sought to preserve its control over this area.

Even today, disability is hardly ever mentioned in the context of state reforms or reflections on the federal system. Nevertheless, because programs for disabled persons were amongst the earliest programs subject to decentralization, they provide interesting lessons to the student of Belgian federalism. This experience shows that even when the matter to be devolved is not controversial, the transfer of jurisdiction takes time, adjustment, and a fair degree of good will on the part of public authorities. New financing mechanisms must be designed. Expertise, civil servants, and files must be shifted. This requires flexibility and a concern for detail, which may not be automatic when the shift occurs for wholly different political considerations.

The disabled person may well wonder what good this whole process has brought about. In a sense, this calls for an answer to the wrong question. The distribution of powers concerning disability policy was not policy-driven. It was driven by a desire for increased cultural autonomy and power by Belgium's main linguistic groups. Its success and failure must be assessed from jurisdiction was essentially devolved in 1980, it took at least a decade for the transfer to occur completely). Moreover, despite a lack of formal coordination between the different orders of government involved, there is a fair degree of continuity in terms of programming. This may not be surprising since many of the actual decisionmakers have gone from the national (now federal) civil service to the administration of the federated entities.

In summary, disability was not an important factor in the constitutional transformation of Belgium. That transformation has had some impact on who conducts policy-making in the disability field, but not a significant impact on the actual policies, at least not so far. A detailed examination of the manner in which powers over disability have actually been redistributed in Belgium provides an interesting indication of the problems and complexities generated by a process designed for essentially cultural, not social policy, reasons. While the fulcrum between disability and federalism is not obvious, it is, upon closer study, quite revealing.

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The Federalization Process in Belgium: An Overview

Belgium was created as a unitary state in 1830. Despite the fact that a large portion of the population spoke Dutch dialects, the state institutions functioned only in French. Indeed, the elite in both southern (Walloon) and northern (Flemish) parts of the country spoke French. While the present institutions are extremely complex, this original language split remains a prevalent feature of the country.

Belgium federalism is recent. The first traces of the territorial divisions of the country, based on linguistic lines, go back to 1963. Major constitutional reforms took place in 1970 and in 1980, 1988, and 1993. It was only at that last stage that the Belgian constitution officially recognized the country as a federation. The gradual and incremental decentralization of a once unitary state required compromises that mark the institutions to this day.

Five major characteristics of Belgian federalism need to be emphasized.[1] First, it is *centrifugal* and the process toward more devolution is not over. Second, it is *bipolar* since the successive reforms were responses to conflicts between the two major language groups. Third, and paradoxically, it is also *multipolar*, since the bipolar nature of the conflicts did not generate a clear territorial division of the state into two entities, mostly because of Brussels, an overwhelmingly francophone city located in Flanders, and which could therefore not be attributed to the Flemish or the francophone entity. Moreover, Belgium has a small but generously recognized German-speaking community which also inherited institutions. In other words, while the logic of Belgian federalism is bipolar, the solutions designed to respond to different tensions, is multipolar. Fourth, and this is surely the most original aspect of the Belgian federal system, there are two types of federated entities, with distinct constitutional powers: the Regions and the Communities. Finally, the Belgian federation is asymmetrical. While powers are technically always devolved in a similar fashion to similar entities, those entities may organize, and do organize, their institutions differently. The most important distinction is the decision by the Flemish authorities to join the Flemish Community and Regional institutions, while such a fusion has not taken place on the French side of the country. This lack of symmetry makes the analysis of public policy, including policies toward persons with disabilities, a complicated endeavour.

From the beginning of the federalization process, envisioned solutions differed between the Flemish and the francophone sides of the country. Given their struggle to have their language and cultural rights recognized, the Flemish have always defended a devolution to the two major cultural Communities (the German-speaking Community being a beneficiary of this process). The Walloons have always favoured a territorial devolution to increase local autonomy over the economy. Indeed, the Walloons feared that the numerically superior Flemish would dominate institutions and take decisions detrimental to the declining heavy-industry Walloon economy. The Brussels francophones, who do not consider themselves Walloons, sought a large degree of institutional autonomy as well, in order not to be dominated either by the Flemish or the Walloons. Thus, there were incompatible demands for state reforms. While in Canada such divergences would likely have given rise to a stalemate, the original Belgian system attempted to satisfy everyone by creating a federation of both Communities (Flemish preference) and Regions (francophone preference), with a special status for Brussels and the German Community.

Communities were officially created in 1970. Regions were granted institutions in 1980. At that stage, however, legislative and executive powers of the federated entities constituted subgroups of national institutions. The status of Brussels was only resolved in 1988, when special, and very complex, institutions were introduced to create a regional entity (francophone request) in which both major cultural communities had a significant role to play (Flemish

health-care insurance is a federal matter. We will address the minute, almost lace-like, distribution of powers over policies regarding persons with disabilities later in the chapter.

In theory, the lack of concurrent powers (except in areas such as employment policies) should limit the risks of friction and overlapping. In practice, the delimitation between the detailed attributed powers can be quite problematic. This has recently given rise to a call, by the Flemish authorities, for a consolidation of related but so far scattered powers, in favour of the Communities (the Flemish authorities never discuss Regions, since they do not correspond to their preferred conception of the federal structure). There are very few areas of joint policy-making. The system is conceived of as a largely "disentangled" one, even if the closely related powers often mean that different actors will be involved in a particular policy field, such as disability.

The different conceptions of the Belgian system, within the Belgian political and constitutional circles is such that there is no agreement even on the actual number of federated entities. Without contest there is the joined Flemish Community and Regional legislature and executive, those of the French Community, of the German Community, of the Walloon Region and of the Brussels Region. Whether the COCOF, which enjoys legislative power, is actually a federated entity is the subject of certain controversy. It is, without doubt, a significant player in the area of social policy in Brussels.

Such a complex system is bound to generate tensions. Conflicts concerning the constitutional distribution of powers are settled by three different federal judicial institutions. First, the legislative section of the Council of State, a federal institution with separate language chambers, must give its opinion on all proposed legislation (but not regulation) whether it emanates from the federal Parliament or the federated legislatures. As its advice is not binding, it is sometimes ignored, but at a political cost. Second, there is an *a posteriori* control of legislation by the federal Court of Arbitration, consisting of six Dutch-speaking and six French-speaking judges. Half of these judges are former politicians, half are professional magistrates. Finally, regulations may be challenged after their adoption before the administrative section of the federal Council of State.

Another original institution in the compromise and balance-prone federal Belgium is the Concertation Committee. It is composed of the federal prime minister, five federal ministers, and six members of federated governments (on the multipolar model). It is also perfectly divided between French- and Dutch-speakers (on the bipolar model). Its role is to solve politically what is

of entities “inheriting” similar constitutional powers from the federal govern-

Like the Communities, the Regions can raise non-fiscal revenues linked to their own jurisdiction (licences on lumber, gambling and games, road user fees). Regions also benefit from exceptional conditional transfers from the federal government in order to pay unemployed persons hired by regional public services.

An equalization mechanism has been introduced in favour of poorer Regions. A Solidarity Fund benefits the Regions where the personal income tax is lower than the national average. In 1997, for instance, the Walloon and Brussels Regions received 21.5 billion BEF and 120 million BEF respectively from this fund. The richer Flemish Region does not benefit from this Solidarity Fund. This redistribution mechanism is heavily criticized in Flanders.

In discussing social policy, it is also essential to consider the financing of the social-security system. The social security budget is distinct from the federal budget, although social-security is still under exclusive federal jurisdiction. A paragovernmental institution, the National Office of Social Security collects contributions from employees and employers, a federal transfer and the special Solidarity Fund.[6] It then redistributes the funds to the different branches of the social-security program: unemployment insurance, pensions, health care, family allowances, work injuries and disability benefits, and — of interest in the present context — allowances to persons with disabilities. The social-security budget is extremely important. It is equivalent to the federal budget, and makes after-tax refunds to the other levels of government.[7] It is generally recognized that the French-speaking population of Belgium (both in Wallonia and in Brussels) is a net beneficiary of the system, while the Flemish, who tend to have lower rates of unemployment, long-term illness, and higher federally-levied taxes. Almost half of the federal revenues are redistributed to the federated bodies and the social-security system.[8] Certain solidarity mechanisms ensure a degree of redistribution to the poorer Regions and Communities (all French-speaking), a fact increasingly decried in Flanders. The (still) federal social-security system also ensures a degree of north-south financial transfers and is therefore currently under attack because of this.

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autonomous source of revenue: an extra premium on fire, car, and work-related injury insurance policies. The insurer collected the premium, so few civil servants were required to administer this part of the project. Since the insurance business was expanding during that period, revenues rose regularly, enough to allow for the introduction of new services. And since the state did not need to finance the program, the paragovernmental rehabilitation fund had a fair degree of latitude with which to conduct policy experiments and development.

In 1980, a special Act of Parliament (adopted with a two-thirds majority and a single majority in each of the Flemish and French-speaking groups) transferred (amongst other things) important aspects of the legislative power regarding people with disabilities to the three Communities (Flemish, French, and German).[13] This included responsibilities for residential institutions as well as rehabilitation, professional integration, and training (from the 1963 National Fund). As with all constitutionally attributed powers in Belgium, these transferred powers are deemed to be exclusive. In other words, from that point on, legislative authority regarding housing, training, and general services for disabled persons were the responsibility of one of the types of federated bodies in Belgium: the cultural communities. This important transfer of responsibility over this aspect of social policy did not give rise to much debate. This was not a highly symbolic area with the different levels of government seeking to control. Moreover, while some reorganization of the service-delivery system was required, this restructuring did not challenge the social-security system, which remained a sole federal responsibility. It appears, in fact, that the constitutional decentralization of powers concerning disablement policy was a fairly successful early attempt at transferring powers to the Community level. It could be seen as a testing ground for other areas of social policy to be decentralized in the course of the federalization process.

Despite this relative ease of transfer from a political point of view, it is interesting to note the more complex and protracted implementation of the transfer. The moving of policies regarding persons with disabilities to the Community level illustrates fairly well the complexity of the constitutional devolution process in Belgium: even when there is a substantial amount of agreement over the domain to be devolved, and regarding which of the federated entities (Regions or Communities) should receive the new powers, the actual process of devolution takes time and will require a certain degree of coordination.

The actual transfer of responsibilities over residential institutions occurred rapidly and relatively smoothly since the residential fund was actually part of the national administration. It did require the movement of files and some civil servants. At that stage, such a transfer was not too difficult since the federated bodies did not have an independent civil service. Hence, employees communautaire française (COCOF) of the Brussels Region.[16] In other words, the exercise of some community powers have now been

Demographics, Attitudes, Organizations

It is difficult to evaluate the number of persons with disabilities with precision. One indication comes from the number of persons who benefit from federal allowances. This number has now reached about 200,000 for a population of ten million.

Federal allowances are both residual and means-tested. As they are reserved for those with no other source of income, it is arguable that a certain stigma attaches to the receipt of those benefits. Nevertheless, the fact that Belgium has a well developed and generous system of social programs, arguably makes banal the reception of benefits and limits the degree of stigma attached to receiving benefits.

As we will see later, each federated body has established a paragovernmental fund responsible for the implementation of most of the policies toward persons with disabilities. Moreover, an impressive number of organizations defend the interests of those with disabilities, and these agencies can also be mandated to represent individuals in their dealings with government.[20]

For instance, at the federal level, the National Council for Persons with Disabilities[21] is comprised of a large number of groups acting on behalf of persons with disabilities, both Dutch- and French-speaking. It makes nonbinding recommendations to the federal government on any regulation concerning allowances. Note that to sit at the Conseil national, associations representing persons with disabilities must be national in scope. Since many of these associations have split over linguistic lines, it appears that they sometimes maintain a national group in order to participate (for instance, the National Association for Mentally Handicapped Persons has a Dutch-speaking section and a francophone section, the latter subdivides again into a Walloon and a Brussels section). While the common front may seem cosmetic, it could be argued that this requirement of national character imposes a certain degree of concertation between associations representing people with similar needs, irrespective of their linguistic groups, before they make representations to the Conseil national.

Similar consultative groups exist for the Walloon Region and French-speaking Brussels. On the Flemish side, the participation of associations takes a different form as they actually sit on the board of the paragovernmental fund.

In Belgium, major labour policies are negotiated by social partners. That is, labour unions (the rate of unionization is very high in Belgium) and employers' representatives will agree on policies such as the minimum wage, labour standards, and so on. Surprisingly, in this very divided society, those social partners still function on a national, *federal*, basis, although language-based subdivisions exist. This explains why the Conseil *national* du travail approves collective agreements, including those applicable to "adapted work enterprises" which are under the jurisdiction of federated agencies.

The social safety net is very high in Belgium. Talks of privatization in the social arena are still marginal. Yet, in a sense, there has always been an important role for non-state actors in services for persons with disabilities. Institutions such as residential homes, day centres, adapted work enterprises, and training centres are mostly run by non-profit organizations, although a few public adapted work enterprises exist in Wallonia. They are accredited, controlled, and financed by the different funds, but not run by them.

Yet, many services are still offered by public employees: individual counselling and guidance. In fact, at least in the case of francophone Brussels, the trend seems to be toward more public intervention. For example, the Fonds bruxellois francophone has just taken over the Service d'aide technique that was previously offered by the Red Cross. This is essentially information on technical products, a show room, and a loan system to test products.[22] Similarly, the Vlaams Fonds sees its mission evolving from a simple transmission line between public money and different types of social and non-profit organizations, to an agency more directly involved with citizens.

In short, new management theory, popular in Anglo-Saxon countries, is not an important item on the public agenda in Belgium.

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Definitions

Four orders of government intervene in public policy regarding persons with disabilities. While there are common criteria of entitlement to services, each entity has some jurisdiction to determine who is a disabled person for the purpose of the services it offers, as well as under what conditions they will extend services to persons with disabilities domiciled in another part of the country.[23] So far, the definition of a disabled person has remained fairly similar across the country and resembles the once unitary and now federal definition used to grant allowances. Amongst other criteria for getting services, the following is perhaps the most central: a person must have a limited possibility of social or professional integration due to a reduced physical ability of 30 percent or mental ability of 20 percent.[24]

Most programs are offered to nationals, recognized refugees, European Union employees working in Belgium and their dependents, or people who have resided in Belgium for five years consecutively (or for ten non-consecutive years). The federal government and federated bodies could independently modify these criteria, but so far have all maintained similar ones for their own programs.

Policies and Programs

This section briefly deals with some of the substantive policies developed by each order of government. In the case of federated bodies, I have insisted on legislative and constitutional authority, since it is already complex, using policy examples to illustrate the distribution of powers. Summaries of specific policies developed by federated organizations are found in Table 2.

