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Our Turn: A New Course for the West

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"Too long have the West's legitimate demands for constitutional change fallen on deaf ears. There is an emerging feeling throughout the West that it is now *our* turn. Deference to others' demands in the past has given way to defiance and determination to have the West's grievances at last dealt with."

Melvin H. Smith, Q.C.
The Renewal of the Federation: A British Columbia Perspective (Victoria: Queen's Printer for British Columbia, 1991), p.i.

Abstract

Despite twenty-five years of constitutional and political endeavor, the gap between Western Canada's economic contribution to confederation and its political influence has grown. The West's constitutional achievements of 1982—such as the new amending formula and development of natural resources—have been reversed or eroded. The Senate reform movement peaked in 1992 and is now all but dead. Constitutionally, the West is further from realizing reforms than it was 25 years ago.The Reform/Alliance Party—founded on the cry, "The West wants in"—has stalled at the Ontario border. The Liberal Party of Canada has re-established its political hegemony, not by courting voters in the West, but by exploiting regional differences to consolidate its voter base in Ontario and Quebec. The policy consequences for Western Canada have been grim.

If Western Canadians want a secure, democratic and prosperous future, they must plot a new path. Rather than focusing solely on increasing Western influence in Ottawa, it is time to start reducing Ottawa's influence in the West. Provincial governments have failed to use all the powers at their disposal to insulate their societies and economies from the discriminatory and costly policies imposed by Ottawa. British Columbia and Alberta must take the lead in reclaiming control of policy areas such as health, education, welfare, environment, natural resources, fisheries, policing, and pensions. They must rehabilitate the notwithstanding power to shield their societies from the new judicial imperialism fostered by the Charter of Rights. In short, Westerners must learn to play federal politics like Quebeckers.

Introduction

Thank you.
Mel Smith was a tireless defender of British Columbia and Western Canada, and I am honoured to be asked to speak at an event that commemorates both the man and his legacy.

Mel saw more clearly than most that the institutional status quo of the Canadian state was—and remains—permanently stacked against the fair treatment of Western Canada.

Writing in the The Province on April 18, 1982, day after the new Constitution Act was proclaimed, Mel declared:

> "The deep-seated alienation that exists in the west toward the federal government—any federal government—because of the lack of meaningful regional input in the national decision-making is symptomatic of out-moded and unfair existing constitutional arrangements. … Only a major restructuring of our central institutions…will quench fires of alienation and regional discontent. These matters cry out for attention. The constitutional package just proclaimed does nothing to address them."[1]

A decade later, on the eve of the negotiations that led to the Charlottetown Accord, Mel wrote:

> "Too long have the West's legitimate demands for constitutional change fallen on deaf ears. There is an emerging feeling throughout the West that it is now *our* turn. Deference to others' demands in the past has given way to defiance and determination to have the West's grievances at last dealt with."

Mel Smith saw that it would not be enough for the West to occasionally be on the winning side of a federal election (such as we were in the Mulroney era). Majority coalitions are temporary. They come and go, but the underlying institutional bias remains. Only fundamental constitutional changes—such as Senate reform—could make a permanent difference for Western Canada.

It was the Senate reform issue that allowed me to come to know Mel. In May of 1987 Prime Minister Mulroney announced the Meech Lake Accord. By giving Quebec (and all other provinces) a unilateral veto over any future constitutional amendments, Meech would have meant the death of Western Canadian hopes for Senate reform. Mel saw this immediately and sounded the alarm bells.

Mel at that time had already served as B.C.'s Deputy Minister of Constitutional Affairs, and was a widely recognized constitutional authority. His influential opposition helped in

[1] Melvin H. Smith, "Still way to go—That's B.C.'s view," The Province, Vancouver, April 18, 1982, p. B2.

due course to defeat the Meech Lake Accord. Unlike Mel, at that time I was a junior faculty member at the University of Calgary with no particular public profile. But like Mel, I was a strong supporter of Senate reform and thus a fierce opponent of Meech. Although we never met, it was through our mutual battle against Meech that we came to know of each other.

This explains why I received a package from Mel in April, 1992, just as the Mulroney government was ramping up its second run at constitutional reform—a process that resulted in the Charlottetown Accord. The package contained a study that Mel had just prepared for the B.C. government entitled The Renewal of the Federation: A British Columbia Perspective. Inside was brief hand-written note—this note—that reads:

"Dear Sir: I thought that you might wish to have a copy of my pro-Canada proposals written from a B.C. perspective."

Indeed I was interested in this insightful study, which warned of the dangers of any new constitutional veto for Quebec, the pressing need for Senate reform, and the new threat of judicial imperialism arising under the 1982 Charter of Rights.

I subsequently met Mel several times and always benefited from his insights. The last time I saw Mel was here in Vancouver in April, 1998 at the annual meeting of the Civitas group. Premier Klein had just announced that Alberta would be holding a Senate election that October, and I was weighing the pros and cons of becoming a candidate. When Mel learned this, he encouraged me to run. The rest of course is history, so Mel Smith touched my own life in a direct and personal way, which makes even happier to be here tonight to commemorate his life and legacy.

Overview

My message tonight is simple: After 25 years of working for reforms, Western Canada is further from our goals than we were when we started. The gap between Western Canada's economic contribution to Confederation and out political influence is growing not shrinking. This means that the tactics of past 25 years have not worked—and I shall argue—will not work. Ontario and Quebec are not—out of the goodness of their hearts—going to consent to changes to an institutional status quo that privileges their interests. That is not how politics works. Central Canadian elites will only become interested in Senate reform and other institutional changes when they come to see these reforms as the lesser of two evils—that is, as preferable to an alternative that is even less in Central Canada's self-interest. The challenge for the next generation of Western Canadian leaders is to construct such an alternative.

The guiding principle of this new alternative must be to decrease Ottawa's influence in the West, rather than trying to increase Western influence in Ottawa—the strategy of the last generation. The latter requires the help and support of Central Canadians—which is why it has failed. The former we already have the powers to do by ourselves—which is why it will work. There is an array of constitutional and policy instruments that British

Columbia and Alberta could use—short of secession—to chart out a more democratic, more prosperous and more hopeful future. If this sounds familiar, it should. This is essentially the strategy Quebec has used to protect its interests for the past generation. It also why this strategy will succeed, Rather than pursuing an agenda that Quebec opposes (strengthening the Central government), we can align ourselves and our new agenda—strengthening the provinces—with Quebec, a new, post-Parti Quebecois Quebec that is more interested in reforming Canada than destroying it.

Economic and Demographic Change versus Political Status Quo

To plot a new path to the future, we need first to know where we are and where we have come from. So I want to begin by briefly reminding you of the mammoth shift—from East to West--in population and wealth that has occurred just in the past generation, and the failure of our political institutions to keep pace with and adapt to this demographic transformation of our nation.

