

THE FIRST CENTURY OF THE INTERNATIONAL JOINT COMMISSION

Edited by Daniel Macfarlane and Murray Clemen

ISBN 978-1-77385-108-2

THIS BOOK IS AN OPEN ACCESS E-BOOK. It is an electronic version of a book that can be purchased in physical form through any bookseller or on-line retailer, or from our distributors. Please support this open access publication by requesting that your university purchase a print copy of this book, or by purchasing a copy yourself. If you have any questions, please contact us at ucpress@ucalgary.ca

Cover Art: The artwork on the cover of this book is not open access and falls under traditional copyright provisions; it cannot be reproduced in any way without written permission of the artists and their agents. The cover can be displayed as a complete cover image for the purposes of publicizing this work, but the artwork cannot be extracted from the context of the cover of this specific work without breaching the artist's copyright.

COPYRIGHT NOTICE: This open-access work is published under a Creative Commons licence. This means that you are free to copy, distribute, display or perform the work as long as you clearly attribute the work to its authors and publisher, that you do not use this work for any commercial gain in any form, and that you in no way alter, transform, or build on the work outside of its use in normal academic scholarship without our express permission. If you want to reuse or distribute the work, you must inform its new audience of the licence terms of this work. For more information, see details of the Creative Commons licence at: <http://creativecommons.org/licenses/by-nc-nd/4.0/>

UNDER THE CREATIVE COMMONS LICENCE YOU MAY:

- read and store this document free of charge;
- distribute it for personal use free of charge;
- print sections of the work for personal use;
- read or perform parts of the work in a context where no financial transactions take place.

UNDER THE CREATIVE COMMONS LICENCE YOU MAY NOT:

- gain financially from the work in any way;
- sell the work or seek monies in relation to the distribution of the work;
- use the work in any commercial activity of any kind;
- profit a third party indirectly via use or distribution of the work;
- distribute in or through a commercial body (with the exception of academic usage within educational institutions such as schools and universities);
- reproduce, distribute, or store the cover image outside of its function as a cover of this work;
- alter or build on the work outside of normal academic scholarship.



Acknowledgement: We acknowledge the wording around open access used by Australian publisher, **re.press**, and thank them for giving us permission to adapt their wording to our policy <http://www.re-press.org>

A Square Peg: The Lessons of the Point Roberts Reference, 1971–1977

Kim Richard Nossal

Most assessments of the International Joint Commission (IJC) as an international institution designed to resolve disputes between Canada and the United States have a distinctly positive ring to them. This is not by accident: in over a century of operation, the IJC has a long and sustained record of successfully defusing and resolving disputes involving boundary waters that have arisen along the 8,891-kilometre border between the two countries. By contrast, the number of institutional “failures” during this period is exceedingly limited.

One of those rare failures was Docket 92R, an investigation into the social and economic conditions at Point Roberts, an American exclave located south of Vancouver that was cut off by the 49th parallel from the rest of the United States. As a result of the increasing problems faced by the residents of Point Roberts in the late 1960s because of their isolation from the rest of the United States, the two governments decided in April 1971 to refer the question of Point Roberts to the IJC for study and recommendations for the alleviation of these problems. The scope of the reference was unprecedented: never before had the IJC been asked to study and make recommendations on a social, political, and economic cross-border issue. Beginning in 1971, the IJC established an advisory panel, the International Point Roberts Board, which began to undertake a study. In October 1973 the board was ready to report: it recommended to the IJC that the problems

created by Point Roberts's isolation be solved with the creation of a conservation and recreation area in the Gulf-San Juan Islands-Point Roberts area that would in essence turn Point Roberts and an equivalent area in Canada along Boundary Bay into a binational park, with exact powers to be determined through a treaty to be negotiated by the two federal governments. While this wide-ranging proposal had the support of conservation groups in the area, the proposal to transform the status of Point Roberts from American territory to a binational forum generated such opposition in Point Roberts and the Washington state legislature that the IJC decided to discontinue work on the reference. Eventually the reference was terminated in 1977 without the IJC having made any recommendations to the two governments—an unprecedented end to an IJC reference. As Paul Muldoon has put it, “the reference represents one of the few ‘black marks’ on the otherwise impeccable record of the IJC.”¹

It is perhaps because the IJC has been such a successful institution that much of the analysis of this institution focuses on the reasons for its success, while relatively little attention is paid to the causes of the IJC's few failures. Yet in an institution's failures we can sometimes see the reasons for its success. Thus the purpose of this chapter is to look at the Point Roberts reference in order to draw lessons about why the IJC has been so successful. How do we understand what caused this “black mark”? Did the Point Roberts reference fail because it went well outside the bounds of the IJC's more common mandate—boundary waters? Was it the case, as one Point Roberts official noted in 1971, that “the square peg of Point Roberts fails to fit any of the conventional round holes”?² I will argue that the reference failed not because the IJC was embarking into a radically new area of jurisdiction. After all, while the area might have been new, in the sense that the IJC had never before examined social, economic, and political problems relating to the border, it was not at all outside the formal jurisdiction of the IJC, as some have argued.³ Rather, I will suggest that much of the failure of this reference can be attributed to the failure of the International Point Roberts Board, and the commission itself, to follow some of the key factors that had been so crucial for the success of other references given to the IJC. If Point Roberts was a “square peg,” the solution lay in finding square holes. As we will see, that did not occur.

