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Sovereignty, Social Contracts and Participatory Democracy: An Exploration Into Constitutional Arrangements

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Introduction

The document that follows is not intended to be an exhaustive, definitive treatment of the issues which it explores. Obviously, many of the topics with which this document deals are quite complex and far-ranging in scope. Moreover, there are many different perspectives one could choose as a means of engaging and examining such topics. However, the Canadian Society of Muslims wished to offer what it hopes will be a constructive contribution to the ongoing debate concerning the constitutional issues facing Canada.

The present document is intended as a discussion paper which delineates a way of looking at various facets of the current Constitutional problems besetting Canada. It offers a critical analysis of a number of the themes which we believe have played a fundamental role in creating and shaping the crisis facing Canadians.

The ensuing discussion also puts forth a variety of suggestions that, if implemented, might go a long way toward helping Canada resolve many of its constitutional problems. However, irrespective of whether any of the proposals contained in this document are realized in practice, we believe the document's critical perspective and proffered proposals should become part of the discussion process which surrounds and permeates the present constitutional crisis.

From a certain vantage point, the exploration that follows is not for the politically faint-hearted. Both the analysis and proposals put forth in the document are rigorous in nature, and, as such, neither of these two aspects leaves much to the reader's imagination concerning how we feel about various issues or where we stand on different matters.

As interested observers and participants in the social/political fabric of Canadian life, we, to borrow the vernacular of sports, have tried to call things as we see them. We realize some of these judgement calls may well upset some segments of Canadian society.

The intention underlying such judgement calls is neither to insult nor to vilify any group. In fact, to continue with the analogy of sports, by citing apparent infractions concerning the spirit and substance of democratic principles, we, somewhat like referees, are not making any moral judgements about the integrity of the people or groups to whom some of the remarks are addressed. Our remarks are directed at drawing attention to the inappropriateness of the behaviour involved, according to our understanding and interpretation of the rules and character of the democratic game. As will be readily apparent at various points in our discussion, we believe some sorts of behaviour to be far more inappropriate than other kinds of behaviour.

Like referees, we have a love for, and commitment to, the game in which we are involved, and also, like referees, we want to see the game played well, cleanly and fairly.

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Everyone enjoys the game more when it is played under such conditions.

In addition, like referees, we acknowledge the possibility that some of our calls may be shown to be, under the hindsight of instant replay, questionable. Nonetheless, we believe we have a duty, as participants in the democratic game, to put forth our judgements to the best of our ability and let the chips fall where they may.

Indeed, in the foregoing sense, all Canadians are assuming the role of so many referees during this constitutional debate. In this regard, we all have a duty to call things as we see them, with the hope that, in doing so, the quality of the game will improve.

As Canadians, we subscribe to the general idea of democracy. Furthermore, the present document is dedicated to putting forth a framework that is thoroughly consistent with democratic ideals and principles.

At the same time, the document has been written because we believe many of the political practices, institutions and processes which exist in Canada fall far short of the promise and potential that democratic theory has for meeting the social and political needs of a truly multicultural society. Consequently, the proposals advanced in the current document could be construed to be an exercise in democratic thinking that is intended to tap into, or unlock, more of the potential of democratic theory than we believe is taking place in Canada at the present time.

Our document is presented with the understanding that mere tinkering with the Canadian Constitution will not serve the best interests of Canada or Canadians. Radical reconstruction is necessary, but such reconstruction must be built upon a thoroughly democratic foundation.

Multiculturalism cannot survive in an environment that pays only lip service to the underlying principles and values of that philosophy. The principles and values of multiculturalism must be put into everyday practice.

The only way the philosophy of multiculturalism can be translated into a lived reality is for people in Canada to come to terms with the different levels of meaning inherent in the idea of, on the one hand, unity in diversity, and, on the other hand, sovereignty. Both of these ideas are given expression in a variety of ways during the course of the present document.

A word of caution should be mentioned in relation to the idea of sovereignty. This cautionary note may prevent much misunderstanding during the discussion which follows.

More specifically, sovereignty is a structurally complex idea. Many people have different ideas about its character and scope. However, as used in the current document, it must always be understood to be a relative and not an absolute term.

Sovereignty might best be construed in terms of having a certain degree of control over, or autonomy in, one's life. Underwriting this control or autonomy is some form of direct, unmediated access to real power on some given level of scale.

The shape which sovereignty assumes in any given socio-political context must always be a function of the dialectic between the rights and duties of care of the participants in that context. Consequently, the sovereignty of one individual must be balanced against the sovereignty of other individuals. Moreover, the sovereignty of one level of government must be harmonized with the sovereignty of other levels of government. The same holds true with respect to the sovereignty association of communities and various levels of government.

Therefore, nothing in the ensuing discussion of sovereignty or related ideas should be construed as advocating either some form of anarchy or the break-up of Canada. Canada must remain whole and united, and it can accomplish this, we suggest, through the combination of constraints and degrees of freedom permitted by the principles and proposals put forth in this document.

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I. DEMOCRACY: SOME PROBLEMS AND PROSPECTS

The Electrified Constitution

A number of years ago, Martin Seligman, a psychologist, performed a rather gruesome experiment. However, it is an experiment that may provide considerable insight into certain aspects of the constitutional problems with which Canada is confronted at the present time. Consequently, despite the rather dark nature of the experiment, the general character of Seligman's work will be summarized below.

Essentially, the experiment is quite simple in design. First, one constructs a small, two-room structure. The rooms have

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an adjoining doorway between them which can be left closed or open. One of the two rooms has a floor of wire mesh which can be electrified at the whim of the investigator.

Next, one takes an animal with the right sort of intellectual capabilities—namely, not too much and not too little. A dog seems to have been the animal of choice. The dog, then, is placed in the room with the wire mesh floor. In the interests of science, the doorway leading to the second room—the one without a wire mesh floor—is closed so as to eliminate an unwanted variable such as the dog's being able to escape.

The third facet of the experiment calls for a constant, non-lethal, but quite painful electrical current to be administered through the wire mesh floor of the first room. Naturally enough, the dog objects to this sort of treatment. However, the dog can do nothing about the situation except to howl in pain and run around the room trying to escape from the painful stimuli. Unfortunately for the dog, there is no escape. Everywhere the dog runs involves coming into contact with some aspect of the wire mesh floor.

Through the courage and dedication of the scientists involved in the experiment, the process is allowed to continue on unabated. Eventually, the dog retires to one or another of the four corners of the room, lies down and just continues to whimper in pain. After some suitably lengthy period of time, this aspect of the experiment is brought to a close.

The second stage of the proceedings discloses the *raison d'être*, such as it is, for the experiment as a whole. In this facet of the experiment, the doorway to the second, "safe" room is opened, permitting an avenue of escape for the dog. At this point, dogs who were 'run' in the first part of the experiment are placed back in the room with the wire mesh floor. Once again the floor is electrified. Once again, most of the dogs retire to a corner and just whimper in pain. There is no attempt on the part of the majority of dogs to make use of the open doorway to the unelectrified room.

In fact, even when the experimenters manually take the dogs through the doorway and show the animals that the second room is safe, nonetheless, when the dogs are placed back in the first, electrified room, most of them (roughly two-thirds of the dogs) simply return to their "favourite" corner and continue to whimper in pain. This pattern of behaviour will persist (for two-thirds of the dogs) even after the experimenters have shown the dogs on scores of different occasions that there is an avenue of escape open to them should they choose to avail themselves of it.

Martin Seligman referred to this phenomenon as "learned helplessness". Interestingly enough, the learned helplessness phenomenon has been shown to hold for

human subjects who, like the dogs, were initially exposed to irritating stimuli (but not shocks) from which the human subjects could not escape in the first part of the experiment. In the second part of the experiment, two-thirds of the human subjects, again like the experiments with dogs, will not even try to escape from the irritating stimuli, despite being given the opportunity to stop, or escape from, the unpleasant stimuli.

