

POLITICAL STRAINS AND THE AIT: AN ALBERTA PERSPECTIVE

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AS WILL BE EVIDENT SOON ENOUGH, I am not an economist. My presentation relies less on data than an analysis of some of the well-known political realities surrounding internal trade with which we all must currently deal. In addition, I should say that I am associated with the Fraser Institute and the University of Calgary Political Science Department. By mentioning these two associations I hope to reduce the shock that some of my remarks may have.

Regarding my association with the Fraser Institute, much of what I have to say will be based upon the assumption that free markets (and thus free trade) are the most efficient and effective ways of dealing with what Machiavelli called "the things of the world." These things may not occupy the most important and elevated sectors of reality, but they are important enough. Among other things, the prosperity that markets and free trade make possible in turn allows human beings to pursue more important and elevated aspirations.

A second assumption, which reflects my experience as a westerner and for which the so-called Calgary School is increasingly notorious, is that Canada does not exist to serve only the interests of the St. Lawrence valley, the pre-Confederation colony of Canada. In many respects we have our own interests.

The general theme of this conference, "Strengthening Canada" is, in my opinion, somewhat at variance with the specific topic to which we have been asked to direct our attention on this panel - Protecting Regional and Social Programs and Environmental, Labour, and Consumer Standards. To see why, I would like to recall some history, and some constitutional law.

Article 103 of the Free Trade Agreement states that the U.S. and Canada "shall ensure that all necessary measures are taken in order to give effect to its provisions, including their observance... by state, provincial, and local governments." This non-discriminatory provision was adopted by the NAFTA as well. The phrase "all necessary measures" is much stronger than the equivalent phrase in the GATT regarding federal states. There Canada need undertake only "such reasonable measures as may be available" to ensure compliance by a province. Anyone who is familiar with the language of such documents immediately can see that what was acceptable under GATT may be excluded by NAFTA.

This is important in terms of Canadian constitutional law because it throws into question – some people would say it overturns – the 1937 decision by the Judicial Committee of the Privy Council in the *Labour Conventions Case*. In that decision the JCPC ruled that Canada's accession to the International Labour Organization did not give Parliament power to legislate by way of implementing the ILO agreement in area of provincial jurisdiction as set forth in s.92 of the *BNA Act* (1867), now styled the *Constitutional Act* (1867). The *Labour Conventions Case* highlights one of the most obvious aspects of trade in a federation: wherever possible, provincial or state authorities will use their jurisdictional authority to favour their own. In Canadian provinces, this usually takes the form of helping local citizens or local businesses. On occasion, with respect to the federal government, it also takes the form of helping their supporters. When supporters are regionally concentrated, helping them can entail distinct regional consequences, as with the National Energy Program, for example. Even if we ignore the economic impact of political regionalism, whether in the context of federal or of provincial parties, there is nothing in ss.91 or 121 of the *BNA Act* or in s.6 of the Charter that constrains provinces from granting subsidies or, as in the example of Alberta, setting tax rates at a sufficiently attractive level to stimulate a brain drain. For many years, the government of Saskatchewan, for example, has lamented the exodus of talented youth to Alberta, chiefly to Calgary. More recently New Brunswick complained that Regional Health Authorities in Alberta were sucking that province dry of surgeons. However, as one who admires the effectiveness of markets, and as an Albertan, I find it hard to sympathize with such complaints.

More to the point, the principle of "National Treatment" under the FTA/NAFTA has led to some curious anomalies. For example, Alberta was required under the FTA to treat a Montana drilling outfit the same as an Alberta one, but the province was not required to treat a Saskatchewan company the same way. It is my understanding that such anomalies are one of the contingencies that led to the *Agreement on Internal Trade* in 1994.

Robert Knox, who will be speaking to you this afternoon, has provided a useful analysis of a number of relatively high profile examples of trade complaints and their disposition. The Internal Trade Secretariat website has some impressive statistics as well. I will focus, however, on the April 2001 "Report on the Regional Consultations" because, it seems to me, this document indicates directly what are the real problems and sources of conflict.