Policies Developed by Federal Authorities

Nowadays, the main federal public policy takes the form of monetary allowances. I have, however, also outlined less visible, but very tangible fields of federal intervention, for they provide an image of how closely interwoven the actual distribution of powers is in this area.

Allowances. The federal government, which has retained exclusive jurisdiction over social security in Belgium, offers two kinds of allowances specifically for people with disabilities, for which the payment of social-security contributions is not required:[25] income-replacement and integration allowance.[26] The allowances are means-tested and spousal income is considered.[27] They are supplementary to other contributory regimes such as workers' compensation schemes.

The *income replacement allowance* is obviously based on one's decreased ability or inability to earn a living. Hence, it does not compensate for the handicap itself, but for the economic loss that results from the handicap. The *integration allowance*, provides compensation for lack of autonomy. It may be spent on any service or good by the recipient. The first is more or less equivalent to the "minimal level of subsistence." The latter is proportional to the severity of the handicap. This second allowance provides a certain level of

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autonomy since it may be spent on any good or service, and not only on those listed by governmental agencies. Note that the integration allowance is reduced by one-third if the person is institutionalized.

The two kinds of supplementary federal allowances for persons with disabilities are significant. The federal government spends over 36 billion BEF/ year (C$1.4 billion) in this area, and the number of beneficiaries went from 97,000 to 203,000 between 1984 and 1996. This increase can partly be explained by the aging population and cuts in other forms of social services such as welfare payments (while allowances for persons with disabilities were maintained) and a generally better informed public. Note that there are interesting geographical disparities in the number of allowances granted, but they do not necessarily correspond to the Flemish-francophone split.[28]

Social Security Provisions. Disability is taken into consideration in the calculation of pensions,[29] unemployment insurance,[30] and family allowances.[31]

Individual physiotherapy, speech-therapy treatments, as well as prosthesis are reimbursed by health-care insurance policies, through the federal Institute of Health and Invalidity Insurance. User fees apply. Transportation costs to and from rehabilitation centres are not covered by the federal programs and different federated bodies have adopted different strategies regarding these costs.[32] This apparently minor detail illustrates the lack of uniformity that is gradually developing across the country. This provides another example of the complexity of the system; while individual treatments are reimbursed, the federal health-care system, the certification of rehabilitation services, as well as capital and operating costs, all fall under community jurisdiction.

Some Aspects of Employment Policies. *Specific collective agreements.* Despite the successive waves of constitutional reforms and the decentralization of important aspects of employment policies, in Belgium collective agreements are still negotiated at the federal level, for every activity, by national trade unions and national employers' organizations. Once a collective agreement is reached, it is certified by the federal-level Conseil national du travail and rendered compulsory by federal regulation.

Two major collective agreements contain special provisions regarding disabled employees. *Collective Agreement No. 26*[33] provides for renewable financial incentives for private employers to hire workers with disabilities. A federal labour inspector will assess the rate of reduced disability and determine the size of the public contribution that will be offered to the employer.

This can reach 50 percent of both salary and social security premiums.[34] Of interest, is that responsible federated bodies execute this decision and will make the actual payment to the employer. While the organizations do not determine the contribution, the federal inspector must obtain their advice prior to fixing the public contribution. This seems to be little more than a formality to ensure a certain amount of cooperation. As we will see later, however, some federated entities have created, or are about to create, their own incentive programs for at the federal level would require a consensus between the Flemish and the francophone components of the state. The Flemish Community tends to be more neo-liberal on economic issues and would favour incentives for employers to hire persons with disabilities. This is an example of the difficulties to which the bipolar nature of the federal system can give rise. In other words, the Walloon Region is precluded from implementing a particular policy because of a disagreement with the Flemish group. The opposite is also often the case.

Recruitment for all public administrations, including those of the federated entities, is done by a federal secretariat with the cooperation from the entities who transfer files of potential candidates with disabilities. An interesting (non-legislative) initiative of this recruitment service, at least as it applies to the federal public service, it that it will give priority to visually-impaired applicants for a receptionist position.

Special arrangements for public servants caring for people with disabilities. Federal public employees can have up to five days paid leave per year to accompany a person with disabilities on a subsidized vacation.

Transportation. In Belgium, jurisdiction over some areas of transportation has been transferred to the Regions, while others have remained a federal responsibility. This gives rise to a scattered distribution of powers. The federal government provides special parking permits for persons with disabilities for anywhere in the country. Value-added tax exemptions on the purchase of private adapted vehicles, and a VAT reduction on repairs are offered by the federal

Tax Rebates. Since the vast majority of state revenues are raised by the federal government, and the federated agencies have not used their limited fiscal powers to reduce taxation rates, deductions and credits for people with disabilities are awarded by the federal government. For instance, the tax exemption for a child with a disability is about twice the rate of another child. Real estate taxes are doubled in the case of a disabled dependant. Since 1995, work done to adapt a private home is subject to a reduced VAT rate. Note that the two types of federal allowances are tax-exempt and need not be reported.

Justice and Administrative Appeals. Labour law and labour administrative tribunals are still under federal jurisdiction, even for employers who are now organized and subsidized by federated agencies, such as "adapted work enterprises."

Judicial review of administrative decisions emanating from federal and federated entities. Federal Labour tribunals have jurisdiction over most aspects of social law. At least three federated bodies now responsible for the integration of persons with disabilities have attempted to create administrative review boards to hear appeals from their decisions. The (federal) court of arbitration and the legislation section of the (federal) State Council[42] declared these attempts unconstitutional, since they infringed on the exclusive federal power in justice matters, and since no specific derogation had been introduced by the *Special Institutional Reforms Act*.[43]

A federated entity cannot, directly or indirectly, abrogate the jurisdiction of the Labour Tribunal to hear challenges to decisions made by the administration or the funds of federated bodies. Recent case law, however, allows a federated agency to modify the Judicial Code to add to the jurisdiction of the Labour Tribunal. Moreover, on some limited issues, a federated agency can set up a parallel but purely administrative review board, so long as people still have access to the Labour Tribunal.[44] Given these constraints, federated bodies have organized slightly different review processes, but all involve appeals to the federal tribunals. Hence, the Flemish Community, after failing to establish a distinct review process for all decisions, has amended the (fed-

State Council (administrative law section) hears appeals concerning residential care, as well as early-childhood support decisions.[45] This, again, illustrates the gradually divergent paths taken in the management of this policy area north and south of the linguistic border.

Civil law protection of persons and property. In federal Belgium, both the civil law and the Justice systems have so far remained under federal jurisdiction. Consequently, procedure to designate a tutor or to put a person under a special protection regime are uniform across the country.[46]

Policies Developed by Federated Entities

The next section deals with the constitutional powers and some of the policies developed by the Belgian federated bodies. Most of the policy work is done through funds, established by the different governments,[47] which have taken over the role of the previous national funds. The following is admittedly com-

French Community. Policies regarding disabled persons were officially devolved to the Communities in 1980. As we saw, the transfer was readily effective as far as institutionalized care. The effective transfer of rehabilitation policies, however, only occurred in 1991. At that point, a Fonds communautaire pour l’intégration sociale et professionnelle des personnes handicapées was created.[52]

As explained above, only three years later, in 1993–94, the exercise of side of the country, but integration inside educational establishments have remained with the French Community. Again, this illustrates the complexity of

Brussels Region and the Commission Communautaire Française. While the foregoing might appear quite complex, the worst is yet to come! Institutions and legislative powers in Brussels are very intricate. This is partly due to the paradox of the city. It is a Region like the two others, with a regional legislative assembly and an executive. However, the jurisdiction over “community” matters in Brussels belongs to subgroups on these regional institutions: either the French-speaking members, sitting as the French Community Commission, or the Flemish-speaking members, for community matters of interest to Dutch-speaking Brusselers, or a combination of all of them (which means exactly the both French and Flemish residents of Brussels. While Brussels is officially a bilingual region, *bicommunautaire* institutions are the exception, not the rule. In Brussels, only 14 institutions catering to disabled persons are officially bilingual, and thus governed by COCOM. They are all full-time residential institutions or day centres for adults. There are no bilingual adapted work enterprises in Brussels.

The *French Community Commission of Brussels* (the COCOF) exercises the powers that were transferred by the French Community to the Region in 1993–94.[58] It is important to underline that inhabitants of Brussels do not, per se, have what is referred to as a French or a Flemish sub-nationality. It is the institution to which they turn that is linguistically tied and thus falls under the jurisdiction of the Flemish, the French, or both communities. For example, a Flemish-speaking, a francophone, and a Spanish immigrant, all domiciled in Brussels,

Funding and Redistribution

Certain benefits offered to people with disabilities are directly financed by the “classical” social-security mechanisms (health and rehabilitation services, pensions, family allowances), and the two specific federal allowances are financed from the social-security budget, although the benefits are, exceptionally, not contributory. User fees are imposed for health services and rehabilitation. Other services, however, are paid from the general revenues of both Regions and Communities.

Tax deductions are available to those who care for a person with dis-are more francophones receiving the income replacement for those 21–65 years, plus integration federal allowances (in absolute numbers), but more Flemish-speaking people in the over 65 category. It is thus difficult to assess whether part of the country receives more than another in this specific policy domain. Of note, however, are the distinctions in services *within* federated entities, depending in part on the economic well-being in the area. For instance, the poorer province[64] of Hainault in Wallonia suffers from a serious lack of full-time residential institutions for adults, while the province of Namur, also in Wallonia, has nearly half of its institutions occupied by people from other parts of Wallonia.[65]

The Intergovernmental Process

The foregoing descriptions indicate that all orders of government are involved in offering services to persons with disabilities. A certain amount of coordination is therefore required to ensure that services are properly rendered. Some users complain of being shifted from one government agency to another. Several services are offered by the federated bodies on a subsidiary basis, so that an application must first be filed with, for instance, the federal Institut d'assurance-maladie-invalidité. As mentioned above, there are gaps in the financing of transportation costs to rehabilitation treatment, when neither order of government feels responsible for a particular aspect. Another small detail, but one that illustrates the lack of coordination: Communities used to pay for maintenance of all wheelchairs. Now, the Walloon Fund refuses to pay for the maintenance of equipment paid for by the federal INAMI (as part of the rehabilitation program).

Some modifications to federal policies can have a direct impact on the federated agencies. That was the case in the decision by the social partners at the national level to remove the exception that permitted the payment of less than the sectorial minimum wage to persons with disabilities. The cost of this decision was borne by the federated bodies. This led to important intergovernmental negotiations.

note that while some of the funds have International Affairs sections, none of them have one specifically in charge in Belgian intergovernmental issues. The degree to which federated organizations ignore each other's work is truly surprising (especially across the linguistic border). One interesting form of cooperation across this divide took place in the judicial arena, the Flemish Community bringing its support to the Walloon Region in the latter's unsucessful attempt to convince the federal State Council that it had the constitutional power to create its own judicial review board in order to hear appeals of administrative decisions concerning rehabilitation.[66]

Nevertheless, cooperation is slowly evolving, and it takes different forms.

Cooperation Between Administrations. In Brussels, people can only register with one fund in order to obtain services: the Fonds francophone or the Flemish Fund. To avoid duplication, information is shared between these two bodies.[67] This is a purely administrative unwritten arrangement. Otherwise, the sharing of information seems to occur on an ad hoc basis, between individuals — who often used to work together in the same organization and who now work for decentralized ones — rather than between institutions. There are no formal discussion meetings, or regular transmission of information on programs, and so on. Occasionally, Flemish and francophone policymakers will discover what the others are doing in the context of a European-based forum. What I would call "active" cooperation is not very common with the federal authorities, since responsibilities are fairly well defined (despite some identithough, ministers responsible for policies regarding persons with disabilities in Wallonia, the German-speaking community, and Brussels have for a long time been members of their respective socialist parties. It is difficult to surmise what would have happened otherwise, but one can presume that cooperation is facilitated in such a situation. By contrast, in Flanders, in addition to the linguistic barrier, the minister responsible for policies for those with disabilities is from the Social-Christian Party (CVP). This may partly explain the obstacles found in the negotiation of free-mobility cooperation agreements between Flanders and other entities.[69]

Cooperation Induced by European Institutions. Belgium will now send several delegates, representing the different agencies responsible for a particular issue, to the meetings of the international organizations. For example, at the Council of Europe committee on discrimination against disabled people, Belgium sends four delegates (French Community, French Community Commission, Flemish Community, and Walloon Region). The German Community could send a representative, but does not. Occasionally, the Council of Europe will request a national report. In such a situation, one of the federated organizations (more rarely the federal government) will collect information and write on behalf of all other public actors.[70]

By contrast, the European Commission normally insists on having only one national spokesperson for some of its programs. This requires a certain amount of cooperation and coordination within Belgium. There are a few examples of "European-induced" cooperation. For instance, a program of the European Commission in place between 1993 and 1996 had four main lines of intervention: rehabilitation, integration in the education system and the economy, social integration, and the promotion of autonomy.[71] For this program, the French Community and the COCOF were represented by the Walloon Region member and there was alternate representation by the Flemish Community and the Walloon Region. In that case there was intra-francophone cooperation and representation across the linguistic divide.

In the case of another European program, a multilingual database on available services, the different federated bodies created a non-profit organization to provide a single Belgian spokesperson. This is a form of "cooperation through incorporation."[72] However, after a while, the Flemish and French data collecting organizations, part of the association, worked completely independently, often dealing directly with Europe. By the end, they were receiving their funds directly from the federated agencies (for the Belgian part) rather


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regional parliaments. This impulse could also come from other international organizations, but it is unlikely to be rapid.[77] In any event, this "convergent" action may not even result from increased cooperation, but simply from parallel but comparable policy-making.

Leading Developments in the Field

One policy issue currently being discussed raises several constitutional questions, this is the suggestion of "dependency-insurance" or sometimes "autonomy-insurance." It would cover assistance to persons suffering from a lack of autonomy and would be through homecare, day centres, institutional care, and so on. While the main target group is the elderly, the insurance would also benefit persons with disabilities.

This insurance could be considered protection against "social" risk, and thus a new area of social security, a clearly federal jurisdiction. Or it could be considered another aspect of assistance to persons, and thus a community responsibility. While the 1993 constitutional reforms transferred residual powers from the federal state to the federated bodies, this provision will not come into force until decrees have determined which of the Communities or the Regions will inherit this power. In the meantime, it remains federal. Hence, some could argue that this is a new field of public intervention, and that in the current constitutional state of affairs, only the federal Parliament has the power to legislate in this area.

