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B.C. and Canada: The Old Ways and New

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I am deeply honoured in a personal and professional sense to give this year's Mel Smith lecture. On the personal side, Mel was a man I knew and very much admired. In a professional sense my work at the Fraser Institute covers governance, federalism and aboriginal issues. Mel had so much to teach us in each of those areas, and I will touch on each of them today.

Mel also was a good Canadian and a strong British Columbian, and I will talk about our province's place in Canada.

And finally by way of introduction, I stand here tonight in the footprints of your first two speakers, Rafe Mair and Preston Manning. Each of those men in his own way has had a major and undoubted impact on Canada, and that impact has been overwhelmingly positive. It is an honour to follow them at this podium.

In thinking about governance (by which for today's purposes I mean the operation of our democratic system) and federalism and aboriginal issues, one must have one or two starting points, and it is only honest to describe them for from thence all else flows.

My starting points are two. The first is the worth of the individual, and of individual freedom. The second is the notion of subsidiarity - the idea that decisions should be made as close as possible to the people affected by them, commensurate with knowledge and resources.

I think Mel had a third reference point, deeply important to him, that being the relationship of a man or woman to his or her faith. This last is a highly personal starting point, up to each of us to determine. I will deal only with the secular domain in my remarks today, but note that the essence of most faiths, which is the subordination of the self to something greater, can have a very considerable leavening impact on the first two principles in our daily lives and questions of ethics. That said, I see no important conflict in dealing with questions of political

process, my main concern here.

Now it should be stated at the outset that many believe in another very different set of starting points, almost the reverse of the above. This vision of the proper beginning holds that the important thing is the collective, not the individual. By this view the whole is larger than the sum of its parts, and the state is more important than the sum total of its importance to individuals. Going along with this view is the idea that power should accrue to the centre and devolve from there - the opposite of subsidiarity.

Neither of these visions wholly rejects the other. No sane person would reject the idea that some things are best done collectively and centrally, and even the most ardent collectivist and centralist would acknowledge that at least some individuals themselves in particular - have a very considerable worth and should be allowed to decide a few things by themselves. Still, as a broad classification, as a way of thinking about things, the idea of the two visions is a useful one.

From the two great starting principles that I believe valid - the worth of the individual and of subsidiarity - we can move to what the Supreme Court of Canada says ¹ are the four fundamental characteristics of Canada. These are, they say, democracy, federalism, the rule of law and respect for minorities. In my opinion each of these characteristics flows naturally from the principles of individual worth and subsidiarity. Today I will speak largely of democracy and federalism, but the other two points need at least brief recognition.

The rule of law has been argued by many, recently for example by the historian Paul Johnson ², as the greatest political achievement of the just concluded millennium. I would agree with that, and moreover would give the rule of law and due process pride of place, even over democracy, in underwriting the peace, order and relative prosperity that we have in Canada today.

Governments have a conceit that it is their wise policies and their democratic sensitivities that account for our progress. In truth our democracy is a rather primitive one, and many of the most important policies of government are not wise. The perverse incentives established by regional development strategies and many labour market policies, the fostering of monopolies and elements of the taxation system and social welfare policy

¹ In Reference Re Quebec Secession, 1998

² Wall St. Journal, March 10, 1999.

constitute more of a drag than a boost. Government policy in respect of aboriginals has been immensely destructive, and continues so.

Rather than governments, it is the toil and ingenuity of individuals operating in relatively free markets in the private sector that has built our prosperity, and that activity has been absolutely dependent upon the rule of law. The associated notions of private property and equal rules applicable to all have made it possible to develop civilization throughout the western world. Canada has been a beneficiary of these principles and of our abundant natural resources, almost in spite of the work of governments.

Respect for minorities has come much later in a historical sense, and is still a work in progress. The curious and often destructive actions of various administrative tribunals and even the courts in interpreting the Charter and human rights laws are still clearly on a steep learning curve. Nonetheless, respect for minorities is now very much a part of the Canadian character, and importantly so. We are all members of various minorities, and the more powerful governments become, the more is vigilance in this area required.

Now, to open the main three topics of this discussion governance, federalism and aboriginal issues - I begin with the recently submitted report of the Ad Hoc Committee on the Provincial Constitution. Mel Smith was a founding member of this committee. Though he passed away before our work was completed, we benefited much from his contributions.

The other members were Nick Loenen, chairman of this event, broadcaster Rafe Mair, lawyer Gary Lauk, and myself. All are former MLAs; Rafe and Gary were also Cabinet Ministers.

The essence of our report can be summed up as follows:

- our democratic system is not working as well as it should.
- the main reason for this is too little power for our elected representatives and too much for the executive branch and especially the First Minister.
- broadly viewed, there are three levels of democracy and of democratic control. Stage 1 is where voters choose the people (MPs or MLAs) who choose the CEO. That boss thereafter is in personal charge (whatever the cosmetic trappings of democracy may be) of making the laws, setting the taxes, controlling the

expenditures and generally running the government. This is known as "responsible government", a highly misleading description. We have a particularly pathological version in Canada. It is a four year elected dictatorship.

In Stage 2 voters choose representatives who themselves, as free actors, make the laws, levy taxes and control expenditures. There is still a CEO who may be directly or indirectly elected, but he or she is closely checked and balanced by elected representatives in the legislature. This is known as "representative government". One version can be seen in the United States, but the concept can also be wedded to parliamentary government.

In Stage 3, voters themselves make direct decisions on public policy via the ballot box and such machinery as initiatives or referenda. This is known as "direct democracy", more common in some parts of the world than in Canada, but invariably and necessarily a rarely used (though very important) part of the political process.

Our committee believed we need to move out of Stage 1 towards Stage 2.

- the choice between and mixture of a host of potential remedies canvassed by our committee - electoral reform, parliamentary reform, more transparency, some direct democracy, representative government versus responsible government, supermajority rules in certain cases and new constitutional constraints on governments generally - in our view should be addressed by an elected Citizens' Assembly to fashion a new constitution for the province. That draft constitution would then be put to a referendum for approval.

- it is essential that the Assembly be elected. No appointed body (including a randomly selected "jury" sometimes proposed) could possibly have the democratic legitimacy needed to overcome the hugely entrenched interests of the status quo.

- the work of constitutional reform is sufficiently important and timely that a new office of the Legislature - that of a Commissioner of Reform - should be created to chair the Citizens' Assembly and report on results for a period of ten years.

