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The environmental transition in Canada: a widespread structural breakdown?

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Sommario

1. Introduction. 2. Climate variability and Canada's energy strategy. 3. Judicial involvement: continuous appeals and mitigation strategies. 4. Intensifying disputes over environmental initiatives. 5. Concluding reflections and insights.

Abstract

The urgency of addressing climate change has become a paramount challenge for the international community, necessitating a radical reevaluation of energy sourcing and consumption. This article examines Canada's recent environmental transition policies, particularly since the ratification of the Paris Agreement in 2016, under Prime Minister Justin Trudeau's leadership. The analysis highlights the complex dynamics of Canadian federalism, where conflicts between the federal government and provinces – especially those reliant on fossil fuels – have intensified. Key judicial decisions, including the Supreme Court's affirmation of the federal carbon tax's constitutionality, illustrate the ongoing legal battles that shape the governance of climate policies. Additionally, provincial legislative initiatives, such as Alberta's Sovereignty Act and Saskatchewan's First Act, reflect a growing anti-federal sentiment and assert the need for local autonomy in environmental matters. Ultimately, this study underscores the critical need for coordinated efforts in climate action and the equitable allocation of resources, while navigating the intricacies of federal and provincial powers amid escalating environmental crises.

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1. Introduction.

The urgency of addressing climate change has emerged as one of the most formidable and pressing challenges confronting the international community, rendering inescapable the necessity for a profound rethinking of how energy is sourced, consumed, and managed. In recent decades, the relentless deterioration of the environment, marked by the increasing frequency and intensity of extreme climatic events, has compelled national governments across the globe to adopt ever more assertive and ambitious policies aimed at mitigating the catastrophic impacts of global warming. This once predominantly environmental issue has now transformed into a full-fledged global crisis, one that intricately intertwines with economic, social, and political dimensions on an unprecedented scale.

International institutions, social movements, and the scientific community have coalesced around the imperative of immediate action, offering a unanimous voice of urgency: the actions deferred today will result in consequences far more severe and irreversible in the future. It is within this context that the energy transition—coupled with the imperative to reduce greenhouse gas emissions—has emerged as one of the most significant challenges of our time, a challenge that no longer admits delay or procrastination[1].

Yet, the adoption of such radical and transformative measures, aimed at confronting the existential threat posed by climate change, is not without substantial repercussions for the institutional and constitutional frameworks of individual nations[2].

Indeed, as is often the case with structural reforms that demand deep and rapid changes, the ramifications of this global transition vary considerably from one system of governance to another[3]. Thus, within this multifaceted context, the question arises as to how the ecological transition will affect systems of governance, especially in federations where the balance of power between national and subnational governments can either facilitate or obstruct decisive action.

This reflection takes on heightened significance when one turns to the recent experience of Canada, a country that, in recent years, has intensified its commitment to environmental transition policies. Canada, long recognized for its vast natural

[1] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, in *federalismi.it*, no. 22, 2024, pp. 259-260.

[2] M. BENSON, C. BODAS, R. R. DAS, *Sustainable Development and Canada's Transitioning Energy Systems*, SUSTAINABILITY, 2024, p. 2213 ff.

[3] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., 259-260. The effects are profoundly shaped by the political configuration, the division of powers, and the constitutional peculiarities inherent to each nation. In particular, the ecological transition's far-reaching impact on governance structures is a subject of growing relevance and complexity, particularly in countries characterized by intricate forms of federalism. In these nations, the distribution of powers between federal and regional entities presents both opportunities and challenges in the implementation of coherent and effective environmental policies.

ISSN 2036-7821

resources and the unique challenges posed by its geography and energy-intensive economy, has emerged as a particularly intriguing case study in this global endeavor. The year 2023 marks a pivotal juncture in this process, as the country has witnessed a genuine acceleration of governmental initiatives aimed at reducing its ecological footprint and fostering a sustainable energy transition.

Since the autumn of that pivotal year, a series of notable developments has unfolded, involving not only the federal government but also the provincial authorities and, increasingly, the Supreme Court[4].

The interplay between these various levels of governance has underscored the critical role of Canadian federalism in shaping, and at times complicating, the adoption and implementation of these far-reaching environmental policies. The distinctive dynamics of Canadian federalism—where jurisdictional boundaries between federal and provincial governments are often contested—have proven crucial in determining the trajectory of the nation's environmental transition. These dynamics have made Canada a particularly compelling example of how environmental transitions can reverberate through a country's constitutional architecture, influencing not only policy outcomes but also the broader institutional balance of power.

In this light, the Canadian case offers rich insights into the broader question of how federal systems can navigate the complex terrain of environmental reform, highlighting the intricate interplay between law, politics, and the urgent demands of climate action.