There seem to be a number of features of the above summarized experiment which may be applicable to the constitutional crisis which besets Canadians at the present time. In fact, this crisis really has been in existence since Confederation began, and the implications of the aforementioned experiment also have been present since the beginning of Confederation. The major difference between then and now is that the people of today have had a lot longer to become shaped by the forces at work in learned helplessness.

The Canadian Constitution is like a complex, intricately woven, wire mesh floor with a potential to be electrified. Canada can be likened to a room which surrounds that wire mesh floor, and the people of Canada are analogous to the experimental 'subjects' that are introduced into the space enclosed by the room of nationhood. The Prime Minister, the legislators, the Premiers and the courts are akin to the experimenters who, according to their mood and whim, deem it proper and fitting to apply various kinds of shocks of varying voltage—some political in character, others economical, and still other species of voltage involving issues of morality, ideology, education, religion, ethnicity, race and/or gender.

For some time now, Canadians desperately have been seeking a second, safe room—a room free of the pain that has come, over the years, from the repeated shocks that have been administered by those in power. However, although the various species of shocks are *administered* by people of power, the shocks themselves *have been made possible* by the intricately woven character of the constitutional wire mesh which makes up the political and legal floor on which Canadians are forced to walk whether they like it or not. Eventually, after being exposed to a situation from which there appears to be no escape, many people begin to exhibit some of the symptoms of learned helplessness. For example, a great many Canadians, apparently, have decided to lay down in their corner of choice and do nothing but whimper as they continue to be the victims of one set of shocks after another.

Juxtapositioning the phenomenon of learned helplessness next to the constitutional crisis tends to lead to two very important questions. (a) How much time will pass before the

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vast majority of Canadians begin to exhibit more and more characteristics of the above mentioned sort of learned helplessness due to constant exposure to an authoritarian rigidity and unresponsiveness of governments which insist that Canadians must go on suffering for the glory of democracy, as presently practised, rather than be provided with one or more constitutional escape routes? (b) Even if some escape routes are found which lead to, relatively speaking, safe, or at least far less painful, circumstances, will the people of Canada be so far ensconced in the human version of learned helplessness that they would choose to continue to suffer in the wired room of the Constitution, as presently conceived, rather than seek relief in some alternatively structured room of constitutionality?

Representational Democracy

What would be required in order for Canada to be a participatory democracy? Some people might wish to argue that Canada already satisfies the requirements of a participatory democracy. After all, voting is considered to be a fundamental expression of participation. Moreover, people are free to run for public office, or to help out in their riding association of choice, or to try to shape the policy platforms adopted by a political party. All of these count as acts of participation.

While conceding the point that there do exist a number of avenues through which Canadians can participate in the political process, nonetheless, the idea of a participatory democracy need not be limited to the foregoing sorts of possibilities. For example, once elections take place, the opportunities for most Canadians to continue participating in the political process often become severely curtailed. This is the case because Canada operates according to the values of representational democracy. These values tend to place very determinate limits on the extent to which non-elected or non-governmental officials can participate in the political process.

There are, in general terms, two methods of putting into practice the concept of representational democracy. One approach construes the idea of representation to mean that the elected official must be faithful to the wishes, desires and interests of the electorate. Therefore, the elected official assumes the responsibility of actively seeking to convert such wishes, desires and interests into a governmental policy which is realized in various sorts of laws, social programmes, economic measures, environmental activity and so on.

In taking on this sort of responsibility, the elected official acts as an agent for the electorate. As such, the elected individual's personal views concerning policy issues, social programmes and legal standards are far less important than

the wishes of the electorate. The elected official serves as a resource person for the electorate and tries to find potentially acceptable or feasible ways of implementing the desires of the electorate, as well as lobbying for, and negotiating on behalf of, the electorate's interests.

The other general approach to the notion of representational democracy, which might be labelled the "visionary model", holds a very different picture of the role of an elected official. From the perspective of the second approach, the elected official's primary responsibility is not necessarily to serve, or actualize, or be an agent for the wishes, desires and interests of the electorate. The task of the elected official is to seek to implement what such an individual believes is in the best interests of all of the electorate, even if these beliefs run, partially or entirely, contrary to the wishes, desires of the electorate.

Under such circumstances, campaign platforms become the blueprint or vision which drives the political activities of the elected official. Indeed, being elected is interpreted by people who adopt this "visionary" approach to representational democracy as a mandate from the electorate to pursue the various planks in the campaign platform during their tenure of office.

In practice, what occurs is a sort of mixture of the two aforementioned general approaches to representational democracy. Although one does find elected individuals who are purists with respect to one approach or the other, usually elected officials try to combine the roles of agent/resource person for the electorate with the role of political visionary. In this way, some of the wishes, desires and interests of the electorate are realized precisely in the way for which the electorate, or some of them, have hoped. At the same time, the elected official also has pursued the realization or implementation of policies and programmes which he/she believes to be in the interests of the electorate even if the latter do not share that belief.

Irrespective of which sort of approach to representational democracy one takes, there are problems. For example, the visionary perspective tends to be coloured by some very questionable assumptions concerning the significance to be attached to the electorate's voting patterns. Very rarely, if ever, do members of the electorate as a whole vote for a particular individual in order to endorse the entire platform of the party for which the individual is standing as a candidate.

Some portions of the electorate, of course, are committed to a given party's platform, from beginning to end. However, even within the core members of a party, not all aspects of the platform are deemed to be equally important or fundamental. Consequently, once in office, some planks of

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the platform may be more readily sacrificed than are other planks of the platform. In fact, elected representatives of the same party may be differentially committed to various facets of their party's platform and will seek to influence the political process accordingly, once they gain office.

Like most everything else in politics, the party platform constitutes a compromise amongst the competing factions of the party. Therefore, what occurs, once the members of a party get into power, will reflect the dialectic which transpires as different members seek to influence, orient, colour and slant the position of the leader of the party. Indeed, the disaffection or alienation experienced by various factions of an elected party usually emerges as the actions of the leaders of that party go in directions that appear to marginalise the concerns, interests and wishes of such factions.

Aside from the foregoing issues, there are a wide variety of reasons why members of the electorate vote for a given individual which have little or nothing to do with a party's platform. These reasons range from: the charisma of the person vying for office, to the looks of the candidate, and from: which candidate has the slickest campaign machinery, to which candidate one dislikes the least.

Furthermore, during the course of office, issues have a way of emerging which were not anticipated by anyone. Elected officials with a visionary bent may take stands with respect to these problems. The stands they take may, or may not, be done in consultation with members of the electorate, but irrespective of which may be the case, there is no guarantee that the official's final position is going to reflect the beliefs, attitudes or feelings of the electorate.

The bottom line for the visionary approach to representative democracy is the belief that one has been elected for one's leadership qualities and one's ability to guide the country in a direction which is somehow "best" for everyone. What qualifies as being "best" is a function of the structural character of the vision held by this sort of individual.

This commitment to the bottom line remains firm even if one's leadership should involve decisions which are unpopular with those who vote for one. The visionary believes he or she has an obligation to impose these values onto society since such a person tends to believe this is the reason why people voted for that individual.

As such, they have reduced everyone's interests down to their own. They believe that their values/beliefs have more legitimacy and are more defensible than the values/beliefs of other people.

On the other hand, these people who advocate a 'give-the-people-what-they-want' approach to representative democracy are not without their problems. The reason for this is quite simple. One cannot possibly satisfy all of the wishes of all of the people all of the time.

Sometimes what people want is too costly. Or, the wants of some people may be exploitive or abusive of other people. Moreover, the wants of different groups of people may conflict with one another and, therefore, cannot be satisfied simultaneously.

Consequently, those who pursue the GTPWTW approach to representative democracy often end up serving the needs of only certain segments of the electorate. More often than not, the needs being served are the ones with which the individual's own likes and dislikes are most congruent. Therefore, those members of the electorate whose needs and interests do not fall within the sphere of interests of this sort of elected official will be marginalised, whether rightly or wrongly.

