

ESSAY

"THE WEST": MYTH OR REALITY IN THE CONSTITUTIONAL REFORM PROCESS?

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INTRODUCTION¹

For many Canadians, "the West" is apparently not merely a geographic location but short-hand for a common set of constitutional grievances and demands. For those who live outside the West, there is a belief that the four provinces which comprise the region will speak with one, unvarying voice on constitutional matters. For example, many believe (perhaps, including the federal government) that the West wants Senate Reform and, in particular, reform based upon the principal of "Triple E". There is also a perception that the West seeks greater decentralization of power from the federal level to the provincial. As I listen to constitutional experts comment on what will be needed to keep our country together, I am struck, again and again, by the assumption that the West has a common set of concerns and a common set of demands to resolve these concerns. It will be my suggestion that this attitude is dangerously simplistic and probably wrong. As is more apparent as the months go by, the cleavages between the four western provinces are becoming more pronounced. They define the nature of our constitutional crisis differently and proffer diverse solutions for its resolution.

Of course, many Canadians can be forgiven for thinking that the West speaks with one voice. At least since the late 1970s, Canadians outside the region have heard, regularly and forcefully, a litany of Western grievances, most particularly concerning control over the region's national resources and the implementation of the natural energy policy. And of course, few Canadians who witnessed it, will forget the ongoing confrontation between the Premier of Alberta, Peter Lougheed, and the Prime Minister of Canada, Pierre Elliot Trudeau, over these and other matters.

It is my view that during this period (including the constitutional crisis of 1980-82) and up to the mid-1980s when he left office, Canadians outside the region assumed that the views and concerns of Peter Lougheed were synonymous with the concerns of the West. His was the voice heard most frequently, and most powerfully, during this time and for most of us living outside the region, his concerns were the West's concerns. It was during this time that Alberta assumed a prominence and influence in constitutional affairs that it only recently may have lost. The effect of this influence was to leave an impression that the Alberta

agenda was the West's agenda, thereby creating the illusion that the four western provinces had identical constitutional concerns and demands.²

POLITICAL ECONOMIES AND IDEOLOGIES

There are a number of underlying socio-economic factors that I believe mitigate against the four western provinces sharing common constitutional agendas. I'll briefly outline some of them.

In Canada, we rather crudely categorize our provinces as being either "haves" or "have-nots". "Have" provinces are those which do not receive equalization payments from the federal government; these payments being unconditional transfers to less prosperous provinces. Only three provinces in Canada currently can claim this status: British Columbia, Alberta and Ontario. The economic strength and potential of these provinces is much greater than that of "have-not" provinces, such as Manitoba and Saskatchewan.³ It is, therefore, not surprising to find that both Alberta and British Columbia have argued for greater decentralization within the Canadian federation. These provinces believe they should be left to develop and diversify their own economies, retain more of the benefits therefrom for their provincial treasuries, and establish their own social welfare and spending priorities, with minimal interference or guidance from the national government.

Massive decentralization appears to be of little interest to Manitoba and Saskatchewan; for example, one need only refer to the Manitoba Constitutional Task Force Report of October 28, 1991:⁴

Our presenters were united in their view that the central government must have sufficient power and authority to redistribute wealth to the benefit of the have-less regions and the less advantaged citizens of our nation. This has been a central and enduring feature of our federal system much admired far beyond our boundaries.

Under the heading, "The Maintenance of a Strong Central Government", the Task Force offered its belief:⁵

That in a period of intense international competition a strong central government is essential to national well-being. As well, a strong

central government can create a sense of nationhood and association between different parts of the country by supporting effective and visible institutions.

Manitobans believe that all Canadians should be able to share equitably in the resources and benefits of the nation as a whole. A strong central government is required for such programs as equalization, established programs financing (EPF) and the Canadian Assistance Program (CAP). We are concerned, therefore, by federal cutbacks to such programs. While means can be found to ensure that these national programs better reflect the regions, they are essentially national in scope and play a crucial role in preserving national unity.