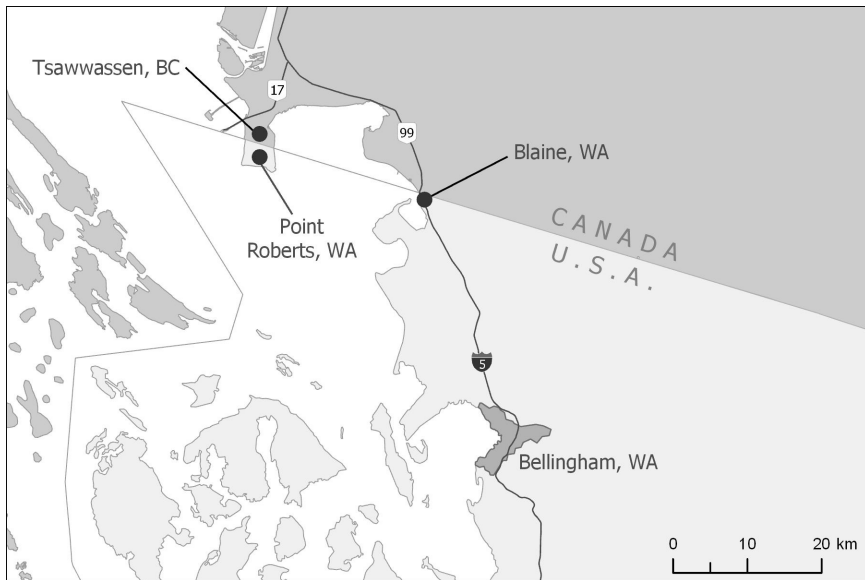


FIGURE 6.1. Map of Point Roberts. J. Glatz, Western Michigan University Libraries.

Explaining the IJC’s “Success”

The IJC is widely seen as a successful binational institution in the Canadian-American relationship. Participants in the process have not been hesitant to express this view. Looking back on the IJC’s first decade, Lawrence J. Burpee, who served as the Canadian secretary of the IJC from 1912 until his death in 1946, declared it a “successful experiment in international relations,” noting that it was “a sort of international safety-valve” that helped settle thorny cases between the two neighbours.⁴ Writing sixty years later, on the seventieth anniversary of the signing of the Boundary Waters Treaty, John W. Holmes, a former assistant under-secretary of state for external affairs in Ottawa, echoed Burpee’s assessment, pronouncing the IJC “a successful experiment in coping with the ambiguities of an inescapable but unequal relationship.”⁵ In 2005, one of Burpee’s successors as Canadian secretary, Murray Clamen, expressed a similar view, writing that “The IJC has helped to transform a vast potential source of conflict into a model of binational environmental cooperation.”⁶ It should

be noted that the view of the IJC as a successful institution is also reflected on the American side of the line. For example, speaking to an IJC event in October 2016, the US ambassador to Canada, Bruce Heyman, heralded the commission's "long, productive history," noting that "people around the world look to the IJC organization as a model for how to work together."⁷

What accounts for this success? Explanations have focused on different elements. Perhaps the most important was the evolution of a long-term institutional culture that essentially denationalized the process of evaluating the applications and references that are the main parts of the IJC's work. This culture formed very early on, as Burpee's description in 1919 makes clear:

The Commissioners have not approached these questions as two distinct groups of national representatives, each jockeying for advantage for its own side, but rather as members of a single tribunal, anxious to harmonize differences between the two countries, and to render decisions which would do substantial justice to all legitimate interests on both sides of the boundary, and particularly to those of the common people.⁸

A similar view was expressed forty-five years later by A. D. P. Heeney, the chair of the Canadian Section of the IJC from 1962 to 1970. In 1966, he wrote that the IJC's commissioners have tended not to serve as advocates "striving for national advantage under instruction from their respective governments, but as members of a single body seeking solutions to common problems, in the common interest."⁹ This formulation was repeated in the commission's response to the 1997 request for proposals for meeting the environmental challenges of the twenty-first century.¹⁰

Likewise, examining the role of the IJC in the case of the Garrison Diversion project in the late 1970s, Garth O. Makepeace argued that the success of the IJC also depended on two further, and related, factors. First, the IJC developed and maintained strong links to bureaucratic agencies along the length of the border at the federal, state/provincial/territorial, and municipal levels, which gave the commission authority on the highly technical issues involving transboundary waters. This encouraged norms

of consensus and common-goal decision-making that in turn undergirded the broader institutional culture.¹¹

To these explanations we need to add the nature of the tasks assigned to the IJC by both countries' governments. If, as Ralph Pentland and Adele Hurley have argued, "the effectiveness of the IJC is a question of politics. The IJC is only effective when both governments want it to be,"¹² then we need to be mindful of why both governments have been willing to allow the IJC to be effective. I have argued elsewhere that a key explanation for the success of the commission was its limited and relatively low-stakes responsibilities: "The higher the stakes, the more incentive both governments would have had to handle high-priority issues through normal diplomatic channels. Had that been the case, it is likely that the IJC would have been allowed to slip into . . . obscurity. . . . The IJC has managed to thrive by serving limited and relatively unimportant interests."¹³ In other words, one of the keys to the IJC's success lies in its parochial mandate.