2. Climate variability and Canada's energy strategy.

In recent years, Canada has witnessed a marked and profound increase in the recognition of the urgent necessity to undertake decisive and far-reaching actions in the global fight against climate change. This growing awareness has not only permeated public discourse but has also found its way into the very heart of political agendas, with the issue ascending to a position of paramount importance[5]. This shift

[4] Although Parliament had already rejected a motion on the carbon tax at the beginning of October 2023, it was, in fact, a subsequent intervention by the Supreme Court just a few days later (Reference re Impact Assessment Act, 2023 SCC 23) that significantly escalated tensions between the federal government and the provinces. The Court's ruling, which declared parts of the federal environmental impact assessment system unconstitutional, was interpreted by the petitioning provinces as a green light to intensify their defense of legislative powers and to continue their systematic opposition to the central government's environmental policies. This ruling, viewed by many as a pivotal moment, not only sharpened the confrontation between different levels of government but also encouraged the provinces to further entrench their resistance against federal green initiatives, highlighting the fragile balance of power within Canada's federal system. For an analysis M. DOELLE, *The Federal Environmental Assessment Process: A Guide and Critique*, Markham, 2008.

[5] S. IMAI, *Consult, consent, and veto: international norms and Canadian treaties*, M. COYLE & J. BURROWS (eds.), *The Right Relationship*, Toronto, 2017; A. J. SINCLAIR & A. P. DIDUCK, *Public participation in Canadian environmental assessment: Enduring challenges and future directions*, K. S. HANNA (ed.), *Environmental Impact Assessment: Practice*

ISSN 2036-7821

is vividly reflected in the numerous First Ministers' conferences, wherein the transition to clean and renewable energy sources, the enhancement of environmental protections, and the need for a comprehensive transformation of industry have consistently occupied a central and prominent place in the deliberations. It is within these high-level discussions that the urgent need to confront the mounting environmental crisis has been brought to the fore, elevating the ecological transition to a matter of national concern[6].

Nevertheless, at the core of the political conflict lies a persistent tension regarding the precise timing and manner in which these innovations ought to be implemented, thus rendering the entire transition process a deeply controversial and divisive issue within the Canadian political landscape[7].

In this complex and charged context, a pivotal moment in Canada's environmental history was marked by the ratification of the Paris Agreement on climate change, which was formally approved by the House of Commons on the 5th of October, 2016. This momentous decision saw a substantial majority of 207 votes cast in favor and 81 against, underscoring a decisive shift in national policy and public sentiment[8]. The vote, emblematic of a new era, represented a watershed moment for Canada, with the leadership of Prime Minister Justin Trudeau signaling a clear and resolute departure from the ambivalence and contradiction that had characterized the environmental policies of the preceding administration. In Prime Minister's vision, environmental stewardship was not merely an aspirational ideal but a central tenet of governance, woven into the fabric of his government's overarching policy framework[9].

Prior to this historic juncture, Canada had relied heavily on its vast and diverse array of mineral and energy resources, which had long formed the bedrock of its economic foundation. The iron mines of Labrador and Quebec, the rich nickel deposits in

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and Participation, Toronto, 2016, pp. 65-95; A. J. SINCLAIR & A. P. DIDUCK, *Public involvement in EA in Canada: A transformative learning perspective*, ENVIRON. IMPACT ASSESS. REV., 2001, pp. 113-136.

[6] On this point, see amplius D. AMIRANTE, *Costituzionalismo ambientale – Atlante giuridico per l'Antropocene*, Bologna, 2022; D. AMIRANTE & S. BAGNI (eds.), *Environmental Constitutionalism in the Anthropocene. Values, Principles and Actions*, London-New York, 2022; J. R. MAY & E. DALY, *Environmental Constitutionalism*, Cheltenham, 2016. With reference to Italy, R. BIFULCO, *Ambiente e cambiamento climatico nella Costituzione italiana*, RIV. ASS. IT. COST., n. 3, 2023; L. SALVEMINI, *Il nuovo diritto dell'ambiente tra recenti principi e giurisprudenza creativa*, Turin, 2022.

[7] For a general overview on this topic see M. BENSON, *Sustainable Development and Underexplored Topics in Canada's Energy Transition*, in *Highlights of Sustainability*, 2024, pp. 184-204. But also S. GRASSIE, *Canada and the Global Pact for the Environment. A Strategic Legal Analysis*, J. ENVIRONM. L. & PRACT., 2019; T. MEREDITH, *Assessing environmental impacts in Canada*, in B. MITCHELL (ed.), *Resource and Environmental Management in Canada: Addressing Conflict and Uncertainty*, Toronto, 2004, pp. 467-496.

[8] The Paris Agreement then entered into force the following month (Nov. 4, 2016) through the fulfillment of thecondition of ratification by at least 55 countries, which accounted for at least 55 percent of global greenhouse gas emissions.

[9] M. BENSON, C. BODAS, R. R. DAS, *Sustainable Development and Canada's Transitioning Energy Systems*, cit., p. 2213 ff.