Both approaches to representative democracy have their strengths and weaknesses. Furthermore, both approaches permit participation of a limited nature.

Some people might wish to argue that the political opportunities provided by the foregoing alternatives represent the most that can be accomplished, or hoped for, within the context of a democratic society. However, there are those who would argue for a form of democracy that gives a much stronger emphasis to the idea of participation than does representational democracy in either of its two alternative forms.

Participatory Democracy and the Process of Recall

When people talk about the desire to have participation in the governing process, the discussion is often couched in terms of having a direct, active, unmediated contact with the governing process. Their desire is to have more autonomy over their political lives in the sense that they do not want their point of view to be marginalised, shunted aside or ignored by politicians. They are seeking some way to have options open to them which offer the hope of circumventing, within limits, the traditional access to power—namely, the politician. In other words, the spirit of participation is rooted in the desire to have access to a form of real power which is beyond the control of politicians and which will make politicians more responsive to the needs of the electorate than does the prospect of holding elections every four or five years.

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In short, the sort of participatory power being sought is that which enables one to make political choices that have substantive impact. Such power is not dependent on having to curry the favour of, or having to plea one's case to, politicians who may not really be interested in helping one and who even may have a vested interest in placing obstructions in the way of some of those who are seeking their assistance or trying to have a point of view taken seriously by such politicians.

There are a number of ways of providing the electorate with a sense of having the direct, substantive, unmediated participatory power which they seek. For instance, the power of recall is one such possibility. The mechanism of recall can assume several forms.

The first variety would be the right of a suitably sized group of the electorate of a given riding, region or province to force elected officials to answer their questions, criticisms and so on in a face-to-face interchange. Such a form of recall does not occur at the whim, convenience or mood of the elected official. It is an obligation of office that must conform to the requirements of the electorate's convenience, mood and needs. If necessary, the elected official would have to undertake a series of such interchanges when the size of the recall group is not capable of being handled in one meeting.

A second form of recall would be the right of a suitably sized group of the electorate to remove an elected official from office prior to the expiry date of a person's term of office. Presumably, after being permitted to perform in office for some minimum length of time—such as one year—the electorate would have the right to take the appropriate procedural steps to: (a) remove the person from office, and (b) proceed with a by-election to replace the person who has been removed. The idea is to provide the electorate with a mechanism of access to power which is responsive without being unnecessarily intrusive and obstructionist in practice.

If a recall vote is taken but does not generate the requisite proportion of ballots against the elected official, that individual could not be subjected to another recall vote for one year. Furthermore, one might wish to argue for some sort of quorum conditions which require that a minimum number of the eligible voters must cast ballots in order for the vote to be considered valid in the event of a recall vote that goes against the elected official. This quorum condition may be different in the two kinds of recall votes outlined earlier.

If one liked, one could even establish some combination of the two forms of recall. For example, if the need should arise, after having served one year, an elected official could be subject to recall by the electorate in order to respond to the latter's dissatisfactions with the official's performance. If the question of a second recall action became necessary, the

electorate would be entitled to seek the official's removal from office.

Referendum Issues

Another sort of power that would enable the electorate to have direct, substantive and unmediated access to the process of governing is linked with the idea of a referendum. There is almost nothing that is more conducive to a sense of helplessness than to see policies, programmes or changes being instituted over which one has no control, despite feeling very much opposed to such activities of the government. Many people would like to have an opportunity to counter some of the decisions made by government. The referendum does represent a mechanism that provides the electorate with a potentially powerful way to affect the governing process in a fundamental manner.

One does not have to propose a government by referendum in order to make use of this form of people power. Some sort of balance needs to be sought which, on the one hand, will permit those elected to govern, yet which, simultaneously, places constraints on the sorts of liberties elected officials can take with the "mandate" they presume the electorate has given them. Moreover, in addition to providing the electorate with a meaningful, proactive method of imposing constraints on the way in which they are governed, the process of referendum also provides the electorate with a substantial set of degrees of freedom that permit it to participate in the machinery of government and, thereby, invests political choice with real power.

Three arguments often are cited against the use of referenda. These arguments emphasize: (a) the expense of running a referendum; (b) the potentially complicated or unwieldy nature of a referendum; and (c) referenda subvert the parliamentary process. Let's explore each of these in turn.

The basic issues underlying the expense of running a referendum is not a function of cost, per se. The real problem focuses on, firstly, whether or not the cost can be justified by the advantages secured through such expenditure, and, secondly, even if the costs can be justified, whether or not one can afford those costs.

Perhaps the best way to address the aspect of justification is to ask the following question: putting aside all issues of cost, what possible reason could a democracy offer that would deny its people the entitlement to decide their fate in a direct, unmediated fashion, at least some of the time? Seemingly, any attempt to usurp the people's entitlement to request referenda from time to time would violate the very spirit to which democracies are supposed to be dedicated. In short, the desire to prevent people from having sufficient autonomy over their lives such that they are not afforded an avenue (i.e., referenda) to express their political will directly as

citizens, rather than through political surrogates, is inimical to the democratic process.

Let's assume for the moment, therefore, that costs, whatever they may be, can be justified in light of the benefits which are obtained by citizens through the referendum mechanism. The question then becomes: can we afford such costs?

Part of the answer to this question is clouded by our lack of knowledge about the frequency of the referendum event. A determinate answer to the foregoing question is also hard to establish because we don't know if the referendum would be a solitary affair or whether it would be run in conjunction with other events, such as elections, which would reduce costs relative to running a referendum on its own.

For the sake of argument, let's arbitrarily suppose that referenda are limited to a maximum of two per year for any given level of government. Let's further suppose that these referenda are unconnected with any other ongoing event such as an election.

There are a number of possibilities that come to mind with respect to the matter of underwriting the costs of a referendum. To begin with, costs could be cut considerably by requiring every citizen above a certain age to be required to volunteer time if called upon to help organize and operate a referendum.

Just as people are selected for jury duty, one could be selected for other forms of civic duty that are crucial to the health of a democracy. Democracy is not merely about rights of the individual. It is also about duties of care that the individual owes to society. In any event, once one has served such a duty on a given level of governmental activity, then one would not be eligible to be called again for volunteer duty on that level for some specified period of time.

Secondly, people are prepared to make political contributions in order to promote and support political activities that serve their interests. The individual's interests are served in a fundamental way when one is provided with an opportunity to vote directly for, or against, issues that have the potential to affect one's life in a substantial way. Consequently, to contribute to a referendum fund would be a way of actively supporting, as well as participating in, a process that was not mediated or controlled by elected government officials.

Furthermore, such contributions would have the advantage of being committed to a very specific purpose with which the individual agreed. Said in another way, such contributions would not be ear-marked for uses about which the individual had no knowledge and with which the individual may or may not be in agreement.

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Thirdly, the location of the referenda events could be held at public places such as schools, libraries, churches, temples, mosques and post offices. Therefore, there would not have to be any costs for renting sites at which the referenda are held.

Fourthly, presumably, one of the conditions of being granted a broadcast licence, whether radio or television, should be the willingness to make public service announcements. Therefore, such stations should donate a certain amount of air time to promote and publicize, in a non-partisan way, the occasion and issues of a referendum.

All of the above possibilities would reduce, if not entirely cut, the expense of running a referendum. However, if additional funds are needed, then they would be paid out of public funds. People have a right to expect that their taxes will be used to pay for services that are in their direct interests and which permit the people to have some degree of control over the political process.

Another argument leveled against the idea of holding referenda is that such a process is unwieldy. In addition, the referenda process is said to have the potential for involving a complexity that is confusing to those who are voting in the referenda.

As far as the charge of being unwieldy is concerned, the charge seems, at best, very weak. The referendum process need be no more unwieldy than are elections. And, since elections have, by and large, proven to be quite manageable, one sees no reason why referenda wouldn't be run equally well.