However, the clearest appraisal of the IJC's success was made in the late 1970s by William R. Willoughby, a historian whose work focused on Canadian-American binational institutions. Willoughby enumerated nine key reasons for the enduring success of the IJC: the long-standing support of both federal governments; the independence that those governments permitted the IJC to enjoy; the decision to create a permanent institution rather than an ad hoc agency; the decision to structure the commission without an umpire from an impartial third country; the legal equality enshrined in the Boundary Waters Treaty of 1909 that established the commission; the reliance on expertise drawn from governments on both sides of the border; the IJC's embrace of pragmatic procedures that involve local residents on both sides of the line; the good judgement of the commissioners in embracing recommendations that attract political support; and the politico-cultural commonality of the two countries that belong to the institution. Willoughby also allowed that "there has also, no doubt, been more than a modicum of luck in the IJC's success."¹⁴

To what extent do we see these determinants of success in other references undertaken by the IJC reflected in the Point Roberts reference? To answer this question, we now turn to an examination of Point Roberts and the 1971 reference.

Point Roberts

Point Roberts is an American community located at the southern tip of the Tsawwassen Peninsula, south of Vancouver (see Figure 6.1). Although it is part of Whatcom County, in the state of Washington, Point Roberts is cut off from the rest of the United States by land because the 49th parallel intersects the peninsula. While there is a grass-runway airpark and a sizeable marina, there are no scheduled air services between Point Roberts and the United States, and no ferry service. Point Roberts is a very small community, both in area and population. It is just 12 square kilometres (5 square miles, or 3,000 acres) in area; the 2010 census indicated that there were 1,314 permanent residents in 678 households, out of a total of more than 2,000 housing units, most of which are unoccupied for much of the year. During the summer months, the population of Point Roberts swells to over 4,500, mostly vacationing Canadians.

The exclave of Point Roberts was created when the United Kingdom and the United States settled a protracted conflict over the northwestern border with the Treaty of Oregon. That treaty, signed in June 1846, established that the line of demarcation would run along the 49th parallel “to the middle of the channel which separates the continent from Vancouver’s Island.”¹⁵ The British and American negotiators meeting in Washington had little detailed knowledge of West Coast geography, and had no idea that the wording they embraced would create an exclave in what was to become Boundary Bay. The Anglo-American boundary commission that was created in 1856 to locate and mark this boundary was well aware of the issue that had been unwittingly created; indeed, by some accounts,¹⁶ the British, anticipating the problems that would be created by running the line to the middle of the Strait of Georgia and cutting off the southern tip of Point Roberts from the rest of the United States, proposed to the American side that the twelve square kilometres of the peninsula be left in British hands, and that an appropriate land swap be effected elsewhere in compensation. The proposal went nowhere, however, since any deviation from the treaty would have required reopening negotiations, and the boundary commission was facing a far more pressing issue: how to demarcate the boundary through the islands at the southern end of the Georgia Strait given the imprecise wording of the treaty vis-à-vis those

islands.¹⁷ As a result, the issue of Point Roberts was set aside and in 1857 surveying work was begun on the western edge of the peninsula. In 1861–2 the British erected an impressive stone obelisk—that still stands today—on the cliffs on the western side of Point Roberts to mark the initial point in the Canada-US border along the 49th parallel.¹⁸

The creation of an international boundary had a marked impact on human settlement on Point Roberts. Traditionally, the peninsula had been used by numerous Coast Salish Aboriginal peoples, particularly the Lummi and the Tsawwassen, for seasonal salmon fishing. However, the demarcation of the international boundary, which coincided with the Fraser Canyon gold rush, brought that to an end. Members of the Tsawwassen First Nation, whose traditional lands included the Fraser River, the Gulf Islands, and Point Roberts, were excluded from their seasonal fishing grounds in Point Roberts by the new boundary. And by the time that the surveying had begun in the late 1850s, the Lummi Nation, which had migrated seasonally around the Lummi Peninsula, the San Juan Islands, and Point Roberts, had been forcibly relocated along with other Northwest coastal tribes by the US government under the Point Elliott Treaty of 1855.

In the immediate aftermath of the establishment of the boundary, a small town was established on Point Roberts in 1857 to supply miners working the gold rush, but was abandoned when the gold rush ended in 1858. In 1859, Point Roberts was designated as a military and lighthouse reserve, and it remained largely uninhabited until the 1890s, when it began to be settled by squatters.

While Point Roberts had a precarious economic existence in the first half of the twentieth century, in the post-1945 period, the nature of the community changed. Washington state law was much more liberal than in British Columbia: the drinking age was lower, the bars remained open later, one could buy alcohol on Sunday, and pornographic movies and magazines were readily available. The construction of a tunnel under the Fraser River in 1959 made it easier for those in Vancouver to visit Point Roberts.¹⁹ And the relaxation of Washington state law in 1953 to allow Canadians to purchase property in Washington increased the numbers of Canadians who purchased vacation property in Point Roberts. By the end of the 1960s, Canadians had come to dominate the Point: in 1969, only 132 of the 326 permanent residents were US citizens; there were 151

Canadians, 19 dual citizens, and 24 citizens of other countries. Of the 1,600 owners of real property in Point Roberts, 85 per cent were Canadians.²⁰ In the summer months, the population of Point Roberts would soar to 3,500.