Since the end of World War II, Quebec's percentage of Canada's population has declined by 20 percent (from 30% to 24%), while British Columbia's share has increased 57 percent (from 8.3% to 13%) and Alberta's by 50 percent (from 6.6% to 10%). More revealing, at the end of the War, Quebec's population was double the combined populations of British Columbia and Alberta. In 2001, they were virtually equal. (7.4 versus 7.1 million, or 24% versus 23% of Canada's population).

Over a shorter time period, Quebec's economic decline has been even steeper. From 1961 to 2001—just forty years—Quebec's percent of Canada's GDP has dropped by 20 percent (from 26.1% to 21%), while British Columbia's has grown by 22 percent (from 10% to 12.2%) and Alberta's an astonishing 51 percent (from 7.9% to 11.9%). In 1961, Quebec's share of Canada's GDP (26.1%) was 44 percent MORE than the COMBINED share of British Columbia and Alberta (17.9%). By 2000, Quebec's share of the GDP (21%) had shrunk to 13 percent LESS than the combined share of British Columbia and Alberta (24.1%).

This dramatic transfer of economic and demographic power from Central Canada to the two western-most provinces has not been matched with a corresponding transfer of political power. In fact, almost the opposite has happened.

Since Pierre Trudeau burst onto the federal political scene in 1968, nine of the ten elections have been won by a party led by a Quebecker. The only non-Quebec Prime Minister elected during this period, the hapless Joe Clark from Alberta, lasted less than six months. With the exception of the two Mulroney governments during the 1980s, our Quebec prime ministers have governed with little to no electoral support in the West. In the six elections following Trudeau's respectable showing of 40 percent in 1968, the Liberals won an average of less than 8 percent of the seats west of the Ontario-Manitoba border. During this 21-year stretch in six elections, Alberta did not elect a single Liberal MP, while Saskatchewan elected only four.

While Western Canada has been an electoral wasteland for the Liberals during this 34 year run, voter-rich Central Canada has been a political bonanza.[2] In the ten elections won by the Liberals since 1963, the Liberals have elected an average of 114 MPs just from Ontario and Quebec, more than two-thirds of the 152 seats needed to form a majority government. From the 1968 through to the 1980 elections, this Central Canadian electoral juggernaut was centred in Quebec, where the Liberals elected an average of 62 (83%) of Quebec's 75 MPs. The Liberals lost their electoral stranglehold on Quebec to the Mulroney Tories in the 1980s and then to the separatists Bloq Quebecois during the 1990s, but it did not matter. Ontario replaced Quebec as the electoral cornerstone of Liberal majority governments. In the three federal elections since 1993, the Liberals have taken all but one or two of Ontario's 103 seats.[3]

The results have been predictable. On a personal level, many Western Canadians have come to feel deeply alienated from a political system in which the results of the election are already decided by Eastern and Central Canada before they even cast their votes. On a policy level, the West's lack of representation in government caucuses and cabinets has resulted in public policies that are indifferent, if not hostile, to Western interests and values.

The most egregious of these policies was Pierre Trudeau's 'National Energy Policy' (NEP) introduced during the energy crises of the mid-seventies and early eighties. The NEP imposed a variety of measures to reduce the cost of energy to Canadian consumers—concentrated principally in Ontario and Quebec—at great expense to the oil and gas industry—then concentrated mainly in Western Canada. Estimates of the cost of the NEP to Alberta's GDP alone range from 140 to 195 billion dollars over a ten year (1974–1984) period.

The list of other federal policies that have negatively impacted the West is too well known to bother repeating in detail. It would include the Canadian Wheat Board monopoly; official bilingualism; mismanagement of the BC Fisheries; mismanagement of Native reserves, land claims, and treaty processes; provincial equalization grants, the federal gun registry; and most recently Kyoto. What is less well known are the staggering financial costs these programs have imposed on Alberta and to a lesser extent, British Columbia.[4]

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[2] A contributing factor is the over-representation of Quebec. Despite near population parity with Quebec (7.1 vs. 7.4 million), British Columbia and Alberta have only 60 MPs compared to Quebec's constitutionally guaranteed number of 75. Indeed, until the 1980 election, Quebec was allotted more MPs than the four Western provinces combined.

[3] In the 1993 federal election, the Liberals won 98 of Ontario's 99 seats; in 1997, 101 of 103; in 2000, 100 of 103.

[4] All figures are taken from Robert Mansell and Ronald Schlenker, "The Provincial Distribution of Federal Fiscal Balances," Canadian Business Economics 3:2 (Winter, 1995), 3-21. This study covered the 32 years from 1961-1992, inclusive. Professor

In the 37 years between 1961 and 1997, only three provinces—Alberta, Ontario and B.C.—were net contributors to the federal government's fiscal transfer programs. Alberta has been the single largest contributor paying $167 billion dollars more than it has received. Ontario and B.C.'s net contributions were $85 billion and $9 billion, respectively. On a per capita basis—which is more meaningful since it takes into account the large differences in population between the three provinces—Alberta's burden was even heavier--$2100 per person, compared to only $244 for Ontario and $111 for B.C.[5]

To no one's surprise, the largest net beneficiary of these transfers has been Quebec, which has received $202 billion dollars more than it has paid in. On a per capita basis, the largest net beneficiaries are the Territories followed by Atlantic Canada, where the average benefit ranges from $2900 [$3023] per person in New Brunswick to $3900 [$4109] per person in PEI.

As a percentage of each province's GDP, Alberta's net loss of revenues averaged 7 percent of its overall economic activity, compared to only 1 percent for Ontario and B.C. By contrast, the Atlantic Provinces depended on receiving these transfers for an average of 20 percent (NFLD, NS, NB) to 32 percent (PEI) of their annual GDP. The figures for Manitoba and Saskatchewan, also net beneficiaries, were 8 and 6 percent, respectively.

The indirect effects of trade linkages lessen the negative effects of transfers on Ontario. Adjoining "have-not" provinces send much of their transferred wealth back to Ontario via purchasing of goods and services—what economists call "leak back". A similar manner, Quebec gains even more than it appears because of its positive trade linkages with Atlantic Canada. By contrast, the net outflows from B.C. and Alberta are not mitigated by "leak back," because they do not benefit from similar trade linkages with have-not provinces. The authors of this study conclude that, "Alberta has been by far the largest net contributor, both in absolute and per capita terms. Alberta also represents the only clear case of a major inequity with respect to the provincial distribution of federal fiscal balances."

If these economic policies had benefited Canada as a whole even as they harmed British Columbia and Alberta, then Western unhappiness could be mostly discounted as sour grapes. In fact, there is considerable evidence to the contrary. During this same 30 year time period, Canada became one of the most heavily taxed and heavily indebted countries among the industrial democracies, with corresponding declines in productivity gains and

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Mansell subsequently updated the study through 1997, and adjusted all figures to 1999 dollars. All figures quoted in this presentation are from this updated data.