Of course, someone may object at this point that elections may be less frequent than are referendums and, consequently, are inherently more manageable than referenda would be. One also might contend that referenda are more likely to be national events, whereas this is not the case for many elections. For the most part, elections tend to be limited to a provincial level of scale or less.

Let us briefly examine the different kinds of referenda proposed in this document [See Appendix, Section I, items (1)(a), (b) and (c)] and see whether the foregoing sort of objections are persuasive. In the ensuing discussion, we will be foreshadowing a few issues that will be explored at more length in the section on *Senate Reform*. Nonetheless, one does not have to have a complete understanding of the forthcoming issues in order to appreciate the points that will be made in the present discussion.

First of all, although referenda concerning, for example, war necessarily occur on a national level, they would tend to be

very infrequent. Therefore, this kind of referendum should be less problematic than national elections, since the former probably will happen more infrequently than do elections.

Secondly, almost all recall referenda (with the exception of those involving the Prime Minister) would take place within a single riding. Because of the restricted level of scale of such referenda, they do not appear to pose any inherent problems above and beyond the usual difficulties surrounding the election process.

In addition, one cannot assume that if the electorate has the power to recall people, this power necessarily will be exercised in an indiscriminate fashion. In fact, one could make a strong case for the following possibility. Precisely because the electorate has such power and, once a year has passed since the date of election, can exercise the power at their discretion, they may be willing to give the elected official some latitude with respect to making mistakes.

When one couples the above tendency toward forbearance under such circumstances with the conservative tendency in many electorates to maintain the status quo, the recall procedure does not appear to be likely to be excessive in its occurrence.

One also would have to factor in the perspective of the elected official in estimating the frequency of referenda relative to recall issues. If she or he realizes that the recall procedure is a real option of the electorate, then, presumably, the official will take steps to prevent the recall procedure being initiated. In short, the official will try to do a good job.

Finally, one must consider the problem posed by certain constitutional issues and ask if referenda in such circumstances would be inherently unwieldy. While all these sorts of referenda would be national in scope, one could argue, once again, that there might be a variety of pressures which would work to inhibit the proliferation of these events.

In general, the possibility of referenda concerning constitutional issues takes place (as is discussed later in the document) when the Senate subcommittee on constitutional issues either: (a) initiates an amendment process with respect to the written form of the Constitution; or, (b) alters a decision of one of the constitutional forums; or, (c) refers conflicting decisions of different constitutional forums to the full Senate body for discussion and debate. As far as (a)—the initiation of the amendment process—is concerned, there is considerable reluctance on the part of any nation to amend its constitutional process. The Constitution may get amended, but this will occur relatively infrequently.

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Furthermore, with respect to (b) above, because the Senate subcommittee on constitutional issues knows that by altering a decision of a constitutional forum it will be setting in motion a process which will lead to a referendum, it will exercise considerable constraint therein. The subcommittee's tendency will be to let the judgements of the constitutional forums stand unless some fundamental principle or value has been undermined by those judgements.

Even in the case of (c) above—namely, different constitutional forums generating conflicting judgements—a great deal will depend on the character of that conflict. Ironically, some, but not all, conflicts serve the interests of society as a whole by permitting different people to pursue their interests in different ways.

This positive facet of conflict will be discussed, in slightly more detail, in the section on *Diversity of Equality: A Principle*. For the present, however, one can say that the Senate subcommittee on constitutional issues often will be inclined to permit a certain degree of flexibility in the judgements of different constitutional forums.

The subcommittee will be moved to act only when the problem of conflicting judgements goes beyond some boundary of permissibility. The character of this boundary point will vary with circumstances and the issues involved. Consequently, here too, there will be pressure to prevent the proliferation of cases which are to be decided by referendum.

To be sure, there will be cases that will lead to referenda being held. Yet, at this point, there is nothing to suggest that such a process necessarily should be excessively frequent or should be inherently more unwieldy than the election process. In addition, whatever extra effort will be required by the electorate and the government in order to look after the responsibilities of referenda will be more than compensated for by the opportunity such a process gives the people to participate in the political process and, thereby, to gain a measure of autonomy over their lives.

The previously mentioned criticism (see page 14) that referenda run the risk of confusing or confounding the electorate seems to be somewhat condescending toward the electorate. First of all, the task of explaining the various issues associated with a referenda is one of the tasks of the elected officials. If these officials can't accomplish this task, then maybe the problem rests, not with the electorate, but with the officials or with the lack of clarity of the issue being subjected to a referendum. Either the government has a clear idea of what it proposes to do, or it doesn't. If the government is clear-sighted in its view, then it should be able to communicate the essence of this to the people.

Secondly, the wording of the referendum should not be a major concern. One does not have to put forth all the ins and outs of the issue on the referendum sheet. In fact, these issues should be spelled out ahead of time. The purpose of a referendum is to seek a yes or a no vote which is in support of, or in rejection of, a given proposition, piece of legislation or government policy considered as a whole. A referendum is intended to provide a means of voting for or against the operative principle which is at the heart of a given issue, irrespective of the riders which may qualify that issue in various, nuanced ways.

If one votes in support of an issue, then one is giving the government authority to pursue that issue, as well as permitting it some degree of flexibility as to the specific wording of the text which gives operative expression to that issue. On the other hand, if one votes against an issue, then one is telling the government that no matter how one tinkers with the wording of the issue, one is opposed in principle to the basic philosophy inherent in the issue.

The final argument which is raised, on occasion, against the idea of a referendum process centres around the charge that referenda subvert the parliamentary process. This is exactly right, and that is what it is intended to do. What referenda do not do is subvert the democratic process and, unfortunately, this cannot always be said of the parliamentary process. Those who would equate, in rigid fashion, the parliamentary process with democracy have an extremely narrow understanding of the latter. Moreover, such individuals entirely fail to grasp that people have a need for access to real power that falls beyond the capacity of politicians to subvert or usurp for the latter's own purposes and irrespective of whether those purposes are legitimate or not.

To try to argue that giving power to the people is wrong since it permits them, within certain prescribed limits, to serve their own interests directly and, thereby, gain autonomy, of a sort, over their lives, seems a rather ludicrous argument. Indeed, to try to prevent people from having access to, as well as exercising, such power, seems to fly in the face of what democracies supposedly entail. One has to wonder about the motivation of anyone who would wish to close off this sort of possibility entirely.

Question of When?

There is at least one outstanding issue which still needs to be addressed. This issue concerns both the processes of recall as well as that of a referendum. More specifically, one might like to know how to determine when a recall or a referendum is in order.

One obvious suggestion is to make use of the opinion poll expertise that exists in the community. While

opinion polls are vulnerable to various kinds of difficulties which can skew the statistics in different directions, nevertheless, polling is rooted in a whole arsenal of statistical techniques and sampling procedures which have been studied thoroughly for a number of years by a large number of professional mathematicians, statisticians, political scientists, sociologists, and psychologists. These years of effort have sensitized investigators and practitioners to the kinds of biases, methods and tools that have the potential for contaminating or distorting the results of an opinion poll. Consequently, when the appropriate protective measures are taken, polls are capable of generating results that, when properly analysed and presented, are fairly accurate in the way they reflect the character of people's opinions about specific issues.

Thus, if one wishes to probe the mood of the electorate in a riding, municipality, province, region or the country as a whole with respect to, say, the issue of recalling a particular elected official, a poll could be conducted which would provide insight into the electorate's thinking on the matter. The same process could be invoked in relation to the question of holding a referendum.

If one were to assume, for the moment, that the issue of the desirability of using polls as the means of choice of taking the political pulse of the community has been settled, two problems remain. The first problem revolves around the question of who is to do the polling, analysis and so on. The second problem concerns the costs of such an undertaking.

This latter facet is not a small consideration if one keeps in mind that recall and referenda issues could be raised at every level of government, from home ridings to the federal context. Moreover, there may be an ongoing need to probe the mood of the electorate on a fairly regular basis. Therefore, the expense of running a number of polls over the course of a year would be fairly substantial.