There is a good deal of philosophy available to buttress the recommendations. Here are some of the issues seldom canvassed but always in the background:

Democracy is not the same as freedom, though many see the words as synonymous. Indeed, the two ideas can often be in conflict. That is what "minority rights" are all about. Democracy is simply a means. Freedom is an end.

Government is not necessarily good. The best definition of government is that organization in society which maintains an effective monopoly on the use of force. For many, the idea of government is that of a benign provider or regulator, but it must never be forgotten that all things government does rely ultimately on coercion, be it as subtle as the quiet extraction of taxes or as obvious as a police action. That is why the proper control of government is so important.

Democracy does not mean you should be able to have whatever a majority votes for. Many politicians have made careers based on telling people exactly that, but it doesn't work well. Why? The resource allocation decisions within a society are made in two marketplaces. One is the voluntary, free market, which is relatively free, competitive and transparent. This highly successful marketplace is the source of most of our material and cultural progress.

The other marketplace is the political one. This market is not free and voluntary; it is coercive. It is not competitive except somewhat at an election, so well described by one cynic as a "futures market in stolen property". And the political marketplace is not very transparent.

Nevertheless this political market is very important, for its products are security and order. Within limits governments can add overall value. Beyond these limits they subtract from overall value.

If unchecked, democracy tends to set the limits of government action not at the social optimum, but at a more intrusive point where the gratitude of those receiving government largesse and favours just exceeds the pain of the losers by way of taxes and regulation, all of the above measured in the currency of votes rather than dollars.

We can't do without either the free or political markets, but the dangers of the political one must never be forgotten. Control of government must be the first preoccupation of men and women who would be and remain free. That is my first point.

If the work of the Ad Hoc Committee on the nature of governance

in British Columbia has any success, one of our fondest hopes was that our province may in some way become an example to the rest of the country. Constitutional ideas that seem good can spread with amazing rapidity. Few people realize that until 98 years ago the United States Senate was entirely appointed (by State legislatures), not elected. The Founders had deliberately designed things that way, as another means of keeping the central government under control.

Then in 1903 the electors of the state of Oregon - making use of direct democracy, by the way - mandated a new process for selecting their United States Senators by way of direct election.

The idea was a sensation, spreading across the country so rapidly that by 1913 an amendment to the U.S. constitution provided for direct election everywhere.

Whether that was a good idea or not is open for debate. By helping to legitimate the U.S. federal government it certainly contributed to the huge centralization of the world's most important country for almost 100 years, though a decentralist tide is running again today. But the point is, B.C. could similarly lead our federation by example in the field of parliamentary reform. And leadership is much required!

Which brings us to reform of the federation itself, as distinct from the reform of its Parliament. This was a lifetime preoccupation of Mel Smith. Mel was "present at the creation" of the 1982 constitutional amendments, and had grave reservations about them. Those amendments and the manner of their adoption have of course given us the (hopefully unintended) three dreadful consequences of judge-made law, an ongoing and serious point of grievance for Quebec separatists (the amendments were adopted over the near unanimous opposition of the National Assembly), and constitutional adventurism in the field of aboriginal law which has had an adverse impact on British Columbia and most particularly, on aboriginals themselves. Mel's last major work was a monograph published by the Fraser Institute on the true intent of the framers of Section 35 (entrenching existing aboriginal rights) as compared to the use of that Section by the courts. I believe that this piece of Mel's will be an important citation in the inevitable Supreme Court litigation on a Third Order of aboriginal government.

Mel worked as Deputy Minister to Rafe Mair in developing the imaginative and sensible proposals for Canadian constitutional reform submitted by the Bill Bennett government in the late 'seventies. Ottawa did not take these proposals seriously even as a courtesy, and this may yet have important consequences for

our federation.

In current constitutional affairs the line from Ottawa during the Chretien years has been that the status quo federalism is just fine. It needs only a bit of fiddling here and there, as much to increase the role of the central government as to constrain it. Meanwhile serious tensions from Quebec remain, and age-old alienation grows in the west.

Make no mistake - this alienation could become serious. Separatism is not yet numerically important in this part of Canada, but it has become respectable to advance such views. That in itself is an enormous and important change.

The response of the central government through its responsible minister, Stephane Dion, has been to accuse those who would reform the federation of indulging in a sort of blackmail, and giving comfort to the separatists. Mr. Dion must be answered, and vigorously so.

Let us begin with the proposition that the role of the state is to serve the individual, not vice versa. It is not clear that this is the unambiguous Ottawa view, but in my opinion it is a self-evident truth.

If the role of the state is to serve the individual, then it is but a public utility - an important one, to be sure, but not a sacred object, simply a utility.

Now as the world changes, we accept that public utilities must too. There may be changes in mandate, or franchise territory, or governance, or ownership. Or there may not. But without any question whatsoever, these questions may be asked - indeed, must be asked by the public spirited citizen.

For myself, I have no doubt that at least three of the four variables cited above must be re-examined. As to mandate, a rebalancing of responsibilities between the central, provincial, and local governments and the private sector is in order.

As to governance, it is time to advance to that second level of democracy cited above, in order to afford a genuine sense of the representation of the regions at the centre.

As to ownership, it is time to reject the old theory of sovereignty residing in Parliament and make clear where it really lies in the modern world, namely in the people. The imperial Prime Ministry is the latter day embodiment of the sovereignty of

the monarch, and while the powers have been transferred from hereditary kings to four-year elected dictators, the concentration of power remains unacceptable.

Not everyone will agree with me on these directions, but there is no question that a proper debate is a civic duty, not an exercise in blackmail. That latter claim must be rejected as unworthy and improper.

I did not include in the above recital the fourth variable of territory. That of course is what the separatist issue is all about - a conclusion that matters are incurable in the larger territory, so we must find our solution in a smaller one. I did not list that fourth variable for current consideration for a very good reason - it is a terribly emotional issue, with the potential for considerable disruption and transitional costs whatever the downstream benefits.

But there should be no doubt - if satisfactory reform is blocked in other ways, the separatist file will be opened in British Columbia in the fullness of time. That is not blackmail; that is an observation of history.

For the world is changing. The great currents of technology and low cost transportation and near-free communication and the resulting world-wide competition in goods and services and ideas and cultures and the increasing wealth and mobility of peoples is redefining the role of the state - that "public utility".