[5] The situation for Alberta, Ontario and B.C. is actually even worse than these figures indicate, since during this period the Government of Canada ran up $466 billion dollars of debt (1961-1992). Future payments of the interest on this debt, as well as the repayment of principal, will fall disproportionately on the shoulders of the "have provinces."

the value of our currency. This has triggered a damaging out-migration of medical doctors (averaging one thousand a year during the 1990s) and other mobile "human capital," mainly to the United States. [6] The case can and has been made that Ottawa's fiscal and economic policies have harmed the rest of Canada even more than Alberta and British Columbia.

Implicit in these federal transfer policies was a 'divide and conquer' electoral strategy. The West is resource rich but voter-poor, while Central Canada is voter-rich but resource poor. As long as they could confiscate new resource revenues from Western Canada to buy votes in Central and Eastern Canada, the Liberals virtually owned the House of Commons. [7] This is power politics, pure and simple. As the Liberals' national campaign manager for the 1980 federal election elegantly put it: "Screw the West; we'll take the rest." And they did.

Growing numbers of Westerners despaired of this situation, especially after their high hopes for less Quebec-centric policies under the Tory government of Prime Minister Brian Mulroney (1984-1992) were shattered. To many in the West, it appeared that the weaker Quebec became economically, the stronger it became politically. Under the institutional status quo—a parliament dominated by the House of Commons; a Commons dominated by the Prime Minister; and a Prime Ministership dominated by Quebeckers—there was no electoral incentive to accommodate or respect Western interests and

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[6] Since 1968, the year Pierre Trudeau was first elected Prime Minister, the value of the Canadian dollar has shrunk from over US$1 to US$.62. This decline is linked to Canada's failure to keep pace in terms of economic productivity and capital investment. These in turn are explained by Canada's relatively higher tax rates and government debt. Canada's tax burden in 2000 was 44.3% of GDP, which is 40% higher than the US, our principal trading partner, and ranks Canada the third highest taxed country in the G7. Canada's public expenditures in 2000 were 40.9% of GDP, or 39% higher than the US. Canada's net debt in 2000 was 66% of GDP, the second highest in the G7 and 54% higher than the US (43%) and 36% higher than the G7 average (48.5%). The US is the most relevant comparison, as it receives 85% of Canada's exports and accounts for 40% of our GDP. Successive federal governments have achieved these dubious distinctions while spending almost nothing on defence compared to our trading partners. As a percentage of GDP, Canada spends (1.03%) one-third of what the US spends (3%) and is the second lowest in the G7—only Japan spends less. Within NATO, Canada spends less on defence than the other 18 members except Iceland and Luxembourg, the former having no army and Luxembourg having only 800 soldiers. If Canada had been making 'normal' expenditures on defence, our debt and tax conditions would be even worse.

[7]This strategy was most explicit in the NEP, but still re-surfaces. In the 2000 federal election, our Liberal PM, Mr. Chretien, campaigning in Eastern Canada, remarked, 'I like to do politics with people from the East. Joe Clark and Stockwell Day are from Alberta. They are a different type.' When his audience chuckled, he added: 'I'm joking.' When they laughed more, he added: 'I'm serious,' drawing an even bigger laugh.

opinions. Indeed, the electoral incentives were precisely the opposite. It was out of this gloomy political landscape that the most recent wave of Western reform politics was born.

Plan A: The West Wants In (1978-2000)

The energy wars between Alberta and Ottawa, Lougheed and Trudeau, broke out in the mid-1970s, and have been the driving force of Western protest politics ever since. But the first positive initiatives for institutional reform were presented by British Columbia Premier Bill Bennett at the October, 1978 First Ministers' Conference in Ottawa. The B.C. proposals called for reforms to the major central institutions of the country—the Canadian Senate, the Supreme Court of Canada, the major boards and commissions of the Federal government. The central figure responsible for B.C.'s constitutional initiatives was the recently appointed Deputy Minister for Constitutional Affairs—Mel Smith. And in Mel's own words, the thrust of these initiatives was to strengthen—not weaken—the federation by giving provinces a greater say in national decision-making.[8]

With Pierre Trudeau at the helm of the constitutional process culminating in the 1982 Patriation of the Constitution, B.C.'s initiatives did not enjoy immediate success. But the B.C. government soon found an ally for its reform agenda in Alberta. In 1984, The Lougheed government endorsed Senate reform, and in 1989 Alberta actually held a province-wide Senate election. In 1987 almost all of the B.C. initiatives were adopted by the newly founded Reform Party of Canada. While some details differed, the common spirit was captured by Reform's brash slogan, "The West wants in!"

Increasing provincial influence inside the institutions of the federal government—what I will call Plan A—has been the guiding principle of Western political leaders for the past generation. It is a patriotic vision, in as much as it seeks ultimately to strengthen Canada by enhancing the legitimacy of the federal government. This was certainly Mel Smith's understanding. In his 1991 study, Mel described British Columbia's constitutional agenda as "strengthening rather than weakening the federation [by giving] the provinces a greater say in national decision-making."[9]

In this respect Plan A contrasted with the Quebec Separatist/Nationalist constitutional agenda over the same time period. Quebec leaders sought to weaken Ottawa by transferring more powers and responsibilities to the provinces-or at least to Quebec—what I will call Plan B. Plan B—often described as "devolution"--envisions Canada more like the European Union—in which the member states retain responsibility for almost all domestic policy.

As someone who stood for and was elected as a Senator-in-Waiting in the most recent Alberta Senate election, I have obviously been a supporter of Plan A. But a frank

[8] Melvin H. Smith, The Renewal of Federation: A British Columbia Perspective (Victoria: Queen's Printer for British Columbia, 1991), p.14

[9] Smith, The Renewal of Federation, p.14.

assessment of our progress—and our prospects for progress in the future—have led me conclude that Plan A—whatever its merits in theory—is not working in practice. In fact, I will suggest that Western reformers—and here I mean a broader coalition than just the Reform/Alliance Party—are actually further from our goals today than we were when we started 25 years ago. Let us review the evidence.

Political

Since its founding in 1987, the Reform/Alliance Party has been the most articulate and energetic advocate of Plan A. The Party has enjoyed a meteoric rise unmatched in Canadian political history. In 1993, only its second contested election, Preston Manning and his Reformers swept across the four Western provinces garnering 52 MPs (check) and virtually destroying the once dominant Tories. Four years later, Reform vaulted into Official Opposition. In the 2000 election, re-born as the Canadian Alliance Party, it won a record 67 MPs (check), strengthened its hold as Official Opposition while increasing its vote totals by almost 50 percent.

