INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each original is also photographed in one exposure and is included in reduced form at the back of the book.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

UMI

A Bell & Howell Information Company
300 North Zeeb Road, Ann Arbor MI 48106-1346 USA
313/761-4700 800/521-0600

**Welfare State Accountability Exigencies:
Reflections Upon Law and Social Movement Transformative Politics**

by
Blake John McLaughlin, B.A. (High Hons. Law)

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of

Master of Arts

Department of Law

Carleton University
Ottawa, Ontario
07 September 1998

© 1998, Blake John McLaughlin

National Library
of Canada

Acquisitions and
Bibliographic Services

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque nationale
du Canada

Acquisitions et
services bibliographiques

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence

Our file Notre référence

The author has granted a non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of this thesis in microform, paper or electronic formats.

The author retains ownership of the copyright in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de cette thèse sous la forme de microfiche/film, de reproduction sur papier ou sur format électronique.

L'auteur conserve la propriété du droit d'auteur qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

0-612-36868-8

Canada

Thesis Acceptance Form

M.A. CANDIDATE

The undersigned recommend to the Faculty of Graduate Studies
and Research acceptance of the thesis

**Welfare State Accountability Exigencies:
Reflections Upon Law and Social Movement Transformative Politics**

submitted by

Blake John McLaughlin, B.A. (High Hons. Law) Carleton University

in partial fulfilment of the requirements for

the degree of Master of Arts

Thesis Supervisor

Chair, Department of Law

Carleton University
September 21, 1998

ABSTRACT

This thesis examines the welfare state “crisis” in relation to accountability issues and the development of a progressive political program which targets the realization of democratically opened up state structures of communication. Drawing upon the theoretical work of Jurgen Habermas and associated literature, this thesis points to the prevalence of expressed accountability concerns as being emblematic of the welfare state’s legitimacy deficit. In response, this thesis calls for a ‘reflexively continued’ welfare state program, emphasising the need for a dialogically and democratically renovated accountability framework. The evolving political program of the National Anti-Poverty Organization (NAPO) is considered in order to illuminate the analysis and the recommendations of this thesis. It is argued that the achievement and maintenance of a reflexively oriented welfare state will require an integrated social movement politics that includes a conception of the transformative possibilities within law.

ACKNOWLEDGEMENTS

The complexity of the subject matter examined in this thesis would have made for an ambitious project under any circumstances. I am 'fortunate' to have had many other simultaneous commitments which have made this a truly challenging experience. Unfortunately, as we all know, it is not always easy to keep everything properly aligned. For this reason, and apart from those I have already thanked, I would like to take this opportunity to acknowledge my parents, Bonnie and Lionel, and the rest of my family, friends and colleagues, who have supported my efforts and extended me their understanding.

I must also acknowledge my ultimate 'personal accountability mechanism' - my grandmother Hilda Sullivan. The lessons I have received from her and my other grandparents will continue to help me far beyond the knowledge associated with yet another degree.

Finally, I must thank my wife and partner - Geri Moss-Norbury. Without all her support I would not have been able to reach this particular finish line. On to our next project.

Blake John McLaughlin, B.A. (High Hons. Law)

TABLE OF CONTENTS

ACCEPTANCE SHEET	ii
ABSTRACT	iii
ACKNOWLEDGEMENTS	vi
TABLE OF CONTENTS	v
INTRODUCTION	
I. Accountability Politics and the Welfare State	1
II. NAPO: A Concrete Social Struggle Touchstone	7
III. Outline	8
CHAPTER ONE Beyond the Social Democratic Welfare State Paradox	15
I. Social Rights and Welfare Surveillance	15
II. A Post-Social Democratic Conception of the Welfare State	19
III. Pursuing a Reflexive Welfare Program Alternative	22
CHAPTER TWO Canadian Social Security Development:	
Policy Environment Reflections	33
I. Examining the Legal Framework of Canadian Social Security: Macro	
Policy Environment Pressures and Issues of Public Accountability	33
II. The Development of Canada's Social Safety Net	35
III. The Contemporary Social Security Policy Environment	46
IV. Accountability and the Arena of Social Security Policy	57
A) Attempting to Restore System Legitimacy	57
B) Welfare Abuse Policies	59
C) Pursuing a Renovated Conception of Accountability	62
CHAPTER THREE Social Movement Public Sphere Political Potential	84
I. Social Movement Strategy and the Reflexive Ideal	84
II. Early Habermas: An Inattention to Agency in the Public Sphere	87
III. The 'Democratic Dam' and Beyond - A Limited 'Dual Politics'	92
IV. The Interrelated Arenas of Social Movement Struggle	97

CHAPTER FOUR	Legal Strategies in Transformative Struggles	116
I.	The Utility of Law in Social Movement Politics	116
II.	The <i>Charter</i> As Transformative Tool and Accountability Mechanism ..	117
III.	Legalization of Politics	120
IV.	The Problematic Relationship Between Law and Social Transformation	122
V.	The Transformative Potential of Law	125
	A) Progressive Struggles and the <i>Charter</i>	125
	B) Rights Discourse	127
	C) A Gramscian Framework	129
	D) Beyond Foucault's Normalization - The Doubleness of Law	134
CHAPTER FIVE	NAPO Engagements: Anti-Poverty SMO Tactical Lessons and Reflexive Political Possibilities	154
I.	Social Struggle and the Canadian Welfare State: SMO Questions of Survival and Strategy Formulation	154
II.	NAPO: Mandate, Functions and Structure	157
III.	Anti-Poverty SMO Survival in a Diminished Political Opportunity Structure	161
IV.	NAPO's Influence in a Changing Policy Environment	165
V.	NAPO as a Source of Public Sphere Counter-Knowledge	170
VI.	NAPO and the Political Public Sphere	177
VII.	Exploring NAPO's Self-Understanding of the Utility of Law / Rights Tactics	183
CHAPTER SIX	Accountability and Rights-Based Politics: Reconsidering the Merits of the Alternative Social Charter (ASC)	204
I.	Pursuing a Reflexive Institutional Communicative Structure	204
II.	NAPO's Constitutional Politics	205
III.	The ASC's Transformative Possibilities	208
IV.	A Dialogical Accountability Mechanism	212
CONCLUSION		219
BIBLIOGRAPHY		225

INTRODUCTION

I. Accountability Politics and the Welfare State

Having rallied sufficient support for the war effort, the heroic middle-aged deficit generals seem to have secured sustainable mutual fund development, the current market turmoil notwithstanding, and march onward to a renovated Dylan cadence.¹ While we continue to be warned of the perils of complacency on this front, mainstream attention is starting to be paid to the ‘peace dividend’. Indeed, even *The Financial Post* has reminded us that there is strategic value associated with the social safety net, boldly asserting: “we still need to get capitalism’s duty to social justice and civility right.”² Together with so many other emerging changes in Canada’s social security policy environment, the ‘remarkable’ state of our fiscal affairs suggest that a fresh examination of the welfare state “crisis” would be timely.

In contrast to either the market solutions of the Right, or the welfare loyalists’ model of the Left, I proceed in this thesis from the perspective that a ‘reflexive continuation’ of the welfare state should be considered as our ideal in developing a progressive political program. A reflexively continued welfare state critically ‘reflects’ on the commentaries emanating from both the Right and the Left, taking seriously concerns such as losses of autonomy and the fiscal limits of the state, while at the same time recognizing that the welfare state must be carried forward. The goal that results from a reflexive analysis is to pursue increased citizen discursive input into our public structures of welfare policy discourse, compromise, and eventually, output. A reflexively oriented welfare state would democratically **open up** our interrelated communicative structures, such as the courts, parliamentary bodies, and

administrative institutions. These are the structures in which macro policy is debated and formed, as well as the structures in which design and delivery decisions are shaped and implemented. These are also the structures in which public evaluation and corrective mechanisms are deployed with the aim of recursively adjusting the previous. By applying the theoretical work of Jurgen Habermas and associated literature to the examination of the so called "crisis", I contend that the conceptual space for a "reflexive"³ continuance of the welfare state does indeed exist, more appropriately orienting our focus toward issues of legitimacy.⁴

The welfare state legitimacy crisis pertains to those problems experienced in the 'welfare' state in terms of the sociological need to bring about a functionally adequate amount of uncoerced support for the objectives of the system from the citizenry.⁵ The 'welfare' state attempts to mitigate the distributive pathologies of modern market arrangements through increased state intervention in the form of, for example, social rights. However, unable to adequately supply resources or meet our reward expectations as actors in the marketplace, we increasingly question the objectives of our post-Keynesian economy welfare state, and eventually a legitimacy deficit arises. Consequently, as opposed to seeking to enhance welfare state system efficiencies or secure more funds, I share the perspective that addressing the welfare state 'crisis' more appropriately proceeds from an understanding that we are facing a crisis of legitimacy. In addition, I take the prevalence of expressed accountability concerns in public discourses and policies to be emblematic of our welfare state's legitimization deficit.

Accountability, as a relational concept, can never be adequately defined apart from

a particular context. Generally speaking, however, accountability refers to the obligation an individual or group assumes to answer to another for responsibilities which have been conferred, and ideally, accepted. This thesis is concerned with the concepts, mechanisms, and frameworks of accountability within the context of welfare state administrative arrangements. Accountability in this context, can be understood as one of our fundamental democratic constitutional organizational principles such as, for example, the ‘rule of law’ or ‘parliamentary sovereignty’. While linked to the concept of ‘responsible government’, as achieved through ‘ministerial responsibility’ and popular elections, accountability is a more dynamic and dispersed concept. Not only does accountability refer to the obligation to answer, it also relates to the information and procedural conditions required to facilitate such ‘answering’. Accordingly, accountability frameworks are generally understood to be comprised of three interrelated principles: transparency, disclosure, and its recursive procedural motor of adjustment, redress.⁶ Where transparency exists, citizens are generally able to **understand the processes**, regulations, policies, etc., by which the parliamentary-bureaucratic complex makes decisions on their behalf. Where disclosure exists, citizens are generally kept **informed of decisions and actions** taken by the parliamentary-bureaucratic complex. Finally, supplied with the knowledge of state decision making methods and outcomes, redress mechanisms enable citizens to **scrutinize and/or appeal** those decisions and actions either collectively or individually. For instance, elections are an example of a collective redress mechanism and judicial review is an example of a possible individually undertaken redress mechanism. These mechanisms are no longer sufficient to support a modern accountability framework.

Traditional parliamentary-bureaucratic approaches to accountability have tended to emphasise ‘ministerial responsibility’ and a top down ‘control’ or ‘compliance’ paradigm fulfilled by financial and program reporting requirements. However, an accountability “framework” is also linked to those public sphere elements, such as the mass media or civil society organizations,⁷ that necessarily augment the parliamentary-bureaucratic informational inputs and self-evaluations as in, for example, the budgetary process. As social complexity has resulted in increased state intervention, top down paradigms are being displaced by flattened, and possibly more responsive parliamentary-bureaucratic service design and delivery. To fulfill ministerial or political accountability, and relatedly, assist the monitoring function of public sphere actors, accountability frameworks are turning to results-based measurements. To put it differently, the parliamentary-bureaucratic accountability knowledge experts⁸ have been moving framework designs away from an emphasis upon ensuring adequate ‘reporting’ inputs toward an emphasis upon measuring outputs⁹ of a given program or policy. Still, beyond the relatively passive redress mechanism of elections, the direct role of the public sphere in these emerging frameworks remains essentially only a secondary external one. The question that arises is how might the political coordinating challenges presented by an increasingly differentiated society be more effectively utilized in our collective need to monitor and adjust those administrative policies and actions designed to fulfill the needs of that increasingly complex society? The answer that I propose is to pursue a democratically enhanced accountability framework so as to open up our welfare state administrative arrangements.¹⁰ In part, this will require the establishment of procedural structures and rights to knowledgeable participation in accountability processes.

In this thesis, accountability and its associated mechanisms or procedures are positioned as key welfare state constitutional communicative structures. Broadly speaking, realizing a reflexively oriented welfare state would, by its very nature, result in a democratically enhanced accountability framework. As opposed to our initial processes of policy debate, creation and implementation, I am especially interested in the possibilities of renovating our conception and approach to accountability so as to better utilize the consensus coordinating function of informed democratic dialogue. In keeping with my project's underlying aim of realizing a reflexively continued welfare state, this thesis argues for a democratically opened up welfare state accountability framework to facilitate the generation of a discursively produced consensus.

Increasingly, debates around the welfare state “crisis” (at least non-deficit fixated polemics)¹¹ are expressed in terms of accountability dilemmas.¹² While accountability concerns cut across the traditional Right-Left political spectrum, some general tendencies can be seen in the way in which these dilemmas are formulated. From the Right, we are warned that fraud and other welfare abuses are rampant. Left critiques have identified problems with the “dark side” of our social institutions such as over bureaucratisation, surveillance, normalization, and dependency. On the one hand, the Right argues that the state, as the designer and deliverer of social programs, has failed to maintain an adequate accountability framework (particularly in terms of financial controls). Consequently, there is the perception of insufficient accountability on the part of the **recipients** of social security to the ‘tax payer’. On the other hand, some on the Left have contended that the system imperatives of welfare administration seem to leave little room (even conceptually) for an accountability

approach which would promote an informed, let alone democratically active, social citizenry. From various standpoints within our welfare state then, the obligation to answer appears deficient, marked by a general sense of lacking in the qualities of transparency, disclosure and redress. Although only one perspective in contributing to our comprehension of the forces of welfare state retrenchment, issues of accountability play a key role in fully appreciating the legitimation problems plaguing the modern welfare state.

A prime example of the impact of political struggles (or lack thereof) around the development of accountability frameworks can be found in the myriad of policy responses aimed at the prevention, detection and prosecution of welfare fraud. While welfare fraud exists, it seems clear that the 'common sense' perception on the Right of rampant abuse is grossly exaggerated in relation to the reality of the problem. Nevertheless, this largely unquestioned perception has had a powerful effect on the political opportunity structure¹³ in which broad social security policy options are considered and advocated. Indeed, much of today's social justice advocacy efforts by groups such as the National Anti-Poverty Organization (NAPO) go into establishing a defensive moat - attempting to hold off the neo-conservative onslaught upon the welfare state. In light of such macro policy backdrops, I will argue that serious efforts aimed at progressive welfare state transformation, and a welfare politics which would go beyond mere defensive struggle, requires of us a seeking out of opportunities in which to challenge the neo-liberal hegemony.¹⁴ More specifically, I believe that a progressive politics (in the broadest sense) with the aim of addressing the welfare state crisis, can challenge the prevailing 'common sense' diagnostics of the Right, and their corollary 'get tough' responses.

Consequently, I will argue in favour of democratically opened up welfare administrative arrangements so as to harness the communicative force, and by extension, legitimating power, of informed public debate and decision making. In particular, I will call for a dialogically renovated conception of accountability, with the establishment of corollary discursive structures and procedural rights to enable enhanced participation in our public processes of opinion-and-will-formation.

II. NAPO: A Concrete Social Struggle Touchstone

I will argue that the realization of a reflexively continued welfare state will require the conception and agency of an integrated social movement politics that targets both the terrain of civil society and the state. Relatedly, I further contend that a conception of legal strategies going beyond the use of rights for simplistic litigation purposes can contribute an important element to wider anti-poverty movement political projects. Thus, for illustrative purposes, I will also examine the workings of a Canadian social movement organization (SMO) with a progressive welfare reform mandate. Within the context of a specific SMO, namely the National Anti-Poverty Organization (NAPO), I consider how views on the welfare state "crisis", and the "proper" role of law in dealing with this so-called crisis, can influence the formation of strategy. As will be discussed, NAPO's mandate covers the expanse of our welfare state in relation to the concerns of low-income Canadians. While I believe that my arguments are applicable to all redistributive policy fields potentially captured within the broader concept of the 'welfare state' (universal health care, for example), my project is primarily focussed on more problematic areas such as general social assistance. Accordingly, I will at times also refer to the more specific income support

oriented concept commonly referred to as our “social security system”. Of course, with NAPO, given the overlapping interconnected nature of welfare state programs, I appreciate that anti-poverty politics can never examine a single welfare policy without considering its relationship to the whole.

Both the evolution of NAPO’s macro perspective of the welfare state ‘crisis’, and the implications reflected in its tactical choices, will be considered by looking at NAPO’s activity in relation to the legal, political, and policy instruments at work in the governance¹⁵ of Canada’s social security system. With respect to these instruments of governance, and of course the linkages between them, how has NAPO shaped or been shaped by the political opportunity structure? In light of key macro policy environment pressures such as shifting accountability frameworks, what action strategy directions seem prudent for NAPO, specifically in terms of contributing to the realization, and operation, of a reflexive welfare state? Beyond it’s important, but limited, role as a non-institutionalized component of our welfare state’s accountability framework, how might NAPO, or other civil society anti-poverty actors, contribute to the pursuit of a more democratic, participatory model of dialogical policy review and adjustment?

III. Outline

The analysis in this thesis is informed by empirical observations relating to various social security policy environment trends and by different theoretical frameworks. While an extensive exposition of these various perspectives is beyond the capacity of this current project, Chapter One provides the reader with some brief but significant background conceptual material.

In order to ground my project within the realities of our contemporary policy environment, I proceed in Chapter Two with a legal-historical sketch of Canadian social security. I begin this analysis by reviewing the development of Canada's social security legal framework and the associated instruments of governance, pointing to some of the key macro policy pressures which any progressive welfare state political strategy will need to consider. This analysis will also serve to clarify current dominant accountability perspectives in relation to policy environment implications. I will elaborate on the already identified need to critically engage with the concept of accountability, suggesting the as yet underdeveloped democratic participatory and deliberative potential of such public sphere discursive processes.

In Chapter Three I examine the potential role of social movements and other civil society collectives in developing and implementing successful political strategies. The objective will be to demonstrate the importance of social movement politics in terms of achieving a reflexively continued welfare state. I will consider the diversity of tactics and tools that an unabridged social movement public sphere politics can, indeed should, legitimately deploy. Included in such a comprehensive political program must be a conception of the transformative potential of the law.

In Chapter Four I reflect upon the relationship between law and social transformation, starting with a consideration of what some feel to be our most important accountability mechanism, namely the *Canadian Charter of Rights and Freedoms*,¹⁶ (hereinafter the *Charter* or *Charter of Rights*). A number of critiques surrounding the utility of law in progressive politics exist. I will argue, however, that progressive social struggle strategy

development needs to move past mere litigation issues when considering the utility of rights politics. For example, rights provide a counter-hegemonic tool for influencing the agenda of public sphere discourses. Another key role for law in achieving a reflexively continued welfare state, as suggested by Habermas's proceduralist paradigm, is the potential for institutionalizing democratically enhanced accountability structures.

In Chapter Five, I provide a concrete touchstone for the project's theoretical analyses. The role that NAPO has played over the past twenty-five years with respect to the 'evolution' of Canada's welfare state will be briefly examined in an effort to illuminate my earlier theoretical discussions. What types of strategy has NAPO tended to employ and what have been the relative results? What can progressive strategists learn from the various failures of past 'reform' initiatives and, given existing macro policy pressures, how might law or rights-based strategies enhance the political potential of civil society associations like NAPO?

Finally, in Chapter Six, I consider the possibility of alternative legal strategies aimed at realizing a reflexively continued welfare state. In particular, if enhanced accountability models will provide for greater participation and improved deliberative mechanisms, which in part, can counter the 'dark side' of social rights, what strategies might be pursued today, and in the near future, to democratize the Canadian welfare state? To this end, a politics of accountability and rights will be advanced by reconsidering the Alternative Social Charter (ASC) which NAPO and other anti-poverty groups proposed during our 1992 constitutional debates. I will argue that the ASC, while perhaps flawed, provides a promising legal strategy template with which to contemplate a progressive rights-based politics and a possible institutional structure for achieving a democratically opened up welfare administration.

Conceived as an institutionally secured and democratically enhanced communicative structure, the ASC is advanced as a possible model for realizing the procedural approach to law which is supported in this thesis. I believe such an approach will provide us with both a more progressive and a more legitimate social security accountability framework. I examine the ASC not with the aim of raising a single procedural participatory panacea, but rather, to suggest a direction for cautious, democratically enhanced, welfare state institutional experimentation.

Endnotes - Introduction

1. See David Foot with Daniel Stoffman, Boom, Bust & Echo: How To Profit From the Coming Demographic Shift, (Toronto: Macfarlane Walter & Ross, 1996). Foot argues that demographics have a huge impact on social policy decisions, noting that, presently, "the public sector is too pre-occupied with deficit-cutting to think about imaginative solutions to social problems," due to the age makeup (and the corresponding concerns) characterizing the contemporary Canadian public sphere, p.14.

2. Hugh Segal, "Paul Martin Sr. knew the value of our social safety net," *The Financial Post*, July 26, 1997.

3. Arato and Cohen, in connection with their reconstruction of the concept of civil society, and citing their affinity with Habermas's, supply us with a clear macro description of what such a "reflexive" orientation involves. With Habermas, Cohen and Arato reject the "neo-conservative return to the program of property right," and the "welfare state loyalists' defence of the existing form of social rights," stressing instead the "reflexive continuation of the program of the welfare state."
This involves, first, the construction of a new type of civil society delimited by a partially new set of rights with communication rather than property rights as their core. . . Secondly, "reflexive continuation" would involve the creation of forms of social control over state and economy (through the expansion of sets of representative institutions within and between them) that are compatible with a modernized life-world.
 Andrew Arato and Jean L. Cohen, "Civil Society and Social Theory" (1988), 21 Thesis Eleven, p.59. While I do not entirely share Arato and Cohen's perspective (which as I will argue, has tended at times to imply a diminished focus on democratically enhancing state institutions, in contrast with that suggested in their 'second' step), the above does provide a useful foil to more familiar programs on the right and left. In short, attempting to move beyond the traditional Right-Left welfare state polemic, and toward the development of theoretically enhanced anti-poverty agency directions, this project utilizes a "reflexive" orientation.

4. Habermas' theory distinguishes between the **lifeworld**, comprising our culture, society, and personality, and the sub-systems of **state** and **economy**. The lifeworld is governed by communicative interaction, which ideally is free from state intervention. Capitalistic growth, however, has triggered conflicts with the lifeworld given the corollary expansion and densification of the "monetary-bureaucratic complex". Jurgen Habermas, The Theory of Communicative Action Vol. 2, (Boston: Beacon Press, 1987), p. 351.

5. See Pierre Rosanvallon, "Beyond the Welfare State" (1988), 16 Politics and Society, p.535.

6. A few of the many sources which explore these principles include: Canada, Final Report of the Royal Commission on Financial Management and Accountability (the Lambert Report), (Ottawa: Supply and Services, 1979); Kernaghan and Siegel, Public Administration in Canada, (Scarborough: Nelson Canada, 1991; and Bruce Doern, "Political Accountability and Efficiency", paper presented for the Government and Competitiveness Project, School of Policy Studies, Queen's University (Ottawa: School of Policy Studies, 1993).

7. As Habermas describes:

Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how societal problems resonate in the private life spheres, distill and transmit such reactions in amplified form to the public sphere. The core of civil society comprises a network of associations that institutionalizes problem-solving discourses on questions of general interest inside the framework on organized public spheres.

Jurgen Habermas, William Rehg trans., Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, (New Baskerville: MIT Press, 1996), p.367.

8. Elected representatives or members of the bureaucracy who specialize in the design and/or implementation of accountability policy.

9. Tim Plumptre, "Accountability: A Fresh Look at a Changing System", (Institute on Governance: The Exercise of Power Round Table, April 23, 1997), p.2.

10. Democratization of the welfare state in this thesis refers to opening up our official communicative structures of opinion and decision making so that all citizens have an opportunity to actively participate. Political procedural conditions and institutions need to be established so that, notwithstanding inequalities such as income, all citizens are able to actively participate in our public processes of policy debate, creation, implementation, and review.

11. It has been argued that there is no "physical limit" to the growth of the welfare state, and that the "crisis" is better attributed to "adjustment" problems. The crisis of the welfare state should be thought of as "developmental" and examined from the perspective of "social and cultural" limits, as opposed to (in the strict sense) financial. Rosanvallon, supra note 5, pp.533-534. Of course, the fact remains that within the policy environment of contemporary welfare states, there exist significant 'fiscal' pressures and restraints with respect to the allocation of public expenditures. That said, debates around "public deficits", the globalization of capital etc., while obviously relevant, are simply beyond the focus of this present project.

12. The politics of the welfare state is couched in many other issues besides that of accountability. That said, accountability matters increasingly appear to be a lightning rod

for social policy critiques.

13. Sidney G Tarrow, in Power in Movement: Social Movements, Collective Action and Politics, (Cambridge: University Press, 1994), at pp.85-86, describes the “political opportunity structure” as those:

consistent - but not necessarily formal or permanent - dimensions of the political environment that provide incentives for people to undertake collective action by affecting their expectations for success or failure. . . . The most salient changes in opportunity structure are four: the opening up of access to participation, shifts in ruling alignments, the availability of influential allies, and cleavages within and among elites. (bold added)

It is the first of these four which I am chiefly concerned with in this project. For example, if the members of an anti-poverty organization experienced a genuine democratic opening up of our processes of policy review, there would be an increased incentive to participate in the group’s collective struggle.

14. So as to better appreciate the transformative potential of law, this project utilizes a Gramscian perspective, in particular his concepts of hegemony and counter-hegemony. In Gramsci’s words, hegemony is the process which generates: “the ‘spontaneous’ consent given by the great mass of the population to the general direction imposed on social life by the dominant fundamental group,” and can be understood in contrast with simplistic ‘ideological’ conceptions of “‘direct domination’ or command exercised through the State and ‘juridical’ government.” Antonio Gramsci, Selections from the Prison Notebooks, ed. and trans. Q. Hoare and G. Nowell Smith, (New York: International, 1971), p.12.

15. For the sake of clarity, the term “governance” can be thought of “in terms of the traditions, institutions and processes within society that determine how power is exercised, how decisions are made, and how citizens are given a voice in issues and decisions that affect them.” The Institute on Governance, “About the Institute”, <http://www.igvn.ca/about_iog.htm>, p.1.

16. Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c.11.

CHAPTER ONE

Beyond the Social Democratic Welfare State Paradox

I. Social Rights and Welfare Surveillance

In this chapter I briefly outline several of the conceptual and empirical motivations behind my examination of, and approach to, the welfare state 'crisis.' I begin, in this section, by calling attention to the observable growth in welfare surveillance policies which I noted in the introduction. The rise in surveillance policies indicates the need for an anti-poverty movement politics that is informed by a critical theoretical stance. That is to say, going beyond a welfare 'loyalist' defence, toward a practical questioning of social rights as an emancipatory institution. In the next section, I sketch the political programs of the Right and the Left as they have developed in response to the welfare state 'crisis'. Finally, in the third section, I elaborate on the reflexive welfare program alternative underlying my project, particularly in relation to the theoretical work of Jurgen Habermas.

As I noted in the introduction, I believe the prevalence of accountability rhetoric in public debates surrounding the welfare state 'crisis' is partly connected with a perception that welfare abuse is rampant. There is certainly some evidence that these are becoming prevailing viewpoints. For example, an Angus Reid Group Opinion Poll, February 19 to 24, 1994, revealed that 81% of Canadians believed that our social programs are "too easy to abuse," with 'welfare' the most commonly identified area 'in need of reform.' Further evidence of the perception of epidemic abuse is found in the significant increases in welfare fraud countermeasures being undertaken in various jurisdictions, such as fingerprinting systems.¹ One is forced to question the true political motivations behind this 'crack down'

when welfare fraud rates, estimated at 3% of total caseload, are contrasted with the relatively limited response to income tax fraud, which is estimated at 20%.² Obviously, I am not suggesting that issues such as welfare fraud are unimportant. I do, however, think we need to critically examine the growth of such policies.

An example which illustrates how far we have come towards the creation of a 'moral panic' around the issue of welfare abuse is found in the present Ontario government's welfare 'reform' agenda. Specifically, welfare reforms have contained, inter alia, provisions for authorizing fingerprinting, further limitations on the right to appeal the denial of welfare,³ and the creation of police-like powers for social workers. In fact, social workers can now be authorized through search warrants to enter the homes of Ontario welfare recipients.⁴ As the following quotation suggests, this heavy handed response seems totally disproportionate to the harm identified.

*No one knows for sure how widespread the welfare fraud problem is, Ms. Ecker Said. "Unfortunately there has been too much misuse and abuse of the system," the minister said. "It's difficult to say how much there is, we're trying to make sure we can fight it as effectively as possible."*⁵

What do such apparently myopic strategies to combatting 'rampant' welfare abuse say generally about the present political opportunity structure for promoting progressive social security reform?

It seems clear that the development of an oppositional discourse to the Right's call for a 'crackdown' on welfare abuse would be a key element in any anti-poverty strategy. This project will utilize the concept of counter-hegemony to help explain the potential of law as a tool in transformative political engagements. In developing social movement agency

directions, law's counter-hegemonic potential, particularly in relation to rights-based politics, could be a useful tool in a broader program. Alan Hunt's work in this area is instructive:

*counter-hegemony is not some purely oppositional project conceived of as if it were constructed 'elsewhere', fully finished and then drawn into place, like some Trojan horse of the mind, to do battle with the prevailing dominant hegemony. Without such an understanding the quest for counter-hegemony can only be a continuation of that which the concept seeks to displace, namely, the search for a unitary political subject which needs simply to achieve consciousness of itself to be able to challenge the dominant hegemony.*⁶

However, developing successful counter-hegemonic strategies involves not only exploding the myths behind the current 'common sense' critiques of social security emanating from the Right, but moreover, recognizing that the traditional social-democratic model of welfare state citizenship, and associated rights, is seriously flawed in terms of the real life experiences of low-income Canadians. Along with the more commonly identified limitations of rights-based politics,⁷ developing a progressive welfare programme requires us to recognize that there is a pathological or "dark side" side to social rights.⁸ Questions of financial feasibility aside, if the objective is to move beyond mere defensive action, creating a strong theoretical foundation for progressive strategy development demands that we critically examine the general supposition on the Left that social programs are entirely emancipatory. In short, the traditional social-democratic positioning of social citizenship rights as a necessary precondition for the exercise of civil and political freedoms, needs to be critically reassessed.

II. A Post-Social Democratic Conception of the Welfare State

T.H. Marshall's account of modernization reflects the traditional social democratic emphasis upon the evolution⁹ of citizenship and the cumulative expansion of rights. Marshall has linked the growth of citizenship over the last three centuries with the progressive accumulation of civil, political, and social rights: "the modern drive towards social equality is, I believe, the latest phase of an evolution of citizenship which has been in continuous progress for some 250 years."¹⁰ In brief, the acquisition of civil rights in the eighteenth century made possible the winning of political rights in the nineteenth century, and consequently the foundation was secured for the development of twentieth century social rights. Marshall has claimed that there is a "basic human equality associated with the concept of full membership of a community"¹¹ or the status of citizenship.¹² Social rights ameliorate the impediments to 'membership' which go along with social class inequality and, thus, allow citizens to take advantage of the other rights associated with citizenship. Unfortunately, however, in practice, social rights are far more problematic than the social democratic project envisioned.

The "crisis" of the welfare state has garnered much attention from the Right and the Left in Canada since the mid nineteen seventies. In part, as noted earlier, the Right side of the political spectrum has emphasised problems such as welfare fraud and the deficit.¹³ With the neo-conservative market moralism of the eighties, there has been an increasing push in the direction of deregulation, privatization, and dismantlement.¹⁴ The assumption here is, in part, that the voluntary sector will move in and (more effectively than state intervention) support our social security needs.¹⁵ In addition, the Mulroney governments attempted to

redesign social programs so as to move away from universality and toward "selective" programming.¹⁶ While at first glance this may seem sensible given fiscal pressures, the result of such targeting diminishes our sense of mutuality, and thus, as history tells us, results in a reduced level of support for those who "really" need it.¹⁷

Generally, the dominant neo-liberal legal approach has argued for a minimalist state. Although Canada's history is at odds with this 'perception',¹⁸ laissez-faire ideology remains a powerful neo-liberal tool,¹⁹ particularly in terms of responding to the 'crisis' of the modern welfare state.²⁰ This is not to make the mistake of dismissing the appeal of the rhetoric of the Right on the grounds of false consciousness, as if the masses had made an error in judgement, having been duped by Thatcher et al.²¹ To some extent, the criticisms of the Right have made 'common sense' since they reflect the lived experiences of citizens who were, and are, potential or actual clients in the modern welfare state.²²

Like the Right, the responses from the Left to the crisis of the welfare state are too varied to present here in detail. Unlike the Right however, the Left has generally failed to advance a sustained alternative to the traditional social democratic model. Some on the Left continue to decry the welfare state as a functional element of capitalist society, with apparently anything other than a radical statist approach being taken as evidence of 'Corporate Canada's agenda'. That said, assuredly, 'progressive' analysts of the welfare state can no longer afford to deny the "dark side" of state intervention.

In fact, the social democrat's traditional coupling of social rights with autonomy, membership, and participation has increasingly come under fire as it paradoxically seems to work against social integration.²³ Rather than the enrichment of membership, it is argued

that 'social law'²⁴ actually contributes to the depletion of civil society. For example, Ulrich K. Preuss raises concerns with respect to the impact social rights have had upon mutuality, as the expansion of social rights, in his view, has had the effect of institutionalizing 'selfishness'.²⁵ Notwithstanding the insights of such analyses, the welfare politics of the Left has remained rather defensive in orientation.

Understandably, in the face of deep welfare state cutbacks, many on the Left have focussed on maintaining existing levels (or at least preventing further dismantlement) of social services and programs. Accordingly, where the utility of law in progressive struggles has not been rejected outright, law or rights-based politics have been rather narrowly conceptualized as tools for protecting existing social security arrangements.²⁶ Other Left programs, recognizing the "dark side" of state (and economic) intervention into civil society or the lifeworld,²⁷ look toward the use of law, such as rights of privacy or communication, to defend or strengthen the barriers of these private sphere relations against further encroachment of the system imperatives of administrative power or money. In protecting or deepening lifeworld associations, civil society can in turn supply a democratizing force in the form of a critical public sphere. Nevertheless, with the primary focus of such programs being a reinvigorated civil society we are offered little in the way of an offensive politics aimed at democratizing the institutions of our welfare state directly.

III. Pursuing a Reflexive Welfare Program Alternative

This thesis seeks to explore the utility of law within the context of a progressive social struggle politics aimed at realizing a *reflexive* alternative to the traditional Left-Right welfare program dichotomy. The Habermasian framework, unlike the approach of the

welfare loyalist, clearly confronts the pathological side effects of social rights. The advocates of the welfare state focused upon taming capitalism, but failed to question the active state's intervention into the lifeworld of its citizens. The very means of controlling capitalism, that is, the interventionist state itself, needs to be "*socially contained*". However, this is beyond the planning capability of the state.

*The legal and administrative means for the implementation of social welfare state programmes do not represent a passive medium, devoid of its own peculiar properties. Rather they are bound up with a practice that isolates and considers separately the legal facts of the matter, that normalises and places under surveillance . . . In short, inherent in the project of the social state is a contradiction between goal and method.*²⁸

Political and administrative power is not neutral, and consequently, the lifeworld is at risk of being colonized by the subsystems of state and economy.²⁹

Habermas identifies four waves of juridification,³⁰ with the last wave most clearly exemplifying this colonization.³¹ These waves are portrayed "from the viewpoint of an uncoupling of system and lifeworld and the conflict of the lifeworld with the inner dynamics of autonomous subsystems."³² The theoretical emancipatory character of social rights then, in practice, ends up damaging the communicatively structured area of life-relations, as the 'social citizen' is now reduced to a "dependent client" of the welfare bureaucracy. In short, the pursuit of social integration through the expansion of social rights has had the paradoxical effect of desiccating the public sphere, given the influences of the media of money and power upon the lifeworld.³³ Habermas is not concerned with defining some conception of the 'good life'. Rather, his project is to demonstrate how we, as actors in the public sphere, come together to inter-subjectively participate in opinion- and will-formation.

In Habermas's recent work he considers conditions upon which a discourse ethics³⁴ in the public sphere may be operationalized so as to produce legitimate legal regulation in problematic areas like social welfare. Habermas points out that he is not denying the importance of defensive or "reactive controls on the administration," however:

With a high level of social differentiation and a corresponding fragmentation of the knowledge and consciousness of potentially endangered groups, precautions are required that "also enable the individual to develop interests, perceive these in common with others, and bring them to bear in the governmental decision making process." . . . in the final analysis, the only thing that serves as a "palladium of liberty" against the growth of independent, illegitimate power is a suspicious, mobile, alert, and informed public sphere that affects the parliamentary complex and secures the sources from which legitimate law can arise.³⁵

In short, a reflexively continued welfare state should be the ideal we strive toward.

On the other hand, unlike the neo-conservative call for a return to market-mediated relations, the Habermasian framework recognizes that, in our increasingly complex society,³⁶ the welfare project cannot simply be abandoned in favour of a return to some imagined tradition of civil society support. As Habermas describes, our rights of private autonomy enable our role as *addressees of laws*. But, without rights of political participation we have no guarantee of public autonomy and, consequently, we cannot become the *authors* of our legal order. For example, liberal rights could simply be paternalistically granted. A final set of basic social, technological and ecological rights further provides the necessary material conditions for exercising our aforementioned civil rights. However, "the normative key is autonomy, not well-being," and consequently, we should move beyond the welfare paradigm of law which has mistakenly reduced our conception of justice to redistributive justice.³⁷

In contrast to the liberal and the welfare paradigms, Habermas offers a "proceduralist

understanding” of law,³⁸ in which our equally important, co-original, private and political autonomy is secured through the realization of the above (interrelated) categories of rights. If this system of rights is to take us beyond existing legitimation gaps, the content of these rights requires delineation through institutionalized democratic procedures of discourse. Only by seeing ourselves as the free and equal authors of our laws will the legitimation burden be met.³⁹ Moreover, the source of legitimate law in our complex pluralistic society cannot be democratically arrived at through the formal state institutional mechanisms of opinion-and-will-formation alone. Rather, our parliamentary opinion and decision systems must also be **open** to the communicative force supplied by civil society associations, like NAPO, which are located within the informal public sphere.

Accordingly, the primary purpose of this thesis is to investigate the development of a progressive politics aimed at the ideal of a reflexively continued welfare state. I will argue that approaching this ideal necessarily involves a form of struggle incorporating progressive social movement political agency. Given the complex and problematic relationship between law and social change, I will consider the utility of a rights-based politics in terms of progressive movement tactical choices. It will be argued that social movement strategy development has been limited by theoretical debates on the Left to the extent that a one dimensional conception of law has tended to emerge.⁴⁰ Acknowledging law’s dual character allows us to move beyond a one-sided focus on the role of law, as seen, for example, in the Foucauldian perspective as a normalizing discourse,⁴¹ which, while identifying significant dangers in terms of the progressive utility of law, fails to recognize the value of law as “institution,” and thus the potential it holds with respect to democratically enhancing our

social institutions through various participatory mechanisms.

Habermas now describes law as a *hinge* between the lifeworld and the subsystems. Through the medium of legitimate law which is generated from communicative power, the communicative power of the lifeworld can in turn be *transformed* into legitimate administrative power. Habermas is conceptually “developing the principles of the constitutional state from the perspective of the legal institutionalization of the network of discourses and negotiation,” concluding that “on the one hand, the constitutional state institutionalizes the public use of communicative freedom” and that, “on the other hand, it regulates the conversion of communicative into administrative power.” He describes the positive force of “institutionalization” in relation to the establishment of rational political will-formation procedures:

The sociological concept of “institutionalization” pertains to normatively expected behaviour: institutions let members of a social collectivity know what behaviour they may demand of one another when and in which situations. One can also institutionalize procedures that stipulate the rules a cooperative effort should follow in managing specific tasks. For example, procedural norms regulate the concluding of contracts, the founding of an association, or decision making in self-governing bodies. Parliamentary deliberations and wage negotiations are also set up with the help of such legal procedures.⁴²

In this thesis I am calling for the consideration of enhanced institutionalized accountability mechanisms so as to increase the participatory and deliberative quality of our welfare state opinion-and-will-formation structures.

In addition, failure to recognize the dual character of law restricts the conceptual framework for potential development of counter-hegemonic action strategy formulation by relinquishing an important area of contestation. As will be elaborated, I take the

Habermasian perspective as a communicative ideal. In terms of the development of a practical anti-poverty politics, however, I also believe that a conception of law as a site of social contestation is also necessary. In a modest effort to build upon these theoretical perspectives, I have suggested a more concrete avenue of exploration - namely the concept of accountability. A progressively renovated conception of accountability could offer a powerful contemporary counter-hegemonic language,⁴³ as well as provide significant normative and procedural capacity with respect to wider efforts at democratizing the state.⁴⁴ I will be examining accountability in this thesis as it relates broadly to (current and potential) legally institutionalized procedures of public sphere participation and deliberation, rather than as a single sided focus on parliamentary mechanisms.⁴⁵

To conclude, in terms of normative capacity, the principles and institutions associated with the concept of accountability provide a good example of an area in which the approach of “immanent critique” may prove immensely useful. Indeed, much of the theory considered in this project has been developed through the form of immanent social criticism.⁴⁶ From this method and perspective, social struggles can be considered in the context of the ‘real world,’ as principles and institutions are explored for their (as yet unrealized) possibilities, as well as their (often unrecognized) limitations. I contend that when we examine accountability from this perspective we can readily see that it has broad support as an abstract democratic principle. However, it has remained rather narrowly conceptualized despite its potential as an important component of our “discursive structure of public communication.”⁴⁷

For instance, in the next chapter I examine some of the seemingly contradictory

policy environment changes which are taking place around social security governance arrangements. While we can see that new types of fiscal transfer mechanisms have been introduced to give the provinces increased spending autonomy, we also see that this has resulted in reduced transparency with respect to accountability. Yet, at the same time, we also see an increase in social welfare recipient policing policies. By highlighting our social security policy backdrop of shifting accountability frameworks, I wish to call attention to the contrast between the current emphasis (some might say obsession) upon ‘improved’ accountability frameworks, and the limited democratic utility of our actual institutional arrangements. In terms of procedural capacity then, I contend that it is certainly problematic that anti-poverty progressive strategies have largely left the development of the concept and mechanisms of accountability to the parliamentary-bureaucratic complex. In short, progressive strategy development must include an exploration of accountability structures in terms of their dialogical, or participatory-deliberative potential. As I have suggested, the possible democratizing impact of enhanced accountability frameworks includes the benefits of our parliamentary opinion and decision making systems becoming **open** to the communicative force of civil society associations like NAPO.

Endnotes - Chapter One

1. See Barbara Depoma, "Fingerprint System Points Out Welfare Fraud," May 1997, <<http://www.fcw-civic.com/pubs>>., November 25, 1997.
2. See Peat Marwick, "Welfare Fraud and Overpayments," Final Report to the Ontario Social Assistance Review Committee, Toronto, 1997.
3. National Anti-Poverty Organization, "Poverty and the Canadian Welfare State: A Report Card", (Ottawa: NAPO, June 1988), p.5.
4. Ibid., Appendix 1.
5. Greg Crone, "Bill Allows Social Workers to Search Welfare Homes," *The Ottawa Citizen*, August 20, 1997, A4.
6. Alan Hunt, "Rights and Social Movements: Counter-Hegemonic Strategies", 3 Journal of Law and Society, p.313.
7. At this point in the paper, it should suffice to say that traditional criticisms of rights, which inter alia, rely too heavily on the rights as 'trump' metaphor, miss the counter-hegemonic utility of rights as a site of dialogue. As Hunt further points out, rights language can provide an important legitimation filter for anti-poverty interests, in contrast with a "demand strategy" that will be found lacking (even in terms of existing social claims) with respect to necessary qualities of self-legitimation. Ibid., p. 324. In part then, through this dialogue, social claims can potentially harness, and in turn renovate, existing 'common sense' with respect to our social security rights.
8. Michel Foucault, Discipline and Punish, (Toronto: Random House, 1979), p.222.
9. Although Marshall does recognize, in a limited way, the role played by "struggle", his is still a classical evolutionary model, employing a rather unilinear conception of the expansion of citizenship within the context of Britain. See Christopher Pierson, Beyond the Welfare State?, (Cambridge: Polity Press, 1991) p.22-24 & 36.
10. T.H. Marshall, "Citizenship and Social Class" in T.H. Marshall ed., Class, Citizenship, and Social Development (Westport, Conn.: Greenwood Press, 1973), p.78.
11. "Full membership" being difficult if one is struggling to keep one's family fed, clothed and adequately housed on a daily basis.
12. Marshall, supra note 10, p.76.

13. Peter M. Leslie, "Of Deficits, Debt, and the Safety Net (and Canada)" (Kingston: Intergovernmental Relations, Queen's University) 2 Opinion February, 1994.

14. It is beyond the purposes of this thesis to fully engage with the definition(s) of 'crisis' as put forward by the political Right. I do not wish to imply, however, that the criticisms of the Right should be dismissed as merely motivated by concerns with efficiency and economy. Indeed, some of the criticisms of the welfare state offered by the Right are shared by the Left. For example, many on both sides would agree that 'paternalistic programs and services have resulted in a loss of personal autonomy'.

15. After discussing a client who had been living under bridges and ditches for the last 6 years because his old age security was cut-off and he did not know how to appeal it, Marion Overholt had the following to say to the Standing Committee on Human Resources Development. She stated that in Ontario we see a situation where our welfare system has been reformed and there are new requirements being put on recipients all the time, "I do not have an alternative when I can not get clients benefits...and some critiques believe there is this magic web of churches, and friends and family who are going to move in and support those people- I can tell you first hand it doesn't exist."

16. See James J. Rice, "Restitching the Safety Net: Altering The National Social Security System", in Michael J. Prince, ed., How Ottawa Spends 1987-88: Restraining the State, (Toronto: Methuen, 1987), p.211. "Selective programming", as opposed to universal programming, is the shifting of resources towards select groups of targeted recipients.

17. Linda McQuaig, Talk Given on Tax Reform, the Deficit, and Saving the Safety Net, at Somerset Community Health Centre, March 14, 1994.