Everywhere we see the application of the principle of subsidiarity. In some cases this is reflected in privatization. In others it is reflected in decentralization of government, even in some cases the creation of new countries. In still others it justifies an upward consolidation of powers, as in the European Union, the United Nations and its agencies, the WTO, and so on. There is nothing wrong with some upward consolidation - here in Canada, surely it is insane that our central government does not have the power to prohibit interprovincial trade restraints, or to measure and compare the performance of provincial governments in the exercise of their duties according to world standards and best practice.

Subsidiarity is not a one-way street. But it is now Main Street!

For Canadian federalism this has three main implications. On two of them - rebalancing and intergovernmental coordination - I have

written extensively elsewhere.³ Rebalancing is much discussed under the less descriptive rubric of "decentralization".

Intergovernmental coordination needs a new transparent and accountable mechanism for this large and hidden level of government - some sort of "Council of Ministers" - most recently proposed in Quebec Liberal Leader Jean Charest's constitutional paper released early this year. That is a large topic in itself, for another time and place.

I will dwell a bit longer on the third issue, regional representation, for that is the fastest, surest fix to our problems. That will take our attention to the House of Commons and the Senate, but first I would like to set a context for the evolution of B.C.'s place in Canada.⁴

³Thirty Million Musketeers; One Canada for all Canadians, Fraser Institute, Vancouver, 1995.

⁴The following section is explored in much further depth in a paper presented at the annual conference on federalism of the Queens' Institute of Intergovernmental Affairs, October, 2000, to be published in full in Canada: the State of the Federation 2000/2001, McGill-Queen's University Press, forthcoming Spring, 2001.

A bit of history. Once Ottawa secured its Pacific flank 130 years ago with the entry of British Columbia into Confederation, this province was essentially forgotten. The railway was grudgingly provided, and very late at that. Since then when we get national attention it is usually from the tax collectors or in terms of amusement at the latest political or cultural oddity emanating from the wet coast.

B.C. has always punched below its weight in the federation, and been given little political respect. There are good reasons for this. At the beginning we were small in population and economic terms, and our voting behaviour in federal elections was unreliable, from a central Canadian point of view. We've never cared much for eastern games and could not be bought.

Now we are a large province - more than 4 million people⁵, 13 per cent of Canada's population and economy. Yet in political terms we are still unreliable. We still can't be bought - though it would be gratifying to at least see Ottawa try - and we tend to vote against parties of the eastern political establishment. So, in their terms, we get the attention we deserve.

A second reason that British Columbia receives far less attention than she ought to do from the central authorities is that our provincial governments over the years have not chosen to play the federation game. Our governments have been indifferent to, or antagonistic towards or just plain ignorant of the issues of the federation that critically affect B.C. interests.

For the first third of the twentieth century our Premiers were seen as whiners, always seeking "better terms" (of Confederation). The Depression's Duff Pattullo was a B.C. firster and a maverick.⁶ World War II made the provinces disappear, for many practical purposes. Post-war the central government began its huge buildup of social policy control financed by war-related tax powers. B.C.'s then Premier was W.A.C. Bennett who famously refused permission for travel and even phone calls outside of B.C. to his Deputy Ministers without explicit authority, and routinely avoided Dominion-Provincial conferences, as they then were.

⁵Which of course is 1 million souls more than the total population of the 13 Colonies at the time of their Declaration of Independence.

⁶Pattullo beat Tory Premier Simon Fraser Tolmie in 1933. One of Dr. Tolmie's memorable lines was, "You must vote for us. We are the only party with Depression experience!"

The two socialist reigns during the most recent thirty years had an additional burden beyond the usual indifference or antagonism or ignorance. For ideological reasons they believed in big government and central solutions, and of course the central government stood ready to offer as much of that as needed. On the other hand they had to live in a local political climate not friendly to Ottawa (though very much so to Canada - a different thing.) The upshot was that socialist administrations were not so much indifferent as erratic, swinging from the feuds of the Clark years to the recent toadying of the Dosanjh government.

The great exception to the above was the Bill Bennett government, and alas, it proved the rule. Constitutional amendments of breadth and imagination to improve the place of the provinces in Canada, invented by Rafe Mair and Mel Smith and carried by Bill Bennett, were literally laughed out of Ottawa. Rafe tells a fine anecdote. The first year at a constitutional conference the B.C. proposals were presented in eight slim, separate volumes. Mel Smith, sensing the minimal impact and with his wonderful sense of humour, suggested they be resubmitted the next year unchanged, but in a single, thick volume. Rafe well remembers the compliments he received for the "new" work. But no one paid any attention.

The net result is that for all of its history in Canada B.C. has been the "outsider" of the federation. Matters of the greatest moment to the province - tax policy, immigration policy, equalization, distribution of federal spending, international trade policy (except for the softwood lumber file), the balance of power as between the two orders of government - all of these have received the benign or wilful neglect of governments in Victoria.

For a long time that didn't seem much to matter (though in fact it did). B.C. was rich and growing. Our resource rents were so high that we could not only maintain a policy of "affordable resentment" vis a vis the rest of Canada - we could maintain it among ourselves as well. (The politics of polarization are more virulent in B.C. by far than elsewhere in Canada.)

But realities have been changing. Our population has almost quadrupled since 1950. When that happens the resource endowment per capita is cut by three-quarters - and indeed more, for like most places we "highgraded" our best resources first. Increasing environmental costs reduce rents even further.

The result? B.C.'s personal income per capita has dropped from

30% above the Canadian average to about par today. And our GPP per capita is only 95% of the Canadian average. We are no longer a rich province. Our industrial structure is changing to lower-wage tourist related activities on the one hand and highly paid technological pursuits on the other. But there is not enough of the latter.

And we have just come through a terrible decade. Canadian disposable income per capita grew by over 12% during the period, while ours managed only under 5%. That relative economic decline is the first new reality.

It is balanced by a second. B.C. has been "discovered". Vancouver is regularly cited as one of the world's great cities, a success story of man as well as nature. The beauty of the hinterland has a growing international fame. So the political climate is not depressed. It is more a climate of waiting for the liberation to be brought about by a new government, which of course may not be able to meet such expectations.

In the politics and economics of this province there is a third, huge "new reality". Not only has the population of this province grown immensely. Its composition has changed.

We are used to thinking of Canada as an "immigrant society", but for most of the country (outside of Toronto, where the immigrant effect is considerable, but less than in B.C.) giving any reality to this description really requires going back 100 years. Most Canadians, and their parents, have been here for quite a while.