The British concerns in the 1850s that this exclave would experience difficulties were prescient. Once Point Roberts was increasingly settled over the course of the twentieth century, the impact of geographic separation manifested itself in a number of different ways. While there were primary schools in Point Roberts, middle- and high-school students had to cross the border four times during the day and drive forty minutes each way to schools in Blaine. Law enforcement was problematic because the only way someone arrested on Point Roberts could be moved to trial was by air or sea, since moving an accused by land would involve extradition proceedings in Canada. Likewise, skilled tradespeople from the United States avoided Point Roberts because a customs escort was needed to move their tools and material through Canada. Anything moved from the mainland United States to Point Roberts required bonded trucks or other special arrangements. There was no hospital, and permanent residents of Point Roberts did not have access to doctors, dentists, pharmacists, or veterinarians, and American health-care insurers refused to pay for health care provided across the border in Canada. Moreover, Washington state law did not allow Canadian medical professionals to practise in Point Roberts.

The transformation of Point Roberts into a vacation destination for Canadians in the 1960s had a major impact on the demand for essential services, such as electricity and telephone, but in particular water for drinking and sewage. The Point had no fresh water supply other than ground wells. In the late 1960s, just seven wells were providing water for drinking water, and two of them had run dry by 1970. While water supplies for drinking were trucked in from Blaine at massive expense, there was no ability to construct a sewage system without a secure supply of water. Whatcom County suspended all new building on Point Roberts, but there was little willingness on either side of the border to fix this growing problem. None of the authorities on the American side—Whatcom County, the state of Washington, or the federal government in DC—were willing to allocate the considerable funds to provide services to a community of three hundred, only half of whom were American citizens. By the same token, all the governments on the Canadian side—the municipality of Delta, the

BC government, and the Canadian federal government—took the view that since Point Roberts was American territory, it was the responsibility of American governments to provide essential services. Moreover, because it was Canadian policy in the 1960s not to export water, governments on the Canadian side refused to provide water to Point Roberts.

In 1970, the two governments decided to give the issue to the IJC. As Munton notes, it was not clear whether Ottawa and Washington were moved to do so “out of sincerity, curiosity, or desperation.”²¹ But on 21 April 1971, the IJC was asked to undertake a study of the problems created by the border, and to recommend solutions to those problems.

The Point Roberts reference was undertaken under article ix of the Boundary Waters Treaty. While we commonly refer to the agreement signed in 1909 as the Boundary Waters Treaty, its formal title is “Treaty between the United States and Great Britain Relating to Boundary Waters, and Questions Arising between Canada and the United States.” Article ix permits the two governments to use the IJC process more widely:

Any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report.²²

Before the Point Roberts reference, article ix had been invoked five times on issues that did not pertain exclusively to boundary water flow levels and uses. The first was in 1920, when the IJC was asked to examine a number of questions about navigation and hydroelectricity generation on the St. Lawrence River. Three focused on air pollution: the ill-fated Trail Smelter reference of 1928, and two others on air pollution in the Detroit-Windsor/Port Huron–Sarnia area of the Great Lakes (all of which are covered in the chapter in this volume by Owen Temby and Don Munton). The fifth reference focused on enhancing the beauty of the American Falls at Niagara (see chapter 9 in this volume).²³ Thus, while the reference on Point Roberts was unprecedented in that it asked the IJC to study and make

recommendations on social, political, and economic matters rather than transboundary waters or air pollution, it was not at all outside the “questions arising” remit of the Boundary Waters Treaty.

The reference to the IJC enumerated several specific problems: the application of customs laws and regulations; regulations relating to employment; the adequacy of medical services for residents of Point Roberts; arrangements for the supply of electricity and telephone service; and the issue of law enforcement.²⁴ The reference, however, made no mention of the problem of water supply.

In keeping with standard IJC practice, the commission established an advisory board, the International Point Roberts Board, which began its work in November 1971. After holding hearings in Vancouver and Point Roberts in December 1971, the board conducted an investigation of the different elements of the reference, and issued a report in October 1973. The board found that the problems that the two governments had identified were quite minor compared to the problems that had emerged in the course of its work. Indeed, while the board had been undertaking its work, some changes to legislation in the United States had already alleviated some problems. For example, in 1972 changes to social security regulations provided that Americans in Point Roberts would be entitled to hospital insurance benefits if they went to a hospital in Canada. And in 1973, Washington State amended its health-care legislation, allowing Canadian physicians to respond to emergencies and make house calls.²⁵

The board concluded that far more significant than the problems identified by the two federal governments in the 1971 reference was a matter that had not even been mentioned. As the report put it, among the most “fundamental problems” was the issue of resources:

Point Roberts is both physically removed from the United States mainland and a natural part of a dormitory and recreational suburb of Vancouver. It does not have sufficient natural resources such as water to support the existing population and weekend visitors let alone any future development. The required natural resources must come from outside the Point.