ISSN 2036-7821

Ontario and Manitoba, the substantial uranium reserves in Ontario and Saskatchewan, and the abundant potash resources of Saskatchewan, alongside the copious oil and natural gas fields in the western provinces, collectively constituted the principal pillars of the Canadian economy. Perhaps the most emblematic of this reliance was the extensive exploitation of Alberta's oil sands, a resource that, while immensely valuable from an economic standpoint, has garnered global attention as one of the most environmentally damaging and polluting sources of fuel. The extraction and refining of oil from these sands have raised profound ethical and environmental concerns, positioning Canada at the center of a heated international debate on the moral responsibilities of energy producers in the era of climate change[10].

However, to forsake this considerable wealth of energy resources is no straightforward task, for it is inextricably intertwined with economic, social, and political realities. The transition away from an economy deeply rooted in such resource exploitation presents formidable challenges, particularly in regions where the livelihoods of countless communities are intricately connected to these industries[11].

In light of the prevailing global scenarios and the intensifying pressures for an ecological transition, it becomes increasingly evident that maintaining an economic model predicated on the continued exploitation of fossil fuel resources would be manifestly incompatible with any proactive approach to combating climate change. The realities of the climate crisis demand not merely incremental adjustments but a fundamental rethinking of Canada's energy paradigm. It was with this recognition in mind that, during the debate surrounding the ratification of the Paris Agreement, Prime Minister Trudeau made a significant and symbolic announcement. He declared that, beginning in December 2018, the federal government would impose a tax of $10 for every ton of carbon dioxide emitted in provinces that had not yet adopted a similar form of taxation on greenhouse gas emissions. This carbon tax, intended not only as a financial mechanism but also as a signal of the government's serious commitment to climate action, was designed to increase by $10 per ton each year until it reached a cap of $50 per ton by the year 2022[12].

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[10] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., pp. 271-272.

[11] M. BENSON, C. BODAS, R. R. DAS, *Sustainable Development and Canada's Transitioning Energy Systems*, cit., p. 2213 ff. The process of shifting toward a more sustainable economic model raises fundamental questions about regional equity, economic restructuring, and the social contract, especially in areas that stand to lose the most from the decline of traditional energy sectors. For these regions, the potential disruption carries with it the specter of job losses, community destabilization, and profound economic shifts, thus complicating the national dialogue around climate action.

[12] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., p. 272. At the time of Trudeau's pronouncements, only Nova Scotia and Saskatchewan still had no form of Co2 taxation, while Alberta and British Columbia had introduced a carbon tax applied to gasoline, diesel, natural gas, and propane, Ontario

This bold and transformative policy initiative occurred in sharp contrast to developments unfolding in the United States, where Donald Trump – who would soon assume the presidency – publicly declared his intention to revitalize the coal industry and expressed vehement opposition to the Paris Agreement. While the Trump administration's rhetoric and policies seemed to signal a retreat from climate commitments, the Canadian government, in a starkly divergent trajectory, committed itself to phasing out coal in favor of cleaner, more sustainable technologies[13].

Nevertheless, the unfolding of this ambitious program was not without considerable internal resistance. Almost immediately, a robust opposition arose from provinces that are more reliant on coal-fired electricity generation, particularly those for whom coal remains an integral component of their local economies. These provinces, perceiving the federal policies as a direct threat to their economic vitality, organized against the measures, thereby setting the stage for a conflict that transcended traditional partisan divisions. Indeed, the confrontation that ensued was not merely a matter of Liberals at the federal level clashing with Conservative-led provincial governments; it delved into the very heart of the Canadian political system itself. The dispute touched upon fundamental constitutional questions concerning the delineation of legislative powers between federal and provincial authorities, as well as deeper ideological debates about the future of Canada's development model and the economic sustainability of certain regions[14].

Thus, the energy transition in Canada emerges as one of the most formidable and consequential challenges facing the nation's future. It calls for a delicate balancing act, requiring careful negotiation between competing interests and a genuine commitment to fostering equitable solutions that account for the diverse needs and perspectives of all Canadians. The ability of the Canadian government to successfully navigate these complexities will be crucial in determining not only the country's

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had taken steps to encourage businesses to reduce their environmental impact, and Quebec had joined California in the cap-and-trade carbon market, setting emission limits (caps) within which industries were allocated emission permits that could be bought and sold through periodic auctions (trades).

[13] Canada's ambition to significantly reduce its greenhouse gas emissions and position itself as a global leader in environmental stewardship was underscored by its pledge to source 90% of its electricity from sustainable means by 2030—a target that reflects both the scale of the challenge and the depth of the country's commitment to a greener future. See R. R. DAS, M. MARTISKAINEN, G. LI, *Quantifying the prevalence of energy poverty across Canada: estimating domestic energy burden using an expenditures approach*, in *The Canadian Geographer*, 2022, pp. 416-433. See also M. RIVA, S. K. MAKASI, P. DUFRESNE, K. O'SULLIVAN, M. TOTH, *Energy poverty in Canada: Prevalence, social and spatial distribution, and implications for research and policy*, in ENERGY RES. & SOC. SCI., 2021, p. 81 ff.