But beyond this enviable history of forward progress lurks a more problematic future. To date, the Reform/Alliance has elected only three MPs east of the Manitoba/Ontario border. In 1997, its Ontario vote actually decreased, and in the post-Stockwell Day-DRC fratricide of 2001, the CA's support in Ontario has all but disappeared in the polls. Reform/CA has never recorded a political pulse in Quebec, and its support-base in Atlantic Canada is restricted to a few rural ridings. While the CA's new leader has succeeded in rebuilding the Party's support in the West, his prospects for an electoral break-through in Ontario and points East are not bright.

Future prospects are made darker by continued vote-splitting on the Right. The Liberals, with a big assist from the Eastern mass media, have persuaded most Canadians that replacing the increasingly unpopular Prime Minister Jean Chretien with his former finance minister and rival Paul Martin will constitute a change of government. As University of Toronto historian Michael Bliss wrote last December, divided opposition all but guarantees Liberal government until the end of the decade, "and by that time, the damage to the country will be irreparable."[10] Even uniting the PC's and Alliance won't make much difference, because whatever gains this might produce in Ontario and Atlantic Canada will be offset by the immanent collapse of the BQ in Quebec, where the Liberals are poised to reclaim their electoral hegemony of the Trudeau era.

Policy Losses

The policy consequences of the most recent era of Liberal political hegemony are well known. The Chretien government has continued existing policies and introduced new ones that are insensitive to—if not actively hostile to—Western interests.
-Nishga Treaty
-Salmon Fishery mismanagement

[10] Michael Bliss, National Post, Dec. 2002)

-the Canadian Wheat Board Monopoly
-the Kyoto Accord
-The billion dollar Gun Registry
-mismanagement of softwood lumber exports

As noted earlier, these policies drain billions of dollars a year out of BC and Alberta. Current estimates for Alberta are approaching $9 billion annually, or almost $3,000 dollars for each man, woman, and child.

The one bright spot in Chretien record—an apparent commitment to fiscal responsibility—disappeared with the federal budget announced by John Manley last month. We now see that the Liberals' balanced budget and debt repayment policies of the late 1990s were simply a temporary political tactic. The Liberals adopted Reform Party economic policies simply to pre-empt Reform's surging electoral appeal. Now that the Reform-turned-Alliance Party is no longer viewed as an electoral threat, the Liberals have returned to their old tax-and-spend ways.

Constitutional Losses

Less well known are the constitutional losses that the West has suffered in the past two decades. These losses are less obvious but harder to reverse. In the negotiations that produced the Constitution Act, 1982, Western provincial premiers won five hard-fought victories.

-Removing Quebec's constitutional veto power by the adoption of the new, more flexible "Seven-fifty" amending formula. (section 38)
-Setting the agenda for Triple-E Senate reform: equal, elected and effective
-Adding the "Notwithstanding Power" to provide a check against judicial abuse of the new Charter of Rights and Freedoms. (section 33)
-Limiting the scope of aboriginal rights in the 1982 Constitution Act (section 35)
-Strengthening provincial responsibility for the development of non-renewable natural resources (section 92A)

One by one, each of these important victories has been undone, some by the political chicanery of the Liberal government, some by the hyper-judicial activism of the post-Charter Supreme Court of Canada, and some by a combination of both—a combination that is hardly surprising given that the members of that Court are handpicked by the Prime Minister.

Amending Formula

The new constitutional amending formula adopted in 1982 broke what had been known as the "tyranny of unanimity." In theory, the old constitutional convention of unanimity gave each province a veto power over constitutional change. In practice during the Sixties and Seventies, this veto was exercised primarily by Quebec to protect its privileged

position in the federal status quo.[11] It was clear to Western reformers of Mel Smith's generation that Senate reform would remain impossible so long as Quebec retained its constitutional veto, and Mel praised the 1982 accords for breaking this impasse.[12]

For this very reason, Mel and others strongly opposed the 1987 Meech Lake Accord that would have restored the unanimity rule—and thus Quebec's veto. As Mel wrote in 1991,

> "Unfortunately, efforts persist to discredit the Constitution's amending formula and to replace it with one which would give Quebec a veto over reform of national institutions including the Senate. … These efforts …should be resisted strenuously by British Columbia and other provinces who seek Senate reform."[13]

Mel reminded his fellow-Westerners that "the Western provinces and others paid a very high price for obtaining the present amending formula."
"It was a monumental achievement," he wrote, "and [it] obviously required a substantial degree of compromise. In short, the provinces 'bought' Mr. Trudeau's Charter of Rights … and the federal government 'bought' the eight provinces' amending formula."[14]

Notwithstanding Mel Smith's warning, the Seven/Fifty Amending formula is now gone and very likely gone for good. It was unilaterally changed in 1995 in the wake of the Liberals' near loss in the 1995 Quebec secession referendum. The Chretien government enacted what is euphemistically entitled the Regional Veto Statute, under which Ottawa commits itself to "loan" its constitutional veto to each of the five regions of Canada. Of course, the real purpose of this statute was to give Quebec (one of the five regions) a unilateral veto over any future constitutional amendments (such as Senate reform), a desperate promise made by Chretien in the final days of the Quebec referendum campaign when the Liberals realized that the Separatists were on the verge of winning.

The defenders of the Regional Veto Statute emphasize that it is "only a statute"—not part of the constitution—and thus can be repealed by Parliament whenever it chooses. While technically true, repeal of the Regional Veto Statute is politically almost impossible. The Liberals will never renege on their Referendum promise, because if they did, it would trigger a nationalist explosion in Quebec. But would repeal by a Canadian Alliance or Tory government be greeted in Quebec with any less outrage? Indeed, I suspect the very anticipation of such a backlash—and the accompanying threat of rekindling the separatist flame—would deter even a Canadian Alliance government from repealing the Regional Veto Act. And so what Mel Smith and others considered to be one of Western Canada's most important constitutional achievements in 1982 has been unilaterally erased.

Senate Reform

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[11] In 1964, Quebec vetoed the proposed "Fulton-Favreau" amending formula. In 1971, Quebec backed out of the "Victoria Charter" and its new amending formula.
[12] See fn. 15, below.
[13] Smith, The Renewal of the Federation, pp.13.
[14] Smith, The Renewal of the Federation, pp.13, 19.

Senate reform did not figure explicitly in the 1982 Constitution Act. However, Western premiers clearly linked the new amending formula as opening the door to Senate reform,[15] and indeed it did. The following year Alberta struck a Senate reform task force. After tabling its report calling for a Triple E Senate, the Alberta task force crossed the nation promoting it. In April, 1987 when Mulroney surprised Canadians with the secretly negotiated Meech Lake Accord and it did not include Senate reform, Reformers played a major role in defeating it. In 1989, Alberta held Canada's first ever Senate election. The winner, Reform Party Candidate Stan Waters, was appointed to the Senate less than six months later.