Not so in B.C. Immigrants (i.e. persons foreign born and granted landed status) now make up over one-quarter of the population of the province.⁷ This is matched only by Ontario. No other province comes close.

Our immigrant population growth rate between the Census data of 1991 and 1996 was **25%**. (Ontario had a 15% growth rate over the same period.) Net international immigration is now the most important contributor to B.C.'s growth.

In addition, most of these immigrants are very new. Almost two-thirds of the immigrant population in 1996 had arrived in the previous 25 years. This is an astounding number.

⁷The following data is from publications of B.C. Stats, the statistics branch of the Ministry of Finance, based on census data.)

Moreover the composition of recent immigration is very different from traditional sources. As recently as 1968, 83% of annual immigration to B.C. came from Europe (mostly), the United States and Australia. Only 13% came from Asia.

By 1999, the figures had reversed, with the Europe/U.S./Australia figure being at 18%, and the Asian number growing to 76%. These "third reality" numbers also clearly constitute a revolution.

The net result by the time of the 1996 Census saw a huge change in the ethnic mix of the province. The situation is clouded by the questions asked by the census - people are able to give single or multiple ethnic origins⁸, and can now include "Canadian" as one of these. The data indicate that it is largely the descendants of British stock who choose the new "Canadian" label, at least so far.

If one takes the "single-origin" data as a proxy for overall distribution of ethnicity, the British/Canadian/European cohort stood at about 68% of the total in 1996. The Asian group stood at about 26%. (Of these, the East Asian group, overwhelmingly Chinese, comprised 19 percentage points, and the South Asian group, overwhelmingly East Indian, made up the remaining 7 points.)

⁸In 1996 in B.C., about 56% of respondents gave single origin answers)

Just ten years before, the distribution was dramatically different, standing at 82% "European" as compared to 13% "Asian".⁹

All of this is obviously important, but what to make of it in political terms? No one really knows, but some comments and conjectures follow:

1. History suggests that newcomers move only slowly into the political process. There is therefore a "lag" effect, but the activities of political parties in chasing the "ethnic vote" - generally, a proxy word for newcomers - gives empirical evidence of its growing importance.

2. The balance of Chinese to East Indian populations from the above figures is just a bit less than 3:1. Most of the Chinese immigration has come from Hong Kong, or latterly, Taiwan. Both of these areas are famously market oriented economies, and in that sense at least, conservative economies.

India on the other hand is a well-known centrally planned political system and economy (to the extent it can be said to be planned at all, in practice), with a very different political culture.

3. Voluntary immigrants (as distinct from refugees) by the very fact of their mobility are likely to be somewhat more adventurous/entrepreneurial than the average for their society of origin.

4. Immigrants, almost universally, consider that they are coming to **Canada**, not this or that province. The distinctions between and divided loyalties between the two orders of government that characterize most Canadians take some time to learn.

5. Immigrants, again almost universally, are not steeped in traditional Canadian attitudes towards such unique local

⁹ Aboriginal Canadians plus a few persons of miscellaneous origin make up the small difference to 100% in each case.

questions as the British Crown, aboriginals, and other Canadian value sets stemming from our particular history. That would make a fascinating study on its own, but for the purposes of this essay and British Columbia politics, the important point is that immigrants do not share the collective Canadian guilt on the aboriginal issue. Indeed, many immigrants have come from places where their own estate was worse.

6. Immigrants are not evenly distributed throughout British Columbia. They tend overwhelmingly to concentrate in the Lower Mainland. This naturally also ensures the concentration of the political effect.

At a guess, the "on balance" effect of the above over time is likely to be towards a gradually more conservative society in British Columbia. Moreover, notwithstanding the initial exclusive identification of immigrants with Canada rather than any single province such as B.C., the primacy of provincial administrations in commercial and market matters plus the growing demographic differences of B.C. from the rest of Canada may well foster an eventual on balance adoption of "B.C. First" attitudes to at least the same extent as traditional British Columbians. These demographic influences on B.C. politics cannot yet be quantified but will surely be important.

From the new realities to the old ones: In the Queens' paper I included a section called "The absent minded gorilla and the goblet to be drained."

The "gorilla" of course is the central government. The "goblet to be drained" is a famous phrase of W.A.C. Bennett. This, he said, was how Ottawa viewed B.C. What are the facts of the relationship, and how do these facts colour B.C.'s present and future relationship with the federation?

Ottawa does not do much that is unusual or important in British Columbia, with three exceptions to be noted.

The central government is immensely powerful, and yet seems largely forgetful of its Pacific Coast province. Programs and expenditures are designed for areas that are either more needy (as seen from the centre) or of greater political consequence. Even allegedly national programs such as Employment Insurance are clearly fine-tuned with Quebec and the Atlantic in mind. Agricultural programming is designed for the Prairies and Central Canada. Industrial development, cultural development (film industry support for example) and technology policies are widely believed in B.C. to be disproportionately centred on Ontario and

Quebec. Federal procurement of goods and services from the province, according to provincial government figures, is only about half what should be expected based on our population.

One must not make too much of this - certainly these things are less important than the affirmative action to be dealt with below taken by the central government with respect to B.C. - but this sort of benign neglect as perceived from B.C. does give rise to a constant low-level irritation.¹⁰

And what impact does the federation, by way of its central government, have on the province of B.C. and its citizens.? Consider first, and then leave aside the programs of general application such as trade and monetary policy, foreign policy, the military, the Criminal Code, the Post Office, payments to seniors, Statistics Canada, drug certification, EI (even with all its regional distortions) and the like. These things are all important, but largely undifferentiated. The only political impact they have on the federation - and this is of great consequence - is that because of programs like these, British Columbians share the views of most Canadians that the federal government is a sort of an underwriter of security and order. To the extent it is true that we all have multiple political allegiances, these programs explain the national loyalty.

(I do not discount the influence of inertia and sentiment. Indeed, these are the principal glues binding Canada. However they are brittle connectors, not resistant to shock and subject to fatigue over time.)

Now consider the ways that the federation, through its central government, interacts with B.C. in ways that are unique to this province. There are many programs in this category too, but only three are important. Those are the fishery, immigration and aboriginal affairs.

The main importance of the fishery is symbolic. The industry accounts for less than 1% of the provincial GPP. But in symbolic terms the fishery, and in particular the salmon fishery is seen as a part of the soul of British Columbia.

