Social Charter

This term is used to capture various means of constitutional recognition of the essential components of economic and social citizenship (such as rights to education, health care, an adequate standard of living, housing, and employment). Recent calls for such constitutional modification flow largely from the perceived vulnerability of social and economic guarantees to political attack. The means envisioned to capture constitutional recognition range from entrenchment of justiciable, judicially enforceable social and economic rights in the Constitution, to constitutional articulation of norms or entitlements monitored by some non-judicial national or federal institution, to expression within the Constitution of general principles of symbolic and hortatory impact alone. The nature of the positive obligation imposed on government by social and economic rights has been cited by many as reason for constituting such rights as "non-justiciable" or as merely "directive principles", on the basis that such obligations, because of the complex socio-economic and fiscal policy issues they raise, are inappropriately adjudicated upon or enforced by the courts. Yet, civil and political rights often involve equally complex issues and impose significant fiscal obligations on governments. A number of countries already provide for varying measures of recognition of social and economic norms or rights in their constitutions. (See, for example, the constitutions of Japan, Netherlands, and South Africa.)

The notion of entrenching social rights in the Constitution received early mention in constitutional scholar Frank Scott's 19xx proposal for an entrenched Bill of Rights containing, in addition to protection for traditional civil liberties, a declaration or enunciation of social objectives or goals. During negotiations leading up to the ultimately unsuccessful Charlottetown Accord of August 28, 1992, the Ontario government argued for recognition of social objectives in an expanded version of the non-justiciable principles contained in Section 36 of the Constitution Act, 1982. In response to this proposal, the Alternative Social Charter was developed and endorsed by a wide range of equality-seeking groups. The Draft Legal Text of the Charlottetown Accord included a "social and economic union" provision modeled on Ontario's proposal detailing a series of non-justiciable "policy objectives" for health care, social services and benefits, education, the rights of workers to organize and to bargain collectively, the goal of full employment, and a reasonable standard of living. The mechanism for monitoring progress made in relation to these objectives was to be left to further federal/provincial negotiations.

Sources:

- Social Justice and the Constitution: Perspectives on a Social Union for Canada, Joel Bakan and David Schneiderman, eds., (Ottawa: Carleton University Press, 1992)
- Frank R. Scott, "What does Labour Need in a Bill of Rights?", A New Endeavour: Selected Political Essays, Letters, and Addresses, Michiel Horn, ed., (Toronto: University of Toronto Press, 1986) 105 - 109.

- Alternative Social Charter