However, because it was clear that none of the three levels of government on the US side was willing to provide those resources, given the tiny number of Americans on Point Roberts, the board concluded that the “logical” source of the resources necessary for the Point was Canada. But the board noted that governments on the Canadian side—municipal, provincial, or federal—would be willing to provide those resources “*only* if they also have a voice in the question of land use patterns and population densities on Point Roberts.”²⁶

As a result of the clear logjam that arose from the unwillingness of any of the governments to co-operate in resolving the “little” problems of Point Roberts, the board decided to propose a broad and holistic solution. The 1973 report recommended that Canada and the United States create a giant international park of some eight thousand square kilometres that would include the main islands in the Strait of Georgia and the Salish Sea—from Gabriola Island in the north to Whidbey Island in the south. “Concept B,” as it was called, envisaged a conservation and recreation area that would incorporate existing communities and parks. The international park and conservation system was to be administered by what the board called a “binational forum” of three Canadians and three Americans appointed by their governments. Point Roberts and a comparably sized area of Canadian territory would serve as the headquarters of the park.

It is clear that the board had in mind the binational park that had been created just six years before on the East Coast. Franklin Delano Roosevelt had owned a summer retreat on Campobello Island in New Brunswick. When Roosevelt’s spouse, Eleanor Roosevelt, died in 1962, the family deeded the property to the governments of the United States and Canada jointly so that an international park could be created to memorialize Roosevelt. The two governments negotiated an international treaty, signed in January 1964 by Prime Minister Lester B. Pearson and President Lyndon B. Johnson, outlining the governance of this international park, creating a six-person commission, and agreeing on the funding and running of the park, which opened in August 1964.²⁷

However, creating an international park of eleven square kilometres from a property that belonged to a single family was fundamentally unlike the Concept B that was being proposed by the International Point Roberts Board in 1973. Concept B involved thousands of acres of land,

several thousand property owners, and numerous municipal jurisdictions. However, the Concept B plan lacked any details about funding or the possible impact on private property values within the proposed park. Moreover, the 1973 report did not explain precisely how an international park would solve the very particular problems faced by Point Roberts residents. Nor did the report explain why the grand design envisaged in Concept B was the only solution. Most importantly of all, however, neither the board nor the IJC had the resources necessary for a comprehensive communications strategy for releasing the report to the community or publicizing the rationale behind Concept B. Copies of the report were only available at local libraries or by formal request from the IJC. As a result, most people had to rely on newspaper articles for their information about the proposal.²⁸

When public hearings were held in Point Roberts in December 1973 and in Vancouver in early 1974, the reaction of the community was overwhelmingly negative. While some conservation and environmental groups welcomed the proposal for the creation of an international park, many residents of Point Roberts—and other jurisdictions affected by the proposal—expressed strong opposition to the “binational forum” that was being proposed; a common concern was that the appointed commissioners would be responsible to the national governments that appointed them, rather than to local residents.

During the public hearings on the report, the board was criticized for having paid insufficient attention to local views. Some critics argued that while the board had contacted a number of agencies in the national capitals about customs or other matters, it had not consulted local groups or municipalities, particularly those municipalities—such as San Juan County, a cluster of some four hundred islands in the Salish Sea on the American side of the line—proposed to be incorporated into the new international park. One of the reasons for this was that the board was severely understaffed: only the US side had a secretary, and there were no resources for the development of a communications strategy. Moreover, at the time that the Point Roberts reference was being undertaken, the IJC commissioners had a number of other, more pressing issues vying for their attention, including the Great Lakes pollution and the Skagit River references.

As the full extent of the opposition to the report became evident, the IJC directed the advisory board to engage in further consultations with the affected municipalities, which lead to a supplemental report to the IJC in September 1974. By this time, however, the board recognized that there was even less desire for co-operation among local levels of government for a solution. As a result, the board recommended to the commission that further work would be useless: “the job [the board] was given cannot be carried further until the various local and regional authorities agree that bi-national cooperation is required.”²⁹ The board also recommended that the IJC not recommend Concept B to the federal governments in Ottawa and Washington. This report brought matters to a standstill, and no further work was done on the reference. In a final report to the governments, issued on 16 August 1977, the IJC informed the two governments that it was officially terminating its work under the reference: “until such time as the local jurisdictions have reached some sort of accommodation concerning the Point Roberts question, there is little the Commission can do in this matter.”³⁰

Aftermath

Today, more than forty years after the termination of the reference, Point Roberts is a thriving community. To be sure, some of the inconveniences that prompted the Canadian and United States governments to submit the reference in 1971 remain. School children beyond third grade still have to make the long, 86-kilometre round trip to Blaine, crossing the border four times a day. The deputy sheriff in what locals describe as “America’s best gated community”³¹ still has to transport anyone arrested for a crime to the county seat for trial by boat or plane. Medical services are still limited: while there is a health-care clinic, urgent care and more complex procedures still require a trip to Canada or to Blaine. But the Point Roberts economy is much more robust than it was in the late 1960s. Not only is the real estate market strong because of the high cost of property in Vancouver, but cross-border shopping for gasoline and groceries contributes significantly to the local economy. There is also an active parcel-receiving industry for Canadians who find it cheaper and more convenient to maintain a US shipping address than to have goods shipped across the border. The Point