[14] For a general analysis J. BORROWS, *Canada's Indigenous Constitution*, University of Toronto Press, 2010. The complexities of this matter are further amplified by the necessity to balance local economic pressures with ecological responsibilities. Regions that have long depended on resource extraction and fossil fuel industries face profound uncertainties as the national agenda shifts toward sustainability. The challenge of transitioning to a green economy involves not only technological advancements but also social considerations, as communities grapple with the potential loss of jobs and economic stability associated with the decline of traditional industries.

environmental policies but also its broader position on the global stage as a leader in the fight against climate change. In the years to come, Canada's approach to the ecological transition will serve as a defining test of its political will, its federal architecture, and its capacity to reconcile the imperatives of economic growth with the existential demands of environmental stewardship[15].

3. Judicial involvement: continuous appeals and mitigation strategies.

At this stage, the following paragraph highlights the intricate interplay between constitutional law, regional autonomy, and national environmental objectives. The path forward, as envisioned by the courts, is one of collaboration, where both provincial and federal authorities are called upon to navigate the complexities of governance in the pursuit of a sustainable and equitable future.

In this context, the rift between certain provinces and the federal government's choices regarding the environmental transition has given rise to a series of legal challenges, parliamentary conflicts, and legislative initiatives, all driven by the determination of the affected territories to advance what they consider to be a fundamental struggle for regional autonomy. The courts, consequently, have found themselves at the very heart of this broader conflict, tasked with navigating the intricate constitutional tensions that have emerged[16].

In Ontario, for instance, the political landscape underwent a significant shift following the change in government from Liberal to Conservative in June 2018. In response, the newly established provincial administration moved swiftly, enacting Regulation 386/18[17] in early July of that same year. This regulation effectively revoked Ontario Regulation 144/16, which had governed the cap-and-trade system in the province, marking a dramatic departure from the previous government's approach to carbon pricing. Simultaneously, on August 2, 2018, a legal challenge was announced before the Ontario Court of Appeal, contesting the constitutional legitimacy of the federal carbon tax. Proponents of the challenge argued that the tax constituted an undue infringement upon provincial jurisdiction, particularly as it was applied "only in those provinces that have not exercised their own jurisdiction in

[15] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., p. 272. See also P. FITZPATRICK & A. J. SINCLAIR, *Multi-Jurisdictional Environmental Assessments in Canada. Practice and Participation*, K. S. HANNA (ed.), *Environmental Impact Assessment*, Oxford, 2016, pp. 182-197.

[16] *Ibid*.

[17] Meanwhile, the aim of the measure was to discontinue green programs funded through the cap-and-trade system, but it represented, above all, a political manifesto that led the spokeswoman for the Minister of Environment and Climate Change to declare that the revocation of Regulation 144/16 in fact implied that «the Ontario government is making it clear that it is not taking climate action, and is effectively withdrawing from Canada's national climate change plan without a planof their own», as reported in M. ALTOMARE, *Le sfide politico-istituzionali del governo Trudeau nel contesto delle complicate relazioni internazionali*, in *Nomos – Le attualità del diritto*, n. 2, 2018.

ISSN 2036-7821

a way that the federal government thinks they should." On October 11, 2019, the Ontario Court of Appeal ruled that Regulation 386/18 had been illegitimately enacted, as it had been approved in contravention of Ontario's Environmental Bill of Rights (EBR)[18].

However, while the court declared the regulation invalid, it did not mandate the restoration of the previous cap-and-trade system, nor did it seek to redefine the conditions under which greenhouse gas emission permits could be bought and sold.

Concerns over the constitutionality of the federal Greenhouse Gas Pollution Pricing Act (GGPPA), enacted on June 21, 2018, to establish binding «minimum national standards» for emissions pricing across all provinces and territories, further deepened the legal discourse[19].

The Saskatchewan Court of Appeal took up this issue, and on May 3, 2019, a closely contested decision was rendered, with a majority of three judges to two holding that the GGPPA was «not unconstitutional either in whole or in part»[20].

In contrast, the dissenting judges voiced a vigorous defense of provincial autonomy, arguing that the legislation represented an overreach of federal authority and encroached upon provincial prerogatives. These dissenting opinions emphasized the need for provinces to retain greater latitude in determining their own processes for emissions reduction and environmental transition. Chief Justice Richards, in addressing the gravity of the issue, remarked that »the facts presented to the court confirm that climate change caused by anthropogenic greenhouse gas (GHG) emissions is one of the great existential issues of our time«. His statement underscored the collective acknowledgment among all parties that limiting such emissions was a matter of pressing national importance[21].

On June 28, 2019, the Ontario Court of Appeal reached a similar conclusion regarding the constitutional validity of the federal carbon tax. In a decision rendered by a majority of four judges to one, the court ruled that the federal government possessed the authority to enact the tax in relation to matters of "national concern" under the "Peace, Order, and Good Government" (POGG) clause of the Canadian Constitution. This decision reaffirmed the central government's capacity to legislate

[18] The Ontario provincial government was challenged that there was no public consultation process prior to the issuance of the regulation, while the Conservatives countered that the election outcome had rewarded a pledge made during the campaign to cancel the cap-and-trade system and that it could be considered that as a public consultation. Si veda M. ALTOMARE, *I nuovi scenari politici dopo il voto federale: la formazione del Governo liberale di minoranza e la questione del separatismo delle Province occidentali*, in *Nomos – Le attualità del diritto*, n. 3, 2019.

