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NEW BRUNSWICK

ON

"REGIONAL DISPARITIES --
ALTERNATIVES IN A CONSTITUTIONAL FORMULA"

September 29, 1969



The very significant emphasis placed upon the question of Regional Disparities in Canada, both historically, as well as within the present constitutional review, makes it necessary to consider possible approaches to the status of the concept in any future rewriting of the Constitution or in any amendments to the present one.

In a sense the regional disparity problem is as old as Canada or indeed, as old as social awareness in all forms of political life where inequalities exist. To some extent it may be viewed as the overriding human question for which political theory and practice have been searching for answers over the millenia and which only in our time does there appear to be some chance of realizing, more or less, this ancient hope.

Even so the Canadian, as distinct from the general human and global approach, already has an established constitutional and political history of its own. Indeed, most of the Atlantic Provinces came into Confederation, including Newfoundland in 1949, with a special recognition of certain disabilities which the union may have imposed upon them; or conversely, certain prices had to be paid in order to make union economically and politically acceptable. Historically therefore, and of course, more recently, the debate over regional disparities has tended to have a Maritime-Atlantic Provinces emphasis even though it is quite clearly a concept applicable to many other areas of Canada depending upon the definition of both "region" and "disparity". Indeed, the more recent regional development programs and the new interest in 'poverty', wherever located, are in a broad sense equivalents in this general framework of discussion to 'regional disparity' in its conventional and formalized Canadian definition.

Already substantial experience exists with respect to equalization payments and shared-cost programs, all of which have as their direct or indirect objective the rectifying of the problem of inequalities in provincial governmental revenues and services, and the reduction in the more general inequality in regional incomes and economic development as a whole.

Given the complex of historical and contemporary commitment within federal Canada toward the reduction of regional disparities, and given the companion policies of minimum welfare and services standards, and positive economic development for less successful areas, it may be said that there already exists this social-economic complex of commitments as a matter of national policy, and even as a matter of constitutional status where some of the Atlantic Provinces are concerned.

There is, of course, a new aspect to the question that takes two forms. The first is the very general interest in 'poverty' wherever it is located and governmental obligations to do something about it; and there is, second, a new self-image on the part of other areas of Canada, e.g. the three prairie provinces, which are also claiming to be in a position of suffering from forms of regional disparity. Supplementary to this, of course, there remains the fact that within large regions, such as Ontario and Quebec, sub-regional disparity exists within those Provinces -- although the definition of 'regional' tends to be thought of generally as comprising one or more "provinces" as such, for purposes of the more formalized disparities debate and definition.¹

The question now is how to view this national commitment towards the elimination or reduction of regional disparities in the context of the constitutional studies now underway?

¹ For a further elaboration on these points see "Brief by the Hon. R.J. Higgins, Minister of Economic Growth, Province of New Brunswick to the Federal-Provincial Ministerial Committee on Regional Disparities", Ottawa, June 10, 1969.

In the opinion of the Government of New Brunswick there is every reason to expect in any future constitutional revision a recognition of the disparities question through some formal statement in the Constitution. But there are a variety of approaches, several of which may have quite different juridical, administrative and political consequences.

These approaches may be summarized as follows:

1. A broad statement in the Preamble of some future Canadian Constitution, or amendments, setting out the elimination and/or reduction of regional disparities as a prime goal of Canadian society.
2. In addition to such a statement in the Preamble, specific "powers" could be vested in the Federal Government to take all the necessary spending steps to reduce or eliminate such disparities.
3. This positive constitutional statement giving the Federal Government "power" to reduce or eliminate disparities could be reinforced by adding the "obligation" to do so; not merely a power with its consequent discretion to do or not to do.
4. If at some stage a Canadian Bill of Rights were to include social and economic rights, such a provision or provisions would create a standard amounting to a legal obligation toward the individual that would have as its broader consequences reducing inequalities

and providing social and economic opportunities for those protected by the objectives of such a constitutional requirement -- the indirect result of which would be group benefits in less developed regions or areas.

