

EQUALITY OR ASYMMETRY? ALBERTA AT THE CROSSROADS

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Foreword

The federal Liberal Party's 2004 general election platform heavily emphasized issues that are mainly subject to provincial competence under the constitution (e.g. health care, child care, cities). Since the federal government lacks the authority to implement detailed regulatory schemes in these areas, acting on these election commitments frequently requires federal-provincial-territorial (FPT) agreements.

A controversial question that arises when considering all intergovernmental agreements is whether they should treat all provinces and territories similarly or whether the agreements should be expected to differ from one province/territory to another. This issue of symmetry or asymmetry arises at two levels. The first is whether all provinces should be and should be viewed as "equal" in legal and constitutional terms. The second relates to the political and administrative level and the intergovernmental agreements it generates. When should Canadians expect all provinces/territories to be treated similarly in these agreements and when should difference be the rule?

Given this political context, it is timely to reconsider the factors that are relevant to the issue of symmetry and asymmetry. We are doing this by publishing a series of short commentaries over the first half of 2005. These papers will explore the different dimensions of this issue- the historical, the philosophical, the practical, the comparative (how other federations deal with asymmetrical pressures), and the empirical. We do this in the hope that the series will help improve the quality of public deliberation on this issue.

Harvey Lazar
Director

In recent decades, Alberta political leaders have championed the principle of provincial equality. Whether it be in the 1982 constitutional amending formula, the demand for a "Triple E" Senate, or the visceral fight against the "distinct society clause" in the 1987 Meech Lake Accord, Alberta has been a consistent opponent of any "special status" for Quebec. It thus came as a surprise when Alberta signed on to the principle of "asymmetrical federalism" at the September, 2004 Health Summit. Is Alberta abandoning the holy grail of provincial equality, or was this a momentary aberration?

Only time will tell, but there is growing support in Alberta for pursuing a Quebec-like future within a more flexible, less centralized confederation. One of the appeals of taking this fork in the road is the growing sense of futility in pursuing the goal of provincial equality (and the model of classical federalism that informs it), given Quebec's staunch and successful opposition. Opting for asymmetrical federalism holds out the alluring prospect of having Quebec as an ally rather than an opponent.

To appreciate the historical significance and appeal of provincial equality to Alberta, it is instructive to recall the state of Canadian federalism as recently as the post-World War II decade. Writing in 1954, J.R. Mallory, one of English Canada's leading constitutional scholars, observed that "in a federal system there is assumed an equality of influence and treatment of the various individual units. In Canada the facts are, and always have been, very different." He explained thus:

The inequalities in size and population of the provinces of Canada have been recognized tacitly in a constitution which to a large extent embraces two levels of federalism. The superior size and bargaining position of Ontario and Quebec give them a status and an autonomy which are different in kind to those of the rest of the provinces. ...The outlying provinces are still Canada's empire and Canada is still, for many purposes, little more than the original area which it encompassed at Confederation. These circumstances have tended to make of

the disallowance power an imperial device for holding other provinces under the sway of the predominant economic interests of the central provinces. ...The Canadian constitution thus recognizes what have been, so far, the economic realities of the country.¹

Against this background, it is easy to understand the appeal of provincial equality to the post-war generation of Alberta political leaders. For Ernest Manning, Peter Lougheed and most recently Preston Manning, provincial equality marked a substantial improvement over the status quo described by Mallory in which Alberta and the other Western provinces were “provinces not in the same sense as were Ontario and Quebec, but in the Roman sense.”²

For Albertans, provincial equality became a potent mix of justice and self-interest. It animated and justified Lougheed’s bitter decade fight with Trudeau over national energy policy; Lougheed’s insistence on no special vetoes for Quebec (or Ontario) in the 1982 constitutional amending formula; the push for Senate reform that confers equal representation for all provinces regardless of size or population; and Albertans’ populist uprising against the “Distinct Society Clause” in the 1987 Meech Lake Accord³. At the level of federal politics, Preston Manning’s effective marshalling of this spirit (“The West wants in!”) explains the remarkable success of the Reform Party in Western Canada (and its corresponding failure to take root in central and Atlantic Canada).

In the post-war decades, Alberta’s self-assertion in national politics has been driven by the new economic strength of Alberta and British Columbia. At the end of World War II, the combined population of the two Western-

most provinces was only half that of Quebec. Today, they are virtually equal. Economically, the change has been even more dramatic. As recently as 1961, the combined provincial GDPs of Alberta and British Columbia were only half that of Quebec’s. Today, it is 13 percent greater than Quebec’s.

The post-war economic and demographic ascendancy of the West has not been matched by a corresponding increase in political influence.

Indeed the opposite has been the case. For three of the past four decades, Canada has been governed by Liberal Prime Ministers whose governments had little to no representation from the West. The only exception – the eight Mulroney years – catered extensively to Quebec demands and ended with the bitter implosion of the federal Conservative Party into two new regional rump parties – with the Manning Reformers hoovering up former PC supporters in the West by playing the regional alienation card. Ironically, by fragmenting the conservative vote, the Reform Party episode further alienated many Westerners by paving the way for three successive Liberal majority governments led by another Quebecker, Jean Chrétien. Indeed, for 34 of the past 36 years, the Prime Minister of Canada has been a Quebecker. It would appear that the weaker Quebec has become economically, the more powerful it has become politically.