[19] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., p. 273.

[20] *Ibid*. The majority ruling affirmed the federal government's authority to impose such measures under its constitutional powers, seeing it as consistent with the division of powers that grants the central government authority over matters of national concern.

[21] See on this point *Saskatchewan et al. v. Canada re Greenhouse Gas Pollution Pricing Act*, 2019 SCKA 40.

in the interest of addressing an issue that transcends provincial boundaries and requires a unified national response[22].

The definitive legal resolution came on March 25, 2021, when the Supreme Court of Canada rendered its judgment, affirming the constitutionality of the federal carbon tax under the POGG clause. In a landmark decision, the Supreme Court, with a majority ruling of six judges to three, dismissed the appeals from Ontario and Saskatchewan, solidifying the federal government's authority to address climate change as a matter of national concern. The court argued that the central government had successfully demonstrated how establishing robust, minimum national standards for greenhouse gas pricing to reduce emissions was «of sufficient concern to Canada as a whole that it warrants consideration in accordance with the national concern doctrine»[23].

This ruling carried profound constitutional implications, marking a decisive moment in the ongoing conflict between federal and provincial authorities over the scope of jurisdiction in environmental matters. Yet, despite the affirmation of federal authority, the court sought to temper the growing tensions by invoking the spirit of cooperative federalism. In its judgment, the Supreme Court underscored that «Parliament and the provinces» could and should exercise their respective prerogatives in environmental matters harmoniously. This appeal to cooperative federalism reflected a broader vision in which both levels of government would work together, in the interest of a shared objective, to mitigate the environmental risks posed by significant projects and to pursue a collective response to the global climate crisis[24].

4. Intensifying disputes over environmental initiatives.

[22] This determination was made to establish minimum national standards, thereby preventing any one province from failing to contribute to this collective effort. On the point M. ALTOMARE, *L'epilogo della vicenda SNC-Lavalin sullo sfondo dei possibili scenari del voto di ottobre*, in *Nomos – Le attualità del diritto*, n. 2, 2019. Even in the contentious dissenting opinion of Justice Grant Huscroft, it became clear that the allocation of powers concerning how to address climate change represents a pivotal aspect of contemporary federalism. He remarked, «Federalism concerns seem arid when the country is faced with a major challenge like climate change. As long as something gets done, it may seem unimportant which level of government does it. But federalism is no constitutional nicety; it is a defining feature of the Canadian constitutional order that governs the way in which even the most serious problems must be addressed, and it is the court's obligation to keep the balance of power between the levels of government in check».

[23] *Ontario v. Canada re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544. The ruling further emphasized that provinces are not equipped to tackle the problem in the same manner, and a «failure to include one province in the scheme would jeopardize its success in the rest of Canada». The court also attempted to mitigate the implications of the ruling through a form of moral suasion, asserting that the GGPPA exerts a limited impact on provincial jurisdiction, as it only intervenes when a province's taxation is deemed insufficient and does not encompass the entire regulatory framework surrounding greenhouse gas emissions, but rather focuses specifically on the pricing mechanism. *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11.

[24] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., pp. 274-275.

ISSN 2036-7821

The declaration of unconstitutionality of the Impact Assessment Act[25] was swiftly embraced by Alberta's conservative government as a momentous political triumph, one that transcended the specific legalities of the ruling and resonated deeply within a broader strategy of opposition against the environmental policies of the Trudeau administration. To many in Alberta, a province whose economic foundation has long been intertwined with the fortunes of the fossil fuel industry, the federal government's environmental agenda was perceived not merely as a policy divergence, but as an existential threat to the very core of its development and prosperity. This legal victory, therefore, became emblematic of a broader ideological struggle, representing a significant blow against a central authority increasingly viewed as out of touch with the needs and aspirations of the province[26].

This simmering discontent towards a federal system perceived as disproportionately accommodating the unique circumstances of Quebec, while neglecting the particular concerns of other provinces, especially those in the West, has fostered, since the preceding autumn, a wave of provincial legislative activism. This activism is seen by its proponents as a legitimate means of countering what they regard as the persistent intrusions of the federal government into areas of provincial jurisdiction. Saskatchewan, also governed by a conservative majority, was the first province to give voice to this sense of grievance, which has come to be known as "Western alienation"[27]. On November 1, 2022, the provincial government introduced Bill 88, formally titled "An Act to assert Saskatchewan's exclusive legislative jurisdiction and to confirm the autonomy of Saskatchewan, but succinctly referred to as the Saskatchewan First Act. This legislative initiative, aimed at reasserting the province's sovereignty, passed its second reading on November 28, 2022, and successfully concluded its final reading on March 16, 2023, notwithstanding opposition from various quarters, including Indigenous communities[28].