To start, I would draw your attention to the following remarks (pp. 5-6):

Many round tables expressed the view, to one degree or another, that efforts to enhance trade within Canada

should not compromise the ability of provincial and territorial governments to set environmental, labour and consumer standards that adequately protect the interests of their citizens. Furthermore, the importance of protecting regional economic development programs and Canadian social programs, in particular health care, was also raised.

These "concerns," the report explains, were initially elaborated as advocacy in the direction of ensuring higher labour, consumer, and environmental standards. Second, *AIT* must not compromise "social programs," including regional economic development. There was also, apparently, a move to exempt crown corporations from *AIT* procurement rules. Third, there was a concern on the part of labour groups and NGOs that international trade agreements might impair Canada's welfare state.

Looking at these concerns from the perspective of political science, it seems to me that, at least as regards to international trade agreements such as NAFTA, the horse is long gone from the barn. The language that I quoted above regarding the obsolescence of the *Labour Conventions Case* is tolerably clear on this point. Moreover, it has long been argued that some aspects of Canada's welfare state such as the variation in the number of weeks required to qualify for EI in Newfoundland as compared, say, to Alberta, constitute a significant brake on labour mobility. One can say with some confidence, however, that ambitious young Newfoundlanders still manage to make their way to Fort McMurray.

Likewise regarding crowns, there is plenty of evidence that the day when such institutions could sensibly be defended on economic grounds has come and gone. Even the people of Saskatchewan have raised questions regarding the desirability of the crown in right of Saskatchewan operating a bus line in competition with Greyhound. Of course, crowns and inter-regional income transfers can be supported for narrow reasons of self-interest, but that is another issue - to which, nevertheless, I shall return.

Perhaps the most easily understood - though in my view, the most misguided - concern deals with environmental standards. This concern is easily understood because the argument is so simple: tough environmental regulations lead to a clean environment and less pollution. They say. Economic development, in contrast, necessarily entails more pollution. They say.

If that were the whole story, the answer to industrial pollution would be de-industrialization - which nevertheless, has its own human costs, and not just to Canada's welfare state.

There is, however, another way of looking at this problem that does not rely on utopian dreams. Nor does it depend on outdated notions of the

welfare state or the longstanding connection between local favouritism and federalism.

Consider the following: once basic needs of food and shelter are met, clean air and water become priorities. Rich countries are usually clean countries. Second, economic growth, not basic necessity, is the mother of technological invention and innovation. And since newer technologies are usually both more efficient and cleaner, the application of them to economic activity generally means an improvement in environmental quality. The evidence that increased per capita income and technological innovation can easily deal with adverse effects from economic development is indicated by the observation that in this country we are very concerned with minute pesticide residues in our food and a market exists to sustain natural or organic food stores. We think that what happened in Walkerton or North Battleford is intolerable, and yet there are many poor countries that have never enjoyed clean water in their entire history.

The point I am making is fundamental, but it is hardly new. At least since the time of Ricardo's discussion of the benefits of freely exchanging British wool for Portuguese wine, economists have known how free trade stimulates specialization and enhances economic growth – which in turn creates a demand for improvements in environmental quality. Free trade enhances competition as well, which also promotes greater efficiency delivered by technological changes. Moreover, in a regime of secure property rights it is both easier and more effective to rely on stewardship than upon regulation to ensure a clean environment. In this regard, let me simply quote Elizabeth Brubaker from her book, *Property Rights in the Defence of Nature*:

Many environmental groups prefer regulatory solutions to environmental problems. But regulations are made by remote governments who, driven by the need to create jobs or some undefined “public good,” are often the least responsible stewards of natural resources. Governments of all political stripes have given us thousands of reasons not to trust them to protect the environment: they've licensed – and bank-rolled – polluters, turned forests into wastelands, emptied oceans of fish, and dammed rivers that were once magnificent.