18. Towards a Modern Federal Administrative Law, (Law Reform Commission of Canada, 1987), p.7.

19. As Broadbent notes:

There can be little doubt that the very success of the welfare state in establishing a higher and more secure economic level had the unintended consequence of making more working-class families open to neo-liberal arguments. Like all people who become accustomed to economic well-being many were now ready to believe it was their effort alone, not the complex social and economic agenda of the welfare state that accounted for their success. Convinced of their own virtue...they preferred duty-free capitalism to what they saw as obligation-free welfare.

Edward Broadbent, "The Rise and Fall of Economic and Social Rights - Thoughts on Citizenship in the Welfare State in the North Atlantic World" Oxford: Visiting Fellow Presentation at All Souls College, February 11, 1997. While Broadbent may place too much explanatory weight on the notion of an 'agenda' (for example, it tends to discount the enormous impact of demographics on the ascendancy and decline of the welfare

state), this perspective does help to explain the current dominant hegemony - today's 'common sense'.

20. Stuart Hall, Drifting Into a Law and Order Society, (Cobden Trust. 1980), p.4-7.

21. Stuart Hall, "Authoritarian Populism: A Reply" (1985), 151 New Left Review, p. 119.

22. Jurgen Habermas, "The New Obscurity: The Crisis of the Welfare State and the Exhaustion of Utopian Energies" 11 Philosophy and Social Criticism, reprinted in Jurgen Habermas, The New Conservatism: Cultural Critique and the Historians' Debate, (Cambridge, Mass.: MIT Press, 1989), p.9.

23. Francois Ewald, for example, has asserted that our expanding social rights are not grounded in mutuality, but rather provide a tool for merely 'putting up' with each other. The social welfare state, a product of post-modernity, is largely about regulating a society of strangers. Francois Ewald, "A Concept of Social Law" in Gunther Teubner ed., Dilemmas of Law in the Welfare State, (New York: De Gruyter, 1988), pp.40-75.

24. Ibid., p.49:

Social law is symbolic of a mass society in which, because space is running short, each must learn to put up with the other and his [sic] unavoidable encroachments. Putting up with each other because we rub shoulders with each other: that is the new meaning of tolerance.

Ewald and others further point out that welfare state power (e.g., as institutionalized in the form of social rights) is far from neutral. Social law *socializes*, and should be examined in terms of the transition from law to norm. Nancy Fraser, for instance, provides an insightful analysis of the way in which the welfare state has served to reproduce gender norms. See Nancy Fraser, Unruly Practices, (Minneapolis: University of Minnesota Press, 1989), pp.144-183.

25. Preuss points out that rights can be characterized as protecting a person's sphere of self-interest and as being non-reciprocal, working against the development of mutuality, and thus the public sphere is further at risk of devitalization. Ulrich K. Preuss, "The Concept of Rights and the Welfare State" in Teubner supra note 23, pp.151-172.

26. Following the Charlottetown constitutional round a number of texts on the utility of rights based politics in relation to the idea of a social charter emerged. For a variety of perspectives see Joel Bakan & David Schneiderman, ed., Social Justice and the Constitution, (Ottawa: Carleton University Press, 1992). Among these perspectives are those who dismiss rights discourse as a strategy which tends to legalize (individualize and abstract) social issues. Others point to the social charter proposal of Bob Rae's Ontario NDP government as an example of a reactive (and toothless) tactic aimed at curtailing declining welfare state fiscal support.

27. For Habermas, the lifeworld:

consists of individual skills, the intuitive knowledge of how one deals with a situation; and from socially acquired practices, the intuitive knowledge of what one can rely on in a situation, not less than, in a trivial sense, the underlying convictions

The three components of the lifeworld are culture, society, and personality.

Jurgen Habermas, The Theory of Communicative Action Vol. 2, (Boston: Beacon Press, 1987), p. 35.

28. Consequently, Habermas asserts that it is "essential to strengthen the autonomy of the lifeworld." Habermas' emphasis is upon language and communicative action (i.e., social integration through discourse) as opposed to the traditional socialist concerns around labour. Habermas, supra note 22, p.13.

29. For a good summary of Habermas' earlier theoretical writings on communicative action and the role of law, see Mathieu Deflem, Habermas, Modernity and Law, (London: Sage Publications, 1996). Deflem describes Habermas' colonization of the lifeworld thesis as the process whereby "the communicative potentials aimed at understanding in the lifeworld are eroded in terms of the systemic imperatives of monetary and bureaucratic systems interventions," p. 5.

30. Habermas, supra note 27, p.357. Juridification "refers quite generally to the tendency toward an increase in formal (positive, written) law that can be observed in modern society."

31. Ibid., p.357.

32. Ibid., p.358. As Habermas states:

The more the welfare state goes beyond pacifying the class conflict lodged in the sphere of production and spreads a net of client relationships over private spheres of life, the stronger are the anticipated pathological side effects of a juridification that entails both a bureaucratization and a monetarization of core areas of the lifeworld.

33. Ibid., p.364.

34. Jean Cohen, in her article, "Discourse Ethics and Civil Society", 14 Philosophy and Social Criticism, 315 at p. 316., provides a good synopsis of "discourse ethics":

Discourse ethics is an attempt to articulate those rules and communicative presuppositions that make it possible for participants in a practical discourse to arrive at a valid, rational consensus on social norms.

35. Jurgen Habermas, William Rehg trans., Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, (New Baskerville: MIT Press, 1996), p.441 -

442.

36. In modern society we no longer share a common lifeworld canopy (religion, culture, etc), resulting in the increased demand upon law for social coordination. Of course, these same forces of 'social differentiation' present challenges to communicatively arrived at (i.e., perceived as valid) law. *Ibid.*, p.25.

37. *Ibid.*, p.426.

38. *Ibid.*, p.442. As the following passage indicates, Habermas' proceduralist approach is strongly linked with his earlier work on communicative action theory.

This brings us to the core of the proceduralist paradigm: according to Ingeborg Maus's formulation, "the universal combination and reciprocal mediation of legally institutionalized and noninstitutionalized popular sovereignty" is the key to the democratic genesis of law. Here the social substratum for the realization of the system of rights consist neither in spontaneous market forces nor in the deliberate measures of the welfare state but in the currents of communication and public opinion that, emerging from civil society and the public sphere, are converted into communicative power through democratic procedures.

39. *Ibid.*, p.121.

40. As an example, this project questions NAPO's perspective on the politics of rights (talk of welfare rights are said, by NAPO, to be "off the table").

41. For example, in Habermas' recent contributions in this area he notes the tensions that arise from the double character of law in terms of welfare state citizenship:

Built into the very status of citizenship in welfare-state democracies is the tension between a formal extension of private and civic autonomy, on the one hand, and a "normalization," in Foucault's sense, that fosters the passive enjoyments of paternalistically dispensed rights, on the other.

Habermas, *supra* note 35, p.78.

42. *Ibid.*, pp.168-177.

43. See Antonio Gramsci, *Selections from the Prison Notebooks*, ed. and trans. Q. Hoare and G. Nowell Smith, (New York: International, 1971), p.330: "it is not a question of introducing from scratch a scientific form of thought into everyone's individual life, but of **renovating and making "critical"** an already existing activity." (Bold added).

44. Accountability has long been valued as one of the elemental democratic principles of the constitutional state. In Canada, like other welfare states, 'accountability' discourses expanded alongside the politics of retrenchment in the mid 1970s, as neo-conservative

forces pushed for expenditure process 'reform.' With left of centre political advocacy focussed on supporting increases in social expenditures, the right was largely free to push forward seemingly politically innocuous ideas such as "program evaluation," and "value for money" auditing. While the normative value of accountability has been retained (indeed, as noted earlier, from both the Right and the Left, improved transparency, disclosure and redress have been demanded), in some quarters, accountability structures seem to have become conflated with mere accountancy systems. I argue in this thesis that the relationship between institutional legitimacy and accountability (i.e., the principle and procedures of) needs to be explored in formulating progressive social struggles.

45. See Habermas, supra note 38.

46. Arato, for example, has pointed out that to fully appreciate the concept of "paradigm" as found in Habermas's more recent work (supra note 35), we need to keep in mind the background context of Habermas' method and perspective, namely, immanent social criticism:

*It means, first and foremost, enlightenment concerning a given society with a normative project in mind -- in the present case, the actualization of the system of rights. Thus, a paradigm is a form of diagnosis, based on the rational reconstruction of forms of consciousness, filtered and synthesized into theory, that seeks to orient action. . . This critique, however, is not conceived as a mere confrontation of norm and fact -- ought and is -- but rather presupposes that elements of rationality are already present in society; **that principles of justice are present in actual institutions and are linked up with elements of justice.** (Bold added)*

Andrew Arato, "Reflexive Law, Civil Society, and Negative Rights" (1996), 17 Cardozo Law Review, 785.

47. Habermas, supra note 35, p.186.

CHAPTER TWO

Canadian Social Security Development: Policy Environment Reflections

I. **Examining the Legal Framework of Canadian Social Security: Macro Policy Environment Pressures and Issues of Public Accountability**

My aim in this chapter is to historically situate our present social security policy environment. In doing so, a number of significant macro policy pressures which need to be taken into account in developing a reflexive welfare state program for the 'here and now' are highlighted.¹ I will begin by tracing the evolution of Canada's social security policy and the associated instruments of governance. The goal of this chapter is to raise important political public sphere² policy pressures, which indicate the value in pursuing a progressive social movement politics oriented towards (among other things) the democratization of welfare state accountability structures. As will be elaborated in chapter three, associations such as NAPO can play a key democratizing role within both civil society and the state. Notwithstanding the importance of the former, the policy environment sketched in this chapter reinforces the need for associations like NAPO to critically engage with the state directly, especially in light of our current social security policy processes, directions and related accountability frameworks.

I wish to make it clear that in examining the instruments of Canadian social security governance I am not proposing a simple welfare state institution 'reform' agenda. Focussing exclusively upon conventional political activity would be myopic as 'successes' would be limited to the state, and thus would neglect the role of hegemony in maintaining the status quo.³ An 'accurate reconnaissance' of this terrain of anti-poverty politics demands that we

consider the bidirectional relationship or mutual influence between the conventional political arena and civil society associations such as NAPO. The state is a significant nodal point of public discourse and movement struggle.

In terms of the focus of this chapter, this implies a recognition that transformative political action strategy development must take into account the interrelated nature of our social policy environment and the various public spheres of discourse which comprise it.⁴ As an element of this relationship, law should be considered for its ability to shape discourse as well as to be shaped by it. Consequently, the legal framework of social security governance and its associated instruments (law, political, policy), seems an important place to begin the reconnaissance.

Even a rudimentary examination of Canada's social security system quickly encounters a complex tapestry of governing instruments. A research agenda with the normative goal of furthering social justice requires an appreciation of the relevant instruments of governance which have shaped, and continue to influence, our present political opportunity structure.

Given the system complexities of the welfare state, I am not concerned here with advocating a particular micro policy *end* as a panacea for the welfare state crisis. Rather, along with providing general foundational material, this background reinforces the reflexive welfare program ideal underlying this thesis. In particular, the backdrop supplied here illustrates some of the reasons why improved accountability has become such a prominent policy objective in Canada,⁵ and moreover, why progressive struggles need to engage more directly with this key component of democracy. The social security policy environment

portrait provided in this chapter portrays a complex but deficient governance structure, wherein democratic opportunities to genuinely participate are considerably limited. Along these lines, the following review of Canadian social safety net development is aimed at highlighting some of the key characteristics that have shaped, and continue to influence, the contemporary political opportunity structure.

II. The Development of Canada's Social Safety Net

Do Canadians have a "Right" to social security? As rights discourse theory tells us (explored further in chapter four),⁶ answering this question is more complex than simply searching our statutes or the constitution for a particular "right". Although the specific form and content of our welfare rights remain, to say the least, controversial, it is widely accepted that Canadians generally support the programs which characterize Canada as a welfare state.⁷ In discussing how to make Parliament important and relevant to Canadians during the most recent run at broad social security reform, the Honourable Lloyd Axworthy stated in the House of Commons:

*That's why the **fundamental right of social security** will be a primary issue of this House over the next year, and you have our commitment on that.*⁸ (emphasis added).

The rhetorical dimensions of this statement aside, as social programs entitle citizens to make claims against the state, social security rights can be said to exist.⁹ Of course, these social programs and their corollary rights have changed over time and place. A short historical sketch will help us better appreciate the current policy environment in which groups like NAPO struggle, as many of our contemporary debates are best understood in relation to their development over time. As with other western nations, the beginnings of the Canadian

welfare state are tied to our transition from an agrarian to an industrial society.¹⁰ After World War I, our economy became more complex and, with urbanization, income security became a significant political issue.¹¹ Canadian history demonstrates that once the seeds of industrialization were planted, our political culture, with its "tory touch",¹² provided fertile soil for state activism. This stands in stark contrast to nations like the United States where the 'liberal' influence was much greater.¹³ It is important to keep in mind that these initial steps toward the modern welfare state were in response to the "demands" of early social reformers, organized labour and other supporters, as opposed to the granting of largesse by a benevolent state.¹⁴ These advances were neither a natural linear evolution of our civil or political rights, nor the product of a ruling class conspiracy to secure its hegemonic position. Rather, this expansion of citizenship was achieved through the social struggle of individuals and movements seeking to enhance their autonomy.

The framers of the Constitution Act, 1867,¹⁵ (formerly, British North America Act, 1867, & hereinafter, the Act)¹⁶ failed to foresee the growth of the modern welfare state. The division of powers contained in this nineteenth-century Act meant that social welfare, understood at the time to be a matter of local responsibility and generally under the charge of voluntary organizations, would fall within provincial or local jurisdiction.

While down-loading or devolution initiatives may be pointing us back in this direction, the contemporary welfare state looks very different from its earlier manifestation. Today, the social safety net is a complicated multi-jurisdictional amalgam of programs. In some respects, the history of Canadian social security is a history of federal-provincial disputes over jurisdiction. For present purposes, certain key events in the evolution of the

safety net are noteworthy in terms of appreciating policy forces within the contemporary structure. In particular, we should remember that current policies have evolved within the context of Canadian federalism. Existing welfare policy reflects the complex reality of interrelated jurisdictions and the associated difficulties with having an informed public debate around potential reforms.¹⁷

After World War I the federal government initiated its first income security undertaking, the Pension Act of 1919. This act was aimed at ameliorating the hardships of disabled veterans and the dependents of those lost in action. Two years later, high unemployment resulted in yet another significant step towards our contemporary safety net. The federal government, responding to this "war related" employment problem, contributed one third to municipal relief programs, under the condition that the provinces do the same. Albeit only temporary, Canada's first shared-cost income security program was born.¹⁸

The economic crisis of the 1930's produced a growing realization that structural problems in the economy required innovative responses. Inspired by the American example, R.B. Bennett's "New Deal" social and economic legislation was put forward. However, with Bennett's 1935 election loss and the resulting reference to the Supreme Court by Mackenzie King, much of this package, including the Employment and Social Insurance Act, was found to be ultra vires the jurisdiction of the federal government. The Judicial Committee of the Privy Council in London upheld the Supreme Court judgements, making clear the necessity for constitutional amendment if a federal unemployment insurance program was to be enacted. In 1937 the federal government appointed the Rowell-Sirois Commission on Dominion Provincial Relations. The Commission's report, tabled in 1940, recommended,

in part, that federal powers be expanded to include responsibility for the unemployed and that Old Age Pension legislation should also go forward. In addition, the Commission reconfirmed provincial jurisdiction for social welfare services, but called for the establishment of equalization grants to the poorer provinces.¹⁹

In stark contrast with so much of our recent history, confronting World War II produced a remarkable spirit of federal-provincial cooperation. According to Allege,:

*The surge of nationalism that followed created an atmosphere of "cooperative federalism" in which intergovernmental relationships were mutually appeasing. The B.N.A Act was amended, in July 1940, to grant the federal government responsibility for the Unemployment Insurance program and again in 1951 and 1964 to make concurrent provisions for federal participation in the Old Age Pension . . . Constitutional amendment would never again be so easily attained.*²⁰

Along with a history of informal arrangements, these repeated amendments stand in "contrast to every other policy area."²¹ The changes to the formal division of power with respect to income security can be viewed as a significant anomaly in our "constitutional odyssey."²² A policy environment in which federal-provincial relations are relatively amiable lends itself to an improved political opportunity structure for individuals and movements. For example, when jurisdictional questions are clarified, governing frameworks (e.g., funding mechanisms), and in turn lines of accountability, are more transparent, and thus policies more readily confronted. Relatedly, the processes of policy development and renewal are more open to the influences of associations like NAPO, as federal-provincial relations are not so fragile that they require shielding from all other voices.

During the postwar period there was a tremendous expansion in the social security role of the state.²³ By the mid-sixties, Canada, following the U.S. lead, was involved in yet

another battle (at least in rhetorical terms), namely the War on Poverty.²⁴ Consequently, we can see the beginnings of a political opportunity structure which would enable the rise of anti-poverty social movement organizations like NAPO as non-governmental participation was recognized as an important source of practical poverty knowledge. It is also during this phase that the Canada Assistance Plan was enacted.²⁵ CAP facilitated the consolidation of all preexisting federal-provincial social security programs. An excerpt from the parliamentary debates leading up to CAP's adoption reflects the lofty spirit of the times:

*This plan extends a bold, new guarantee to all Canadians in need. In accepting it, the people of Canada for the first time accept responsibility to meet all the needs, no matter how great they may be, of Canadian children, widows, the disabled, the blind, the elderly and the unemployed. Under this plan we accept unlimited liability. We undertake to charge the public treasury to discharge our responsibilities to the needy throughout Canada.*²⁶

Under CAP, social security benefits were extended for the first time to the working poor (i.e., persons “in need”), with Ottawa now contributing to the provinces and municipalities one half of the cost of administering general social assistance.

The CAP cost-sharing arrangement placed five key requirements upon the provinces and territories, namely:

- 1) section 6 (2) a): to provide assistance to all persons “in need” (although they were largely free to define “in need”);
- 2) section 6 (2) b): to take into account a person’s budgetary requirements in determining the amount of assistance to be provided;
- 3) section 6 (2) e): to establish in law a procedure for a person to appeal the decisions of welfare officials;
- 4) section 15 (3) a): not to deny assistance to a person on the grounds that he or she refuses to take part in a work activity project, i.e., work for welfare; and

- 5) section 6 (2) b): not to establish a minimum residency condition on eligibility for assistance.

With the replacement of CAP (& other interprovincial funding arrangements) with the Canada Health and Social Transfer (CHST),²⁷ only the last condition regarding residency remains (apart from the standards of the Canada Health Act).²⁸ Given the focus of this thesis, the loss of the right to appeal clearly represents a significant diminishment to our social security accountability framework in terms of the principle of redress.²⁹ Any notion that CAP was a poverty panacea had disappeared.

The oft-quoted 1968 Economic Council of Canada's annual review announced that, despite more than two decades of sustained economic growth, one in five Canadians still lived in poverty.³⁰ Throughout the seventies, report after report was released (at all levels of government), fuelling public pressure for social security reform. The idea of a comprehensive guaranteed annual income scheme was being sincerely debated as a way to replace the existing piecemeal safety net.

However, in 1971 the rejection of the "Victoria Charter", which attempted to "patriate" the Canadian constitution, ushered in a new era of federal-provincial discontent, not to mention the modern epoch of constitutional preoccupation. Although it appeared an agreement had been reached, in the end Quebec withdrew support, citing in part the Victoria Charter's failure "to provide for jurisdictional settlement in the field of social policy" and stating that "no patriation of the Constitution would be possible until those concerns were satisfied."³¹

Provincial dissatisfaction was very high. Indeed, at the conference some of the

provinces had demanded that jurisdiction and fiscal resources be handed over to them with respect to family allowances. Understandably, when the Provincial Welfare Ministers called for a joint review of the social security system, the federal government readily accepted.³² The results, however, were far from impressive.

The resulting "Orange Paper" was released three years later during the mid-seventies recession, a time when the business community was strongly demanding government restraint. The review's main recommendations dealt with a plan for national income support and supplementation. However, it "foundered on federal-provincial jurisdictional disputes, administrative complications and the general climate of fiscal restraint."³³ With the neo-conservative rise since the mid-seventies, little has been accomplished to date with respect to progressive social security reform.³⁴ Indeed, the contemporary Canadian political opportunity structure is marked by an emphasis on Harris-Klein type objectives, with the war on poverty seemingly to have been replaced with a war on the welfare 'abuser'.³⁵

Richard Splane, a former bureaucrat with the Department of National Health and Welfare (1952-1972), sheds some light on the major reasons for progressive social security reform being placed on the back burner.³⁶ He notes that, with the possible exception of the 1985 MacDonald Commission³⁷, little in the way of "positive reconstruction" has been put forward until quite recently.³⁸ Along with the "neo-conservative dismantlement approach", Splane points out that social policy has had to contend with alternate priorities, including: world economic pressure; high unemployment; the 1980-84 Trudeau government's preoccupation with energy policy, Quebec separatism, western alienation, and, of course, patriation of the constitution.³⁹ Several of these themes are still readily identifiable as factors

influencing the contemporary policy environment. For example, the fiscal environment has not been conducive to innovative social policy responses.

Another important theme is linked with the ongoing 'Quebec question', which produces a set of dynamics that continue to exacerbate federal- provincial (and by extension, territorial and aboriginal government) tensions. These dynamics contribute to a diminished welfare state accountability framework as non-governmental actors or groups find fewer opportunities to participate directly within state deliberative structures. Issues related to Quebec nationalism are ever present on the political landscape, particularly given the sensitive jurisdictional questions associated with social security policy. Of course, there is also a strong interrelationship between Quebec nationalism and the broad expanse of Canada's ongoing constitutional politics. Significant aspects of our constitutional politics include debates around the legitimacy of the *Charter of Rights and Freedoms*,⁴⁰ and the role of the judiciary thereunder; the federal government's authority to promote national social standards; and recognition of Aboriginal peoples right of self-government.

The full effects of these and other social security policy pressures are beyond the scope of this thesis, but I would like to call attention to certain anti-democratic tendencies. For instance, in looking at the relationships between English Canada, Quebec, and Aboriginal peoples, Cameron points out that each group has different national identity traditions, which serve to define their respective understandings of social citizenship and related institutional arrangements.⁴¹ Each group sees the locus of social security accountability as legitimately placed with its associated government. However, lacking a political environment where diverse interests and policy aims could be openly recognized

and dealt with (e.g., federal- provincial-territorial-aboriginal jurisdictional agreements), the federal government has tended to pursue its own social security agenda through the problematic federal spending power mentioned above. Referring to the federal government's embracing in the mid 1940s of Keynesian economic theory (i.e., centralized control of macroeconomic policy required), Cameron states:

*The result has been a slower, more modest system than might otherwise have developed, recourse to complex and politically unaccountable mechanisms and ongoing wrangling between the federal and provincial governments over social programs.*⁴² (Emphasis added)

The federal government's use of its spending power to implement unilateral changes in the overlapping and interconnected jurisdictions of social policy contributes to a less than clear understanding of which government has which roles and responsibilities. Furthermore, as the intergovernmental relationship is stressed, opportunity for counter-publics such as NAPO to participate is diminished.⁴³ Such complex and unaccountable mechanisms of social security governance seem to remain politically expedient from the federal perspective. On the other hand, as I will elaborate upon in the next section, the federal policy position has been more recently shifting towards the building of partnerships. At the same time, it seems that the nurturing of a single partnership (i.e., the federal-provincial) has resulted in a policy environment in which a diversity of positions and discourses are considered too dangerous in terms of establishing a perceived consensus. With so many potential environmental variables capable of derailing social security policy development, the federal government has had an understandable interest in 'managing' political public sphere discourse, curtailing the opportunity and capacity for input from movements outside the delicate federal-provincial

'partnership'. These effects on the processes of contemporary social policy development will be addressed again later.

Finally, while its role as a progressive tool is problematic (see chapter four), the entrenchment of the *Charter* provided an instrument which continues to stand out in a policy era that was otherwise rather lacking in possibility or innovation. Splane points out that although the origins of the *Charter* are complex (attributed in large measure to the personal agenda of Trudeau), this significant addition to the store of legal instruments available in the field of Canadian social security was backed by many in the poverty movement because of "its promise of preserving and extending human rights."⁴⁴ For example, anti-poverty activists thought that s. 7 (fundamental justice) and s. 15 (equality) could provide strong procedural and redistributive rights respectively. At the time, the *Charter* was seen as a potentially powerful mechanism of public accountability. With the clarity of hindsight, however, we can say there has been a huge disparity between the *Charter's* actual role and the lofty vision espoused by its various advocates and framers.⁴⁵

To summarize, the federal government, after initially pursuing jurisdictional control over social insurance through its power to make laws for the "peace order and good government" of Canada⁴⁶ and the general spending power,⁴⁷ has today, through various constitutional amendments, uncontested dominion over contributory income security (e.g., Employment Insurance). The provinces have essentially remained in control of the areas of health care and social services. Other non-contributory social security programs largely operate under concurrent jurisdiction. Notwithstanding the present fetish with "partnership", the federal government has historically exercised its controversial spending power more and

more, with the impact of centralizing control over areas which were once exclusively provincial. Utilizing conditional grants to the provinces (such as CAP transfers⁴⁸) became the primary instrument of achieving the increase in social security centralization. When this source of federal-provincial discontent (i.e., “made in Ottawa” decisions) is combined with other related pressures such as prolonged fiscal constraints with neo-conservative dismantlement demands, the ‘Quebec question’, and of course, the many stressors associated with ongoing constitutional wrangling (to name but a few), the result has tended to be a less than open social security policy environment.

The federal government has accordingly been left with two choices. They have either ‘gone it alone’ through the continued use of complex and unaccountable mechanisms. Or, as has been the case more recently, they have attempted to nurture a fragile federal-provincial partnership, in part by avoiding possibility contentious inputs from voluntary poverty groups like NAPO. Although the entrenchment of *Charter* stands out as one development which might have generally expanded our public accountability framework, essentially this review illustrates that Canadian social security governance arrangements have historically increased in complexity, while limiting the range of those actively participating in design and delivery decisions. More recently, it would seem that our policy environment is at least rhetorically starting to reflect an appreciation that the welfare state is beyond the planning capabilities of centralized parliamentary-bureaucratic system, thus calling for the increased use of partnerships in various sectors, as well as enhanced accountability arrangements. As evidenced below, we have yet to move much beyond mere rhetoric, and conceptions of accountability enhancement remain rather bound to neo-conservative public accountancy

notions.

III. The Contemporary Social Security Policy Environment

In this section, I will analyse some of the major trends at work in our contemporary policy formation processes. Examining the styles of the recent Progressive Conservative and Liberal governments with respect to public participation in our policy making processes enables us to appreciate the need for a Left politics targeting a democratic opening up of our deliberative structures.

By the start of this decade, welfare state retrenchment was well underway, and centralization was quickly being replaced by the political benefits associated with downloading. In reviewing the social policy record of the Mulroney government Rice and Prince found that:

While the Conservatives seemed fearful of social policy reforms in their 1984-88 mandate, they have been more decisive in their 1988-93 mandate in restraining and restructuring social transfers and programs. The Mulroney Conservatives have fundamentally changed some foundations of modern social policy in Canada, terminating the Family Allowances program, abolishing the universality of the Old Age Security plan and ending federal contributions to the unemployment insurance scheme . . . the most significant consequences of the Conservatives' social policy record have been a lowering of the safety net and a weakening of certain bonds of nationhood and citizenship.⁴⁹

These changes certainly had an enormous impact but I would contend that the way in which the policy formation process was altered during this time may have had even more significant long term implications. While outcomes are obviously important, I am interested here in drawing attention to changes in the opportunity for public participation in our deliberative processes. I am pointing to public participation as a key accountability

mechanism.

When, in their first mandate, the Mulroney Conservatives attempted to de-index old age pensions they were quickly convinced otherwise by angry and organized seniors. Ironically, having called early on for greater cooperation and input from the various sectors (business, anti-poverty, etc.) with respect to social policy reform, the government's proposed de-indexation plan was met with enormous wide scale rejection. The government learned from this fiasco. A policy environment which, already soured by fiscal pressures, would now see genuine participation in the policy making process greatly curtailed for low-income Canadians, whose voices were already marginalized. Unlike the political opportunity structure of the 1960s,⁵⁰ poverty groups found themselves in a hostile climate, confronted by neo-conservatives "armed with the tools of public choice theory", and quick to blame "special interest groups" for paralysing government.⁵¹ Through a combination of the avoidance of genuine consultation and the use of highly technical policy instruments, the government successfully deployed what Ken Battle has referred to as "the politics of stealth."⁵² While not a particularly imaginative governance tactic, this strategy did allow for massive cuts in social spending with "virtually no political cost". Further, and perhaps most importantly, it "neutralized opposition from social advocates and stifled . . . informed and open public debate."⁵³ Although a successful strategy for furthering the federal policy agenda, these tactics surely contributed to the widespread crisis in the integrity of governance, and likely did little to ameliorate our welfare state's legitimacy crisis.

With the election of the Chrétien Liberals in 1993, our policy processes have been taken in a slightly different direction. A number of what Tardi would categorize as "political

instruments”⁵⁴ were, and are, being used within the legal framework of government to try and address the ‘integrity issue’ plaguing public officials and the general climate of public mistrust. Tardi offers a conceptually useful categorization of governing instruments in his analysis of the rules of public affairs, namely - political, policy and legal. We are reminded of the importance of examining the linkages between the rules of governance (i.e., beyond simple jurisprudence), and their influence on the conduct of public affairs.⁵⁵ While critical review of the *Charter*, for example, has tended to point toward the influence of politics on law, it is my contention that the impact of law on politics must also be taken into consideration. Drawing on Tardi’s perspective, as the Chrétien government was clearly concerned with restoring some integrity to the political process in Canada, we consequently have seen some interesting developments in terms of the binding nature of several of these political instruments.⁵⁶

Looking at the Liberals’ election platform from Tardi’s model, we may be seeing the emergence of a new source of political process rules. The Liberals’ election platform was set out in a document entitled, Creating Opportunity: The Liberal Plan for Canada, better known as the Red Book.⁵⁷ The Red Book was central to the Liberal’s elections strategy and contained a number of lofty, if ambiguous, promises. What made this document unique, (not to suggest that election platforms are merely filled with empty rhetoric), is that the Red Book, and its successor, Red Book II, have been held up by the executive itself as a touchstone or guideline for the government’s agenda. The Liberals actual adherence to these documents, in comparison with promises made by previous administrations, may be debatable. The important point here is that the Red Books were clearly held up as a means

by which the Liberals would increase their accountability to the electorate throughout their mandate. Ironically, it played a key role (if a less than successful tactic) in responding to their first term GST-reversal crisis, in that the ambiguous language of the Red Book was pointed to as a defence of the government's position.

In announcing their social security review, the Hon. Lloyd Axworthy, then Minister of Human Resources Development and Western Economic Diversification, had this to say:

*The Red Book, I think, struck a chord when we said we want a country whose people live in hope, not fear . . . When our Prime Minister speaks about the Red Book, that is the core, that is the spirit that everybody has a fair chance.*⁵⁸

There was, however, a glaring absence of any specific reference to proposals for an extensive social security review in Red Book I. Policy commitments can be found with respect to health care, such as universality, but nothing in regards to the comprehensive social safety net examination which was launched.

The Red Books may represent a 'new' hybrid instrument of governance in terms of Tardi's classification scheme. Not unlike a Throne speech, the Red Books seem to be both political and policy in orientation.⁵⁹ Indeed, an interesting aspect of their post-election Throne Speeches has been just how closely the Liberals have in fact followed the Red Book agendas.⁶⁰ On the other hand, it was not until their first Throne Speech that Canadians formally learned of the government's ambitious intention to undertake a comprehensive review of the safety-net in cooperation with the provinces and in consultation with Canadians.⁶¹

While the Throne Speech is mainly a political instrument, it is also an important

policy instrument which serves to direct the role of public administrators. Both in form (the interrelationship) and in content, the Red Books and the Throne Speeches point toward a sensitivity on the part of the executive with respect to the diminished sense of accountability felt by Canadians. To the extent that the 'binding' character of these instruments continues to be important to the executive, wielding these as sword or shield within the political public sphere, as well as the non-political public sphere, could now prove more beneficial within particular strategic engagements. The anti-poverty movement, for example, could utilize these instruments within the development and articulation of an alternative discourse. Tracking the executive's language around 'partnership' in an oppositional politics aimed at democratically opening up our deliberative structures would most likely have a greater practical impact than would a simple 'demand' for consultation with low-income Canadians.

The Budget process, yet another highly relevant political instrument,⁶² has also undergone some renovation under Chrétien's Liberals. The Budget process is seen within traditional accountability models as one of our key sources of public accountability. The use of regional pre-budget conferences can be seen as another example of the executive's goal of restoring some integrity to our governing processes. Discussing the value of the conferences in the preface to Facing Choices Together, Martin states that "(t)hey represent real progress in enlisting genuine public participation in the vital budget decision-making process."⁶³ Again, concerns about "genuine public participation", "partnership" and "opening up the process" are raised over and over again within contemporary governing instruments. Still, one is forced to question the notion that "real progress" has indeed been achieved. While the verbal commitment to participation is laudable, the actual scope of pre-budget

participation has been rather narrow.⁶⁴ Using Sherry R. Arnstien's conceptual "ladder of citizen participation", these budget consultations may be more closely characterized as an "empty ritual of participation" as opposed to being located on the higher rungs where involvement has "the real power needed to affect outcomes."⁶⁵ It is difficult to see where these consultations, especially in relation to low income Canadians, actually had any impact upon the policy direction assumed by the bureaucracy and/or their political masters. Since the 1960's 'war on poverty', the critique that "formal political accountability has not given citizens a sense of control over social welfare institutions" has often resulted in calls for enhanced citizen participation in design and delivery decisions.⁶⁶ While we still hear cries for improved accountability frameworks and responsive social security approaches, the political rhetorical value of 'participation' continues to far outpace careful exploration of imaginative democratic institutional arrangements. It seems clear the Budget process is a fundamental point where deliberative and decisional procedures to open up or democratize public discourse should be pursued.

Even more poisonous to the required good faith foundation of "genuine public participation" in the reform of social security has been the disparity between the nature of the process as it was first portrayed by the government (thus securing input from various NGOs), and what it would be reduced to once the Department of Finance assumed the lead role. As evidenced in their first Budget, it seemed clear that the Chrétien government was placing a high priority on social security reform. Indeed, reforming our social programs was considered the second of "three central challenges to be met."⁶⁷ There was a strong relationship emphasised throughout the 1994 Budget between the government's fiscal agenda

and the "success" of social security reform.⁶⁸ Alongside this, we again find evidence of the executive's concern with restoring some integrity to the process. In Martin's words,:

*The challenge today is not to rush. The challenge is to get things right . . . But make no mistake, there will be change. This is a two-stage process, not a twenty-stage process. We are setting the stage this year for completion next year. There are due dates. There are deadlines. And there are firm fiscal targets to guide our reform.*⁶⁹

Getting "things right" however has not produced a credibility surplus.

Unable to bring in a unified set of social security reform recommendations prior to Martin's second budget, the one-two punch of fiscal and surgical social reform gave way to deficit priorities. With Axworthy unable to put forward a unified social security reform report, the Finance Minister was free to shape how CAP would be addressed. As Rice puts it:

*Axworthy had been unable to get agreement on the Committee's recommendations, and this lack of unity allowed the Finance Minister to intervene. What Canadian's got for all their time and effort in the review process was a cut in welfare expenditures delivered in a super block that mixes welfare transfers with those for health care and post-secondary education.*⁷⁰

While I will discuss the impact of the review process and the resulting replacement of CAP with the CHST, the cynicism resulting from this process is understandable.⁷¹

The most recent fiscal revelations of the government ironically invite comparisons with the budget process of the Mulroney Conservative governments. Throughout the nineteen eighties the Conservative government's Budgets consistently underestimated the deficit. 'Things will be better next year' we were told. Undoubtedly Paul Martin's Budgets, having used very modest numbers, were partly yet a further attempt to restore faith in the

governance process. Each year, however, the deficit has consistently been far smaller than was predicted. And most recently, Finance projections have proven to be absurdly out of whack. Transparency in our public processes again seems to be sacrificed for more politically expedient short term objectives.⁷² Why produce even semi-accurate figures going into an election when this would require the government to account for how it will deal with its vastly improved fiscal situation? On the other hand, less cynical accountability framework forecasts can also be found in the direction of recent federal government political instruments.

In discussing the most recent Throne Speech, in which the federal government talks at length about partnership, Fraser points out some significant reversals:

*Clearly, the agenda of the last Throne Speech in February 1996 — in which Ottawa invited the provinces to grab a fistful of powers while promising not to intrude anymore on their jurisdiction — is yesterday's news . . . As Ottawa gets back into the business of relating to Canadians, it will do so in a different way. Partnership does not mean transferring money to provinces, but to individual Canadians. Not health transfers but home care. Not social assistance transfers to provinces but money for children sent directly to Canadians. Not education transfers, but Canada Student Loans. In each case, the federal government's involvement in a field of provincial jurisdiction will be visible, comprehensible and **not hidden in the abstraction of a federal-provincial deal.**⁷³ (emphasis added)*

These may indeed prove to be pivotal changes, increasing the visibility of our social security governance systems, and thus potentially increasing the likelihood that the individual citizen will better understand the methods and operations of government in these fields. That said, this clearly contrasts with provincial calls for greater control over social policy and financing,⁷⁴ and of course the impact of the down-loading momentum continues.⁷⁵ Furthermore, from the perspective of the anti-poverty movement which needs to mobilise

their supporters in a collective social struggle, will these changes ‘individualize’ our policy formation processes? Another potentially interesting social security governance ‘partnership’ development is found in the emerging work of the First Ministers’ Social Union initiative. The First Ministers created the Federal-Provincial-Territorial Council on Social Policy Renewal in 1996 assigning to it the role of guiding the social union initiative. As I write, a framework agreement is being developed by the Council which is to reflect that:

*the social union is about doing what works for Canadians, about how governments are going to work together to modernize and renew the social union, **improve accountability to the public for social programs**, and ensure that programmes are efficient, effective and adequately funded in the long term.*⁷⁶ (Emphasis added)

Ironically, given the ambiguously identified goal of improving accountability to the public, so far little can be said about these initiatives as the dialogue has been ‘intergovernmental’, with no aboriginal representation, and behind closed doors. To be fair, this initiative is still in its infancy, and the lack of disclosure (a key accountability principle which states that a government is to keep citizens informed of its plans and actions) is no doubt a reflection of the highly flammable state of intergovernmental partnerships. This initiative may yet provide an important fora for public discourse. I also think it might move governments conceptually in the right direction, i.e., social security governance and reform require an integrative approach, which recognizes the need for real improvements in accountability to all citizens. However, given the very fragility of the partnership upon which the social union initiative is based, an institutionalized mechanism of ongoing and open dialogue, with a broader base of participation, would be a welcome addition.

Before concluding this section, I will briefly comment on another crucial class of

social security governing instrument. The devil is in the details, and the details are found in the policy instruments (guidelines, directives, etc.). Along with legal instruments such as the CHST, and political instruments like those just reviewed, ‘executive policy’, given its binding effects on the bureaucracy, must also be considered in terms of developing realistic transformative action strategies. Policy instruments currently in place are so confusing as to fuel the disparity in which recipients are treated. This situation is aggravated by the discretionary character of many of these instruments. According to The National Council on Welfare:

*The Welfare system in each province is governed by a complex and extensive set of rules. The complexity of the system makes it difficult to understand and to be knowledgeable about eligibility or degree of entitlement. The rules allow many opportunities for the exercise of discretion in individual cases, a situation which may give rise to inequities in the treatment of recipients.*⁷⁷

Even where the rules are relatively clear, the number of potential exemptions give case workers a de-facto policy making role.⁷⁸ That said, there are disturbing trends in the direction of executive policy formation which appear to capitalize on and/or promote many of the myths associated with social assistance. Workfare, increased welfare policing and enhanced eligibility verification are examples of policies which, while perpetuating a number of myths, seem to be designed to address our publicly perceived accountability deficit, but, as elaborated in the next section, with highly questionable cost benefit results. I certainly do not see such initiatives enhancing our welfare state accountability frameworks in any meaningful way.

To recap, as down-loading from the feds to the provinces, and in turn the municipalities, has continued, the “politics of stealth” has been augmented by ever more

complicated lines of governance, and by extension, the further diminishment of an already less than transparent accountability framework. It has become more difficult for our citizenry to understand the operations of government. Governance processes are lacking in the key accountability principle of transparency or openness. Other policy environment influences on social security accountability frameworks include diminished rights to redress (i.e., loss of CAP appeal standards), and an ongoing lack of disclosure within parliamentary-bureaucratic policy fora (i.e., the social union initiative). Notwithstanding these examples, as evidenced by the political instruments reviewed above, our political leaders have started responding, at least rhetorically, to the existence of a governance integrity crisis. However, declining accountability arrangements have done little to enhance our welfare state's legitimacy deficit. After decades of intergovernmental conflict, "special interest group" bashing, successive constitutional crises (often evoking elitist policy making images such as those associated with Meech), and in general, a climate of social insecurity (at least partially attributable to governance obscurities arising from devolution), it is not surprising that "partnership" facilitation has become such a strong political mantra. Indeed, the political landscape is filled with references to objectives such as building partnerships, increasing public participation, enhancing accountability, and commitments to broad-based policy renewal. Despite the seeming importance being placed on such themes, actual institutional arrangements related to these objectives remain dubious at best, e.g., the Budget process.

Of course, the unity issue has had, and will no doubt continue to have, a tremendous impact on our political opportunity structure, not the least manifestation of which has been

the ever present possibility of constitutional crisis / talks. Certainly the behind-closed-doors nature of the emerging Social Union intergovernmental partnership is in part a reflection of the fragile nature of this relationship. Once again though, we have an example of how the rhetoric of improved accountability to the public is at odds with actual institutional arrangements. In this case, another key accountability principle (disclosure, the idea that citizens should be kept informed with respect to government plans and actions) languishes. Although we might be seeing some potential for democratically enhanced social security in terms of clarified accountability lines (e.g., direct government transfers to individuals, rather than abstract federal-provincial agreements), without the support of adequate institutionalized mechanisms, even such small steps can be quickly lost to the dictates of political expediency. If this was not reason enough for movements to struggle around the concept and processes of accountability, recent directions in social security policy certainly indicate that anti-poverty efforts cannot afford to abandon the design of institutional arrangements to the parliamentary-bureaucratic complex.

IV. Accountability and the Arena of Social Security Policy

A) Attempting to Restore System Legitimacy

As shown in the above policy environment reviews, and as noted earlier, debates surrounding the nature of the welfare state crisis often find expression in accountability concerns. It follows that accountability has been a significant element within contemporary policy responses to the problems associated with the welfare state. It would be a mistake to dismiss the rise in attention being paid to accountability as influenced by a single perspective, for example, neo-conservative efforts to improve the 'efficiency' of state

expenditures. Rather, I argue that, at least in part, accountability concerns are so pervasive because they enable various political perspectives to give concrete expression to the wider legitimacy problems afflicting our appreciation of the modern welfare state. Put another way, there is a lack confidence in our governing systems,⁷⁹ and while there are various complex reasons behind this, the concept of accountability provides an everyday language to express the loss of trust and frustration citizens experience (e.g., “I elected this government on the basis of x, but then, without consultation or even explanation, they implemented y”). In turn, promising to ‘enhance accountability’ is one tool available to governments so as to at least be seen to be doing something to restore our collective lack of confidence. Of course, as enhanced accountability is adopted as a prime objective, failures to realize this goal in turn feed into our existing legitimization crisis. Kearns, albeit within the context of the United States, addresses the rise in accountability problems in the preface of his book on public and nonprofit accountability management.

*The headlines in newspapers and magazines around the country are easy to find and impossible to ignore:. . . [Kearns proceeds to list and summarize three very different examples of actual accountability newspaper articles.]. ... While these cases differ in context and scale, they have one very important thing in common: they all involve fundamental questions of accountability. . . . Beneath these and countless other headlines there is a story of intense public scrutiny of governmental and nonprofit organizations and **growing concerns about citizen confidence in these institutions.**⁸⁰ (Bold added)*

In broad terms, as the public perception of an accountability deficit increases, institutional legitimacy is further called into question. One does not have to think too long before any number of recent Canadian accountability stories come to mind: the Dionne Quintuplets; allegations of First Nation Band Council fraud; the Krever inquiry into tainted blood, and our

various military scandals are but a few.

The previous observations on our contemporary social security policy environment certainly indicate that some government attention is being paid to the issues of accountability and legitimacy, if only in the narrow sense of attempting to alleviate leadership integrity woes. Unfortunately, so far, most efforts at restoring legitimacy have merely taken a rhetorical form, with claims to objectives such as increased citizen participation and more inclusive partnerships. Of greater concern is the general lack of critical engagement on the Left with respect to recent policy development trends in the area of social security reform. As noted earlier, in the face of welfare retrenchment, the Left has assumed a rather defensive posture, supporting existing social programs and services or trying to forestall further dismantlement. Consequently, where the parliamentary-bureaucratic complex has moved beyond rhetoric, modifications to social security accountability frameworks have generally proceeded with relatively little critical attention.⁸¹ A reflexively continued welfare state politics will require the left to address 'accountability'. On the other hand, calls for enhanced accountability arrangements have been quickly answered by those on the Right, shaping policy responses around a 'get tough' definition of 'improved' social security accountability.

B) Welfare Abuse Policies

As I have already pointed out, accountability is a real issue. It is not simply a Right-wing 'red herring'. That said, a good deal of policy has been created in recent years in response to the apparent epidemic of welfare fraud or abuse. Such policies are built upon, and indeed perpetuate, poverty myths such as those associated with the stereotype of the "welfare bum". With Canadians having little confidence in our political institutions

generally, and perceiving our social programs and services as “too easy to abuse,”⁸² implementing welfare fraud countermeasures is a way for political leaders to be seen to be ‘improving’ the system’s accountability framework and ‘cracking down’ on the undeserving segment of the poor at the same time.