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[25] Generally, for an in-depth analysis on the Impact Assessment Act, M. DOELLE & A. J. SINCLAIR, *The new IAA in Canada: From revolutionary thoughts to reality*, ENVIRONM. IMPACT ASSESSMENT REV., 2019; A. EHRLICH & W. ROSS, *The significance spectrum and EIA significance determinations*, IMPACT ASSESS. PROJECT APPRAIS, 2015, pp. 87- 97.

[26] A. FIORENTINO, *Un bilancio di fine anno: le difficoltà del Governo Trudeau, le vulnerabilità del sistema democratico e le tensioni tra centro e periferie*, in *Nomos – Le attualità del diritto*, n. 3, 2023, p. 21 ff.

[27] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., pp. 275-276.

[28] *Ibid*. See also, for a general overview on Indigenous communities and environmental law D. MCGREGOR, *Mino-Mnaamodzawin. Achieving Indigenous Environmental Justice in Canada*, in *Environment & Society*, 2018, where the author highlights the emergence of the *Anishinaabe* philosophy referred to as *mino-mnaamodzawin* ("living well" or "the good life"), common to several Indigenous epistemologies, that considers the critical importance of mutually respectful and beneficial relationships among not only peoples but all human relations (including all living things and many entities not considered by Western society as living, such as water and Earth itself). See also M. PAPILLON & T. RODON, *Proponent-indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada*, ENVIRON. IMPACT ASSESS. REV., 2017, pp. 216-224.

ISSN 2036-7821

The anti-federal sentiment underpinning the *Saskatchewan First Act* is unmistakable, particularly in its preamble, which underscores the notion that the addition of Section 92A to the *Constitution Act* in 1982 had ostensibly fortified Saskatchewan's "exclusive legislative jurisdiction" over its natural resources and economy[29].

The preamble critiques the Federation's stance, accusing the federal government of overstepping its constitutionally defined prerogatives, thereby causing undue economic harm and generating uncertainties for both residents and businesses. It culminates with a bold declaration, asserting that Saskatchewan shall never again accept a position of inferiority within Confederation and will demand its rightful status as an equal partner.

The first part of the Saskatchewan First Act is divided into two primary sections. The initial section serves to reaffirm provincial competencies and emphasizes the necessity of providing "certainty" regarding the inapplicability of federal encroachments on matters constitutionally reserved for the province. The second section, following what appears to be a harmless rephrasing of Sections 92 and 92A, introduces the more contentious issue of interjurisdictional immunity[30].

However, this second part raises significant constitutional doubts. The proposed amendments to both the Constitution of Saskatchewan and the Constitution Act would require adherence to the procedure outlined in Section 43 of the Constitution, necessitating resolutions from both the federal Parliament in Ottawa and the provincial legislature. Moreover, the interventions concerning the interjurisdictional immunity doctrine and the constitutional amendments seem fragile, as they appear to encroach upon functions typically reserved for the judiciary. By seeking to redefine the scope of federal and provincial powers, the act risks overstepping its legislative mandate and usurping the authority of the courts to mediate jurisdictional disputes[31].

Further complicating the landscape, the act establishes the Economic Impact Assessment Tribunal (EIAT), tasked with evaluating the economic repercussions of federal initiatives. This tribunal aligns with the provinces' prerogative to scrutinize the economic implications of federal legislation within their own borders, yet its

[29] *Ibid*.

[30] It seeks to apply this doctrine to provincial jurisdiction «to the same extent» as it applies to federal jurisdiction, essentially positing that matters falling within the "core content" of provincial powers should enjoy the same protections from federal interference. On the argument see A. FIORENTINO & C. SPINIELLO, *La morte della Regina riapre il dibattito sulla monarchia, mentre si riaccendono tensioni nei rapporti centro-periferia e il Québec è travolto dallo "Tsunami Caquiste"*, in *Nomos – Le attualità del diritto*, n. 3, 2022, pp. 6-7.

[31] N. BANKES, A. LEACH, M. OLSZYNSKI, *Playing Games with the Constitution: The Saskatchewan First Act*, in http://ablawg.ca, 2022. The authors, specifically, on the subject of separation of powers recall *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, (par. 28-29).

ISSN 2036-7821

creation only amplifies the friction between provincial assertions of autonomy and federal authority[32].

Simultaneously, Alberta introduced its own assertive measure, Bill 1, formally titled the Alberta Sovereignty within a United Canada Act. This legislative initiative, rapidly approved by the provincial legislature, has been widely criticized as an attempt to usurp the role of the courts in arbitrating jurisdictional conflicts. The Alberta Sovereignty Act represents a defiant response to what the province perceives as federal overreach and, more broadly, the existential threat posed by the green transition to Alberta's economic lifeblood – the fossil fuel industry. Under this act, the Premier may propose a motion to adopt a resolution identifying any federal law deemed unconstitutional and delineating the provincial actions to be undertaken in defiance of such laws. Once the Legislative Assembly has debated and voted upon the resolution, the provincial Cabinet reviews the proposed actions and determines the appropriate course[33].