When negotiations began the following year for the Charlottetown Accord, it was a given that Senate reform would have to be included to garner the support of Western Canadians. In a July, 1992 draft known as the Pearson Accord, Tory Minister for Constitutional Affairs, Joe Clark, announced that the premiers of the nine English-speaking provinces had agreed on plan for a full Triple E Senate. Subsequent negotiations with Quebec Premier Robert Bourassa reduced the final version of Senate Reform in the Charlottetown Accord to a double-E Senate—elected and equal, but not fully effective in terms of legislative parity with the House of Commons. This amendment alienated Senate reform advocates in the West and when Preston Manning announced that his new Reform Party would oppose the Charlottetown Accord, failure to achieve a full Triple-E Senate was a leading reason. When the Charlottetown went down to defeat in the nation-wide referendum of October 30, 1992, dissatisfaction with the proposed "Double E" Senate was a major factor in Western Canada.

Since the 1993 federal election, the Liberals' embargo on constitutional issues has effectively buried the Senate reform issue. Alberta's 1998 Senate election—in which Bert Brown and I were elected—quickly became a political orphan. The Liberals did all they could to undermine its legitimacy. They told the Alberta provincial Liberal Party not to run candidates. Chretien and his ministers then denounced it from the start as a "joke" and a "waste," and confused voters by filling an Alberta vacancy in the midst of the election. Alberta's easy-going Tory Premier Ralph Klein, wary of the more politically conservative Reform Party activists who dominated the Alberta Senate election, has never made the appointment of the winners a priority. As for the Reform Party, leader Preston Manning's new pursuit of the "United Alternative" meant putting Senate reform

[15] "There was little in the [1982] patriation package for British Columbia. Entrenching equalization was a boon to the Atlantic Provinces and Manitoba and Saskatchewan and also to Quebec. … The provisions in the patriation package … on non-renewable natural resources were of particular attraction to Alberta and Saskatchewan. … The one thing that British Columbia did achieve out of the patriation package was an amending formula which would give British Columbia a 'fair shake' at Senate reform, which has been this province's long-standing constitutional priority." Smith, The Renewal of the Federation, pp.23.

on the back-burner, since it was hardly a helpful issue in Ontario. Under the Canadian Alliance, Senate Reform has stayed on the back burner for the same reasons.

In retrospect, the decade following 1982 was the high water mark of the Senate reform movement. Ten years after Charlottetown, the Senate reform movement is dead in the water. Even if it were not, Quebec could use its new constitutional veto to kill it. To say that progress on Senate reform is stalled would be overly optimistic. The sad truth is that we were closer to Senate reform 25 years ago than we are today.

The Notwithstanding Power and the Charter of Rights

The Charter of Rights held pride of place in Trudeau's constitutional initiative of 1980-81 and for good reason. The Charter created dozens of new constitutional rules that constrained provincial governments and made the ultimate interpreter and enforcer of these rules the Supreme Court of Canada—a court whose members are handpicked by the Prime Minister himself. Trudeau valued the Charter because—like the discredited federal powers of disallowance and reservation—it provided a new instrument for federal supervision of provincial policy-making, especially in the sensitive area of language issues.

Provincial premiers disliked the Charter for this same reason that Trudeau liked it: They saw it as a clear and present danger to provincial rights. For this reason, the so called "Gang of Eight," led by Premiers Lougheed and Bennett, refused to accept the Charter until Trudeau agreed to accept their 7/50 amending formula.[16] In addition, the Gang of Eight demanded the addition of a "notwithstanding" clause in what is now section 33 of the Charter. Section 33 allows a provincial government to protect or insulate its laws from Charter review by adding a notwithstanding clause to the statute in question. Trudeau reluctantly agreed to this trade-off, but only on the condition that it not apply to the language rights. At the time, it seemed like a reasonable and innovative compromise to most observers, including myself.

What seemed good in theory has in practice turned out to be a disaster for the provinces. On the one hand, the Supreme Court has created a jurisprudence of hyper-judicial activism that sets the judges as national censors over broad swaths of provincial policy-making. On the other hand, the section 33 notwithstanding power has been so discredited in elite opinion and the media that provincial governments—except Quebec—are afraid to use it.

The net result is that there are now broad areas of provincial jurisdiction where public policy is essentially set by the Supreme Court and its interest group supporters—a

[16] Cf. Smith, The Renewal of Federation, p.24: "There is nothing wrong with the amending formula and British Columbia should resist all attempts to change it. British Columbia paid a high price for it, and should not give it up unless, of course, those who propose changing it would agree to repeal the entrenched Charter of Rights which came along with it."

coalition that I have dubbed the "Court Party." Any policy touching on bilingual education, aboriginal issues, abortion, gay or feminist issues, or prisoner voting rights—if a provincial government does not accede to the special interest group's demands, that government can expect to be hauled into court and usually lose. When they go before the Supreme Court of Canada, these Court Party interest groups win between 50 to 70 percent of their cases. (The average success rate of Charter cases before the Supreme Court is 33 percent.)

Encouraged by the success of these groups, other left-wing interests have recently expanded the tactics of Charter-challenge politics to provincial health, labour law and welfare policies. Several of the key policies of former Ontario Premier Mike Harris' "Common Sense Revolution" have been struck down by the courts just in the last 18 months.[17] If there is any lingering doubt about how far the Supreme Court is willing to intrude into provincial policy-making, we need only look at its recent ruling in the Surrey School Board case, where the Court has undertaken to micro-manage grade school curriculum decisions.

With the benefit of hindsight, we can now see that from a provincial point of view, the Charter of Rights was one of the worst bargains ever struck in the history of Canadian federalism. It is really little more than the old power of disallowance in disguise; a federal veto over provincial policy exercised by the Supreme Court rather than by the Cabinet.

Until or unless the section 33 notwithstanding power is rehabilitated by a provincial premier with the courage to use it, Ottawa-appointed judges will roam the land like Plato's philosopher kings, striking down provincial policies that do not accord with their own sense of justice and that of their federally-funded, interest group allies. Rather than increasing Western influence in Ottawa policy-making, the Charter has resulted in a quantum leap in Ottawa's influence over provincial policy-making. Once again, Western Canada has moved backwards rather than forward over the past twenty years.

-Limiting the scope of aboriginal rights in the 1982 Constitution Act

One of the Western Premiers' most important victories for in the 1980-81 constitutional negotiations was to place explicit limitations on the section dealing with aboriginal rights. There was no consensus on what practical meaning "aboriginal rights" might have. Provincial premiers, led by Alberta's Peter Lougheed (himself part Native), prudently wished to limit the recognition of aboriginal (and treaty) rights to those in effect at the time. To ensure this, they successfully demanded that the restrictive adjective "existing" be inserted before the words "aboriginal rights." Thus Section 35 recognizes and confirms only "the existing aboriginal and treaty rights." The restrictive intent of this qualification was so clear that three of the four major Aboriginal groups in Canada opposed the entire constitutional package because of this one change. The National Indian Brotherhood (NIB) declared April 17 (the day the Constitution Act, 1982 was

[17] See Ted Morton, "Activist Judges Attack Common Sense Revolution," Fraser Forum (October, 2002), 7-9.

proclaimed) “a day of mourning” and said that any Indian participating in the celebration would be committing a “treasonous act against the Indian nations and their citizens.”