Roberts marina is one of the largest employers; 95 per cent of the vessels there are registered to Canadians.³²

The key to the transformation was water. During the reference period, the board had recommended that, because no American government would fund a water pipeline across Boundary Bay to Point Roberts from an American point, a water solution should be negotiated between Point Roberts and governments on the Canadian side. And on the Canadian side, there was strong opposition to bulk water removals: indeed, the NDP government of Dave Barrett, in power between 1972 and 1975, enacted legislation prohibiting bulk water removals. However, the negotiations recommended by the board were nonetheless undertaken, and in August 1987, ten years after the reference was terminated, the Point Roberts Water District finally signed an agreement with the Greater Vancouver Water District for an allotment of 840,000 gallons of water each day, to be provided from a reservoir in Delta.³³ With a steady and reasonably priced supply of water from the Lower Mainland, most of the problems that had given rise to the reference in 1971 have since disappeared.

Analysis

It can be argued that the failure of the Point Roberts reference had a deep structural cause: the positions and policies of the local and regional governments constituted a significant impediment to meaningful action on the problems of Point Roberts. All three levels of governments on the American side of the line had little interest in spending the large sums of money that would be necessary to provide US-based services for the small number of residents of Point Roberts (and the even smaller number of American citizens). Likewise, governments on the Canadian side, particularly the British Columbia provincial government and local municipalities that bordered Point Roberts, had little interest in providing services and resources such as water to American territory when these governments would be given no say in how Point Roberts was governed, much less any of the tax revenue. Stalemate was the inevitable result.

However, in the way that it pursued the reference, the IJC made this stalemate more pronounced. In particular, in three areas the IJC did not do in the Point Roberts reference what it generally did in other references

and applications—the “causes of success” enumerated above. First, the advisory board was not given enough resources to involve locals as effectively as the IJC tended to do in other areas. Willoughby notes that “particularly important has been [the IJC’s] custom of going to the people instead of requiring them to come to it; its affording all persons an opportunity to be heard.”³⁴ The International Point Roberts Board did not have a member from the Point, which increased suspicions among locals that the IJC was a distant bureaucratic mechanism intent on destroying the Point Roberts community (suspicions that were for many confirmed when the board issued its Concept B proposal). This initial problem was exacerbated by the lack of resources available for a comprehensive communications strategy when the 1973 report was finally rolled out.

Second, both Willoughby and Makepeace focus on the importance of bureaucratic expertise in shaping the IJC’s success: the ability of the IJC to draw on bureaucratic expertise from agencies on both sides of the border and from different levels of government that gives the commission both authenticity and authority. In the Point Roberts case, there was little involvement by bureaucrats from the surrounding localities. While the board conducted a vigorous study of the questions posed in the reference by approaching federal departments and local hydroelectric utilities, it was clear that there was little buy-in from township and county planners.

The fact that officials and experts from localities around Point Roberts were not deeply involved in the process contributed to a third problem. In Willoughby’s view, one factor in the IJC’s success “has been the good judgement it has shown in its orders and recommendations in taking into account local and regional requirements.”³⁵ It is possible that had local planners from neighbouring municipalities on both sides of the border been more deeply involved in the work of the board, it might not have been quite as seized with the idea of trying to solve the Point Roberts problem by reaching for a giant holistic “fix.” Certainly it can be argued that Concept B and its proposal to create a massive, eight-thousand-square-kilometre international park—from Gabriola Island near Nanaimo, British Columbia, in the north to Whidbey Island near Everett, Washington, in the south—did not reflect a *politically* sensitive judgement; there was little recognition that the model uppermost in the minds of the board—the

Roosevelt Campobello International Park—had such little applicability to the Point Roberts case.

In short, if we think counterfactually about the Point Roberts reference, might it have worked out differently had the IJC carefully followed its usual practices? In other words, what if the commission and the advisory board had involved local residents from the start? What if the board had consulted more broadly with local municipal bureaucracies? What if the board had had the good judgement to recognize that the solution that it had embraced—the international conservation and recreation area—was simply too large and indigestible given the multitude of interests involved? What if the board had had the good judgement to recognize that the Roosevelt Campobello International Park model it was using had been successful because it was infinitely less complex? What if the board had recognized that the IJC tends to be successful when its focus remains parochial?³⁶

The most intriguing counterfactual question, however, involves the issue that the IJC has been so successful in dealing with in other references: water. One of the significant contributions made by the International Point Roberts Board was to demonstrate clearly that the concerns raised by both national governments in the reference in 1971 were in fact of minor concern, and that the real issue that confronted Point Roberts was water and the impossibility of meeting steadily increasing demand for water with the slowly failing ground wells. Having correctly identified the real problem, what would have resulted had the board—and the commission itself—fixed firmly on the issue of water, and defined access to water from the Lower Mainland as a “square hole” into which the Point Roberts peg might have been more readily fitted? What if the IJC had concentrated its recommendations to the two governments on the importance of overcoming the obstacles to getting appropriate supplies of water to Point Roberts? For, as the subsequent history of the Point demonstrated so clearly, once the water supply was fixed, all other problems became infinitely more manageable.