Welfare state retrenchment politics in the United States has given rise to many of the new anti-fraud tools, such as the use of fingerprinting systems to track welfare recipients.⁸³ Clearly an intense spotlight has been directed on today’s social security recipient. In Ohio, for instance, we see an Orwellian welfare abuse campaign which, in part, is aimed at “seeking the help of the general public in reporting suspected welfare fraud.”⁸⁴ Canadian jurisdictions have adopted similar policies. In 1994 the Ontario NDP government announced its “plans to step up the fight against welfare fraud,” providing municipalities and First Nations with \$20 million over two years, hiring an additional 270 investigators and launching the “Enhanced Verification Program.”⁸⁵ Although these initiatives were targeted to save \$60 million in the first year and \$90 million in the next, for fiscal 1994-95 the more realistic expectations had been dramatically lowered to \$15 million. Admittedly this is a significant amount of money. However, the policy foundation is surely suspect when we take into consideration that this represented a mere 0.002% of total welfare spending.⁸⁶ Clearly welfare fraud is a serious concern, and appropriate mechanisms should be established to prevent, detect, and prosecute those who abuse the system. However, when such measures are considered in light of fraud rates, estimated at 3% of total caseload, and contrasted with the relatively limited response to income tax fraud, which is estimated at 20%, it is difficult not to question the actual political inspirations behind such ‘get tough’ policies.⁸⁷ In any

event, shouldn't the determination of what indeed are 'appropriate' measures be the product of informed and open public discourse?

Recent years have seen a sort of welfare abuse 'moral panic' take over Ontario's reform agenda. In a 1996 keynote address on fraud in the public domain, Andrejs Berzins Q.C., Crown Prosecutor Ottawa-Carleton, noted that pre-trial statistics now showed that welfare abuse made up 25% of "serious cases before the court." The Crown pointed out that this represented a sharp increase from just five years earlier when welfare fraud would rarely, if ever, rate a formal charge. Noting that although his office was sensitive to a general decrease in the public's tolerance for fraudulent activity, the only increase that they could document was in the area of welfare abuse. Berzins questioned how much of the 'increase' in welfare fraud actually was owed to increased surveillance given that enforcement levels were three or four times higher than they had been a few years earlier. Berzins concluded by suggesting that, if for no other reason than existing backlogs in the courts (the same courts which must deal with crimes such as manslaughter, sexual assault, etc.), current responses to welfare fraud would benefit from being reconsidered in light of overall public policy priorities.⁸⁸ As already discussed in Chapter One, while the current Ontario Conservative government admits that they do not really know how much fraud takes place; "unfortunately there has been too much misuse and abuse of the system, . . . it's difficult to say how much there is."⁸⁹ They continue, however, to hold up the welfare abuser as a large part of the explanation of why the 'system' is in crisis.

Reforms in Ontario have included fingerprinting, further limits on the right to appeal the denial of welfare, and the creation of police-like powers for workers who will be

authorized through search warrants to enter the homes of welfare recipients.⁹⁰ Although anti-poverty efforts have tried to point out that such policies are based largely on poverty myths, these arguments have not gone very far in light of the dominant neo-liberal hegemony. The Right's 'common sense' diagnostic of the welfare state crisis is much more likely to point towards a system which has become "too easy to abuse" by unscrupulous individuals, and consequently is ripe with fraud, than to more abstract and less 'controllable' variables such as the economic pressures associated with globalization. Perhaps if the Left had been more willing to struggle directly with accountability policy and related framework design (as opposed to favouring a defensive welfare politics), the fallout of the statist-market polemic might not have resulted in recent social security initiatives looking so much like a dystopian novel. Indeed, a democratically enhanced accountability approach could still provide a key recursive mechanism (e.g., evaluation frameworks) in which to discursively challenge such highly dubious, if socially/psychologically comforting, welfare police models.

C) Pursuing a Renovated Conception of Accountability

One area in which the Left has had to engage directly with accountability has been around the "special interest" group bashing that has taken place over the last couple of decades. Welfare rights groups were at least reluctantly accommodated by welfare administrators in the 1960s as a vehicle for "citizen participation - the involvement of people directly affected by social welfare programmes in the planning, implementation, and evaluation of policies and programmes."⁹¹ However, poverty groups such as NAPO have been assailed by right-wing populists as an illegitimate voice within our parliamentary-bureaucratic communication structures. As will be discussed in chapter five, NAPO's

credibility has withstood facile attacks on its legitimacy, but the general hostility being directed to it, and other voluntary advocacy associations, once again suggest a narrowing of the social security political opportunity structure, and indicates the need for more secure avenues for low-income citizen participation. A social movement organization like NAPO can play an important role in realizing the reflexive welfare program ideal underlying this thesis, but such an orientation will not be sustainable if built solely upon the non-institutionalized participatory mechanism of social movement politics. Challenging prevailing accountability perspectives would seem to be an important step towards the realization of a reflexive welfare state orientation.

It is not surprising that engagements on the Left with the concept and processes of accountability have been rather defensive in orientation. 'Accountability' discourse largely evolved alongside the welfare state roll back of the mid 1970s, with neo-conservatives pushing for expenditure process 'reform.' While the Left assumed a defensive position, preoccupied with advocating increases in social expenditures or at least preventing further retrenchment, seemingly politically benign accountability reforms such as "program evaluation," and "value for money" auditing was introduced by the Right. The implication for NAPO, or others interested in developing practical transformative action routes, is that welfare state policy and political struggles are being framed (sometimes with little critical attention) by accountability issues. Where debates around accountability approaches do take place, they are often limited to the knowledge 'experts' in parliamentary or bureaucratic complexes. There are at least two significant and interrelated problems associated with the dominance of 'experts' in these debates.

First, the evolution of our public processes of accountability have primarily been linked to questions of control over bureaucratic actions by elected representatives, as opposed to more contemporary democratic governance issues (e.g., increased citizen program deliberations). Consequently, debates around political-administrative accountability structures and procedures have tended to interest the associated experts, but have remained rather insulated from broader public concern, and thus, participation. Even these limited debates have often conflated questions of accountability with issues of public accounting policy. While accounting issues are an element in addressing democratic governance requirements of transparency, disclosure, and redress (the principles of accountability), it is certainly not the only, or for that matter, most significant, component of a democratically sound accountability framework. The traditional approach taken by the parliamentary or bureaucratic knowledge 'experts' has focussed on Ministerial accountability to Parliament, i.e., for the expenditure of allocated funds (as in keeping with the pluralist model of responsibility).

Ministerial responsibility to Parliament, and theoretically to Canadian citizens, has been closely tied to the budgetary process. Spending proposals are made by ministers. Central agencies like Treasury Board review the proposals which then move to Parliament for scrutiny. Ministers report back to Parliament on the actual expenditure of that money (albeit with an increasing emphasis being placed upon 'performance reporting') and the Auditor General or its provincial counterpart provides a 'value for money' audit function. This is thought to provide citizens with a transparent process of decision making, whereby through such disclosure mechanisms as budgets, estimates, audits etc., citizens are kept

informed. Eventually, through the election process, redress is available. However, given the increasingly complex social security governance arrangements and corollary policy environments reviewed above, such classical formulations of ministerial responsibility could, at best, hope to offer only a fragmented accountability mechanism. Even if these processes were adequate for their ‘intended’ purposes during the ascendancy of the welfare state (e.g., the programs involved reasonably simple money transfers to recipients), such traditional top-down conceptions of accountability do little to facilitate enhanced citizens participatory structures as required by ‘legitimate’ policy development today. In short, our processes of political-administrative accountability have largely been designed by, and for, parliamentary-bureaucratic experts.

Consider, for example, the implications the annual system of budgetary accounts has upon the quality of seemingly straightforward administrative capital ‘investment’ decisions, not to mention how these processes fail to contribute to wider public consultation and reflection. Real capital budgeting, let alone “social investment criteria,” are discouraged, leading to peculiar representations wherein the “capital infrastructure of education is treated the same as spending on paper clips or army underwear.”⁹² When unchallenged, such expert discourses can serve to neutralize the inherently political nature of accountability modelling. In response to the changing realities of governance, substantive aspects like ‘performance reporting’ have been grafted on to existing procedures, but the resulting accountability frameworks are still characterized by a narrow spectrum of participation and discourse.

This brings us to the second significant problem with the dominance of these experts. While the parliamentary-bureaucratic knowledge experts have attempted to increase the

wider public relevance of the budgetary information supplied through the traditional approaches (e.g., adding performance reporting), their continued overwhelming dominance of the process (i.e., little outside input) can introduce a weighty, if unintended bias. For example, in his examination of the value for money audit function, Doern points out that:

The substantive criteria for assessing performance is not clear-cut since there is no fully agreed upon language of discourse. The emergence of value-for-money auditing was an important attempt at providing a common language . . . (S)pending decisions are in fact imbued (sic) with multiple values against which performance might be and is judged by several participants in the [broader] accountability chain such as ministers, parliament, political parties in Parliament, and citizens and interest groups.⁹³

Expert discourse around value for money may do little to genuinely improve the intersubjective, democratic character of state spending, yet, unless challenged by alternative perspectives, such evaluation methods could come to acquire an objective or ‘scientific truth’ quality. In addition, as governance areas grow in complexity, the role of the policy specialist (both within and outside the bureaucracy) has been increasing at all stages of policy development. In general, we must clearly recognize these knowledge professionals as an ever expanding accountability line. With respect to the budgetary process, these professionals have an important role in determining what will constitute adequate performance information, as well as a privileged position in terms of the analysis of this data, and its eventual feedback into policy review. For example, who determines how we measure success or failure in the fields of general welfare assistance? Is it the compliance officer who is concerned with fraud rates? Is it the executive of a voluntary food bank coalition? Increasingly performance reporting will be pointed to as a core component of our accountability regimes (especially within the budgetary processes). We should remember

the methodological truism that, ‘what, and how, we decide to measure will impact upon that which we are measuring.’ Once again this reinforces the fundamental point that critically engaging with the concept of accountability should be a key action strategy for progressive struggles, and in particular, suggests the importance of pursuing an institutionalized, democratically enhanced accountability model to enable the dialogical⁹⁴ advancement of counter-knowledge within state structures.

It should be evident from the material above that accountability views (ranging from those of the ‘experts,’ to the prevailing ‘common sense’ perspective of the citizenry) are shaped by, and shape, the macro policy environment in which social security options are conceived, deliberated, or ignored. Indeed, the institutional realization of accountability regimes directly impacts upon the way social services are designed, delivered, and (potentially) recursively modified in a democratically enhanced fashion.

The findings of the *Royal Commission on Aboriginal Peoples* (RCAP) with respect to the relationships between accountability approaches and policy development are illustrative for wider Canadian anti-poverty struggles. Aware that the opportunity structure for Aboriginal Peoples pursuit of self-government arrangements is being negatively impacted upon by allegations of fraud, mismanagement, etc., the need for improved accountability systems to support emerging partnerships between Aboriginal and Canadian governments is identified in RCAP: “Aboriginal people have recognized that establishing mechanisms for government accountability and responsibility must go hand-in-hand with the autonomy that these governments will enjoy under self-government and associated fiscal arrangements.”⁹⁵ However, if self-government accountability approaches do not move beyond the standard

detailed monitoring and reporting regimes of the past, then they will be unlikely to sustain the collective and individual aboriginal autonomy being aspired to within these new relationships. Conceptually moving beyond the time consuming, top-down compliance paradigm enables the accountability framework supporting the new arrangements to emphasise the primary accountability relationship, which is owed to the Aboriginal citizen by the Aboriginal government. That said, for both Aboriginal and non-Aboriginal citizens concerned with democratizing social security governance, a struggle is required to move thinking beyond the confines of traditional accountability models. While I would not presume to prescribe a particular action strategy for NAPO (an ongoing challenge and responsibility for the organization and its membership), my observations here do suggest that further exploration of the arena of accountability politics is required. For instance, given existing macro policy environment tensions (demands for greater welfare recipient monitoring, etc.), NAPO would be prudent to investigate the strategic, counter-hegemonic possibilities within the use of a renovated accountability discourse.⁹⁶ Such a discourse might be used generally in anti-poverty social struggles, and, as will be argued in the following chapter, throughout the various dimensions of a comprehensive social movement political program. In particular, accountability and associated procedural rights discourses (e.g., right to informed participation in establishing objectives, reviewing performance, and deciding upon necessary corrections) could provide a powerful language with which wider movement political efforts aimed at promoting the type of dialogical mechanisms supported in this paper could utilize.

Given the increasing frequency with which the term “accountability” is used today,

and the various meanings (often imprecise)⁹⁷ associated with its casual usage, I shall close this section by providing some brief additional conceptual clarification on its application in this paper. Although accountability is abstract enough to encompass the broad principles of transparency, disclosure, and redress, we can turn to a number of sources for guidance in developing a working definition of accountability.⁹⁸ Unfortunately, most sources on accountability tend to proceed from the dominant liberal-democratic pluralist perspective, as opposed to, for example, general rights-based theoretical writings which often deploy one of many possible critical analytical approaches. My use of the following material should not be mistaken as support for the simplistic pluralist characterization of state power (i.e., as neutral), or related fallacies like: an “equality of opportunity to mobilize political resources” presently exists in our political system.⁹⁹ That being said, I find the evolving accountability language found within the reports of the Office of the Auditor General (OAG) particularly instructive for several reasons. These reports illustrate the evolution of conventional thinking around accountability (remembering that counter-hegemonic struggles commence on old ground) and provide a foundation upon which to build a practical normative bridge between traditional (often narrow) public service accountability regimes, and the “model of deliberative politics” which is called for in Habermas’s proceduralist paradigm of law.¹⁰⁰ I see the concept of accountability linked to Habermas’s key category of procedural participatory rights, which institutionally secure our opportunities to take part in collective, deliberative, and decision-making processes.

Reflecting the policy environment of the times, in 1975 the OAG defined accountability as follows:

*Accountability in its simplest terms means the **obligation to answer for a responsibility that has been conferred**. It presumes the existence of at least two parties; one who allocates responsibility and one who accepts it with the undertaking to report upon the manner in which it has been discharged.¹⁰¹*
(Bold added)

When we compare this earlier formulation with the OAG's more recent position (a position which reflects the increasing use of 'partnerships' in government), we find a working definition which is particularly fitting given the dialogical and democratically enhanced institutional arrangements being called for in this paper, "accountability is a **relationship** based on the obligation to demonstrate and take responsibility for performance in light of **agreed** expectations."¹⁰² Taken together, accountability can be understood as a relational concept, where the parties have a right to answers for agreed upon expectations. Applied within the conventional context of public communicative and deliberative institutions like Parliament, such a definition would fail to problematize the power differentials that exist within public sphere relationships. For example, traditionally the state's welfare policy 'expert' or administrator has been in a superior position to the recipient with respect to establishing the 'agreed upon' "expectations."¹⁰³ The question that interests me here, then, is how might we renovate and operationalize the above conception of accountability so as to move social security arrangements in a more genuinely democratic, dialogical direction?

To conclude, I come back to the notion of a required dual state-civil society political focus for individuals and social movement organisations, like NAPO, interested in contributing to the realization of a reflexive welfare state orientation. While this chapter has

focussed upon the implications of a changing social security policy environment within our official public sphere, i.e., the state, I have also indicated that realizing, and sustaining a reflexive orientation will require an interrelated state-civil society ongoing struggle. I have noted that 'accountability' provides a key legitimation function in traditional pluralist models of governance. From the Habermasian perspective, it can be argued that institutionalized accountability mechanisms (participatory, deliberative rights), contribute to the wider category of communicative and procedural rights, supplying the necessary conditions for democratically legitimate opinion and decision processes. However, such a renovated conception of accountability will not arise without some sort of political struggle opposing traditional normative administrative frameworks. Within both the political public sphere and civil society, accountability has come to be associated more with 'control' than with informed participatory deliberation or will formation. In short, institutional reforms will require a broad struggle over democratization that will begin with a new articulation of the problems, and in turn, the required reflexive project. Indeed, if the aim is a reflexively renovated accountability model with respect to welfare administration, a political struggle will also be required around dominant perceptions of poverty and the poor, including the self-perceptions of low-income Canadians who have been bombarded with neo-liberal messages such as "it is your own fault that you are poor". Without such an oppositional discourse, poverty myths are likely to forestall a genuine opening up of the administrative communicative structures so as to benefit from low-income citizen participation, (e.g., What could 'they' possibly contribute?). Without anti-poverty social movement agency, it is difficult to see how the ongoing communicative impulses of this disadvantaged mini-public

can be channelled into the political public sphere. The extent to which social movement politics can legitimately play a part in such comprehensive state-civil society politics is the topic of the next chapter.

Endnotes - Chapter Two

1. Although conceptual complexity surrounding socio-legal analysis may be expected, a 'useful' theoretical framework should take us beyond the limitations of 'Ivory Tower' abstraction. See Mari J. Matsuda, "When the First Quail Calls: Multiple Consciousness as Jurisprudential Method", 11 Women's Rights Law Reporter (1989), p.9.
2. In the Habermasian framework, the term "public sphere" refers to that ever changing social space within which opinions are expressed, debated, and eventually, through a myriad of discursive nodal points, public *opinion* is formed. The "public sphere" is separate from the "state". Indeed, it can provide a discursive check on the state. Separate from our official structures, like parliaments, a "political public sphere" where citizens come together to discuss political issues which may affect them, can be said to have formed. Civil society associations channel the discourses of their members into the political public sphere. See Jurgen Habermas, William Rehg trans., Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, (New Baskerville: MIT Press, 1996), pp.360-367.
3. See Antonio Gramsci, Selections from the Prison Notebooks, Q. Hoare and G. Nowell-Smith, eds. and trans., (New York: International Publishers, 1971), p. 238:
In Russia the State was everything, civil society was primordial and gelatinous; in the West, there was a proper relation between State and civil society, and when the State trembled a sturdy structure of civil society was at once revealed. The State was only an outer ditch, behind which there stood a powerful system of fortresses and earthworks: more or less numerous from one State to the next, it goes without saying -- but this precisely necessitated an accurate reconnaissance of each individual country.
 It is widely understood that Gramsci utilized military science analogies in his political theory. The point above being that even if a conventional politics in the West was successful (e.g., a political party succeeded in becoming the government), the State's exercise of legitimate force is only one of the mechanisms reinforcing the dominant group's hegemony.
4. See Nancy Fraser, "Rethinking the Public Sphere" in Habermas and the Public Sphere, Craig Calhoun, ed., (Cambridge, Mass.: MIT Press, 1992), pp.109-142. In reflecting upon the early contributions of Habermas with respect to the public sphere, Fraser points us towards a more fruitful modern conception for the purposes of democratization efforts.
The public sphere, in short, is not the state; it is rather the informally mobilized body of nongovernmental discursive opinion that can serve as a counterweight to the state....Thus the bourgeois conception of the public

sphere supposes the desirability of a sharp separation of (associational) civil society and the state...That, at least, is suggested by Habermas's initial formulation of the bourgeois conception. In fact the issue becomes more complicated as soon as we consider the emergence of parliamentary sovereignty. With that landmark development in the history of the public sphere, we encounter a major structural transformation, since a sovereign parliament functions as a public sphere within the state... With the achievement of parliamentary sovereignty, therefore, the line separating (associational) civil society and the state is blurred. (p.134).

5. Along with the evidence presented earlier regarding the growing emphasis upon accountability, the reader is referred to "Getting Government Right: Improving Results Measurements and Accountability", Annual Report to Parliament by the President of the Treasury Board, (Ottawa: Treasury Board of Canada, 1996). See also, The Exercise of Power Round Table, "Accountability: A Fresh Look at a Changing System", (Institute On Governance, April 23, 1997).
6. See Alan Hunt, "Rights and Social Movements: Counter-Hegemonic Strategies", 3 Journal of Law and Society, vol. 17, p.310.
7. Human Resources and Development survey conducted by Angus Reid Group, February 19-22, 1994, showed that 79% described our social programs as "essential".
8. Honourable Lloyd Axworthy, then Minister of Human Resources Development and Western Economic Diversification, Notes of Speech delivered in the House of Commons, January 20, 1994, p.8.
9. Carl Wellman, Welfare Rights, (Toronto: Rowman and Littlefield, 1982).
10. Keith Banting. Welfare State and Canadian Federalism (Kingston,: McGill-Queen's, 1987), p.31.
11. Ibid., pp.33-34.
12. R.I. Cheffins & P.A. Johnson, Politics as Law, (Toronto: McGraw-Hill, 1986), p.78.
13. Banting, supra note 11.
14. Martha Jackman, "The Protection of Welfare Rights Under the Charter" (1988), 20 Ottawa Law Review, p.277.
15. Constitution Act, 1867 [R.S.C. 1985, App. II, No.5]
16. See Constitution Act, 1982, c.11, Schedule B, Schedule, Item 1(1) (UK)

17. Allan Irving, "Federal-Provincial Issues in Social Policy," in Chancer A. Allege, ed., Canadian Social Policy, (Waterloo: Wilfred Laurier University, 1987), p.326.
18. Leslie A. Pal, State, Class, and Bureaucracy: Canadian Unemployment Insurance and Public Policy, (Kingston and Montreal: McGill-Queen's University, 1988), p.36.
19. Dennis Guest, The Emergence of Social Security in Canada, (Vancouver: University of British Columbia Press, 1985), pp.83-103.
20. Chancer A. Allege, "Canadian Social Policy: Perspectives" in Allege, supra note 17, p.11.
21. Banting, supra note 10, p. 31.
22. See Peter H. Russell, Constitutional Odyssey, (Toronto: University of Toronto, 1992), pp.53-71.
23. For an extensive, albeit non-inclusive, list of governing instruments impacting upon the development of Canadian social policy between the years 1940-1982, see: Leslie A. Pal, "Social Policy and the Constitution", in Jacqueline S. Ismael, ed., Canadian Social Welfare Policy, (Kingston-Montreal: McGill-Queen's University, 1985), Table 3, p.9.
24. For a review of this War from a civil rights and social justice perspective, see Marcia Bok, Civil Rights and the Social Programs of the 1960's, (Westport: Praeger, 1992).
25. S.C. 1966-67, c.45., [hereinafter, CAP].
26. Canada, House of Commons Debates, No. VII at 7142 (4 July 1966).
27. See the Budget Implementation Act, 1995, S.C. 1994-95, c.17, Parts IV and V, ss. 31, 48.
28. R.S.C. 1985, c.6, ss. 8-13. There are five standards that government health insurance plans must adhere to: comprehensiveness, universality, portability, accessibility and publicly administered.
29. See National Anti-Poverty Organization, "Poverty and the Canadian Welfare State: A Report Card", (Ottawa: NAPO 1998.), Appendix I. In British Columbia time limits for people on welfare to appeal have been reduced and a new level of appeal (the Review Board) has been added. Also, access to training programs can no longer be appealed except by disabled applicants. In Ontario, there are new time limits on appeal rights and, in Saskatchewan, the conduct of welfare workers is no longer appealable.
30. NAPO notes that in 1961, close to 30 percent of Canadians were living in poverty. By the mid-nineteen seventies the figure had dropped to 14 percent (once all major social

programs were in place). However, in the two decades after these programs were put in place poverty rates climbed from 13.3 percent in 1973 to close to 19 percent in 1984. They largely attribute these increases to economic recessions. See NAPO's Response to the Federal Discussion Paper "Improving Social Security in Canada" (Ottawa: NAPO, 1995).

31. Rick Van Loon, "Reforming Welfare in Canada"(1979), 27 Public Policy, p.474.
32. Derek P. Hum, "Social Security Reform", in Ismael, supra note 23, p.31.
33. Jackman, supra note 18.
34. See G. Riches, Food Banks and the Welfare Crisis, (Ottawa: Canadian Council on Social Development, 1986), for one of many useful accounts.
35. NAPO, supra, note 29, Appendix I.
36. Richard Splane, "Social Policy Making", in Allege, supra note 17.
37. Royal Commission on the Economic Union and Development Prospects for Canada.
38. As Splane points out, the recommendations of the Commission were far from universally accepted as "positive." It called for a new Universal Income Security Program, which would entail some radical revision to existing programs. As Splane describes:

Although the MacDonald plan would deal drastically with many of the programs identified with the period of welfare state ascendancy, it merits the label of "positive reconstruction" because it realigns the state's responsibility for human well-being rather than renouncing the role of the state in preserving and enhancing human values.

See Richard Splane, "Further Reflections: 1975-1986", in Allege, supra note 17, p.248.

39. Ibid., pp.248-250.
40. Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c.11.
41. Barbara Cameron, Rethinking the Social Union: National Identities and Social Citizenship, (Ottawa: Canadian Centre for Policy Alternatives, 1997), points out that English Canadians have a strong commitment to national standards:
Federal - provincial wrangling over jurisdiction often creates the impression that national standards are merely administrative norms, such as efficiency in the provision of services and income support. However, for English Canadians, national standards are not administrative norms,

but guarantees of social rights. They are the expression of a shared social citizenship that is integral to the English-Canadian sense of national identity. (p.5)

In Quebec, defending provincial jurisdiction is linked with advancing the identity of the Quebec people:

Every Quebec government since the Second World War, whether federalist or sovereigntist, and regardless of political stripe, has opposed federal spending on social programs and challenged the legitimacy of the federal spending power. All have advocated that the federal government withdraw from tax room to permit the provinces to raise their own revenue to fund programs within their jurisdiction. (p.9)

For Aboriginal peoples, identity and renewal is equated with aspirations of self-governance:

Long before contact with Europeans, Aboriginal Societies in Canada where characterized by their own political institutions and a sense of shared identity as peoples... A recognition of self-government is central to the recommendations of the Royal Commission on Aboriginal Peoples. It is directed at achieving authority over matters affecting the culture, identity and collective well-being of Aboriginal nations, as well as over traditional lands. According to the Royal Commissioners, "Aboriginal peoples see self-government as one of the main vehicles for repairing the damage done to their languages, way of life and basic identities". (pp.9 - 10).

42. *Ibid.*, p.14.

43. Interview with Lynne Toupin, then Executive Director, National Anti-Poverty Organization, April 18, 1997, Ottawa.

44. Splane, *supra* note 36, p.252. For those reasons the patriation was supported in various ways by social agencies like the Canadian Council on Social Development and the Canadian Association of Social Workers (CASW).

45. See Jackman, *supra* note 14.

46. Constitution Act, 1867, s.91.

47. Constitution Act, 1867, s.91(1A) & s.91(3).

48. A product of the CAP disputes, Reference re Canada Assistance Plan (B.C.) (1990), 71 D.L.R. (4th) 99 (B.C.C.A.), rev'd 83 D.L.R. (4th) 297 (SCC); [1991] S.C.J. No. 60, is symbolic of post Victoria Charter federal-provincial relations.

49. James J. Rice and Michael J. Prince, "Lowering the Safety Net and Weakening the Bonds of Nationhood: Social Policy in the Mulroney Years" in Susan D. Phillips, ed., How Ottawa Spends 1993-94: A More Democratic Canada?, (Ottawa: Carleton University Press), p. 381

50. For a review of the 'citizen participation' movement of the 1960s see Guest, supra note 19, p.159. Participation by the poor in planning, implementation, and evaluation of welfare programs was, at least reluctantly, starting to be seen by welfare administrators as an important input in the development of sound policy.

51. Robert Howse et al., "Smaller or Smarter Government", Summer 1990 University of Toronto Law Journal, Volume XL, No. 3, p.533: "... these conservatives have suggested that once the state starts to meddle in the economy it is inevitable that rent-seeking interest groups will gain a vise-like hold over economic policies."

52. Ken Battle, "The Politics of Stealth: Child Benefits Under the Tories", in Phillips, supra note 49, p. 417. What Battle means by the "politics of stealth" is the negation of positive reforms to specific policies (his example being the 1985 changes to federal child benefits) by other, negative, reforms to those same policies. Of course, the positive changes are touted and what the other reforms actually mean (in the pocketbooks of Canadians) are downplayed.

53. Ibid., p.418.

54. G. Tardi. The Legal Framework of Government (Aurora, Ont.: Canada Law Book, 1992), p.9. This category also relates to what Doern and Phidd have termed our "exhortation and symbolic policy" governing instruments. These involve, respectively, the use of suasion to attempt to induce a voluntary compliance with a specific goal, or symbolic gestures to demonstrate the governments concern. Examples include Ministerial speeches, research studies, departmental reorganizations, etc. See Robert J. Jackson, et al., eds., Politics In Canada, (Scarborough: Prentice-Hall, 1986), pp.590-593.

55. Ibid., pp.6-8. Quoting Black's Law Dictionary ("that branch of jurisprudence which treats of the science of politics, or the organization and administration of government"), Tardi describes this approach as:

Analysis of these legal, policy and political instruments of governance as rules pertaining to the conduct of public affairs and the study of the interactions between them from an interdisciplinary perspective. . . .

56. This message was very clear to the policy crafters, as I learned in an interview with Karen Jackson, head of the Task Force on Social Security Review, March 10th 1994.

57. Creating Opportunity: The Liberal Plan for Canada, (Ottawa: Liberal Party of Canada, 1993), better known as the Red Book.

58. Ibid., p.5

59. The use of the term 'policy' here is being used in a macro-sense, as applied for example when analysing the Budget as an instrument of governance. Unless the term "executive policy" is used, policy hereinafter should be taken in the general sense of the word. Tardi, supra note 54, p.154.

60. As political commentators have pointed out, the Throne Speeches have been, in many ways, a reworking of election campaign platforms set out in the Red Books. See Scott Feschuck, "Throne Speech Charts Post-Deficit Spending", Globe and Mail, Wednesday, September 24, 1997, A1.

61. Liberal Throne Speech, Tuesday, January 18, 1994.
<http://www.gc.ca/hansard/previous/002_94-01-18/en002.html>

62. The Hon. Paul Martin, P.C., M.P., Minister of Finance, The Budget Speech, (Ottawa: Department of Finance, 1994), February 22, 1994.

63. The Hon. Paul Martin, P.C., M.P., Minister of Finance, Facing Choices Together, (Ottawa: Department of Finance, February 1994), p.1.

64. Toupin interview, supra note 43.

65. Sherry R. Arnstien, "A Ladder of Citizen Participation," Journal of the American Institute of Planners, Vol. XXXV, 4, July 1969, pp. 216-224, quoted in Robert F. Adie and Paul G. Thomas, Canadian Public Administration: Problematic Perspectives, (Scarborough: Prentice-Hall, 1987), pp. 576-577.

66. Andrew Armitage, Social Welfare in Canada, (Toronto: McClelland and Stewart, 1988), pp.258-260.

67. Martin, supra note 62, p.5. The other two major priorities being the expansion of growth (jobs, jobs, jobs) and reducing the deficit. Reducing the deficit, we were told, would require "spending reductions and a re-engineering (of) government to deliver greater value for, and **accountability** to, taxpayers." (emphasis added)

68. Ibid., especially p.5 & pp.9-12.

69. Ibid., p.3.

70. James J. Rice, "Redesigning Welfare: The Abandonment of a National Commitment", in Susan D. Phillips, ed., How Ottawa Spends 1995-1996: Mid-Life Crises, (Ottawa: Carleton University Press, 1995), p.189.

71. The Social Security Review undertaken by Lloyd Axworthy and his department was believed to be genuine by Canadians (and to Minister Axworthy, I would suggest). And yet, what came out of all this talk about how we were going to improve the system, make it more responsive, and responsible, to low income people, was the end of CAP and the implementation of the CHST. The resulting cynicism (basically, that the Department of Finance had this in mind all along) is hardly surprising. (Toupin, supra note 43.

72. For several reasons. One, he/the government look good if they meet their deficit/surplus targets and two, if they underestimate the size of the surplus, they don't have to deal with demands on how to spend it.

73. Graham Fraser, "Ottawa Signals Return to Activism," Globe and Mail, Wednesday, September 24, 1997, A4.

74. Edward Greenspon, "Provinces Muscling in on Federal Territory" Globe and Mail, Saturday, August 9, 1997, A2.

75. Kelly Toughill, "Critics Attack Welfare Changes," Toronto Star, Wednesday, January 15, 1997, A14:

Making cities pay for welfare will hurt the poor, drive up property taxes, kill almost 2,000 jobs and wallop Metro (Toronto) harder than anywhere else, critics say.

76. Federal-Provincial-Territorial Council on Social Policy Renewal- New Release, "Council on Social Policy Renewal Launches Work on Framework Agreement for Canada's Social Union", Toronto, Ontario, March 13, 1998.

77. Welfare in Canada: The Tangled Safety Net (Ministry of Supply and Services, 1987), p.16.

78. The first hand experiences of one recipient put this into perspective::

Now that I have a new worker, I walked in to see her two weeks ago. She said as she was handing me my support payments for the month: 'You know, considering that you are unemployable, I don't think it's fair that you should take such a loss. I will go and talk to Mr. M.' She left the office, came back and said: 'You will get an additional \$196.' Now I had previously been denied that amount. I walk across the hall and I'm given it from another worker. These are rules I don't understand. Anonymous, Ibid., p.15.

79. When confidence is engendered and maintained by our governing systems, citizens support the objectives of the system on an uncoerced basis.

80. Kevin P. Kearns, Managing for Accountability: Preserving the Public Trust in Public and Nonprofit Organizations, (San Francisco: Jossey-Bass Publishers, 1996), pp. xi-xii.
81. Certainly anti-poverty movement struggles resisting the loss of CAP redress rights would be an exception. Of course, even these efforts were part of a larger campaign to defend existing programs and services from further cuts brought about by the CHST replacing CAP.
82. Angus Reid Group Opinion Poll, February 19 to 24, 1994, declared that 81% of Canadians deemed social programs "too easy to abuse," with 'welfare' most 'in need of reform.'
83. See Barbara Depoma, "Fingerprint System Points Out Welfare Fraud," May 1997, <<http://www.fcw-civic.com/pubs>>., November 25, 1997.
84. See Arnold R. Tomkins, "Ohio cracks down on welfare-fraud abuse," October 6, 1997, <<http://www.amcity.com/columbus/stories/100697/editorial.html>>., November 25, 1997.
85. See Honourable Tony Silipo, "Notes for Remarks - Case File Investigation," March 28, 1994.
86. See "Shuffling the Cards," Ottawa Citizen, July 26, 1995, p. A10.
87. See Peat Marwick, "Welfare Fraud and Overpayments," Final Report to the Ontario Social Assistance Review Committee, Toronto, 1997.
88. Andrejs Berzins, Q.C., Crown Prosecutor, Ottawa - Carleton, "Fraud In the Public Domain," Keynote Speech to the Certified Fraud Examiners Association, September 19, 1996.
89. Greg Crone, "Bill Allows Social Workers to Search Welfare Homes," The Ottawa Citizen, August 20, 1997, A4.
90. NAPO, supra note 29, Appendix I.
91. Guest, supra note 19, p.159.
92. Bruce Doern, Political Accountability and Efficiency, paper prepared for the Government and Competitiveness Project, School of Policy Studies, Queen's University, (Ottawa: School of Policy Studies, 1993), p.17.
93. Ibid., p.17.

94. Joel Handler, "Dependent People, the State, and the Modern/Post-Modern Search for the Dialogic Community" 35 U.C.L.A. Law Review (1987), p.1001. Handler describes the search for the Dialogical community as one which:

seeks to break down hierarchy, to explicitly introduce values, commitments, and institutions into the discourse of action, and to create the conditions whereby people talk to each other. In law, the dialogical community would be located in the areas of discourse. It asks: In these spaces, what are the conditions necessary for community?

95. RCAP, Vol. 2, Part 1, Chapter 3, p.345. See also, Mary Ellen Turpel-Lanfond, "Enhancing Integrity in Aboriginal Government: Ethics and Accountability for Good Governance," a background paper prepared as part of RCAP's research program. An enhanced accountability framework designed to support a government to government partnership requires a very significant conceptual shift from the current situation. For example, in discussing the existing approach, RCAP goes on to state:

At the level of administration, reporting systems and lines of accountability to external agents such as DIAND are time-consuming and complex and divert the energies of Aboriginal service providers away from delivery responsibilities. These arrangements have created a situation where Aboriginal governments are more responsive to external agencies than to community members. Further, the development of the capacity for political accountability has been stymied by the fact that key policy and program decisions are made by non-Aboriginal officials and political leaders. (Vol. 2, Part 1, Chapter 3, p.346.)

For both Aboriginal and non-Aboriginal governments, the democratic character of their service design and delivery is marked by the degree of responsiveness these governments maintain towards their citizens. Responsiveness obviously relates to our perceptions of legitimacy. As I argue in this paper, the legitimacy of the state's institutional arrangements is even more enhanced however as the ongoing design and delivery of its services are concretely modified through democratically enhanced participatory mechanisms. Thus it can be said that accountability arrangements play a large role in establishing the democratic quality of our welfare programs.

96. As Hunt puts it, in relation to the broad counter-hegemonic potential of rights discourse:

To recap: my general thesis is that discourses deploy concepts and symbols that are already in place. New discourses are not invented but rather transform already existing elements and it is generally within this context that 'new' or original elements are added and, conversely, old elements are exercised -- as today we are conscious of the gender implications of language. What determines the substantive content of discourse is not the results of intrinsic properties of the symbols themselves but their articulation with other discursive elements.

Hunt, supra note 6, p.325.

97. For example, some conflate the term “responsibility” with the more specific concept of accountability. Others, by neglecting one of the key elements of accountability, namely redress, reduce the concept to merely a right to information. This fails to recognize the concept’s recursive, dialogical potential.

98. Examples the reader may wish to consult include: Royal Commission on Financial Management and Accountability, Final Report, (Ottawa: Minister of Supply and Services, 1979); O.P. Dwivedi and J.G. Jabbara, eds., Public Service Accountability: A Comparative Perspective, (West Hartford, Connecticut: Kumarian Press, 1988); Australian Government, Accountability in the Commonwealth Public Sector: An Exposure Draft, (Canberra: Australian Government Publishing Services, 1991).

99. Daiva Stasiulis, “Capitalism, Democracy and the Canadian State”, in Dennis Forcese and Stephen Richer, eds., Social Issues, (Scarborough: Prentice-Hall, 1988), p.225.

100. While recognizing the importance (and the interrelated quality) of rights (negative liberties, social rights and political procedural-participatory rights), Habermas contends that “only the rights of political participation ground the citizen’s reflexive, self-referential legal standing.” Habermas, supra note 2, pp. 504 - 505.

101. Auditor General of Canada, Report of the Auditor General of Canada to the House of Commons, (Ottawa: Ministry of Supply and Services, 1975), p.2.

102. Auditor General of Canada, Report of the Auditor General of Canada to the House of Commons, (Ottawa: Ministry of Supply and Services, 1997), p.3. (Bold added).

103. Handler, supra note 94, p. 1001.:

the relationship between dependent people and social welfare bureaucracies is clearly not equal; and it is voluntary in only a tenuous, legal, formal sense. Poor people come to agencies because they need help and have nowhere else to go. Is it possible, then, to have a dialogical community in a relationship that is, at least initially, characterized by great disparities in power, that is strongly hierarchical, and, for all practical purposes, coercive?

CHAPTER THREE

Social Movement Public Sphere Political Potential

I. Social Movement Strategy and the Reflexive Ideal

In the previous chapter, I reviewed the evolution of our complex social security governance arrangements and our contemporary policy environment. This review pointed toward the need for a progressive politics aimed at, at least in part, a democratically renovated accountability framework. I have argued that although “enhanced accountability” is often called for as a means to address the welfare state’s legitimacy problems, governance arrangements have actually become less open to the democratic communicative impulses of an informed participatory citizenry. A renovated accountability model that relies more on dialogical exchanges between potentially affected citizens has the potential to both democratically open up our public discursive processes as well as to increase our ability to knowledgably participate in micro and macro policy formation. Accordingly, I now examine the potential of social movement struggle in relation to achieving a reflexive welfare state orientation. In this chapter, I will consider the implications that can be extrapolated from Habermas’s evolving perspective in terms of the general development of sound social movement political frameworks. I will suggest that a four-part political typology (politics of identity, inclusion, influence and reform), combined with Habermas’s recent proceduralist paradigm, provides a more complex, positive, and realistic assessment of the potential role of associations like NAPO in broader movement social struggles.

It is my aim in this section, then, to move toward a more concrete understanding of the task at hand. In doing so, I hope to contribute to what Gramsci called our “good”

political sense. By applying the theoretical questions dealt with so far more narrowly to the realm of social movement politics, I hope to contribute toward the type of practical contemplation called for by McCann and others who challenge us to critically examine the “utility of various tactics in specific institutional contexts” as well as the “larger strategic questions” related to our broader struggles.¹ I will attempt to answer the following questions: What role can social movements (or voluntary associations like NAPO which comprise the larger movement entity) play with respect to transformative struggles? In particular, what possibilities might exist for social movement structuring of oppositional public spheres and/or influencing the political public sphere? Should we be optimistic about the transformative potential of social movements?

I have already sketched the advantages of a Habermasian reflexive approach to the problems of the welfare state. These lessons can now be extended, in this chapter and in those that follow, to our understanding of social movements. To reiterate briefly, the Left has too often argued for statist solutions. In part, this has contributed to a political opportunity structure in which the Right has more successfully advanced the idea of increased private autonomy through market-mediated relations. For the Right, public welfare is to be relinquished to an emaciated concept of civil society with support provided by an imagined network of voluntary associations, church and family.

Of course, more enriched conceptions of civil society as a positive alternative and discursive check to the encroachments of the welfare state also exist. Civil society, understood in this latter sense, is demarcated as a complex pluralistic sphere of social interaction, public debate, and identity formation. Civil society, conceived in this manner,

is supported by the rule of law and a corollary system of rights such as freedom of association, communication, etc. The Habermasian reflexive framework utilizes this sort of reinvigorated civil society perspective, but significantly, it also calls our attention to state communicative structures, and the importance of directly democratizing our administrative arrangements through the institutional realization of participatory procedures.

When we consider the above statist-market polemic in relation to social movement political potential, a somewhat predictable pattern appears, which helps to explain the translation of social power or “ability of organized interests to have their way” into the “official” or “constitutionally regulated circulation of power.”² For instance, the Right has applied public choice theory to discredit social movements, arguing that rent seeking, illegitimate, and meddlesome interest groups will inevitably arise from an economically interventionist state. In response to pluralist equality fallacies and later neo-conservative pressures, the Left has embraced social movement political agency. However, these ‘progressive’ objectives have been questionable as they are still often aimed at defensive welfare loyalist solutions, or conversely, at post-modern anti-statist, anti-institutional, localized political struggle. As an alternative, Habermas’s immanent critique directs us toward the unrealized possibilities of autonomous communicative interaction within our existing institutions of public discourse and decision making. Unlike the impasse of the choice between state and market, the Habermasian two-sided perspective provides a more complex understanding of our welfare state crisis. This can point us in the direction of a reflexive program ideal, and enable a more positive outlook for social movement agency. In short, for Habermas, social movements play a legitimate and, at times, significant role in

the communicative processes of the public sphere. Indeed, as I argue here, social movement agency seems to be a key ingredient, not just in the ongoing political communications of a reflexively oriented welfare state, but in the counter-hegemonic struggles required for its attainment.

In his recent explorations of the relationship between civil society and the political public sphere, Habermas explicitly asks: “who can place issues on the agenda and determine what direction the lines of communication take?”³ However, the transformative implications for social movements within the Habermasian perspective(s) have been ambiguous at times, and subject to debate. Not surprisingly, the lines of the debate have shifted over time in accordance with the evolution of Habermas’s approach. Through a brief review of some important criticisms,⁴ I will trace the evolution of Habermas’s understanding of social movements. In doing so, I hope to lay the foundation for an enhanced framework of complimentary offensive and defensive social movement politics.

II. Early Habermas: An Inattention to Agency in the Public Sphere

Habermas’s earlier work introduced the concept of the “public sphere” as a communicative space for deliberation and social interaction which mediated between society and the state. Rather than the market or state power as a method of social coordination, this concept allowed theoretical thinking to incorporate a notion of social coordination through the democratic ‘force’ of public opinion. For example, the “public sphere,” distinct from the state (or the economy), was not to be conflated with the official apparatuses of domination in the Marxist sense. “Without the concept of the public sphere, civil society talk becomes hopelessly one-sided and analytically useless,” as within modern complex societies,

the democratic legitimacy of governance demands that policies, and the foundations guiding them, be joined with informed social dialogue.⁵ Put simply, there must be a link between our political and social institutions. Undoubtably then, Habermas's "public sphere" is a crucial element in allowing us to get beyond the state-market polemic so as to contemplate the ideal of a reflexively organized welfare state targeting increased citizen discursive input into our processes of policy output. That said, Habermas's early approach to the questions of popular politics as played out in the public sphere suffers from too narrow a conception of social agency.⁶ Social movements need to be appreciated as key civil society institutions that play a significant role in ongoing social struggles. In addition, Habermas's early approach to the public sphere "conforms too closely to the liberal bourgeois ideal in imagining it simply as a realm into which individuals bring their ideas and critiques,"⁷ when, in fact, there exist multiple and overlapping public spheres. Social movements have an important democratic role in influencing our public discourse agenda, highlighting and providing an alternative understanding of issues, as well as associated identities.⁸ While public spheres may never be totally disconnected, in an ever more functionally differentiated society, it seems only reasonable that some agency (e.g., a social movement) is required in structuring the agenda of communication. The alternative would seem to be either a monolithic state/economy structured arena or a critical public sphere 'tower of Babel.'