There may be someone outside of the federal bureaucracy who is

¹⁰ In an Ipsos-Reid poll released Feb. 23, 2001, 84% of British Columbians felt federal political leaders do not pay enough attention to B.C.'s interests and 77% believe that B.C. does not get its fair share from Ottawa.

prepared to argue that the central government has done a good job of running the B.C. fishery over the years, but I have not met or heard of that person.

Immigration has been briefly dealt with as to numbers but we should also look at the broader context. A society is defined by its population base. Everything else - power structures, wealth creation, cultural achievement - flows from that base. There is nothing more fundamental.

Since the early part of the twentieth century when widespread mobility throughout the world became technically and economically possible, states have jealously guarded their control over their population base. There is a libertarian argument that this is an improper thing to do, and a property rights argument that validates the practice, but the fact of the importance of controls on immigration to virtually every state in the world is incontrovertible.¹¹

Under the constitution of Canada immigration is a shared jurisdiction with federal paramountcy, but as a practical matter no province but Quebec has even attempted to have a significant influence on admissions.

By way of its immigration policies over the past generation, the central government has literally changed the face of B.C. society. Curiously, there is no reason to believe that this was anything more than a side-effect and unintended consequence of a simple pursuit of ethnic votes in selected ridings, particularly in Toronto. The gradual shift over time (by both Liberal and Conservative governments, but particularly the former) to framing immigration policy to address the interests of recently arrived Canadians (i.e. "family reunification", which translated into ethnically specific immigration) instead of the interests of all Canadians (i.e. usefulness to Canada as a whole) led to the demographic changes described in a previous section.

The upshot from British Columbia's point of view has so far generally been a happy one, and surely one of the most peaceable ethnic readjustments on record. There have been plenty of kitchen table mutterings about this of course, related to race and jobs, but a high level of tolerance coupled with rising real

¹¹One of the most convincing indices of the growing "federalism" of the EU is the way in which the Schengen Convention member states have been willing to subordinate this power to the overall Union.

estate prices fuelled by the newcomers (allowing "old-stock" British Columbians to retire to the sunny Okanagan or Vancouver Island with a condo, small boat and term deposit) kept things on an even keel. Latterly there is a growing pride in the new multiracial mix in this province.

But three things remain. The first is that the B.C. population base was changed without consulting B.C.. (B.C. has of course had representatives in Parliament throughout this exercise, but they have never had much influence even when in government, which mostly they have not been.) Whether the outcome is good or' bad, something very important has happened without our input, and that is alarming for those who think about such things.

"Those who think about such things" constitute a very large part of the population on such basic matters as who your neighbour is. This concern about lack of influence at the centre is of course fed not only by immigration but by other policy files, but that general concern is a large part of the underpinning for the rise of the Reform party in B.C.

The second thing that remains is that of settlement cost. However the dialogue on the long-run economic impact of immigration is sorted out (and it appears to depend importantly on the age and skill set composition of the newcomers), the **short run** impact is clearly costly to the host province. Provinces pay these bills, and English (or French) language education, social services and infrastructure requirements for newcomers are considerable whatever their origin. The federal appetite for immigrants has laid a net cost on British Columbians of double that of the average Canadian.

The third consideration is the most important of all to our topic of political culture, and perhaps as well the most unintended of all of the consequences. If the speculation of an earlier section is in the correct direction, it appears that the Asian migration of the late twentieth century may bolster the B.C. right as surely as the British working class migration of the early twentieth century turned the province's politics to the left. This will have provincial electoral consequences early on, and federal consequences as immigrants and their descendants lose their gratitude to the (largely Liberal) politicians who admitted them to Canada.¹²

¹² It should not be imagined that this development will be too long delayed. Even today, immigrants who have been in Canada for a couple of decades and therefore more likely to participate in the political process complain in the editorial pages of

The third unique and the most important thing that Ottawa does in British Columbia is exercise virtually full control over aboriginal issues, except insofar as the province controls resources. But the federal government overwhelmingly dominates this file, like that of immigration and the fishery. And in the cases of the fishery and of aboriginals the results are universally agreed to be human and economic tragedies.

Would Victoria have done any better? Suffice it to say that no provincial government could have run these central government files as badly as has Ottawa. Why not? Because any local government cannot help but be on the ground, and see and live with the problems on a daily basis. The central government is insulated by 3000 miles distance in its Ottawa and Hull office towers miles from the collapse of the fishery, the dramatic demographic changes brought about by immigration, mostly beneficial but highly costly in infrastructure and resettlement, and the ongoing tragedy of the aboriginal file. The flak lands on minor Ministers. The media pay little attention. These things are of little importance in the Ottawa "Power Game", as one influential column used to be called.

In the matter of the "goblet to be drained" the facts are simple and imposing. According to Statistics Canada interprovincial accounts, adjusted for the impact of the federal deficit or surplus by the B.C. Ministry of Finance, in 1997 B.C. sent about \$22 billion in tax revenue to Ottawa and received something less than \$19 billion back in benefits, measured by the most generous direct and indirect attributions. For example B.C.'s share of the military, embassies, foreign aid, Ottawa overhead and so on are all counted as benefits to B.C.

The net drain of about \$3 billion was almost 3% of our GDP. This has varied during the nineties. Preliminary figures for 1998 suggest the net drain fell to \$1.7 billion, but a couple of years earlier it stood at \$5 billion. If this seems not too bad for a

"rich" province, recall that these numbers are as high (or in some cases, much higher) than any annual deficit ever incurred by a B.C. government. In addition we are no longer rich. Recall as well that our GDP per capita now stands **below** the Canadian average, at only 95%.

One might argue that we have brought this unhappy estate on ourselves by our curious choice of provincial governments, but as the equalization formula generally works in this country, the more incompetent any given province's economic system, the more support is given. (On performance this should have had B.C. leading the incompetence race.) B.C. receives no equalization however, and suffers a net drain instead. (So too do Alberta and Ontario, but these provinces are far richer than the average.)

What are the solutions to this dysfunctional membership in the federation - i.e. bad service and little influence? We really cannot blame other Canadians. People always look after themselves and their own first, and pay far less attention to others, especially if the others are far away and thought to be rich. No, we must blame ourselves, and we can also blame the system.