In fact, a few years ago, the federal government launched the idea of such an insurance in its Loi-program. The Flemish Council reacted strongly, threatening to pull the *sonnette d'alarme* and set the concertation process into

European front, orders of government ignore each other. While services to the disabled population are developed and protected in a country with generous social programs, this is not a field that raises major concerns at the political level.

The Situation as it Appears to Persons with Disabilities

The situation is, however, disconcerting for users of the system. On the one hand, it can be argued that the constitutional and institutional changes have not profoundly altered the content of the policies, so that clients remain relatively unaffected by the transferring of responsibilities over the last 20 years.

register with the Vlaams Fonds to receive services. What if this person wants to attend an institution in Brussels? There is no problem if the institution is Flemish-speaking since it will be administered by the same fund. But what if the institution is French-speaking?[84] Similarly, what if a Walloon wants to work in an adapted work enterprise in Brussels? Or what if a resident of Brussels seeks to be admitted into an institution in Wallonia or Flanders? Or if a resident of the German-speaking Community needs to be admitted to an institution in Wallonia? To state the obvious, Belgium is a very small country and mobility is particularly important.

In 1993, when the French Community devolved the exercise of its jurisdiction to the COCOF and to the Walloon Region, it retained its legislative authority to determine the categories of handicap which are entitled to different types of services, in particular different types of institutions.[85] Yet, the year after, the Walloon Region sought to *add* a residency criterion for access to its services. This would have precluded residents of Brussels from receiving services in Wallonia.[86] The French Community Commission set off the alarm system, setting into place a concertation process[87] and threatening to go the Cour d’arbitrage to challenge the Walloon decree, were it to be adopted. Ficould work in a French-speaking adapted work enterprise in Brussels or in Wallonia. But he or she will not receive a salary subsidy from Flanders, nor from the other agencies in which he or she is not a resident. So, in effect, a person in that situation would not be accepted by the French-speaking adapted work enterprise, which needs the financial contribution. In other words, francophones from the periphery are deprived of a service to which they were entitled previously.[92] While the reverse is theoretically also true, in reality there are far fewer Flemish residents of Wallonia who would seek services in Flemish.

The consequences of these barriers to mobility are barely discussed in Belgium outside the disability circle. However, in my view, they constitute a warning of the risks involved in the Flemish proposals to transfer jurisdiction over health care to the Communities. In some respect, persons with disabilities have paid the price of a decentralization process that was driven by a desire for increased autonomy, not a concern for the quality, or continuity, of services.

Federalism Principles

Yet, despite the gaps in communication and the difficulty experienced by some people in their search for services in their preferred language, the disability domain respects a fairly clear distribution of powers. Other policy areas, such as health care or employment, contain so many exceptions to the official transfer of jurisdiction that the decentralization is either cosmetic or at least, partial. In the case of health care, the transfer of powers to the Communities has been so limited that it has given rise to a Flemish movement to partially split the federal social-security system. In the case of employment policies, there are so many actors involved that the lines of responsibility are blurred and effective policy-making is a real challenge.

Policies regarding persons with disabilities illustrate the difficulties generated by a decentralization process, but they also illustrate that this process *can* function without completely endangering service delivery. This policy area could provide lessons for policymakers regarding the impact of federalization on concrete aspects of governmental services.

Most aspects of policies concerning persons with disabilities are clearly “disentangled.” Often, the actual policies remain relatively similar, regardless of the federated body responsible for designing, implementing, and financing them. This appears to be more a result of habit and coincidence than coordination. The different federated entities enjoy a large degree of autonomy in the field of disability policy. Similarly, the federal government can act quite independently of the federated bodies (to modify allowances, for instance). It is important to bear in mind, however, that the federal institutions are essentially bipolar and consequently that any action on their part automatically takes into consideration the preferences of each major cultural community.

theoretical transfer of powers, the exceptions to transferred competencies are so numerous, important, and varied, that the agencies either do not know exactly what they can do, or know that they cannot do very much.

There is in Belgium, an impressive array of programs and policies related to persons with disabilities. There are some differences on the margins in some of the federated entities, but many are still similar across the country. Action is parallel, but relatively comparable. This is quite interesting, given the few formal means of information-sharing.

There are a few gaps concerning services which no order of government wants to offer. There is also some overlap: work-incentive programs organized by federal institutions, but paid for by other bodies compete with programs totally organized and financed by those bodies. There is also some “federal dumping”: the maintenance of wheelchairs bought by the federal INAMI used to be paid for by the Communities, now the Walloon Fund has stopped paying. The restrictions on the creation of administrative panels to review decisions by federated agencies can create some frustrations, but to the extent that the federal tribunals work efficiently (which in this area they seem to do) and work in both languages (which they do), the frustration has not led to too much acrimony.

As far as policy-orientation is concerned, the trend toward integration, as opposed to “protection,” has been incorporated into the public policy rhetoric, as well as some of the legislation, but it has not so far translated into

“Dienststelle der Deutschsprachigen Gemeinschaft für Personen mit einer Behinderung sowie für dies besondere soziale Fursorge” (Office de la Communauté germanophone pour les personnes handicapées ainsi que pour l’assistence sociale spéciale) (M.B. 13.11.1990).

[15] The transfer of the exercise of the constitutional powers is really a constitutional transfer of legislative authority. In fact, the use of the term “exercise” is quite semantic, since the Walloon Region and the COCOF have complete normative authority over the transferred domains, and must approve any “retrocession” of the exercise of these powers to the French Community: see M. Leroy and A. Schaus, “Les relations internationales,” in *Les réformes institutionnelles de 1993, Vers un fédéralisme achevé* (Bruxelles: Bruylant, 1994), p. 41. The term was used, however, to make it clear that the new authorities were limited in the exercise of these new powers as the French Community had been: in other words, while the Walloon Region Assembly has jurisdiction over the whole Walloon Region for regional powers (such as urban planning or public transit), it only has jurisdiction over the French-speaking parts of the Walloon Region in the exercise of the transferred community powers (i.e., the Walloon Region *minus* the territory of the German-speaking Community).

[16] Décret II de la Communauté française du 22 juillet 1993 attribuant l’exercice de certaines compétences de la Communauté française à la Région wallonne et à la Commission communautaire française, and corresponding decrees in the Région wallonne and the COCOF, taken pursuant to s. 138 of the constitution. With this transfer of legislative power, the COCOF has become, for many analysts, a federated entity. See, for instance, B. Blero and F. Delcor, “Les transferts de compétences de la communauté à la région,” in *Les réformes institutionnelles de 1993: vers un fédéralisme achevé?* (Bruxelles: Bruylant, 1994), p. 100.

[17] I mention this distinction, because despite the recent constitutional transfer, the 1960s distinction between the two funds affects the way the new legislators can act (particularly with regard to appeal mechanisms).

[18] Note that reimbursement for medical services is done through health-care “mutualities” with which individuals register. The federal Institut d’assurance-maladie-invalidité receives funds from the Institut national de la sécurité sociale (ONSS) and transfers money to the many “mutualities” who reimburse their members.

[19] See, for instance, Arrêté du gouvernement de la Communauté française du 8 décembre 1995 transférant des membres du personnel du Fonds communautaire pour l’intégration sociale et professionnelle des personnes handicapées à la COCOF, (M.B. 10.02.96); Art. 73 of the Décret du Conseil régional wallon du 6 avril 1995 relatif à l’intégration des personnes handicapées, (M.B. 25.02.1995); Arrêté du Collège de la COCOF du 18 juillet 1996 portant équivalence de certains grades des fonctionnaires du Fonds bruxellois francophone pour l’intégration sociale et professionnelle des personnes handicapées (M.B. 18.9.96).

[20] In Brussels, however, the COCOF is about to modify its policies to permit organizations to attend meetings with the administration with the disabled person

requesting services, but not in lieu of them. This is presented as another way of promoting the autonomy of the person with disabilities.

[21] Created by arrêté royal 09.07.81 (M.B. 21.08.81).

[22] Along the same lines, until recently, the evaluation of a person's level of autonomy and professional integration was decided jointly between the person's social worker and the manager of the adapted work enterprise. Now, it is done solely by the former, since it is thought that managers could be in a conflict of interest position, seeking to maintain a person's low level of integration to justify a higher public subsidy (which is proportional to the rate of reduced productivity).

[23] For details, see the section on the intergovernmental process.

[24] This 20–30-percent rule is found in unabrogated sections of the national 1963 legislation. So, although federated bodies have developed less rigid definitions in their own legislation, technically, this numerical one still applies. Why the bodies have not abrogated this national rule (or incorporated it into their own legislation) is unclear.

[25] This is not the rule, as most social-security programs (health, unemployment insurance, workers' compensation, pensions and family allowances) are not financed through general tax revenues, but through premiums linked to salaries.

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[33] Concluded by Conseil du Travail (15.10.75). Note that an employer cannot fire an employee in order to benefit from this program.

[34] It would be 40 percent in the German Community.

[35] Conseil de l'Europe, Comité pour la réadaptation et l'intégration des personnes handicapées, La législation anti-discriminatoire à l'égard des personnes handicapées, Rapport établi par la délégation belge – février 1997, pp. 14-15.

[36] Convention collective no. 43 septies du 02.07.96.

[37] "Augmentation du salaire minimum dans les ETA," *Le Soir*, 24 avril 1998, p. 3.

[38] The federal contribution takes the form of a generalized reduction in social-security premiums that adapted work enterprises must pay, see Loi du 6 décembre 1996 (M.B. 24.12.96).

[39] For the federal public service, A.R. du 11.08.72, as modified by A.R. 10-06-75 (M.B. 29.07.75), A.R. 29-11-76 (M.B. 19.01.77) et A.R. 19-07-85 (M.B. 07-08-85). For public organizations, A.R. 05-01-76 (M.B. 03-03-76), as modified by A.R. 23-10-89 (M.B. 23-11-98).

[40] Opinion of the State Council, legislation section, concerning s. 12 of the *Avant projet de décret wallon portant une politique globale d'intégration des personnes handicappées* L. 23.478/2/V, 12-08-1994. The proposed quotas were aimed at private enterprises hiring 50 people or more. Quotas for the Walloon Region are found in *Arrêté de l'exécutif régional wallon*, 13-09-90 (M.B. 11-12-90).

[41] Here is another interesting initiative: a non-profit organization, Le Centre d'adaptation à la route pour automobilistes handicapés, will assess a person's ability to drive, will loan an adapted vehicle for driving lessons and exams and recommend equipment.

[42] The State Council is the major administrative law appeal tribunal.

[43] Voir arrêt 49/93, C.A. 24 June 1993 (French Community); 25/97, C.A. 30 April 1997 (Flemish Community). Note that in this case, the Walloon Region intervened to support the Flemish Community against the federal government's position.

[44] Opinion of the State Council, legislation section, no. 23,478/2/v, 12 August 1994.

[45] Art. 22 décret wallon 06.04.95: Appeal Commission (administrative, multidisciplinary, headed by a judge). It has jurisdiction over appeals concerning de-

[51] Education was developed in 1989, but ever since 1970, there have been two Departments of Education, one for each linguistic group, and each one has its own specific legislation.

[52] Décret de la Communauté française du 3 juillet 1991 relatif à l'intégration sociale et professionnelle des personnes handicapées, (M.B. 30.07.91).

[53] There is a convention between the Walloon Fund and the French Community providing for the payment of 370,000 BEF per year, per student. It is estimated that there are 400 to 500 students in that situation.

[54] "Dienststelle der Deutschsprachigen Gemeinschaft für Personen mit einer Behinderung sowie für die besondere soziale Fürsorge," créé par Loi du 19.06.90 (M.B. 13.11.90).

[55] Décret du Conseil régional Wallon du 6 avril 1995 relatif à l'intégration des personnes handicapées, (M.B. 25.05.95).

[56] While Brussels is officially a bilingual region, *bicommunautaire* institutions are the exception, not the rule. In Brussels, only 14 institutions catering to disabled persons are officially bilingual, and thus governed by the COCOM. They are all full-time residential institutions or day centres for adults. There are no bilingual adapted work enterprises in Brussels. Note that the COCOM is financed not by both communities, but through federal transfers.

[57] It has been delegated administrative, not legislative, powers. This is not relevant in the present context, Loi spéciale du 12 janvier 89, s. 65 and Constitution, s. 166(3)(2).

[58] The Fonds bruxellois des francophones pour l'intégration sociale et professionnelle des personnes handicapées is to be replaced by the regular civil service. Representatives of COCOF explained that they believe it preferable to integrate services for persons with disabilities into the regular civil service, rather than getthoize it in a separate administrative body. This approach is, of course, quite different from the one taken by the other federated bodies.

[59] The problem of people domiciled outside the territory of a particular entity and who want services from that entity is addressed below, in the section dealing with cooperation agreements.

[60] Note that there are no Flemish or bilingual adapted work enterprises in Brussels.

[61] Note that for Dutch-speakers in-and-out of school, support is provided by distinct bureaucracies (the Department of Education inside schools, or the Vlaams Fond outside schools) but under the responsibility of the same federated entity, that is, the Flemish Community.

[62] Entreprises de travail adapté are discussed below.

[63] It is unclear, however, whether a federated entity could "subsidize" user fees. This would likely be seen as an infringement of exclusive federal power over social security.

[64] In the past, provinces were administrative divisions of the unitary state. They are now administrative divisions of the federal order of government, and not federated entities. They have no legislative power, for instance.

[65] Agence Wallonne pour l’intégration des personnes handicapées (AWIPH),

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issues and advocate its interests. This championship role has been seen as the natural purview of the federal government; for the past two decades, the disability community has pinned its hopes on the federal government because of the human rights protections that Ottawa introduced in the early 1980s. These protections were seen as the key to opening all other doors, including employment opportunities and access to disability-related supports, that would lead to full citizenship. Moreover, federal constitutional protection takes precedence over all other laws, which means that these would have to conform to the requirements of the federal statute. A wide range of laws, policies, and programs would have to be changed in order to make concrete and real the national commitment to human rights.

But in recent years, the disability community has been deeply concerned that current shifts in federalism in Canada, embodied in a document known as the Social Union Framework Agreement (discussed below), will transform fundamentally the power balances in this country. The community worries that changes to the current "rules of the game" could undermine progress on the disability front. The fear is that the disability agenda could suffer a serious setback under new federal-provincial arrangements. While disability is a key item on the federalism agenda, the new federal-provincial relationships inadvertently could end up impeding progress on disability issues. In order to understand this irony and how it evolved, it is first necessary to look at the structure of the Canadian federation and current discussions to change its shape.

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Constitutional

Canada is a federated structure whose governance framework is set out in the *British North America Act* (BNA) of 1867. The framework was supplemented by the introduction of the *Constitution Act* in 1982.