In contrast to the idealized conception of a unitary critical liberal public sphere defending civil society from state encroachment, we can envisage a multiplicity of public spheres wherein social movements, or SMOs such as NAPO, have the potential to both shape and to be shaped. Contra the bourgeois conception of a single public sphere wherein a sharp

separation of state and civil society is required to guarantee an independent, autonomous, and legitimate generation of public opinion, a well functioning public sphere involves an ‘interimbrication’⁹ of civil society¹⁰ and state institutions. Rather than a unitary public sphere, we need to appreciate the conceptual merits of “multiple publics”¹¹ including the contestory utility of “subaltern counterpublics.”¹² While these subaltern counterpublics are not “necessarily virtuous,” in terms of anti-poverty collective politics for example, they are mechanisms with which to mitigate the traditional alienation of the poor from the dominant agenda of public discourse. Consequently, given our stratified societies, such movements can play an important role in bringing us closer to the “ideal of participatory parity.”¹³

If we consider the social movement as a ‘subaltern counterpublic’, we can see the important role it can potentially play with respect to consciousness raising or identity politics (e.g., ‘I may be on welfare, but that does not mean I am a bum or a cheat - I have rights’). For instance, NAPO, as an SMO, operates in various spaces. Sometimes NAPO communicates in the parliamentary public sphere, at other times it operates at more local levels such as within an anti-poverty church group. As I have noted, a reflexive welfare program depends not only upon a democratization of official structures of public communication, but also upon opening up these structures to the impulses generated within a strong civil society, i.e., an oppositional public sphere. An association like NAPO can facilitate spaces in civil society where poverty coalitions can critically examine and redefine dominant discourses, norms and identities. Supplying such counter knowledge relates to the counter-hegemonic potential of social movement politics. The early Habermasian portrait of the public sphere needs to be challenged on the grounds that it “idealizes the element of

rational discourse in the formation of the public sphere and neglects the extent to which institutions were founded on sectionalism, exclusiveness, and repression.”¹⁴ To better account for social complexity, Habermas’s ideas need to be extended in the conceptual direction of a **wider public domain** and thus, utilizing a Gramscian interpretive framework may allow us to better appreciate civil society as a structure for communicatively securing system legitimacy, and to appreciate it as an arena of ongoing social struggle.¹⁵ Accordingly, I see the public sphere as a site of ongoing social contestation.

Nancy Fraser introduces a useful distinction, in terms of expanding our appreciation of the agency potential of social movements, between strong and weak publics. If, as in the bourgeois conception, a well functioning public sphere requires a sharp civil society-state separation, it follows that associations like NAPO could be little more than a ‘weak’ public, since NAPO’s contribution to our processes of communication would necessarily be restricted to “opinion formation.” The supposed danger with adding decision making (will formation) elements to the public sphere is that the separation from state is blurred and thus, in terms of the bourgeois conception of the public sphere, we run the risk of losing a “critical discursive check on the state.” These issues become even more complicated with the appearance of parliamentary sovereignty:

*With that landmark development in the history of the public sphere, we encounter a major structural transformation, since a sovereign parliament functions as a public sphere **within** the state. Moreover, sovereign parliaments are what I shall call **strong publics**, publics whose discourse encompasses both opinion formation and decision making. As a locus of public deliberation culminating in legally binding decisions (or laws), parliament was to be the site for the discursive authorization of the use of state power.¹⁶ (Bold added)*

In essence, then, we have a historical model that illustrates the benefits of an overlapping and interconnected relationship between movements, or other civil society associations, and the will formation structures of the state. As contemporary welfare administration takes place in an increasingly complex, pluralist social environment that is characterized by a plethora of interests and viewpoints, democratic legitimacy demands a link between our weak publics and our official political structures. What I mean by this is that “the force of public opinion is strengthened when a body representing it is empowered to translate such “opinion” into authoritative decisions.”¹⁷ It could be argued that, in his recent work, Habermas is considering this relationship between our weak and strong publics as he explores the required conditions to allow for the necessary self-perception that we are the author of our laws.

Although Habermas has responded to these and other critiques over the years, important challenges remain to be considered with respect to the required institutional arrangements necessary to support a post-bourgeois conception of the public sphere. Here, again, we come back to the issues surrounding the inadequacy of existing accountability models. How, for example, can a framework be instituted which ensures that the stronger publics are adequately accountable to the weaker publics? Can a democratically enhanced accountability relationship be advanced without overburdening the limited steering or coordination capacity of our welfare administration? Put another way, can the system logics of our functionally specialized welfare state administrative apparatuses be adequately maintained so that goal attainment is not sacrificed by the project of democratically opening up our communicative structures? What types of welfare state democratic institutional design might we envisage that can simultaneously balance the legitimate interests of those

on either side of the widening divide between the haves and have nots? In other words, increased participation by low-income people would not, by itself, address our legitimacy problems. Can social rights be conceived beyond the goal of wealth redistribution so as to institutionally secure the necessary conditions for an informed, open, and ongoing public debate? Achieving such a framework would seem to require a social movement politics on many levels, from the interpretation and promotion of a more dialogical and participatory accountability relationship, to a struggle for parliamentary-bureaucratic structural reforms that would enable an opening up of our public processes to the ongoing communicative force of oppositional publics. I will return to these issues of institutional design and delivery.

III. The 'Democratic Dam' and Beyond - A Limited 'Dual Politics'

The Habermasian perspective, at times, has tended to argue against the transformative potential of social movements, which I will defend below. Habermas's reflections on the limitations of his early conception of the public sphere help us to understand the underpinnings of what, to date, remains his most influential text, The Theory of Communicative Action. Habermas concluded that "in view of the high level of complexity of functionally differentiated societies" (e.g., the systems logics of administration and economy must be respected), we can no longer conceive of society "as an association writ large, directing itself via the media of law and political power." Habermas's turn was to "link the concept of lifeworld . . . to that of the boundary maintaining system" (approximating civil society), advancing a two-sided conception of society as lifeworld and of system.¹⁸ This had tremendous theoretical implications, part of which it could be argued, contained a rather pessimistic view of the potential role of social movements. Indeed, one

could argue that the direct democratizing capacity of agency, in general, becomes suspect under this model. If the systems logics are to be respected, then voluntary associations, nongovernmental organizations, etc., are reduced to the defensive role of protecting the lifeworld from money and power. Leaving will-formation aside, even the democratic potential of opinion-formation is necessarily limited in that the special codes of the systematically integrated action fields seem all but impenetrable to the impulses of communicative action in the lifeworld. This would mean that civil society associations like NAPO would not be able to influence the welfare state policy processes.

As the failure of state socialism confirmed for him, Habermas no longer saw it as realistic that our socially complex society could be self-organized as a totality through the sovereign will of the people. Holistic notions of self-governance do not make sense given the complexities of the economic and administrative systems. In the often quoted passage below, Habermas summarizes the implications of his theoretical shift:

*The goal is no longer to supersede an economic system having a capitalist life of its own and a system of domination having a bureaucratic life of its own but to erect a democratic dam against the colonialisng encroachment of system imperatives on areas of the lifeworld.*¹⁹ (Bold added)

What transformative agency role does this “democratic dam” conceptualization leave for social movements, particularly in relation to the strategic utility of law and/or rights discourse? Defending the lifeworld of low-income Canadians against further oppressive welfare administrative arrangements may be laudable, but this will do little in terms of the type of direct democratization through enhanced dialogical accountability arrangements called for in this paper.

Jean Cohen and Andrew Arato appreciate the necessity of respecting differentiation, but unlike the earlier Habermasian approach, they insist upon an offensive (albeit self-limited) political potential for social movements. An offensive social movement politics allows us to contemplate strategies for challenging existing welfare state accountability arrangements directly. In discussing politics within civil society, Arato and Cohen delineate the distinction they see between Habermas's approach and their own. By conflating the defensive role of new social movements (e.g., protecting the lifeworld from further state/economic penetration), for the whole of social movement politics, Habermas fails to appreciate the lifeworld rationalization role of these civil society "associations."²⁰ In short, social movements are not simply reactionary. They have a positive side as well. They allow us to think in terms of offensive strategies. Cohen and Arato share Habermas's concern with protecting the lifeworld. Hence, their framework stresses the utility of association and communication rights, as opposed to a politics of rights aimed more directly at democratically enhancing the state. That said, the importance of breaking with a politics of mere boundary maintenance does seem to be appreciated by Cohen and Arato as they note that Habermas "is still weighted more toward protecting the lifeworld than toward the equally important project of controlling and redirecting the political and economic subsystems."²¹

Indeed, Cohen and Arato go on to explicitly insist "on the possibility of democratizing political and economic institutions," positing the possibility of a dual politics, wherein movement gains can be institutionalized through the establishment of "restricted discursive forms."²² An "offensive" politics of "influence" is added to the "defensive"

project of securing lifeworld borders. This politics of influence is made possible if sensors are established in the state and the economy which can recognize and amplify public opinion formed outside of the market or political systems.²³ Thus, seen as an agent of defensive politics, NAPO contributes to the protection and development of an anti-poverty network. It attempts to dispel poverty myths, and to generally facilitate wider efforts of low-income Canadian consciousness raising, thus providing an oppositional public to state/economic penetration into the lifeworld of poor Canadians. As an agent of offensive politics, NAPO reports, for example, that it has facilitated the influence of low-income Canadians by serving to funnel their voices into both the economic and political subsystems.²⁴ Examples of NAPO "influence" include its work with the federal Finance Department which resulted in a modification to the Goods and Services Tax rebate so that it would better reflect the needs of the poor. NAPO has even enjoyed some limited influence in the economic subsystem. Banks have modified their policies so that poor Canadians have greater access to cheque cashing facilities and the ability to open a bank account. Still, the extent to which a conception of social movement politics that emphasises the defence of the lifeworld has the capacity to enhance democratization is less than clear. We seem to end up with overly "restricted forms" in which "structures of sensitivity to the results of participation" can, at best, create 'weak' publics of counter-knowledge.²⁵

While I would agree that a comprehensive social movement politics (and by extension, a better informed political public sphere) can benefit from the type of participatory structures which enable the "influence" called for by Cohen and Arato, we still seem to come up short in terms of the democratic enrichment of our public structures of policy creation.

A large component of this attenuated social movement politics can be linked to an inadequate positioning of rights. In the following chapter I address the role of rights discourse, as well as the transformative potential of law in general. I note here, however, that Cohen and Arato see the paradigmatic possibility of rights-based politics necessarily restricted in accordance with their strategy of ‘self-limiting radical democracy’:

*to the extent that rights represent a regulation of the state by institutions of civil society, this regulation is a form of autoregulation. Rights are the example par excellence of law as institution . . . Rights, however, represent a form of self-regulation of the political system whose consequence is only the strengthening of the barriers defending the lifeworld. They do not in themselves go beyond the first phase of the program of “barriers” and “sensors.”*²⁶ (Emphasis in original)

Unfortunately then, as Swan argues, “by limiting the major consequences of the politics of rights to a defence of the boundaries of civil society, Cohen and Arato prematurely circumscribe the role of law in democratic social transformation.”²⁷ By extension, the agency choices for social movement strategy development are substantially curtailed.

I find a more optimistic and less ambivalent framework upon which to build a comprehensive social movement politics in a recent contribution on the subject by Jean Cohen.²⁸ In addition, the paradigmatic positioning of law located within Habermas’s most recent writings, particularly in relation to the role of social movements, has undoubtedly benefited from Cohen and Arato’s earlier theoretical challenges.²⁹ I believe Habermas’s updated framework shares aspects with Cohen’s. When taken together, I believe that they provide a much clearer, contemporary, and optimistic take on the possibilities of social movement transformative politics.³⁰

IV. The Interrelated Arenas of Social Movement Struggle

In brief, Jean Cohen's article, "Critical Social Theory and Feminist Critiques," argues that while there are enormous theoretical contributions to be found within the Habermasian framework, his earlier analysis can be legitimately criticised for failing to appreciate the social and political implications associated with gender difference. Consequently, he neglects to take into account the interconnected aspects of public and private spheres.³¹ Cohen's critique challenges Habermas's general dismissal of the emancipatory potential of new social movements for being "mired in particularism" and as appearing "primarily as defensive reactions against the colonization of the lifeworld."³² Cohen makes her case effectively using the example of feminist struggles around the abortion issue. Feminists challenged traditional interpretations of the identity and roles of women, articulating an alternative political discourse wherein women were to be perceived "as both different and yet worthy of equal concern and respect." The abortion issue demonstrates the "new" side of the feminist movement as it goes beyond the politics of inclusion along the lines of "bourgeois emancipation movements."³³ Rather, a key element in the social struggle is to challenge traditional political discourses and develop alternative modes of interpretation. In comparison with other new social movements, Habermas is said to appreciate the emancipatory potential of the feminist movement, as characterized by its "offensive universalist side concerned with political inclusion and equal rights."³⁴ On the "newer" side however, feminism and other social movements, are claimed to be "reactive," "anti-modern communalist projects of dedifferentiation and withdrawal."³⁵ In short, while the "new" qualities may be appreciated by Habermas in terms of "social learning and identify

formation,” these movements (in contrast with the bourgeois-socialist liberation) are seen to lack a universal orientation, and hence, are not fully emancipatory by nature. Within this conceptual framework then, NAPO as an SMO would be reduced to a reactive anti-poverty agent. We would therefore dismiss the potential of NAPO as an organization capable of struggling for a reflexively continued welfare state.

Habermas’s own arguments regarding social movements have not done justice to the potential of his theory to elaborate a conception of progressive social movement politics.³⁶ By failing to conceptualize “lifeworld” in terms of “civil” and “political” society, Habermas has also failed to appreciate the role of associations. Associations are key components in modern civil and political institutions. Thus, movements can also be appreciated for their contributions toward institutional modernization, as opposed to mere media for cultural transmission. For example, NAPO could struggle to democratically ‘reform’ our Budgetary discourse structures, along with continuing its efforts to challenge prevailing stereotypes of poverty. Relatedly, in his past work Habermas has relied too heavily on the concept of self-referentially closed subsystems (i.e., systems theory). It is a weakness which “blinds him to the offensive strategies of contemporary movements aimed at creating or democratising receptors within the subsystems.”³⁷ A renovated system/lifeworld conception incorporating civil society takes us beyond these weaknesses.³⁸ Conceiving of the lifeworld as the institutionalization of civil society which is protected by rights, while recognizing “that there are receptors for the influence of civil society within political (and economic) society” that can be democratically enhanced, enables us to see the dual, state-civil society, terrain of social movement struggles.³⁹ Drawing on the work of Jean Cohen, I contend that social

movement politics is made up of four different elements, namely, a politics of identity, inclusion, influence, and reform.

A “**politics of identity**,” as we have seen above, is the arena in which the form and content of political discourses are struggled over. Struggles for identity are located within the defensive, boundary maintaining side of Cohen and Arato’s “dual politics.” However, this is an arena wherein the communicative infrastructure of the lifeworld is both protected and *developed*, as identities and norms are reinterpreted and institutionally secured within civil society associations. For example, a low-income social movement politics of identity could be utilized to counter prevailing poverty myths about rampant welfare abuse. Or, perhaps a collective consciousness might be generated within which a democratically renovated conception of accountability could be articulated. Having developed such a collective consciousness, low-income Canadians might, therefore, begin to see themselves, and be seen, as ‘citizens’ with a ‘right’ to participate in an ongoing dialogical process of governance, as opposed to being merely ‘demanding’ and dependent recipients.

Secondly, we find a “**politics of inclusion**,” which “targets political institutions to gain recognition for new political actors as members of political society.”⁴⁰ This is the first of the three “offensive” types of struggle, which focus upon power, and sometimes money, as the mediating realms between civil society and the subsystems. With respect to “inclusion,” movements can strategically deploy collective action to struggle for money or political representation, thus allowing them, for example, to supply new information. Although the increased democratic involvement of low-income Canadians in welfare administration was widely called for in the 1960's, the narrower contemporary political

opportunity structure reinforces the importance of struggles for greater inclusion within political institutions. For instance, NAPO has existed for some time and has developed a significant anti-poverty membership that results in it being recognized as an important voice for low-income Canadians during public policy debates.

The “**politics of influence**” is the third type of struggle. Its aim is the altering of “the universe of political discourse to accommodate new need-interpretations, new identities, and new norms.”⁴¹ If inclusion is seen as the ability to introduce a new perspective, influence is the ability to mobilize that perspective in a struggle to produce broad shifts in public opinion, and in Habermas’s words, to “exert pressure on parliaments, courts, and administrations in favour of specific policies.”⁴² A politics of influence could be a means for social movements to challenge traditional accountability policy perspectives, providing an oppositional normative discourse in which a dialogical conception of accountability could be advanced in civil, and eventually, political society. Again, using the example of NAPO, a politics of influence could be deployed so as to shift public opinion away from the dubious policies associated with preventing welfare abuse, in favour of the genuine enhancement of our accountability frameworks that, I argue, would arise if our policy processes were opened up to more dialogical exchanges.

Finally, the fourth arena of social movement engagement involves a “self-limited” “**politics of reform**,” which, for Cohen, is a prerequisite for the possible influences just described:

(self-limiting) projects of institutional reform. How else are we to understand attempts to make the subsystems more receptive to new issues and concerns, more responsive to the needs and self-understanding of actors in

civil society, and more internally democratic than they are now? In other words, those elements of the new movements that target political society (and will one day perhaps target economic society as well) articulate a project of self-limiting, democratic institutional reform aimed at broadening and democratizing the structures of discourse and compromise that already exist in these domains.⁴³

I have presented the idea of a renovated conception of public accountability as an important element of focus in terms of realizing a reflexively oriented welfare state. For a social movement adopting such a direction, the targeting of political society with institutional reforms that will enable the implementation of democratically enhanced accountability mechanisms will undoubtedly be a prime action objective. As the above quotation indicates, Cohen however, continues to be concerned with emphasising the self-limited aspects of reform politics. I would agree that movement strategy development must recognize the limited utility (indeed the dangers of holistic attempts) of transforming the subsystems directly. The question remains, however, to what extent does this stress on self-limitation inadvertently lead to movement incapacitation? In particular, given the focus of my project, I again ask, what are the implications of law and rights-based agency choices with respect to movement democratic transformative strategy development?

Building upon the recent writings of Cohen and of Habermas, I contend that several important elements of social movement politics in relation to the progressive utility of rights-based action strategies emerge as we more appropriately take into account the multiple and interrelated arenas of collective action.⁴⁴ In brief, a social movement politics aimed at advancing a reflexive welfare state program will have to go beyond a reactionary statist orientation (i.e., welfare rights as ‘demands’). Further, it must conceptually expand the role

of rights politics past the mere protection of civil society from system encroachment (e.g., rights of association or communication). Rather, with respect to the utility of rights politics, movements can look toward the discursive role of rights in identity and influence struggles waged within civil and political society; that is, to articulate an oppositional discourse with which to influence the public agenda. As will be discussed in the chapters that follow, I see rights as a key site of social contestation. Accordingly, rights discourse can be appreciated as an arena for articulating alternative perspectives and as a tool for mobilizing those perspectives within a broader anti-poverty political program. With respect to inclusion and reform struggles, as the public agenda is progressively influenced, embodying institutional changes such as securing democratically enhanced administrative mechanisms, becomes achievable since public opinion can now be more readily mobilized in support of such reflexive aims. Moreover, and given my particular emphasis in this project, struggles directly on the terrain of our political public sphere can strive for institutional reforms including, among other things, rights to informed participation in our welfare state accountability frameworks. This may enable an opening up of our discursive structures to the ongoing communicative influences of civil society. Put another way, rights can be understood as both an ends and a means in reflexively oriented social movement political struggles. Habermas's most recent framework can be read in support of these types of official communicative structure institutional reforms. Still, in relation to developing a sound social movement political strategy, I believe Habermas's proceduralist model can be further enhanced through Cohen's recent efforts, particularly in terms of our understanding of rights-based politics.

When compared with his early writings, Habermas's framework can now be considered to incorporate a more positive role for social movements. Habermas contends that while civil society groupings (associations, movements) are "generally too weak to initiate learning processes or redirect decision making in the political system in the short run,"⁴⁵ in a "perceived crisis situation, the actors in civil society"⁴⁶ can play a surprisingly important role. Indeed, the normal circuit of problem solving can actually be reversed. Consider, for example, the 1960's peace movement (or today's anti-land mine agents), wherein the civil society actors were the impetus for major policy change, as opposed to that change originating in the administrative subsystem itself. Although pointing out important structural limitations, such as our "mass-media-dominated public spheres," Habermas states:

I would like to defend the claim that under certain circumstances civil society can acquire influence in the public sphere, have an effect on the parliamentary complex (and the courts) through its own public opinions and compel the political system to switch over to the official circulation of power.⁴⁷

In short, movements can be seen, at least in part, as the "who" in terms of agenda setting. However, I argue that we must also develop an appreciation of the various roles, terrains, and thus potential of ongoing social movement struggle.⁴⁸ In particular, social movements are key agents in the ongoing struggle around the articulation of identity and norms in terms of, for example, the development of alternative welfare policy directions or 'right' to political participation. It is through these ongoing struggles that the public can come to perceive the existence and nature of a crisis. As I will suggest in the next chapter, rights discourse can be an important counter-hegemonic medium in which groups like NAPO can contest the dominant conceptions of the welfare state crisis and the resulting institutional prescriptions

with regard to accountability.

In the four part typology outlined above we find a clearer articulation of what exactly 'defensive' and 'offensive' collective agency choices entail, and of how they interrelate. To reiterate briefly, the dual political task for movements involves, respectively, a defensive aspect aimed at protecting and developing the discursive structures of the lifeworld, and an offensive aspect targeting political (and economic) society.⁴⁹ Conceiving the defensive side of social movement politics beyond a 'reactive' identity politics enables us to envisage a key transformative facet associated with rights politics, namely that it is a tool for oppositional discourse and norm reinterpretation. In part, this expanded understanding of social movement struggle is achieved by utilizing Habermas's earlier colonization thesis, particularly his analysis of juridification. Contra Habermas's own updated perspective, the colonization thesis⁵⁰ is a key product of dualistic social theory which valuably reminds us of the "double process of interchange between system and lifeworld" involved in juridification.⁵¹ In considering welfare state juridification, there is the possibility of systems 'logic' encroachment upon the lifeworld. Thus, as I maintained earlier, welfare law's emancipatory aim can have unintended negative consequences, creating new bonds that potentially replace "socially integrated contexts with legal institutions."⁵² On the other hand, drawing from Cohen, I point to the progressive example of juridification in relation to the family as basic rights to personhood were extended to women and children. In this instance, principles of equality displaced traditional patriarchal relations through the establishment of rights. We can see that civil society influenced the state, as the norm of equality was chosen over the patriarchal norm. Once this civil society influence successfully exerts pressure

resulting in legislation, the state can be seen to be influencing civil society through the institutionalization of this normative choice.⁵³

This analysis allows for a more comprehensive concept of identity politics, allowing for both the preservation and **development** of identities and norms. Moreover, we can see that a reflexive welfare program social movement struggle formulation would not merely require a defence of lifeworld identities from juridification tendencies. Rather, we clearly need to question what types of rights (or ‘benefits’, ‘reforms’ or ‘relations’) ought to be advocated in light of wider movement objectives. Pursuing rights to increased levels of general welfare, for example, would most likely be accompanied by further penetration of administration into lifeworld relations; that is, where such rights took the traditional disempowering, clientalizing form. The consequence of such reforms would lead to an even greater depletion of civil society, with crude administrative control supplanting discursive coordination through empowered citizenship. On the other hand, an offensive politics aimed at reforming the discursive structures of the state, for example, offers the chance to open up the difficult normative choices surrounding welfare design and delivery decisions to the communicative influence of individuals and movements in civil society.

Of course, the success of movement offensive struggles is predicated upon developing a reflexively oriented collective consciousness within the anti-poverty movement.⁵⁴ Accordingly, while I would not disagree with Habermas’s assessment of civil society impulses being generally too weak “to initiate learning processes or redirect decision making into the political system in the short run,”⁵⁵ I believe that he has failed to adequately take into consideration the agency aspects underlying the identification/naming of crises.

To borrow from one of Habermas's well-known critiques derived in another context, it is as if crises 'emerge and pop like glittering bubbles from a swamp of anonymous processes'⁵⁶ of neutral public sphere communicative action.⁵⁷ Habermas has neglected the influences coming from the opposite direction. That is to say that the state, via rights and other institutions, helps to establish and/or reinforce civil society norms, which in turn, permit the mobilization of public opinion as a crisis perception that can now be widely appreciated.

To summarize, social movements and associations like NAPO are clearly correct to target both the state and civil society as each plays an interrelated role in shaping the public agenda. In targeting civil society, the anti-poverty movement partakes in the ongoing social struggles surrounding the interpretation and articulation of the crisis of the welfare state and the required responses. Rights politics is a potentially powerful counter-hegemonic tool for movements interested in establishing an oppositional discourse to familiar assessments of poverty and of the poor, and the resulting police-like welfare accountability arrangements outlined in the last chapter. As opposed to the neo-conservative program of property right, or a statist defence of existing social rights, the first step toward a reflexive welfare program orientation can emerge in the form of an oppositional public capable of supplying the force of an oppositional discourse around key norms such as accountability. A healthy oppositional public, by its very nature, democratically enhances our macro accountability framework, supplying a counter-knowledge check on the state and expanding the political opportunity structure for civil society influence. However, this first step, important as it may be, can only generate a "weak" opinion-formation public.

The second step, on the other hand, targets the state directly, involving struggles to

democratize our public processes of welfare design and delivery. As I will argue in the following chapter, notwithstanding the problematic relationship between law and social transformation, there are multiple progressive possibilities within a rights-based politics. I would argue, given the review of social security governance in the last chapter, and the interrelated nature of movement politics covered in this chapter, that reflexively oriented collective struggles cannot realistically dismiss this key arena of public debate and policy formation. Rights politics on this terrain will enable movements to challenge the hegemonic forms of existing disempowering social security arrangements within existing official discursive structures of opinion-and-will-formation. Moreover, focussing on democratizing social security administration, points us toward an appreciation of rights politics as both ‘means’ and ‘ends’. That is to say, a reflexive continuation of the welfare state also requires an offensive politics aimed at opening up the administration of social security to the ongoing communicative force of movements and individuals in civil society through the establishment of institutionally secured norms (rights to informed participation, for example). To this end, struggles to secure rights of increased transparency, disclosure, and redress, are particularly relevant to the functioning of a reflexive or dialogical welfare accountability framework.

In conclusion, by combining Cohen’s more positive positioning of social movements with Habermas’s proceduralist paradigm, we discover ‘what direction’ movement mobilization concerned with democratically enhancing the state might optimally pursue. I believe Habermas’s procedural paradigm, with its thesis of legitimacy supplied through the internal connection of private and public autonomy, properly directs our attention toward “a

dynamic understanding of the constitution as an unfinished project,”⁵⁸ and the type of ‘reforms’ which a reflexive welfare program might optimally pursue in light of the welfare state’s legitimacy deficit. In particular, Habermas’s procedural approach directs our attention to, and emphasises the need for, more democratic participatory forms of administration. Consequently, in terms of a reflexive continuation of the welfare state, while social movements can be appreciated for their role in protecting, developing and channelling civil society communicative impulses into the public sphere, they represent a much more precarious hinge between the state and lifeworld than the unique transformative function of law. Habermas now describes law as functioning as a “hinge between system and lifeworld.”⁵⁹ Still, as I have argued throughout this chapter, movements are vital transformative agents, providing key oppositional publics from which to construct both defensive and offensive political programs, which, at least in part, should include rights-based strategies. Nevertheless, given the many progressive critiques associated with the transformative utility of law, I certainly do not assume that an anti-poverty SMO such as NAPO will uncritically adopt law as a strategic tool. In the following chapter I will expand upon my positive positioning of the relationship between law and social transformation. Not surprisingly, given the interrelated social movement arenas pointed to in this chapter, I will argue that without a conception of the transformative potential of law, collective action is reduced to little more than a politics of protest, and certainly will do little in terms of contributing to the realization of a reflexively oriented welfare state.

Endnotes - Chapter Three

1. Michael W. McCann, "Resistance, Reconstruction, and Romance in Legal Scholarship" (1992), 26 Law & Society Review, p.745. McCann reflects my own concerns when he notes that:

*much recent study shies away from the task of contributing our contemplative skills and learning to popular philosophy, from helping to make what Gramsci called "good" political sense from everyday "spontaneous" common sense. Such an endeavour involves critical analysis about the **utility of various tactics in specific institutional contexts as well as about larger strategic questions of long-term goals, reorientations in values, and potential linkages to other groups and struggles.*** (Bold added)

2. For example, Habermas explains that in the early postwar period sociology offered pluralist accounts which "linked normative models of democracy with so-called "realist" approaches, that is, with economic theory on the one hand and systems theory on the other." The former can be linked with public or rational choice theory, essentially looking at the role of the strategic individual in the processes of democracy. The latter looks toward the autopoietic or self-referentially closed political system to appreciate the functioning of political power, i.e., the key is the modes of operation, not the influences of participating actors. As the political system is "encapsulated in its own semantics" (e.g., law, as another autopoietic system, is recursively closed off to the political system), it can be perceived as a "self-programming administration," and by extension, the role of individual or collective agency is insignificant. Jurgen Habermas, Between Facts and Norms: Contributions to Discourse Theory of Law and Democracy (Cambridge: The MIT Press, 1996), pp. 329-334..

3. Ibid., p. 379.

4. Several of which appear to have contributed to Habermas's current perspective.

5. Jean L. Cohen, "American Civil Society Talk", in Report from the Institute for Philosophy & Public Policy, <http://www.puaf.umd.edu/IPPP/summer98/american_civil_society_talk.htm>. 18, (1998), p.1.

6. See Jurgen Habermas, The Structural Transformation of the Public Sphere, (Cambridge: The MIT Press, 1989).

7. Craig Calhoun, ed., Habermas and the Public Sphere, (Cambridge: The MIT Press, 1992), p.36.

8. Calhoun criticises this bourgeois public sphere conception in early Habermas for its “inattention to agency,” arguing instead that because public discourse cannot be about everything at once “some structuring of attention, imposed by dominant ideology, hegemonic powers, or social movements, must always exist.” *Ibid.*, p. 37.

9. More than simply overlapping, these spheres are internally connected.

10. Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy”, in Calhoun, *supra* note 7, p. 133. Fraser points out that the expression “civil society” found within the bourgeois conception of the public sphere is too narrow if taken: a) to mean, “a privately ordered, capitalist economy” which would then entail a sharp separation from the state in order to “defend classical liberalism; or b) interpreted as meaning “the nexus of nongovernmental or “secondary” associations that are neither economic **nor administrative**.” In regards to the former, Fraser illustrates the implications of this narrow conception as follows:

The public sphere, in short, is not the state; rather the informally mobilized body of nongovernmental discursive opinion that can serve as a counterweight to the state. Indeed, in the bourgeois conception, it is precisely this extra governmental character of the public sphere that confers an aura of independence, autonomy, and legitimacy on the “public opinion” generated in it. (p. 134)

11. *Ibid.*, p. 122.

12. *Ibid.*, pp. 122-123.:

*I contend that in stratified societies, arrangements that accommodate contestation among a plurality of competing publics better promote the ideal of participatory parity than does a single, comprehensive, overarching public...historiography records that members of subordinated social groups -- women, workers, peoples of colour, and gays and lesbians -- have repeatedly found it advantageous to constitute alternative publics. I propose to call these **subaltern counterpublics** in order to signal that they are parallel discursive arenas where members of subordinated social groups invent and circulate counter discourses to formulate oppositional interpretations of their identities, interests, and needs. Perhaps the most striking example is the late-twentieth-century U.S. feminist subaltern counterpublic, with its variegated array of journals, bookstores, publishing companies, film and video distribution networks [etc.,]... In this public sphere, feminist women have invented new terms for describing social reality, including “sexism,” “the double shift,” “sexual harassment,” and “marital, date, and acquaintance rape.” Armed with such language, we have recast our needs and identities, thereby reducing, although not eliminating, the extent of our disadvantage in official public spheres.*

13. *Ibid.*, p. 124. Fraser contends that the bourgeois 'ideal' of public sphere interlocutors 'bracketing' social and economic inequality so that a dialogue of peers could take place is now, given contemporary understandings of 'voice' and 'difference,' even more problematic. Fraser connects her idea of participatory parity with a democratic public sphere in an example which is especially relevant given NAPO's mandate of providing a voice for low-income Canadians:

participatory parity is essential to a democratic public sphere and that rough socioeconomic equality is a precondition of participatory parity. [And since] laissez-faire capitalism does not foster socioeconomic equality... some form of politically regulated economic reorganization and redistribution is needed to achieve that end. (p. 133.)

In essence, my identity (voice, perspective, etc.) is linked to both my private and public autonomy (i.e., my ability to participate in the public sphere).

14. Geoff Eley, "Nations, Publics, and Political Cultures: Placing Habermas in the Nineteenth Century", in Calhoun, *supra* note 7, p. 321.

15. *Of course, for Gramsci civil society was not quite the neutral context for the emergence of rational political discourse in the ideal and abstract sense intended by Habermas. As I have argued, it was an arena of contested meanings, in which different and opposing publics manoeuvred for space. (Bold added)*

Ibid., p. 325

16. *Ibid.*

17. *Ibid.*

18. Jurgen Habermas, "Further Reflections on the Public Sphere" in Calhoun, *supra* note 7, p. 444.

19. *Ibid.*, p. 444.

20. Jean L. Cohen and Andrew Arato, "Civil Society and Social Theory" (1988), 21 *Thesis Eleven*, p. 54.

21. Jean L. Cohen and Andrew Arato *Civil Society and Political Theory*, (Cambridge: The MIT Press, 1992), p. 473.

22. *Ibid.*, p. 487.

23. *Ibid.*

24. Interview with Lynne Toupin, then Executive Director, National Anti-Poverty Organization, April 18, 1997, Ottawa. Of course, both of these were achieved without

the institutional reform of establishing “sensors” and consequently do not represent a stable influence pathway.

25. Cohen and Arato, supra note 21, p. 487.

26. Ibid., p. 478.

27. Peter D. Swan, “Rights, Civil Society and Dualistic Social Theory”(1995), 58 (ARSP), p. 245.

28. Jean L. Cohen, “Critical Social Theory and Feminist Critiques: The Debate with Jurgen Habermas” in Feminists Read Habermas: Gendering the Subject of Discourse, (New York: Routledge, 1995).

29. Habermas, supra note 2, chapter 8.

30. See Cohen’s review of Jenson’s analysis of the women’s movement in France. Modes of movement politics have been shown to be inter-dependent, as gains in an arena are secured and advanced by struggles on related fronts. See Cohen, supra note 28, pp. 78-81.

31. Ibid., p. 81, note 1.

32. Ibid., p. 60.

33. Ibid., p. 80.

34. Ibid., p. 61.

35. Ibid.

36. Ibid., p. 62.

37. Ibid., p. 63.

38. Ibid., p. 81. It is important to remember that Cohen is discussing the pre- Between Facts and Norms Habermasian approach, and thus, she is concerned mainly with his theoretical paradigm as put forward in Communicative Action. That said, she does mention favourably Habermas’s more recent approach, claiming that she regards his latest contributions as “vindication for the claims made in [this, her own] article.” For his part, Habermas has certainly utilized Cohen and Arato to advance his own theoretical understanding of civil society and the role of social movements.

39. Ibid.

40. *Ibid.*, p. 63.

41. *Ibid.*

42. Habermas, *supra* note 2, p. 370.

43. Cohen, *supra* note 28, p. 64.

44. *Ibid.*, p. 76. In her analysis of the women's movement, Cohen indicates that "rights" strategies have advanced institutional reform. Of course, as she rightly points out, these advances would not have been possible, or could not be sustained, without similar progress in the other arenas of political struggle. Still, this conceptualization would seem to be a positive widening in the utility of rights as compared with the restricted boundary maintaining function found in Cohen and Arato's earlier work. Cohen would seem to be suggesting a subsystem democratizing goal that goes beyond the mere creation / addition of 'sensitive' receptors:

In short, the offensive politics of "inclusion," if it is really to be universalist, entails institutional reform. The dual logic of feminist politics thus involves a communicative, discursive politics of identity and influence that targets civil and political society and an organized, strategically rational politics of inclusion and reform that is aimed at political and economic institutions.

45. Habermas, *supra* note 2, p. 373.

46. *Ibid.*, p. 380.

47. *Ibid.*, p. 373.

48. Habermas's appreciation of the role of associations remains underdeveloped, leading him to underestimate the potential role of social movement struggle. Habermas posits that in a 'perceived' crisis situation civil society actors can play an important role in building the political spheres agenda. However, he fails to adequately account for the ongoing struggle over identity and norms which can contribute to the very genesis of a crisis 'perception.'

49. Cohen, *supra* note 28, p. 63.

50. Andrew Arato has offered a similar criticism while reviewing Habermas's recent work where Habermas points to the interrelationship between private and public autonomy, which in turn is key source of legitimation:

I accept the thesis of the internal connection, complementarity, and mutual dependance of these forms of freedom. . . And yet, following the work of Jean Cohen, I believe that there is also a built-in tension, even a potential conflict

between the two freedoms due to the likely divergence of the processes of individual and collective identity formation in complex, plural societies. These tensions are only exacerbated given the ambivalence of state interventionism under the welfare state stressed by Habermas. Indeed, it seems to me that he was too quick to part with the idea of colonization.

Andrew Arato, "Reflexive Law, Civil Society, and Negative Rights" (1996), 17 Cardozo Law Review, p.788.

51. Ibid., p. 74.

52. Ibid., p. 72.

53. Ibid., p. 72.

54. Ibid., p. 76.

55. Habermas, supra note 2, p. 380.

56. In a critique of Foucault's method and lack of attention to agency, Habermas made the following often quoted statement: "discourses emerge and pop like glittering bubbles form a swamp of anonymous processes of subjugation," Jurgen Habermas, "Questions Concerning the Theory of Power: Foucault Again," The Philosophical Discourse of Modernity, trans., Frederick Lawrence (Cambridge: Polity Press, 1987), p. 268.

57. Admittedly I use hyperbole here, as Habermas does offer an explanation of how "forces at the periphery, outside the purview of the political system" can move inward, carried by citizens, social movements, etc., and, if these issues are taken up by the mass media, can potentially be brought onto the public agenda. Habermas, supra note 2, p. 381.

58. Ibid., p. 384.

59. Noting that the basis of law's discursive capacity goes beyond Kantian morality, finding rather it's basis of legitimation in the internally related rule of law and democracy, Habermas explains the unique transformative function of law as follows:

Law includes all communication oriented by law, such that legal rules refer reflexively to the function of social integration directly fulfilled in the process of institutionalization. But the legal code not only keeps one foot in the medium of ordinary language, through which everyday communication achieves social integration in the lifeworld; it also accepts messages that originate there and puts these into a form that is comprehensible to the special codes of the power-steered administration and the money-steered economy. To this extent the language of law, unlike the moral communication restricted to the lifeworld, can function

*as transformer in the society-wide communication circulation between
system and lifeworld.*

Ibid., p.56.

CHAPTER FOUR

Legal Strategies in Transformative Struggles

I. The Utility of Law in Social Movement Politics

In this chapter I explore the problematic relationship between law and social transformation so as to contribute to wider efforts of developing an informed social movement welfare state politics. I begin by reviewing some important criticisms of law's transformative potential. However, I will conclude that a comprehensive social movement politics cannot afford to dismiss law as it is an arena of ongoing social struggle. If we recall the interrelated state and civil society terrains of social movement politics illustrated in the last chapter, evaluating the merit of law or rights in progressive politics must surely be considered in broad terms. Put simply, the utility of law goes beyond the ability to wield it as a sword in achieving material welfare rights, or as a liberal shield in protecting lifeworld boundaries.

For example, anti-poverty organizations such as NAPO have tended to conflate traditional litigation-type legal strategies for the whole of rights-based politics, thus neglecting this important, albeit limited, tool for progressive transformation. Alternatively, if, as in the Habermasian proceduralist approach, we utilize a dual sided conception of law, we can see both limitations as well as possibilities within law. Notwithstanding the dangerousness of legal tactics, law can be appreciated for its unique ability to transmit civil society communicative impulses to and from welfare administrative systems. Moreover, through law's institutional capacity to institutionalize our rules of cooperative effort, democratic deliberative structures and procedures can be utilized to secure and democratically enhance informed citizen participatory spaces, so as to transform weak

civil society communicative forces into legitimate administrative power. I will further argue that a conception of law's counter-hegemonic potential will also be key in terms of challenging existing welfare state arrangements, and in articulating a reflexive alternative within both state and civil society communicative structures. Taking, as an example, this project's renovated accountability theme, the counter-hegemonic potential of law could be harnessed to place these issues on the public agenda, as well as to challenge traditional 'control' perspectives and to promote the good political sense of informed citizen participation in administrative processes of policy creation, implementation, evaluation, and correction.

In my earlier review of our changing social security policy environment I noted that the *Charter of Rights Freedoms* was clearly an uncommon development in this policy field. Certainly the *Charter*, a constitutionally entrenched accountability mechanism, stands in contrast to so many of the other forces influencing the political opportunity structure of the last few decades vis a vis anti-poverty efforts. Not surprisingly, the entrenchment of the *Charter* was a lightning rod for various socio-legal opinions with respect to our welfare state and the relationship between law and conventional politics, as well as broader law and social transformation debates. Accordingly, I begin my assessment of law's progressive utility by examining this important addition to our legal framework of governance.

II. The *Charter* As Transformative Tool and Accountability Mechanism

Canadian processes of public accountability are in a state of flux. While the dominant mode of accountability in the exercise of state power remains that of ministerial responsibility it is understandable, given the increasing complexities of modern governance examined earlier, that other mechanisms have arisen. For example, as ideas such as "value for money" are introduced, traditional

mechanisms of collective political accountability such as ministerial responsibility for policy development, implementation, and review, are being confronted by market values. Consequently, parliament, the official political public sphere, is a little more insulated from the discursive impulses of civil society, since normative political choices are now deliberated in relation to 'neutral' economic efficiency criteria. As previously noted however, the entrenchment of the *Charter* can be pointed to as the most dramatic change in Canada's modern public accountability structure. Clearly, the *Charter* represents a substantial addition to our legal framework of government. In contrast with so many other policy environment forces, such as complicated funding arrangements, that seem to be depleting our social security accountability frameworks, the constitutionally entrenched *Charter* is arguably a mechanism which might open up our public deliberative processes. That said, the argument that the *Charter* has resulted in our adoption of an individualistic rights-based perspective of citizenship and a corollary shift toward a liberal-legalized approach to accountability can also be made. Could the *Charter* then actually be resulting in a democratically diminished accountability structure, as judges, rather than political communicative processes, engage in policy formation and review?

Notwithstanding the early hope of some in the anti-poverty community that the *Charter* would be a force in 'progressive' social security revision, we have seen that until relatively recently, comparatively little conventional political activity has taken place with respect to addressing the policies of Canada's welfare state. It is understandable that many scholars warned against holding any false hopes with respect to the use of the *Charter* as a transformative tool. As Hovius and Martin predicted, inaccurately as it turned out, when speculating upon the likely approach of the Supreme Court: "the history and traditions of the Supreme Court of Canada, favour an attitude of

restraint. There is nothing in the Charter which will compel the court to renounce its accustomed role."¹ In retrospect, since the courts have, in fact, adopted a far more active role under the *Charter*,² the potentialities and limitations of rights-based strategies for social transformation have increasingly become an important focus for Canadian socio-legal studies. Rather oversimplified, this debate involves *Charter* enthusiasts versus those who are more cautious or pessimistic about judicial review.

David Beatty, for example, has been described as a "romantic-liberal"³ for believing that we should hail the *Charter* as an opportunity to improve procedural and substantive justice.⁴ In his text Talking Heads and The Supremes,⁵ Beatty responds to those 'radical sceptics' who decry the utilization of the *Charter* via judicial review on the grounds that it is subjective and undemocratic. For Beatty, the Court is not, and should not be, engaged in deciphering *Charter* rights. Rather, it is the role of the Court to evaluate "the justifications offered by the Government and its supporters for why a particular social policy has been chosen to be enacted into law."⁶

Consequently, at least from this perspective, an SMO like NAPO, wishing to evaluate the utility of engaging with the *Charter* as an accountability mechanism, would begin by looking at the demonstrated capacity of the courts to respond to the justifications offered by non-governmental organizations. If we relied upon the view of the Auditor-General Office (AGO) in answering this question then it would seem that the *Charter* represents a potentially powerful agency choice in terms of furthering NAPO's mandate. In discussing the impact of the *Charter* in relation to the role of the Justice Department, the AGO has noted that:

The Charter, together with social forces that supported it and have been reinforced by it, has affected the nature and extent of the Department's work . . . Canada is becoming an increasingly litigious society as individuals and interest groups assert

*their rights . . . Canadians expect more of the justice system, including its accessibility and responsiveness.*⁷

The report explicitly recognizes that "the *Charter* has led to a greater role for the judiciary in public policy."⁸ It is far from clear, however, that this increased role for the judiciary has led to a corresponding increase in the voice of low-income Canadians. Has the *Charter* served to democratically open up our public processes of deliberation and accountability? While important litigation around social security has taken place,⁹ *Charter* litigation has had very little substantive impact upon the reality of poverty in Canada. What this means in terms of forming a progressive strategy for social security reform, however, is more complex than a "spread sheet" assessment can provide. In the words of Arne Peltz, chairperson of the Charter Committee on Poverty Issues, "poverty will never be defeated simply by going to court. But fighting for legal rights, along with effective political strategies, can help to move the struggle forward."¹⁰ Utilizing the judiciary in general, or *Charter* litigation in particular, is at best an imperfect and ambiguous *reform* strategy. Certainly we do not wish the judiciary to be the primary shaper of Canadian social security policy.¹¹

III. Legalization of Politics

In direct contrast to the "romantic liberal" perspective, Glasbeek and Mandel's article, "The Legalization of Politics in Advanced Capitalism" argues for an outright rejection of the *Charter* as a tool in social reform.¹² Strategy formulation which depends upon the *Charter* is said to serve to legitimate the state's legalization of what is, in reality, politics, as problems are formulated using legal, supposedly 'politically neutral', language. From the perspective of this Marxist variant, the *Charter* and constitutional review can only serve to mask the substantive concerns of the subordinate classes. As such, the utilization of the *Charter* as a tool in social reform is to be considered

"collaboration in the legalization of politics."¹³ While the entrenchment of the *Charter* is viewed as an exercise in legitimation, Glasbeek and Mandel are much less hostile towards the rule of law; or, indeed, towards "rights", which they believe to be of great value to the 'worker'.