As to ourselves, our eyes should first turn to Victoria. We can no longer afford to be outsiders. We should insist that our provincial governments begin playing the federation game with the skill and forcefulness that our stature requires. The champion player in this game has been Quebec, and there is much we can learn from that. We do not have - not yet at least - the lever of separatist sentiment but at the same time we haven't asked for and don't need special treatment. Just fair treatment would do nicely.

In part such "fair" treatment will come from greater influence at the centre - if allowed, and see below. But as far as Victoria is concerned, alliances with like minded provinces - above all Alberta, Ontario and Quebec - in order to boost the influence of the provinces vis a vis the central government by way of collective action should be seen as the way to go.

But strengthening governments, even provincial governments is not a particularly worthy end. That is less the answer than is getting the central government more under regional control, as exercised by the people's representatives.

In the House of Commons the solution is perfectly obvious - and absolutely revolutionary. We already have MPs from B.C. The trouble is, they don't work for us. In the crunch (and with

appropriate recognition of the platform of the Alliance) they mostly work for their leaders rather than the folks back home, and do so particularly slavishly if their leader is the Prime Minister.

While this Ottawacentric perspective is a very federal Liberal view of the world, it also held sway when the Tories had the central government. It is not a matter of party. We need to change the system so that MPs work for the folks back home no matter which party or Prime Minister is in power. That means a dramatic reduction in the power of the Prime Minister and the executive generally, in favour of the elected legislature. The techniques lie along the same lines of the earlier-discussed report on reform in the B.C. Legislature.

If and when we can get to a system wherein B.C. MPs work for B.C. in the crunch, then we can say that the regional representation question is solved. Like most people, British Columbians don't need to win every battle, but do feel a strong need to be heard.

We need our representatives to have used our influence to the fullest in the resolution of the policy issues of the day.

And what are the chances of this? I tell you after having watched the system and been involved in it for over forty years now - the chances are nil with the current Prime Minister, slim with any Liberal, and to be proven if and when an Alliance government takes power. For another observation is this: politicians often come to have a great fondness for the system that put them in power, and for the power itself. Indeed, here in British Columbia this will be the great test of the democratic reform promises of a Gordon Campbell government. Memories for old battles and old traditions often turn out to be much longer than memories for promises.

The other institutional reform often prescribed for Parliament relates to the Senate. I admit to being one of the authors, with Senator Ernest Manning, Prof. Peter McCormick and David Elton of the book¹³ that was the intellectual godfather of the Triple E Senate movement. Our purpose was to bring genuine regional influence to Ottawa in a way that would not be dominated by partisan politics, and to curb the huge concentration of power in the executive branch. In a sense it was one of the answers to what would become the cry of Ernest Manning's son, Preston: "The West Wants In!"

¹³ Regional Representation, Canada West Foundation, Calgary, 1981.

I said a moment ago that "I admit" to authorship, not because I am not proud of the book and warmly remember the opportunity to work with my co-authors, but rather because I no longer agree with the conclusions. Instead of reforming the Senate I think we should abolish it.

Why the change? Two reasons.

First of all the world has changed. The world forces of decentralization discussed earlier no longer support the legitimization of increased power in Ottawa, which a Triple-E Senate would do (and did, so effectively, in the United States.) Today, au contraire, I believe the power of Ottawa should be curbed.

The second reason is one of realpolitik. In recent years we have seen a very unhealthy trend in our federalism, whereby the six small, poorer and virtually "client state" provinces specialize in extracting subsidies from the central government, to the detriment of the health of their own economies. The economic analysis on this is clear and conclusive.

In a Triple-E Senate the client-state provinces would out-vote the four large provinces, and matters would be made worse than ever. From a British Columbia point of view, this is simply not supportable.

But if there is not to be reform by way of Triple-E, what then? Some would begin to shade the "equal" part, giving more Senators to larger provinces and moving closer to rep by pop - and therefore closer to duplicating the Commons. As another possibility, Jean Charest's Quebec Liberals have tentatively advanced a version of the House of the Provinces, suggested by Mel Smith over twenty years ago, and that is a respectable option. In a House of the Provinces the Upper House would be named by provincial governments.

The choice between such options depends upon your vision of the future of Canada. If you see some case for a relatively strong central government, some sort of Upper House is necessary. My own view is that a preferable future would be to see us moving closer to a European Union solution. We already have the necessary element that they lack, namely a democratic central government with true legitimacy in its limited sphere. In that vision, abolition of the Senate and replacement with a Council of Ministers on intergovernmental matters is the way to go.

But I think we must all admit to a lot of humility and be open to a lot of flexibility in the specific answers to these great questions.

The necessary thing is to get a lot of improvement, for we will never get perfection.

The worrisome thing is, what if we are estopped even from any significant improvement? The central government must approve any change in Parliamentary reform or it will not happen. It must approve any change in our federalism or that will not happen - at least in a gentle, evolutionary way. Yet any change will surely mean a diminution of central government power. Alas, the voluntary ceding of power is not a normal characteristic of human nature.

The probabilities then are these:

- most likely is that the status quo will remain.
- the second likelihood is that the status quo will be fractured by some secessionist event (which might end in reconfederation rather than secession, of course)
- the least likelihood is that generally desired change will come about by rational and civil dialogue.

The separatists of Quebec have long ago given up on the third, least likely possibility.¹⁴ That is why they are separatists. This is notwithstanding the fact that the huge majority of Quebeckers - about 70% by most polls - really want the same thing that British Columbia needs, namely reform of the federation.

¹⁴The last try was the "beau risque" policy of Rene Levesque after his loss of the 1980 referendum.

The real separatists of Quebec are relatively few in number, though still far more numerous than those in western Canada.¹⁵ My own forecast is that if westerners think and agitate about these questions as long as Quebeckers have been doing and meet the same stonewall toward reform of the federation, they will arrive at the same general conclusions and separatists will become more important here.

B.C. separatists have similar problems to the Quebeckers however. Just as Quebec separatists start with the monolithic opposition of the numerically important anglophone population, so do B.C. separatists start with the monolithic opposition of the similar or slightly larger fraction of newcomers to B.C., whether from other countries or from eastern Canada.

So the status quo remains the likelihood for now. That is the bad news.

The good news is the gradual atrophy of the national state the world over, which is absolutely irreversible as a result of the advance of technology. People everywhere will still want to express their collective interests through governments, and will increasingly turn to governments closer to home for that purpose in many things, and to supranational governments for a few. So the end result will be the same, albeit more slowly and less comfortably than a willing accommodation to reality would produce.