Under the BNA Act, the federal government was designated as responsible for the "peace, order and good government of the country." The Act confers implicitly a federal spending power that allows the federal government to make payments to individuals, institutions or other governments for purposes that Parliament does not necessarily have the power to regulate. Ottawa claims that this constitutional interpretation gives it the power to spend money and attach conditions to the money even if the purposes fall within the clear purview of the provinces.

set out in section 36(1): “to provide essential public services of reasonable quality to all Canadians.” Mobility rights, in particular, ensure that all Canadians can move freely to and take up residence in any province. The implications of mobility rights with respect to disability supports and services are discussed more fully later. The rights of persons with disabilities are also affirmed in federal and provincial human rights codes that apply to both the public and private sectors. Employment equity legislation and programs in some jurisdictions are designed to increase the labour force participation of designated populations, including persons with disabilities.

In addition to the general protection afforded in these codes, several jurisdictions set out explicit employer obligations in their respective employment equity acts. The new federal *Employment Equity Act*, which came into effect in October 1996, is intended to achieve equality in the workplace and to correct conditions of disadvantage, although the requirement to provide “reasonable accommodation” needs clarification and interpretation. Workers’ compensation legislation in most jurisdictions also places a positive obligation upon employers to accommodate workers injured on the job.

Jurisdictional

In Canada, there are few areas around which there is a clean jurisdictional split. As noted, the federal government is responsible for issues of national and international concern. Primary federal areas of responsibility include customs, foreign policy, fisheries and oceans, communications, and transportation. Provinces, by contrast, are concerned with municipal issues and services to people such as health, education, welfare, and social services. But many areas overlap and there is shared responsibility in several fields. The transportation issue is a case in point. Here the distinction in jurisdiction is made along the lines of scale. Transportation concerns that apply to interprovincial or international travel lie in the federal domain. By contrast, provincial and, in some cases, municipal governments are responsible for local or intraprovincial transportation.

While most discussions of disability issues focus on supports, employment, and income, the transportation issue illustrates that there are no simple divisions when it comes to the federal and provincial governments. It is also worth noting that substantial progress with respect to transportation accessibility has been achieved in recent years. While the systems are by no means problem-

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come on board as a result. This shift in emphasis is explained more fully in a report entitled *How Finance Re-Formed Social Policy*.[4]

There are several public bodies expressly concerned with disability is-

In 1991, 48 percent of working-age people with disabilities were employed, 8 percent unemployed, and 44 percent were “not in the labour force.” People with severe disabilities are least likely to be in the labour force. The reasons for not joining the labour force most often cited by people with disabilities included losing their current income (21 percent), problems with training (16 percent), and no jobs available (15 percent).[7]

Persons with disabilities, particularly women, are concentrated at the bottom end of the income scale. About 60 percent of persons with disabilities have incomes below the poverty line.[8] Of adults with disabilities, 43 percent had an individual income of less than $10,000 per year and 26 percent had an income of less than $5,000. Adults with severe disabilities are much more likely to be poor than those with mild disabilities. These figures do not take into account the extraordinary costs associated with disability that can be substantial in many situations.

But disability affects far more than just a minority of the population. It touches everyone. All Canadians have some experience with disability through contacts with relatives, colleagues or friends with a disabling condition. A major social-security review that had been conducted in 1994 by the federal Department of Human Resources Development succinctly summarized this reality: “People with disabilities are our parents, brothers, sisters and spouses, as well as our colleagues, our friends, our neighbours and ourselves.”[9] Moreover, most Canadians will experience some form of functional incapacity or limitation as a normal part of aging; the incidence of disability rises directly with age. Seven percent of children under age 14 have some form of disability compared to 50 percent of the population over age 65. The rate of disability for working age Canadians, aged 15–64, is 13 percent.[10]

The fact that this national profile is dated is itself a major issue with the disability community. Statistics Canada’s HALS was supposed to be conducted every five years as a post-censal survey, that is, after the formal national census which is conducted every five years. The last census was conducted in 1996 and results are now being released. But due to budget constraints and “other priorities,” Statistics Canada had decided that the HALS post-censal survey would not be carried out this time. The Sor wo par]TJ 0 -1sr]TJ 0 85oilityl.2327(

Political Organization of Disability Groups

The political organization of disability groups tends to mirror the political structure of the country. There are national groups whose mandate is concerned mainly with issues of national and international scope. At the political level, they relate primarily to the federal government. Key national groups include: the Council of Canadians with Disabilities, the Canadian Association of Independent Living Centres, the Canadian Association for Community Living, the Canadian Paraplegic Association, the Canadian Council on Rehabilitation and Work, the Canadian Hearing Society, the Canadian National Institute for the Blind and the Canadian Cystic Fibrosis Foundation. This list is by no means exhaustive; rather, it is intended to illustrate the wide range of organizations that comprise the disability community.

Many national groups receive some core funding from the federal government although these grants have been cut in recent years. Groups have had to rely more upon other sources of funds including memberships, contracts and private donations from individuals and foundations. National groups typically have provincial offices. In some cases, the Quebec office has split from the national group and acts independently at both the provincial and federal levels. The disability organization representing the province of Quebec, for example, is not part of the structure of the Council of Canadians with Disabilities. Provincial groups, in turn, generally have local chapters. These work on issues at the municipal government and local service level. Most voluntary organizations in Canada conform to this federated structure. Their national office relates to the federal government; provincial and local branches deal with provincial and local governments, respectively. But groups working in the disability area, perhaps more than any other field, place a strong emphasis on the federal arena. This emphasis is the result of several factors.

The Charter of Rights and Freedoms lies at the heart of the citizenship agenda. The disability community has been keen to push this agenda because it believes that citizenship represents the key to all other doors: employment, disability-related supports and services, and access to transportation and communications.

A major factor in the preoccupation with citizenship is the recognition that an inordinate focus upon provincial health and social service policy would not effect associated changes in employment policy, education, transportation, and communications. These areas are considered crucial for promoting full participation in Canadian life. Another reason for pushing the citizenship agenda

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is to ensure that every government department and agency make provision for persons with disabilities in their respective policies, programs, and services. A

A related problem for all agencies, but again for the disability community in particular, is the fact that the new federalism involves extensive discussions in federal-provincial working groups involving government officials. While governments claim to be improving their accountability to the public (see, e.g., the Future Directions Strategy discussed below), the action has not yet matched the rhetoric. The voluntary sector is concerned that it will be left out of these federal-provincial forums altogether, or at best consulted after the fact.

- health-related goods such as medications, special dressings, oxygen equipment, dialysis equipment, surgical dressings, and medically-prescribed diets;
- attendant services that provide assistance with personal needs such as bathing, feeding, dressing, and grooming;
- homemaker services for help with household tasks such as cooking, shopping, meal preparation, cleaning, and home maintenance;
- respite services, which refer to assistance primarily for families caring at home for children with severe disabilities;

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Attendant services combine both health and social service elements because they may be at university, seeking work or at home — generally make provision for special needs on their own.

Some jurisdictions operate programs designed solely for the provision of technical aids and equipment. These programs vary widely throughout the country. In some cases, they include a range of assistive devices. In other cases, only certain types of equipment (e.g., hearing aids, respiratory equipment or wheelchairs) are provided or only persons with certain conditions (e.g., paralysis, cancer or cystic fibrosis) can qualify for assistance under the program.

Tax Credits

Some disability supports are not delivered directly. Rather, their cost can be reduced by various benefits delivered through the income tax system, namely the medical expense tax credit and the disability tax credit. The medical expense tax credit helps offset the cost of a designated list of disability supports. Because the credit may be claimed in respect of the health-related expenses of an individual, spouse or dependents, it is available to all Canadians and not just to persons with disabilities. There is a long list of expenses deemed eligible for the medical expense tax credit. They include: payments to medical practitioners, nurses and hospital services; attendant care; nursing home care; medical devices (e.g., artificial limbs, wheelchairs, braces, eyeglasses and a list of prescribed devices); prescribed drugs; and home renovations. The medical expense tax credit is non-refundable; it reduces income taxes owing and does not benefit people with incomes below the taxpaying threshold.

The disability tax credit also provides some tax relief for the additional, but

allowed for the federal government to share with the provinces the cost of a wide range of vocational supports needed to help persons with disabilities enter or re-enter the labour market.

In 1997, the federal and provincial governments began to explore ways to improve the VRDP agreement. The new *Employability Assistance for Persons with Disabilities Act* also allows for the cost-sharing of a broad range of services including assessment, employment counselling, wage subsidies, and technical aids and equipment. But the current cost-sharing arrangement will be replaced by a federal allocation to the provinces on the basis of a set formula. Alcohol and drug treatments will not be included under the new agreement. It will cover a five-year period with provision for a review after the first three years and will incorporate an accountability framework with associated outcome targets.

Opportunities Fund

The 1997 federal budget announced an Opportunities Fund worth $30 million a year for three years. Under this fund, federal dollars are allocated in proportion to the working-age population of persons with disabilities. A small portion of the fund (about 10 percent) was reserved for national initiatives. Its purpose is to work in partnership with organizations representing persons with disabilities and other sectors to reduce barriers to labour market participation and to support innovative approaches to employment or self-employment. The target population includes persons with disabilities who require assistance to prepare for, find, and secure work, and who are not currently eligible for EI-funded employment programming. The dollars may be used to assist persons who have participated in other labour market initiatives but are still unable to make the transition to employment.

The Opportunities Fund is intended to complement existing programming. Services such as employment counselling and job-finding clubs can be supplemented by special supports paid for by the fund. It can also build on pilot projects developed by non-governmental organizations. The various employment benefits supported under the fund include targeted wage subsidies to help offset the incremental costs of hiring a person with a disability; targeted earnings supplements; job-creation partnerships; self-employment assistance; training to help individuals take courses; and case management to support the development of personal action plans.

Aboriginal Programs

The federal government has entered into a series of bilateral National Framework Agreements with organizations representing First Nations to guide the devolution of federal funds to selected Band Councils.

Workers’ Compensation. Provincial workers’ compensation replaces between 75 percent and 90 percent of lost insured earnings in the event of occupational injury, disability or disease. The variation is actually smaller than the numbers suggest because the programs with 75 percent replacement rate base the benefits on gross earnings while the 90 percent benefits are based on net earnings. Employees receive compensation in the event of injury but abrogate their right to seek legal damages. Benefits are determined by the length and severity of the incapacity. In addition to cash awards, workers’ compensation plans include a variety of in-kind benefits, such as rehabilitation services. Employers pay 100 percent of the cost of this program.

Employment Insurance. Employment Insurance (EI) is a federally administered program that replaced Unemployment Insurance in 1996. EI provides income protection from temporary work absences arising from unemployment, illness, disability, or birth or adoption of a child. The risk for which EI offers protection must be a temporary interruption. Workers who are unemployed over a prolonged period may receive assistance under different programs, notably, CPP and welfare.

Employability enhancement is a major focus of the new program. EI redirected a substantial sum of money ($800 million) from income support to employability benefits. These include a package of active employment measures, noted earlier, to help workers prepare for and find a job. A three-year $300 million fund also was established to generate economic growth and create new jobs.

Canada/Quebec Pension Plan Disability Benefit

The purpose of the Canada Pension Plan is to protect workers and their families from a long-term or permanent interruption of earnings as a result of retirement, severe and prolonged physical or mental disability, or death. Quebec operates an analogous program.

There are three eligibility criteria for the CPP disability benefit. Contributors must be between the ages of 18 and 65. They must have paid into the program for four of the last six years. The third eligibility criterion relates to the disability itself that is both severe and prolonged and interferes with substantially gainful employment.

The disability benefit is a fully indexed, taxable benefit. It consists of two parts. All beneficiaries receive the flat-rate component — $339.80 a month

whose resources are inadequate to meet their needs and who have exhausted other avenues of support. Persons with disabilities are a substantial group; in 1995, an estimated 20 percent of welfare cases (approximately 332,000) were headed by a person with a disability.

Each province and territory sets its own rules and regulations that govern eligibility, amount of basic assistance, type and amount of special assistance, enforcement policies and provisions governing appeals. Despite the differences, all jurisdictions have several features in common. Applicants must qualify on the basis of provincial definition. Provinces generally require that the disability be severe and prolonged and that the applicant with a disability be considered "unemployable" — i.e., unable to engage in remunerative employment. In addition, applicants must qualify for welfare on the basis of a needs test. The value of their liquid (i.e., cash, bonds) and fixed (i.e., house, car) assets must they face problems arising from geographic isolation and the lack of community supports and services.

Lack of Supports

Many Canadians who require assistance to live independently in the commurisk their security, and possibly their lives, if they cannot gain access to these supports.

Finally, even when disability supports are available or affordable, problems may arise around responsiveness. Consumers typically have little say in how services are delivered or managed. Some services operate as though they are needed only between regular working hours on weekdays. Services may not be available at the place they are required. Attendant services may be de-

Low Incomes

Canadians whose work is interrupted temporarily or permanently as a result of disability or who have no workforce attachment must rely on various income programs. There is no comprehensive disability income system. As noted, it is more a patchwork of uncoordinated programs. There are multiple assessments based on different criteria which add to the cost and complexity of the system. Until recently, there were few links among the programs. Some would say that below poverty levels. In addition, certain sources of disability income, includ-

International Decade of Disabled Persons

Canada continued its work in this area in respect of the United Nations Declaration of the International Decade of Disabled Persons (1982–1993). In 1982, a major federal-provincial effort was initiated to propose options for disability income reform. In response to recommendations in the *Obstacles* report, social services ministers established a federal-provincial working group. The group conducted an exhaustive study which developed several costed options for income security reform. These proposals were published in a *Joint Federal-Provincial Study* issued in 1985.

Another major initiative was the appointment of a Royal Commission

Mainstream Review

In 1992, the Conference of Federal/Provincial/Territorial Ministers of Social Services announced a mainstream review to develop a collective strategic framework for the full integration of Canadians with disabilities. Ministers also directed that the review explore whether governments and individuals with disabilities could agree upon a vision and statement of principles. The report of the mainstream review proposed the “open house” concept as a conceptual framework to support the shift from segregation to mainstreaming.

The open house concept emphasized the importance of persons with disabilities enjoying the same rights and benefits as other Canadians and participating fully in all aspects of life including school, work, and recreation. This participation is made possible by the removal of discriminatory social, economic, and physical barriers and the provision of supports that accommodate and respect differences. The report also explored the need to make generic programs, such as child care, training, and education, more open and inclusive.