Glasbeek and Mandel point out that "the rule of law is a democratic ideal under which the judicial function is to apply the law to the facts" and it is "most closely reached when laws are specific" thus leaving little room for discretion. As well, they consider it to be "most democratic when there is popular participation in law making."¹⁴ Given these two concerns, the rights in the *Charter* appear problematic. They are abstract, and thus subject to judicial interpretation. The result is a significant amount of power in the hands of our courts, a non-elected body. Indeed, not only is the interpretation of our fundamental rights, and thus their construction, the responsibility of the courts as opposed to the legislature but, in fact, the judiciary can now nullify legislation enacted by our elected officials if it is said to conflict with the *Charter*. The courts are seen to be playing a more obviously political role.¹⁵

For Glasbeek and Mandel the rights achieved under the *Charter* do not represent the achievement of either "immediate" or "fundamental" advances for the worker.¹⁶ Once again, class is being denied. This is exacerbated by increasing the policy role of the courts at the expense of the legislature as the power of the electorate is, thus, reduced. For Glasbeek and Mandel, "the *Charter* is a result of the abstract form which legitimation must take in a capitalism no longer able to deliver the goods."¹⁷ The rights within it, being subject to interpretation by the courts, can only be harmful to the subordinate classes in the long run. Consequently, should progressive SMOs try to implement the *Charter* against the current class biases inherent in our law, not only are they unlikely to achieve any substantive change, but in fact, they will legitimate the current inequalities of a legal system

designed to serve the 'needs' of capitalism.¹⁸

While Glasbeek and Mandel may not be asserting that the Supreme Court is simply the handmaiden of a cohesive capitalist class, their approach is still too deterministic. This kind of analysis, as Bartholomew and Boyd put it, is "marred by an overly monolithic view of the state which treats it as a rather simple "agency of control" leading these scholars to exaggerated and debilitating anti-statist and anti-judicial prescriptions."¹⁹ Such theory denies the struggles which have produced real gains,²⁰ or worse, dismisses those gains as products of the legitimization mechanism. In short, it is tautological reasoning to claim that *Charter* rights, or other rights, are empty promises except when serving the function of legitimization.²¹

It seems only natural to develop anti-judicial prescriptions if one accepts the perspective represented by Glasbeek and Mandel. Brickey and Comack clearly outline the problem with such an inherently sceptical stance by pointing out that from this view, the legal system can only be seen as "operating in the long term interests of the capitalist system, or to the permanent advantage of capital."²² Therefore, social struggles around rights would only serve to legitimate what are, in fact, structural inequalities. In this light, a strategy formulation which incorporates rights is foolhardy. Clearly, the relationship between law and social transformation in wider social moment struggles is far from straightforward.

IV. The Problematic Relationship Between Law and Social Transformation

The debate over the utility of legal instruments in the advancement of progressive causes did not originate with the entrenchment of the *Charter*. Many critical theoretical approaches have been employed in the examination of this debate. Built upon the earlier Realist project,²³ the Critical Legal Studies movement (CLS) flourished in the seventies and early eighties with a fixation on

"deconstructing legal discourse" and demonstrating the disadvantages of law as a tool for reform.

The essence of this perspective is lucidly summarized by Kimberle Crenshaw:

Although the focus of their critiques may differ, the Critics all premise their views of transformative possibility on the necessity of critically engaging dominant ideology. Viewing the structures of legal thought as necessary and the status quo as legitimate, they believe it is crucial to demonstrate the contingency of legal ideology. Once false necessity or contingency is revealed, the Critics suggest, people will be able to remake their world in a different way.²⁴

Thus, for instance, from this perspective there would be little theoretical significance in evaluating the potential utility of the *Charter* as a transformative route. It has become apparent, however, that exposing myths as an end in itself is a limited tool for those concerned with moving 'beyond mere critique'.²⁵

In an attempt to move 'beyond mere critique' feminists and other scholars turned to post-modern theories of knowledge and power "to understand both the strength of law as discourse and its points of vulnerability."²⁶ The work of Carol Smart illustrates this interpretive approach. Smart, maintaining that law is a closed discourse, cautions against the use of law as a transformative tool. She notes that "in accepting law's terms in order to challenge law, feminism always concedes too much."²⁷ Rather, she suggests, the emphasis should be upon local struggles and non-legal tactics, as the pursuit of 'legal reform' risks legitimating this androcentric mode of social coordination. As I will argue below in relation to the benefits of a Habermasian approach, this type of post-modern nihilism regarding the transformative potential of rights-based politics can be alleviated if we come to appreciate the double sidedness of law, wherein we recognize its potential for contributing to both domination and emancipation.

Michel Foucault's work can be criticised for dismissing the whole of law because of its

dangerous qualities. It is a truism to say that Michel Foucault has had a significant impact upon contemporary socio-legal theory.²⁸ Indeed, much of the above reflects the tensions that arise when evaluating the transformative potential of law in light of the widespread influences of Foucault's insights on the "dark" and "dangerous" nature of modern power processes. Post-modern theories of truth, power and knowledge characterize much of the critical study presently conducted around the law and society relationship. Although admittedly an oversimplification of Foucault's examination of law, for present purposes the following description should suffice.²⁹ Foucault, while arguing that the significance of law is in fact diminishing,³⁰ exposes the "dangers" of law as discourse, which claims to speak the 'truth', and is consequently a source of power in a society that valorizes the 'truth'. Furthermore, in terms of rights discourse, "formal juridical liberties" (rights) are portrayed as a mask of domination.³¹

There are numerous criticisms of Foucault's analysis of law which would not be unimportant to explore given the parameters of the present project. For example, Foucault paradoxically promotes 'local struggle'³² while describing the state in terms of "the omnipotence of its apparatuses."³³ This criticism is compounded by the often noted absence of agency within Foucault's work.³⁴

Clearly, such theoretical foundations are problematic in terms of social movement transformative discourse strategy development. Without agency, who is to challenge or to be challenged in terms of existing forms of governance? Moreover, why bother if the apparatuses are omnipotent? Others have pointed out that Foucault's project of redirecting our attention from law to the new disciplinary mechanism of power is flawed as it induces a false belief that modern law is "a less significant site of power relations."³⁵ In terms of the present project however, my chief

concern is with the uni-dimensional conceptualization that informs Foucault's general positioning of 'law'. As I will elaborate below, a number of alternative positive conceptions of law and social transformation can also be pointed to. In particular, Habermas's social theory provides a useful framework for understanding law's limitations as well as its possibilities as an arena of social struggle.

V. The Transformative Potential of Law

Given the above critiques of law, would it not be better for social movements to channel their agency efforts into alternate political forms such as local protest? On the other hand, can social movements concerned with responding to oppression as experienced in the here and now really afford to reject rights-based politics and law as an arena of struggle?³⁶

A) Progressive Struggles and the *Charter*

Certainly judicial review under the *Charter* should be approached with caution. However, rejecting the *Charter* and Constitutional review would seem to be throwing the proverbial baby out with the bath water. To simply dismiss the courts as a capitalist tool is to deny their complexity as an institution subject to diverse demands and varied human input. Adopting the action or inaction called for by Glasbeek and Mandel in "The Legalization of Politics" means rejecting the potential of both the *Charter* and the courts as a tool in the formulation of social movement transformative politics.

I would argue that *Charter* litigation is, and should remain, an important, albeit imperfect device for safeguarding procedural rights such as the right to appeal social assistance benefit reductions. In the area of social law, this is particularly important. For example, Martha Jackman, in discussing section 7 protections of the *Charter* explains that:

*Like welfare rights themselves, procedural justice clearly entails a positive right to call on the financial resources of the state. The right of a welfare beneficiary to insist on procedural protection against an unjustified termination of his or her benefits is a right to demand that the state expend whatever resources are necessary to make the requisite procedural guarantees available . . . the right to procedural justice furthers important individual and societal interests in **accuracy, participation, legitimation and accountability**. A decision-making process which affects a welfare interest will be deemed to offend principles of fundamental justice when it is insufficiently responsive to one or all of these concerns.³⁷ (emphasis added)*

When the basic securities of life are involved, such as food and shelter, there is little practical difference between procedural and substantive protection. Nevertheless, while the role of *Charter* litigation in safeguarding the rights of welfare recipients through supervision of the administrative state is clearly important,³⁸ formulating agency direction around progressive social security requires a broader understanding of the transformative potential and limitations of law and/or rights discourse. As McCann and Silverstein put it: "law is neither just a strategic resource nor just a constraint in political struggles, but tends to be both at once, and in complex ways."³⁹

Recalling Smart's charge that "feminism always concedes too much," is law really such a closed discourse? Given the interrelated political typology presented in the last chapter, how could any movement discount law as a site of struggle within a comprehensive politics aimed at both civil society and the state? Given the reflexive ideal underlying this project, how could the legal framework of the state be rejected as a key social movement target? Unfortunately, for those interested in a realistic assessment of instrument choice, much of the critical research done in the area of law and social transformation is still limited by a conceptual framework that views law as "existing somehow outside of and apart from 'society'."⁴⁰ Critical research adopting this perspective is likely to remain rather pessimistic about the utility of rights-based strategies for social or political

transformation. If one's theoretical perspective places law in a sphere apart from 'society' then 'law' can be dismissed as an instrument of domination or as an ideological force which mystifies. However, if law is conceived as a component of society, being "seen as a powerful discursive or representational field through which the social is constituted,"⁴¹ it then becomes important to address law as a site of struggle.

B) Rights Discourse

Mari J. Matsuda addresses the progressive utility of rights-based politics debate within the context of racism as a site of oppression: "We are a legalized culture. If law is where racism is, then law is where we must confront it."⁴² In short, law is an important language through which social struggles are at least partially conducted. What does this imply for an anti-poverty SMO such as NAPO?

First, it seems important to reiterate that organizations like NAPO operate within a nexus of public spheres, within civil society as well as within the political public spheres of the state, influencing discourses as well as being influenced. A theoretical removal of law as an option when considering strategy development would eliminate a crucial arena in which "opinion formation and decision making" in the various public spheres is contested.⁴³ An effective critical legal studies approach, if it is to move beyond mere critique, should adopt a theoretical position which recognizes law as a site of struggle. My entry point into this debate is premised on the belief that law clearly plays a part in shaping social relations. I cannot just dismiss rights discourse (*Charter* or otherwise), as it may, in fact, have some potential as a transformative tool.

Second, since confronting poverty takes place within various spheres, as with other sites of oppression, it can potentially involve the utilization of various instruments. For example, education

will help combat stereotypes which "must be unlearned individually".⁴⁴ Certainly, legislation and litigation, in and of themselves, will never be a sufficient response to the concrete problems of low-income Canadians. That said, however, evaluating the potential of law does not end with the realization that equality is a myth. Challenging the dominant liberal view of rights will continue to have merit in that myths need to be debunked. However, merely exposing myths will not provide a transformative route. Rather, exploring the transformative potentials and limitations of agency choices, including law or rights, requires an evaluation of the wider hegemonic ideological function of these instruments and the institutions in which they would be deployed.⁴⁵

Examining the question of ideology within the context of corporate crime and the law and social transformation debate, Sargent states:

*By emphasising the values of individuals responsibility and freedom of choice, these ideological discourses serve to reinforce popular notions of the objectivity and neutrality of law, regardless of evidence of its particularized and unequal application in practice. Rather than seeking to expose law's claims to popular legitimacy as a mere sham, as most class conflict theorists seek to do, it is important to explore its real ideological significance in reproducing consent for a system of social relations based on formal equality and substantive inequality . . . Only by taking the ideological significance of the form of law seriously is it possible to develop a "jurisprudence of insurgency" . . .*⁴⁶

Thus, for example, pursuing substantive reform, let alone transformative possibilities, via the courts would require us to unmask the traditional dominant liberal-legal values and approaches of the judiciary. But, moreover, if we are to move beyond mere critique in evaluating the potential of rights discourse, we must explore the "real ideological significance" of law, which denotes a wider conception of ideology as found in a Gramscian framework.

C) A Gramscian Framework

Gramsci's work takes us beyond erroneous class reductionist Marxist perspectives.⁴⁷ As Hunt describes, Gramsci's notion of ideology makes a distinct "break with Marx's conception of ideology as 'Ideology', that is as a *Weltanschauung*, a coherent world-view, intellectually developed and at the same time informing the consciousness of active social classes."⁴⁸ Rather than a coherent outlook, ideology in Gramsci's sense is more positive, dealing with the mechanisms of social participation in which popular consciousness or 'common sense' (as opposed to false-consciousness) is formed. Contrary to Marx's conception then, we can appreciate the dynamic nature of our 'common sense'. Our popular understanding of identities, norms, issues, etc., is the product of ongoing social contestation in civil society and the state. From this perspective, law is not simply the transmitter of a dominant viewpoint, but rather a site of ongoing discursive struggle where popular understandings can be challenged and reshaped.

Referring to Gramsci's key concept of hegemony, Eley explains that, "hegemony should not be used interchangeably with "ideology" or "ideological domination" tout court in a perspective stressing the "manipulations" or "social control" deliberately exercised by a ruling class."⁴⁹ In Gramsci's words, hegemony is the process which generates "the 'spontaneous' consent given by the great mass of the population to the general direction imposed on social life by the dominant fundamental group."⁵⁰ It follows, then, that counter-hegemony can be more readily understood, not as an attempt at replacing one 'Ideological' monolith with another, but rather as a strategy of supplanting the dominant version of 'common sense' by articulating an alternative hegemony based upon a renovated version of the existing 'common sense.' Counter-hegemony makes use of the existing structure, its discourse and symbols, and thus may be thought of as a project of renovation

in the Habermasian sense.⁵¹

Admittedly it may be problematic to combine the Habermasian framework with its emphasis upon societal rationalization via communicative action as a power neutral process, with a Gramscian perspective, wherein a concept of ideology is explicitly recognized.⁵² In this project, Habermas's communicative action theory is considered as ideal type, providing important analytical guidance with respect to reflexively renovating our deliberative structures. However, I see in the Habermasian approach achieving greater practical social struggle explanatory power when combined with Gramsci's concept of hegemony. In brief, it is posited that the intersubjective achievement of norm consensus through dialogical processes provides a strong theoretical grounding for democratically enhancing our public sphere communicative structures, thereby ameliorating the welfare state's legitimation deficit. However, as in the previous chapter, I concur with those who have pointed out that the "critical discourse of the public sphere cannot be about everything all at once" and that "some structuring of attention, imposed by dominant ideology, hegemonic powers, or social movements, must always exist."⁵³ In fact, Habermas's more recent formulations in the areas of civil society and the political public sphere implicitly support a recognition of agenda structuring mechanisms in the ongoing processes of social discourse.⁵⁴

By using Gramsci we can, therefore, appreciate the role of an SMO like NAPO in terms of the ongoing struggle to articulate anti-poverty concerns and to have these concerns reflected in popular consciousness. The only way that hegemony can be overcome is by utilizing its by-product, namely, counter-hegemony.⁵⁵ In Alan Hunt's view, as a tool for counter-hegemony, rights strategies have a strong case in terms of a social movement's evaluation of possible agency choices. As rights discourse reflects the institutional logic of the existing system, it can be seen as one element in a

wider counter-hegemonic strategy. 'Rights strategies' should not be conflated with 'litigation', as the former is a discursive tool of political mobilization which can be utilized in many arenas, whereas the latter is linked with the conventional, narrower notion of going to court to 'win' a particular case.

Hunt understands that, although the practical needs of disadvantaged persons are of prime importance, any theory that promises social change without providing mechanisms to transform hegemonic ideologies is not really tackling the entire dilemma. If, however, an individual is seen to have a "right" to basic necessities, a shift in ideology may eventually take place.⁵⁶ Our 'common sense' or popular consciousness may support taking care of the disadvantaged, but deploying a discourse wherein food, shelter etc. is a "right" may produce an ideological shift enabling us to see such care as 'good sense'.⁵⁷ If NAPO, for example, could mobilize such a perception of anti-poverty social claims, such a shift could lead to a gradual, complex exchange between hegemonic and counter-hegemonic factions, where the existing common sense, by valorizing the 'new', is critiqued - transformed into good sense, and ultimately this good sense becomes the renovated common sense.⁵⁸ With respect to realizing a democratically renovated accountability framework, NAPO could articulate the political participatory conditions of low-income Canadians as a "right." Through this 'complex exchange', the prevailing 'control' model of accountability could be displaced by a 'new', valorized dialogical model.

Evaluating the agency possibilities for social movements connected with a counter hegemonic rights discourse strategy should undoubtedly be explored within the context of particular engagements. Such a contextualized examination is, in part, the aim of this thesis. While the present project's parameters afford only a modest exploration of NAPO's engagements, a number of future

research paths along these lines will be advanced in the remaining chapters. For present purposes, however, the following theoretical implications flow out of the above commentary.

First, by introducing the Gramscian approach, we are better able to appreciate the necessity of evaluating agency choices in terms of the plurality of public spheres making up the political opportunity structure. Hegemonic forces, and by extension, counter-hegemonic possibilities, are operative within both civil society and the political public sphere of the state. Certainly history demonstrates that social struggles have transformed hegemonic administrative and legal practice.⁵⁹ We need to remember the bidirectional nature of the relationship between associational movements like NAPO and the institutional apparatus of the state with which they sometimes engage. Indeed, as I have already argued, the interrelated modes of a broad social movement politics (identity, inclusion, influence, reform) must clearly target the terrain of the state as well as civil society in the ongoing struggle to challenge and rearticulate hegemonic forms. In this light, polemical discussions of state versus civil society agency choices contribute little to transformative considerations of the utility of law within wider movements.

The role of law in transformative politics should not be reduced merely to conventional litigation tactics, but rather evaluated for its wider discursive capacity, as a site of communicative interaction. Of course, this is not an outright rejection of litigation as a potential tool. Indeed, if mindful of the various tactical lessons learned from early reform attempts, litigation could prove a significant addition within wider social movement 'mobilization' efforts.⁶⁰ Nor is the discussion above intended to put forward a theoretical panacea for social movements which are 'clever enough' to deploy rights discourse in a counter-hegemonic fashion. Instead, it is a call to shift critical analysis away from myopic cost benefit considerations of the utility of law, wherein establishing

“the myth of rights, [i.e., the] linking of litigation, rights, and remedies with social change,” becomes the inevitable conclusion.⁶¹ In shifting our attention to the wider ‘discursive’ implications of law and social transformation, the Gramscian framework as applied by Hunt, offers a more optimistic evaluation for rights as a social movement agency choice.

A key factor in assessing a social movement’s hegemonic capacity is said to revolve “around their capacity to put in place a new or transformed discourse of rights,” which in turn, impacts upon the perception, articulation, and ultimately, the outcome of ongoing social struggles around substantive questions.⁶² As I have already noted, with such a conception, simplistic notions of litigation failure or success need to be replaced by a more comprehensive understanding of social movement politics and its relationship to social transformation.⁶³ By emphasising the discursive capacity of rights as a site of social struggle we are also able to connect with the type of identity development project that Fraser has called the “politics of needs interpretation.”⁶⁴ Claims couched in the language of rights discourse have much more potential than a mere ‘demand strategy’ as the latter often lacks sufficient self-legitimation, being ‘merely the interests of the poor.’⁶⁵ Clearly, when contrasted with the nihilistic conclusions of positions such as the legalization of politics thesis, the Gramscian framework provides a more optimistic starting position for the evaluation of rights strategies.

A major contributor to the nihilism surrounding the utility of rights discourse has been the tendency to conflate law as an “institution” with law as a “medium”. Put another way, one can still appreciate, indeed valorize, the role of law as a potentially emancipatory institution in our society without discounting law’s role as a medium for domination. For example, when low-income Canadians claim a right to general welfare assistance, they will also most likely find themselves

under increased state surveillance. On the other hand, law as institution is what enables us to secure our rights of private and public autonomy.

D) Beyond Foucault's Normalization - The Doubleness of Law

Notwithstanding its inadequate positioning of law as a site of social struggle in the Gramscian sense, I contend that a Habermasian framework provides a more complete, and ultimately more optimistic, analysis of the complexity of the role of law with respect to agency choice evaluation than that of Foucault. To briefly reiterate, utilizing a double sided social theory, Habermas's critique asserts that the modern pursuit of social union through the expansion of rights has had the unfortunate paradoxical effect of desiccating the public sphere. Law, in this sense, is a "medium" or vehicle for the influences of money and power, and thus leads to a colonizing of the lifeworld. Unlike Foucault however, Habermas's three part model allows us to see the double sided character of law.⁶⁶ Thus, we can also recognize the potential of law as an "institution" which secures and 'formalizes' the normative achievements of the lifeworld.

In his recent writings Habermas no longer maintains the once rigid distinction between law as functional "medium" and law as the lifeworld's formal "institution" of norms or procedures. As "medium" law is linked to system integration as it provides those organizing rules or procedures which enable the state and the economy to function. For example, law provides a set of formal rules governing the application process for receiving social assistance from one province to the next. As "institution" law represents a mechanism of social integration in that it institutionally secures the expression of the lifeworld's normative values. A 'right' to shelter would be an example of law as "institution". I share Bernhard Peters' view that this distinction retains analytical utility, even if law as a sphere of social action is really made up of both forms of integration simultaneously.⁶⁷

As Arato and Cohen put it “Foucault's error is to have focused exclusively on the role of law, and even rights, as a medium, while dismissing its freedom-securing, empowering institutional moment as mere show.”⁶⁸ While viewing law exclusively as “medium” helps explain the dangerousness of law as it normalizes and colonizes, it offers little conceptual potential for utilizing law in a wider progressive project aimed at democratizing our communicative processes. Also, such a one-sided perspective arguably leads to a diminished SMO theoretical arsenal in terms of the development of wider counter-hegemonic strategy that could be aimed at the reflexive continuation of the welfare state. Such a narrow understanding of political rights discourse will inevitably “reinforce the prevailing hegemony.”⁶⁹

Alternatively, if law is conceived in a multidimensional way, we can recognize both the ‘dangers’ associated with its potential use, as well as the possibilities. We have already addressed the potential counter-hegemonic utility linked with a ‘site of struggle’ conceptualization of law and rights discourse. In the previous chapter I have also noted the crucial function that law plays in safeguarding the necessary preconditions for civil society associational forms such as NAPO.⁷⁰ I have further argued however, that the implications of this ‘institutional moment’ go well beyond the defensive benefits of boundary maintenance. Invoking law’s institutional capacity enables us to envisage a means of countering the ‘dark’ colonizing aspects of social rights through an enlargement of democratic spaces within deliberative processes of welfare state design and administration. Applied to a renovated concept of accountability, we can conceive of institutionally secured rights to informed participation that democratically open up our official communicative processes of policy design and implementation. In part, such rights could enable traditionally marginalized voices in civil society to articulate an oppositional discourse and have it placed on the public agenda.

Moreover, a further set of accountability rights would be aimed at ensuring that this participation is extended into our social security policy review, evaluation and corrective decision making processes (i.e., redress).

Joel Handler's "Search for the Dialogic Community,"⁷¹ which values both private autonomy and community, provides a clear example of this type of discursive participatory approach. In starting with the following question, Handler focuses our attention on the basic problem he is attempting to address, namely the paradoxical nature of social rights:

*the relationship between dependent people and social welfare bureaucracies is clearly not equal; and it is voluntary in only a tenuous, legal, formal sense. Poor people come to agencies because they need help and have nowhere else to go. Is it possible, then, to have a dialogical community in a relationship that is, at least initially, characterized by great disparities in power, that is strongly hierarchical, and, for all practical purposes, coercive?*⁷²

In part, Handler's suggested response involves the deployment of Teubner's "reflexive law,"⁷³ which he links with the participatory part of Nonet and Selznick's concept of responsive law.⁷⁴ At the risk of oversimplifying "reflexive law" to normative influence, Handler points out that Teubner relies on the thesis that law as an "institution" functions as an "external constitution," thus facilitating the redesign of decision making procedures in a consensus-oriented manner. That is to say, since "external constitution" is the means for institutionalizing Habermas's "ideal speech" situation,⁷⁵ reflexive law arguably carries "at least implicitly a significant normative democratic agenda."⁷⁶ In short, the search for a dialogical community takes us towards the ideas of "deliberative democracy,"⁷⁷ calling for a democratic enrichment of the design-delivery decision making mechanisms. Handler's approach is just one of many calling for reflexively renovated decision making processes.⁷⁸ As will be elaborated below however, Habermas's proceduralist approach goes

beyond the autopoietic limitations of Teubner's "reflexive law," explicitly linking law's legitimate generation with citizen participation.

Habermas's more recent writings in this area offer us further socio-legal theoretical guidance in the pursuit of, as he terms it, the "proceduralist understanding of law." For example, Habermas points us away from a reflexive legal rationality relying too heavily upon a self-referentially closed-off positioning of law. As I will discuss below, law is to be valorized for its unique ability to facilitate communicative exchanges between the systems of state/economy and the actors, associations etc., of civil society or the lifeworld. Habermas critiques Teubner's "reflexive law" in terms of its failure to account for intersystemic effects, the capacity of law as a social-subsystem to learn and develop. From a systems theoretical perspective, law is operationally closed in the sense that it must use its own internal language to communicate meaning. It is an autopoietic subsystem.⁷⁹ But if law is an autopoietic subsystem, how can it incorporate the external environmental complexities? Alternatively, how is it that the law is able to influence the other supposedly closed-off subsystems? Teubner tells us that, "the function of law can be defined as its capacity to provide congruent generalizations for the whole of society," a function which is performed through resolving conflicts created in the other subsystems.⁸⁰ Habermas, however, argues that Teubner's use of systems theory cannot be sustained as law is assumed to be both a medium of general social communication as well as an autopoietic specialized language:

On the one hand, legal discourse is supposed to be trapped in its self-reproduction, constructing only its own internal image of the external world; on the other hand it is supposed to use "general social communication" so that it can "influence" general social constructions of reality, and in this way influence those of other discursive worlds as well.⁸¹

Teubner's renovated conception of systems theory collapses, unable to support the simultaneous

requirements of autopoietic systems with specialized codes, and “the “translation” of social knowledge from one social context to the other.”⁸² Once again, given that welfare state legitimacy in our increasingly differentiated society places an even greater emphasis upon the need for citizen inputs into our policy making outputs, how are we to understand law’s role in facilitating the transmission of this required discursive influence? Moreover, can law serve a social transformative function?

Habermas’s subsystems/lifeworld distinction enables us to go beyond the autopoietic limitations found in systems theory, explicitly incorporating the participant perspective with the corollary flexibility of everyday language. Thus, his distinction enables the pursuit of a renovated reflexive legal rationality. Law is positioned within both the code-specific subsystems, as well as in the ordinary language used to achieve social integration in the lifeworld. Consequently, “the language of law, unlike moral communication restricted to the lifeworld, can function as a transformer in the society-wide communication circulating between systems and lifeworld.”⁸³ Rather than the artificial, rigid distinction between law as “institution” and law as “medium,” we can now see law as a hinge, feeding messages back and forth from lifeworld and system. Contrary to a self-referentially closed system conception, law as a hinge is permeable to the impulses generated in civil society discourses. Indeed, law can be appreciated for its unique ability to transform such communicative impulses into legitimate administrative power through the legal institutionalization of communicative structures and procedures.

Habermas also claims that modern law is unable to find adequate legitimation in appeals to morality or ethics.⁸⁴ Instead legitimation, in our complex, pluralistic societies, is found in the internal relationship between the rule of law (or constitutional state) and the principle of democratic

deliberation. Having pointed out that coherent world views, as were once located within religion or metaphysics, can no longer supply the necessary grounding forces for legitimation, Habermas states that only the creation of law via democratic procedure can furnish this legitimacy. Discourse theory is said to provide the legitimating force to this procedure:

Two considerations provide prima facie grounds in favour of a discourse-theoretic approach . . . [1] From the standpoint of social theory, law fulfills socially integrative functions; together with the constitutionally organized political system, law provides a safety net for failures to achieve social integration . . . [& 2] From the standpoint of legal theory, the modern legal order can draw its legitimacy only from the idea of self-determination: Citizens should always be able to understand themselves also as authors of the law to which they are subject as addressees.⁸⁵

We no longer find adequate explanatory value in the concept of a social contract. The contemporary citizen's agreement is based, rather, on the discursive or deliberative form. Thus, it is crucial that political participatory conditions exist, enabling citizens to understand themselves as able to engage in the ongoing, dynamic project of realizing our legal order. Habermas explains that we have two options with respect to our approach as addressees of law. We can take a strategic stance, calculating whether or not to obey the legal norm as it is merely a command. Alternatively, we can choose to take a performative attitude, wherein legal norms are taken as valid precepts, and thus we follow the law out of respect. There are two conditions where a legal norm is seen as valid. First, the state is able to ensure that most people will comply. Second, the state "guarantees the institutional preconditions for the legitimate genesis of the norm itself, so that it is always at least possible to comply out of respect for the law."⁸⁶ In short, law's required legitimation is now seen to be located within the communicative structures and processes of democracy itself.

Habermas, not surprisingly given the complexities of modern society, is not advocating the "proceduralist approach" in a fashion which would supplant one form of law over all others, that is

to say, formal or material law.⁸⁷ The complex functions of modern governance can only be supported through a complex (and as it turns out) interdependent system of rights. In the proceduralist approach, we find a system of rights with the key concern of securing autonomy -- both private and public.⁸⁸ Habermas is calling attention to the crucial legitimization function of democracy:

The democratic process bears the entire burden of legitimation. It must simultaneously secure the private and public autonomy of legal subjects. This is because individual private rights cannot even be adequately formulated, let alone politically implemented, if those affected have not first engaged in public discussions to clarify which features are relevant in treating typical cases as alike or different, and then mobilized communicative power for the consideration of their newly interpreted needs. The proceduralist understanding of law thus privileges the communicative presuppositions and procedural conditions of democratic opinion- and will-formation as the sole source of legitimation⁸⁹

In the following chapters I examine the conceptual potential of civil society associations, such as NAPO, to engage in opinion-and-will-formation processes, as well as to develop democratically enriched communicative structures. Drawing upon Habermas and associated literature, I contend that realizing a reflexively oriented welfare state program requires a social movement politics that, at least in part, directly targets our administrative arrangements, seeking to institutionalize procedural conditions which will democratically open up our official public sphere discursive structures.

To summarize, Habermas's proceduralist paradigm constructs a reflexive legal rationality conception which is particularly relevant to the renovated accountability aims of this project. As I have argued, modern accountability frameworks need to provide the informational conditions and procedural mechanisms for harnessing the dynamic force of dialogical exchanges between citizens within democratically opened up welfare state administrative arrangements. In contrast with autopoietic theoretical perspectives, the realization of dialogical rights in state administrative

arrangements can be understood to take advantage of law's unique position as hinge between lifeworld and system. In terms of realizing a reflexively oriented welfare program, law is not simply open to civil society influences, it can also serve to transform these communicative influences into legitimate administrative power. This legitimation is linked to the valid production of legal norms discursively generated between publicly and privately autonomous citizens, and within democratic political public sphere communicative structures regulated by procedures. Habermas's proceduralist positioning of rights is not intended to simply replace liberal or welfare models. The rights associated with these latter models aid in securing our private and public autonomy. However, with the proceduralist paradigm, autonomy is the key. It enables citizens to participate in ongoing discursive processes where the often conflicting claims to formal or material rights can be reconciled. I do not suggest that Habermas has presented us with a proceduralist panacea for balancing the inevitable conflicts between individual and collective rights in our ongoing social struggles.⁹⁰ As I have argued, law can be appreciated for its capacity to institutionalize more democratic dialogical exchanges, but this does not replace the need for anti-poverty groups like NAPO to also conceptualize law as a site of social contestation. Accordingly, law's counter-hegemonic potential must be considered within the development of broader anti-poverty struggles to articulate an oppositional discourse and to influence public opinion. I appreciate Habermas's paradigmatic positioning of law as it enables us to go beyond a mere boundary maintaining conception of rights politics,⁹¹ toward an emphasis upon realizing dialogical procedural conditions within welfare state administrative structures. With such an emphasis, the discursive input of civil society actors can be appropriately valorized and integrated into public sphere opinion and decision making processes as they relate to democratically enhanced accountability mechanisms.

In this chapter, I have addressed a number of valid criticisms with respect to the transformative potential of law and rights-based politics. Notwithstanding the dangers associated with legal strategies, I have argued that a comprehensive social movement politics aimed at realizing a reflexive welfare state orientation cannot afford to abandon law as a site of ongoing struggle. Indeed, given the interrelated terrains of social movement politics developed in the previous chapter, it seems crucial to deploy a conception of law and social transformation that appreciates law's unique institutional and transmission capacity for facilitating a communicative exchange between civil society and the state, as well as its broad position as an arena of ongoing contestation. Accordingly, I have argued that civil society actors such as NAPO need to get beyond simplistic litigation models, incorporating instead a wider counter-hegemonic focus in terms of considering rights-based tactics. With respect to achieving a democratically enhanced accountability framework then, rights discourse could be deployed within both the terrain of civil society as well as in our parliamentary-bureaucratic complex, to challenge prevailing narrow 'control' type modes of accountability, as well as to articulate a dialogically renovated conception. In turn, we can envisage the establishment of communicative structures and associated rights to informed participation in welfare policy creation, implementation and review processes.

This type of rights-based politics, targeting an opening up of our welfare administration communicative structures, and accountability processes, requires integration within the development of a broad social movement transformative strategy. The dynamic nature of ongoing social struggle alone prevents me from elaborating here the details of such a program. Certainly, given the aforementioned dangers of law, the actual institutional arrangements of reflexive deliberative structures must be approached with caution, and revised as appropriate. That said, if we accept the

realization of a reflexively oriented welfare state as our ideal, we return to questions pertaining to social movement agency and tactics.

In the next two chapters I ground my analysis of social movement politics and progressive utility of law in a concrete review of various NAPO engagements. I have already reviewed the effects of our changing legal framework of social security governance in relation to the increasingly diminished anti-poverty political opportunity structure. I turn, now, to an examination of NAPO as a counter-public attempting to widen the opportunity structure for low-income Canadians by focussing on the terrain of both civil society and the state. While the reflexive ideal advocated in this project is certainly not an explicit aim of NAPO, some of their anti-poverty tactics can be read in support of my goal, which is to increase the discursive input of all potentially affected citizens into our public structuring of policy output. On the other hand, NAPO's underdeveloped conception of rights-based politics is generally more problematic in terms of progressive strategy development. Nevertheless, the point is not to critique NAPO in relation to an ideal that it has yet to adopt, but rather to show how NAPO's present tactics might be reoriented toward a reflexive politics. Moreover, while I would hope that my project has general informative implications for NAPO strategy development, I believe examining the efforts of a particular SMO can reveal tactical lessons that could potentially be extended to wider anti-poverty democratization efforts.

Endnotes - Chapter Four

1. Berend Hovius and Robert Martin, "The Canadian Charter of Rights and Freedoms in the Supreme Court of Canada", in 1 Law and Antisocial Behaviour, p.255.
2. See F.L. Morton, Peter H. Russell, Michael J. Withey, The Supreme Court's First 100 Charter of Rights Decisions: A Statistical Analysis, A Paper Presented at the Annual Meeting of the Canadian Political Science Association, May 27-29, 1990; Revised: June 28, 1990.
3. This colourful label was attached by Paul C. Weiler, in "The Charter at Work: Reflections on the Constitutionalizing of Labour and Employment Law" (Spring 1990), University of Toronto Law Journal, p.135.
4. David Beatty and Steve Kennett, "Striking Back: Fighting Words, Social Protest and Political Participation in Free Democratic Societies", in Labour Law Under the Charter, (Kingston: Queen's Law Journal, 1987), p.214.
5. David Beatty, Talking Heads and The Supremes: The Canadian Production of Constitutional Review, (Toronto: Carswell 1990).
6. Ibid., p. vi.
7. Report of the Auditor General of Canada, 1993, p.450.
8. Ibid.
9. Although a non-*Charter* case, Reference re Canada Assistance Plan (B.C.) [1991] S.C.J. No. 60, provides an important example of the growing impact of political litigation. This case offers specific insight into the capping of federal transfers, as well as the growing importance, generally, of the judiciary in terms of policy 'creation'. As Tardi states:

The increasing willingness of public officials and institutions to litigate is rapidly expanding this area of law and it needs to be given serious consideration by both the government community and legal scholars.

Gregory Tardi, The Legal Framework of Government: A Canadian Guide, (Aurora, Ont.: Canada Law Book, 1992), p. 171.
10. For a review of recent social rights litigation the reader is referred to, *Charter Committee on Poverty Issues (CCPI), Charter Committee on Poverty Issues - Report to the Members*, October 17th and 18th 1993.

11. For a comprehensive examination of the impact of judicially interpreted social assistance rights to date, as well a 'realistic' projection of possible future judicial responses in this area, see Sandra Wain, Social Assistance Policy and Rights (Toronto: Ministry of Community Social Services Maintenance Branch, 1991).
12. H.J. Glasbeek and Michael Mandel, "The Legalization of Politics in Advanced Capitalism" (1984), 2 Socialist Studies, p.115. Also see Michael Mandel, The Charter of Rights and the Legalization of Politics in Canada, (Toronto: Wall and Thompson, 1989).
13. Ibid, p.115.
14. Ibid, p.99.
15. The effect of which being, for example, that normative questions of welfare state design and delivery are removed from the parliamentary-bureaucratic public sphere communicative structures to less democratic institutions, such as the courts. In short, the communicative force of the broader public sphere is attenuated, as parliament (the 'official' public sphere) is displaced by the courts.
16. Glasbeek and Mandel, supra note 12, p.114.
17. Ibid.
18. See Stuart Scheingold, "Constitutional Rights and Social Change: Civil Rights in Perspective" in Michael McCann and Gerald L. Houseman, eds, Judging the Constitution, (Glenview, Ill.: Scott, Foresman, 1989), pp.73-91 for a discussion, in the American context, of the dangers of utilizing the law and becoming implicated in relationships of domination and submission.
19. Amy Bartholomew and Susan Boyd, "Towards a Political Economy of Law", in W. Clement and G. Williams, eds., The New Canadian Political Economy, (Montreal-Kingston: McGill-Queen's Press, 1989), p.214.
20. While all reform should be viewed as dangerous (a la Foucault) this must not lead us to abandon the 'struggle'. As Susan B. Boyd has warned:

To the extent that post-modernism leads us away from an engaged politics in our lives in academia and other communities, we would do well to be wary of taking it to its logical limits of nihilism and political pessimism.

Susan B. Boyd, "Dislodging Certainties: Feminist and Post-modernist Engagements with Criminology and State Theory" (1991), 3 The Journal of Human Justice, p.122.
21. John L McMullen, "Epilogue: Law, Justice, and the State" in Ratner and McMullen, State Control: Criminal Justice Politics in Canada, (Vancouver: University of British

Columbia Press, 1987).

22. Stephen Brickey and Elizabeth Comack, "The Role of Law in Social Transformation: Is a Jurisprudence of Insurgency Possible?", in Law and Society: A Critical Perspective, (Toronto: Harcourt Brace Jovanovich, 1989), p.317.
23. For a discussion of this early movement see Derrick Bell, "Racial Realism" (1992), 24 Connecticut Law Review, p.363.
24. Kimberle Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-discrimination Law" (1988), 101 Harvard Law Review, p.1331.
25. R.A. Williams, Jr., "Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color" (1987), 5 Law and Inequality, p.123.
26. S. Razack, "Using Law for Social Change: Historical Perspectives" (1992), 17 Queen's Law Journal, p.35.
27. L. Henderson, "Law's Patriarchy" (1991), 25 Law and Society Review, p.417.
28. Some of his significant offerings for socio-legal theory include: Michel Foucault, Discipline and Punish [1975] (Toronto: Random House, 1979) and The History of Sexuality: vol 1, An Introduction [1976] (New York: Pantheon, 1978).
29. For a critical discussion of this impact see Alan Hunt, "Foucault's Expulsion of Law: Toward a Retrieval" (1992), 17 Law and Social Inquiry, pp.1-38.
30. Foucault, supra note 28, Discipline and Punish, p.223. We are to focus on the new forms of power, i.e. mechanisms of discipline like psychology, social-work, etc, which normalize.
31. Ibid., p.222.
32. Michel Foucault, "Politics and Ethics: An Interview", in Paul Rabinow ed., The Foucault Reader, [1983] (New York: Pantheon, 1984), p.375.
33. Michel Foucault, in Colin Gordon, ed., Power/Knowledge [1972-77] (New York: Pantheon, 1980), p.64.
34. For example, Foucault notes:
there is no power that is exercised without a series of aims and objectives. But this does not mean that it results from the choice of decision of an individual subject; let us not look for the headquarters that presides over its rationality; neither the caste which governs, nor the groups which control the state apparatus, nor those who make the most important

economic decisions direct the entire network of power that functions in a society ... the logic is perfectly clear, the aims decipherable, and yet it is often the case that no one is there to have invented them, and few who can be said to have formulated them.

Michel Foucault, La Volunte de savoir, (Paris: Gallimard, 1976), p.124, as quoted in Michele Barrett, The Politics of Truth, (Stanford: Stanford University Press, 1991), pp.153-154.

35. Carol Smart, Feminism and the Power of Law, (New York: Routledge, 1989), p.6.

36. Alan Hunt, "Marxism, Law, Legal Theory and Jurisprudence" in Peter Fitzpatrick, ed., Dangerous Supplements: Resistance and Renewal in Jurisprudence. (London: Pluto Press, 1991), p.128.

37. Alan Hunt, "Rights and Social Movements: Counter-Hegemonic Strategies", 17(3) Journal of Law and Society, p.323.

38. See Ian Johnstone, "Section 7 of the Charter and Constitutionally Protected Welfare" (1988), 46 University of Toronto Fac. L. Rev., pp.1-47.

39. Michael W. McCann and Helena Silverstein, "Social Movements and the American State: Legal Mobilization as a Strategy for Democratization," in Panitch et al., A Different Kind of State? Popular Powers and Democratic Administration, (Toronto: Oxford University Press, 1993), p.134.

40. N.C. Sargent, "Rethinking the Law and Social Transformation Debate: Beyond the Correspondence Metaphor"(1991), 3 The Journal of Human Justice, p.4.

41. Ibid.

42. Mari J. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story" (1989), 87 Michigan Law Review, p.2381.

43. Nancy Fraser, Unruly Practices, (Minneapolis: University of Minnesota Press, 1989) p.134. In this context, I am mainly referring to the opinion formation aspect of public sphere discourses.

44. Shelina Neallani, "Women of Colour in the Legal Profession: Facing the Familiar Barriers of Race and Sex"(1990), 5 Canadian Journal of Women and the Law, p.156. Important lessons can be gleaned from within the context of race and law.

A rather famous example of stereotypical attitudes and employment insurance recipients, is that of Jean Chretien making a comment about said recipients "sitting at home drinking beer", a comment for which he was soundly criticised, not the least of which by NAPO. (Interview with Lynne Toupin, then Executive Director, National Anti-

Poverty Organization, April 18, 1997, Ottawa).

45. Hunt supra note 37, p. 311. Fleshing out his term 'incorporative hegemony,' (which denotes the process whereby subordinate group interests are addressed within the dominant hegemony), Hunt provides a good example of hegemonic ideology within the context of social security:

Frequently a 'compromise' is inflected towards the interests and values of the dominant bloc. An important example of this process is the way in which the institutionalization of welfare provisions have been incorporated not in the form of generalized or universal rights, but in forms which tend towards the degradation of the 'client' who is transformed in minute ways into a supplicant.

46. Neil Sargent, "Law, Ideology and Corporate Crime: A Critique of Instrumentalism" (1989), 4 Canadian Journal of Law and Society, p.60.

47. As Gramsci notes: "Indeed the meaning which the term "ideology" has assumed in Marxist philosophy implicitly contains a negative value judgement..." Antonio Gramsci, Selections from the Prison Notebooks, Q. Hoare and G. Nowell-Smith, eds. and trans., (New York: International Publishers, 1971), p.76.

48. Hunt, supra note 37, p.310.

49. Geoff Eley, "Nations, Publics, and Political Cultures", in Craig Calhoun, ed., Habermas and the Public Sphere, (Cambridge: MIT Press, 1992), p.322.

50. Gramsci, supra note 47, p.12.

51. Jurgen Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, (Cambridge, Mass.: MIT Press, 1996). Warning against erroneous Marxist type visions of movements in civil society with "holistic aspirations to a self-organizing society," and concurring with Cohen and Arato's emphasis on "the limited scope for action that civil society and the public sphere afford to constitutionalized political movements and forms of political expression," Habermas goes on to point towards the possible:

In spite of asymmetrical access to expertise and limited problem-solving capacities, civil society also has the opportunity of mobilizing counter knowledge and drawing on the pertinent forms of expertise to make its own translations. (p.371)

52. For a fuller discussion than will be provided in this paper on the role of ideology critique in Habermas' work, the reader is directed toward: Axel Honneth, Kenneth Baynes trans., The Critique of Power, (Cambridge: MIT Press, 1993).

53. Calhoun, supra note 49, p.37.
54. Habermas, supra note 51, especially pp.379-387.
55. Hunt, supra note 37, pp.309-328 .
56. See Fraser, supra, note 43 for a discussion of the politics of social-welfare “needs” interpretation and the counter-hegemonic potential of social movements to “articulate alternative, politicized interpretations of their needs as they engage in processes of dialogue and collective struggle.”, p. 157.
57. Gramsci, supra note 47, p. 333.
58. Ibid., pp.323-326 and p.330; and see also Hunt, supra note 37, p.314. As Hunt puts it:
The emphasis on counter-hegemony as a transcendant project involves a line of thought which does not negate that which exists, but strives to construct, in Gramsci’s terms, ‘good sense’ from ‘common sense’ and in this way to prioritize or valorize those elements or features which are ‘new’. The effect of such a process ends up with the dying away or exhaustion of elements once dominant.
59. Heather Jon Maroney, “Using Gramsci for Women: Feminism and the Quebec State, 1960-1980” in RFR/DFR, vol. 17, number 3, p.29. Applying a Gramscian framework within the context of feminist struggles, Maroney points out that “the radical feminist warning that the state is simply an institution of insidious cooptation” is ahistorical (in the sense above), and:
its vision is too narrow, ignoring the extent to which changes in state ideological, administrative and legal practices themselves indicate that hegemonic ideologies have been transformed towards more feminist definitions of women, men and gender politics.
60. See McCann and Silverstein, supra note 39, who advocate for a “more balanced, context-specific understanding of the potential benefits and costs of using legal advocacy to democratize the bureaucratic state,” p.132. Their approach:
suggests that litigation and other appeals to official legal institutions often are more important in their broad indirect and supplementary effects on political struggles - in demonstrating social injustices, validating claims for remedial reform, publicizing movements actions, leveraging recalcitrant opponents - than in their direct impacts on unjust social relations and state politics. (Emphasis in original), p. 134.
61. Scheingold as quoted in Hunt, supra note 37, p. 309.
62. Hunt, supra note 37, p. 320.