My final subject is the one that I approach, and I know Mel Smith approached, with a passion quite different from a cerebral engagement with constitutions. That is the question of aboriginal policy in Canada, a human tragedy of huge dimension and direct government culpability. It was the final and greatest preoccupation of Mel's life in public policy. It was also, I am convinced, the reason for the shameful denial of the Order of British Columbia to this great public servant. Mel was too politically incorrect, and unforgivably, too right and insightful for the establishment on this issue. But then to roughly quote Cicero, it is better that posterity should ask why there is not a statue dedicated to you than why there is one!

¹⁵Though this number is reaching important dimensions. The Ipsos-Reid poll of 800 persons in B.C. cited, earlier showed that 14 per cent answered "Yes" to the "hard question", i.e. simple separation from Canada. This is numerically similar to Quebec sentiment in the >sixties.

For there should be a statue of Mel Smith on this issue. His book, "Our Home or Native Land" became a wake-up call to thousands of Canadians, and an immensely controversial one, for it challenged the authorized world view of governments and academics and the media. Before getting into the principles, some history.

In an error of historic and tragic dimensions, the British North America Act singled out one race of Canadians and assigned responsibility for (5.91(24)) "Indians and lands reserved for the Indians" to the central government. 1867 was a racist, sexist and bigoted time. Chinese, Jews, women, Catholics and Indians all were thought inferior to the Anglo Saxon male and discriminated against.

But only Indians were mentioned in the Constitution. All of the rest - Chinese, Jews, women, Catholics - are just fine in the year 2000. There is a very definite cause and effect here.

That the federal administration of Indian affairs has been a human tragedy is common knowledge. The results have been much less felt in central and eastern Canada, though the Atlantic is getting a taste of things to come in the wake of the Marshall decision.

What is less well known is the impact of the reserve system on Western Canada, and the even greater impact of the land and treaty question in B.C.¹⁶

Unlike much of the rest of Canada¹⁷, B.C. was as to most of its territory never covered by treaties with the Indian inhabitants.

Instead, small parcels of land were arbitrarily set aside as reserves. There is a grievous history of sharp dealing and broken promises even with respect to the few lands as were assigned.

B.C. has about 200 distinct Indian bands averaging perhaps 700 members per each, typically with about 50% on-reserve and the rest off. The on-reserve people are mostly in rural settings, while the off-reserve have migrated mostly to urban settings.

¹⁶For a detailed treatment of many of these issues, see www.fraserinstitute.ca for availability and downloading of several articles by this author.

¹⁷Except for eastern Quebec and most of the Atlantic provinces, where B.C.-type problems may in due course surface).

The "land question" has never gone away, and has served to focus the attention and energy of B.C. Indians in a manner unknown in the rest of Canada.

The gradual evolution of Supreme Court of Canada (SCC) decisions added impetus to this movement. Then the constitutional amendments of 1982 and 1984 not only entrenched yet-to-be-defined entitlements, but made the Supreme Court of Canada - very definitely a non-B.C. institution - the final law-maker (superseding Parliament) with respect to Indian matters.

Within a period of ten years, Indian land claims progressed from an arcane branch of the law to a matter of intense economic concern in the province. Claims to land title were launched which covered more than 100% of the province. (Some barren areas and some existing treaty areas were not covered, but there are considerable overlaps in the claims.) Most of the productive area of the province outside of the northeast Peace River country is covered. With a newly vigorous appetite for land (based as much on modern aspirations as on traditional usage) came a complementary appetite for Indian government. These two demands came together in the landmark Delgamuukw case. The SCC declined to rule on the plea for a declaration that Indian governments had an inherent right of sovereignty over traditional territories. However the court did speak as to land claims.

The 1997 decision said the following: Aboriginal title exists in B.C. The extent is undefined. The court proposed several tests for determining where title exists in law, but expressed a preference for negotiation. The court also said that for good and justified public purpose aboriginal title could be infringed, but only to that extent, and only upon payment of compensation. No one has any very good idea as to what lands and what compensation might be involved, nor how all of this applies to lands alienated in the past.

This judgement landed in the midst of a long and complex treaty negotiation process between Canada, B.C. and a majority (but by no means all) of Indians in the province, as represented by about fifty of the bands. The federal government has taken a negotiating position since the 'seventies, also adopted by B.C., that it will discuss only the future. Additional land, cash, self-government - all can be on the table, but not title from the past, nor compensation for the past. The Indian participants had reluctantly accepted this.

Suddenly the SCC said that the past exists in law, with claims

for title and compensation having legal force. The result has been that negotiations have as at this writing (March, 2001) been mostly paralysed for months. Some local dealings continue, and one agreement in principle has reportedly just been reached with the Sliammon near Powell River. There may be one or two others in the dying days of the current government. Some emergency accommodations have been made in response to blockades, so-called "illegal" (but is it?) logging, and so on.

The current governments in Ottawa and British Columbia made a pre-Delgamuukw agreement with the Nisga'a tribe that provided for considerable lands and cash, and a form of Indian government with elements of sovereignty. The first judicial challenge in the Supreme Court of British Columbia has led to a decision in favour of the treaty makers, including a judicial view that some elements of Indian sovereignty survived Confederation, beyond the authority of the federal and provincial governments. No one knows where this may lead and the case is under appeal.

The pre-Nisga'a settlement formula¹⁸ was \$70,000 per Indian in cash and resources. Nisga'a clocked in at about \$100,000 but as mentioned, this was set pre-Delgamuukw. The Nisga'a benchmark would see total B.C. settlement costs of about \$15 billion. My guess is that the Delgamuukw standard could run to \$50 billion.

The issue of who pays is significant. B.C. had historically taken the position that Term 13 of the Terms of Union loads all such costs on to Ottawa. The NDP government in 1993 reversed this position and entered into an agreement that would see the province paying about half, mostly in lands. No one at that time contemplated the escalation in values involved.

The issue of Indian government is even more significant. In a survey taken for the federal government by the Angus Reid organization in the fall of 1999, only 25% of Canadians thought that Indians should be entitled to ethnically based governments denied to any other ethnic group. In an earlier survey Reid found a general Canadian generosity for the settlement process, but then an ongoing and strong expectation by 73% of respondents that Indians would thereafter be ordinary Canadians in a political sense.

This perception goes directly to the question of Canadian citizenship. Are we one nation, are we two ("founding nations"), are we many nations, or are we any of the above depending on the

¹⁸ Governments invariably deny that such formulae exist.

issue?