One possible way of defraying such costs is to entice the universities and colleges in the community to be good corporate neighbours and provide the necessary expertise in polling as a public service. By offering this sort of service, the educational institutions could return something of value directly to the community—especially to those people who may have little or no contact with these institutions and, yet, who are helping to support the universities and colleges through their tax dollars. On the other hand, those professionals who donate their time to providing such a service could use the activity to help fulfil some of their own needs within the university or college as a kind of employment credit that would be weighed along with the research, teaching and administrative duties which are used in determining promotions, tenure and pay increases.

Election Reform

Another possible avenue for helping the electorate to gain more direct control over the political process that affects their lives concerns the way in which election campaigns are run and financed. More specifically, if one asks people what factors should weigh most heavily in determining the outcome of a truly democratic election process, more often than not, one will receive answers like: the issues; or the quality of the candidates.

By "issues", people usually are referring to the policy or programme options being advocated by the various candidates. These options have different projected ramifications for the community (whether municipal, provincial, regional or national) and are construed as serving, or not serving, the interests of specific groups or some collection of such groups.

The answer of "the quality of the candidates" is fairly straightforward. It encompasses characteristics such as integrity, commitment, leadership abilities, intelligence, work ethic, humanity, and so on.

Neither of the aforementioned answers (i.e., issues, quality of the candidates) is about the ability to finance a campaign. Unfortunately, money, as it does in most things, has a way of confusing matters. Nonetheless, anyone who is truly interested in democracy, principles, or political fairness does not take kindly to the idea that elections can be won on the basis of the size of campaign expenditures rather than on the basis of the quality of issues or candidates.

Furthermore, there is a growing cynicism among many voters about the way campaign money plays an increasingly corrupting role in the electoral process. More and more, seemingly, campaigns are about who has the most money to spend on advertising campaigns. More and more, campaigns are about which candidate can be packaged most alluringly. More and more, campaigns seem to be based on the tactics of illusion, deception, evasion and manipulation. Less and less, do campaigns seem to be directed to the needs, interests, concerns and problems of the electorate. More and more, campaigns seem to be reduced to 30-second spots, photo opportunities and repetition of names or slogans. Less and less, are campaigns about an in-depth debating and discussion of issues. More and more, campaigns are about individuals and parties winning elections. Less and less, are campaigns about ensuring that the community wins through the election of people and the promotion of issues that are most responsive to the needs and concerns of the electorate.

Of course, some politicians will argue that, with all due modesty, they are the best people to serve the interests of the electorate. Their arguments may or may not be true. In addition, such politicians will claim their approach to the issues is the one that is most conducive to the enhanced welfare of the community. Again, these claims may or may not be true.

Under the best circumstances, determining the worth of these arguments and claims is fraught with difficulties. The presence and expenditure of money in the campaign process muddies the political waters considerably. In fact, one cannot establish any substantial, meaningful, positive correlation between the size of campaign expenditure and the worth of candidates or the positions they support.

Consequently, one way of helping to eliminate such problems, and thereby assist the electorate to gain some control over the electoral process, rather than be its manipulated victims, is to require that all political contributions be directed to a general election fund which serves the interests of the community as a whole. This fund would be used to underwrite the cost of such things as: debates, non-promotional campaign expenses, as well as publicizing the philosophical positions of all the candidates on various topics, issues and problems.

In order to work toward eliminating the deleterious or distorting effect which the slickness of campaign advertising or packaging strategy may have on the electorate's perception of the quality of candidates or issues, all campaigns should be tied together. In other words, any campaign literature would have to include material on all the candidates, say, in a given riding. Or, all candidates would have to be given equal exposure on radio and/or television, and they all would have to be given equal access to the peak listening/viewing times. No independent advertising would be permitted.

Moreover, no negative advertising would be allowed. Therefore, candidates' advertising could only be about promoting their own political/philosophical ideas, values, beliefs, hopes and policies. Campaign advertising could not denigrate or criticize other candidates' qualifications, directly or through innuendo.

In addition, remarks about another candidate's political position would have to be restricted to stating, in matter-of-fact terms, differences of perspective, emphasis and priorities. In doing this, one could not resort to scare tactics, vilification, ridicule or distortion. Furthermore, such remarks would have to be offered in a context (e.g., debates) that permitted one's political opponent(s) an opportunity to respond.

Canada, in general, has less difficulty with the problem of negative campaign advertising than does, say, the United States. However, this practice does arise in Canada from time to time, and it should be avoided. Let every candidate put his or her best foot forward, and let the people decide the matter solely on the basis of the talents and abilities of candidates, together with the political positions of the candidates on various topical issues.

There will be those who will maintain that placing the foregoing sorts of constraints on the campaign process is undemocratic because, for example, such constraints interfere with a person's right to contribute to whichever candidate that individual wishes. Moreover, such constraints interfere with an individual's capacity to give financial support to those issues in which one believes and to which one is committed.

However, democracy is best served when one can ensure that the wielding of power does not sway, corrupt, bias, distort or skew the electoral process. And, most assuredly, money tends to be used as a tool of power that serves the interests of those who have it by undermining the electoral process through skewing it in their favour while disadvantaging those who do not have the money necessary to make their own values and concerns known to the electorate.

If people are truly interested in serving the ends of a democratic process, then let the political playing field be level so that everyone has an opportunity of putting forth his/her case to the people under equitable conditions in which the only things that matter are the quality of issues and candidates. Permit the electorate to have control over the election process rather than permitting them to be controlled by power groups, vested interests, or bankrolls and marketing strategies.

Quite frankly, if people feel they have to buy an election in order to win, they have very little faith in their own political position. In effect, they are saying that their ideas and/or candidates would not win in a fair, equitably run election. In order to win, they are saying we must subvert or skew the election process. This may be politics in action, but it is not democracy in action.

There is another side to the proposal that would require campaign contributions to be given to a common election fund. When a poor person or an individual from a minority sees that one's contribution to the political process will not be lost, that one's contribution will not be swamped by a rich and powerful majority, and that one's dollars will help purchase a fair, equitable and just electoral process, then such people will not only feel that they have more control

over their political life, but, in actuality, they will have more power over their own lives.

One of the central principles of participatory, as opposed to representational, democracy is to provide people with more access to a real political power with which to control their own political destiny. A common campaign fund from which all candidates could draw and which could be used to promote a variety of political philosophies would provide access to real participatory power.

Consistent with the foregoing ideas would be a waiver on all nomination or filing fees. Frequently, these fees run into the thousands of dollars, and constitute a serious impediment to the poor and disadvantaged with respect to meaningful participation in the political process.

One can come up with other, fairer ways of placing manageable limits on the number of candidates, as well as protecting against frivolous campaigns, than by charging filing fees. For example, one could specify that in order to qualify as a candidate (i.e., one who is entitled to draw upon the general campaign fund for all 'official' candidates), one must receive the nomination, in one's constituency, of one of the five or six major parties in Canada, or one must be supported, through petition, by, say, 10% of the eligible voters in the riding in which one wishes to stand for election.

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II. SOVEREIGNTY, IDENTITY AND EQUALITY

Sovereignty: A First Encounter

Let us examine yet another area involving the issue of personal autonomy as a basic expression of participatory democracy. Recently, the British Columbia Supreme Court handed down a decision which denied the land claims of a group of Native people. The essence of the court's decision is that the Native land claims had no merit since such claims had all been extinguished during colonial times. This act of extinguishing was accomplished by those who were acting on behalf of the authority of the sovereign power of the King or Queen of England.

The apparent ethnocentric prejudices that are ingrained in certain aspects of Canadian society and which are reflected, unfortunately, in the judgement of the learned justices of the B.C. Supreme Court run so deeply that many people do not seem to have properly appreciated just how revealing the court's judgement is about the assumption underlying the world view of many Canadians concerning Native peoples. Moreover, the court's judgement is not an isolated phenomenon. Other judges and governmental officials in other localities and times have made statements or rendered judgements which are similar to that of the British Columbia Supreme Court.