Conclusion: A Square Peg?

Some have suggested that the Point Roberts reference demonstrates the difficulty of going beyond the “usual” mandate of the IJC. “One wonders,”

William Willoughby noted, “whether the governments were not ill-advised when they asked the IJC to recommend a solution to the difficult problem of Point Roberts.”³⁷ Likewise, as a commissioner confided to Don Munton in 1979, “the IJC as an institution was not ready for Point Roberts . . . we were simply not equipped to deal with it.”³⁸ It is true, as Paul Muldoon notes, that the unusual nature of the reference took the IJC out of its traditional boundary water comfort zone: “Stripped of its traditional technical basis for resolving disputes, the IJC was asked to play a role more closely akin to that of a political body.”³⁹

However, I have argued in this chapter that this transboundary issue, while it might have been unprecedented, was well within the ambit of the 1909 treaty. Point Roberts may have been a “square peg” in a historical repertoire of “round hole” boundary waters cases. But it is not at all clear that had the IJC organized itself for this reference in the same way that it organized boundary waters references, the outcome would not have been different. The “causes of success” that we identify with so much of the IJC’s operations could well have been embraced in the case of Point Roberts. Had the IJC structured the International Point Roberts Board to be more representative of local interests; had the board been more willing to bring local bureaucracies into the process; and had the board been more realistic and parochial, it may well have embraced a square hole into which the Point Roberts peg might have been fitted.

Notes

The author wishes to thank Jim Chandler, who served as secretary of the International Point Roberts Board in the mid-1970s, for his assistance during the research for this chapter.

- 1 Paul Robert Muldoon, “The International Joint Commission and Point Roberts: A Venture into a New Area of Concern” (MA thesis, McMaster University, 1983), 195.
- 2 Arthur Finch, secretary of the Point Roberts Harbor Committee, November 1971, quoted in Muldoon, “The International Joint Commission and Point Roberts,” 92.
- 3 See, for example, Don Munton, “Paradoxes and Prospects,” in *The International Joint Commission Seventy Years On*, ed. Robert Spencer, John Kirton, and Kim Richard Nossal (Toronto: Centre for International Studies, University of Toronto, 1981), 79.

- 4 Lawrence J. Burpee, "A Successful Experiment in International Relations," address to Victorian Club of Boston, 17 February 1919 (Ottawa: King's Printer, 1919), 13; available at https://archive.org/stream/cihm_82189.
- 5 John W. Holmes, "Introduction: The IJC and Canada-United States Relations," in Spencer, Kirton, and Nossal, eds., *International Joint Commission Seventy Years On*, 3.
- 6 Murray Clamen, "The International Joint Commission : A Model for Inter-American Cooperation ?" *Vertigo: la revue électronique en sciences de l'environnement* 2 (September 2005), <http://vertigo.revues.org/1885>.
- 7 US Mission to Canada, "Ambassador Heyman's Remarks at the International Joint Commission Reception," Ottawa, 24 October 2016, <https://ca.usembassy.gov/ambassador-heymans-remarks-international-joint-commission-reception/>.
- 8 Burpee, "Successful Experiment," 8.
- 9 Quoted in William R. Willoughby, *The Joint Organizations of Canada and the United States* (Toronto: University of Toronto Press, 1979), 55.
- 10 International Joint Commission, "The IJC and the 21st Century: Response of the IJC to a Request by the Governments of Canada and United States for Proposals on How To Best Assist Them to Meet the Environmental Challenges of the 21st Century," Ottawa and Washington, n.d. [1997?].
- 11 Garth O. Makepeace, "The International Joint Commission: Determinants of Success" (MA thesis, University of British Columbia, 1980), 73–7.
- 12 Ralph Pentland and Adele Hurley, "Thirsty Neighbours: A Century of Canada-US Transboundary Water Governance," in *Eau Canada: The Future of Canadian Waters*, ed. Karen Bakker (Vancouver: UBC Press, 2007), 163–81; quotation at 177.
- 13 Kim Richard Nossal, "Institutionalization and the Pacific Settlement of Interstate Conflict: The Case of Canada and the International Joint Commission," *Journal of Canadian Studies* 18, no. 4 (Winter 1983–4), 75–87; quotation at 85.
- 14 Willoughby, *Joint Organizations*, 52–8.
- 15 Article 1, Treaty between Her Majesty and the United States, for the Settlement of the Oregon Boundary; American version: 1846, 9 Stat. 869; Treaty Series 120, <https://www.loc.gov/law/help/us-treaties/bevans/b-gb-ust000012-0095.pdf>.
- 16 Derek Hayes, *Historical Atlas of British Columbia and the Pacific Northwest* (Vancouver: Douglas & McIntyre, 1999), 161; see also Elizabeth Tower, *Over the Back Fence: Conflicts on the United States/Canadian Border from Maine to Alaska* (Anchorage: Publication Consultants, 2009).
- 17 According to article 1, the demarcation line would continue from the middle of the Georgia Strait "thence southerly through the middle of the said channel, and of Fuca's straits to the Pacific Ocean," a wording that made no provision for the many islands in the Salish Sea between the Georgia Strait and the Strait of Juan de Fuca.
- 18 United States Geological Survey, *Survey of the Northwestern Boundary of the United States, 1857–1861*, by Marcus Baker (Washington, 1900), 16–19. See also Richard