5. The use of a formula to determine both equalization concepts and regional disparity obligations written into the Constitution, thus spelling out the obligation whether that obligation is in the form of a general statement as in (3) above or whether it is in the form of economic and social rights as in (4) above.

Of all of these approaches the simplest undoubtedly is the use of the Preamble to state a general national policy and goal while the most complex is the attempt to write a "fixed formula", as an "obligation", into the Constitution itself.

The Government of New Brunswick does not believe that a fixed formula is either desirable or possible in view of the fluid nature of the problems posed by the ongoing attempt to develop a society with a minimum of disparity between regions. The early obsolescence of the Confederation financial settlements demonstrate how difficult or impossible any realistic approaches to formula-making would be.

Similarly the Government of New Brunswick does not believe that public opinion in Canada is prepared to entrench general principles of economic and social rights in some future Charter now being considered -- although there is no reason why this approach should not be among those examined in a serious study of this question.

The Government of New Brunswick, however, is of the opinion that the statement of national policy or broad goals aimed at the reduction of regional disparities should at least be in a Preamble, but this may not be enough. It would therefore prefer to see in addition to the Preamble, a firm statement of "powers" vested in the Federal level of government to eliminate or reduce such regional disparities and to maintain systems aimed at equalization of services. Such a power could be set out in the section or sections of the Constitution providing for expressed powers.

A very difficult question is whether these powers should be made a specific "obligation" of the Federal Government. A supplementary question of almost equal difficulty, is whether by actually defining the power to promote equalization of services and to deal with regional disparities, there is implied a restriction on the spending power because a part of it is now being defined; whereas until such a definition takes place the spending power, certainly for unconditional grants, remains unfettered. To add a definition in this area may seem to strengthen the position of regions receiving federal assistance by giving the Federal Government the specific power to assist, as part of the national goals set out in the Preamble, but in fact it may be defining the spending power in such a way as indirectly to open the debate as to whether other forms of spending power would also have to be spelled out in such a revision.

But the more sophisticated problem is whether, in any event, the approach to regional disparities in a constitutional revision should lead to the creation of an "obligation" on the Federal Government to do something about it. Here there will arise at once the issue as to the political and legal significance of such an obligation. Politically, there is no doubt that claimant provinces will be in a stronger symbolic position because of the

very statement of the obligation itself. The real question is what will have happened "juridically" if the rectification of regional disparities now were made a "duty", placed on the Federal Government, in the Constitution.

In the opinion of the Government of New Brunswick this question is part of the larger issue of the possibly enlarged role of the Courts in dealing with the new systems of rights and duties affecting all governments particularly those rights that may now be spelled out in the proposed Charter or elsewhere in the Constitution. It is not unlikely that "class actions" or federal-provincial litigation could and would arise both from Bills of Rights types of provisions on the one hand and regional disparity obligations -- or federal-provincial consultation obligations -- on the other.²

For these reasons it is the New Brunswick view that great care should be taken before adopting the concept of an "obligation" in this area. It would mean that some measures would have to be designed to make this obligation meaningful and while certain of the "measures" might conceivably be political, in the general bargaining and debating sense, the more specific measure could well be the extent to which the obligation provided access to the Courts to command a federal policy or program.

Finally, New Brunswick is of the opinion that the C.C.O. should in any case experiment with discussions of all five of the possible variations above, subject to the varying degrees of concern and difficulty expressed above. But on balance, the optimum political and legal solution seems to New Brunswick to be a proper combination of a "goal" in the Preamble and a "power", but the latter drafted in such a way as not to raise questions about the federal spending power in general.

² See the New Brunswick Working Paper (prepared by Dean M. Cohen) to the Continuing Committee of Officials: "Comments on the Judicial Process and National Policy in a Federal State". May 20, 1969.