63. Ibid.

My more controversial suggestion is that the immediate 'success' or 'failure' of specific litigation has to be approached in a different way which requires that we take account of the possibility that litigation 'failure' may, paradoxically, provide the conditions of 'success' that compel a movement forward... [e.g., wife abuse judgements providing]... instances of a dying discourse in which woman 'deserve' chastisement by their husbands.

64. Fraser, supra note 43, p.144.

65. Hunt, supra note 37, p.324.

66. Neither of the subsystems of state or economy are so monolithic as to completely dominate the lifeworld.

67. See Bernhard Peters, "On Reconstructive Legal and Political Theory" in Mathieu Deflem, ed., Habermas, Modernity and Law, (London: Sage Publications, 1996), p.122.

68. Jean L. Cohen and Andrew Arato, Civil Society and Political Theory (Cambridge, Mass.: MIT Press, 1992), p.50.

69. For an alternative (narrower) conception of hegemony see Scheingold, supra note 18, p.87.

70. Peter D. Swan, "Rights, Civil Society and Dualistic Social Theory", (ARSP) 58 (1995), p.244. Within the context of a wider critique, Swan describes Cohen and Arato's positioning of rights as a stabilizer for civil society:

Rights, as the "institutional core" of modern civil society provide the conditions necessary to allow individual and groups to assert and reinterpret their social identity. Rights thus empower groups and individuals by creating and guaranteeing a space for communication by protecting the boundaries of civil society from the intrusions of power and money...

71. Joel Handler, "Dependent People, the State, and the Modern/Post-Modern Search for the Dialogic Community"(1987), 35 U.C.L.A. Law Review, p.999.

72. Ibid., p.1001.

73. While responding to the dangers of juridification, Gunther Teubner has identified a supposedly "new" "evolutionary" stage which may offer greater potential for those interested in democratically enhancing the state more directly - namely, "reflexive law". Gunther Teubner, "Substantive and Reflexive Elements in Modern Law" (1982), 17 Law

and Society Review, p.258.

74. See Handler, supra note 71, p.1048. Teubner uses work by Nonet and Selznick to account for the "internal dynamics" of law which lead to changes in the legal order. These authors provide a model in which there are three evolutionary stages: repressive, autonomous, and responsive law. In this model the contemporary orientation towards responsive law (stressing purposiveness and participation) is said to be a reply to the internal crisis of formal legal rationality. See P. Nonet and P. Selznick, Law and Society in Transition: Toward Responsive Law, (New York: Harper, 1978).

75. Characteristics of the "ideal speech" situation include: the force of power does not determine which arguments win; the winning argument is the intersubjectively recognized 'better' argument; the weight of evidence and argumentation determine what is considered to be valid or true. Habermas's "discourse ethics" attempts to ground the "ideal speech" situation in practical lifeworld discursive contexts. As Habermas states: "According to discourse ethics, a norm may claim validity only if all who might be affected by it reach (or would reach), **as participants in practical discourse**, agreement that this norm is valid. Jurgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification" in Seyal Benhabib and Fred Dallmyr, eds., The Communicative Ethics Controversy, (Cambridge Ma.: MIT Press, 1990), p.71.

76. Ibid.

77. Habermas, supra note 51, p. ix: As William Rehg describes:

one of the more fertile and optimistic theoretical developments has been associated with ideas of "deliberative democracy." These ideas reflect a concern that citizens' participation in the democratic process have a rational character -- that voting, for example, should not simply aggregate given preferences but rather follow on a process of "thoughtful interaction and opinion formation" in which citizens become informed of the better arguments and more general interests.

78. See, for example, Amy Bartholomew, "Democratic Citizenship, Social Rights and the "Reflexive Continuation of the Welfare State"" (1993), 42 Studies in Political Economy, pp.148-149. Bartholomew calls instead for the development of a social citizenship supported by social rights with a "participatory, dialogical core," thus establishing an "internal link" with "democratic participation":

Such a transformation might be achieved by institutionalizing Habermas's notion of discourse ethics, or similar conceptions of reflexive law, or dialogical rights in state administration...the general idea behind all of [these] is that the determination of agreements should be guided by procedural norms that allow everyone who is concerned to participate equally in decision making.

79. As Habermas describes:

"Autopoiesis" means that the system describes its own components in legal categories and employs these self-thematizations for the purposes of constituting and reproducing legal acts by its own means. The legal system becomes autonomous to the extent that its components are linked together in such a way "that norms and legal acts reciprocally produce each other, and that procedures and jurisprudence bring these relations themselves into relation... Once it has become autonomous, the legal system can no longer sustain any direct exchange with its intrasocietal environments, nor can it have a regulatory effect on these. (Emphasis in original).

Habermas, supra note 51, p 49.

80. Teubner, supra note 73, p.273.

81. Habermas, supra note 51, p.53.

82. Teubner, supra, note 73, pp.280-281.

83. Habermas, supra note 51, p.81

84. Ibid., p 121:

Legitimate law is compatible only with a mode of legal coercion that does not destroy the rational motives for obeying the law: it must remain possible for everyone to obey legal norms on the basis of insight. In spite of its coercive character, therefore, law must not compel its addressees but must offer them the option, in each case, of foregoing the exercise of their communicative freedom and not taking a position on the legitimacy claim of law, that is, the option of giving up the performative attitude to law in a particular case in favour of the objectivating attitude of an actor who freely decides on the basis of utility calculations.

85. Ibid., pp.448-449.

86. Ibid., p.448.

87. Ibid., p.438.

88. Ibid., p.410.

89. Ibid., p.450.

90. Andrew Arato, for example, takes issue with the extent to which Habermas's approach will change the output side of welfare law, as it may simply transplant "a legislatively-oriented democratic process" for increasing administrative discretion in

determining how far an interventionist state will go. Andrew Arato, "Reflexive Law, Civil Society, and Negative Rights" (1996), 17 Cardozo Law Review, p.785. Problems associated with institutionally realizing a reflexively oriented administration will be considered in my final chapter.

91. I am not suggesting that this approach displaces the need for an invigorated civil society. Rather, it represents a conceptual approach for more directly democratizing the discursive aspects of the political public sphere. Civil society and its institutions provide key accountability mechanisms within a reflexively oriented welfare state (e.g., NAPO). However, as I argued in the previous chapter, we must also pursue democratically enhanced state structures of deliberation if accountability is to go beyond the impulses of a 'weak' opinion generating public.

CHAPTER FIVE

NAPO Engagements: Anti-Poverty SMO Tactical Lessons and Reflexive Political Possibilities

I. Social Struggle and the Canadian Welfare State: SMO Questions of Survival and Strategy Formulation

In this chapter I will review a number of NAPO agency ‘choices.’¹ My objective is to consider, in light of the previously elaborated policy environment pressures and socio-legal theoretical background, how NAPO might better utilize its limited resources to meet its mandate of securing a voice for low-income Canadians. Moreover, through an examination of this one particular organization, I will begin to link the concrete experiences of anti-poverty movement activity with the more ambitious possibility of developing and implementing a reflexive welfare program. How might NAPO, or other anti-poverty actors, reorient their political struggles so as to support the realization of a reflexively continued welfare state? Following the analyses advanced so far, it is my contention that an enhanced self-understanding of social movement political potential, combined with an expanded perspective on the ‘proper’ role of law, better equips NAPO in terms of appreciating, and of contributing to the development of, a reflexively oriented welfare state politics.

I am not attempting to dissect the following engagements so as to neatly categorize them into one type of politics or another (e.g., identity or reform). Indeed, NAPO campaigns can involve several types of politics at once, with the emphasis being placed on any given tactic shifting as a campaign evolves. Rather, by reviewing these activities, I am attempting to concretize, and thus pragmatically enrich, my earlier theoretical analysis regarding the

relationships between law, social transformation, and the welfare state political potential of social movements. In examining NAPO's strategy and agency choices, I am connecting the arguments I have been advancing in this paper with a practical example of anti-poverty politics. I believe that when NAPO's struggles are considered in relation to my earlier arguments, we gain a better appreciation of the pragmatic nature of a reflexive welfare state program ideal and the related goals that I have been advocating. To summarize, my central and interrelated arguments have been:

- 1) By appreciating existing legitimation deficits, anti-poverty transformative efforts should be reoriented away from 'reactionary' welfare 'loyalist' political programs toward a more emancipatory reflexive ideal. A reflexively continued welfare state will involve the protection and development of civil society discursive forces, as well as (this project's emphasis), a democratically opened-up welfare state administration.
- 2) Various macro policy environment variables (such as the fiscal and unity crises) have simultaneously contributed to a reduced political opportunity structure for anti-poverty organizations, as well as a diminished social security accountability framework, thus supporting the need for advancing a reflexive orientation to critically carry forward the welfare state project. These variables will need to be considered and adjusted for in ongoing social struggles aimed at realizing a reflexively continued welfare state. For example, the generally negative direction that social security accountability policy is taking with regard to increased surveillance, demands a progressive politics that can articulate an alternative dialogically renovated conception of accountability. Such a renovated accountability model would harness the social coordinating force of democratically enhanced citizens' discourse and deliberation.
- 3) Achieving a reflexive welfare state orientation demands a comprehensive, integrated, and ongoing social movement politics, targeting both the terrain of civil society and the state. Notwithstanding the problematic relationship between law and social transformation, a reflexively oriented social movement politics will partly require an expanded conception of rights-based politics, going beyond, for example, simplistic litigation tactics.

- 4) In part, rights strategies provide a counter-hegemonic mechanism for challenging prevailing welfare state diagnostics. Prevailing views have largely been left unchallenged and, thus, have supplied a foundation for social security institutional 'reform' built upon notions such as 'deserving and undeserving poor'. For example, dubious policy initiatives like fingerprinting have been introduced to 'enhance' welfare accountability. Anti-poverty groups need to formulate a counter-hegemonic politics through which an alternative perspective can be introduced, and eventually mobilized, to produce a broad shift in public opinion with which to exert pressure in favour of progressive policies.
- 5) Finally, a reflexively reoriented welfare state program leads us toward the type of institutional reforms advocated in Habermas's proceduralist approach to rights.² This, in turn, points us toward a politics of reform aimed at a democratically enhanced social security accountability framework, and corollary rights to informed participation in policy development, implementation, and review.

In fact, NAPO's mandate and agency choices already demonstrate a concern for accountability and legitimacy issues in relation to the advocacy of low-income Canadians' 'right to participate' in the design and delivery of social security institutions. Still, NAPO's welfare politics, as signified by its agency choices and the direction of its struggles, have remained largely reactive in orientation. In light of continued social security cutbacks, NAPO has, understandably, tried to defend at least the current level of welfare benefits. Unfortunately however, in adopting a primarily reactive approach, I believe NAPO and others have largely conceded the field of 'reform' to those with primarily fiscal concerns. Strategies emphasizing social security 'demands' lack the necessary broad-based support in our post-Keynesian economy. I am concerned about how an anti-poverty counter-public, like NAPO, might pursue the realization of a reflexively continued welfare state, and about what role can law play in such a struggle.

II. NAPO: Mandate, Functions and Structure

In this section, I will provide a brief sketch of NAPO as a long time agent within Canada's welfare state policy environment. By reviewing NAPO's mandate, functions and structure, we can better appreciate the organization's self-perceived political program.

In 1971 the citizen-based National Council of Welfare organized the first national conference of anti-poverty groups, held in Toronto and called the Poor People's Conference. Five hundred delegates, representing more than 250 low-income organizations from across the nation, passed as a major resolution the formation of the National Anti-Poverty Organization (NAPO) to nationally represent the issues and concerns of low-income Canadians. NAPO was originally conceived as a federation of provincial and local organizations, with representatives from the provinces and territories to form a national board of directors. A temporary head office was established in Winnipeg and four basic objectives were adopted: the provision of information about and to low-income organizations; a united voice on agreed-upon issues; assistance in developing and strengthening of new organizations in areas where none had previously existed; and to ensure that resolutions passed at the Poor People's Conference and future conferences were acted upon.³

According to NAPO's Mission Statement, while NAPO has had a variety of specific priorities and structures since its inception, it has continuously been directed by activists working within low-income communities.⁴ Issues that have consistently been priorities include social assistance and other income assistance programs, health, housing, education and training, and opportunities for the participation of poor people in decision making processes and policy making. According to Andrew Cordozo, NAPO is "the leading voice

for Canadians living in poverty.” He notes that although NAPO is clearly a thorn in the government’s side, “it is respected for its good research and continued attempts to provide alternative solutions.”⁵ NAPO has also been active in the area of human rights and poverty, consistently advocating for the recognition of social and economic rights in Canadian law both within Canada and without. For example, NAPO was granted intervenor status by the Supreme Court (within), and NAPO has successfully pressured the Canadian government internationally by making submissions to the committee on the United Nations’ Covenant on Economic, Social and Cultural Rights (without).⁶

NAPO pursues a welfare program which is not easily labelled. At times, NAPO’s project seems rather reactive in orientation, understandably attempting to at least preserve existing welfare programs.⁷ Although beyond the organization’s own self-understanding, at other times NAPO’s agency choices would indicate an appreciation of the problems of the welfare state which a more Habermasian reflexive project would demand. For example, NAPO has had as one of its central objectives an opening up of the parliamentary-bureaucratic deliberative structures to the ‘voices’ of low-income Canadians. Relatedly, NAPO’s contributions to the ongoing building of a strong anti-poverty civil society network help to develop and amplify low-income discourses. In short, no matter how materially ‘generous’ or well intentioned a welfare administration policy proposal might be, the real emancipatory impact of state intervention would be doubtful absent genuine consultation with the poor and incorporation of their perspective. That said, along with its role in protecting and developing an oppositional public discourse, NAPO has generally perceived itself merely as a mechanism for channelling these civil society impulses into our state

structures. As I have argued, however, if we are aiming for a reflexive welfare program, we must also seek to secure the democratization of our administrative structures through the institutionalization of legal procedures for informed participation.

NAPO's goal is the elimination of poverty in Canada. "Elimination of poverty", to NAPO, will have occurred when all Canadians have: adequate income, access to high-quality human services, autonomy and choice within their own households and lives, recognition of their contributions (both paid or unpaid) to the community and freedom from all forms of discrimination and complete social and economic equality. The stated mandate of the organization is to **provide a voice for low-income Canadians** on national issues and, thus assist local and regional organizations to bring the **input of poor Canadians to the decision-making and policy-making processes** in their communities.⁸

In order to carry out its mandate, NAPO undertakes to raise public awareness about poverty and issues of concern to poor Canadians, attempting to mobilize these alternative perspectives so as to produce broad shifts in public opinion. NAPO promotes these concerns as well as the values and wishes of low-income Canadians in an ongoing effort to achieve greater representation of these perspectives in our political institutions. While NAPO has not focussed its efforts upon democratizing state deliberative structures, it has attempted to achieve changes in public policy which better reflect the views of low-income Canadians. Concerned with protecting and developing the voice of low-income Canadians, NAPO helps facilitate the lifeworld communicative structures in which issues and concerns are first identified, reinterpreted, explained and prioritized. NAPO, accordingly, carries out research on such issues. Relatedly, NAPO plays an important role in building the larger anti-

poverty movement, working with local activists and organizations to strengthen local and national anti-poverty efforts.⁹ As I elaborated in my earlier discussion of social movement politics, such civil society communicative structures are vital to the collective genesis and development of oppositional discourses and counter-publics. Indeed, as I have already argued, struggles over identity provide a discursive foundation for the other types of movement politics. It is important to remember that this mode of politics, while defensive in terms of its lifeworld boundary maintenance role, should not be characterized as merely reactive, in that it serves to both protect and **develop** identity discourses. For example, while NAPO may articulate an alternate interpretation, 'statist' or otherwise, of the welfare state 'crisis', as a civil society association it can contribute to the development of its members self-understanding and, thereby, challenge the "common sense" of the Right.

As of April 1997, approximately 600 anti-poverty groups belonged to NAPO, with half of these groups able to contribute financially in the form of membership dues.¹⁰ NAPO's work is directed and governed nationally by a twenty-two-person voluntary Board of Directors, out of which a president, and five others are elected to the executive (NAPO's Executive Director also sits on the executive).¹¹ To be a NAPO Board member one must have had personal experience with poverty. All Board members are active in their own communities working on issues of concern to poor people. A small staff working out of NAPO's Ottawa office provides assistance to the Board.¹²

Sometimes NAPO is more research oriented. At other times, advocacy and lobbying are more the focus. These changes are sometimes "predicated on the leadership of the organization."¹³ NAPO is very leadership driven, particularly by the executive which is the

functioning working unit. Mainly due to budgetary constraints, the Board only meets once a year, with the remainder of inter-Board communication largely done by fax and/or E-mail. Therefore, the executive is essentially the heart and soul of the policy making process of the organization. Lynne Toupin (until recently, the Executive Director),¹⁴ during her five years with NAPO, observed a move from an education and awareness function, to more of an advocacy and lobbying role. In comparison to the harder lobbying tactics that they have used in the past, however, more recently, the focus has been on building linkages, awareness, and again on education.¹⁵ In short, as opposed to the other three offensive modes of movement struggle, NAPO has been mainly deploying a defensive politics of identity in concentrating on such strategies. Of course, external events such as shifts in political opportunity structure, also lead to major shifts in direction. For example, the Liberals' decision to end the Canada Assistance Plan and replace it with the Canada Health and Social Transfer (CHST) was met with a great deal of advocacy work by NAPO, and other anti-poverty groups.

III. Anti-Poverty SMO Survival in a Diminished Political Opportunity Structure

In this section, I examine NAPO's continued presence within our welfare policy environment as representing a significant political victory unto itself. NAPO has survived by adapting to an ever changing political opportunity structure. This brief review helps us to understand both the evolution of Canada's welfare policy field, as well as the corollary evolution and foundations of NAPO's current political program.

Since its inception, perhaps, NAPO's greatest struggles have been connected to its mere survival. While NAPO's stated goals and mandate may not have changed much over the past 26 years, the political opportunity structure in which they have operated certainly

has. For example, with the 1960s civil rights movement in U.S., and the emergence of welfare rights groups in Canada, the poor began to organize. This eventually led to policy statements in regard to the 'just society' by the early Trudeau government.¹⁶ In 1969, the Senate Committee on Poverty would diagnose the poor as unorganized and voiceless:

Changes are essential to the organization of our social services. The poor have a right to participate, to be heard, and, indeed, to share in the organization and administration of programmes created for them. They have the right to live their own lives in their own way without any other standards being imposed upon them. The mere fact that they are underprivileged does not mean that they should be deprived of their rights as citizens, much less human beings; for too long the Poor have been people to whom and for whom things have been done by others¹⁷

The above quotation illustrates the more positive political opportunity structure of the 1960s and 1970s, particularly with respect to movement politics targeting the promotion of democratically enhanced participation in welfare administration. It also reflects a popular political consciousness which recognized and was concerned with the disempowering side of the welfare state and its associated rights. Indicating our continued commitment to the welfare state project, in 1976 Canada became a signatory to the United Nations International Covenant on Economic, Social and Cultural Rights.¹⁸ The intellectual community was also generally supportive of a social-democratic welfare state ideal, as it seemed to promote both social stability and economic growth.¹⁹ In short, NAPO's early development took place during a period of general economic prosperity, resulting in a policy environment where ideals such as the "just society" could thrive.

Since the mid 1970's however, the welfare state policy environment has been much less supportive of the types of concerns related to NAPO's mandate.²⁰ With the late 1970's

recession the 'crisis' of the welfare state received a great deal of attention and debate. Consequently, NAPO's ability to support the work of its associated groups was being increasingly challenged. As organizations generally had to do more with less, NAPO too was forced to make cutbacks, resulting in reduced internal communication. Thus, while the need for guidance was greater than it had ever been, there was little direction coming from NAPO's Board. NAPO staff would be left to make some increasingly difficult program decisions, which proved to be problematic. NAPO experienced a severe organizational crisis, eventually leading to the resignation of several board members in 1981, an operating deficit of \$150,000, and the dismissal of the Executive Director. NAPO was subsequently placed into receivership and its key source of funding from National Health and Welfare was at risk. However, the remaining board members, longtime anti-poverty activists, rallied, appreciating that changes in the social policy environment required NAPO to change also.

NAPO's early form of identity politics was based on the development of grassroots associations. As I explained earlier, civil society associations like NAPO contribute to the protection and development of the lifeworld's communicative infrastructure. Within these counter-public spaces, low-income Canadians can collectively discuss, reinterpret and articulate alternative understandings of the welfare state 'crisis' and the projects required to address said 'crisis'. These grassroots organizations were meant to both challenge popular conceptions of poverty at the local level, and feed into wider political efforts of influence etc., at the regional and national level. NAPO considered this "grassroots" focus to be a failure. Consequently, NAPO was rebuilt on a foundation which now emphasised the importance of a strengthened national anti-poverty presence through centralized use of its

diminished resources.²¹ By 1986, although NAPO continued to build a consciousness raising anti-poverty counter-public network through its support of community organizing and self-help, their identity politics, as Kinnon puts it, “had definitely taken a back seat to pressure group politics.”²²

It is important to distinguish Kinnon’s reference to ‘pressure group politics’ from today’s more common negative conception. Kinnon describes the chief role of pressure groups as a democratic enhancement to the political system, providing “a network for policy communication,” wherein “these groups provide government with direct information about their constituents’ views and can in turn inform a segment of voters about changes in government policy.”²³ As Cardozo points out, today, such a democratically legitimate appreciation is no longer associated with the term ‘pressure group’²⁴ It is important to note that NAPO’s survival was, in part, a function of the organization’s ability to adapt to the changing external environment in which it found itself. Still, with this survival came a tension within the organization in regard to the extent to which a ‘professional’ staff threatens the identity securing and developing aspects of NAPO?²⁵ Does the introduction of non-poverty experienced professionals with expert discourses threaten NAPO’s role as a communicative counter-public in which low-income Canadians themselves can collectively reinterpret prevailing identities, norms and interpretations of poverty and the poor?

This is an issue that NAPO must continue to revisit. Given the integrated character of social movement politics, some use of professionals to develop and articulate an expert counter-knowledge seems essential. Additionally, should NAPO decide to pursue a reflexive welfare politics as I have been arguing for, the organization would need to utilize expert

counter-knowledge on several fronts. Legal and other professional advice would have to be incorporated into a counter-hegemonic rights-based politics aimed at realizing a renovated welfare accountability mechanisms, for example.

IV. NAPO's Influence in a Changing Policy Environment

Given Canada's social policy environment during the last ten years, NAPO's continued presence is indeed an accomplishment. Low-income issues have generally not found their way onto the agenda of the public sphere, at least in terms of a progressive discourse. In this section, I examine NAPO's continued ability to mobilize its perspective within public policy debates. This sketch reinforces my assessment of the need to augment informal civil society institutions, like NAPO, with a less precarious (i.e., an institutionalized) channel for the transmission of civil society communicative impulses.

Public sphere debates have been much less receptive to NAPO's normative messages with respect to the substantive needs or the political participation of low-income Canadians.. Certainly, it has not been easy to insert the voice of their membership into the official public sphere, namely, the parliamentary complex. Social security is popularly regarded as a personal and/or family responsibility, and the public has been quick to offer criticism of abuse and waste in the system.²⁶ Jean Swanson, in NAPO's President's Report (1996), characterizes the political opportunity structure in Canada, which was once marked by ideals such as the creation of a "just society" and a "war" on poverty, as an environment where:

*poor-bashing is almost a national sport, with newspapers, talkshows, and politicians thinking it is ok to discriminate against, stereotype, and promote hatred toward people on welfare and UI to their hearts' content.*²⁷

Not surprisingly, Lynne Toupin believes that NAPO's influence with respect to specific

policy matters is weakening. In other words, NAPO's ability to mobilize the anti-poverty perspective so as to achieve a broad shift in public opinion is declining. This perception is based on Toupin's ongoing relationships with former Directors and changes within her tenure at NAPO. For example, she notes that when the Goods and Services Tax was being brought in, NAPO worked closely with the Department of Finance in order to design a GST rebate that would better meet the needs of low-income people. It is clear to Toupin that since the mid-eighties until the present time, the importance of dealing with the debt and the deficit has prevailed.²⁸ As such, NAPO's activities have understandably assumed a rather reactive orientation, attempting to prevent further social security cutbacks.

As a function of this preoccupation with deficit reduction, opportunities for discussions around social policy were limited. In Toupin's words, senior bureaucrats and politicians:

*certainly did not want to be developing processes where they would be told over and over again what was happening . . . Their political decisions about how they were dealing with the debt and deficit made it such that space became very small, because all we could do was criticise. There wasn't a lot of room to be positive about the kinds of policies and programs they were developing. They were, in fact, increasing the number and depth of poverty. We knew that they knew that. So what is the point of having a discourse, particularly on their part?*²⁹

Toupin contends that the changes the last ten years have wrought on welfare programs have contributed to a policy environment, which while once characterized by some desire to improve the lives of the poor, is now filled with "**deserving and undeserving poor**" discourses, "**casting blame on people** as opposed to giving them support."³⁰ Such an environment greatly diminishes the space for dialogue or policy consultation, not to mention

the possibility of promoting the participation of low-income Canadians and other civil society actors as an accountability mechanism.³¹

Canadians appreciate the importance of consultation. We value it as an element of being the ‘authors of our own laws’. However, the political public sphere has had so many legitimacy problems that citizens find it difficult to trust their institutions of governance. Given the budget consultations process, for example, it can be difficult to see such practices as little more than show.³² NAPO Board member Beverly Brown has commented that “our social policy environment has become **cosmetically consultative** and open to the voices of advocacy for low income Canadians, but the [participatory] rights of this group are decreasing along with our incomes.” Brown goes on to state that:

*There is increased manipulation of the **accountability and transparency** process in our country. This takes the form of **fake public consultations**. The practice of public relations consulting has the convenient effect of producing a fake consensus for cutbacks, and can also be used to falsely claim that cutbacks are the will of Canadians.*³³ (Bold added).

Government funding is vital to voluntary organizations. Taken as a whole it comprises 56 percent of revenues, most of which is received from provincial governments. Only 10% of revenues are raised through individual donations and only 1% from corporate donations.³⁴ However, this government support has been contracting dramatically. Selective grant and contribution cutting began with the Tories in 1986-87 and almost every budget since has announced new and significant across-the-board cuts. The 1995 Liberal budget made more selective cuts to **advocacy and public education groups** and announced a major review of interest group funding. Welfare groups such as NAPO were cut 15 percent over three years.³⁵ The Canadian Centre for Philanthropy estimates that for every 1 percent in

government cuts to charities, a 5.8 percent increase in individual donations and a 49 percent increase in corporate donations is necessary just to maintain the previous level of funding.³⁶ Reductions of such magnitude are unlikely to be replaced with private money, particularly as Canadians already donate more of their time and money than do the citizens of many other developed countries.

NAPO, because of its high level of advocacy, as opposed to the direct provision of services to the poor, is especially vulnerable to the present mind-set of off-loading services. This residual role of providing services that governments or business cannot or will not is a very limited perspective on the role of civil society associations. Instead, the voluntary sector needs to be understood as an entity or force in society and in public policy in and of itself. As groups of citizens, voluntary organizations are “expressions of community,” representing identities, interests, and concerns with a view to changing public policy, educating the public and affecting the behaviour of society in general. In so doing, notes Phillips, they “create and maintain political spaces in democratic discourses for their constituencies, often disadvantaged ones.” She elaborates:

*In their representational capacity, (they) provide two kinds of knowledge: technical expertise about the population they represent or service that they provide and popular knowledge about the concerns and life experiences of their constituencies. They are thus useful sounding boards regarding what kinds of public policy would be accepted as legitimate or what kind of services would be used. In this way voluntary organizations play an important role in democracy that is a complement to, rather than a usurpation of, the role of political parties.*³⁷

In an age where “public consultation” is necessary to confer legitimacy on the public policy process, and to provide information that was once provided by government agencies,

governments would seem to need the input of organizations like NAPO more than ever.

That said, it has become common for both politicians and the media to question the legitimacy of such organizations. For instance, John Bryden, Liberal Member of Parliament from Hamilton-Wentworth, has been on a crusade against voluntary and citizen groups since his arrival on Parliament Hill.³⁸ Shocked to discover that such groups had more power than backbench parliamentarians, Mr. Bryden complained he “was in severe competition to be heard.”³⁹ The new populism holds that citizens should represent themselves during public consultations, referenda, petitions and recall, and of course with their vote during elections. As such, the only legitimate third party representatives are elected officials, political parties and legislatures. As Toupin explained, Bryden was making “false allegations” against NAPO, “claiming that we were not representing poor people” and that “we were just mispending funds.”⁴⁰ While such facile attacks on NAPO’s legitimacy may not be able to surmount the respect the organization has engendered over the years,⁴¹ these reflect ongoing tensions that remind us that non-institutionalised social security accountability mechanisms provide less than a secure source of low-income citizen input.

Given the current government rhetoric around the importance of the voluntary sector,⁴² I believe NAPO and other civil society associations would do well to remember that maintaining the space for their influence in the political public sphere must remain an ongoing struggle. Indeed, a politics of reform which secures and develops the space for low-income Canadian participation should always be part of NAPO’s larger social struggle. If the political opportunity structure becomes such that a legally institutionalized channel for greater participation in our governance structures of discourse can be realized, NAPO and

other anti-poverty civil society associations would be in a much stronger and stable position to continue to facilitate the input of the low-income Canadian perspective into the official public sphere.

V. NAPO as a Source of Public Sphere Counter-Knowledge

As noted earlier, NAPO has at various times in its history employed tactics aimed at both the political public sphere (the state) and at articulating/mobilizing an alternative perspective within civil society.⁴³ While NAPO does not specifically utilize a reflexive theoretical framework, here I review some of its activities which would indicate a regard for civil society as an important terrain of public dialogue and social contestation. Lynne Toupin notes that, at present, their efforts toward influencing civil society are more prominent than they have been in the past, in part, resulting from the organization's perception that they have had "very little success with the formal lobbying structures", such as knocking on MPs doors, appearing before committees etc. NAPO is developing a greater appreciation for its role as a counter-public, focussing on the terrain of civil society and public opinion as a key site of social struggle.

NAPO has utilized a number of tactics in their civil society efforts. The present emphasis has mainly been on raising awareness and educating Canadians about specific issues related to poverty. To do this, NAPO speaks to many types of organizations including churches, unions, and United Ways. One of NAPO's most important civil society oriented efforts this past decade was its organization of a second Poor People's Conference, held in October 1993. NAPO uses these and other tactics to contribute to the wider anti-poverty movement's ongoing struggle to challenge prevailing notions of poverty and the poor. For

example, NAPO recognizes that a politics of identity is necessary to counter prevailing poverty myths such as the prevalence of welfare fraud. Unless popular notions that equate the welfare recipient with system 'abuser' are countered, increased state surveillance will likely continue to rise, along with further lifeworld colonization. Moreover, without an adequate identity discourse foundation (i.e., as counter perspective) an anti-poverty politics of influence would seem to be hopeless. A politics of influence aimed at producing a broad movement in public opinion could ultimately apply pressure on state communicative structures like Parliament, the courts and the administration. Once again, we are reminded of the necessity of conceptualizing social movement struggles as an integrated project. Perhaps this helps to explain why NAPO has shifted its efforts back toward the protection and development of Canadian anti-poverty associations. Faced with a difficult social policy environment, NAPO has clearly decided to turn its attention back to building its grassroots support. Undoubtedly, this change in focus is also linked to NAPO's recognition that its contemporary efforts to directly influence government policy-making have not been very successful.

One of the internal problems for anti-poverty groups in trying to develop a successful social struggle politics is that these organizations themselves tend to be poor. They have limited resources and, particularly in our present policy environment, they are marginalised. Relative to the environmental movement's ongoing struggle, for example, one need only consider the anti-poverty movement's contemporary political opportunity structure, and the available internal organizational resources to appreciate the considerable challenges NAPO comparatively faces. The environmental movement has been fairly successful in articulating

a green discourse and achieving broad shifts in public opinion over the last few decades. Political parties of all stripes seem to have been at least partially ‘greened’, and many ‘responsible’ baby boomers now self-identify with green politics, both in public discourse and in charitable support. Our *collective* environmental responsibility has become ‘good’ political sense. Alternatively, as evidenced by popular concerns around welfare abuse, and the increased use of program targeting (e.g., toward children), poverty seems to be moving more and more toward an individualized framework, as opposed to a collective concern. Through a model emphasising individual responsibility, the poor can be categorized on the basis of ‘deserving’ and ‘undeserving’, making the mobilization of public opinion around low-income issues and perspectives much more difficult. Broad anti-poverty struggles are especially dependent today on the collective consciousness developed within the identity politics of civil society associations.

Discussing NAPO’s recent network building activities, Toupin notes that anti-poverty groups and individual poor people:

*have a tendency to work in a vacuum and without those connections. So we feel it is our role to sometimes let them know who is out there and to build those bridges or build those linkages . . . is that the beginning of civil society? I don’t know, but it is something that we feel is important because of the limitations of the other methods.*⁴⁴

Developing strong internal linkages obviously helps NAPO facilitate the creation of a stronger oppositional public, and in turn, its ability to more readily mobilize public opinion around low-income issues and perspectives. NAPO Newfoundland Board member Beverly Brown notes that struggles directed toward civil society rather than the state are very much part of her work with NAPO. For example, NAPO work in Newfoundland focuses on

educating the public (through media interviews and public meetings), letter writing campaigns (particularly to big businesses asking them to pay taxes and be responsible corporate citizens), and working with other groups on specific issues. Groups that Ms. Brown has worked within the last three years include the Coalition for Equality, Youth for Social Justice and the Council for Canadians. In the same time period, she has helped organize two poverty forums, workshops on poor bashing and discrimination for affected groups and service providers, cable television programmes in Newfoundland on social justice issues, and demonstrations against increasing unemployment. All of these activities provide NAPO with an opportunity to challenge dominant perspectives around the poor and poverty, and to introduce an alternative counter-hegemonic low-income discourse.

When contrasting efforts such as the above with those aimed at targeting the state directly, NAPO representatives are quick to point out that there are both positives and negatives in the focus on civil society. Lynne Toupin says:

*Some aspects of the civil society discourse are attractive and others are scary. Aspects that I like and that I think NAPO would like to buy into is this notion of collective responsibility within a community. The notion of rebuilding the links between different social classes, for example, could be one of the nice aspects. Some of the members believe this would **improve their participation in policy making** if you really bought into the civil society model.⁴⁵*

But Brown worries that “charity” has already become “a cornerstone of social welfare policy in Newfoundland instead of adequate welfare rates, or even better, full employment.” She notes that there are fewer procedural rights available to the charity recipient than the social assistance recipient. For example, people can be turned away from a food bank for any number of reasons (wrong religion, not on social assistance, the wrong parish etc.), with no

redress. Lynne Toupin has similar concerns:

Where I get nervous is "civil society" seen as a way to disengage the state. Because then there are concerns that we will not have adequate resources to deal with the basic needs of people. When you are moving into shelters or food banks that are privately run, or are run on charity particularly, then you know you are moving into a whole host of problems. The recipient is put into a very different position as a civil society participant. You are an object of charity, which has a whole different set of meanings. And secondly, you need some dependency in terms of that you need to be able to depend on your source of income as well. And we have seen in food banks, for example, that without an ongoing and a stable source of funding, there are times when the fridges and warehouses cannot meet the demand. It is subject to the vagaries of what people are going to give, and yet food is a basic need. Who should cover off the basic needs of food, clothing, and, in Canada I would add, health care and basic education? So there are attractive and fearful elements around the civil society model. I worry because some people use it to disengage the state and others, I think, are really very hopeful that out of this will emerge a new model where people will be more engaged. That's good, but who knows where it is going. It always depends on who takes a hold of it and runs with it too.⁴⁶

These NAPO representatives remind us that conceptions of a reinvigorated "civil society" can potentially be just as dark as the "dark side" of modern welfare states. Although government surveillance would be lessened, under civil society alternatives there are no safeguards in terms of access to assistance or participation in the processes of design and delivery of that assistance. Who's to say that charities would not put recipients through a vigorous and/or intrusive screening process of deserving/undeserving poor? There is no "right" to charity, nor do recipients of charity enjoy basic accountability rights such as a transparent system of eligibility, or the ability to appeal a decision to deny or reduce benefits.

One way to possibly alleviate some of the concerns outlined above is to encourage active citizen engagement in a democratically enhanced voluntary sector. Unfortunately,

according to Susan Phillips, there are several sources of pressure that may affect citizen engagement in the voluntary sector. The current assault on the credibility of voluntary organizations may make it difficult for certain types of associations, particularly advocacy groups, to attract members and volunteers. Off-loading of social programs by governments often leads to the “professionalization” of voluntary groups, which may result in decreased opportunities for democratically enhanced citizen involvement. And third, demands by government to provide welfare programs involve “an overly facile understanding of the dynamics of voluntary organizations and the nature of the commitment involved,”⁴⁷ particularly in regards to the lack of staff available for training and monitoring, as well as the effects on paid workers. Coercion into an activity such as volunteering destroys its essential meaning. Further:

*citizen engagement is not achieved merely through the provision of free labour, but from the opportunity to undertake activities that build civil society and democracy: to voice divergent views; put new issues on the political agenda and work together to change public policy and society at large. It is, therefore, incorrect to assume that welfare is the equivalent of, or will satisfy, the need for citizen engagement*⁴⁸

In short, while a reinvigorated civil society could assist NAPO and other anti-poverty social movement organizations in efforts aimed at realizing and maintaining a reflexively continued welfare state, some caution is warranted. Accordingly, I have argued throughout this thesis that a strong civil society provides a key discursive check on the state, but that counter-publics like NAPO cannot replace our public processes of accountability. As I have asserted, NAPO and others would do well to target the democratization of our public communicative structures of opinion-and-will formation. In the following chapter, I will examine a possible

legal strategy that, in part, aims to progressively reform our current welfare state accountability framework.

Probably the most visible of NAPO's education functions is educating the public (and government) about myths surrounding welfare recipients. As noted throughout this thesis, "welfare fraud" is considered to be rampant.⁴⁹ And yet, the Social Planning Council of Ottawa-Carleton tells us that:

*Recent regional figures estimate that welfare fraud amounts to about 1.1% per year of gross expenditures and 4.5% of the general welfare caseload. This is down from previous years. This compares to the estimate that 15% of Canadians commit income tax fraud.*⁵⁰

Poor-bashing is engaged in by the public and by public officials alike. Mr. Chretien's comments about "beer-drinking" recipients were well-publicized by NAPO. This brings us back to the importance of engaging with the state directly in terms of democratization efforts, but also, the vital foundational role of social movement politics aimed at protecting and developing identities and norms through an ongoing struggle around the form and content of discourses.

Not surprisingly, a large proportion of NAPO's work over the last two years has been dealing with myths about poor people. They have developed a list of commonly held myths that are a real barrier to low-income people in a number of ways. For example, they try to counter the myth that poor people don't work by using statistics to show that in 60% of single parent homes on social assistance, that parent worked either full or part time during the year. Toupin speculates that one reason we tend to "blame the victim" is that if we can convince ourselves that social assistance recipients are at fault, then we feel safer ourselves.

She says:

because they somehow have to believe that it is a question of personal responsibility, i.e., it is easier to accept that, because if it is a question of social and economic conditions that make it such that I could be poor, I have a lot less control over that.⁵¹

It might be argued that NAPO's efforts to counter poverty myths are merely a reactionary politics, contributing little to a reflexively oriented movement program. However, I would place these efforts within the defensive identity politics category of an integrated social movement politics. Once again, we have to remember that such efforts are complementary to the other offensive types of movement politics like influence, and clearly represent important initial steps in developing a counter-hegemonic politics in this area given prevailing popular perspectives on poverty and the poor. That said, a politics of identity or influence targeting the terrain of civil society will be inadequate in terms of realizing a reflexively continued welfare state. I have argued that a successful movement politics must also target the state. In terms of opening up communicative structures like accountability to the discursive force of civil society impulses, the state is a fundamental site of social struggle.

VI. NAPO and the Political Public Sphere

Despite NAPO's long history of directly engaging with the state in terms of trying to exert pressure for social policy that better reflects the needs of low-income Canadians, NAPO's recent political public sphere campaigns have engendered a cynicism within the organization. This section, and the next, illustrate that there is a growing tension within NAPO regarding the utility of targeting the courts or our parliamentary-bureaucratic

complex.

As noted previously, NAPO went into the Social Security Review initiated shortly after the Liberals took office in 1993 with a fair amount of good will. When the Minister of Human Resources Development initially started talking about reform, he said the reform was not predicated on budget constraints. However, during the same time period, the Minister of Finance was talking about upcoming cuts in the next budget.⁵² The Social Security Review (SSR) was then delayed several times and finally got underway in mid-January. By that time, the Department of Finance was giving clear signals as to the kind of budget that was imminent. NAPO was able to use the funding provided by HRD (to assist in giving presentations) to reconnect with many of the groups they had worked with in the past. So even though NAPO was, by that time, very sceptical about the “Reform” they were able to use that money for a good cause, getting other groups involved and reconnecting with them.⁵³ Further cynicism was engendered by the extremely constrained time frame in which presentations to the HRD Standing Committee eventually had to be done. Only ten days were allotted.

While NAPO was able to use what turned out to be a disappointing experience to its own benefit in terms of rebuilding a network of anti-poverty groups, the SSR caused a lot of scepticism among NAPO and other groups.⁵⁴ The main result seems to be the feeling that the government has already decided on its course of action before it actually “consults”, so the consultation process is cynically regarded as “window dressing.”⁵⁵ This would again reinforce the need for a movement politics that includes an emphasis on institutional reform so as to secure democratized channels for communicative impulses from civil society into

the parliamentary-bureaucratic systems. Thus, some of the legitimacy problems associated with our current welfare state program would be alleviated. For example, a dialogically renovated accountability mechanism would provide the political procedural conditions for democratically increased and reformed exchanges on policy development and review, thus, potentially achieving a more receptive and responsive welfare administration

Already disillusioned with the Liberal government's commitment to social security for poor Canadians, NAPO entered arguably its most intense lobbying campaign of the last four years when, in 1995, the Federal Budget announced the end of the Canada Assistance Plan (CAP) and a plan to move to a block funding arrangement for health, post-secondary education and social assistance, to be called the Canada Health and Social Transfer (CHST).⁵⁶ Because it would be a transfer payment with fewer conditions so as to provide the provinces with maximum flexibility and greater spending discretion, the implementation of the CHST meant that almost all national standards to protect poor people would be obliterated. The CHST eliminated CAP and combined the funds for social assistance with those for health and post-secondary education (previously under the Established Programs Financing), into a single block transfer. This measure fundamentally changed the social safety net, and by implication, the role of the federal government in the social policy field. It was made with virtually no public debate either before or after in an atmosphere where public attention was focussed overwhelmingly on the deficit. This deficit preoccupation, together with a great lack of understanding about social services (in contrast to health care and education) meant that the introduction and passage of legislation on the CHST went almost unnoticed by the general public.⁵⁷ In light of prevailing attitudes regarding the

normative value of programs such as general welfare assistance, NAPO and other anti-poverty groups seem to have been unable to 'mobilize' the low-income perspective regarding the nature of the welfare state crisis so as to effect a shift in public opinion. Without such a shift, NAPO and other groups could not exert adequate pressure on the parliamentary-bureaucratic process to save CAP.

CAP was ended as of April 1, 1996 thereby eliminating four of the five standards (including the right to an adequate income, the right to appeal, and the right not to have to work for welfare) for welfare programs. This act fundamentally changed our social security accountability frameworks.⁵⁸ Also in the 1995 Budget, the federal government announced cuts of \$7.4 billion in transfer payments for health, post-secondary education, welfare and social services between 1996 and 1998.⁵⁹

Lynne Toupin's remarks highlight the need for an institutionalized mechanism of citizen participation that democratically opens up our discursive policy structures:

The feds were so driven by deficit reduction that it affected our participation in two ways. One, there was no way they were going to give us any money to participate in any substantial way. Nor were they going to give us any substantial support to do it ourselves, i.e., to get people organized and participating. Two, they did not want to take the risk, at the time, when they knew clearly that deficit reduction meant cuts to social programs. they knew . . . I mean, with the CHST when you look at health, post-secondary education and welfare being the three programs that were going to be funded in the block . . . I cannot believe that the federal government did not know that the one that was going to be hardest hit and hit first was welfare because it is politically the least popular. It was the one where you could suck money out of the system and you would not have a rampage and you wouldn't be hit at the polls next time around. Health and post-secondary (education) to some degree were a different matter. So the approach of dealing with the deficit had a huge impact in terms of our ability to participate.⁶⁰

The NAPO CAP/CHST campaign, lacking the funding they had received for the SSR in

1994, therefore consisted of: getting people to lobby their MPs for the CAP rights, putting out about 30,000 flyers/newsletters about the CAP rights and strategies on how to fight for them, a month of action for national standards in March 1996 and a fast in Ottawa by Jean Swanson (then President of NAPO) and Guy Caron (then President of the Canadian Federation of Students).

