

# An Overview on Devolution

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One of the great accomplishments of the twentieth century has been the extension of self-government to most of the world's population. The end of political empire has not meant the end of economic colonialism, nor has it guaranteed peace or good government for the Third World. Attainment of greater autonomy will not automatically resolve the problems of the countries of eastern Europe. However, self-determination has given Third World countries, and appears likely to give Eastern Bloc countries, the opportunity to decide for themselves how to respond to the many challenges which confront them. While this opportunity carries with it potential pitfalls, it also enhances peoples' power over their lives and the likelihood that the solutions they reach will be more culturally relevant and more legitimate than policies imposed by an imperial power.

Canada's North is a part of this global process of increasing self-determination as devolution gradually transfers to the territorial governments jurisdiction over matters which were formerly controlled by the federal government. This transfer of legislative and administrative authority is bringing the governments of the Yukon and the Northwest Territories close to the full span of powers enjoyed by the provinces. In this regard, although not in relation to their role in federal-provincial relations or the dependent nature of the territorial economies, north-erners are enjoying increasing autonomy.

However, the attainment of self-determination in the Third World and eastern Europe generally leaves a host of questions unanswered. It also sets in motion some political processes and accelerates or influences others. Similarly, devolution north of 60 is unfolding in a field of unresolved issues. It also affects other processes of political and constitutional development which are under way in the territories. In recent years, these processes have included: aboriginal claims, particularly those elements of claims which seek a guaranteed aboriginal role in public decision making concerning land and resources; the national process of seeking a constitutional definition of the concept of aboriginal rights; the pursuit of provincial or near-provincial status for the territories; claims for greater power for regional governments in the Northwest Territories;

division of the N.W.T; and the restructuring of the government of the N.W.T or, should division occur, the western Northwest Territories.

In 1987, six university-based researchers formed the Consortium for Devolution Research to study how devolution affects all of these processes. The articles in this issue of *The Northern Review* report some of their findings. They were confident that devolution would have a significant impact because they recognized that all of the constitutional development initiatives in the North are bound together by their common relationship to the basic issue of inter-ethnic relations. Neither of the territories has definitively answered the absolutely fundamental question of how power is to be shared between aboriginal and non-aboriginal groups in their populations. These groups share many circumstances and needs, many problems and goals. They have proven that they can work effectively together to pursue common causes. At the same time, their different histories, the differences in their constitutional status in Canadian law and the differences which tend to characterize their cultural and economic relationships with the land have caused their interests to diverge, sometimes fundamentally. The intense feelings which can surround these differences flow from the fact that elemental rights, both aboriginal and non-aboriginal, are at issue. In addition debates about these rights have very practical outcomes; they will deeply affect both the cultures and the material well-being of the peoples of the North.

The articles which follow reflect the conviction of their authors that devolution is important because it can affect these outcomes. Indeed, each of these processes can be seen as a means by which governments and aboriginal groups pursue a constitutional outcome most favourable to themselves. In this sense, the processes form a system of inter-related parts. Developments in one process which favour one group may close off opportunities in other processes for other groups. They may affect the pace of other processes or change the bargaining power of the various participants. Anticipating these consequences, participants may attempt to shift discussion of an issue from one constitutional process or negotiating table to another which they consider to be more promising.

One assumption on which these articles rest is that devolution is especially important because it has been a particularly active process for the last five years. As a result, it has tended to influence the other processes and, to some degree, to define the context to which they have had to adjust. This pattern should not be overstated. Both territorial governments have formally acknowledged the legitimate interest of the aboriginal peoples in any aspect of devolution which significantly affects

their aboriginal claims. Also, Ottawa is unwilling to transfer ownership of land and resources until the aboriginal claims in the territories have been finalized. The devolution of authority which has taken place has affected the bargaining power of the various groups interested in northern constitutional development and the overall direction of the process.