The Manitoba Task Force Report calls for, at best, a tinkering with the present distribution of power. While I do not suggest that British Columbia and Alberta support the vision of a decentralized Canada propounded in the Allaire Report of the Québec Liberal Party,⁶ it is fair to say that both provinces have argued for a decentralization of powers that goes well beyond that endorsed by the Manitoba Task Force Report.

The recent comments of Howard Leeson, a former senior advisor to the New Democratic government of Alan Blakeney in Saskatchewan, are also revealing in this regard. At a recent conference on the Constitutional Futures of the Prairie and Atlantic Regions, he was quoted as calling for "an agenda directed towards small farmers, workers and other powerless groups in the West."⁷ He went on to say: "Such an agenda would guarantee a role for the national government in helping the economically subordinate regions."⁸

In addition, both Mr. Leeson and the Manitoba Task Force Report call for a strengthening of the equalization section of the constitution, as such a provision operates as a form of insurance for poorer provinces.

These comments reflect the economic reality of the provinces of Manitoba and Saskatchewan. Because the fiscal position of these provinces is such that they are net beneficiaries of federal transfer payments, they will not support any significant diminution in the ability of the federal government to redistribute wealth, be it through equalization, shared-cost programs, procurement programs, etc.

One should also be aware of the different sources of economic prosperity in the four western provinces. While it is true in general terms that the four provinces depend largely upon the exploitation of natural resources for their economic well-being, there are significant differences in relation to the nature of these natural resources and the

markets for them. For example, in a recent paper, Chambers and Percy document the following:⁹ approximately 50% of Alberta's total exports come from crude petroleum and natural gas. In British Columbia, approximately 50% of that province's total exports come from the forest; in Saskatchewan, wheat represents 27% of the province's total exports, with crude petroleum representing 20% and potash 13%. Manitoba presents quite a different picture, with only 23% of its exports coming from natural resources (wheat - 14%; nickel and alloys - 6.12; canola - 3.17%).

The distinctive nature of Manitoba's economic base has led Professor Paul Boothe to question whether its economic interests might not be more closely aligned with those of Ontario than those of the other three western provinces.¹⁰

As these statistics point out, despite the importance of the natural resource and agricultural sectors in each of the western provinces, significant economic diversity exists between them. Chambers and Percy have observed in relation to patterns of employment:¹¹

The comparison of employment across the four western provinces indicates that differences between the provinces are also striking. Within the prairie provinces, agriculture's relative importance in Saskatchewan is more than twice as great as in Alberta and Manitoba. In all provinces the proportion of employment in the non-agricultural primary industry exceeds the national, more so in Alberta than the other three provinces because of the energy sector. While all four provinces have smaller shares of employment in manufacturing than the national average, manufacturing is relatively more important in B.C. and Manitoba.

Further, when one considers the export destinations of goods produced in the four western provinces, one is immediately aware of differences which may have significance for ultimate constitutional positions.

*Current Dollar Exports of Goods
by Destination in 1984¹²*

	Interprovincial Trade	International Trade
Manitoba	59.2	40.8
Saskatchewan	35.4	64.6
Alberta	61.1	38.9
B.C.	23.2	76.8

Source: Unpublished Provincial Input-Output Data, Input-Output Division, Statistics Canada.

Manitoba and Alberta are much more dependent upon inter-provincial trade than either Saskatchewan and British Columbia and therefore may be more concerned with the effect of interprovincial trade barriers upon their ability to do business. In contrast, the economic well-being of British Columbia is largely dependent upon international trade, and in particular, trade with United States and the Pacific Rim. Indeed, trade with the Pacific Rim now represents approximately 40% of the province's total exports.¹³ This diversification of markets will ultimately make B.C. less vulnerable to the vagaries of both the Canadian and U.S. economies and will probably ensure that B.C.'s constitutional concerns in relation to trade will have a particular international dimension.

It is important to keep in mind these kinds of differences between the four western provinces when predicting their ultimate constitutional positions. Reliable and accessible markets will ensure the economic well-being of the four provinces — however, the location, and relative importance of these markets, will vary among the provinces, as will their constitutional positions regarding topics such as economic union, trade policy, tariff barriers, etc. Chambers and Percy offer the following caution about the West:¹⁴

... despite the importance of natural resource and agricultural sectors in each of the Western provinces, significant economic diversity exists between them. These intra-regional differences are probably sufficiently large that many of the problems which currently confound federal-provincial relations would remain, and perhaps be even more serious for a grouping of western Canadian provinces. For example, the issue of regional disparities, the need for an equalization mechanism and of the possible conflicts between equity and efficiency would remain.