Discussing NAPO's campaign around CAP, Toupin noted that while flawed, CAP was significant as it provided "rights for poor people":

*As limited as they were, they were much better than what we have now. You had a right to an income; you had the right to an appeal process; you had the right not be forced to work for welfare . . . and we are seeing the lay of the land 12-15 months after the CAP is gone, it was much better than what we've got now which is nothing. People thought in terms of that framework and they thought that they could ask for accountability by virtue of these CAP rights, and now nobody dares even refer to those rights. There are no rights for poor people in the way that we had them 12-18 months ago. CAP was not perfect, but it did provide that framework, and it is not there anymore. I think, also, that we have been successful in telling poor people that "you are lucky that we are taking care of you, so don't dare ask for more."*⁶¹

Toupin worries that the end of CAP rights is increasing inequality in this country in "we have not seen since the Thirties".⁶² It did provide for very basic rights for all Canadians. NAPO tried to make that understood to people in the brief time that they had to lobby on this. And, says Toupin, "obviously, we've not been too successful. There may come a day when we'll see again that we need to restore those rights because of the consequences of not having them anymore."⁶³

Another concern for Toupin is the effect on the psyche of the average person who has been living in poverty for some time. She believes the poor have come to accept the

hegemonic view of social assistance, that they are going to social assistance for a 'handout'. They are a 'charity case'. They don't have the 'right' to seek any accounting from the state, or to participate in our public communicative structures and processes. Alternatively, Toupin notes that a lot of recipients were tax payers at one time and may be again in the future. While welfare is a last resort when it comes to income, the reality is that it does serve a purpose, it is 'better than nothing'. Today however, there seems to be a notion that when people become poor somehow they are less worthy of public autonomy than they were before. What low-income Canadians may have contributed to society, and even what they currently can contribute, perhaps in non-monetary terms, is not valued. The poor are seen as "a drag."⁶⁴

The failure to save CAP, or at least the rights contained within it, has clearly been a disheartening experience for NAPO and helps to explain why, at present, they are so discouraged with the notion of engaging directly with the political public sphere. NAPO believes, given the current policy environment, that they are unlikely to 'win' struggles waged on the terrain of the state. Given the interrelated nature of social movement politics which I have argued for in this thesis, failure to apply both sides of the dual state-civil society focus would be a dangerous strategy. In particular, given the emphasis in this project upon a need for a dialogically renovated social security accountability framework, and the institutionalized structures and procedures required to support it, an offensive politics aimed at democratizing state discursive and deliberative structures is critical. In terms of realizing the ideal of a reflexively continued welfare state underlying this project, it seems clear that an offensive politics aimed at reforming our state communicative structures so as to open

them up to civil society impulses generated by individuals and associations like NAPO is unavoidable.

VII. Exploring NAPO's Self-Understanding of the Utility of Law / Rights Tactics

In this last section, I review a number of NAPO's legal engagements. While NAPO has enjoyed some 'success' with legal tactics; as the following demonstrates, their perspective on the progressive utility of law remains ambiguous at best. I would suggest that NAPO seems to suffer from the narrow 'litigation conception' of rights-based politics that I criticised in the last chapter. Still, perhaps one of NAPO's most "successful" engagements within the last seven years has been NAPO's submission to the United Nations. In 1976 Canada and all of the provinces signed the International Covenant on Economic, Social and Cultural Rights. On May 17, 1993, the Charter Committee on Poverty Issues and NAPO gave a 45 minute presentation and an eighty-nine-page written submission⁶⁵ to the U.N. Committee charged with monitoring compliance to the Covenant charging that Canada was not meeting those commitments.⁶⁶ The Committee meets every five years, but this was the first submission ever heard from a non-governmental organization. It contained documentation to show that Canada was not complying with the *Covenant's* undertakings.

The subsequent publicity was good for NAPO. The Canadian media picked up the story. Subsequently, there were questions in the House of Commons, which embarrassed Prime Minister Brian Mulroney and his government. In particular, says Toupin, the emphasis was on "in a country as rich as ours, it is just not good enough, you just haven't done enough in terms of alleviating poverty and progressing on the problem."

As previously noted, when the CHST was implemented and CAP was ended, NAPO

and CCPI were dismayed because the few rights that poor people had had were gone. Accordingly, the two groups wrote to the U.N. Committee, noting that Canada had just abolished CAP, which is what the government had always invoked in government reports to the Committee as the way in which it was responding to its commitments under the Covenant. With no more CAP, how would Canada say it was responding to their commitments NAPO and CCPI wanted to know? The Committee wrote to the Canadian government expressing curiosity about this, and the Canadian government responded that they were sending out a report. Two years later, the government had not yet replied. The federal government stated that its report was coming out in March 1997, then April 1997. NAPO and CCPI were planning on going back to Geneva in 1998. While communications are very diplomatic at the U.N. level, Toupin does not think the Committee's patience is endless. The U.N. has indicated that if the government is not forthcoming on this matter, they will deal with it as a separate issue, which would be a major coup for NAPO/CCPI. NAPO has continued with these tactics, although as Habermas has noted, institutions like the U.N. do not lead to direct responses since there is no enforcement mechanism. It does however, accomplish two things. First, it highlights the issue of social and economic rights on an international stage, and the Canadian government is interested in avoiding such negative publicity. Secondly, it is an opportunity to bring forward the issue of social and economic rights in a context which is a little less problematic, that is to say, the political opportunity structure for advancing the anti-poverty perspective is widened within the context and discursive form of a U.N. document. In terms of attempting to mobilize public opinion around such rights, and in comparison with debates dissociated from this larger

international framework, Toupin believes that somehow NAPO's perspective has more credibility when couched within a U.N. document.⁶⁷ As Toupin states:

*This is where we are going to continue to do our work. And part of the reason we went to the United Nations is that we believe so strongly in the document itself [the International Covenant on Economic, Social and Cultural Rights] and in the validity of those particular rights. And secondly, out of frustration for the fact that we were going to the Canadian government, we were going to the federal stage and our concerns were largely falling on deaf ears. And so, we also know that Canada is not terribly comfortable with criticism on the international stage. I don't think anyone's thrilled with the fact that we have to go this route. I mean, a lot of us would prefer to bring some resolution to these concerns domestically. But there was such a sense of frustration that this is kind of a last resort, a last tactic.*⁶⁸

In part, NAPO's sense of frustration can be attributed to the limited 'success' they have perceived themselves as having within the context of Canadian 'legal' struggles. While NAPO's attempt to mobilize its anti-poverty perspective by articulating an oppositional politics within this international arena is laudable, I believe, at least initially, this can only hope to exert some pressure on the parliamentary-bureaucratic complex. However, as my review of the counter-hegemonic possibilities of rights discourse demonstrated, we need to recognize that such struggles are marked by a gradual exchange of "common sense" with "good sense".

Another "formal" action, i.e., directed toward the state, which NAPO has undertaken in recent years is their intervention in *Finlay v. Canada* (Minister of Finance) [1993] 1 S.C.R. 1080. *Finlay* is arguably one of NAPO's most important political successes in that it served to democratically expand one of our key communicative structure - the courts. Nevertheless, the implications of this case in terms of NAPO's current negative evaluation of the transformative utility of rights-based politics are significant. The case was taken by

a fairly high-profile law firm doing some pro-bono work, in and of itself probably a key element in it moving forward. Jim Finlay is a disabled welfare recipient from Manitoba, a province with notoriously low welfare rates. In what would become a ten-year court battle for the rights of poor people under the CAP Act, he first had to go all the way to the Supreme Court of Canada to be granted public interest standing⁶⁹ so that he could then bring an action alleging that the terms of the Act had been breached by the Manitoba government. Mr. Finlay then worked his way back up to the Supreme Court on that issue. Initially the Court could not reach a decision and the case had to be re-heard. Finally, on March 25, 1993, the Court ruled 5-4 against Mr. Finlay.

Mr. Finlay was receiving social assistance in Manitoba at a rate of 56% of the poverty line, when the province decided to deduct 5% a year for ten years from his welfare payments in order to recover past “overpayments.” These overpayments resulted from administrative “errors” on the part of the government, such as moving expenses which had been approved when Mr. Finlay was ordered to move and then later demanded back after he had paid the expenses.⁷⁰

Mr. Finlay sought a declaration that federal contributions to the Manitoba social assistance scheme under CAP were illegal so long as the Manitoba *Social Allowances Act* (SAA)⁷¹ continued to authorize reducing an allowance below the level of basic requirements, or so long as Manitoba permitted its municipalities to establish their own rates of assistance.⁷² The language of CAP required a province to provide financial assistance in an amount or manner that “takes into account the basic requirements” of a person in need in order to be eligible for federal contribution. The trial judge found that the province’s scheme

for deductions of overpayments violated CAP, but that CAP did not prohibit municipalities from setting social assistance rates. The Federal Court of Appeal held that the province of Manitoba was breaching CAP on both grounds.

At the Supreme Court level, Mr. Finlay's counsel argued that if a province has a duty, under CAP, to establish an amount of assistance which takes into account the recipient's basic requirements, and if that amount has been established, then how can 95% of that amount be deemed to be adequate? Evidence was presented that, as a result of these deductions, Mr. Finlay was unable to eat three days of each month and had lost 60 pounds.

NAPO intervened in the case at both the Federal Court of Appeal and the Supreme Court of Canada. In and of itself, the Supreme Court's granting of intervenor status to NAPO and the general establishment of the category of "public interest standing" for groups or individuals to challenge government action even when not directly affected by that action is a significant element of this case. This was certainly the first time an anti-poverty group had intervened in a case before the Supreme Court. NAPO argued that CAP should be interpreted consistently with Canada's obligations under the United Nation's International Covenant of Economic, Social and Cultural Rights. Using the Covenant's language of "adequacy", they argued that recipients must receive an income sufficient to provide for an adequate standard of living. The majority decision on the Court held, instead, that welfare payments must be provided in an amount "compatible" with the recipient's basic needs and that the province had "substantially" complied with CAP. Therefore, deductions from an individual's social assistance to permit recovery of overpayments did not violate CAP or the agreement between Manitoba and the federal government.⁷³

However, the ‘adequacy’ principle put forward by Mr. Finlay and NAPO was affirmed in the dissenting judgement written by Madame Justice McLachlin and was not expressly rejected by the majority decision:

An interpretation which ensures that at least the basic requirements of the person in need are satisfied complies with the principle that a court, faced with general language or contending interpretations arising from ambiguity in statutory language, should adopt an interpretation which best assures adequacy of assistance.

Further, Madame Justice McLachlin noted that the Manitoba allowance for basic necessities included food, clothing, personal needs, household supplies, shelter, utilities and fuel. This list corresponded exactly to the “basic requirements” in CAP. She argued that any deduction from these amounts would therefore result in payments below the minimum level specified in CAP. The crux of her argument was that:

while the Manitoba allowance also provides for certain items beyond the “basic requirements”, it is clear that they would be provided only in unusual circumstances and that none of them would enhance the recipient’s spending position, since they are all destined to reimburse third parties. Since recipients of social assistance in Manitoba thus never personally receive more than their basic requirements, any deduction will necessarily deprive them of a portion of their basic requirements (emphasis added)

In short, if Manitoba recipients only ever receive basic requirements how can any deductions ever not cause undue hardship?⁷⁴

While the case was eventually lost, there were several ‘positive’ results in bringing it forward. First, these issues received the public notice granted Supreme Court cases. Further, it was a close decision (5-4), giving legitimacy to their (NAPO and Mr. Finlay) arguments. The case helped to mobilize a number of organizations around Mr. Finlay’s particular situation and the broader political questions related to this court challenge. So

while the results were disappointing for NAPO, the organization does, at least in part, seem to appreciate the wider discursive role of such rights-based political tactics:

we cannot ever lose sight of the fact that this kind of public event, dealing with very clear institutions, does give us some kind of visibility and it also brings a number of other players together to give support to the organizations that we cannot do. We don't have that kind of visibility often. So from an organizing support perspective, I think it was useful. From the point of interpreting law in favour of poor people, clearly it wasn't. It did not have all the results that you would hope for.⁷⁵

However, even when narrowly assessed in terms of the results of the litigation itself, NAPO would do well to remember that *Finlay* managed to establish the right of a welfare recipient to challenge provincial practises under CAP. It is significant, too, that the court expressly rejected Manitoba's argument that there was no duty to meet basic requirements, but merely to consider or take into account such needs prior to setting the benefit levels. The case is also important in terms of the advancement it represents with respect to increased low-income citizen engagement in this particular public structure of discourse and deliberation - namely the courts. Through this case, the Supreme Court established the concept of 'public interest' standing in Canada, which clearly represents a degree of opening up of our structures of discourse in terms of the potential inclusion of counter-public knowledge such as NAPO's.

Still, the end result of this case was very discouraging for NAPO's membership, who are now apt to see legal challenges generally as "not worth it" and to conclude that they "have to work only with the grass roots and build this huge movement from the bottom." NAPO had a lot invested in this case and it is easy to see how, based upon their lived experiences in this instance, why many in the organization might be unable to see the

positive benefits of this particular case or future legal engagements, let alone to conceptually move beyond traditional understandings of rights politics. However, there is another school of thought within the organization who believe that they must continue “to challenge the existing institutions with these issues.”⁷⁶ In short, NAPO’s internal assessment of the transformative utility of law or rights-based strategies reflects some of the tensions I illustrated in the last chapter. Unfortunately, given my earlier arguments with respect to the necessity of targeting the state directly, and in particular, the importance of conceiving of law as arena of ongoing social contestation, NAPO’s recent engagements tend to indicate a rejection of these offensive types of struggles in favour of essentially defensive civil society identity politics.

On the other hand, in the next chapter I will reconsider a legal strategy utilized by NAPO recently in an offensive reform type politics. I will examine an alternative Charlottetown round constitutional proposal made by NAPO, which, when renovated along the lines of a reflexively expanded conception of rights politics, may provide a target for a limited politics of reform in support of the previously elaborated Habermasian deliberative or procedural model.

In review, in this chapter I have examined a number of NAPO engagements which illustrate various external and internal challenges for the organization in terms of its development of progressive movement political strategy and the realization of its mandate. I have also demonstrated that the stated objectives of NAPO, while perhaps beyond the organization’s current self-understanding, do share a certain affinity with the objectives advanced in this thesis; namely, to increase participation of citizens in the communicative

processes of welfare administration. That said, NAPO's agency choices and targets clearly indicate that it is not specifically pursuing a reflexive welfare state political program. In fact, the organization's strategy can be generally characterized as reactive in the sense that it has understandably simply tried to forestall further welfare state retrenchment. Furthermore, while NAPO may appreciate the need for a dual state-civil society SMO political focus, NAPO's engagements have increasingly tended to centre upon civil society and a defensive politics of identity.

As I have argued in this and previous chapters, an integrated anti-poverty social movement politics certainly requires struggles around the form and content of discourses so that counter-publics like NAPO can protect and develop an oppositional interpretation of identities and norms. Eventually, these alternate interpretations could be articulated and mobilized within civil society or the political public sphere in a politics of influence. However, we must remember that such struggles are only one of the elements within an integrated movement politics. Even in terms of NAPO's mandate of securing a voice for low-income Canadians in welfare policy formation, should NAPO not be targeting an opening up of state discursive structures? I have argued that although NAPO serves an important counter-public role by way of channelling the communicative impulses of its membership into the parliamentary-bureaucratic complex, in comparison with the realization of legally secured rights to informed participation in the discursive structures of welfare administration, NAPO is a precarious instrument of democratically enhanced participation. NAPO plays a significant, if 'weak', civil society accountability role. However, it cannot replace, for example, the realization of a democratically and dialogically enhanced welfare

state accountability framework with supporting procedural rights. In short, while NAPO could provide an important civil society contribution to the operation of a reflexively continued welfare state, it in no way supplants the need for targeting the democratization of state discursive structures.

I have additionally argued that it is understandable that NAPO or other anti-poverty SMOs may be disheartened with their experiences targeting the state directly, and in particular, the transformative utility of law. However, the political public sphere remains a key arena for social contestation. For example, unless the anti-poverty movement is able to articulate alternative normative policy responses, to introduce these into the universe of political discourse, and in turn, to mobilize public opinion so as to exert pressure on our opinion-and-will-formation structures, then associations like NAPO will remain mere 'weak' counter-publics. As I have already described, the counter-hegemonic utility of rights discourse provides an important tool for such struggles. Accordingly, to dismiss legal tactics on the narrow basis of litigation's political potential would be unfortunate. A further implication is the need to appreciate that a prerequisite for the politics of influence just described, is a politics of reform aimed at securing procedural rights to informed participation in state discursive structures. While NAPO has clearly waged important struggles within the political public sphere, I maintain that an integrated movement politics, together with an expanded conception of the role of rights-based politics, would greatly benefit NAPO in terms of its stated mandate. Moreover, given the ideal underlying this thesis, such a reoriented political struggle would be critical in terms of realizing a reflexively continued welfare state.

I turn now to reexamine yet another NAPO engagement. Specifically, in the next chapter, I consider the underdeveloped reflexive potential within NAPO's Charlottetown round constitutional proposal, the ASC. I believe that NAPO's Alternative Social Charter may represent a model for institutionalizing Habermas's proceduralist approach. In particular, it may offer a concrete example of how we might democratize our state discursive structures, including the realization of a more reflexive social security accountability framework. The ASC, or a similar type of strategy, would utilize the institutional function of law to provide a potentially more secure avenue for democratic dialogue and social struggle. When considered in relation to the important but, as I have demonstrated in this chapter, precarious transformative role played by NAPO, the ASC could represent a significant reform politics for broadening our public communicative structures.

Endnotes - Chapter Five

1. I have put 'choices' in single quotations to denote that many of these activities have been undertaken by NAPO as a reaction to macro policy pressures, such as those reviewed earlier (fiscal pressures, down loading, accountability politics). Consequently, as opposed to being the product of internal organizational reflection, NAPO, like other anti-poverty groups, has often found itself simply reacting. This is less a criticism of NAPO's organizational processes of reflection than it is a reminder of the diminished resource capacity NAPO has had to devote to such sustained strategic review. To the extent that my thesis may contribute to the organization's self-understanding, I consider this to be a useful function of this project unto itself.

2. As I have previously elaborated, in the Habermasian model privately and publicly autonomous citizens can utilize legally institutionalized procedures to actively participate in our deliberative structures, thus engaging in the ongoing process of articulating our legal order. In discussing proposals for escaping welfare state paternalism, Habermas explains the implications of his proceduralist orientation:

citizens must experience the organization of legal protection as a political process, and they themselves must be able to take part in the construction of countervailing power and the articulation of social interests. Participation in legal procedures could then be interpreted as collaborating in the process of realizing rights, thus linking positive legal status with the status of active citizenship.

Jurgen Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, (Cambridge, Mass.: MIT Press, 1996), p.411.

3. Margaret Wiebe, "The National Anti-Poverty Organization: History, Goals and Achievements," (NAPO internal document, 1979), pp. 1-3. For more information about the history and goals of NAPO see, NAPO, "All About NAPO," <<http://www.napo-onap.ca/napo-all.htm>>, November 25, 1997.

4. National Anti-Poverty Organization, Mission Statement, (Ottawa: NAPO, 1995).

5. Andrew Cardozo, "Lion Taming: Downsizing the Opponents of Downsizing," in Gene Swimmer, ed., How Ottawa Spends 1996-97: Life Under the Knife, (Ottawa: Carleton University Press, 1996), p. 321. Cordozo provides a brief description of NAPO's agency activities:

In recent years it has addressed issues such as the Canada Assistance Plan, pension policy, free trade, social security reform, the Canada Health and Social Transfer, labour market issues, the U.N. Covenant on Economic, Cultural and Social Rights, the rights of poor people under the Charter of Rights, and pre-budget planning.

6. National Anti-Poverty Organization and the Charter Committee on Poverty Issues, The Right to an Adequate Standard of Living in a Land of Plenty: Submission of the National Anti-Poverty Association and the Charter Committee on Poverty Issues to the Committee on Economic, Social and Cultural Rights (On the Occasion of the Consideration of Canada's Second Report on the Implementation of the International Covenant of Economic, Social and Cultural Rights, Articles 10-15), May 17, 1993, Geneva, p. 1.
7. For a view suggesting that such a defence of existing welfare programs is understandable, see: Amy Bartholomew, "Democratic Citizenship, Social Rights and the "Reflexive Continuation" of the Welfare State" (1993), 42 Studies in Political Economy, p. 142.
8. See NAPO's Response to the Federal Discussion Paper "Improving Social Security in Canada", (Ottawa: NAPO, January 1995).
9. NAPO, supra note 4, pp. 1-2.
10. Interview with Lynne Toupin, then Executive Director, National Anti-Poverty Organization, April 18, 1997, Ottawa, p. 1. Throughout this chapter, as much as possible, I have tried to include NAPO's self-understanding of these issues by quoting directly from its representatives.
11. Below is an outline of NAPO's process for establishing its Board of Directors. As you will see from the current list of Board members, NAPO attempts to represent every province and territory, and thus, in part, achieve a nationally developed policy direction.

Every year, about half the seats are open for election. Anyone who lives or has lived in poverty may seek nomination. A call for nominations will be announced in NAPO News three or four months prior to the Annual General Meeting of NAPO, which is usually held in May. Where there are more nominations than Board vacancies in a particular geographical area, an election will be held with all members in that area voting by mail.

British Columbia - Jean Swanson (Vancouver), Gisele Guay (Sechelt), Jacquie Ackerly (Victoria)

Alberta - Midge Cuthill (Edmonton), Fred Robertson (Calgary)

Saskatchewan - Morris Eagles (Regina), Dorothy Daoust (Saskatoon)

Manitoba - Virginia Maracle (Winnipeg), Pauline Riley (Winnipeg)

Ontario - Linda Lalonde (Ottawa), Barry Schmidl (Sudbury), Monica Petzoldt (Barrie)

Northwest Territories - Vacant

Québec - Jean Lalonde (Montreal), Guylaine Lebrun (Notre Dame des Prairies), Claude Trépanier (Temiskaming)

New Brunswick - Pamela Coates (Saint John)

Newfoundland - Beverly Brown (St. John's)

Nova Scotia - Verna Thomas (Dartmouth)
Prince Edward Island - Brian Curley (St. Peter's)
Atlantic - Edna Doiron (Saint John, N.B.)
Yukon - Sara Crangle (Whitehorse)

12. NAPO web pages: <<http://www.napo-onap.ca/napo-brd.htm#BC>> and <<http://www.napo-onap.ca/napo-all.htm#MEMBERSHIP>>

13. Toupin, supra note 10, p. 1.

14. Most of the research conducted for this thesis took place during Lynne Toupin's tenure as NAPO Executive Director. Her successor as of early summer 1998 is Laurie Rektor.

15. Toupin, supra note 10, p.1.

16. Trudeau Liberal Government Throne Speech, September 12, 1968, "House of Commons Debates Official Report: First Session - Twenty Eighth Parliament", 17 Elizabeth II, Vol. I, 1968, p.7.

17. Senate Committee on Poverty, Poverty in Canada: A report of the Special Senate Committee (The Croll Report), (Ottawa: Information Canada, 1969), p. 21.

18. The *Covenant* includes rights such as adequate housing, food and an adequate standard of living, as well as procedural or accountability rights.

19. As Ramesh Mishra puts it:

(S)ocial welfare looked like an eminently successful way of tempering freedom with security, economic growth with a measure of social concern and amelioration. No wonder all western industrial societies seemed to be moving, willy-nilly, in the same direction. Who but the diehard ideologue (of the Right or Left) could doubt that the welfare state was at once the correct and righteous path for the West?

Ramesh Mishra, The Welfare State in Crisis, (Brighton, Sussex: Wheatsheaf Books, 1984), p. 6.

20. In discussing with me the radically different opportunity structure NAPO faces today (i.e., as compared with the climate almost thirty years ago), Toupin wistfully noted she wishes she had been working for NAPO in 1971. Toupin, supra note 10, p. 3

21. Diane Kinnon, "Pressure Group Politics in Canada": The History of the National Anti-Poverty Organization" Carleton University School of Public Administration April 1986. Paper on file with NAPO (file # RE 2.4.3 NA), p.14.

22. Ibid.

23. *Ibid.*, p.21

24. Cardozo, *supra* note 5, p. 307, provides us with a useful definition:

Special interest group, single issue pressure group, lobby group:

These three terms have taken on pejorative connotations, to suggest that a group is demanding unwarranted or special treatment, and that it exists primarily to pressure the government for its own narrow interests. A special interest group is sometimes defined in more neutral terms as an organization that addresses a particular and clearly definable membership, such as manufacturers, or persons with AIDS; this usage is rare..

Cardozo sets out several other relevant definitions, contributing to our understanding of civil society associations and providing useful distinctions between the various terms used to describe these public sphere collective actors.

Public interest group:

A group whose members act together to influence public policy in order to promote their common concerns as well as to advance broad societal interests. The group is and its members are non-profit in nature and the group is not centred on providing direct financial or economic benefit to its members. Acting individually, the members would be relatively powerless. (p. 306.)

Voluntary organization:

An organization made up primarily of volunteers. There could be a small paid staff component that works under the direction of the volunteers. Public interest groups are voluntary organizations for the most part. (p. 306.)

A movement:

Generally a public interest group that does more than represent member views, and that works at more than one fundamental level to "move". The leadership of the movement educates the members about the full extent of the issues and the range of possible solutions, some of which may require challenging the government system or public attitudes. Examples are feminist groups, as well as the New Democratic and Reform parties. (p. 306.)

25. I explored the implications of this tension with Toupin, asking her if she believed there is a necessary compromise between NAPO membership participation and "effective lobbying". She replied by first pointing out that NAPO's focus has moved away from "harder lobbying" tactics toward the "building of linkages, awareness and education." However, she noted that she believes that NAPO is:

(n)ow at a point where we feel comfortable that poor people really do have control of the organization, that we feel comfortable enough that we

can go back and get expertise. . . [These experts] might not be on the board which is the best way [of introducing this expertise] but I was thinking of an advisory committee, for example, of people who are knowledgeable around these kinds of issues, but would not necessarily be making the decisions for poor people . (Bold added). . .

Toupin went on to say that loss of control by the membership has been a concern, as there used to be a time when there were non-poor people on the board. This was before her tenure with NAPO. The problem with that situation is that these 'experts' could "take a lot of room and perhaps drive things unconsciously or consciously". So there was a very deliberate attempt, in the last five years, to make NAPO **clearly a poor peoples organization.**" In part, this has meant that NAPO's staff have been left to develop linkages between "the board, the executive and people in positions of power." These compromises also reflect:

the practical financial reality that it has become very difficult to bring poor people into meetings, to Senate presentations, or to things on the Hill. . . they [i.e., parliament] are not willing to change their practices to accommodate the fact that you need enough time to bring people in, to make sure they are briefed on the issues and that they are comfortable going before a 'committee' . . . when there is no accommodation made for poor people to do it then we just cannot do it . . . part of the compromise is the staff... but we have to be clear that with a few exceptions the staff are not poor... they can talk on policy matters but they cannot talk from the personal experience (they can only bring it with them).

26. Angus Reid Group Opinion Poll, February 19 to 24, 1994, p. 5.

27. Jean Swanson, 1996 NAPO President's Report. NAPO describes poor bashing discourses as follows;

Poor-bashing hurts the poor. Poor-bashing is when people who are poor are humiliated, stereotyped, shunned, despised, pitied, patronized, ignored and blamed. Poor-bashing is when people who are poor are falsely accused of being lazy, drunk, stupid, uneducated, having large families, and not looking for work. Poor-bashing is directed at individual poor people, and at groups of people on welfare and (un)employment insurance. It encourages people to think in stereotypes and to discriminate against people who are poor. It blames individuals for being poor. This shifts the public's focus onto individual poor people instead of governments and corporations.

Lately, there seems to be a campaign of sorts being waged against the poor. Some media stereotype and discriminate against the poor, for example, by giving the definite impression that all people on welfare are fraud artists and that there is massive fraud in the welfare system.

Poor-bashing assumptions are behind some government policies and laws that are proposed, supposedly to benefit low income people. For example, people on welfare are often falsely stereotyped as being lazy and untrained. The government policy that responds to this assumption is Workfare, forcing people to work or train for their welfare. Poor-bashing assumptions provide a rationale for keeping welfare rates very low, usually at 25% to 70% of the poverty line, even though people may need more money to meet their basic needs.

NAPO, "Poor Bashing," <<http://www.napo-onap.ca/napobash.htm>>, March 20, 1998.

28. Toupin, supra note 10, p. 4.

29. Ibid.

30. Ibid., p. 6.

31. For a discussion of participation as an administrative accountability instrument in various contexts, see Robert Howse et al, "Smaller or Smarter Government" (Summer 1990), Volume XL University of Toronto Law Journal, No. 3, pp. 498-539.

32. Opinion research on social security reform has indicated that most people believe public consultations are "good news," as they are an important source of public input. However, those who categorized consultations as "bad news" said that they believed consultations would have little real impact. Angus Reid poll, supra note 26.

33. Beverly Brown, Written Response to NAPO Interview Questions, on file with author. Ms. Brown is the NAPO Board member for Newfoundland.

34. Ibid., p. 3.

35. Cardozo, supra note 5, p. 321.

36. Susan D. Phillips, "Redefining Government Relationships with the Voluntary Sector: On Great Expectations and Sense & Sensibility (A Discussion Paper Prepared for the Round Table on the Voluntary Sector, November 1995), p.3.

37. Ibid., p. 5.

38. As Cardozo, supra note 5, p. 314, found:

While the Reform Party has led the attack on funding, a lone liberal backbencher went on a similar crusade. John Bryden challenged the funding that went to fourteen groups, and the fact that some of them had charitable tax status. While his "report" had no consistent methodology, his status as a government MP seemed to give him licence to criticize with

abandon. His research methods were questionable.

39. Susan Delacourt, "Losing Interest," *The Globe and Mail*, April 4, 1995, p. D5. See John Bryden, MP for Hamilton-Wentworth, MP's Report-Canada's Charities: A Need for Reform, October 1996, p.7.

40. Toupin, supra note 10, p 7.

41. See Walter Stewart, The Charity Game: Greed, Waste and Fraud in Canada's \$86-Billion-A-Year Compassion Industry, (Vancouver and Toronto: Douglas & McIntyre, 1996), p. 67-68:

NAPO has an effective voice; it is, as a senior bureaucrat explained to me once I had turned my tape recorder off, "a royal pain in the ass," because it is always getting up petitions, holding rallies, buttonholing MPs, besieging parliamentary committees, turning out pamphlets that say in the same measured tones that Toupin uses to me, that the feds are not, after all, doing a good job of looking after Canada's social welfare system; they are doing a lousy job, and it is getting worse...When they hold meetings, in the cheapest halls they can find, with no banquets and no frills, the delegates from ten provinces and two territories are nearly all poor, too, and none of them arrives in a corporate jet or an executive limousine. When they pass resolutions, they are usually based on solid research. They know what they are talking about, when it comes to poverty, in a way that none of the outside experts who have set all the standards and made all the rules for so many years can possibly match; you cannot shut them down, you cannot sneer them away, you cannot shut them up.

42. See Chretien Liberal Government Throne Speech, September 23, 1997, House Of Commons Debates, Vol. 135, No. 002 (First Session, 36th Parliament) and The Liberal Plan 1997- Securing Our Future Together: Preparing Canada for the 21st Century (Ottawa: Liberal Party of Canada, 1997).

43. Habermas provides us with the following description of "civil society" in "Further Reflections on the Public Sphere" in Craig Calhoun ed., Habermas and the Public Sphere, (Cambridge, Mass.: MIT Press, 1992), p. 453-454:

the institutional core of "civil society" is constituted by voluntary unions outside the realm of the state and the economy and ranging (to give some examples in no particular order) from churches, cultural associations, and academics to independent media, sport and leisure clubs, debating societies, groups of concerned citizens, and grass-roots petitioning drives all the way to occupational associations, political parties, labor unions, and "alternative institutions".

44. Toupin, supra note 10, p.3.
45. Ibid., p.3.
46. Ibid., p.6.
47. Phillips, supra note 36, p. 11.
48. Ibid.
49. In the Angus Reid poll previously discussed, supra note 26, 81% of respondents agreed with the phrase that social programs are "too easy to abuse".
50. Social Planning Council of Ottawa-Carleton, Fact Sheet, January 1994, p. 2.
51. Toupin, supra note 10, p. 9.
52. Ibid., p.17.
53. Ibid., p.22. See also "The Reality Check: The Federal Social Security Reform", Brief Presented by the National Anti-Poverty Organization to the Standing Committee on Human Resources Development, Ottawa, March 8th, 1994.
54. As the NAPO brief to the HRD Standing Committee noted:
we were given to understand that the report of the Parliamentary Committee following this first round of consultations would feed into the process of the task force, which is preparing the action plan. Since the task force is already operational, are we to assume that the government has already made up its mind on the contents of the review and that the work of the Committee is nothing more than window-dressing?
 "Reality Check", supra note 53, p. 3.
55. Toupin, supra note 10, p.22.
56. NAPO, Executive Director's Annual Report 1994-95.
57. The Canadian Council on Social Development, Position Statement, March 5, 1996.
58. NAPO, Executive Director's Report of Activities for the Fiscal Year 1995-96, (May 1996).
59. The Canadian Council on Social Development, supra note 57.
60. Toupin, supra note 10, p. 7.
61. Ibid., pp. 8-9.

62. Ibid., pp.9.

63. Ibid., p. 29.

64. Ibid., p. 13.

65. The Right to an Adequate Standard of Living in a Land of Plenty: Submission of the National Anti-Poverty Organization and the Charter Committee on Poverty Issues to the Committee on Economic, Social and Cultural Rights (On the Occasion of the Consideration of Canada's Second Report on the Implementation of the International Covenant of Economic, Social and Cultural Rights, Articles 10-15) May 17, 1993, Geneva.

66. CCPI, Report to Members, Oct 1993.

67. Toupin, supra note 10, p. 13.

68. Ibid., p. 30.

69. To see other cases on public interest standing see Canadian Council of Churches v. Canada (Minister of Employment and Immigration) [1992] 1 S.C.R.

<<http://www.droit.umontreal.ca/doc/...dex.html&range=8&numdoc=31#nqIrefl>>

70. Charter Committee on Poverty Issues, Report to Members October 17th and 18th 1993.

71. Social Allowances Act, R.S.M. 1987, c.S160.

72. Finlay v. Canada (Minister of Finance) [1993], 1 S.C.R. 1080.

73. Ibid., p. 1081.

74. Finlay v. Canada <http://www.droit.umontreal.ca/doc/.../1993/vol.1/html/1993scr1_1080.html> p. 12 of 27. It is noteworthy that the alleged overpayments

of \$207.70 (related to shared accommodation), \$109.00 (for moving costs) and \$796.00 (for proceeds of a business development grant), **did not result in the gain of extra living expenses for Mr. Finlay**. For example, the moving cost "overpayment" resulted from a demand by the province that he move to a smaller apartment. Mr. Finlay has severe epilepsy and cannot drive, so he hired someone to move him for \$189.00. After he had moved and after the province had paid for the move, he was told he was entitled to a maximum moving allowance of \$80.00, and so he was deemed to have received an overpayment of \$109.00. It should further be noted that deductions under section 20(3) of the SSA state "the director may authorize the deduction of an amount that would not cause **undue hardship** to the recipient.

75. Toupin, supra note 10, p. 19.

76. Ibid., p. 20.

CHAPTER SIX

Accountability and Rights-Based Politics: Reconsidering the Merits of the Alternative Social Charter (ASC)

I. Pursuing a Reflexive Institutional Communicative Structure

In the previous chapter I examined various NAPO political engagements which took place within our political public sphere and/or civil society. Notwithstanding the important role NAPO and other SMOs can play as counter-publics, I have argued that an anti-poverty political program aimed at a reflexively continued welfare state also demands an increased focus on democratizing our state communicative structures. In this, my final chapter, I would like to briefly examine a NAPO politics of reform tactic which was conceived in connection with our 1992 constitutional debates - namely the Alternative Social Charter. I believe this offensive legal strategy can still assist us, conceptually, in terms of contemplating a progressive rights-based politics and a possible institutional structure for achieving a democratically opened-up welfare administration.

The ASC contains a number of substantive “well-being” provisions aimed at ensuring, for instance, adequate food, housing, health care, etc. However, I am primarily concerned here with the reflexive potential of this model in that it enables us to reconceptualize rights as an ongoing site of open public sphere dialogue, and in turn, envisage an institutional communicative structure that advances a democratically enhanced social security accountability framework.

Of course, as I discussed earlier, considerable debate exists with respect to the merits of a rights-based strategy of social transformative engagement. I will argue in support of the

"rights as sites of dialogue" metaphor put forward by Nedelsky and Scott in their informative examination of the ASC.¹ I submit that this metaphor properly highlights the recursive nature of the ASC which establishes procedural participatory rights for an ongoing democratic dialogue, and thus importantly, allows us to move beyond traditional judicial review concerns. The ASC would be an institution within which citizens could, ideally, discursively generate their welfare norms, but it would simultaneously provide a democratically enhanced arena for the ongoing process of social contestation.² I assert that the ASC represents a practical coupling of participation and substantive protections, while avoiding the dysfunctional "debate stopping" character of traditionally understood rights-based strategies. The ASC is not a panacea. It does, however, represent a concrete model of reform politics that NAPO or other anti-poverty actors might wish to revisit.

II. NAPO's Constitutional Politics

In November of 1991, responding to a set of Federal constitutional reform proposals,³ NAPO released a detailed position paper on social and economic rights.⁴ Their summary recommendation at that time was as follows: "NAPO therefore proposes that the Canadian Constitution guarantee to all Canadians substantive economic and social rights, that is entitlements (or benefits) that alleviate economic and social disadvantage."⁵ After setting out several substantive provisions which would need to be entrenched within the existing *Charter of Rights*, NAPO explicitly addressed the debate around justiciability:

NAPO does not agree with the view that social and economic rights should not be justiciable because they involve government spending, and therefore should be under the control of elected officials, not the courts. Poor people have been fighting, and will continue to fight in the political arena. But they should also have the right of using the courts to fight for their rights if they

*decide that is the best strategy for claiming a specific right . . . Social and economic rights should be rights that citizens can **claim**, not rights that governments decide to give or not to give.*⁶ (emphasis original)

Subsequent events, however, would lead NAPO to abandon this position in favour of the ASC.

In December of 1991, NAPO, with the closely affiliated Charter Committee on Poverty Issues (CCPI),⁷ joined several other national organizations to arrange a constitutional conference in Toronto. Conference participants examined the idea of a social charter which would incorporate some of Canada's existing international human rights commitments. It was following this conference that CCPI prepared a draft of the ASC.⁸ In February 1992, the Beaudoin-Dobbie Committee Report was released with its proposal for a "social covenant" containing largely declaratory policy objectives, as opposed to a justiciable social charter.⁹ Since the courts could be required to interpret our existing *Charter of Rights* protections consistently with the weaker social covenant, anti-poverty activists feared that such an unsubstantial social charter would be worse than nothing at all. Aware that the policy environment required a united anti-poverty community counterproposal, and perhaps appreciating that its November 1991 call for adding justiciable social and economics rights to the *Charter of Rights* was politically unattainable, NAPO joined a coalition in support of the ASC. On March 27, 1992, NAPO released the ASC in a series of press conferences held across the country.¹⁰

The ASC is comprised of four parts. Part I sets out a number of substantive **Social and Economic Rights** (s.1), as well as the relationship of the ASC within Canada's broader constitutional framework. Important examples of the latter are found in s.2 and s.3 which

provide, respectively, that the *Charter of Rights* shall be interpreted consistently with the ASC's substantive rights as set out in s.1, and that nothing in s.1 diminishes or limits the rights contained in the *Charter of Rights*.

Part II establishes a **Social Rights Council** to evaluate governmental compliance with the rights set out in s.1 of the ASC. In part, this innovative accountability role is to be achieved through encouraging governments to engage in active and meaningful consultations with non-governmental organizations representing the disadvantaged and vulnerable members of society (s.9(2)(f)). The Council is further empowered, for example, to require governments to provide necessary information (s.9(3)), and actively participate in Canada's international reporting commitments in relation to the s.1 rights.

Part III establishes a **Social Rights Tribunal** which can receive and consider petitions alleging infringements under s.1. The main purpose of the Tribunal is to consider allegations of infringements which are systemic or that has a significant impact on vulnerable or disadvantaged groups and their members (s.10(2)). By way of redress, the Tribunal may hold a hearing to determine if an infringement has occurred (s.10(4)) and, in turn, hear submissions from petitioners and governments as to measures required to achieve compliance (s.10(5)). The Tribunal may order the appropriate government to take measures to achieve compliance (10(5)(b)). However, a simple majority vote of the appropriate legislature or Parliament can be used to override the order ((10(7)(a)). Although the ASC contains essentially non-justiciable rights, Tribunal decisions and orders are subject to judicial review. The judicial review possibilities are linked, however, to a strong privative clause ((10(8)).

Finally, Part IV contains a declaratory provision respecting the fundamental importance of various **Environmental Rights**.

III. The ASC's Transformative Possibilities

Mendelson reminds us of the stakes of status quo anti-poverty social struggle politics that is merely defensive or reactive, when he says:

unless a reasonable, progressive investment strategy can be articulated, the simple minded strategy of deep cuts will be adopted at some point down the road . . . To give up defending the status quo. To instead articulate an alternative path. A path for social policy which makes our social programs better, not worse. Which reflects hope and optimism about people, not despair and fatalism. A path for social policy which is both progressive and which can survive in "real time".¹¹

I have argued throughout this thesis that a major component of articulating a practical social movement politics involves finding progressive and reflexive enhancements to our social security accountability framework. The aim is to provide a recursive review mechanism through which disadvantaged Canadians can meaningfully participate in both public sphere opinion formation as well as in decisions involving the design and delivery of social rights and the benefits attached to them.

With Habermas, I believe the legitimation problems of our welfare state require that we, as publicly and privately autonomous citizens, are better able participate in the ongoing processes of perceiving, articulating and asserting our rights.¹² To review, Habermas's paradigm emphasises the **conceptual** importance of autonomy, which in turn, emphasizes the importance of rights of political participation. That said, liberal negative freedoms and social-welfare rights are certainly **empirically** vital, as in our political culture they supply the necessary conditions for exercising our participatory freedoms. However, only in a

democratic culture, wherein citizens can engage in the ongoing dynamic project of shaping their rights, could the rights of political participation be secured.¹³ Put simply, valid law, and the uncoerced socially integrative force derived from it, requires that we are able to see ourselves as the authors of those laws. When conflicting normative goals emerge citizens should be able to actively participate in our structures of discourse and compromise.¹⁴ These structures can take many modes, including the courts, the various communicative processes associated with the parliamentary-bureaucratic complex, as well as yet unrealized legally institutionalized sites of dialogue and struggle.

The ASC can be seen to provide a concrete example of utilizing law's institutional capacity in the quest for a dialogical community or for other responsive law orientations.¹⁵ By applying the Habermasian proceduralist paradigm, we can appreciate the ASC as a integral hinge with which to communicatively link civil society with our political public sphere, and, accordingly, transmit discursively generated impulses back and forth. In short, the ASC establishes a discursive space that opens up state communicative structures to the potential influence of civil society associations, like NAPO, in the ongoing process of realizing our rights. The rights as sites of dialogue metaphor appropriately conceptualizes the ASC. I would describe it as a discursive institutional mechanism that may secure a democratically opened up communicative structure for broad participation in the dynamic and ongoing or recursive process of modern constitution making.

This dialogical interpretation of the ASC points us away from a simplistic zero-sum interpretation of rights-based politics through litigation. At the same time, and in keeping with my earlier criticisms of Habermas's underdeveloped conception of rights as an arena

of ongoing social contestation, the ASC also affords an understanding of rights as a potential counter-hegemonic transformative tool. For example, the ASC would provide another counter-hegemonic structure through which NAPO could introduce a new 'rights' claim, as opposed to advancing a mere poverty 'demand' politics. Moreover, through participatory procedures, the ASC's Social Council and Tribunal establish overlapping democratically enhanced communicative structures that might, arguably, facilitate a more level playing field for the discursive contest and interplay between state and civil society actors.

Not surprisingly, the theoretical frameworks used to debate the capacity of the *Charter* (hereinafter CCRF) for social transformation were also adopted in the analysis of the proposed Charlottetown-round social charters, including the ASC. Some critiques narrowly construct the problems of rights discourse around judicial review and issues of discretion. Thus, much of the debate has revolved around the pros and cons of justiciable social rights.

As I discussed previously, while some progressives may argue that rights litigation is an effective and legitimate transformative route,¹⁶ others point out that the judiciary is both ideologically and institutionally ill equipped to promote "progressive" change.¹⁷ The overemphasis upon judicial review, however, may limit our ability to consider the potential of social rights for the promotion of a discourse approach to law. In criticising the liberal and social-welfare paradigms for their conflation of "freedom" with an equal "distribution" of rights or goods, Habermas effectively quotes from Iris Marion Young:

What does distributing a right mean? One may talk about having a right to a distributive share of material things, resources or income. But in such cases it is the good that is distributed, not the right. . . . Rights are not

*fruitfully conceived as possessions. Rights are relationships, not things; they are institutionally defined rules specifying what people can do in relation to one another. Rights refer to **doing** more than **having**, to social relationships that enable or constrain action.*¹⁸

Thus, combatting injustice for the poor means addressing those material and institutional conditions that constrain their ability to **do**- that is, to exercise their public and private autonomy. The ASC utilizes just such a participatory and relational rationality.

Emphasising participation within an administrative law setting, the ASC is a complex relational mechanism designed not only to protect the normative aspects of social welfare rights, but also to allow us to reflexively reshape our notion of rights.¹⁹ Perhaps the key characteristic of the ASC is the shift it requires of us in terms of moving from the dominant liberal-legal conception of law working itself pure via rights and the judiciary,²⁰ to a more dialogical legal approach. Social rights are still viewed as **sites of struggle**, but we can also envision them as **sites of dialogue**.

Other commentators move beyond the problematic role of the judiciary, or similar institutions like tribunals, only to conclude that the ambiguities of social rights translate into the absence of any substantive guarantees. As Joel Bakan states:

*My argument is that the very idea of a social charter or union is flawed, and that, in any of its proposed forms, it is unlikely to do what those who support it want it to do. This is because social rights, as they are articulated in social charter proposals, are too vague to guarantee anything of substance, do not touch the complicated causes of poverty and disadvantage, and their symbolic message is at best ambiguous.*²¹

As Habermas²² and other commentators have recognized, however, the fact that rights may be claimed by contending forces "does not condemn rights, but rather praises them."²³ In short, the ASC could democratically enhance our welfare state discourse and decision-

making processes by institutionalizing a deliberative mechanism that acknowledges, indeed utilizes, the dynamic principles underlying legitimate law, and the ongoing realization of our constitutional framework.