A second assumption of the articles in this issue is that devolution can best be understood if the full range of participants in the process and the differences among them are taken into account. For example, the Yukon and the Northwest Territories differ in their histories, their present governmental patterns and the proportions of aboriginal and non-aboriginal people in their populations. As the article by Gurston Dacks discusses, these differences affect the calculations of all the participants in the devolution process so much that it may be more accurate to speak of two separate devolution processes, rather than a single one. In addition, the different aboriginal groups cannot be lumped together for the purpose of generalization. Their different circumstances have led them to confront devolution in very different ways. Finally, the governments involved cannot be viewed as single homogeneous entities. For example, some of the agencies at the centre of the federal government, such as the Treasury Board and the Privy Council Office supported devolution largely because they viewed it as a cost cutting exercise. However, the Department of Indian Affairs and Northern Development supported it as a means of increasing the self-determination of northerners. For their part, some other departments of the federal government, in particular Energy Mines and Resources, opposed devolution. Moreover, regional federal government staff in the North and headquarters staff in Ottawa have differed from time to time on the pace and terms for devolving particular powers. In the government of the Northwest Territories, the controversy over the transfer policy noted in the Weller, O'Neil and Graham articles can be seen as a conflict between the territorial departments of Health and Personnel. These contradictions suggest that the contribution of each government to devolution should be understood as the outcome of the patterns of cooperation and conflict within it. More generally, these patterns add substantially to the number of players involved in the devolution game and to the complexity of the interplay of motives which have shaped the devolution process.

The contrasting interests and vantage points of all these participants make it inevitable that quite different interpretations of devolution have developed. For example, residents in local communities may not understand the compromises which their territorial governments have had to make in order to meet the concerns of the federal government. They may

view these concessions as evidence of a lack of sensitivity to local or regional needs. For their part, territorial public servants may not fully appreciate the cultural roots of the concerns which prompt aboriginal leaders to resist devolution. The articles which follow assume that, even if these views conflict, they are equally valid in the sense of being honestly held. The articles attempt to report fairly this diversity of views, rather than to mask them by producing an "official history" of the devolution process.

The articles describe the recent process of devolution and its impact upon the North. In part, this impact is the way in which devolution has made its mark upon the overall process of constitutional development, including the development of local and regional governments which bring control over government policies closer to the people. At the same time, the members of the Consortium for Devolution Research have studied the more tangible and immediate effects of devolution because they understand that it will affect the daily lives of northerners in very concrete and profound ways. The articles by John O'Neil and Frances Abele discuss how devolution may affect the ways in which, respectively, medical services and forest management and fire fighting services are provided to northerners. Between the practical impacts now being felt by northerners and the constitutional patterns which lie in their future are the public administration consequences or aspects of devolution, such as those described by Geoffrey Weller and Katherine Graham.

If the proof of the pudding is in the eating, judgements about devolution must be tentative because the North has barely begun to taste the impact of devolution. Some important powers, such as control over land and most resources, have not yet been devolved. In other matters, devolution has taken place but the agencies for developing and administering policy may not yet have assumed their final form or achieved the full extent of their powers. For example, it remains to be seen how powerful regional health boards become and how effectively they use their power to meet the needs of people in their regions. As Frances Abele reports regarding forestry, some new policy priorities and programs which are expected to result from devolution have not yet been established. Also, the impact of devolution will be influenced by developments on other constitutional fronts. In particular, aboriginal self-governments and the powers given to resource management agencies established under the claims are certain to affect the scope of the powers of the territorial governments and to influence the ways in which they use the powers which have devolved to them.

As a result, the articles in this issue report a process in motion. They identify trends in the process. For example, they note that devolution has tended to enhance the responsiveness of policy, but not local control over it. They also suggest that the government of the Northwest Territories has pursued devolution more aggressively than has the government of the Yukon. These differences appear to reflect different constitutional strategies, with the Yukon putting the settlement of its aboriginal claim ahead of devolution while its eastern neighbour sees its own empowerment as compatible with the negotiation of aboriginal claims and perhaps necessary in the face of some particular challenges to its authority which the claims and the strength of regionalism in the territories may pose. While the articles can note that devolution is proceeding in these directions, they cannot predict definitively its ultimate destination. What they have attempted to do is to identify patterns and basic issues in the devolution process and to link these to the larger issues of constitutional development in the North. They are intended in this way to encourage northerners and others to think about these issues and to contribute actively to the process by which the North will approach its constitutional destiny.

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