A further basis for distinction between the four provinces is the political ideology of the governments presently in power. Recent elections have returned New Democratic governments to power in Saskatchewan and British Columbia. As one might expect from social democratic governments, even moderate ones, such as those in Saskatchewan and British Columbia, their rhetoric speaks of concern for the powerless and the disadvantaged and the necessity to redistribute wealth to ensure that these people share in what is generally a very high standard of living enjoyed by most Canadians. This is not the rhetoric of the present Conservative government of Alberta and it is unclear, at this point, what the formal position of the Conservative government of Manitoba will be. However, if one looks to the Manitoba Constitutional Task Force, one sees a much greater concern with issues of social welfare than one does in Alberta. I presume that these expressed

concerns with the powerless and the disadvantaged will lead to a somewhat different constitutional agenda than that which is being proposed by Alberta. Indeed, while neither Premiers Romanow or Harcourt have embraced Premier Rae's notion of a "social charter", it is my sense that, by whatever name, we will see a greater infusion of social welfare issues into the present constitutional debate than we have so far.¹⁵

In addition, the New Democratic governments of British Columbia and Saskatchewan appear to have a much stronger commitment to aboriginal self-government than does, at least, Alberta.¹⁶ In the case of British Columbia, this is a remarkable reversal of position — considering that the Social Credit government of Premier Bill Vander Zalm consistently refused to recognize Aboriginal claims to self-government. The degree of commitment to the inclusion, and definition, of the right to aboriginal self-government in this constitutional round will probably prove to be yet another point of distinction between the four western provinces.

BRITISH COLUMBIA — CANADA'S FIFTH REGION?

I will briefly outline a few facts which might support the recognition of British Columbia as a fifth region in Canada, a position the province has asserted for sometime. British Columbia is to a large extent geographically isolated from the rest of Canada, due to the presence of the Rocky Mountains. In addition, of the four western provinces, it is the only maritime province. While it is true that Manitoba has a small sea coast on the Hudson Bay and one port at Churchill, this hardly qualifies Manitoba as a maritime power. British Columbia, on the other hand, is a province defined, to a large extent, by the ocean. British Columbia views its relationship with other Pacific Rim nations as crucial to its economic survival.¹⁷ In addition, if one considers some of the areas of constitutional concern which have been identified by the province as important to its development and prosperity, one appreciates their uniqueness; fisheries, ocean oil tanker regulation, offshore resources, law of the sea issues, maritime boundaries, harbour development and ocean shipping.¹⁸ British Columbia's main trading partners are Pacific Rim nations and the United States; therefore, its concerns in relation to international trade policies and tariff barriers will to some extent be different from those of the other three western provinces.

It should also be kept in mind that the population of British Columbia is growing at twice the national average, a fact which merely exacerbates its resentment at what it sees as a lack of equitable representation in our federal institutions. However, unlike the Smith Report, which points to B.C.'s leadership role in calling for the reform of the country's central institutions¹⁹ and which calls for a

reformed Senate, the present New Democratic government has recently announced that it will not support the concept of a Triple-E Senate. The Government appears to believe that the province's long term interests can be better served by gaining additional legislative powers and not through reformed a Senate.

In summary, I believe that a reasonably convincing argument can be made for viewing British Columbia as a distinct region of Canada and one that can rightly argue that it has little in common with its three prairie neighbours.

SIMILARITIES

In spite of the points of difference outlined above that exist between the four western provinces, there are important similarities. The most important of these is an intense feeling of alienation and exclusion from federal institutions of government, be it Parliament, the Cabinet, the S.C.C. or regulatory boards and agencies, such as the C.T.C., C.R.T.C., N.E.B. and the National Harbours Board. For example, Smith reported that in a 1988-89 study of 31 major federal boards and commissions, only 7% of their membership (directors) came from British Columbia.²⁰ The four western provinces share a sense of being a "hinterland", possessing only limited influence over decision-makers in Ottawa. This sense of alienation and lack of effective voice have been heightened by certain notable events, which have taken on almost "mythic" proportions.²¹ I offer, as examples, the National Energy Policy, a policy of the Trudeau Liberal government of the early '80s which stripped the western oil and gas producing provinces of significant revenues from, and control over, their natural resources; and the apparently blatant politicization of the process by which federal government contracts, such as the CF-18, are awarded.