The debate in the Legislative Assembly culminates in a vote, and if approved, the Cabinet reviews the proposed actions[34]. The objectives of this measure, as articulated by its proponents[35], are to establish a legal framework that enables Alberta to reject federal laws considered detrimental to the province's interests.

However, this assertion of provincial authority has not gone unchallenged. Critics, particularly within the scientific and legal communities, have raised alarm over what they perceive as a direct assault on the very concept of federalism itself[36]. By claiming the power to disregard federal laws, Alberta stands accused of undermining the balance of powers within the Confederation and infringing upon the judiciary's role in resolving disputes over jurisdiction[37]. While some initially speculated that

[32] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., p. 276.

[33] N. BANKES, A. LEACH, M. OLSZYNSKI, *Playing Games with the Constitution: The Saskatchewan First Act*, cit.

[34] The law includes in the provincial entities subject to this obligation: provincial public bodies, Crown corporations, Alberta Health Services, post-secondary institutions, school boards, municipalities and police departments, as well as a broad conception of entities that receive funding from the province of Alberta to provide a public service. In contrast, there is no similar constraint to comply with these guidelines for individuals and private companies.

[35] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., pp. 276-277. In the author's opinion, the text was initially even more unbalanced in favor of the provincial executive before the deletion in the amendment phase of a measure that allowed it to "bypass" the Assembly.

[36] E. MACFARLANE, *Alberta's Sovereignty Act passes after amendments – yes, it's still garbage*, 2022, in https://emmettmacfarlane.substack.com/p/albertas-sovereignty-act-passes-after. Last visited September 26, 2024. The measure is criticized as allowing the Alberta government to «to order provincial entities to flout or even violate federal law» and gives the provincial level not only the power to find a federal initiative unconstitutional, but also the power to act on that belief, realizing a direct attack on the very idea of federalism and the entire division of powers.

[37] J. UNGER, *Environmental Rights in Alberta: Substantive Environmental Rights*, Publication of the Environmental Law Centre's Environmental Rights Program, 2016. Available at https://elc.ab.ca/wp-content/uploads/2016/12/EBR_MOD-1_SubstantiveEnvironmental-Rights-in-Alberta.pdf. Last visited September 26, 2024.

ISSN 2036-7821

the Alberta Sovereignty Act might be little more than a symbolic gesture, subsequent events have proven this assumption to be unfounded. The aggressive posture adopted by the Alberta government, along with its willingness to invoke the act in response to federal initiatives, suggests that the province is intent on using this legislative tool to assert its autonomy in meaningful and potentially far-reaching ways[38].

Thus, the unfolding drama of provincial-federal relations in Canada, epitomized by the Saskatchewan First Act and the Alberta Sovereignty Act, lays bare the growing tensions within the Confederation. As provinces increasingly challenge what they perceive to be federal encroachments, the delicate balance of power enshrined in Canada's federal system faces unprecedented strain[39].

5. Concluding reflections and insights.

This analysis cannot hope to fully encompass the immense complexity of the institutional initiatives and jurisprudential interventions that have shaped environmental policies and the energy transition in Canada. Nevertheless, it strives to illustrate how the issue has now ascended to the status of a critical theme, perceived as central not only to the country's environmental future but also to the stability of the federal pact and the broader constitutional architecture. These structures are now under unprecedented strain, a result of the intensifying conflict between the central government and those provinces most vulnerable to both the economic and climatic repercussions of transitioning away from a fossil fuel-dependent economy. Recent parliamentary debates have revealed that the momentum towards mitigation and the deceleration of processes zealously pursued by the Trudeau government has garnered support beyond the conservative opposition, as evidenced by motions approved by the New Democratic Party. This growing consensus across party lines underscores the gravity of the issue and the complexities of balancing environmental imperatives with the economic realities faced by key regions of the country.

This contribution has concentrated on the ramifications of environmental transition and the fight against climate change on Canada's federal system. However, it is essential to broaden the scope of the discussion to incorporate two fundamental and intertwined questions that are inevitably implicated in this debate. The first of these

[38] B. POWELL, *Environmental rights in Alberta: an annotated environmental bill of rights for Alberta*, 2018. Available at https://elc.ab.ca/wpcontent/uploads/2018/03/ELC-Annotated-EBR-March-2018.pdf. Last visited September 26, 2024.

[39] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., p. 278. The resolution of these conflicts will have profound implications for the future of Canadian federalism, as the provinces assert their autonomy in the face of a central government determined to implement its vision of a greener, more sustainable future.