More specifically, the justices are saying, in effect, that one source of sovereignty has a perfect right to extinguish the sovereignty of another people, and, thereby, make any claim for autonomy, on the part of the latter people, null and void. Stated in another way, the justices seem to be saying that robbery, enslavement, displacement and cultural genocide are quite acceptable as long as these sorts of activities proceed in accordance with the dotting of legal i's and the crossing of judicial t's as stipulated by the justices' own self-serving sense of sovereignty. Thus is everything tied up in a nice, neat, solipsistic, legal tautology which never touches on anything except the imperialistic desires and whims of a people who would appropriate that which does not belong to them, as well as who would attempt to extinguish the sovereignty of a people that is not capable of being extinguished merely because some law is passed or edict is given.

The sovereignty of a people is not a function of law. It is an a priori given that has been recognized, appealed to, alluded to and invoked across thousands of years and in virtually every society about which there exists recorded knowledge. In fact, the roots of this a priori principle are so fundamental and so pervasive to the human condition that no one has been able to mount a plausible, let alone convincing, argument that would justify the denial of such sovereignty in a way that would be acknowledged as a tenable philosophical position by most people. The central importance of this issue of sovereignty also is reflected in every kind of human rights document that has issued forth from the United Nations and its predecessor, the League of Nations.

Law is predicated on, and presupposes the existence of, such sovereignty. Law is derivative from sovereignty. Indeed, although one can conceive of sovereignty without law, one cannot conceive of law without presupposing the existence of a source of sovereignty to generate such law. Law does not generate itself.

One may use law to obscure and obfuscate the issue of sovereignty. One also may use law to generate delusions, illusions and distortions concerning the nature of sovereignty. Nevertheless, no one can use law to unilaterally extinguish such sovereignty. Such an act can never be justified, although people do attempt to rationalize it.

Forexample, when Britain was reveling in its imperialistic and colonialistic glory, it used might as an argument for its "right" to impose its will on other peoples. British officials, then, proceeded to dress up this act in an ethnocentric, self-serving clothing of a Divine destiny that shines Its favour on the civilized (i.e., British) world. Many other countries, including France, Spain, Portugal, Germany, Russia and the United States, have rationalized similar actions in similar fashion.

Legitimate constraints and limits can be placed on the exercise of sovereignty only through mutual agreement. This sort of reciprocity is exhibited in the case of a social contract between an individual and the larger community in which both parties agree to restraining themselves in certain ways in order to preserve the autonomy and integrity of the other party to the agreement. Each party has rights in such an agreement. Each party has duties of care with respect to the other party under the reciprocal character of the agreement.

However, the willingness of a person or people to accept constraints upon one's sovereignty should not be confused with the idea of extinguishing a people's sovereignty. The latter idea is a figment of the fevered imagination of those who would shamelessly, and with an inflated sense of self-importance, try to rationalize their attempts to deny, if not usurp, the sovereignty of another people.

Neither the Supreme Court of British Columbia, nor the court system of any province, nor the Supreme Court of Canada has any jurisdiction in the matter of the sovereignty of Native peoples. In and of itself, the sovereignty of the Native people is entirely extra-legal in character. However, as indicated earlier, the trappings of legitimate legality arise in conjunction with the sovereignty of Native peoples only to the extent that, of their own free will and volition, Native peoples agree to enter into a social contract with the peoples of Canada. This contract gives expression to the sort of constraints on sovereignty which are deemed necessary in order to protect and, where possible, enhance the integrity, autonomy and access to real power of the respective parties.

Unfortunately, historically, the non-native peoples of Canada tend to have misconstrued and misunderstood the nature of their relationship with Native peoples. The former have been inclined to consider themselves the superior, "civilized", divinely favoured party which has the right to impose their

values, policies, programmes and will on the Native peoples. In short, most non-Native peoples of Canada believed they alone had sovereignty. For the most part, there has been a dearth of any semblance of mutuality and reciprocity which has characterized the intentions and attitudes of non-Native peoples in their dealings and interactions with Native peoples on the issue of sovereignty.

Canada took some 50 years to apologize to the Japanese Canadians for subjecting these citizens to all manner of indignities during and after the Second World War. Canada still has not apologized for the indignities that it heaped, over a much longer period of time than occurred with the Japanese, upon the Chinese immigrants to this country.

The plight of the Native people is further historical evidence of the disturbing penchant of all too many "mainstream", majoritarian Canadians, or their political representatives, to fail to come to grips with the whole issue of sovereignty. Unfortunately, the suffering of Native peoples has been far more long-standing than the cases of either the Japanese or the Chinese peoples.

All of these cases demonstrate that all too many "white" Canadians believe only their own sovereignty is of any value. All too many Canadians seem to believe that such sovereignty underwrites their right to deny, usurp or intrude upon the sovereignty of other peoples.

The resolution of the sovereignty problem of Native peoples is complicated immeasurably by the fact that money, natural resources and land have become inextricably caught up with the issue of sovereignty. On the one hand, vested interests—both public and private—stand to lose a considerable amount of power, property and money, both in the present as well as the future, if the full significance and ramifications of the sovereignty of Native peoples is finally acknowledged and acted upon. On the other hand, Native peoples cannot give full expression to their sovereignty as autonomous peoples unless they can exercise control over the land and resources that were taken from them.

In fact, for Native peoples, the land plays a central role in their spiritual traditions, since it is a sacred responsibility that has been entrusted to them. They are the trustees of the land over which they have authority and on which they live their lives. If they are denied the capacity to nurture their relationship with the land and to fulfil their spiritual responsibilities as trustees, then they are being denied the opportunity to pursue a fundamental aspect of their religious tradition.

Giving all of Canada back to the Native peoples may be far too problematic and impractical at this late stage—not to

mention being unfair to a lot of present day non-Native peoples. Nonetheless, non-Native Canadians are going to have to face up to the fact that there is, in principle, only one way to right the wrongs which have been perpetrated against the Native people. Some sort of package of land, autonomy and compensation is going to have to be extended to the Native peoples, and this is going to require substantial sacrifices on the part of both the Federal as well as the Provincial governments.

Presumably, Native peoples will be prepared, as they always have been, to enter into a form of social contract with the non-Native peoples of Canada in which reciprocity, mutuality and co-operation become the central shaping forces of that contractual process. This means that the Native peoples will have to assume certain kinds of restraints upon their sovereignty and, therefore, they will not get everything they would like or to which they, morally, may be quite entitled. However, there must be a reciprocity to this constraining process. This means that all non-Native Canadians are going to have constraints placed on their sovereignty as well with respect to the Native peoples, if we are to resolve the problem in as equitable a fashion as possible under a very complicated and messy set of circumstances. This is likely not going to be a pain-free process on either side.

Nevertheless, as long as the problems surrounding the sovereignty of Native peoples continues to fester, then Canada will have lost its moral authority to speak out against intrusions upon the sovereignty of people which occurred in the past, are occurring now and, very likely, will continue to occur in the future. For Canadians to denounce the usurping or suppression of sovereignty in other places while standing neck deep in its own cess pool of usurpation and suppression, would be hypocritical in the extreme.

A Possible Solution

Before outlining our proposal, one or two points need to be stated clearly. First of all, we do not consider what follows to be necessarily either the best way, or the only way, of resolving the problems which plague the Native peoples issue. This issue is complex, and any solution will have ramifications for all Canadians. Indeed, many of the ramifications that ensue from any given attempt to resolve the problem likely will have unpalatable aspects for a variety of groups, communities, levels of government and individuals.

Consequently, proposed solutions for dealing with the attendant problems of Native peoples issues face the imposing challenge of having to be both maximally fruitful as

well as minimally injurious with respect to a variety of interests and parties. As a result, any solution that is offered up likely will be criticized as being: either not sufficiently fruitful with respect to one group or another; or, not sufficiently free from injurious implications for one group or another.

