

To protect property rights

CALGARY

FOUR weeks ago I wrote about market-oriented research institutes and advocacy groups in the West, and their influence on the agenda of national politics. The story continues with the emergence of two new organizations, the Frontier Centre for Public Policy in Winnipeg and the Canadian Property Rights Research Institute (CanPRRI) in Calgary, which held its first conference last weekend.

CanPRRI was founded by Alberta ranchers and farmers, who face property-rights issues remote to most of us: access to range land, development controls and environmental legislation, and expropriation without adequate compensation. But the founders of CanPRRI obviously want to build alliances. There were presentations on wider issues of property, including the mining industry, rent controls in Ontario and drug patents and intellectual property.

The Constitution's silence on property rights is a long-standing grievance of Canadian conservatives. They tend to admire the U.S. Constitution because the Fifth Amendment prohibits the federal government from depriving anyone of property "without due process of law" and from expropriating property "without just compensation," and the 14th Amendment extends the due-process protection of property to state governments.

Many conservatives are critical of the Canadian Charter of Rights because Section 7, although it guarantees the "right to life, liberty and security of the person," omits any mention of property. Such criticism led the Reform Party to include constitutional entrenchment of property rights in its policy manual.

Changing the Canadian Constitution has become so difficult that I wasn't expecting any immediate progress toward the entrenchment of property rights, but I still regarded it as a desirable long-term objective — until I attended this conference. Two presentations led me to change my mind.

University of British Columbia economist Bill Stanbury dissected Canada's milk marketing system, which keeps consumer prices artificially high by enforcing production quotas. These quotas are bought and sold in specialized exchanges. Prof. Stanbury estimates that their total value exceeds \$11-billion. That value would disappear overnight if Canada were suddenly to return to open-market principles in the dairy industry, as we must do sooner or later because of international pressure.

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These quotas are a kind of property right, albeit one artificially created by misguided government policy. When the system is wound down, compensation may have to be paid to at least some dairy producers. Those who were present at the creation, so to speak, received a windfall; but those who entered the business later had to make a large investment in buying quota and might be forced into bankruptcy by the ending of supply management.

I can't claim to know what would be fair compensation in these circumstances. Huge amounts have already been extracted from Canadians as milk consumers; how much more should they have to pay as taxpayers? In the end, legislatures would need to endorse a messy political compromise, with many undeserving winners and innocent losers. But we would be even worse off if we had to run this through the courts, asking judges to assess the value of a specious property right that never should have been created in the first place.

BEYOND dairy quotas, supply management exists for eggs, chickens, turkeys and tobacco. Municipal schemes for licencing taxicabs have similar characteristics. And don't forget the expectations generated by public pension plans, which activist judges might convert into constitutionally protected property rights.

University of Calgary political scientist Rainer Knopff made this point in a more general way, arguing that it would be folly to increase Canadian courts' control over property rights by enacting a constitutional entrenchment clause. The common law is solicitous of property rights, but current Canadian jurisprudence is far removed from the common law. Under the impetus of "critical theory," our courts of appeal are coming to resemble unelected legislatures, rewriting law virtually at will. This already bad situation is likely to get worse as older judges retire and are replaced by newer graduates of our law schools.

In short, a change of strategy is called for. Property-rights advocates must broaden their search for political allies to include groups, such as aboriginal people, who suffer from the defective specification and inadequate protection of property rights. Propertarians must renounce their faith in constitutional entrenchment as the ultimate goal and concentrate on achieving administrative and legislative reforms.

As author David Frum suggested to CanPRRI, getting property rights mentioned in human-rights statutes would be a good start. Private property means individual control over one's body and over the physical means of existence: it is the ultimate human right.

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