To summarize my first point: there is no inherent conflict between a genuine open internal market in Canada and protecting the environment. On the other hand, it seems to me, the conventional understanding of what is meant by protecting regional and social programs or of labour and consumer standards does stand opposed to the objective indicated in the first

article of the *AIT*: to reduce and eliminate trade barriers, and sustain an open market.

There are, of course, other problems arising from what in The People's Republic of China is called marketization, but I am confident you will be hearing from others on this question. I would like to make really just one further point, again as a political scientist looking at the Canadian economy. A decade ago Murray Smith made the observation that "Canada has not responded to increased international competition by promoting internal integration." The efforts of the *AIT* may arguably dispute the validity of that observation today. Nevertheless, it seems safe to say that not everyone would be persuaded, in the sense that highly effective barriers still exist.

The argument has been made, perhaps in recent years more strongly in Alberta than elsewhere, that the Canadian economy is an archipelago of regional economies, 6,000 miles long, and a hundred miles deep, held together by transfers from the productive regions and individuals to the unproductive. The effects of inter-regional fiscal transfers – indeed their magnitude – has been debated ever since the Macdonald Commission. For my money, Robert Mansell got it about right: there is a strong element of the zero-sum game about inter-regional fiscal transfers. Worse, at least from a political scientist's perspective, is that such programs enhance the political dependence of the receiving region upon the donor while at the same time harming the local economy and destroying social capital in the process. The only real beneficiaries appear to be those who transfer the payments, and even they would be ashamed of themselves if they were aware of the damage they have done.

In any event, appeals to Canadian solidarity are unlikely to win many warm responses unless it can also be shown that there are genuine and related gains to be made from increasing inter-regional trade volumes. The alternative, the forced purchase of domestic products at prices above world prices or the forced selling into the domestic market of products at below world prices has clearly exacerbated regional differences. The same holds, I would say, when it comes to inter-regional fiscal transfers. I do not notice, for example, a great outpouring of gratitude to the contribution Albertans have made to the welfare of their fellow citizens, which is a good index of the perversity of the entire program.

Flatters and Lipsey have recast interprovincial free trade in the context of a prisoner's dilemma:

This is ... the dilemma of empire building and interprovincial restrictions to trade. If one province plays the restrictive game, it can do better than free trade, but if they all play it, they all do worse. Yet rational calculation of self-

interest where there is no co-operation on policy-setting leads to behaviour that minimizes joint GNP. Only by cooperating and agreeing not to try to exploit the other's passive behaviour can the provinces agree to stay at the joint-maximizing position of mutual free trade. But political pressures to depart from such an agreement are so strong that some kind of "binding oneself in advance" such as is found in the rules of the GATT and EEC or in the Australian Constitution seems to be necessary if such agreement is to be anything more than an ephemeral affirmation of the motherhood principle.

At least for Alberta it is probably too late for Canada to think about "binding in advance" and, politically speaking, whatever the motherhood principle might be it is not expressed in votes for the Liberal Party.

There is, finally, an additional problem. Tom Courchene argued in 1996 that external forces such as NAFTA have had an important role in freeing up domestic markets. That is unquestionably true. In addition, however, when Ed McNally sees a larger market in California for Big Rock beer than he does in the rest of the country, it suddenly becomes a relatively minor issue to look for a share of the Moosehead market.

Or, to give you a more promising example so far as Albertans are concerned: Premier Klein is meeting with Vice President Cheney in two weeks. He is going to try to persuade the Americans that the tar sands are a secure energy source capable of meeting long-term North American needs. The extraction technology is in place, as is the capacity to move oil and gas from the Arctic littoral to the lower forty-eight. The implications for trade within the country seem to be obvious. It is not so much that a foreign trade agreement has freed up domestic markets as eclipsed them. The relative invisibility of the *AIT*, at least for some parts of the country, is completely understandable: what possible purpose can it serve?