IV. A Dialogical Accountability Mechanism

Nedelsky and Scott argue the merits of the ASC's unique enforcement mechanism, which rather than judicial review, utilizes the discursive forces emanating from ongoing political debate. They describe the ASC's protection of rights as being achieved via a "dialogue of democratic accountability."²⁴ I would also like to hail the potential of this "dialogue of democratic accountability," not just as an enforcement mechanism, but as an enhanced participatory discursive nodal point in our public debate and decision-making processes. To be meaningful, citizenship requires the ability to participate and thus, as elaborated earlier, we look toward our interrelated political, civil and social rights. As Stuart Hall and David Held have claimed however, constitutional entrenchment is not enough:

A constitution or bill of rights which enshrined the idea of the 'double focus' of citizenship - equal rights and equal practices - would have to specify rights with respect to the processes that determine outcomes. Thus, not only equal rights to cast a vote, but also to enjoy the conditions of political understanding, involvement in collective decision-making and setting of the political agenda which make the vote meaningful.²⁵ (emphasis added)

To some extent the ASC accomplishes this by entrenching both our material and procedural needs. Our material needs are entrenched through the various substantive social rights set out in s.1 of the ASC. Moreover, the ASC provides a proceduralist orientation through the entrenchment of a set of overlapping dialogical accountability institutions with which to recursively determine our welfare state's design and delivery arrangements. The ASC

establishes as a 'right' our material needs, while also institutionalizing our procedural discursive and deliberative needs. In legally securing democratically opened up administrative spaces, the ASC institutionalizes the conditions for our knowledgeable participation in the ongoing dynamic processes of dialogue (and struggle). With the required enabling political conditions so augmented, we are better equipped to take part in our deliberative processes of perception, articulation, implementation, and, the motor of accountability, recursive review. And, as I have maintained, realizing a legitimate or valid system of rights in our increasingly differentiated society demands this type of operationalized participant perspective.²⁶ Nedelsky and Scott point out that in the ASC:

There is nothing that requires the state to simply give in-kind goods and services to passive beneficiaries. Nor, however, does the wording of s.1 easily lend itself to arguments that a government is justified in standing back and not doing anything to meet the requirement in question by way either of income redistribution or creation of a collective good.²⁷

The ASC, then, can be said to organize dependent people's relationship to the state on what is essentially participatory and recursive grounds. In so doing, it thus promotes the political participatory conditions required for citizens to engage in a dialogue wherein our procedural regulation for the design and delivery of our material needs can be determined.

It is also possible that the ASC could have a broader role in facilitating the realization of a procedural orientation within many of our social security structures of communication and negotiation. The overlapping discursive and dialogical accountability role of the Social Rights Council and Tribunal has a broad mandate. To the extent that the ASC would be able to facilitate increased transparency and disclosure within our social security policy environment, accountability's recursive motor of change (review, redress, adjustment, etc.),

would enable citizens to conceivably pursue the democratization of other areas of welfare administration. Relatedly, given the democratizing force of the ASC, all four components of the previously elaborated integrated conception of social movement politics would likely be enhanced. Thus, even if only initially democratizing a macro discursive and deliberative structure, the ASC could contribute to a wider ongoing social movement struggle aimed at realizing a widespread social security proceduralist rationality.

To conclude, I have been considering the ASC as an ideal type, as one possible step toward Habermas's proceduralist approach and a means by which to enhance the accountability framework of our social security system. Obviously NAPO, or any other anti-poverty association interested in pursuing such a program, needs to examine these possibilities more closely. To be sure, there are practical considerations which require further study.

For example, the formal recognition of disadvantaged groups may paradoxically lead to lead increased surveillance. The disadvantaged focus of the ASC, combined with the existence of other accepted precedents of sectional representation like the Supreme Court of Canada, should enable the ASC to facilitate dialogically rational and legitimate outcomes. Whether there will be a review process for evaluating the board members is another question that could be asked. The ASC's rights are essentially non-justiciable in comparison to those of the *Charter of Rights*, and thus may perpetuate the perception that social rights are less important. This might, in turn, diminish the ASC potentially as a counter-hegemonic structure. My concern is whether the ASC could be perceived as just a glorified welfare 'demand' strategy. These are but a few of the practical issues which need to be explored

further.

Endnotes - Chapter Six

1. As will be explored further in the text of this chapter, while examining the ASC, Nedelsky and Scott put forward the metaphor of "rights as sites of dialogue." Jennifer Nedelsky and Craig Scott, "Constitutional Dialogue," in Joel Bakan and David Schneiderman, eds., Social Justice and the Constitution, (Ottawa: Carleton University Press, 1992).
2. Nedelsky and Scott utilize another metaphor to characterise this arena of contestation conception, namely, "rights as sites of struggle." Ibid., p. 64.
3. Shaping Canada's Future Together, (Ottawa: Minister of Supply and Services, 1991). This was the Federal government's first attempt to recover from the constitutional crisis generated from the failure of the Meech Lake Accord in 1997.
4. NAPO, "How the Constitutional Reform Proposals Will Affect Poor Canadians: NAPO's Position on the Federal Constitutional Reform Proposals Contained in the Document Shaping Canada's Future Together", (Ottawa: NAPO, November 1991).
5. Ibid., p.8.
6. Ibid., pp. 7-8.
7. CCPI and NAPO maintain a close working relationship, with a number of CCPI board of director seats reserved for NAPO representatives. In 1991 however, the relationship was even closer, as CCPI's administrative operations were housed in NAPO's national office.
8. Charter Committee on Poverty Issues, "Report to Members", (Ottawa: CCPI, October 17th and 18th 1993), pp.14-16.
9. Special Joint Committee of the Senate and the House of Commons on a renewed Canada, Report, (Ottawa: Queen's Printer, February 1992) (Co-chairs: G.-A. Beaudoin and D. Dobbie).
10. A final historical note worth mentioning is that neither NAPO or CCPI campaigned for either side in the eventual Charlottetown Accord referendum, choosing instead to disseminate information to interested groups on the potential impact for the poor. For the details of the Charlottetown proposals, see the Consensus Report on the Constitution, (Ottawa: Canadian Intergovernmental Conference, August 1992).

11. Michael Mendelson, Social Policy in Real Time, (Ottawa: Caledon Institute of Social Policy, 1993), p.9.

12. Pointing to the tensions between liberal and material equality (or the dispute between liberal and welfare rights paradigms), as contained in the processes of discursively arrived at normative reasoning, Habermas states that:

Legitimate law closes the circle between the private autonomy of its addressees, who are treated equally, and the public autonomy of enfranchised citizens, who, as equally entitled authors of the legal order, must ultimately decide on the criteria of equal treatment.

Jurgen Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, (Cambridge, Mass.: MIT Press, 1996), p.415.

13. Habermas, Ibid., note 12, see especially pp.418-419 and 504-505. For a less favourable reading of Habermas's project, which purports his positioning of social rights "remains deeply ambiguous", see John Tweedy and Alan Hunt, "The Future of the Welfare State and Social Rights: Reflections on Habermas" (1994), 21(3) Journal of Law and Society, 288 at p.307.

14. Referring to the alarming statistics on the feminization of poverty, Habermas uses the historical but ongoing feminist dialectic around legal and factual equality to illustrate the contemporary need for a proceduralist orientation. **Liberal** equality demands point to greater inclusion of women in public office, with the implementation of new rights for personal freedom like reproductive control. The emphasis here is upon 'formal' equality, however such a 'legal' reading of equality can be blind to the factual differences that gender differences can make. **Social-welfare** 'material' equality demands point towards various entitlements, as well as laws like labour protection legislation dealing with pregnancy and maternity. Of course, as feminists have also noted, with the latter have come increased colonization of the lifeworld through welfare-state paternalism. Thus the need is demonstrated in our complex society for a proceduralist orientation. It does not displace the liberal or welfare models of rights. Rather, it emphasizes the need for participatory spaces in which feminists themselves, in an ongoing dynamic process, can publicly debate the issues, form perspectives, and have them articulated within the political public sphere.

Habermas, supra note 12, pp.418-426.

15. See my earlier discussion of Handler, Nonet and Selznick, Bartholomew, etc., regarding various theoretical models concerned with realizing a legal program which operationalizes something along the lines of Habermas's "ideal speech" situation.

16. Martha Jackman, "Constitutional Rhetoric and Social Justice" in Bakan and Schneiderman, ed., supra note 1.

17. Gwen Brodsky, "Social Charter Issues", in Bakan and Schneiderman, supra note 1.

18. Iris Marion Young, Justice and the Politics of Difference, (Princeton: 1990), quoted in, Habermas, supra note 12, p. 419.

19. Nedelsky and Scott, supra note 1, p. 61.

20. Ronald Dworkin, Law's Empire, (Cambridge: Harvard University Press, 1986), p. 400.

21. Joel Bakan, "What's Wrong with Social Rights," in Bakan and Schneiderman, supra note 1, p. 86.

22. Habermas has stated that "the constitutional state does not represent a finished structure but a delicate and sensitive--above all fallible and revisable--enterprise, whose purpose is to realize the system of rights anew in changing circumstances. . . ." Habermas supra note 12, p. 384. I have certainly critiqued Habermas's underdeveloped conception of rights as site of ongoing social struggle. However, Habermas's emphasis upon the participant perspective, and the need for democratizing our various structures of communication and negotiation so as to open them up to civil society impulses, serves to remind us that an anti-poverty social movement politics will have multi and interrelated sites of struggle. In short, rights are but one arena of contestation.

23. Alan Hunt, "Rights and Social Movements: Counter-Hegemonic Strategies", 3, Journal of Law and Society, vol. 17, p.310.

24. Nedelsky and Scott, supra note 1, p. 76.

25. Stuart Hall and David Held, "Citizens and Citizenship", in Stuart Hall and Martin Jacques, eds., New Times, (London: Lawrence and Wishart, 1989), p.185.

26. For an important example found within the context of aboriginal law, arguably Canada's most dynamic field in terms of the ongoing process of realizing anew our system of rights, see Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010. This recent Supreme Court decision reflects a growing appreciation of the need for genuine participation and consultation. At paragraph 168, the court, addressing the consultation procedures required for justifying an infringement of aboriginal title, stated that "in most cases, it will be significantly deeper than mere consultation." Following the Delgamuukw decision, the Supreme Court of British Columbia ruled in George v. Marczyk et al., Vancouver Registry No. A963521, that the province had failed to meet its duty to consult on the grounds that it had not been genuinely "informed" consultation.

27. Nedelsky and Scott, supra note 1, p. 72.

CONCLUSION

In this thesis I have called for the adoption of a progressive anti-poverty politics aimed at realizing a reflexively continued welfare state. As opposed to those on the Right who advocate simplistic programs of retrenchment, or those on the Left who cannot get past a reactive 'loyalist' model, a reflexively continued program directly targets our welfare state's legitimacy crisis. While appreciating the important role of social movement organizations like NAPO or other civil society actors in terms of the struggle for, and ongoing maintenance of, a reflexively continued welfare state, I have called for a strategy which targets a democratization of state structures directly. By providing the procedural conditions for democratically enhanced participation in our communicative structures of dialogue and struggle, a reflexively oriented welfare state enables citizens to engage in discursively rational processes of norm generation. Put simply, we can see ourselves as autonomous authors in the dynamic and ongoing processes of shaping our laws and policies.

Flowing out of this proceduralist orientation, in contrast with either a strict liberal or welfare state legal paradigms, is the realization of valid or legitimate forms of self-organization which, I believe, will continue to be comparatively more responsive to the changing requirements of an increasingly differentiated society. Law's institutional capacity can be seen as a hinge, facilitating the transmission of discursive impulses to and from civil society and the state. Furthermore, I have specifically pointed to the benefits of such an approach in relation to our welfare state's evaluative and corrective processes. Through a democratically and dialogically renovated conception of accountability, coupled with the realization of corresponding legally institutionalized procedural conditions and institutions,

anti-poverty actors or civil society associations like NAPO can actively participate in our recursive processes of review and adjustment. In the previous chapter I examined the ASC as a possible offensive social movement reform politics targeting such a democratically opened up site of dialogue.

Although this project has focussed mainly on the opening up of our welfare administration's communicative structures, as opposed to the protection and development of civil society discursive forces, I have clearly argued that an effective social movement politics aimed at realizing a reflexively continued welfare state will need to target both. Indeed, I have pointed to an integrated social movement politics as a primary agent for the ongoing struggle which would be required to achieve and maintain the democratically and dialogically renovated approaches to welfare administration that I am proposing. I have explained how the interrelated types of movement politics (identity, inclusion, influence, and reform), have an overlapping role in realizing a reflexive conceptual and institutional shift. With respect to the transformative utility of law as one element within wider social movement programs, I have pointed to a rights-based politics that conceives of and deploys rights beyond simply defending communicative spaces in civil society or as a 'loyalist' litigation strategy. Again, recalling my discussion of the ASC, I have argued for an appreciation of rights as sites of discourse, but I have also called for a recognition of rights as an important arena of ongoing social struggle. Thus, I have proposed that social movement strategy development aimed at producing a broad shift in public opinion which would support the normative ideas proposed in this thesis needs to consider the counter-hegemonic use of rights.

In contrast to a social rights as 'demand' strategy model, rights as a counter-hegemonic discursive tool would envisage a means by which SMOs like NAPO could develop and articulate, for example, a renovated conception of accountability in opposition to the prevailing traditional control or compliance approach. Eventually, such an oppositional discourse could be mobilized in struggles to produce broad shifts in public opinion and to exert pressure on our deliberative structures of policy formation. Rights can be conceived as both a 'means' of social struggle and institutional 'ends' in a movement politics targeting the realization of a reflexively continued welfare state.

Through my review of the historical and legal development of Canadian social security policy I have tried, in part, to demonstrate that these are not simply abstract academic issues. For example, as the Left has been preoccupied with a defence of the welfare state, often pursuing a reactive 'loyalist' politics, the Right has been essentially insulated from oppositional discourses with respect to the development of accountability policy. I have argued that a progressive welfare politics must take seriously the political implications surrounding the development of accountability frameworks. In response to the welfare state 'crisis', we have seen a plethora of accountability policies designed to address welfare fraud and other abuses. An identity politics aimed at countering prevailing poverty myths is useful on this front, but the public's demand for 'adequate' accountability remains a legitimate concern. The design and implementation of accountability frameworks should be considered a primary site of progressive welfare state politics. Without an engagement with the procedural conditions required for democratic and knowledgeable participation in our processes of review and adjustment, welfare state accountability frameworks will continue

to be shaped mainly by parliamentary-bureaucratic experts whose traditional perspective has been oriented toward compliance reporting or a self-defined ‘value’ for money approach. Regardless of the underlying conception, accountability will remain a primary motor of policy evaluation and adjustment, and therefore, I contend it must be conceived as a key site of anti-poverty politics. Certainly, advancing the renovated dialogical conception of accountability I have called for in this thesis will require a dual state-civil society terrain of social struggle.

The contemporary social security policy environment contains numerous issues related to the proposals I have made in this thesis. The emerging “social union” initiative, aboriginal self-government, and welfare policing policies are just some of the areas in which accountability is a central issue. With or without the Left’s engagement, changes are taking place in terms of the parliamentary-bureaucratic modelling of accountability. Notwithstanding the growth of welfare surveillance policies such as the fingerprinting of recipients, changes in approaches to accountability have been taking place in order to support the increased use of service design and delivery through “partnership”. Of course, the overlapping jurisdictional nature of our social security arrangements have, by default, meant that one would need to look to different governments to evaluate the effectiveness of welfare design and delivery. Some degree of conceptual movement seems to be taking place, shifting public accountability approaches away from traditional ‘control’ models that emphasise things like prescriptive reporting, toward the use of multi-party developed and implemented joint evaluation frameworks.¹ On the other hand, an accountability approach relying on a democratically opened up dialogue of negotiation and compromise would

undoubtedly be perceived as a radical departure for most parliamentary-bureaucratic 'experts' who have grown accustomed to the less dynamic model of top-down control. Certainly, I have no doubt that the reflexively innovative proposals for welfare state policy formation, implementation, as well as review and redress that I have been proposing here would be met with considerable initial resistance.

Finally, and at the risk of unintentionally contributing to 'deserving-undeserving poor' discourses, I would like to conclude my thesis by reminding myself and my reader of the concrete reality of poverty in Canada today. Obviously, this is not intended to mitigate the complexity of the problems that I have examined in this thesis, nor the reflexive directions that I have argued these problems require. Rather, as academic abstraction can insulate us from real life sufferings, I wish to end with a clarion statement on the absurd extent of poverty in Canada today. Accordingly, I close simply, and abruptly, with the following statistics as gathered and presented by NAPO.²

An estimated 4,941,000 people - almost one Canadian in six- were living below the poverty line in 1994. In fact, these numbers underestimate the number of poor Canadians because they do not include Aboriginal people on reserves, residents of the Yukon and Northwest Territories, and people who live in homes for the aged or other institutions. The current national poverty rate is 17.1%. In other words, 17.1% of Canadians are poor.

Children: More than one in five or 19.5% of Canada's children live in poverty. This means that 1,362,000 children are living in poor families.

Endnotes - Conclusion

1. See the August 4, 1998, initialled Nisga'a Final Agreement and related Fiscal Financing Agreement between Nisga'a Nation, Canada and British Columbia.
2. NAPO, "Facts and Figures," <<http://www.napo-onap.ca/nf-figur.htm>>, March 20, 1998. NAPO explains that it uses Statistics Canada's published poverty lines and associated most recent data (i.e., 1994 National Census, 1991 Aboriginal Peoples Survey). Poverty lines vary with the size of your family and community, e.g., within a large city in 1994, poverty lines were set at \$16,511 (an individual) and \$31,071 (a family of four). General welfare assistance is well below these poverty lines.

BIBLIOGRAPHY

- Adie, Robert F. and Paul G. Thomas, Canadian Public Administration: Problematic Perspectives, Scarborough: Prentice-Hall, 1987.
- Allege, Chancer A., "Canadian Social Policy: Perspectives" in Chancer A. Allege, ed., Canadian Social Policy, Waterloo: Wilfrid Laurier University, 1987.
- Arato, Andrew, "Reflexive Law, Civil Society, and Negative Rights" (1996), 17 Cardozo Law Review 785.
- Arato, Andrew and Jean L. Cohen, "Civil Society and Social Theory" (1988), 21 Thesis Eleven 59.
- Armitage, Andrew, Social Welfare in Canada, Toronto: McClelland and Stewart, 1988.
- Arnstien, Sherry R., "A Ladder of Citizen Participation" (1969), Vol. XXXV Journal of the American Institute of Planners, 216.
- Axworthy, Honourable Lloyd, then Minister of Human Resources Development and Western Economic Diversification, Notes of Speech delivered in the House of Commons, January 20, 1994.
- Bakan, Joel and David Schneiderman, ed., Social Justice and the Constitution, Ottawa: Carleton University Press, 1992.
- Banting, Keith, Welfare State and Canadian Federalism, Kingston: McGill-Queen's, 1987.
- Barrett, Michelle, The Politics of Truth, Stanford: Stanford University Press, 1991.
- Bartholomew, Amy, "On Dialogical Social Rights"(1993), 42 Studies in Political Economy 141.
- Bartholomew, Amy, "Democratic Citizenship, Social Rights and the "Reflexive Continuation of the Welfare State"" (1993), 42 Studies in Political Economy 148.
- Bartholomew, Amy and Susan Boyd, "Towards a Political Economy of Law", in W. Clement and G. Williams, eds., The New Canadian Political Economy, Montreal-Kingston: McGill-Queen's Press, 1989, p.214.

- Battle, Ken, "The Politics of Stealth: Child Benefits Under the Tories", in Susan D. Phillips, ed., How Ottawa Spends 1993-94: A More Democratic Canada?, Ottawa: Carleton University Press, 1993.
- Beatty, David and Steve Kennett, "Striking Back: Fighting Words, Social Protest and Political Participation in Free Democratic Societies", in Labour Law Under the Charter, Kingston: Queen's Law Journal: 1987.
- Beatty, David, Talking Heads and The Supremes: The Canadian Production of Constitutional Review, Toronto: Carswell, 1990.
- Bell, Derrick, "Racial Realism" (1992), 24 Connecticut Law Review 363.
- Berzins, Q.C., Andrejs, Crown Prosecutor, Ottawa - Carleton, "Fraud In the Public Domain," Keynote Speech to the Certified Fraud Examiners Association, September 19, 1996.
- Bok, Marcia, Civil Rights and the Social Programs of the 1960's, Westport: Praeger, 1992.
- Boyd, Susan B., "Dislodging Certainties: Feminist and Post-modernist Engagements with Criminology and State Theory" (1991), 3 The Journal of Human Justice 122.
- Brickey, Stephen and Elizabeth Comack, "The Role of Law in Social Transformation: Is a Jurisprudence of Insurgency Possible?", in Law and Society: A Critical Perspective, Toronto: Harcourt Brace Jovanovich, 1989, p.317.
- Broadbent, Edward, "The Rise and Fall of Economic and Social Rights - Thoughts on Citizenship in the Welfare State in the North Atlantic World" Oxford: Visiting Fellow Presentation at All Souls College, February 11, 1997.
- Brodsky, Gwen, "Social Charter Issues" in Joel Bakan and David Schneiderman, eds., Social Justice and the Constitution, Ottawa: Carleton University Press, 1992.
- Brown, Beverly, Written Response to Interview Questions posed to NAPO staff and members, on file with author. Ms. Brown is the NAPO Board member for Newfoundland.
- Bryden, John, MP for Hamilton-Wentworth, MP's Report- Canada's Charities: A Need for Reform October 1996.
- Bryden, John, MP for Hamilton-Wentworth, Special Interest Group Funding: MP's Report, November 1994.

- Calhoun, Craig, ed., Habermas and the Public Sphere, Cambridge: The MIT Press, 1992.
- Cameron, Barbara, Rethinking the Social Union: National Identities and Social Citizenship, Ottawa: Canadian Centre for Policy Alternatives, 1997.
- Canadian Council on Social Development, Position Statement, March 5, 1996.
- Cardozo, Andrew, "Lion Taming: Downsizing the Opponents of Downsizing," in Gene Swimmer, ed., How Ottawa Spend 1996-97: Life Under the Knife, Ottawa: Carleton University Press, 1996, p. 321.
- Charter Committee on Poverty Issues (CCPI), Charter Committee on Poverty Issues - Report to the Members, October 17th and 18th 1993.
- Cheffins, R.I. and P.A. Johnson, Politics as Law, Toronto: McGraw-Hill, 1986.
- Crenshaw, Kimberle Williams, "Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-discrimination Law" (1988), 101 Harvard Law Review 1331.
- Cohen, Jean L. and Andrew Arato, Civil Society and Political Theory, Cambridge, Ma.: MIT Press, 1992.
- Cohen, Jean L. and Andrew Arato, "Civil Society and Social Theory" (1988), 21 Thesis Eleven 53.
- Cohen, Jean L., "Discourse Ethics and Civil Society", 14 Philosophy and Social Criticism, p.315.
- Cohen, Jean L., "American Civil Society Talk", in Report from the Institute for Philosophy & Public Policy:
<[http://www.puaf.umd.edu/IPPP/summer98/american_civil_society_talk .htm](http://www.puaf.umd.edu/IPPP/summer98/american_civil_society_talk.htm)>. 18, (1998), p.1.
- Cohen, Jean L., "Critical Social Theory and Feminist Critiques: The Debate with Jurgen Habermas" in Feminists Read Habermas: Gendering the Subject of Discourse, New York: Routledge, 1995.
- Crone, Greg, "Bill Allows Social Workers to Search Welfare Homes," Ottawa Citizen, August 20, 1997, A4.
- Deflem, Mathieu, Habermas, Modernity and Law, London: Sage Publications, 1996.

- Delacourt, Susan, "Losing Interest," The Globe and Mail, April 4, 1995, p. D5.
- Depoma, Barbara, "Fingerprint System Points Out Welfare Fraud," May 1997, <<http://www.fcw-civic.com/pubs>>., November 25, 1997.
- Doern, Bruce, Political Accountability and Efficiency, paper prepared for the Government and Competitiveness Project, School of Policy Studies, Queen's University, (Ottawa: School of Policy Studies), 1993.
- Dworkin, Ronald, Law's Empire, Cambridge: Harvard University Press, 1986.
- Eley, Geoff, "Nations, Publics, and Political Cultures: Placing Habermas in the Nineteenth Century", in Craig Calhoun, ed., Habermas and the Public Sphere, Cambridge: The MIT Press, 1992.
- Ewald, Francois, "A Concept of Social Law" in Gunther Teubner ed., Dilemmas of Law in the Welfare State, New York: De Gruyter, 1988, p.40.
- Federal-Provincial-Territorial Council on Social Policy Renewal- News Release, "Council on Social Policy Renewal Launches Work on Framework Agreement for Canada's Social Union", Toronto, Ontario, March 13, 1998.
- Fegan, Eileen, "'Ideology' After 'Discourse': A Reconceptualization for Feminist Analyses of Law" (1996), 23 Journal of Law and Society 173.
- Feschuck, Scott, "Throne Speech Charts Post-Deficit Spending", Globe and Mail, Wednesday, September 24, 1997, A1.
- Foot, David with Daniel Stoffman, Boom, Bust & Echo: How To Profit From the Coming Demographic Shift, Toronto: Macfarlane Walter & Ross, 1996.
- Foucault, Michel, The History of Sexuality: vol 1, An Introduction [1976] New York: Pantheon, 1978.
- Foucault, Discipline and Punish [1975] Toronto: Random House, 1979.
- Foucault, "Social Security" in Michel Foucault: Politics, Philosophy, Culture ed. Lawrence D. Kritzman, New York: Routledge, 1988 pp.159-177.
- Foucault, Colin Gordon, ed., Power/Knowledge [1972-77], New York: Pantheon, 1980.
- Foucault, "Politics and Ethics: An Interview" in Paul Rabinow, ed., The Foucault Reader, [1983], New York: Pantheon, 1984, p.375.

Foucault, La Volunte de savoir, Paris:Gallimard, 1976.

Fraser, Graham, "Ottawa Signals Return to Activism," Globe and Mail, Wednesday, September 24, 1997, A4.

Fraser, Nancy, Unruly Practices, Minneapolis: University of Minnesota Press, 1989.

Fraser, Nancy, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy" in Craig Calhoun, ed., Habermas and the Public Sphere, Cambridge: The MIT Press, 1992.

Glasbeek, H.J. and Michael Mandel, "The Legalization of Politics in Advanced Capitalism" (1994), 2 Socialist Studies 115.

Greenspon, Edward, "Provinces Muscling in on Federal Territory" Globe and Mail, Saturday, August 9, 1997, A2.

Guest, Dennis, The Emergence of Social Security in Canada, Vancouver: University of British Columbia, 1985.

Gramsci, Antonio, Selections from the Prison Notebooks, ed. and trans. Q. Hoare and G. Nowell Smith, New York: International, 1971.

Habermas, Jurgen, The Theory of Communicative Action Vol. 2, Boston: Beacon Press, 1987.

Habermas, "The New Obscurity: The Crisis of the Welfare State and the Exhaustion of Utopian Energies" 11 Philosophy and Social Criticism, reprinted in Jurgen Habermas, The New Conservatism: Cultural Critique and the Historians' Debate, Cambridge, Ma.: MIT Press, 1989.

Habermas, William Rehg trans., Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, New Baskerville: MIT Press, 1996.

Habermas, The Structural Transformation of the Public Sphere, Cambridge: The MIT Press, 1989.

Habermas, "Further Reflections on the Public Sphere" in Craig Calhoun, ed., Habermas and the Public Sphere, Cambridge: The MIT Press, 1992.

Habermas, "Questions Concerning the theory of Power: Foucault Again," in Frederick Lawrence, trans., The Philosophical Discourse of Modernity, Cambridge: Polity Press, 1987, p. 268.

- Habermas, Communication and the Evolution of Society, Boston: Beacon, 1981.
- Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification" in Seyal Benhabib and Fred Dallmyr, eds., The Communicative Ethics Controversy, Cambridge Ma.: MIT Press, 1990.
- Hall, Stuart, Drifting Into a Law and Order Society, Cobden Trust, 1980.
- Hall, Stuart, "Authoritarian Populism: A Reply" (1985), New Left Review, 151.
- Hall, Stuart and David Held, "Citizens and Citizenship", in Stuart Hall and Martin Jacques, eds., New Times, London: Lawrence and Wishart, 1989.
- Handler, Joel, "Dependent People, the State and the Search for the Modern/PostModern Search for the Dialogic Community" (1987) 35 U.C.L.A. Law Review 999.
- Hartz, L., The Foundation of New Societies, Toronto: Longmans, 1964.
- Henderson, L., "Law's Patriarchy" (1991), 25 Law and Society Review 417.
- Honneth, Axel, Kenneth Baynes trans., The Critique of Power, Cambridge: MIT Press, 1993.
- Hovius, Berend and Robert Martin, "The Canadian Charter of Rights and Freedoms in the Supreme Court of Canada", in 1 Law and Antisocial Behaviour 255.
- Howse, Robert et al., "Smaller or Smarter Government", Summer 1990 University of Toronto Law Journal, Volume XL, No. 3, p.533.
- Hum, Derek P., "Social Security Reform" in Jacqueline S. Ismael, ed., Canadian Social Welfare Policy, Kingston-Montreal:McGill-Queen's University, 1985.
- Hunt, Alan, "Rights and Social Movements: Counter-Hegemonic Strategies" (1990), 17 Journal of Law and Society 309.
- Hunt, Alan, "Foucault's Expulsion of Law: Toward a Retrieval" (1992), 17 Law and Social Inquiry. 1.
- Hunt, "Marxism, Law, Legal Theory and Jurisprudence" in Peter Fitzpatrick, ed., Dangerous Supplements: Resistance and Renewal in Jurisprudence, London: Pluto Press, 1991.

- Irving, Allan, "Federal-Provincial Issues in Social Policy", in Chancer A. Allege, ed., Canadian Social Policy, Waterloo: Wilfrid Laurier University, 1987.
- Ismael, Jacqueline S., ed., Canadian Social Welfare Policy, Kingston-Montreal:McGill-Queen's University, 1985.
- Jackman, Martha, "Rights and Participation: The Use of the Charter to Supervise the Regulatory Process" (1991), 4 CJALP.
- Jackman, Martha, "The Protection of Welfare Rights Under the Charter" (1988), 20 Ottawa Law Review 277.
- Jackman, Martha, "Constitutional Rhetoric and Social Justice" in Joel Bakan and David Schneiderman, eds., Social Justice and the Constitution, Ottawa: Carleton University Press, 1992.
- Johnstone, Ian, "Section 7 of the Charter and Constitutionally Protected Welfare" (1988), 46 University of Toronto Fac. L. Rev. 1.
- Kearns, Kevin P., Managing for Accountability: Preserving the Public Trust in Public and Nonprofit Organizations, San Francisco: Jossey-Bass Publishers, 1996.
- Kinnon, Diane, "Pressure Group Politics in Canada": The History of the National Anti-Poverty Organization" Carleton University School of Public Administration April 1986. Paper on file with NAPO (file # RE 2.4.3 NA).
- Leslie, Peter M., "Of Deficits, Debt, and the Safety Net (and Canada)", Kingston: Intergovernmental Relations, Queen's University, 2 Opinion February, 1994.
- Mandel, Michael, The Charter of Rights and the Legalization of Politics in Canada, Toronto: Wall and Thompson, 1989.
- Maroney, Heather Jon, "Using Gramsci for Women: Feminism and the Quebec State, 1960-1980", 17(3) RFR/DFR 29.
- Martin, P.C., M.P., The Hon. Paul, Minister of Finance, The Budget Speech, Ottawa: Department of Finance, February 22, 1994.
- Martin, P.C., M.P., The Hon. Paul, Minister of Finance, Facing Choices Together, Ottawa: Department of Finance, February 1994, p.1.
- Marshall, T.H., "Citizenship and Social Class" in T.H. Marshall ed., Class, Citizenship, and Social Development, Westport, Conn.: Greenwood Press, 1973, p.78.

- Matsuda, Mari J., "Public Response to Racist Speech: Considering the Victim's Story" (1989), 87 Michigan Law Review 2381.
- McCann, Michael W., Rights at Work, Chicago: University of Chicago Press, 1994.
- McCann, "Resistance, Reconstruction, and Romance in Legal Scholarship" (1992), 26 Law & Society Review 745.
- McCann, Michael W. and Helena Silverstein, "Social Movements and the American State: Legal Mobilization as a Strategy for Democratization," in L. Panitch et al. A Different Kind of State? Popular Powers and Democratic Administration, Toronto: Oxford University Press, 1993, p.134.
- McMullen, John L., "Epilogue: Law, Justice, and the State" in Ratner and McMullen, eds., State Control: Criminal Justice Politics in Canada, Vancouver: University of British Columbia Press, 1987.
- McQuaig, Linda, Talk Given on Tax Reform, the Deficit, and Saving the Safety Net, at Somerset Community Health Centre, March 14, 1994.
- Mendelson, Michael, Social Policy in Real Time, Ottawa: Caledon Institute of Social Policy, 1993.
- Mishra, Ramesh, The Welfare State in Crisis, Brighton, Sussex: Wheatsheaf Books, 1984.
- Morton, F.L., Peter H. Russell and Michael J. Withey, The Supreme Court's First 100 Charter of Rights Decisions: A Statistical Analysis, A Paper Presented at the Annual Meeting of the Canadian Political Science Association, May 27-29, 1990; Revised: June 28, 1990.
- National Anti-Poverty Organization, "The National Anti-Poverty Organization: A Voice of Canada's Poor," <<http://www.napo-onap.ca/napo-all.htm>>. November 25, 1997.
- NAPO, The Future for Canada's Poor: Participation Or Total Dependence?, Internal NAPO Policy Paper, July 14, 1978.
- NAPO, NAPO's Response to the Federal Discussion Paper "Improving Social Security in Canada", Ottawa: NAPO, 1995.
- NAPO, "All About NAPO," <<http://www.napo-onap.ca/napo-all.htm>>, November 25, 1997.

NAPO, Mission Statement, (Ottawa: NAPO, 1995).

NAPO and the Charter Committee on Poverty Issues, The Right to an Adequate Standard of Living in a Land of Plenty: Submission of the National Anti-Poverty Association and the Charter Committee on Poverty Issues to the Committee on Economic, Social and Cultural Rights (On the Occasion of the Consideration of Canada's Second Report on the Implementation of the International Covenant of Economic, Social and Cultural Rights, Articles 10-15), May 17, 1993, Geneva.

NAPO, Executive Director's Report of Activities for the Fiscal Year 1995-96, May 1996.

NAPO, "The Reality Check: The Federal Social Security Reform", Brief Presented by the National Anti-Poverty Organization to the Standing Committee on Human Resources Development, Ottawa, March 8th, 1994.

NAPO, Executive Director's Annual Report 1994-95.

NAPO, "Facts and Figures," <<http://www.napo-onap.ca/nf-figur.htm>>, March 20, 1998.

NAPO, "Poverty and the Canadian Welfare State: A Report Card", (Ottawa: NAPO 1998), Appendix I.

Neallani, Shelina, "Women of Colour in the Legal Profession: Facing the Familiar Barriers of Race and Sex" (1990), 5 Canadian Journal of Women and the Law 156.

Nedelsky, Jennifer and Craig Scott, "Constitutional Dialogue" in Joel Bakan & David Schneiderman, ed., Social Justice and the Constitution, Ottawa: Carleton University Press, 1992.

Nonet, P. and P. Selznick, Law and Society in Transition: Toward Responsive Law, New York: Harper, 1978.

O'Connor, Deborah, Letter to John Bryden, Member of Parliament, on behalf of the Board of Directors of the National Anti-Poverty Organization. Dated January 27th, 1995, on file with NAPO and myself.

Pal, Leslie A., Public Policy Analysis, Scarborough: Nelson, 1992.

Pal, Leslie A., State, Class, and Bureaucracy: Canadian Unemployment Insurance and Public Policy, Kingston and Montreal: McGill-Queen's University, 1988.

- Pal, Leslie A., "Social Policy and the Constitution", in Jacqueline S. Ismael, ed., Canadian Social Welfare Policy, Kingston-Montreal:McGill-Queen's University, 1985.
- Peat Marwick, "Welfare Fraud and Overpayments," Final Report to the Ontario Social Assistance Review Committee, Toronto, 1997.
- Peters, Bernhard, "On Reconstructive Legal and Political Theory" in Mathieu Deflem, ed., Habermas, Modernity and Law, London: Sage Publications, 1996.
- Phillips, Susan D., "New Social Movements in Canadian Politics: On Fighting and Starting Fires" in James Bickerton and Alain Gagnon, eds., Canadian Politics, 2nd ed., Peterborough: Broadview Press, 1994, p.189.
- Phillips, Susan D., "Redefining Government Relationships with the Voluntary Sector: On Great Expectations *and* Sense & Sensibility (A Discussion Paper Prepared for the Round Table on the Voluntary Sector), November 1995.
- Pierson, Christopher, Beyond the Welfare State?, Cambridge: Polity Press, 1991.
- Plumptre, Tim, "Accountability: A Fresh Look at a Changing System", Institute on Governance: The Exercise of Power Round Table, April 23, 1997.
- Preuss, Ulrich K., "The Concept of Rights and the Welfare State" in Gunther Teubner ed., Dilemmas of Law in the Welfare State, New York: De Gruyter, 1988.
- Razack, Sherene, "Using Law for Social Change: Historical Perspectives" (1992), 17 Queen's Law Journal 35.
- Rice, James J., "Restitching the Safety Net: Altering The National Social Security System", in Michael J. Prince, ed., How Ottawa Spends 1987-88: Restraining the State, Toronto: Methuen, 1987, p.211.
- Rice, James J. and Michael J. Prince, "Lowering the Safety Net and Weakening the Bonds of Nationhood: Social Policy in the Mulroney Years" in Susan D. Phillips, ed., How Ottawa Spends 1993-94: A More Democratic Canada?, Ottawa: Carleton University Press, 1993, p. 381.
- Rice, James J., "Redesigning Welfare: The Abandonment of a National Commitment", in Susan D. Phillips, ed., How Ottawa Spends 1995-1996: Mid-Life Crises, Ottawa: Carleton University Press, 1995, p.189.

- Riches, G., Food Banks and the Welfare Crisis, Ottawa: Canadian Council on Social Development, 1986.
- Rosanvallon, Pierre, "The Decline of Social Visibility" in John Keane ed. Civil Society and the State: New European Perspectives, London: Verso, 1988, p.91.
- Rosanvallon, "Beyond the Welfare State" (1988), 16 Politics and Society 533.
- Russell, Peter H., Constitutional Odyssey, Toronto: University of Toronto, 1992
- St. Lewis, Joanne, Director of Education Equity Program - Ottawa University Law School, Video Interview, Fall 1991. Video is on file with the Department of Law, Carleton University and with myself.
- Salter, M. and J. Shaw, "Towards a Critical Theory of Constitutional Law: Hegel's Contribution," (1994), 21 Journal of Law and Society 465.
- Sargent, Neil C., "Rethinking the Law and Social Transformation Debate: Beyond the Correspondence Metaphor" (1991), 3 The Journal of Human Justice 4.
- Sargent, Neil C., "Law, Ideology and Corporate Crime: A Critique of Instrumentalism" (1989), 4 Canadian Journal of Law and Society 60.
- Scheingold, Stuart, "Constitutional Rights and Social Change: Civil Rights in Perspective" in Michael W. McCann and Gerald L. Houseman, eds., Judging the Constitution, Glenview, Ill.: Scott, Foresman, 1989.
- Social Planning Council of Ottawa-Carleton, "Fact Sheet", January 1994.
- Segal, Hugh, "Paul Martin Sr. knew the value of our social safety net," The Financial Post, July 26, 1997.
- Silipo, Honourable Tony, "Notes for Remarks - Case File Investigation," March 28, 1994.
- Smart, Carol, Feminism and the Power of Law, New York: Routledge, 1989.
- Snider, D. Laureen, "Legal Aid, Reform, and the Welfare State," in Stephen Brickey and Elizabeth Comack, eds., The Social Basis of Law, Toronto: Garamond Press, 1986, p.173.
- Splane, Richard, "Social Policy Making", in Chancer A. Allege, ed., Canadian Social Policy, Waterloo: Wilfrid Laurier University, 1987.

- Splane, "Further Reflections: 1975-1986", in Chancer A. Allege, ed., Canadian Social Policy, Waterloo: Wilfrid Laurier University, 1987.
- Stasiulis, Daiva, "Capitalism, Democracy and the Canadian State", in Dennis Force and Stephen Richer, eds., Social Issues, Scarborough: Prentice-Hall, 1988.
- Stewart, Walter, The Charity Game: Greed, Waste and Fraud in Canada's \$86-Billion-A-Year Compassion Industry, Vancouver and Toronto: Douglas & McIntyre, 1996.
- Swan, Peter D., "Rights, Civil Society and Dualistic Social Theory" (1995), 58 ARSP 245.
- Tardi, Gregory, The Legal Framework of Government, Aurora: Canada Law Book, 1992.
- Tarrow, Sidney, Power in Movement: Social Movements, Collective Action and Politics, New York: Cambridge University Press, 1994.
- Teubner, Gunther, "Substantive and Reflexive Elements in Modern Law" (1983), 17 Law and Society Review 239.
- Teubner, Gunther, ed., Dilemmas of Law in the Welfare State, New York: De Gruyter, 1988.
- Tomkins, Arnold R., "Ohio cracks down on welfare-fraud abuse," October 6, 1997, <<http://www.amcity.com/columbus/stories/100697/editorial.html>>., November 25, 1997.
- Toughill, Kelly, "Critics Attack Welfare Changes" Toronto Star, Wednesday, January 15, 1997, A14.
- Toupin, Lynne, interview with Executive Director, National Anti-Poverty Organization (NAPO), April 18, 1997, Ottawa.
- Van Loon, Richard, "Reforming Welfare in Canada" (1979), 27 Public Policy 474.
- VSR, "Ed Broadbent to Chair Panel on Accountability and Governance in the Voluntary Sector" <<http://www.pagvs.com/vsrnews.htm>>, Press Release, Winnipeg, October 16, 1997.
- Wain, Sandra, Social Assistance Policy and Rights, Toronto: Ministry of Community Social Services Maintenance Branch, 1991.

Weiler, Paul C., "The Charter at Work: Reflections on the Constitutionalizing of Labour and Employment Law" (Spring 1990), University of Toronto Law Journal 135.

Wellman, Carl, Welfare Rights, Toronto: Rowman and Littlefield, 1982.

Wiebe, Margaret, "The National Anti-Poverty Organization: History, Goals and Achievements," (NAPO internal document, 1979).

Williams, R.A. Jr., "Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color" (1987), 5 Law and Inequality 123.

GOVERNMENT REPORTS AND PUBLICATIONS

Canada, Senate Committee on Poverty, Poverty in Canada: a report of the Special Senate Committee (The Croll Report), Ottawa: Information Canada, 1969.

Canada, Department of Health and Welfare, Welfare in Canada: The Tangled Safety Net, Ottawa: Ministry of Supply and Services, 1987.

Canada, Office of the Auditor-General, Report of the Auditor General of Canada, Ottawa: Ministry of Supply and Services, 1993.

Canada, House of Commons, Report of the Royal Commission on the Economic Union and Development Prospects for Canada, Ottawa: Ministry of Supply and Services, 1985.

Canada, House of Commons, Report of the Royal Commission on Aboriginal Peoples: People to people, nation to nation, Ottawa: Minister of Supply and Services Canada, 1996.

Canada, House of Commons, Throne Speech, Tuesday, January 18, 1994.
<http://www.gc.ca/hansard/previous/002_94-01-18/en002.html>

Canada, House of Commons, Throne Speech, September 12, 1968, "House of Commons Debates Official Report: First Session - Twenty Eighth Parliament", 17 Elizabeth II, Vol. I, 1968.

Canada, House of Commons, Throne Speech, September 23, 1997, House Of Commons Debates, Vol. 135, No. 002 (First Session, 36th Parliament).

Canada, House of Commons Debates, No. VII at 7142 (4 July 1966).

Canada, Law Reform Commission of Canada, Towards a Modern Federal Administrative Law, Ottawa: Ministry of Supply and Services, 1987.

Canada, Final Report of the Royal Commission on Financial Management and Accountability (the Lambert Report), (Ottawa: Supply and Services, 1979); Kernaghan and Siegel, Public Administration in Canada, (Scarborough: Nelson Canada, 1991; and Bruce Doern, "Political Accountability and Efficiency", paper presented for the Government and Competitiveness Project, School of Policy Studies, Queen's University (Ottawa: School of Policy Studies, 1993.

Liberal Party of Canada, Creating Opportunity: The Liberal Plan for Canada, Ottawa: Liberal Party of Canada, 1993.

Liberal Party of Canada, The Liberal Plan 1997- Securing Our Future Together: Preparing Canada for the 21st Century Ottawa: Liberal Party of Canada, 1997.

STATUTES

Budget Implementation Act, 1995, S.C. 1994-95, c.17, Parts IV and V, ss. 31, 48.

Canada Assistance Plan, S.C. 1966-67, c.45.

Canada Health Act, R.S.C. 1985, c.6, ss. 8-13.

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

Constitution Act, 1867 [R.S.C. 1985, App. II, No.5]

Constitution Act, 1982, c.11, Schedule B, Schedule, Item 1(1) (U.K.)

Social Allowances Act, R.S.M. 1987, c.S160.

CASES

Finlay v. Canada (Minister of Finance) [1993], 1 S.C.R. 1080.

Reference re Canada Assistance Plan (B.C.) (1990), 71 D.L.R. (4th) 99 (B.C.C.A.), revd 83 D.L.R. (4th) 297 (SCC); [1991] S.C.J. No. 60.

IMAGE EVALUATION TEST TARGET (QA-3)

APPLIED IMAGE, Inc
1653 East Main Street
Rochester, NY 14609 USA
Phone: 716/482-0300
Fax: 716/288-5989

© 1993, Applied Image, Inc., All Rights Reserved