Standing Committee on Human Rights and the Status of Disabled Persons

The Standing Committee on Human Rights and the Status of Disabled Persons, a committee of the House of Commons, actively promoted the equality rights of persons with disabilities. In its 1990 report, *A Consensus for Action*: *The Economic Integration of Disabled Persons,* the committee recommended that all federal departments, Crown corporations, and agencies be required to review and reform legislation and regulations in order to promote the integration of persons with disabilities. The report called for an effective mechanism to ensure ongoing and consistent monitoring of all policy, legislation, and regulations in relation to persons with disabilities. In its 1992 report, *Paying Too Dearly*, the committee highlighted the costs of the continued marginalization of persons with disabilities. The following year, the committee published *As True as Taxes*: *Disability and the Income Tax System*. The report explored various improvements to the tax system, for example, including more items within the medical expense tax credit, creating a new disability expense tax credit, and making the disability tax credit refundable. That same year, the committee produced the report *Completing the Circle* which highlighted the needs of Aboriginal Canadians with disabilities.

In 1995, *The Grand Design*: *Achieving the Open House Vision* further developed the open house vision that had been put forward in the mainstream review. The report assessed the successes and limitations of the National Strategy for the Integration of Persons with Disabilities. The committee recommended the appointment of a secretary of state with a mandate to coordinate federal activities related to disability, carry out an impact assessment of all proposed measures on persons with disabilities and prepare an annual report to be referred to the standing committee. The committee also proposed a set of protections within the Canada Health and Social Transfer to ensure minimum funding for disability supports.

Social Security Review

The social security review was launched by the federal Department of Human Resources Development in early 1994 and completed in 1995. It included a comprehensive exploration of options for reforming a range of social programs: child benefits, Unemployment Insurance, labour market programs, and other areas of social policy.

The review produced a series of background papers, one of which dealt with persons with disabilities. The paper put forward several proposals for reform, including a comprehensive earnings replacement program or a guaranteed annual income for persons with disabilities.

Task Force on Disability Issues

The federal Task Force on Disability Issues was established in June 1996 by the ministers of human resources development, finance, revenue, and justice. Its mandate was to define and make recommendations regarding the role of the Government of Canada as it relates to persons with disabilities.

The task force travelled extensively and organized 15 public consultations throughout the country. It commissioned a set of research papers on five key issues: national civil infrastructure/citizenship, legislative review, labour coordination, and accountability at the federal level. It proposed a legislative review to establish an ongoing strategy to assess laws and policies for their impact on persons with disabilities. The task force recommended the incorporation of a “disability lens” in the development of all laws, policies, and programs. It also suggested an ongoing accountability mechanism to track government actions and the publication of an annual report; changes to existing labour market programs; and improved tax assistance to offset the costs of disability.

Federal-Provincial Working Group

The most recent initiative in Canada is a report by a federal-provincial working group on disability. It is entitled *In Unison*: *A Canadian Approach to Disability Issues*. This vision paper evolved as part of the social union process currently under way in Canada. The document is described below, following the discussion of the current political context, and more specifically, the social union negotiations.

Future Directions Strategy

In July 1999, the federal government announced yet another national strategy on disability entitled *Future Directions to Address Disability Issues for the Government of Canada: Working Together for Full Citizenship*. The document builds on the *In Unison* report and states that the purpose of the strategy is to affirm the federal commitment to action. The strategy focuses upon increased public accountability and improvements to policy and program coherence. It promises to strengthen the coordination of disability issues and to improve access to programs, services, and information by persons with disabilities. The federal government will engage in discussions with the provinces, Aboriginal representatives, and community organizations in order to meet these stated objectives.

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In the past two years, Canada has been engaged in discussions around a new framework for federalism referred to as the social union. The social union discussions focus primarily upon the “who does what” of social policy, that is, the respective roles of the federal and provincial governments, the associated financing arrangements, and the monitoring and enforcement functions.

In February 1999, the federal and provincial governments (except Quebec) signed a Social Union Framework Agreement which sets out some general rules for how these two levels of governments should work together in future. It is intended to promote a respectful and collaborative approach to resolving key social issues that are not clearly defined as exclusively federal or provincial. The agreement talks about, among other issues, the need to protect the mobility rights of Canadians and the importance of acib6.4(o)13.7(v)13.7(e)e

The federal and provincial governments have been embroiled for years in constitutional discussions. The negotiations that took place in 1986 and 1987 and led to the drafting of the proposed Meech Lake Accord were regarded as a failure. Crucial negotiations affecting the future of the country had been held

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to be divided into political jurisdictions or single ministries as though these needs could be compartmentalized into neat boxes. That approach not only exacerbated existing problems but often created new problems.

Great Depression of the 1930s. Welfare caseloads were poised to skyrocket in response to the economic slump.

that they are passed back and forth between jurisdictions. Ottawa often would try to get people to move from a federal benefit, such as EI or CPP, onto a provincial program, usually welfare. The provinces, in turn, would shift people from provincial programs such as welfare or workers' compensation to federal programs, in this case, CPP. At the very least, there is now a federal-provincial venue to address this problem. There is a process in which Ottawa and the persons with disabilities, and removing the disincentives to work in current income programs.

These objectives are intrinsically linked. Availability of and access to disability supports are required to promote employability. These supports allow access to education and training programs and ensure that persons with disabilities can get to and function in their workplaces. Access to paid work clearly has a direct impact upon earnings and the need to rely upon programs of income support.

In Unison commits all governments in Canada to work toward these objectives. Equally important, it encourages all governments to work *together* to reach these objectives. To date, several key issues have arisen out of the federal-provincial *In Unison* agenda. These include the protection of mobility rights, the harmonization of income security, the coordination of labour market initiatives, and accountability.

Protection of Mobility Rights

Mobility is a central component of Canadian citizenship. It entails the unimpeded movement of goods, services, and human and natural resources throughout the country. The right to mobility is enshrined in section 6 of the Charter of Rights and Freedoms. This right was reaffirmed in the 1996 Speech from the Throne in which the federal government committed itself to "protect and promote unhampered social mobility between provinces and access to social and other benefits, and [to] work with the provinces to identify new and mutually agreed approaches." The Social Union Framework Agreement addresses explicitly the need to remove barriers to the mobility of Canadians.

Mobility is a key issue for persons with disabilities. Because they rely on personal supports that typically are attached to residential or income programs, persons with disabilities are not free to move throughout the country. The *In Unison* document commits the federal and provincial governments to improved portability. Within the disability context, "portability" means that commitment to portability would require each jurisdiction to develop a plan for how it will ensure access to disability supports. Each plan should include actions that articulate how disability supports would be detached from income and other programs and “assigned” instead to the individual. The availability of disability supports should never be an impediment to mobility.

Coordination of Labour Market Initiatives

As noted, there are several major labour market initiatives that affect persons with disabilities: Employability Assistance for People with Disabilities, federal/provincial labour market agreements, the Opportunities Fund, and the National Framework Agreements with First Nations. The fact that there is now a federal-provincial working group to address disability issues can encourage these initiatives to work in tandem and support each other rather than proceed independently.

A coordinated approach in which key players are at the "same table" also can promote a shift from segregated to mainstream programming. It can ensure that all mainstream programs make accommodation for persons with disabilities. Accommodation could include extending course completion dates, modifying the job description or work arrangements, and removing the age limit for youth programs to help students with disabilities successfully complete their training. Improved coordination also would reduce the numbers of individuals who "fall through the cracks" because they do not meet current eligibility criteria.

Accountability

Finally, *In Unison* commits the federal and provincial governments to an open and transparent accountability process. The accountability framework is still

But accountability can move well beyond reporting on the various activities of different government departments. It can also involve an active process of determining whether all government policies and programs are removing barriers to the inclusion of persons with disabilities and, equally important, promoting their participation as full and equal citizens. The formulation and implementation of government legislation, policies and programs could be examined, for example, through an “inclusion lens” in order to consider their potential impact on persons with disabilities. A high-profile mechanism could be designated or established within each jurisdiction to take responsibility for incorporating an inclusion lens within all government activities.

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There is now in place in Canada a clear action plan rooted in strong values to guide future federal-provincial action on disability. There are specific building blocks and clear objectives to pursue at the federal and provincial levels. But this is only the first step and could face serious challenges even before it gets actively under way. The problem is that this federal-provincial collaborative process could end up being smoke-and-mirrors rather than real substantive change. The challenges of the future arise around the issues of transparent decision-making, a lowest common denominator approach and lack of federal leadership.

Transparent Decision-Making

The recently announced Social Union Framework Agreement made reference to the importance of public accountability and transparency. It talked about the need to monitor and measure the outcomes of social programs and report regularly on their impact. This commitment to transparency is crucial, especially in light of the fact that the federal-provincial process leading up to the agreement was highly secretive and far from inclusive.

As noted, the working groups which have been struck as part of the social union process, including the one on disability, are expected to develop an accountability framework. This framework presumably includes some form of discussion or consultation with interested stakeholders and the public more generally. The danger is that the consultation process itself could become the major or only action taken by governments. It is easy to make all the “busy work” surrounding consultation become the end in itself when it is actually perspective or a new way of addressing a problem. A given province, for example, may object to the scrutiny of its policies and programs through an inclusion lens. Important proposals can be lost if there is a sense that they may not be well received in a certain province. Rather than struggle with the problem and figure out a compromise, many issues could be pushed to the back of the agenda for another day, which may or may not come again.

There are also problems around the specific initiatives that have been carried out to date. Short-term harmonization measures go only so far. While they may improve the overall functioning of the income system, they still retain the diverse range of programs. This problem has led to calls over the years for comprehensive reform of the disability income system. But little action, other than more study, is expected in this area.

Weakened Leadership Role

The disability community is especially worried that the federal-provincial working group arrangement will water down the federal leadership role that, in the community's view, is so crucial to advancing the disability agenda. Ever since the heady days of Canada's new constitution and the introduction of a Charter of Rights and Freedoms which guaranteed the protection of disability rights, the disability community has regarded Ottawa as the champion of its issues. The current fear is that the federal government will abandon its leadership role in the name of constitutional conciliation and will be less prepared to take action that protects citizens' rights or introduce programs that will provide direct assistance to any given population.

The concerns that the disability community raises are relevant to all Canadians. There are questions about the future and ongoing role of the federal government, in particular, in social policy issues. Will Canada's national government be able to speak on behalf of the nation? Will its voice in representing the needs of all Canadians be able, if required, to rise above the "horizontal policy-making" that is reshaping the federation? Will it be able to act with leadership and authority without being accused of infringing its consensual commitments under the Social Union Framework Agreement? All Canadians should be concerned about these crucial questions that the disability community is raising on behalf of the entire country.

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[24] Sherri Torjman, *CHST Spells COST for Disabled* (Ottawa: Caledon Institute of Social Policy, 1995).

[25] Sherri Torjman, *Dollars for Service: Aka Individualized Funding* (Ottawa: Caledon Institute of Social Policy, 1996).

which rest substantially with the Länder. Since 1949, German federalism was formed by the idea that intergovernmental relations and government-citizen relations should be practised in such a way that the uniformity of living conditions (*Einheitlichkeit der Lebensverhaeltnisse*) is achieved and maintained. Therefore, German citizens have the same social rights and obligations regardless of where they live.

Germany as a Multi-Tiered System

To understand intergovernmental relations in Germany it is important to note federal jurisdiction, the significance of this constitutional provision is correspondingly reduced to a minimum. In fact, the policy-making powers are distributed asymmetrically between the federal and the Länder governments. In addition, the legislative competences of the federal government are not restricted to those policy areas enumerated by the Basic Law as exclusive federal powers; the wide array of concurrent legislation has to all intents and purposes been absorbed by the federal level of government with the consequence of limiting the legislative powers of the Länder to a small number of exclusive powers. The dominance of the federal government in the field of concurrent powers is especially true in the field of social policy. Until 1994 the federal constitution stated that the federal government has the right to legislate in matters of concurrent legislation to the extent that a need for regulation by federal legislation exists, since, for example, the maintenance of uniformity of living conditions necessitates such regulation. Although this provision was weakened by the constitutional reform of 1994 the policy goal of attaining social equity is still dominant.

Legislation at the Länder level is therefore more or less restricted to the policy areas of culture and education, local government, law and order and the police, and the regulation of broadcasting. While the Länder have almost no legislative competences in the realm of social policy, their powers and functions in administration and implementation are much more important. The Länder have to execute nearly all federal laws because the federal government deals with specific matters based on federal authority. The normal situation is to have federal laws applied by the Länder. Although the federal government retains substantial powers of normative influence and supervision of administrative activities, the Länder are not mere administrative subdivisions of the federal government. They enjoy a large degree of autonomy in the administer-

The Organization and Functioning of the German Upper House of Parliament

Although the important legislative competences as well as those for taxes stay with the federal government, the Basic Law ensures substantial Länder influence, especially through the Bundesrat, which includes members of the Länder governments. All federal laws have to pass the Bundesrat, many of them needing Bundesrat approval. In order to understand the system of German federalism, it is important to reflect on the provision of the Basic Law (article 77) which states that those laws that greatly affect the interests of the Länder, such as financial matters or administration, require the approval of the Bundesrat. While in the early years of the Federal Republic approximately 42 percent of all federal legislation required approval, the percentage has undergone a distinctive increase: nowadays more than 60 percent of all federal laws have to be approved by the Bundesrat. As a result of this development the role of the second chamber of the federal parliament and thereby of the Länder has gained even more importance. The regime of interlocking federalism has intensified.

Intergovernmental Mechanisms

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measure of vertical balance; it should provide the basis for the Länder to institutionalize (social) programs on their own and to implement the federal laws without interference from the federal government.

The distribution of the particularly profitable VAT not only presents an instrument to reduce vertical imbalances in revenues, but it is also important as the first step of horizontal financial equalization (article 107, Basic Law).

Because the primary distribution of tax revenues between the federal and the Länder governments is not sufficient, a need for other financial provisions remains. First, there is the mechanism of horizontal fiscal equalization, facilitating the redistribution among the financially weak or less efficient and the financially stronger Länder. Second, there exists a constitutional provision for the federal government to provide grants-in-aid to those Länder which are less efficient and financially weak. Despite the constitutional and legislative provisions, including elements of equalization, there are still relevant horizontal imbalances. Since German reunification in 1990, the problem of financing German federalism has become a severe challenge to the intergovernmental regime.

With regard to social policy, it is important to note that the German federal system normally does not work on the basis of shared-cost programs. In general, there are no federal transfers to state governments in order to fund social assistance programs as is the case in Canada. Although there are a number of exceptions, the basic assumption is that the federal government and the Länder meet separately the costs resulting from the discharge of their respective tasks.