Despite such a clear intention of the Framers, the Supreme Court effectively removed this limitation in its1990 Sparrow decision. Contrary to existing precedents, the Court ruled that the mere regulation of an aboriginal right is not sufficient to extinguish it. Based on this novel legal definition, the Court went to find that the aboriginal right to fish for food in the Fraser River was not nullified despite almost 100 years of government regulation.

Aboriginal rights activists have approvingly described the Sparrow ruling as “a virtual revolution in consciousness . . . a sea change in Canadian law . . . kick started to a large degree by the courts.” Kick started indeed! Without Sparrow, there would have been no Delgamuukw or Marshall decisions, and no Nishga Treaty, at least not it its current form. I hardly need to spell out the economic and social consequences of this train of events to an audience of British Columbians. What perhaps you did not know before was that this sequence of Supreme Court rulings directly contradicts and reverses the intended meaning of the “existing aboriginal and treaty rights” section of the constitution. Thus, another one of the important political-constitutional victories of the Western provinces has been reversed.

-Strengthening provincial responsibility for the development of non-renewable natural resources

For Alberta and Saskatchewan, the most important achievement of the 1980-81 constitutional negotiations was the strengthening of “exclusive” provincial responsibility for the exploration, development, conservation and management of non-renewable natural resources, what is now section 92A of the Constitution Act. Negotiated in the shadow of Trudeau’ hated National Energy Policy (NEP), Western Canadians understood section 92(A) to erect a new constitutional barrier against federal meddling in provincial energy and mineral development.

Again, however, what was won in principle in 1981 has been largely lost in practice in the ensuing 20 years. The Supreme Court’s ruling in its 1988 Crown Zellerbach ruling cuts a broad federal swath through provincial jurisdiction in the name of national environmental protection laws. The Court articulated a new constitutional doctrine—the provincial inability test—uphold federal regulation of ocean dumping even when it occurred in provincially-controlled waters—in this case, those of British Columbia. All three Quebec judges strongly dissented, warning that the majority’s ruling has “profound implications for the federal-provincial balance mandated by the Constitution.”

This erosion of provincial control of natural resource development has been expanded by recent federal legislation—The Species at Risk Act—and the federal ratification of the Kyoto Accord. The Species at Risk Act imposes new federal guidelines—judicially enforceable--on any and all human activities that pose a risk to species identified as being “at risk.” The Kyoto Accord will require new legislation to implement reductions in

carbon dioxide emissions—reductions that will fall disproportionately on Western-based oil, gas, oil sands and coal-fired electricity generating operations. Under section 92(A), government regulation of these operations was supposed to be a provincial responsibility. But the Supreme Court's "provincial disability" precedent opens the door for overriding federal legislation. This is a battle that has yet to be fought, but Western provinces would be naïve to expect any help from federally appointed judges who will ultimately decide these disputes. Thus, what the Western premier's won in 1981 has been largely eroded by subsequent Supreme Court rulings and new federal environmental protection initiatives.

To conclude, by all three measures—political, policy and constitutional—the West is worse off today that it was twenty years ago.

The Reform Party initiative assumed that the West could successfully appeal to the higher motives of Ontario voters and persuade them to change a system that privileges their interests. We basically asked them to give up something for nothing. Not surprisingly, this has not happened. After 15 years and three federal elections, this initiative is still stalled at the Manitoba-Ontario border. In the meantime, the West has lost most of the constitutional gains it made in the Eighties and continues to suffer from regionally biased and discriminatory federal policies made in Ottawa.
I am not advocating abandoning the Alliance Party, but I am saying it's time to stop putting all our eggs in one basket. It's time to develop a Plan B.

Plan B: Devolution, or More of Us and Less of Them

Plan B is the opposite of Plan A. Rather than trying to increase the West's influence in the institutions of the central government, it is time to start decreasing the influence of Ottawa in the West. Not only has Plan A not worked, Plan B has . . . for Quebec. Consider what Quebec has gained following a Plan B strategy during the same two decades that the West was losing ground under Plan A. Since 1982, Quebec has

1. regained its constitutional veto power
2. has been granted "distinct society" status in its dealings with the federal bureaucracy.
3. Under the 1998 SUFA agreement, Quebec has been allowed to "opt out" of federal-provincial agreements on shared social service programs.
4. Has continued to be the beneficiary of highest net federal financial transfers—approaching $8 billion dollars annually in recent years.

Plan B encompasses a three prong approach to re-balancing Canadian federalism:

1. utilizing more fully the powers given to all provinces under the existing constitution.
2. challenging harmful federal policies that harm provincial interests.
3. pursuing more long-term constitutional amendments that enhance provincial autonomy from Ottawa

Utilizing existing powers

1. Withdraw from the Canada Pension Plan (like Quebec)
   Alberta and B.C. should withdraw from the Canada Pension Plan to create their own pension plans. Younger work forces and higher rates of workforce participation would allow us to provide the same level of benefits at a lower cost. Estimates are as much as 15 percent lower. It would also transfer to Alberta and B.C. control over the investment of multi-billion dollar pension funds, creating new sources of capital investment in Western Canada. Pensions are a provincial responsibility under section 94(a) of the Constitution Act, and Quebec has already done this.

   Withdrawal from the CPP will also create a new strategic advantage for the West. Currently, Alberta, B.C. and Ontario are the only three provinces that "over-pay" their CCP contributions. Without B.C. and Alberta, Ontario's "overpayment" will have to be increased to maintain current benefit levels. Presumably Ontario voters—and thus an Ontario government—would prefer to avoid this, and might be willing to make concessions on some other issue—such as Senate reform—to keep Alberta and B.C. in the federal Plan.

2. Collect personal income taxes (like Quebec)
   Collect our own revenue from personal income taxes, as Alberta already does for business income taxes. This would create flexibility for further growth-stimulating innovations. This option is available to all provinces, and Quebec already does it.

3. Create a provincial police force (like Quebec and Ontario)
   There is no reason for B.C. and Alberta to continue to rent the RCMP for provincial policing. Provincial police reporting directly to the provincial solicitor-general would also allow for flexible enforcement of federal criminal code provisions that are unpopular in the West, such as the Gun Registry.

4. Automatic use of the section 33 Notwithstanding Power coupled with referendum
   When a court strikes down a provincial law for allegedly violating the Charter, automatically invoke the section 33 notwithstanding power to re-institute the law. Then hold a referendum at the next practical date (provincial or municipal election) to allow the people to choose between the court's policy and the government's policy (or perhaps a new compromise). The Charter was originally promoted as "the People's Package," but it has been hijacked by activist judges and special interest groups, while timid politicians do nothing. It's time to return the People's Package to the people. Judicial review must be checked by legislative review, and popular review must check both of them. This policy will restore meaningful checks and balances and true dialogue between courts, legislatures and the Canadian people.