The polling numbers above, and much other data suggest that "equality" is the current watchword for the public. The difficulty is that this concept does not square with the solutions currently contemplated by the parties at the treaty tables.

And what has this "separate and more than equal" policy of the governments and the Indian Industry produced? The results are most instructive.

The 1996 Census counted 1.1 million Canadians of aboriginal ancestry. Of these, 300,000 no longer "self-identified" as aboriginals. They knew of their aboriginal heritage, were no doubt mostly proud of it, but lived as ordinary Canadians. Not surprisingly, their social and economic condition in terms of jobs and income and family violence and substance abuse and suicide and so on was indistinguishable from that of ordinary Canadians.

Of the balance, about half lived on reserves. This is third world country, on all of the above indicators. Canada is regularly reminded of this by foreigners.

The other half of the balance lived off reserves, with economic and social outcomes falling in between the two extremes. So governments have had three models to look at. Which have they chosen? The one with the unambiguously worst outcomes, the reserve system. And more land, more money, more "selfgovernment" will not fix the problem, because lack of land and money and self-government is not the cause of the problem.

To understand the root cause, consider what Albert Einstein used to call a "thought experiment". Image two newborn Canadian babies. One is ordinary, to be brought up by its parents according to their beliefs (unless for some unhappy reason the state must intervene), and to be subject to all of the rights and responsibilities of the ordinary Canadian educations and economic and legal systems. That child's chances are pretty good.

Now consider another child, of insignificant racial difference from the other according to what scientists have learned about the human genome, but figuratively stamped with the word "Indian" on the birth certificate, duly recorded in the big book of Indians in Ottawa.

The parents could make that child an ordinary Canadian, proud of

their Indian heritage but in every other way ordinary, and some do. But the perverse incentives - incentives that we provide and impose - make this very difficult. There are the legal provisions of the Indian Act - poor incentives indeed, but at least something to hang on to. There are the financial incentives of easy welfare. There are the cultural incentives of being different, even if much of that difference is based on grievance, a sad and unhealthy means of distinction. There is the trap of the reserve system, with its Jekyll and Hyde characteristics of fortress and prison. There is a world more collectivist than individual, more common than private property. There is a world of other peoples' money, received in the belief that and much, much more is not only deserved, but deserved as a matter of right, as the return of stolen property. There is the world of small governments with large powers - powers to give or withhold a job, or a house, or access to higher education or transportation or travel, or even welfare or medical care. Small governments with large powers using other peoples' money are always an open invitation to abuse by elites the world over in the purchase of votes and the appropriation of communal wealth to personal ends. People are people everywhere. Indians are no different.

Consider that system - and then ask, what right have we to impose that system? For that is exactly what we do. Without the laws and money of Canada, this collectivist, destructive system could not last.

For example - were the money and land provided to Indian governments on a historic and routine basis, occasionally supplemented by new awards or treaties, instead provided to Indian people as individuals what choices would be made?¹⁹ Would the choice be to give it all back to the Indian governments to carry on as at present? I don't think so.

The root question is this and it goes back to the principles at the beginning of this lecture. Are Indians first and foremost members of a collective, or are they first and foremost individuals like all other Canadians? The answer that we have virtually required, with the system we have set up by law and funded, is the first answer - the collective answer.

¹⁹The ability of governments to deal with Indians individually on treaty and compensation matters is probably constrained by law. The very much larger annual flow of funds for social and economic development purposes is probably not so constrained, so this is not an academic question.

Does this make sense? If there is a single economic and social and governance lesson of the twentieth century that is clear and unambiguous, it is this: the way to freedom and prosperity leads through respect for the individual and private property. The collectivist solutions have mostly failed, if comparison with the well-being level of the general community is the test.²⁰ There are exceptions - some small religious groups like the Hutterites for example - whose association, it must be underlined, is wholly voluntary, and not subsidized by the state or encouraged by law.

Why do we treat Indians differently? Where is the morality in this? Why do we effectively suppress individual choice by treating Indians differently from other Canadians? Individual choice does not rule out collective solutions - but arrives at such solutions only as they are chosen by individuals.

Dealing with Indians as ordinary Canadians would not in any way reduce the social services available to those in need. It would not in any way reduce treaty rights which are property rights after all, and properly heritable. We would be removing nothing by providing choice - nothing, that is, but improper and perverse incentives.

Some say that giving Indians a real choice in the lives they might choose for themselves and their children would be tantamount to "cultural genocide". This is a despicable and intellectually dishonest charge that cannot be too firmly rejected.

"Genocide" is a powerful word. It describes the deliberate

²⁰ There are some examples of successful Indian societies. See the ongoing work of Stephen Cornell, Director of the Udall Center for Studies in Public Policy at the University of Arizona. Little comparable work is available in Canada.

elimination of a people by death. The word has a terrible history in suffering and blood, and to use it in any other way is to trivialize that terrible experience.

Cultures on the other hand are not human beings. Cultures can't be killed as long as there are people who want to keep a culture and live that culture.

But beyond that cultures have no freestanding value. Cultures are only worth the value they are assigned by their adherents. For example, the French language continues to be assigned a high value by a majority of Quebecers. It no longer is assigned that value by literally millions of former francophone families who have migrated outside of Quebec throughout North America. Life goes on. This is not "cultural genocide". This is human beings making choices.

And "choice" is a key word here. The entire multi-billion dollar Indian Industry is absolutely dependent upon the myth of a fundamental distinction as different kinds of human beings between Indians and other Canadians, and a restriction of choice by Indians to collectivist solutions. There are people within this industry that are driven by idealism, mistaken in my view but worthy. But there are many more who are driven by the same ordinary motives of money and status and power that are found in all human beings.

And that is the central point. Indians are ordinary human beings. To say anything else is to be racist. They are ordinary Canadians. From a political point of view, there is no higher estate. From a human point of view, there is no kinder treatment. Indians deserve what we have refused to give - equality in the fullest sense of the word, individual choice in the fullest sense of the word. That is the basis of this great country. Notwithstanding the protestations of a self-interested industry, how can we continue to deny this fundamental right?

In closing, I obviously do not burden Mel Smith with any responsibility for these words I have given you here. His life stands wonderful and complete on its own. But I do dare to conceive that he might have nodded approval here and there. I thank you for the opportunity to make my contribution to his memory.