Only those federal laws executed by the Länder and involving the disbursement of funds may provide that such funds shall be contributed wholly or in part by the federal government (*Geldleistungsgesetze,* article 104 a, section 3, Basic Law). None of the policy sectors relevant to r]TJ 0.the feddsderion,sgrem3271(w political and legal conflicts between the municipalities and the respective Länder governments. This financial problem has direct consequences on local government functions in the area of social policy On the one hand, they are obliged to fulfill those transferred responsibilities, which are to be carried out on behalf of the Länder or the federal government. Most importantly, local governments

intergovernmental regime where the Länder participation in policy-making at the federal and European levels is much more important than at the Länder level. This type of intergovernmental regime is clearly distinguished from a disentangled interstate system of federalism where the federal and the state governments act independently of one another in their respective areas of legislative competence. The German system can be characterized by the following

the regime of interlocking federalism under certain circumstances. Especially in periods when the Bundesrat is dominated by the federal political opposition, political responsibilities can no longer be clearly identified.

Whereas the regime of interlocking federalism once seemed able to satisfy political, economic, and social needs, in recent years, in particular, it has been criticized for having serious defects with respect to its effectiveness. The slow decision-making process caused by the "divided government" (different party majorities in both houses of parliament) and by the effects of the fiscal crisis brought on by the costs of reunification is bringing under attack the current regime of intergovernmental relations. For several decades, the assessment of the German system of intergovernmental relations was dominated by the criteria of the division of powers and its consistency with the political goal of achieving social equity despite the formal distribution of powers between the two levels of government. The political goal was therefore to achieve a federal regime not in conflict with the maxim of uniform living standards. With the growing horizontal imbalance resulting from post-reunification political and economic changes, the consensus on this policy goal seems to be diminishing: while politicians and voters in the poor Länder hope to achieve uniformity by strengthening the position of the federal government and preserving the sys-
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toward social justice, social security, and a fair and just social and economic system. The welfare state principle lays the constitutional foundation for the different programs for persons with disabilities. Because citizens will not be able to derive any legal claims from this general guideline it is necessary that all legislative bodies define the different services and supports more precisely.

The coordination and efficiency of disability programs is negatively affected, not only in Canada but also in the Federal Republic of Germany, by the

pursuant to which the principle of equal treatment is a right enforceable by law, is rejected by the federal government while referring to the fact that the German legal system is completely different from that in the US or Canada.

Basic Principles of Allocation of Responsibility in the Field of German Governance of Disability Programs

Germany's governing of disability programs is highly complex and inconsistent: neither legally speaking nor in terms of allocation of responsibility. In order to give an overview of the organizations playing a role in this field, one needs to take into account that there are different levels of action:

- the allocation of responsibility between the federal government, the Länder, and the municipalities (different orders of government),
- the allocation of responsibility between the different social security organizations: their abilities do exist regardless of the distribution of tasks in the federal system, and[18]
- allocation of responsibility between governmental and non-governmental organizations (associations of private welfare work).

Vertical Allocation of Responsibility

The benefits offered to disabled persons by the authorities (the governance of disability programs) correspond with the allocation of responsibilities in the federal welfare state.[19] The relevant laws are federal, they have to be passed by both houses of parliament — e.g., the Social Code, *Rehabilitation Adjustment Act*, *Employment Promotion Act*, *Federal War Victims Relief Act*, *Severely Disabled Persons Act*, and *Federal Social Welfare Act*.

The tasks of the Länder consist mainly in the enforcement of different types of federal laws. For this purpose, they pass provisions for implementation. When it comes to federal laws that provide for the creation and maintenance of certain institutions/facilities for disabled persons, it is the federal government that is responsible for setting the rules, but the Länder are responsible for implementing the regulations. However, services are generally offered by charitable organizations and not by governmental institutions. In this case the authorities act in a supervisory capacity and grant financial aid. There are some federal laws that contain detailed provisions as to their implementation. The *Severely Disabled Persons Act* provides for the statutory setting up of so-called central welfare offices, and each of the Länder needs to have at least one such office plus a corresponding number of branch offices. The costs incurred in

This possibility to grant voluntary subsidies to disabled individuals or to non-governmental organizations assisting persons with disabilities is the major reason why in the Federal Republic of Germany the governance of dis-

The criteria that need to be complied with in order to qualify for benefits depend on contribution periods and are different for the four insurances. If a disability is caused by an accident suffered at the workplace or on the way to work and/or if it is the result of an occupational disease, the e232omplyers' lility-J 0 -1.221

hand, the pension insurance organizations (pension insurance schemes) are very important for a region since they usually invest their funds locally. In addition to the health insurance and pension insurance organizations, it is also the employers' liability insurance funds, in their capacity as organizations of occupational accident insurance funds, that are responsible for the governing of disability programs.

Charitable Organizations. Whereas self-help organizations are based on the activities of the disabled persons themselves as well as on the work of their families, charitable organizations are interest groups which enjoy constitutional privileges and which are sometimes idealistically motivated: they work with staff members from the most diverse professional backgrounds ranging from social workers to nurses, but they also rely on volunteers.This way, thanks to

Democrats and the Green Party frequently give priority to the promotion of other societal minorities while those governed by the Christian Democrats tend to give priority to the promotion of disabled persons. Since subsidies given to self-help groups are of a voluntary nature, they frequently lack security/continuity in terms of planning, which they so urgently need.[27] But it is not only governmental agencies that financially support these self-help groups. Health insurance companies also have the possibility of granting financial support to these groups and agencies involved in rehabilitation.

Coordination of Support and Services in the Governing of Disability Programs

In order to integrate the German governance of disability programs into a framework that complies with the basic principle of “uniformity of living conditions” — despite the fact that there are so many different organizations and ideas, both at the federal and Länder level — coordination mechanisms had to be created. This is an attempt to offset the deficits in terms of efficiency and transparency concerning the different programs, which might be said to be a natural result of the horizontal diversity of the organizations on the one hand, and the vertical distribution of functions and responsibility on the other. It means that the coordinating agencies also serve the purpose of meeting the social needs of the disabled in a more appropriate way. At the federal level, coordination rests with the federal Ministry of Labour and Social Affairs which uses the consulting services of the Council for Rehabilitation of Persons with Disabilities consisting of representatives of the organizations involved in the governance of disability programs.

The Länder, because of their position in the federal system, are obliged to enforce and implement federal laws regarding the concerns of the disabled and they are also entitled to be involved in social planning. Within the framework of this social planning, most Länder draw up regional plans centred around the needs of persons with disabilities.The objective of these plans is two-fold: (i) they are to describe the current situation in terms of assistance granted to the disabled and its individual elements and (ii) they are to formulate programs as to how the support for persons with disabilities can be further extended in the future. These regional plans mainly comprise the voluntary services provided by the Länder. The purposes of these social plans are manifold: they help the organizations orientate their measures toward governmental objectives and they inform those affected about the services and assistance available. In this way, the regional plans also fulfil a coordinating function.

The coordinators administering the disability programs at the municipal level play an important role in the provision and the harmonization of services and support for disabled persons. In the areas where there are no local coordinators, this function is partially fulfilled by independent organizations. These coordination offices/coordinators are contacts for persons with disabilities as well as contacts for social-security organizations.

Supports and Services for Persons with Disabilities

Rehabilitation

Rehabilitation, considered a social right, is provided for in the first volume of the Code of Social Law. It is defined first as the supports and services necessary to prevent disabilities: to eliminate, improve, and prevent their aggravation or to alleviate their consequences, and second as the supports and services necessary to guarantee a person with disabilities, or threatened with disabilities, a place in the community and above all in the labour market in accordance with his/her preferences and skills. Pursuant to the *Rehabilitation Adjustment Act*, the rehabilitation process has to pursue the objective of integrating those with disabilities into the labour market, a profession, and society and, if possible, on a permanent basis. Since different measures of rehabilitation are assigned to the different branches of the social-security system, the Federal Republic does not have a uniform law governing rehabilitation. Instead, there are federal laws in the different books of the Social Code as well as in the *Severely Disabled Persons Act*, the *Employment Promotion Act* and the *Federal Social Welfare Act*. Rehabilitation is defined in the regulations adopted by the rehabilitation organizations, but not yet part of legislation. Due to the way the German social-security system is structured, it is complicated to decide which carrier is in charge of providing which type of rehabilitation services.

Medical Rehabilitation for the Restoration of Health

In the area of medical treatment, rehabilitation[28] is equal to prevention and cure.[29] Since rehabilitation measures always have priority over the supports and services/benefits granted by a pension insurance or the nursing care insurance, insurance companies apply the same order. According to the insurance principle, medical rehabilitation support and services are mainly paid for by the individual social-security organizations. They are also the ones who are in charge of the provision of the services required. As long as measures of medical rehabilitation are granted, the provider of benefits is also obliged to pay the living expenses of the persons with disabilities and their families. The large number of laws and regulations and the scope of responsibility of different agencies renders coordination of the different rehabilitation offers extremely difficult. As there are so many different organizations, it is frequently very difficult to do justice to the principle of providing comprehensive and optimum support and services. In order to tackle that problem, the rehabilitation agencies, as early as 1969, joined forces and set up the federal Association for Rehabilitation. Its objective is an improved cooperation among the different rehabilitation agencies by means of coordination and communication. In addition to that, the federal parliament passed a rehabilita-

Since under the intergovernmental structure, pre-school and school matters are within the jurisdiction of the Länder, rehabilitation measures at the pre-school and school levels have to be handled by the Länder. Therefore, the governments of the Länder decide whether children with disabilities are to be integrated into regular schools or whether a particular Land is to offer special schools for disabled children. Both decisions must be taken, both for rehabilitation at the pre-school and the school level. Whereas these school-related decisions can be taken without prior consultation with the federal government, cultural matters — including rehabilitation in schools — are to a large extent a matter to be handled in accordance with the ideals of cooperative federalism. In this area, the Länder coordinate themselves. As early as in 1948 (a year before the founding of the Federal Republic of Germany), the existing Länder created the Permanent Conference of Ministers of Education. Its task was to handle the areas requiring joint action, such as schools and education policy, as these are supra-regional and relate to the ideal of uniform living conditions throughout Germany. In 1972, the Permanent Conference of the Ministers of Education issued a "Recommendation on the System of Special Schools." Although decisions taken by the ministers theoretically do not bind the individual Länder and only become valid if and when they become part of Länder legislation, the self-coordination of the Länder has substantially limited their flexibility and that of their parliaments. Despite this self-coordination, particularly with regard to rehabilitation at the school level, there are considerable differences between the Länder. In the past two years, the political goal of integration has meant that the majority of the Länder have integrated children with disabilities into regular classrooms. These efforts, aimed at overcoming the treatment of children with disabilities in institutions — increasingly seen to be marginalization — were intensified even further with the Basic Law prohibiting discrimination against persons with disabilities. Whereas, in the new Länder — who, with German reunification, were required to reorganize rehabilitation in schools — now offer integrated institutions. In Bavaria, for example, there is a comprehensive system of Special Schools for children with disabilities, as

is presently an unrealistic idea) would also have consequences for administering the disability programs. In addition to the Federal Employment Agency, the statutory pension insurance also plays a role when it comes to vocational rehabilitation.

There are different facilities for vocational rehabilitation: vocational training centres *(Berufsbildungswerke)* work in conjunction with firms in their respective region to provide initial vocational training for young disabled persons who require medical, psychological, and educational assistance as a result of their disability and are therefore unable to receive in-plant training. Vocational retraining centres *(Berufsfoerderungswerke)* provide retraining and further training for disabled adults, also in cooperation with firms in the region. One aspect of vocational rehabilitation are the workshops for disabled persons.

The legal supervision of these facilities rests with the Länder because of the administrative jurisdiction. Funds are provided based on the principle of mixed financing: the costs of operating these vocational training and retraining centres are financed by the Land, the federal government, and the Federal Employment Agency. Each pays one-third of the costs.

Workshops for Disabled Persons

These workshops offer suitable jobs for persons who are permanently or temporarily unable to find employment in the open job market due to the nature or severity of their disability. Workshops should provide disabled persons an opportunity to develop, increase or regain ability to work productively.

The workshops are financed from social welfare funds: their structure is determined by the Länder and financing is a direct function of their organization. Training a person with disabilities serves the purpose of providing basic skills for his or her job in the workshop and is considered to be a training measure and therefore is paid for by the Federal Employment Agency. The other activities of the workshops, which enable a disabled person to function at work are partially financed by the “compensatory levy.”

Workshops for disabled persons are not governmental facilities but are financed mainly by the associations of the disabled and those of private welfare work. Frequently they are organized in the form of societies and foundations. It is also possible for municipalities to run workshops such as these, but this is seldom the case. A workshop can only be officially recognized if it complies with the legal prerequisites of the *Severely Disabled Persons*

Act. Funding for these workshops comes from many sources: the compensatory levy (contribution on the part of the federal and the Länder governments) provides the major portion; and the Federal Employment Agency and the respective Lands dedicate part of their own funds to pay some of the costs, while operating costs are usually paid for by social welfare agencies (supra-local organizations); and some income comes from the products made and sold by the workshop.

Welfare Benefits/Social Assistance (Economic Security for Persons with Disabilities)

Measures of rehabilitation are not financed only by the social-security organizations pursuant to the insurance principle. Social assistance as well as youth welfare agencies come into play in all areas of rehabilitation, though only when

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The compensatory levy, however, is not only of importance as an instrument of integration of persons with disabilities into the labour market. It is also intriguing since it is an obligatory levy that is earmarked and therefore must be spent on those designated by this area of social policy and it involves a form of mixed financing which is currently being rejected by the Länder.

The compensatory levy is charged by the central welfare offices. These central welfare offices need to be established at the level of the Länder, as stated by the

Unlike Canada, the complexity of governance of disability programs in Germany not only results from the vertical cooperation of the federal government, the Länder, and the municipalities (the intergovernmental regime), but from the point of view of persons with disabilities and their families, one of the major problems is that the provision of support and services is also allocated horizontally between the different sectors. Since the jurisdiction of the social-security organizations is, among other factors, determined by the insurance-related situation of the disabled persons and because many of the people with disabilities also rely on social welfare benefits, it is made very difficult to tackle the problems holistically.

The associations for disabled persons are among the most vocal critics of the fact that the system is extremely difficult to understand, and this in turn substantially impairs the efficiency of the governance of disability programs and makes it difficult for the disabled to access the services. Therefore, the principle of a comprehensive insurance coverage (universality of coverage) is clearly limited in its scope since the services and support provided are frequently very difficult to access as the system is extremely difficult to understand. Seen from the point of view of a person with a disability, a system that is centred around the individual with all the required services organized would be very helpful. However, the German reality is different. In line with the basic concept of a mature and emancipated citizen, individuals with disabilities and their families have to select from the large range of services and support available and then arrange for the assistance they are entitled to and which they require. However, the plurality of supply contributes to the fact that it is very likely that some of the offers are not utilized. This could be due to the disabled person not knowing about the offer or to the organizations not being able to agree on jurisdiction and financing. A large number of counselling institutions exist, but the individual is required to take the initiative. In this aspect, the differences between this concept and the governance of disability programs in the former GDR becomes clear. In the former GDR, persons with disabilities were under governmental custody.