There may be those, perhaps many, from within the Native peoples community who will find our proposed solution problematic, maybe even completely unacceptable. Undoubtedly, there will be people, perhaps many, from among the non-Native peoples of Canada who will consider our proposed solution as being 'unhelpful'. People from both sides of this issue will have these opinions because they will feel that our solution is asking them to give up something which is, to their understanding, rightfully theirs.

Generally speaking, tug-of-wars can have only one winner. One side or the other usually ends up being dragged in a direction in which it does not want to go. On the other hand, sometimes the rope on which the competing sides are tugging breaks under the strain, and nobody wins. Yet, everybody suffers from the ordeal.

The rope, of course, is a metaphor for Canada. More and more strain is being imposed on the fabric of that rope as people, especially in both the federal and provincial governments, become dug in with respect to their conceptual positions in relation to Native peoples issues.

Under such circumstances, we wished to introduce the idea of a different kind of conflict resolution activity. In this approach, many people might be required to give up something, but, hopefully, everyone would gain something substantial in return that would more than compensate for that which had to be surrendered.

In any event, we believe the problems surrounding Native peoples issues are of fundamental importance to the moral, political, economic and spiritual health of Canada. Consequently, our proposed solution should be seen as an attempt to stimulate discussion in the direction of creative, win-win situations and away from the enervating tug-of-war which now seems to be taking place.

* * * * *

One possibility for resolving the sovereignty issue of Native and aboriginal peoples may revolve around the Yukon and Northwest Territories, together with some added incentives. More specifically, the government of Canada and the provinces could cede substantial portions of these territories

to the Native and aboriginal peoples of Canada, along with, say, certain areas of the northern portions of a number of provinces extending from British Columbia to Ontario. Such ceding would be done in partial exchange for all outstanding land claims in the various provinces.

In addition, some sort of monetary compensation package should be added that will help the Native and aboriginal peoples to establish themselves in whatever way is most congruent with their conception of sovereignty. This compensation package could be used to construct, if desired, a communications network, television stations, an economic infrastructure, and educational systems—including higher education—all of which would be done according to the designs, values, policies, needs and aims of the Native and aboriginal peoples.

If the ceded land were given the status of provinces, then one might consider foregoing the idea of monetary compensation arrangements. This possibility warrants careful thought since, by having provincial status, one would be entitled to certain kinds of transfer payments on a continuous basis rather than a limited number of one-shot compensation packages.

The ceded areas should be selected with the ecology of Native and aboriginal peoples in mind. In other words, the lands should be rich with game, fish and resources that would enable Native peoples to sustain themselves in accordance with their spiritual values and close affinity with the environment. The ceded lands should not be marginal, nor should the designated areas be polluted.

Furthermore, the ceded lands should hold the potential for Native peoples to develop in whatever way suited them—as individuals and collectively. Moreover, the ceded land must have the potential for permitting Native and aboriginal peoples to be able to bequeath to later generations the prospects of an enhanced, and enhancible, quality of sovereignty.

The two territories, plus certain portions of the northern areas of a number of the provinces, seem to be well suited to satisfying a number of the stated needs of Native and aboriginal peoples. In addition—and, unfortunately, this is not a small consideration—the overall inconvenience to both Native peoples and non-Native peoples may be less if pursued in the foregoing fashion.

For example, if the above proposal were pursued, there will be Native peoples who will be faced with the prospect of having to move to a new land and having to start a new life. The fact that they would be going to their own land and not a reservation, and the fact that life in the new land would be

rooted in principles of Native sovereignty, cannot hide the possibility the migrant Natives could encounter significant psychological, sociological and spiritual difficulties.

Some, but not necessarily all, of these difficulties may be alleviated, if not eliminated, by funds from the monetary compensation package that accompanied the land ceding aspect of the deal. Consequently, although there is the imposition of having to move, along with the inconvenience and difficulties this potentially entails, the value of what an individual receives in return with respect to sovereignty (and, thereby, the opportunity, finally, to gain autonomy over one's life in an environment that is conducive to one's values) may far outweigh the aforementioned inconveniences and difficulties.

There may be a further advantage for Native and aboriginal peoples if they were to accept the idea of one, large tract of land as part of a negotiated settlement, rather than pursuing a multiplicity of land claim disputes. More specifically, even if one were to suppose that Native peoples were successful with every one of their land claims (which is a highly questionable supposition), the result would leave Native peoples isolated from one another in a sort of archipelago of Native and aboriginal islands in a massive non-Native sea of land. The geographical, economic, political and social constraints which would tend to impinge on Native and aboriginal peoples under such circumstances may not be in the long-term best interests of Native and aboriginal peoples. Such constraining influences would exert an extremely potent force that, in time, could undermine the sovereignty of Native and aboriginal peoples.

One also must give some reflection to the fact that not all Native peoples have outstanding land claims. Many Native peoples, especially in northern Ontario and Manitoba, live on reservations which will not be expanded. Even if the courts were suddenly to decide in favour of Native peoples with respect to all outstanding land claims, many Native peoples would, so to speak, be left out in the cold as far as having an adequate land base through which to sustain themselves.

Furthermore, pursuant to Bill C-31, which changed certain aspects of the Indian Act, reservations have become increasingly burdened by the needs of those individuals who are returning to the reservation after being reinstated as so-called 'Status Indians'. Reservations simply cannot resolve the problems of housing, crowding, employment, and lack of community facilities that currently are facing many Native people.

Indeed, quite frankly, reservations were always intended as a tool to manage Native people in accordance with the needs of white political, economic and religious interests.

Reservations were never intended as a means of sincerely addressing the essential needs of Native peoples as human beings.

Consequently, those Native peoples who stand to benefit if their land claims eventually are honoured by the courts or government, have a duty of care with respect to those Native people who will not benefit from such land claim decisions. Sharing their reservations is not the answer, since everyone's standard of living gets lowered in the process.

On the other hand, one solution which may make long-term sense for all Native peoples is the one suggested earlier—namely, in exchange for all outstanding land claims, Native and aboriginal peoples would be given one tract of land with provincial status. This land area would cover portions of the Yukon, the Northwest Territories and certain aspects of the northern parts of a number of provinces extending from British Columbia to Ontario.

Whether the ceded land is to be one province or several provinces could be determined through negotiations between Native peoples and the rest of Canada. We have suggested at least two provinces in an attempt to reflect, in a very small way, that Native peoples really encompass a diverse group of peoples. Therefore, some attempt should be made to provide for different venues of provincial opportunity in order to accommodate some of these differences among Native peoples.

The foregoing proposed solution offers the possibility of simultaneously satisfying the needs of self-autonomy and self-sufficiency for all Native and aboriginal peoples. Without this dual dynamic of self-autonomy and self-sufficiency, many, many Native people are doomed to a fate of endless poverty, degradation and dependency on others for their sustenance.

On the other hand, from the perspective of the provincial and federal governments, ceding the aforementioned land areas may be less conducive to the possibility of becoming entangled in the sort of complex legal/social problems where a spectrum of vested interests are at cross-purposes with one another. Said in another way, the above arrangement may least intrude upon, or interfere with, issues of sovereignty involving non-Native and non-aboriginal people.

To be sure, there will be some non-Natives who will be inconvenienced as a result of the proposed solution. Moreover, there undoubtedly will be economic interests which either will have to be terminated or run in accordance with the wishes of Native and aboriginal peoples. However, as is the case with some of the Native peoples who will be inconvenienced, some sort of monetary compensation may

help assuage the inconvenience and difficulties suffered by non-Natives during the process of transition in which lands of sovereignty are generated for Native and aboriginal peoples.

The bottom line, for both Native and non-Native peoples, is the same if the solution outlined previously be followed. In other words, there will be difficulties and inconveniences on both sides of the ledger, but the resolution of the long-standing problems would bring benefits to all people concerned. Native and aboriginal peoples, finally, would have their sovereignty which has been usurped unjustly by the European immigrants to this country—an unseemly condition that has been perpetuated by subsequent generations of non-Native peoples. On the other hand, non-Native peoples could enjoy the fact that principles of real democracy, outlined previously, finally had won out over a set of values, prejudices and practices that, for far too long, have been corrupting and polluting the fabric of democratic institutions in Canada.