These trends have not been lost on Albertans. What does Alberta have to show for three decades of championing the principle provincial equality? Despite Alberta’s third Senate election in November, 2004, Senate reform is further off the national agenda than it was twenty years ago. Peter Lougheed’s hard fought 1982 “Alberta amending formula” was rudely supplanted by Jean Chrétien’s 1995 Regional Veto Act – which effectively restores Quebec’s veto over the constitution. The section 33 Notwithstanding Clause – another Lougheed demand to protect Alberta (and other provincial governments) from Charter-based judicial imperialism – has been stigmatized outside of Quebec. Financially, Alberta has watched over \$200 billion dollars leave the province over the past four decades in official and un-official

¹ J.R. Mallory, *Social Credit and the Federal Power in Canada*, (University of Toronto Press, 1954), pp. 10,176.

² Mallory, p. 10.

³ Alberta Premier Don Getty and his government supported the Meech Lake Accord when it was announced in May, 1987. However, popular opposition to the Accord became widespread in Alberta by 1989, stimulated in large part by Preston Manning and his then emergent Reform Party.

federal transfer programs. Last October's First Ministers' Conference on Equalization appears to guarantee that this figure will continue to grow. In the current fiscal year, Alberta will watch its \$9.3 billion dollars in oil and gas royalty revenues be swallowed up by the \$12 billion dollars it will transfer to Ottawa. Alberta's fate appears to be the opposite of Quebec's: the more it contributes financially, the less it receives politically.

If this is all Alberta has to show for three decades of championing provincial equality, it is hardly surprising that Alberta Premier Ralph Klein has left the door open to Quebec's new initiative on asymmetrical federalism. If asymmetry turns out to mean only sweetheart side-deals for Quebec, then this door will soon be slammed shut. But if the principle of asymmetry can be developed in a manner that means a more flexible, less centralized form of federalism for all provinces, then Alberta may well become an important ally for Quebec, and vice-versa.

I am one of a number of Albertans who have already advocated choosing this new option. We have proposed a series of provincial initiatives known collectively as the "Alberta Agenda." These include withdrawing from the Canada Pension Plan and creating a provincial pension plan; canceling Alberta's contract with the RCMP and creating a provincial police force; taking over collection of personal income taxes; making more frequent use of the section 33 Notwithstanding Power to override adverse Supreme Court Charter decisions; and reclaiming provincial control of health care.

These policy reforms have three things in common. They are neither radical nor unconstitutional. They are all being done already by either Quebec, Ontario, or both. Second, they would decrease the presence and influence of the federal government in the lives of Albertans. Third, with the exception of health care reform, they can each be done unilaterally, without permission or agreement from Ottawa and other provinces. Taken together, these reforms would represent the beginning of what asymmetrical federalism might look like in Alberta.

To date, most of these proposed reforms enjoy only modest popular support – in the 40 to 50 percent range.⁴ Premier Klein has publicly voiced his skepticism, and a recent government MLA task force recommended against most of them.⁵ But the Task Force tabled its report before the First Ministers' Conference embraced asymmetrical federalism, and before Alberta's November election. In that election, three of the nine members of the task force, including the Chairman, were defeated. The upstart Alberta Alliance Party, which embraces the "Alberta Agenda," won 10 percent of the popular vote and elected one MLA. There is now a new Minister of Intergovernmental Affairs, who has the responsibility to accept or to amend the task force report.

Future events will also be factors. If Prime Minister Martin keeps his promise to ignore Alberta's recent Senate elections and fills the three current vacancies with non-elected, Liberal favourites, Albertans' interest in alternative measures may increase. Similarly, if Mr. Martin and the Liberals win the next federal election by using Alberta as a political whipping boy on any number of issues – health, Kyoto, homosexual marriage – changes in public opinion within Alberta may result.

Less tangibly, the "more Alberta, less Ottawa" movement is likely to benefit from the spreading realization that if Quebec strongly opposes something in Ottawa, it simply doesn't happen. This *real politik* insight into how Confederation really works – widely held but seldom stated publicly among national elites – is gaining ground in Alberta. The failure of Senate reform has been the catalyst. Despite its obvious merits – more effective integration of regional concerns into national policy-making and providing a much needed check on our all-

⁴JMCK Polling, for the Alberta Residents League (April, 2004). Among PC voters support rises to the low 60 percent range, including 81 percent who agree that Alberta's equalization payments are "too much."

⁵"Report of the MLA Committee on Strengthening Alberta's Role in Confederation," Government of Alberta (June, 2004).

powerful Prime Ministers – everyone in Ottawa (except perhaps Reform-Alliance Party MPs and Senators-Elect) understood that this would not happen. By strengthening the federal government, meaningful Senate reform would weaken provincial governments – something Quebec nationalists, both separatist and federalist, adamantly oppose.

To the extent that this kind of realism displaces idealism as the dominant force in Alberta political opinion, support for the asymmetrical option will grow. This is an important difference between “Western alienation” in the 1980s and today. The former was visceral, visible but short-lived. It burned itself out. Contemporary discontent is less flamboyant but more calculated and sustained.

It is also consistent with Canada’s evolving political economy. Professor Mallory accurately pinpointed the reasons behind Canada’s two-tier federalism a half-century ago: “The Canadian constitution thus recognizes what have been, so far, the economic realities of the country.”⁶ Suffice it to say that while the “economic realities” of today are far different from those in Mallory’s generation, the political system has changed hardly at all. The growing disequilibrium between Canada’s political system and economic system cannot be sustained forever. The economic and demographic growth of Alberta and British Columbia cannot continue to be ignored in the operation of our political system.

For over two decades now, political leaders from B.C. and Alberta have pursued the holy grail of provincial equality and Senate reform but have very little to show for it. Whether the aspirations of the next generation will take the form of asymmetrical federalism, only time and events will tell.

⁶ Mallory, *Social Credit and the Federal Power in Canada*, pp. 10,176.