- U. Goode, "The Northwestern Boundary between the United States and Canada," *American Geographical Survey* 32, no. 5 (1900), 465–70.
- 19 See Julian V. Minghi, "Point Roberts, Washington: Boundary Problems of an American Exclave," in *Borderlines and Borderlands: Political Oddities at the Edge of the Nation-State*, ed. Alexander C. Diener and Joshua Hagen (Lanham, MD: Rowman & Littlefield), 173–89.
 - 20 Muldoon, "The International Joint Commission and Point Roberts," 109–10.
 - 21 Munton, "Paradoxes and Prospects," 79.
 - 22 Treaty between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada [Boundary Waters Treaty], 11 January 1909, article ix—Appendix 1 of this book, or <https://www.ijc.org/en/who/mission/bwt>. See also William R. Willoughby, "Expectations and Experience, 1909–1979," in Spencer, Kirton, and Nossal, eds., *International Joint Commission Seventy Years On*, 35–8.
 - 23 Down to 1971, the article ix references that did not pertain purely to boundary water levels and uses were: Docket 17R St Lawrence River—Navigation/Hydro Power (1920); Docket 25R, Trail Smelter (1928); Docket 61R, Windsor-Detroit Ship's Smoke (1949); Docket 85R, Port Huron-Sarnia/Detroit-Windsor (1966); and Docket 86R, American Falls (1967). After the Point Roberts reference in 1971, there were two further article ix references that did not pertain to boundary waters: Docket 99R, Air Quality—Detroit-Windsor/Port Huron-Sarnia (1975), and Docket 112R, Air Quality Agreement (1991), which asked the IJC to help monitor and implement the Canada-United States Air Quality Agreement of 1991 that had brought the long-running acid rain dispute to an end. While the Trail Smelter fumes reference is often classified as a failure, Temby and Munton persuasively argue in their chapter in this volume that the Trail case was one of the major success stories of the IJC in its first century of operations. In August 1928, the two governments asked the IJC to investigate a case of air pollution, and determine the extent to which property in Washington State was being damaged by fumes from a smelter operated by Consolidated Mining and Smelting Company (Cominco) in Trail, British Columbia. In this case, the IJC split along national lines and the United States government rejected the IJC report. See International Joint Commission, Docket 25R, at <https://www.ijc.org/en/25r>; see also D. H. Dinwoodie, "The Politics of International Pollution Control: The Trail Smelter Case," *International Journal* 27, no. 1 (1971–2), 219–35; and Martijn van de Kerkhof, "The Trail Smelter Case Re-examined: Examining the Development of National Procedural Mechanisms to Resolve a Trail Smelter Type Dispute," *Utrecht Journal of International and European Law* 27, no. 73 (2011), 68–83. For the case in comparative perspective, see John D. Wirth, *Smelter Smoke in North America: The Politics of Transborder Pollution* (Lawrence: University Press of Kansas, 2000).
 - 24 International Joint Commission, Supplemental Report of the International Point Roberts Board, 15 September 1974, <http://www.ijc.org/files/publications/ID418.pdf>, 1.
 - 25 Muldoon, "The International Joint Commission and Point Roberts," 153.
 - 26 Supplemental Report of the International Point Roberts Board, 15 September 1974, 2.

- 27 Agreement between the Government of the United States of America and the Government of Canada relating to the Establishment of the Roosevelt Campobello International Park, in United States, Department of State, *United States Treaties and Other International Agreements*, vol. 15, pt. 2 (Washington: US Government Printing Service, 1964), 1504–7. See also Jonas Klein, *Beloved Island: Franklin & Eleanor and the Legacy of Campobello* (Forest Dale, VT: Paul S. Eriksson, 2000), epilogue.
- 28 Muldoon, “The International Joint Commission and Point Roberts,” 171.
- 29 Supplemental Report of the International Point Roberts Board, 15 September 1974, 33.
- 30 Quoted in Muldoon, “The International Joint Commission and Point Roberts,” 184.
- 31 Lauren Kramer, “Point Roberts: A Mini-Getaway in America’s Best Gated Community,” *Bellingham Insider Blogs*, 15 February 2016, <https://www.bellingham.org/insider-blogs/point-roberts-a-mini-getaway-in-americas-best-gated-community/>.
- 32 Tristin Hopper, “Point Roberts, Washington: A Little Slice of the U.S., Only Accessible through Canada,” *National Post* (Toronto), 27 February 2012.
- 33 See Patrick Forest, “Inter-Local Water Agreements: Law, Geography and NAFTA,” *Les Cahiers de droit* 51, no. 3–4 (2010): 749–99.
- 34 Willoughby, *Joint Organizations*, 56.
- 35 Ibid., 57.
- 36 Nossal, “Institutionalization and the Pacific Settlement of Interstate Conflict.”
- 37 Willoughby, *Joint Organizations*, 59.
- 38 Quoted in Munton, “Paradoxes and Prospects,” 80.
- 39 Muldoon, “The International Joint Commission and Point Roberts,” 216.