Due to these organizational problems, there are repeated demands in Germany for a disentanglement of the current system. However, this is not realistic. It would mean new organizational structures and the exclusion of a governance system that has worked and is based on social-security institutions. Since such a step toward a uniform governance of disability programs on the horizontal level is rather unlikely, those responsible wish for improved coordination. One example of an attempt to achieve this reorganization is for all interested institutions to have "commissioners representing disabled persons' interests." In order to make the system (the provision of services and the area of jurisdiction) more transparent, these commissioners play the role of intermediaries between persons with disabilities, the authorities, and the agencies of rehabilitation facilities. Despite the fact that these coordination bodies have already begun their work, even the federal government agrees that the major problem is coordination of services and the guarantee of smooth and uninterrupted handling processes. These problems of efficiency are a burden for the individuals and their families, but they also represent a financial burden for the organizations. The fact that the majority of all social-security institutions — above all health insurance and pension funds — are facing enormous financial difficulties anyway, aggravates the problems even further. In addition, the Federal Employment Agency and the organizations of social welfare who assume important responsibilities in the field of governance of disability programs are very stressed, financially speaking, due to the high unemployment rate in the Federal Republic of Germany.

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[1] Paul Pierson and Stephan Leibfried, "Multitiered Institutions and the Making of Social Policy," in

[29] Anita B. Pfaff, “Rehabilitation aus Aekonomischer Sicht,” in *Behinderte und Rehabilitation*, ed. Knappe, p. 93.

[30] Sozialverband Reichsverbund e.V., *Leitfaden fuer Behinderte. Haubuch zur Rehabilitation in der Bundesrepublik Deutschland* (Bonn, 1997), p. 39.

[31] Markus Heintzen and Christoph Kannengiesser, “Die Regionalisierung der Sozialversicherung aus Verfassungsrechtlicher und Verfassungspolitischer Sicht,” *Die Angestelltenversicherung* 2(1993):59.

[32] Compare the case study by Steffen Schneider.

[33] Heinz Lampert, *Lehrbuch der Sozialpolitik* (Berlin: Springer, 1991), p. 365.

[34] Supra-local organizations (*Ueberoertliche Sozialhilfetraeger*), which are responsible for different social services, are to be found in the Länder on a regional level, the terminology differs.

[35] Local organizations of social welfare (*oertliche Traeger der Sozialhilfe*) are those towns that do not belong to a county (*kreisfreie Staedte*) and the counties (*Landkreise*).

[36] See the earlier section on “The Role of Local Government in German Social Policy.”

[37] Approximately one-fifth of all recipients of welfare are disabled persons. Their share of welfare expenditures is one-third.

[38] Bundesarbeitsgemeinschaft Hilfe fuer Behinderte, p. 20.

[39] George H. Milbradt, “Die kommunalen Sozialhilfeausgaben: Das Fuer und Wider verschiedener Finanzausgleichskonzepte aus kommunaler Sicht,” in *Sozialhilfe und Finanzausgleich*, ed. Wolfgang Kitterer (Heidelberg: Campus, 1990), p. 154.

[40] Lampert, *Lehrbuch der Sozialpolitik*, p. 365.

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Throughout the twentieth century, public policy in the United States has been formulated to address the needs and aspirations of people with disabilities, beginning with income replacement and medical support services and culminating, in the last decade, with comprehensive legislation to protect the rights of and advance opportunities for disabled Americans. This chapter examines the evolution of disability policy in America. Particular attention is given to the formation of these policies and the governmental, and often intergovernmental, mechanisms by which disability policy has been formulated, implemented, and enforced. This intergovernmental perspective is an appropriate viewpoint from which to study disability policy given that today's policies are the result of political movements, debates, and decisions that have taken place both within state capitals and the US Congress and sometimes *between* state and national policymakers.

This chapter outlines several key features of disability policy as it has emerged in the United States. First, contemporary disability policy shows a pattern of protections, coverage, and services that has grown from minimal and restricted to broad-based. Second, like many other forms of social policy in the United States, policies aimed at people with disabilities have evolved through a federal system of governance whereby the national and state

Livneh examined the formation of attitudes toward handicapped people and concluded that these attitudes are “learned and conditioned over many years,” and that attempts to change them require substantial effort.

Researchers have considered the extent as well as the source of public attitudes toward handicapped people. Analyst William English, in reviewing empirical research on this question, argues that “the attitudes of the general public toward physically disabled persons in general suggest that nearly half of the non-disabled public have primarily negative attitudes that extend to many aspects of the lives of disabled persons.[6] Public attitudes about and perceptions of disabled individuals arise from many sources, ranging from personal fears and anxieties to inaccurate media and literary portrayals. These attitudes appear to be deeply based and difficult to change. Their impact cannot be overstated, for it is clear that these attitudes have generated behaviours and decisions that have limited the opportunities and life-styles of disabled persons.

Because of these perceptions and attitudes, society as a whole, until quite recently, has not been open to the idea that disabled individuals can meaningfully participate in most life activities. As has been argued, “Society invariably perceives the disabled in terms of their disabilities, for what they cannot do, not for what they can do. This almost universal view is far more handicapping than any particular disability.”[7] Because of its blindness to these potentialities, society has erected many barriers — tangible and intangible and with motives that range from neglect to prejudice — that impede the ability of disabled persons to participate in many facets of contemporary life. It is against

The impact of disability on the lives of handicapped persons is clear from survey questions about social interactions and ability to reach personal potential. Over half of the respondents reported that their disabilities prevented them from achieving full potential in life, and 56 percent said that their handicaps prevented movement within the community, such as attending cultural and sports events, and socializing with friends outside the home.

Respondents were asked about barriers that prevented them from entering the mainstream of society. The most frequently cited impediment was fear that their disabilities might cause them to get hurt, sick, or victimized by crime if they left home more frequently. In addition to health and safety concerns, respondents also pointed to physical obstacles to their mobility. Of those interviewed, 49 percent said that they were not able to use public transportation or gain access to specialized transportation services; 40 percent said mobility was limited by buildings that were inaccessible or unequipped with restrooms they could use; and 47 percent of working-age respondents stated that employers would not recognize that they were capable of performing full-time work. While those interviewed indicated that significant progress had been made since

and regulation of commerce among the states. Responding to a long-time distrust of central authority and seeking to protect their own governing authority, the American states, while granting some authority to the national government, retained substantial governing rights for themselves. The concerns of the states are reflected in the tenth Amendment to the Constitution, known as the reserve clause, which holds that all powers not specifically delegated to the national government were reserved to the states.

Within this constitutional framework, the relative power position of the national government increased as constitutional interpretations and understandings evolved, especially during the twentieth century. This occurred for several reasons. The fourteenth amendment and its equal protection clause is one factor that has extended constitutional rights and responsibilities originally applied to the national government to the actions of state governments. The equal protection clause (enacted following the end of America's Civil War in 1868) was added to the US Constitution as a means to instruct southern states to treat all citizens, including former slaves, equally under the law. Through a process known as "selective incorporation," the rights and liberties outlined in the Constitution and Bill of Rights have been coupled to the equal protection clause, thereby extending coverage to the actions of state and local governments. In this way, most of the rights and liberties articulated in the Bill of Rights have been "nationalized," meaning that the civil liberties and protections, originally designed to protect citizens from the actions of the *national* government, now work to provide citizens with protections from *state and local governments* as well.

The reach of national government power also expanded as the result of interpretations of the Constitution that see this important rule book as elastic. Actions beyond those expressly listed in the Constitution have been judged permissible. For example, the US Constitution's necessary and proper clause empowers the national government to enact laws necessary to perform its responsibilities. The *commerce clause* of the Constitution, which permits the national government to regulate interstate commerce, has increased national power. Given the nature of the modern economy, most goods and services produced in the country are transported across state boundaries. Using the commerce clause power, Congress has enacted laws to regulate monopolies, clean the environment, and protect consumers.

Another source of expanding national government power is known as the spending power. Where the national government is not constitutionally empowered to take action it can instead offer funds to support programs that the national government deems of value in the country. States are not required to create federal programs, but instead are given financial incentives to devise and operate programs that follow guidelines and stipulations set by the national government. Federal financial transfers, the spending power of the national government, have been used to create a large number of other social welfare programs, such as Aid to Families with Dependent Children (AFDC)

by suing employing companies in court. Here, compensation could be delivered by judges and juries who weighed the competing claims of workers and employers to decide if the employer was responsible and, if so, the amount of compensation to be awarded to the injured worker.[15]

In court deliberations, the claims of workers for redress from industrial employers were based on common law duties imposed upon the employer, including the provision of a safe place to work, safe tools and equipment, warnings of danger, sufficient able workers to perform assigned tasks, and rules (and their enforcement) to ensure a safe work place.[16] Using this judicial mechanism to provide workers' compensation proved costly and uncertain to both parties. For employers, claims for compensation could lead to hefty settlements, thereby generating an ongoing risk that harmed the ability of the company to grow. Injured workers worried about whether judges or juries would recognize their injury, employment loss, and need for adequate compensation. Recognizing the potential for serious, even life-threatening, injury faced by industrial workers as well as understanding the negative impact of the risk associated with potential compensation claims, led to the search for public policy to handle workers' compensation issues.

Policy changes came in the states. As early as 1855, the State of Georgia

The workers' compensation model adopted in the United States, similar to programs in nations like Germany, represents a compromise approach between employees and employers. Williams describes this social compromise:

> Employers became responsible for all industrial injuries and diseases, regardless of who was at fault. Workers' compensation became the exclusive remedy of the employee against the employer for industrial injuries and diseases, i.e., employees lost the right to sue the employer for these injuries and diseases even if the employer was at fault. Workers are compensated for their medical expenses and income lost because of disability or death. No compensation was provided for the pain and suffering the worker might endure because of an industrial accident or sickness.[17]

This "exclusive remedy" approach, despite some shortcomings, represented an improvement over relying on the courts where decisions were much less 2eas.r2 fa3ByT3(e)1950he majTw [9.3s in 6.3(ppr)8(oachless)]TJ 0 561.356 TD 0.0265 state programs.[19] At the same time, the commission identified problems, made recommendations for changes, and gave the states three years to reform their programs in response to commission findings. In particular, the commission stated firmly that cash benefits should be substantially increased. Many states in turn reformulated their programs and increased benefits, resulting in an increase of workers' compensation premiums from $6.8 billion in 1973 to almost $23 billion a decade later.[20]

Contemporary workers' compensation programs provide a variety of benefits generally without regard to the amount of time the individual has had on the job. Assistance includes medical benefits to support treatment and possibly provision of replacement limbs and income support during time off work due to injury. Disabled workers in the United States are also eligible for vocational rehabilitation services provided through a separate national government program.

In current state workers' compensation laws, employers may provide coverage to workers in one of three ways. They can purchase a workers' compensation and employer liability policy from a private insurance vendor, they can purchase coverage through a state workers' compensation fund, or they can set aside sufficient reserves to cover compensation risks. Given the uncertainties involved, most companies rely on one of the first two methods. Payment schedules for individuals eligible for workmen's compensation vary across the 50 US states. One method is to base payments on fixed tables that relate well-defined impairments to specific payments. Another method is to base paymentbe,iits9stance

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provided funding — on a 50/50 match with state governments — to support state rehabilitation agencies in providing counselling, vocational training, and job-placement services for physically handicapped individuals. Thus, while workers' compensation arose as a state-based program, vocational rehabilitation was created to operate as an intergovernmental collaboration where program funding and governance would be shared between the players of the federal system of governance in the US.

As with many of the social programs in the US, the breadth of individuals covered by the vocational rehabilitation program has expanded significantly from program beginnings. In 1943, with the passage of the *Barden-La Follette Act*, the rehabilitation program was expanded to include mentally-ill and mentally-retarded individuals. Beginning in 1954, the program was revised so as to include research and demonstration projects in addition to traditional service delivery programs.

The original supporters of vocational rehabilitation programs expected a close connection between their new program and the workers' compensation programs operated in the states. In fact, it was anticipated that the rehabilitation program would receive its participants from the compensation programs for injured workers. This partnership between programs did not occur, however. Instead, workers' compensation programs became more affiliated with the labour establishment while the rehabilitation programs became affiliated with educational models and institutions.[23]

From its genesis in 1920, the vocational rehabilitation program has grown extensively in the realm of persons served and the breadth of services offered. The *Social Security Act* of 1935 provided permanent status to the program, while subsequent legislative changes expanded the program in many directions, including the provision of medical services and prosthetic devices; creation of programs to serve people with mental disability, migratory work-individuals must experience (i) the presence of a physical or mental disability and the resulting functional limitations or limitations in activities; (ii) the existence of a substantial handicap to employment caused by the limitations unemployment insurance programs. This state action stimulated renewed national government attention to the issue. After administrative study and legislative debate, a system of disability payments, known as Social Security Disability Insurance (SSDI), for workers between the ages of 50 and 64 was created in 1956 through amendments to the *Social Security Act*. Payments were

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Origins

The *Americans with Disabilities Act* did not emerge spontaneously or without policy precedent. Instead, it was formulated as a reflection of previous national and state government laws and policies.[29] At the level of the national government, ADA draws upon several pieces of important legislation as precursors. The push for federally-based legal protections for persons with

> *Section 501*: Requires that the agencies of the federal government take affirmative action to employ qualified people with disabilities: thus a Congressional mandate placed upon the employment practices of national government agencies.
>
> *Section 503:* Requires persons and organizations that have contracts with the national government in excess of $2,500 to take affirmative action to employ, and advance in employment, qualified people with disabilities. Contractors violating this mandate were subject to contract revocation and loss of federal dollars.
>
> *Section 504:* Prohibits recipients of federal financial assistance (grants) to discriminate on the basis of handicap. Using its spending power, the national government exerted a nondiscrimination mandate upon state and local governments receiving federal funding.

