

Rogers

① This is my part of the note on Saskatchewan
Frank Carter is finishing the int'l trade question SECRET
and will send a consolidated version here in an hour.

January 15, 1981.

② You should talk to Frank about your idea with respect to
the resources amendment.

The Referendum

Edie

In his appearance before the Joint Committee,
Premier Blakeney stated that:

"The proposed amending formula is the
most unacceptable part of the federal
Resolution, the part which does most
serious violence to the basic principles
of federalism...

In a federal state, the procedure for
amending the Constitution is the most
important part of the fundamental law.
And the amending formula proposed in
the Resolution is so weighted in favour
of the central government, so biased
against the interests of the provinces,
that it threatens to destroy the balance
that is crucial to the maintenance of
the Canada as we now know it."

In his initial reaction to the amendments announced
by the Minister of Justice, Mr. Blakeney restated that "our
key area was the amending formula and our subsidiary keys
were resources and there have not been addressed."

With respect to the amending formula, Mr. Blakeney's first preference is to eliminate the concept of a referendum altogether. His fall-back position is some type of reciprocity. "While we don't necessarily need or insist upon the provisions we set out in our position paper to the Committee on December 19, we do think that there ought to be something concerning the ability of provinces to trigger referenda."

It is worth considering the advantages and disadvantages of a) dropping the referendum altogether or
b) providing some degree of reciprocity.

A) Dropping the Referendum

There is no question but that it is extremely important to have the support of at least one Western province as well as members of Parliament from Western Canada. This in itself would give added legitimacy to the course of action we are pursuing. Such would be the first tangible benefit of dropping the referendum.

The second benefit would be to strengthen our position in the court challenges. By dropping the referendum, provincial legislatures could not be by-passed in the amending process and no one could argue that the balance of powers is being altered in anyway by the amending formula. Further our argument that the Victoria formula had at one time been approved by the provinces would be strengthened as no one would be able to argue that the referendum component of it had never been agreed to by any province.

*referendum as a means of affecting changes ... /3
has not been discussed with provinces ever -
before Sept 80 -*

The third immediate benefit would be to destroy the perception in Western Canada that the ultimate aim of the federal government is to use a referendum to take over provincial resources. This fear -- no matter how far-fetched -- is relatively widespread.

The fourth immediate benefit would be to lessen the intensity of the opposition in some provinces and in the Federal Conservative Party. This would serve to reduce the political temperature of the country and would make acceptance of the package less difficult. This is extremely important as there is only so much confrontation the country can take at any one time.

The fifth benefit would be to reduce opposition in Great Britain by removing the argument that the referendum provision destroys the balance of federalism in Canada.

A final benefit is that what will appear to be a very major concession will in reality be achieved at no cost. It is inconceivable in practice -- especially with the time delay already accepted by the government -- that there would ever be a federal referendum fought against serious provincial opposition in order to give new powers to the federal government. If such a referendum were to be called, it would be very very difficult for any federal government to win.

When Canadians vote, they do not like to put all their eggs in one basket. They create counterweights by voting for strong provincial governments and for strong national governments. They do not like to vote in a way that would allow one level of government to crush the other level. This has been true especially in Quebec. So it is highly doubtful that a federal government would ever be able to impose its will against the provinces in a constitutional referendum where regional majorities are needed to win as well as a national majority. For example, the present ^(procedure) would not likely be successful in all regions.

? |
^ Resolution
Constitutional

Furthermore, given the wide powers already within federal jurisdiction, all pressure for constitutional change is to devolve more powers to the provinces. Even last summer, the economic union proposal was used more as a bargaining tool than as something so vital to the national interest that it could not wait for the development of a consensus in the country. Therefore, it is not likely that a deadlock breaking mechanism will be required for the federal government to be able to obtain more powers. It is more likely that deadlocks will be the result of federal vetoes of provincial proposals arising from "ganging ups" such as occurred on the last day of the First Ministers' Conference in September. Such vetoes may be in the national interest and should not have to be confirmed by referenda.

There are two disadvantages to dropping the referendum. The first is that it would be an abdication of the principle of the sovereignty of the people. However this principle is somewhat abstract as it is almost impossible to envisage when a federal government is likely to ask the people to exercise their will in a constitutional referendum. And even the principle is open to question in Canada as referenda are not part of our heritage. Neither the plebiscite on conscription nor the Quebec referendum were particularly happy experiences in as much as they contributed to great division within families and communities.

The second disadvantage to dropping the referendum is that it may appear as weakness. Yet at this stage of the process, a major concession which will make it easier to achieve our objective should not be perceived as weakness. What is central to our objective is not an amending formula with a referendum. If that were so critical, then the government would not have been prepared in September to accept the Vancouver consensus if that was all that was necessary to achieve agreement on a peoples package. The package we are seeking is patriation with a Charter of Rights including mobility rights and minority language education rights, and an amending formula which is much more flexible than unanimity.

B) Reciprocity

The advantage of reciprocity is that it would appear to be less of a concession than dropping the referendum altogether. In fact, to permit provinces to trigger a referendum is far more dangerous than not having a referendum at all.

First, the so-called symmetry really adds up to a confederal model of Canada where the sum of the provincial governments is equivalent to the national government. This is not the type of federalism in which we believe.

Second, it is possible that the provinces would be able to get together to propose amendments through a referendum. These could be detrimental to the federal system and could pass in situations where there is a particularly unpopular federal government and where the vote becomes one of lack of confidence in the federal government rather than one where the issues are properly debated.

It may well be that an alternative to reciprocity would be to require the approval of three provinces and Parliament before a referendum could be called. This would not be a major concession because it would be politically extremely unwise for a national government to call a national referendum over the strenuous opposition of eight or more premiers. However this alone may not be enough to satisfy Premier Blakeney.

Conclusion

It is very likely that dropping the referendum would ensure the support of Premier Blakeney and the federal NDP. This major concession would most likely be enough of a victory that no concession would have to be made in the area of international trade in resources.

Changing the referendum procedure to require the support of three provinces would not in itself be sufficient to win Blakeney's support although it may be sufficient if combined with concessions on international trade in resources.

What has to be determined -- if concessions are to be made at all -- is whether it is better to make what appears to be a very major one, i.e. dropping the referendum, and not really give anything up in terms of federal powers while reaping great political benefits or whether it is better to make what appears to be two minor concessions and risk the possibility that the one on international trade would have significant practical consequences for federal powers.

Much as it is tempting to tell Premier Blakeney that we do not care what he does, and much as we would like to say that he has lost credibility by sitting on the fence so long, there is no doubt that his support would be very useful. It would have a morale boosting effect; he has a certain credibility in the press; and it could be important in England. Losing him would have the opposite effect.

Most important, it is possible and indeed likely that if Blakeney opposes the federal package, Mr. Broadbent will not be able to hold his caucus together. We have indications that if there is a chance of a large split, the NDP will decide all to vote against. Such a loss would be very damaging to the government as it would take away Western support in Parliament.