ISSN 2036-7821

pertains to the effectiveness of the global fight against climate change. It has become manifestly clear that uncoordinated national policies, coupled with excessive disparities between nations and even continents, jeopardize global progress, threatening to unravel the hard-won achievements of the most proactive states. The interdependence of nations, and the transnational nature of both the causes and consequences of climate change, necessitate the pursuit of multi-level solutions. This imperative is not a call for top-down global governance but rather for a meticulously coordinated effort among states and the various actors involved[40]. In this regard, the Paris Agreement and the ongoing United Nations Climate Change Conferences hold great significance, even though the practical consequences of these international accords often vary greatly depending on the internal cohesion of participating nations, their territorial vastness, and the nature of their political regimes, whether they be democratic or authoritarian. The ability to undertake decisive political responsibilities differs markedly, and this diversity shapes both the adoption and implementation of climate measures[41].

The second overarching question raises an existential inquiry that is as old as the concept of federalism itself: to whom should resources be allocated? This question is no less pressing today than it has been in prior epochs of history, from the gold mines of California to the coal and steel reserves of Alsace-Lorraine. A succinct yet potent answer emerges: so long as the federal pact remains robust, with an inextricable intertwining of benefits and burdens among regions, resources can be fairly distributed. However, when crises erupt or imbalances become too pronounced, the entire federal structure risks fracturing under the strain[42].

This is a danger acutely felt in the contemporary Canadian context. The western provinces, which had long tolerated what they perceived as the "favorable" treatment accorded to Quebec, are now asserting that this system of federalism has become fundamentally inequitable. In their eyes, federal environmental policies, particularly those aimed at phasing out the fossil fuel economy, are no longer merely inconvenient; they are seen as intolerable and branded as an existential threat to their way of life.

More specifically, the ongoing clash over the federal government's green policies has engendered various attempts to coordinate political and institutional responses. The conservative movement, both at the federal and provincial levels, has demonstrated a

[40] G. POGGESCHI, *La lotta al cambiamento climatico da Massachusetts v. EPA (2007) sino a oggi. Un modello per il diritto comparato dal sistema federale statunitense?*, in DPCE, n. 4, 2021, p. 1023. Clearly, certain aspects already fall under the discipline of an international environmental law. See L. RAJAMANI & J. PEEL (eds.), *The Oxford Handbook of International Environmental Law*, Oxford University Press, Oxford, 2021.

[41] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., pp. 281-282.

[42] For a comprehensive overview, see E. LEES & J. E. VIÑUALES (ed. by), *The Oxford Handbook of Comparative Environmental Law*, Oxford University Press, Oxford, 2019.

ISSN 2036-7821

notable degree of alignment, although this coordination has become even more pronounced in the collaboration between provinces acting in an explicitly anti-federal capacity. Alberta and Saskatchewan, for instance, have not only passed and activated new legal instruments within mere days of each other, but they have also united in challenging federal legislation in the courts, even garnering support from Ontario. This provincial solidarity represents a significant and growing challenge to the authority of the federal government[43].

At present, the federal government's strategy of "minimizing" tensions appears to have borne little fruit in quelling the rising tide of provincial defiance. Prime Minister Trudeau has deliberately refrained from responding to provocative statements and outright constitutional breaches, notably choosing not to directly confront the *Alberta Sovereignty Act* or invoke the rarely used federal power of disallowance. Even in the wake of last October's Supreme Court ruling on the Reference re *Impact Assessment Act*, the government offered only muted commentary, committing itself to minimal regulatory adjustments and, with measured tones, indicated that no further departures from its environmental agenda were anticipated, despite the political upheaval triggered by discussions surrounding partial exemptions to the carbon tax over a three-year period.

To conclude, one might argue that this cautious approach – marked by a reluctance to escalate confrontation with defiant provinces – has its merits in preserving the fragile unity of the Confederation in the short term.

However, it also raises important questions about the long-term viability of such a strategy. By opting for minimal responses and avoiding direct confrontation, the Trudeau government risks allowing the fissures within the federal system to deepen. The steadfast refusal to challenge provincial laws that openly contravene federal authority could be seen as tacitly emboldening those provinces to push the limits of their autonomy even further, thereby threatening the cohesion of the federal pact.

Furthermore, the strategic decision to sidestep invoking the disallowance power, despite its constitutional validity, may ultimately weaken the central government's ability to enforce national standards on issues of paramount importance, such as climate change.

In sum, while the Trudeau government's attempts to maintain a delicate balance between federal authority and provincial autonomy have thus far managed to prevent outright rupture, the growing assertiveness of certain provinces signals a potential unraveling of the federal system if these tensions are not addressed more decisively.

As Canada navigates the complex and evolving landscape of environmental transition, it will need to find new ways to reconcile the divergent interests of its

[43] D. RAGONE, *Federalismo canadese e transizione ambientale: verso una crisi di sistema?*, cit., p. 282.

ISSN 2036-7821

provinces while upholding its commitments to a sustainable future. The challenge lies not only in addressing the immediate political and economic concerns raised by the provinces, but also in ensuring that the federal system itself remains robust enough to withstand the pressures that are certain to intensify in the years ahead.
Without a more concerted and coordinated approach to these challenges, the very stability of the Canadian federation may be imperiled, with consequences that extend far beyond its borders.

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