No legislator, nor any of the parties to be regulated by these provisions, anticipated the substantial impact that these disability rights provisions, especially

The Perspective of Advocates

Despite the symbolic importance of disability rights laws predating the ADA, and the positive impacts associated with their implementation, there remained a substantial consensus in the 1980s, especially among civil rights advocates and groups representing persons with disabilities, that national government protections were insufficient. Existing laws, both at the national and state levels, were a start, but were not considered adequate to ensuring access for disabled individuals to the full range of opportunities and services available in contemthose for disability rights were confined almost exclusively to the *public* sector. The National Council on the Handicapped, a body charged with reviewing federal laws and policies affecting disabled citizens and responsible for creating the first version of the ADA, cited this limitation in the scope of non-discrimination mandates: “an examination of the major Federal disability programs reveals little effort to encourage, expand, or strengthen Federal/private sector partnerships that address disability problems.”[35]

although Edward Koch, as Mayor of New York City, identified handicapped rights requirements as among the federal mandates operating “as millstones” around the necks of local governments.[37] These entities did, however, object to the extent of accommodations and accessibility modifications stipulated by section 504 and other federal laws and the costs required to achieve compliance. Probably the loudest cries of cost burden were raised about accessibility in pubs

George Bush regularly railed against the creation of new federal mandates, there was widespread support for the ADA in both houses of Congress and in the White House — unusual bipartisan support for major civil rights legislation. While some Republicans, taking a conservative stance, voiced displeasure about ADA provisions concerning coverage, enforcement, and penalties, they were generally comfortable with the plan for a national civil rights bill for people with disabilities which would strengthen and expand the mandates included in earlier federal laws. Attorney-General Richard Thornburgh, for example, testifying on behalf of President Bush at congressional hearings on the ADA, claimed that "Over the last 20 years, civil rights laws protecting disabled persons have been enacted in a piecemeal fashion. Thus, existing Federal laws are like a patchwork quilt in need of repair. There are holes in the fabric, serious gaps in coverage that leave persons with disabilities without adequate civil rights protections."[42]

The move to "nationalize" disability rights policy also reflected the willingness of Congress to enact pre-emption statutes in the area of civil rights[43] and a shift in federalism away from aiding places and toward directly aiding persons.[44] By the late 1980s, the disability movement had reached full political force, joining interest groups that had proliferated in other policy areas and who were having a growing impact on policy issues related to federalism.[45] Scores of national, state, and local organizations representing persons with disabilities had, by this time, organized politically, adopted effective political tactics, and learned to cooperate in pursuit of national civil rights legislation to end discrimination based on disability. These groups demanded that people with disabilities be recognized as full citizens of the United States and that the federal government take action to ensure that they receive the full benefits of that citizenship. They were joined by civil rights organizations representing women and minorities who helped sustain the push for enactment of comprehensive national civil rights legislation.

Constitutional and Political Foundations of the ADA

The language of the ADA carefully specifies the constitutional basis for the mandates it creates. The statute invokes "the sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."[46] Through this statement, Congress moved disability rights laws into a parallel position with other civil rights laws where the fourteenth amendment and commerce clause have been “the two principal founts documented in a variety of studies.[53] These attitudes have persisted despite substantial evidence documenting the productivity and reliability of disabled workers[54] and the relative low cost associated with making the workplace accessible to individuals with disabilities.[55]

disabilities in both the private and public spheres. As of the late 1980s, 46

The concept of paratransit services is explicitly addressed in the ADA which, borrowing heavily from earlier Department of Transport regulations implementing section 504, requires that public entities which operate fixed route transit systems provide paratransit and other specialized services to individuals with disabilities that are sufficient to provide such individuals a level of service comparable to the service provided to non-disabled passengers. The paratransit mandate holds only to such a point that it does not create an undue financial burden on the public transit entity. The last provision was seen as key by public transit purveyors who recognized the costliness of paratransit operations and feared an unlimited responsibility to provide demand-responsive transportation to disabled riders.

Access to Accommodations

accommodation" is broadly conceptualized and encompasses most private sector establishments, including hotels and motels, banks, business locations, restaurants, bars, theatres, concert halls, service facilities (e.g., laundromats, banks, travel agencies, and health-care providers), parks, places of education, and recreation centres.

Operators of public accommodations are (i) prohibited from denying access or participation to disabled persons, (ii) required to made reasonable modifications in policies, practices, and procedures to afford goods, services, privileges, and opportunities to persons with disabilities, and (iii) mandated to make "readily achievable" modifications (i.e., "easily accomplished and able to be carried out without much difficulty or expense") to architectural and communications barriers that impede the access of disabled individuals. The public accommodations title of the ADA strengthens substantially the federal accessibility mandate, which now surpasses the strongest mandates specified in state laws concerning the access of disabled individuals to public and private operations. Thirty-two states, as of the late 1980s, had laws requiring barrier removal or accessibility modifications in at least some privately owned and operated buildings, but none had such extensive coverage of private sector enterprises as the ADA.[64]

The ADA as National Policy

There is no question but that the *Americans with Disabilities Act* represents application of significant governing authority by the national government, power activated by constitutional authority in place of a condition-of-aid mandate. Americans as citizens, and the state governments that represent them, generally accepted this assertion of power aimed at protecting the rights and opportunities of people with disabilities. While such national assertions of power have generated controversy, even rebellion, in the past, the ADA did not raise the hackles of the states; instead the states accepted the ADA with the primary worries focusing on the costs of compliance rather than the need to challenge national government authority.

The overall acquiescence of the states to nationally defined and implemented protections for people with disabilities can be explained by multiple factors. First, the national government's assertion of policy-making authority in the area of civil rights dates back to the 1950s as the United States contemplated laws to protect the rights first of people of colour and then rights of women. By the late 1980s as the ADA was drafted and debated, civil rights controversies pitting the state governments against the national government had abated with overall acceptance of national government prominence in civil rights policy. From this perspective, the ADA became one of a long developing set of civil rights policies with the national government operating at the helm.

Another explanation of state government acceptance of national government authority as articulated in the ADA is that states had themselves already moved by the 1980s to create disability rights policies. Some states had laws that surpassed the national government's pre-ADA laws and policies in terms of coverage and scope. The policy provisions of the ADA were often consistent with elements of laws in most states allowing states to see the ADA not so much as a rival but as a companion to state laws.

A final explanation of state acquiescence to national government power in the context of the ADA concerns the depth of public recognition of discrimination and growing public sentiments for strong protections. During the two decades preceding the ADA, Americans not only witnessed greatly expanded civil rights protections for many groupings of Americans but also began to learn about the plight of people with disabilities, the limiting impact of policies and design features, and the potential contributions that people with disabilities can make to American life. These recognitions generated political support for the ADA, support that was nationally, not regionally or state, based. Civil rights protections designed and enforced by the national government were therefore consistent with popular conceptions of how civil rights are to be defined and enforced within the overall federal system of the US.

As the United States faces a new millennium, the disability policy front is relatively quiet. While significant issues about program implementation condisabilities and expand their opportunities in society. Income maintenance programs, including workers' compensation and Social Security Disability Insurance, have been created and expanded. These entitlement programs have survived onslaughts against entitlements and today face no significant chal-

One final issue focuses on the fundamental conception of the human beings for which disability policy is intended to serve. Initial concepts, as noted at the start of this chapter, were rooted in fear, pity, and preferences for separa-

> So what is the situation? First, people are already concerned about the size of beneficiary populations of the disability programs. After examining the changes contemplated in other income support programs, the declining demand in the labor market for low-skilled and disadvantaged workers, and the growing gaps in health care protection for workers, thinking that demands on the disability systems are going to decline through a strategy of benign neglect is not plausible. So, there remains a great deal of unfinished business.[69]

Proposals have been, and will continue to be, offered to improve the disability policy system, to make policies more effective in aiding people with disabilities. The National Council on Disability, an independent agency of the national government, suggested a variety of action proposals that, cumulatively, were expected to enhance the employability and life situations of disabled persons. The council urged the US Congress "to tap into the potential provided by people who have disabilities. America's citizens with disabilities want very much to contribute to their country's continued preeminence in the world of nations. They have the talents and the capabilities to do so."[70]

If the ADA represents the important linchpin of contemporary disability policy, we can also inquire as to its current status. The full answer to this question is not yet in. On the one hand, the administrative work to implement the program is in place, on the time line established in the ADA: "Collectively considered, preliminary indications suggest that the ADA is on track in terms of accomplishing its goals. Congress clearly stated its intent, regulatory agencies developed compliance standards and enforcement mechanisms, and potential beneficiaries are engaged in the process. On this basis, the prospects for successful implementation and vigorous enforcement of the ADA appear promising."[71] One the other hand, less is known about the outcomes of the ADA. The sheer magnitude of the ADA mandate — covering multiple policy dimensions (i.e., employment, transportation, public accommodations) and both the public and private sectors — makes it difficult to know just what has been accomplished.

The issue of ADA costs will remain at the forefront of the political whirlwinds that surround the implementation of this law to protect people with disabilities. Given the scope of the Act and insufficient information on such things as the number and type of employment accommodations and the extent of architectural barrier-removal projects that will be needed, it is extremely difficult to estimate the total costs of achieving nation-wide compliance with the ADA. While many types of accommodation can be made with little cost, substantial costs will be incurred in such areas as providing paratransit services, making key transit stations accessible, and making physical changes in services and facilities used by the public.

One partial yet plausible set of estimates on ADA compliance was prepared by the Congressional Budget Office (CBO), which estimated that the cost to the federal government in implementing the ADA would range from about $5 million in the first year to $31 million by 1995.[72] But the real cost of compliance is with the content of the ADA — unlike other disability rights policies borne by state and local governments and private sector establishments, of course — will be substantially higher. With regard to the compliance costs to state and local governments, CBO estimated that it would cost $20–30 million per year over several years to purchase additional lift-equipped buses, $15 million annually to provide maintenance to these buses, and several hundreds of millions of dollars over 30 years to make key rail and transit stations accessible. Still other dollars will be required to achieve compliance with other ADA mandates, including reasonable accommodation in employment and housing.

Cost issues and the elevated opportunities for people with disabilities has the potential to generate a backlash against the ADA and its strong regulatory mandates. While significant political revolts against the ADA have not yet materialized, complaints have arisen in some quarters about expansivenss of ADA mandates and the fiscal requirements needed to achieve compliance. Communities, large and small, have complained about compliance costs for such things as major building renovations and interpreter services. Complaints range in scope from mandated actions that represent little more than anger about the "nuisance" of compliance to accommodations that represent substantial fiscal outlays (e.g., provision of paratransit services). Academics have entered the fray, challenging whether disability policies which advance the opportunities of people with disabilities are fair and just or whether they can enable undeserving claims to "jump the queue" while other more deserving public needs are left unmet.[73] And while these critiques from practitioners and academics remain, these seem unlikely to derail the ADA. One analyst warns state and local governments that: "Given the militancy of the disabled, the activism of the [US Justice Department and the sympathies of most of the judiciary, ignoring the 'little things' [adherence to ADA mandates] can turn out to be the riskiest strategy of all."[74]

Finally, there is substantial agreement that we have more to learn about disability policies, their effects, individual and cumulative, and whether or not policy modifications are needed to ensure that public programs achieve their intended consequences. As one disability policy analyst contends, it is now a critical time for policy analysts to join the fray to answer these important policy questions: “Disability policy engages the attention of decision makers in a way it did not in the past. It is the responsibility of the policy analysis community, especially those analysts who identify with the disability community, to focus on disability policy and its implications.”[75] There is much wisdom here, since we are now past the point of policy formulation and preliminary implementation. It is time now to learn from policy experiences in the United States, at both the state and national levels, to inform the next generation of disability policies — most of which will be revisions of current policy rather than bold new initiatives.[76]

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[1] This field of policy studies is moving toward disciplinary status as evidenced by the creation in 1993 of a new interdisciplinary journal, *The Journal of Disability Policy Studies*, published at the University of Arkansas.

[2] For a comprehensive review of research studies through the late 1970s on attitudes toward persons with disabilities, see John G. Schroedel, *Attitudes toward Persons with Disabilities: A Compendium of Related Research* (Albertson, NY: Human Resource Center, 1979).

[3] Robert L. Burgdorf, Jr. and Marcia Pearce Burgdorf, “The Wicked Witch is almost Dead: *Buck v. Bell* and the Sterilization of Handicapped Persons,” *Temple Law Review* 50 (1977):995-1033.

[4] Shari Thurer, “Disability and Monstrosity: A Look at Literary Distortion of Handicapping Conditions,” in *Rehabilitating People with Disabilities into the Mainstream of Society*, ed. Allen D. Spiegel and Simon Podair (Park Ridge: Noyes Medical Publications, 1981).

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[6] William R. English, “Correlates of Stigma Toward Physically Disabled People,” *Rehabilitation Research and Practice Review* 2 (1971):1-17. See also Jerome Siller *et al.*, *Attitudes of the Nondisabled toward the Physically Disabled* (New York: School of Education, New York University, 1967); and Robert B. Nathanson, “Campus

Interactions: Attitudes and Behavior," in *The College's Challenge* (New York: Teacher's College, Columbia University, 1980).

[7] Florence Isbell, "How the Handicapped Won their Rights," *Civil Liberties Review* (November/December, 1977): 62.

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[10] Thomas J. Anton, *American Federalism and Public Policy: How the System Works* (Philadelphia: Temple University Press, 1989), p. 3.

[11] A detailed examination of different patterns and periods of American federalism is presented in Deil S. Wright, *Understanding Intergovernmental Relations*, 3d ed. (Pacific Grove, CA: Brooks/Cole Publishing Company, 1988), pp. 65-112.

[12] For more on fiscal federalism, see Thomas R. Swartz and John E. Peck, *The Changing Face of Fiscal Federalism* (Armonk, NY: M.E. Sharpe, 1990).

[13] The US Advisory Commission on Intergovernmental Relations (ACIR) has documented the forms and magnitude of regulatory mandates placed by the federal government upon states and localities. By the mid-1980s, ACIR counted over 35 *major* federal laws regulating state and local governments; this number increased through the early 1990s. The breadth of regulatory power is evident in the number of different areas being regulated by the federal government, including environmental protection, civil rights, consumer protection, labour issues and workplace safety, and energy conservation. Advisory Commission on Intergovernmental Relations, *Regulatory Federalism: Policy, Process, Impact and Reform* (Washington, DC: ACIR, 1984).

[14] For a thorough examination of the development of federal disability policies, see Edward D. Berkowitz, *Disability Policy and Government Programs* (New York: Praeger Publishers, 1987).

[15] Edward D. Berkowitz, *Disabled Policy: America's Programs for the Handicapped* (Cambridge, MA: Cambridge University Press, 1987), p. 15.

[16] Jack B. Hood, Benjamin A. Hardy, Jr. and Harold S. Lewis, Jr., *Workers' Compensation and Employee Protection Laws* (St. Paul, MN: West Publishing Company, 1990), pp. 1-2.

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