The primary constitutional reform that has been proposed to overcome these feelings of alienation and exclusion is that of Senate reform and in particular, a Triple-E Senate. This is a position strongly endorsed by the government of Alberta. However, support for this model in the three other western provinces is more difficult to gauge. There does not appear to be strong support for the notion of a Senate, made up of equal numbers of Senators from each province, other than in Alberta. The Manitoba Constitutional Task Force calls for equitable representation, as did the Smith Report. As mentioned above, British Columbia appears to no longer have any particular interest in Senate reform and the government of Saskatchewan, while not yet indicating its position, is unlikely to demand equality in representation. There is greater general support for the concept of an effective and elected Senate. But with British Columbia's recent decision to forsake Senate reform, it is no longer realistic to suggest (if it ever was) that Senate reform is

the paramount constitutional demand of the West.

Further, during the '70s, there were a number of significant Supreme Court of Canada decisions in which the western provinces felt that the Court reflected an unacceptable centralist bias. Two of these cases, *CIGOL*²² and *Central Canada Potash*,²³ placed significant limitations upon the ability of resource-producing provinces to regulate those resources in the inter-provincial and international markets. These defeats, probably felt most profoundly by Alberta and Saskatchewan, led even ordinarily reasonable and level-headed politicians, like then Premier Alan Blakeney of Saskatchewan, to suggest that the Supreme Court was biased in favour of the federal government.²⁴

While the concerns of the western provinces, at least in relation to the development and exploitation of their natural resources, were accommodated to some extent by the inclusion of section 92.A in the *Constitution Act, 1982*, there is still strong support for some provincial involvement in the selection of Supreme Court of Canada justices. For example, the Meech Lake accord, which would have required the federal government to select Supreme Court justices from lists provided by the provinces, was seen in the West as an important first step in ensuring provincial "input" in the make-up of this important federal institution. However, such participation in the appointment process is a far cry from the proposal put forth by the Smith Report, in which the author recommends that the Supreme Court should have ten members and that the make-up of the Court at all times should be representative of the five regions of Canada, those regions being the Atlantic, Québec, Ontario, the Prairies and British Columbia.²⁵

A further irritant for many in the West is the continued reference to the concept of duality in Canadian constitutional law, referring to the English and the French. Westerners will concede that in 1867, two founding peoples was the socio-political reality. What they find more difficult to accept, in 1991, is that the concept should continue to be a controlling constitutional principle. The reality of the West is that of a region in which only 35% of the population identify their ethnic origin as English or French.²⁶ Westerners are suspicious of any constitutional proposal that appears to give "special status" to one ethnic group over others. This suspicion is translated into ambivalence, if not hostility, toward any form of distinct society clause. During the Meech Lake debate, it became clear that even the possibility of Québec gaining special powers to preserve and promote its distinctiveness was unacceptable to the majority of westerners. Interestingly, however, the premiers of British Columbia, Alberta, and Saskatchewan supported the Meech Lake Accord throughout, with the Premier of Manitoba being the only dissident. However,

in this constitutional round, Premier Getty of Alberta appears to be resiling from his support for the inclusion of a distinct society clause, while his fellow western premiers appear to be much more receptive to the idea. While the principle of "provincial equality" is still an important demand from the government of Alberta, it appears to have less resonance with the governments of British Columbia, Saskatchewan and Manitoba.

CONCLUSION

Obviously, there are important historic and economic similarities among the four western provinces. Further, they share strong feelings of alienation and exclusion from federal institutions. However, on balance, it is my opinion that the differences between the four western provinces outweigh these similarities, thereby making it very difficult and perhaps, even futile, to suggest that there is a "western position" in relation to constitutional reform. The agendas of the four western provinces reflect there should be no expectation that they will speak with one voice in the ongoing constitutional reform process. Indeed, it is my opinion that the differences outlined above will become more pronounced over the coming months, thereby further adding to the array of constitutional "bottom lines" upon which compromise will be required.