   If Alberta and B.C. do not utilize the province's Notwithstanding Power, every time Court Party groups lose an election or a vote in the provincial Legislature, they can appeal to their judicial allies in Ottawa to reverse our elected

government's decision. At issue here is nothing less than who shall govern the province: the majority or the minority? The Premier and his ministers to whom the voters have entrusted the government or the Liberal minority whom they refused to trust? At issue is whether we shall live under a democracy or a jurocracy?[18]

Challenge harmful federal policies

1. Maximize provincial responsibility for health care
   Continue to push for provincial innovation and experimentation in the delivery of health services. Use the federal government's acceptance of private, for-profit abortion clinics as a lever to force acceptance of more private medical clinics. Use a constitutional challenge to block any federal attempts to impose sanctions.

2. Referendum on Senate Reform
   The Supreme Court has ruled that if a province holds a referendum on a constitutional amendment and there is a "clear majority on a clear question," then there is a "constitutional duty" for Ottawa "to negotiate in good faith." These are the ground rules the Supreme Court has laid down for Quebec referendums, and they must be applied equally to other provinces.

3. Legislative and Constitutional Challenge to Kyoto Accord
   Pre-emptive provincial environmental legislation that provides a "made-in-Alberta" [B.C.] solution to global warming. This initiative would showcase a balanced, responsible approach to reducing carbon dioxide emissions. It would also enhance Alberta's [B.C.'s] constitutional position by "occupying the field" prior to any contrary federal legislation. Alberta Environment Minister Lorne Taylor has already signaled his intention to bring in legislation of this type.

4. Legislative Challenge Canadian Wheat Board Monopoly
   Form an alliance with Manitoba and Saskatchewan to keep Western farmers out of federal jails and to bring the Wheat Board monopoly to an end. Pre-emptive provincial legislation—such as that recently introduced in the Alberta legislative assembly providing for a ten year "test" of dual marketing—would be a start. Legal challenges should be used if necessary. Western governments should refuse to be accomplices in enforcing this discriminatory law against their own citizens.

5. Charter Challenge to Federal Gun Registry (C-68)
   The Liberals' firearms registry violates as many as 17 different sections of the Charter of Rights. The B.C. and Alberta governments should take responsibility for protecting our rights. Otherwise thousands of law-abiding gun-owners will be

[18] This situation is identical with that faced by provincial rights advocates in Ontario during the 1880s in their successful fight against the federal power of disallowance. My argument is simply a paraphrase of their arguments, as reported and analysed by Robert Vipond on page 80 of his important study, Liberty and Community: Canadian Federalism and the Failure of the Constitution (SUNY Press Albany, 1991) p.80.

forced to defend themselves against criminal charges in separate trials. These trials will take a heavy financial and emotional toll on individuals. There will be conflicting decisions and appeals. The Alberta and B.C. governments would be doing both the taxpayers and these wrongly accused fellow citizens a favour by consolidating their cases into a single constitutional reference. It would be the quickest and least expensive way to address this important issue, and other provincial and territorial governments could again be recruited to make this a coalition effort.

6. Constitutional Challenge to Regional Veto Statute

The Regional Veto statute is unconstitutional and should be challenged by way of a constitutional reference. It changes the application of the amending formula in a manner not authorized by the constitution. Amendments to the amending formulas require unanimous consent of all provinces plus the Federal government. Ottawa's failure to solicit the consent of all provinces--much less put the motion in the form of a constitutional amendment--all argue for the unconstitutionality of the Act. In addition, the Supreme Court has clearly stated that one level of government may not delegate to another level of government powers that are exclusively given to it by the constitution. Both these arguments are reinforced by the Supreme Court's ruling in the Quebec Secession Reference (1998), which identifies federalism and the rule of law as unwritten but legally enforceable principles of the Constitution.

7. Study withdrawal from voluntary milk- and egg-marketing boards

Alberta and British Columbia voluntarily participate in federal supply-management programs for milk and eggs. These programs ensure higher prices for producers but also for consumers. Certainly in the case of milk and dairy products, and possibly for chickens, this means that Alberta and B.C. consumers pay higher prices to subsidize out-of-province producers. (Quebec dairy farmers are the largest beneficiaries of the milk-marketing program.) Our continued participation in these programs should be made conditional on concessions by Ottawa, Ontario and Quebec on some of Western Canada's policy and constitutional priorities.

Constitutional Amendments

1. Patriation of the Alberta Constitution (Alberta Act)

2005 marks the Centennial of Alberta's joining confederation. Yet the Alberta Act, the province's only entrenched constitutional instrument, remains part of the Constitution of Canada. For Alberta to amend the Alberta Act requires the consent of Ottawa. This legal subordination is unacceptable in a modern federal state. In the Australian, U.S. and German federations, each state/lande has its own constitution. For the same reasons that Canada requested patriation of the Canadian constitution from Great Britain in 1982, Alberta should request that the Alberta Act be patriated to Alberta as part of out 2005 Centennial celebration.

2. Design and entrench provincial constitutions

B.C. already controls its own constitution. Once Alberta achieves patriation of the Alberta Act from Ottawa, both provinces should undertake constitutional reforms to clarify the powers and duties of provincial governments and office-holders, and to specify the rights and responsibilities of provincial citizens. Provincial constitution-building is already underway in Quebec. B.C.'s current electoral reform process headed by Gordon Gibson is an important step in this direction. Just because we cannot enjoy true democracy in Ottawa, does not mean we cannot still practice it at home.

3. Abolish the federal disallowance, reservation and declaratory powers

These powers are an anachronism of Nineteenth Century British Imperialism and have no place in contemporary Canadian federalism.[19] Prior to Confederation, Britain used these powers to control the elected assemblies of its colonies. In 1867, they were part of John A. MacDonald's plan to subordinate the provinces to the new central government. After Confederation, their legitimacy was successfully challenged by Premier Oliver Mowat, the leader of the first provincial rights movement.[20] In the Twentieth Century, they were used almost exclusively against Alberta and British Columbia.[21] Since Word War II, it is accepted that there is a constitutional convention of non-use with respect to disallowance and reservation. In 1971 at a First Ministers' Conference in Victoria, Prime Minister Trudeau agreed to abolish the disallowance and reservation powers in return for a new charter of rights that applied to both levels of government.[22] In 1982, we got the latter but not the former. It is time to abolish these powers once and for all.