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1. Comments presented at the Association for Canadian Studies in the United States, 20th Anniversary Conference, Boston, November 22, 1991.
2. This comment does not ignore the involvement of Premier Blakeney and his government in constitutional affairs during this time. It is simply to reflect my opinion that the dominant player of the time was the Premier of Alberta.
3. On a related point, Roger Smith has documented the disparity in fiscal capacity of the Western provinces. He makes the point that although tax bases are similar for all major taxes and rates are similar, this does not provide for equal fiscal residuals. "At similar levels of local and provincial taxes, in 1982 Alberta could have supported a percapita level of expenditure that was 2.8 times that in Manitoba, and double that in Saskatchewan and British Columbia. Fiscal capacity in Saskatchewan and British Columbia was 40% that in Manitoba. These disparities fell sharply with the fallen energy prices, but remain substantial. By fiscal 1992, fiscal capacity in Alberta was still nearly 1.7 times that in Manitoba." See: Smith, Roger "Constitutional Reform and the Structure of Government: Fiscal Residuals in the West - A Reason for Getting Together", *The Economics of Constitutional Change Series*, Article No. 2 - June 1991.
4. Report of the Manitoba Constitutional Task Force, October 28, 1991 at 8.
5. *Ibid.* at 40-41.
6. A Québec Free to Choose, Report of the Constitutional Committee of the Québec Liberal Party, January 28, 1991.
7. As reported in the *Globe and Mail*, Tuesday, November 12, 1991.

8. *Ibid.*

9. Chambers and Percy, "Natural Resources and the Western Canadian Economy: Implications for Constitutional Change", *The Economics of Constitutional Change Series*, Article No. 5/June 1991. These percentages are compiled from Table 2: Leading 5 Commodity Exports by Province as a Percent of Total Exports.
10. Boothe, Paul, "The Economics of Association: A Regional Approach to Constitutional Design" Research Paper No. 91-11 (A paper prepared for the C.D. Howe Conference on Constitutional Futures, Toronto, November, 1990).
11. *Ibid.* at 4.
12. Canadian Federalism and Economic Union Partnership for Prosperity (Minister of Supply and Services, Ottawa, 1991) at 10.
13. Smith, Melvin, H. Q.C., *The Renewal of the Federation, A British Columbia Perspective* (May, 1991) at 3-4.
14. *Ibid.* at 12.
15. Together with Ontario, these governments now represent over 52% of the population of Canada. As a result, these three provinces may become a potent force in any future constitutional reform, in that, our amendment formula requires the agreement of seven provinces representing 50% of the population. If the provinces of Saskatchewan, British Columbia and Ontario were to agree on the nature of the fundamental constitutional change they wish to see take place, they could prevent any proposed change not in keeping with their vision.
16. The Manitoba Task Force also calls for the recognition of the inherent right of aboriginal peoples to self-government.
17. *Supra*, note 13 at 3-4.
18. *Ibid.*
19. *Ibid.* at 7.
20. Premier's Office, (Intergovernmental Relations) An Analysis of B.C. Representation on Major Federal Crown Corporations and Boards, F.Y. 1988-89, (January, 1990) as reported in Smith, *Ibid.* at 63.
21. See, for example, the draft speaking notes of I.H. Asper, Q.C., as presented at the Canada West Conference — Alternatives 1991, Banff Springs Hotel, September 27, 1991 in which he refers to the NEP as "fiscal rape".
22. [1978] 2 S.C.R. 545
23. [1979] 1 S.C.R. 42
24. This expressed concern with bias was dealt with by Peter Hogg in an article entitled "Is The Supreme Court of Canada Biased in Constitution Cases?" (1979) 57 C.B.R. 721 in which Professor Hogg concluded there was no evidence of centralist bias.
25. *Supra*, note 14 at 62.
26. *Supra*, note 10, Figure 2, Ethnic Origin.

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