4. Transfer power of appointment for provincial superior courts to provincial governments

Federal appointment of provincial judges is a relic of British imperial model with its preference for centralized control and distrust of local authority. This outmoded prejudice is inconsistent with the principle of equality that informs contemporary

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[19] Mallory, Social Credit and the Federal Power, p. 8: "Disallowance is an executive restraint on the power of a subordinate legislature. When legislative powers were given to British colonies the imperial executive retained a veto by way of disallowance over legislation validly passed by a colonial legislature. This rounded out the old imperial system of colonial government by providing a device by which imperial interest could be preserved against encroachment of purely local interests expressed through the will of a colonial legislature."

[20] See Robert C. Vipond, Liberty and Community: Canadian Federalism and the Failure of the Constitution (SUNY Press Albany, 1991), ch. 3, "Provincial Autonomy and Self-Government."

[21] Mallory, Social Credit and the Federal Power, p.169: "One of the most significant facts which emerge from a study of disallowance is that the power has been used primarily against the West."

[22] Peter H. Russell, Constitutional Odyssey: Can Canadians Become a Sovereign People?, 2d. Ed. (University of Toronto Press, 1993), p. 89.

> Canadian federalism. No other modern federal state allows the central government to appoint state/provincial judges. Provincial appointment of provincial judges would reduce the excessive patronage powers of the Prime Minister of Canada. Provincial appointment of provincial judges would create a more diverse judiciary, since provincial politics is not dominated by one party (i.e. the Liberals). Provincial appointment of provincial judges would create a more diverse pool of appointments to the Supreme Court of Canada, as most SCC appointments are drawn from existing provincial Courts of Appeal.[23]

There will be no shortage of critics of Plan B.

Some will say that it won't work.. Well, as Quebec has demonstrated repeatedly, when it comes to protecting provincial rights, the best defense is a good offense. Each time the Separatists lose a referendum, Ottawa rewards Quebec with more powers. In the politics of Canadian federalism, if you don't actively defend what is yours, it won't be yours for long.

Others will say that it is un-Canadian. You would think that the Quebec example would suffice to refute this criticism. Also, in its 1998 ruling in the Quebec Secession Reference, the Supreme Court ruled that there is a constitutional right to provincial self-determination—based on the principle of a "clear majority on a clear question" in a referendum. But I suppose what these critics really mean is that it is un-English Canadian to challenge the political status quo. This may be true in Ontario, but it's certainly not the case in Western Canada. From Riel onwards, Western Canadians have not been afraid to go on the offensive to get Ottawa's attention.

Alberta has a long history of challenging Ottawa. When Ottawa refused to return control of Crown lands and resources to Alberta, the United Farmers of Alberta (UFA) government enacted the Mineral Taxation Act in 1923 to try to collect rents from those companies exploiting these resources. At the urging of the Canadian Pacific Railway and the Hudson Bay Company, Ottawa immediately disallowed the Alberta legislation.[24] But seven years later, in 1930, Alberta and the other Prairie Provinces got what they wanted—the transfer of Crown lands and resources to the provinces. In 1936, the Aberhart government enacted legislation that it knew would be challenged by Ottawa, but it did so to establish a bargaining position.[25] Most recently, when Trudeau announced the

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> [23] Note that a newly elected CA government could initiate this reform as an informal agreement between the federal and provincial governments; i.e., that the former would appoint only judges nominated by the latter. Once this practice was established as a working convention, it could be formalized later by way of constitutional amendment to section 96 of the Constitution Act, 1867.

[24] James R. Mallory, Social Credit and the Federal Power in Canada (University of Toronto Press, 1954), p.23.

[25] Cf. the following passage from James R. Mallory's classic study, Social Credit and the Federal Power in Canada (University of Toronto Press, 1954), pp.63-64, in which Major

National Energy Policy in 1980, Alberta Premier Peter Lougheed responded by reducing oil shipments to Eastern Canada, suspending expansion of oil sands development, and launching a cleverly designed constitutional challenge—the Alberta Natural Gas Reference. These precedents need to be followed again.

Other critics might say that Plan B does not make sense economically. This might have been true a generation ago when Alberta and B.C. were still part of an East-West economy anchored by the railroads and the St. Lawrence Seaway. But in the era of free trade (FTA and NAFTA) and the global economy, that day is long past.

As recently as 1990, international and inter-provincial exports were about equal. By 1996, international exports were double inter-provincial exports. Today, for every one dollar of goods and services that Canadians export to another province, we export more than $2 dollars abroad. Today, Alberta's international exports account for 80 percent more of its provincial GDP than what it sends to other provinces (37.6% versus 21.4%). For British Columbia, the comparable figure is even higher—150 percent.[26] For Alberta and British Columbia, the axis of our economic future is North-South and Pacific Rim, not East-West. Nor is this a Western Canadian idiosyncrasy. It is part of a world-wide trend toward "glocalism," in which nation states become less important as trade increasingly occurs on a regional and continental basis.

Others will say it is irresponsible. To this I would respond that to accept the inevitability of the political status quo is as irresponsible as the advocacy of separatism. Plan B is the responsible choice--the middle ground between mindlessly continuing in the undemocratic, downward spiral of the status quo and abandoning Canada altogether.

Conclusion:

Central Canadians cannot be expected to take Western discontent seriously until we take ourselves seriously enough to do something about it. To be taken seriously, a minority must develop its own political organizations; have a focus for its own existence and a path to the future. Plan B, I suggest, offers Western Canada that path to the future.[27]

Douglas tells Aberhart that Alberta first must inflict sufficient pain on the Eastern banks in order to create "something to bargain with": "[Major Douglas] then proceeded to advocate the tactics which the Aberhart government was led, eventually, to adopt. He suggested that the province should exploit its constitutional powers to the limit by taxing and restricting the activities of financial institutions in order to coerce them into co-operation with the government." Douglas said that they would not listen to "reason" so the only option left was "to penalize these institutions. You have got to get a sanction in the political field to bring to bear on this situation to get something done."

[26]B.C.: 33.5% versus 13.5%. Source: Robert Roach, "Beyond our Borders: Western Canadian Exports in the Global Market," (Canada West Foundation, 2002), p.6.
[27] Paraphrase of P. Brimelow, The Patriot Game, p. 210.

Alberta and British Columbia must begin to forge a new relationship with Ottawa. To succeed in this endeavor, we must choose reforms whose success depends on our own actions and not those of Ottawa or other provinces. Rather than seeking to increase our influence in the institutions of the central government, we must decrease the influence of Ottawa in our provinces. The success of Plan B initiatives will be increased through strategic cooperation with a non-separatist government in Quebec. A more autonomous West will be a more democratic, a more hopeful and a more prosperous society.

Does this mean that I have abandoned Mel Smith's vision of a reformed Canada, a Canada strengthened through reforms like a Triple E Senate? Not completely. I am still in favour of Senate reform, but I do not think that it will ever happen if its only advocates are Western Canadians. I will be happy to discuss Senate reform again, when it is Central Canadians who are advocating it. When and if that day ever comes, it will only be because we Westerners are succeeding in implementing Plan B.