If Native and aboriginal peoples were given their own provincial sphere of responsibility through the land ceding proposal outlined earlier, they would need to be given certain guarantees that the land ceding arrangement was not just one more ploy by non-Native people to marginalise the needs and concerns of Native peoples. In other words, Native and aboriginal peoples need to know that they are not being moved to just one more reservation, albeit a much bigger one.

History clearly has shown that the promise of inviolability of the reservation—a promise which was to be honoured and protected by non-Native peoples—has been broken many, many times. This goes on even today when, for example, public utility companies, logging and mining concerns, as well as paper mills run roughshod over the concerns and needs of Native and aboriginal peoples.

Whenever corporate and political interests have found it expedient and profitable to do so, Native peoples were pushed aside. Repeatedly, the lands of the latter have been stripped of resources, as well as polluted, through the insatiable appetite of a human greed that has respect for nothing except its own hunger and lust.

Moreover, Native peoples often have not been free even to run their own lives or practise their spiritual traditions. This is the case because they have been interfered with constantly by the Native Affairs Ministry and other levels of government. All of this violation of the sovereignty of Native and aboriginal peoples must stop.

In order to achieve this, we would offer several suggestions. First, the Ministry of Native Affairs, together with the concomitant Indian Act, must be dismantled. This Ministry

is a remnant of a colonialist mentality which is a completely inappropriate way of interacting with Native and aboriginal peoples. Furthermore, this Ministry is saturated with a paternalistic ethnocentrism, which is injurious to the integrity and sovereignty of Native peoples.

Secondly, the political arrangements instituted in the New Provinces (that are to be created through the land-ceding proposal) must always permit Native peoples to retain a majority position in those provinces. While some people may view such a restriction as being undemocratic when considered from the myopic perspective of majority rules, this proposal is perfectly in keeping with the principle of diversity of equality (see page 49) being given expression in this present document. In addition, this instance of asymmetry in the treatment of the political institutions of the Native peoples' Provinces will be counterbalanced by the kinds of Senate reforms that are being introduced in the section on *Expanding the Scope of Participation* (see pages 56-86).

Before leaving the issue of the sovereignty of Native and aboriginal peoples, a difficult question must be raised. Many, if not most, Native peoples speak in terms of having a custodial relationship with the land. This custodial status is not one of ownership. It is, rather, one of fulfilling the responsibilities of a sacred trust.

The sacred trust has, at the very least, two fundamental themes. One theme concerns the duty of care which the present generation of Native and aboriginal peoples owes to future generations.

A second theme indigenous to the sacred trust concerns the duty of care which is owed to the land itself, along with the forms of life, both animal and plant, that inhabit that land. From the perspective of Native and aboriginal peoples, all creation, whether 'living' or not, manifests spiritual properties. As such, all aspects of creation must be respected for the qualities of spirituality to which they give expression.

Given the foregoing, the question that must be asked is this: Do Native and aboriginal peoples suppose that they, and they alone, have been charged with such a sacred trust? If the answer is yes, then certain facets of the Native peoples' claims may be on very shaky spiritual and philosophical ground, so to speak, because of the exclusionary character of their sense of sacred trust. It would be exclusionary because it seems to deny the possibility that other people also may have been invested with the same sacred responsibility and concomitant duties of care, vis-à-vis the whole of creation, including the land.

If, on the other hand, the answer to the foregoing question is no, then the nature of the problem becomes somewhat

different. Under these circumstances, the emphasis must be on issues of sovereignty. For, only through a properly secured sovereignty, will Native peoples truly be in a position to discharge their sacred trust in its fullest, most broadly applicable sense. In addition, through a properly secured sovereignty, Native peoples will have like-hearted and like-minded non-Native companions with them to work toward the realization of an overlapping set of objectives and values.

To speak in terms of land claims is problematic in a variety of ways. First of all, it risks succumbing to the mentality of ownership which is at the root of so many problems in our country, if not the world. The philosophy of ownership is, by and large, antagonistic to the qualities of sharing and generosity that are, now more than ever, very much needed in our country. The philosophy of ownership tends to lead to a smallness and meanness of spirit.

Indeed, the Prime Minister's recent announcement to establish a fast-track programme to settle, over the next four or five years, all land claims that are for less than a certain amount of money, appears to be a clever gambit. It seems to be built around the seductiveness of the philosophy of ownership. By offering the few an inducement of what amounts to land ownership, resolution of the real problem of sovereignty which plagues the many will remain elusive.

Secondly, the language of land claims has a tendency to narrow the focus of the underlying sacred trust. Instead of being extended to all of creation, it may become reduced to a particular, small parcel of land.

Of course, the moral and spiritual decay in the world has reached such proportions that fulfilling the sacred trust for even a small piece of land becomes a courageous struggle. However, the more essential, more fundamental struggle may be to work toward extending the duty of care to as wide an area as possible.

By proposing that, Native and aboriginal peoples be given custody of certain lands in the north and that these lands have provincial status, we believe the Native peoples would be in a much stronger, more tenable position through which to fulfil the spiritual responsibilities that have been entrusted to them. Furthermore, with such provincial status, we believe Native and aboriginal peoples would be in a much better position to assist the rest of us to work towards redeeming the Canadian environment as a whole and, thereby, fulfil the sacred trust which many non-Natives also believe they have with respect to the land.

Canadian Identity

This principle of sovereignty, and its attendant problems, actually goes to the heart of who we are as Canadians. Being a Canadian is not about CBC, Via Rail, the National Film Board, the RCMP, the Maple Leaf Flag or any other symbol one cares to choose as that which helps bind us to one another and helps define our collective identity as Canadians rather than as something else.

All of these institutions and symbols have roles to play. Moreover, they have a value to Canadians that goes beyond the merely functional since they each, in their own way, introduce certain nuances, colour and orientation into our collective identity. However, they are all peripheral factors as far as understanding who we are as Canadians.

From the very beginning of our history as a place and a people that eventually would become known, respectively, as Canada and Canadians, the issue that has brought us together and forged our identity has been the problem of sovereignty and our attempts to deal with the issues surrounding that problem. Whether we have been successful or we have failed, whether we have agreed or disagreed, whether we have co-operated with one another or thwarted one another, Canada and Canadians both have been built upon a unique history of engaging the issue of sovereignty through the many ways in which that issue has manifested itself over the years and from place to place. No one else in the universe has our history.

Whether we are talking about regions, provinces, municipalities, ministries, institutions or the federal government, we are talking about family, and we interact with the members of that family in a way that we don't interact with governments and people beyond our borders. The affection, pride or exasperation we feel toward one another has a political/cultural chemistry of its own that is not the same as the sort of chemistry that is generated by the affection, pride or exasperation one may feel toward other peoples. The straw that stirs the political/cultural chemistry of Canada and Canadians is the problem of sovereignty.

The history of: French Canada or the Maritimes; the West or the Northern Territories; the provinces or the federal government; Native peoples or immigrants—all revolve around the search for asserting or claiming or fighting for their sovereignty. The story of Canada is a story of the attempts, failures and successes of a variety of peoples as they sought to enter into a social contract with other peoples. Such a social contract emphasized a reciprocity or mutuality of understanding and, therefore, a concomitant willingness to place constraints on their respective sovereignties in order to work out a system of rights, duties, freedoms and responsibilities which would enhance the

quality of sovereignty of the parties involved in that social context.

The sense of betrayal that all peoples in Canada have experienced, at one time or another, can be traced directly to the perception, whether accurate or not, that there is an inequity in the relationship of reciprocity and mutuality that defines the social contract which links the sovereignty of one people with other people. Essentially, this means that when a people feel betrayed, they feel they have placed constraints on their own sovereignty as a people which either: (a) are not being reciprocated by others; or, (b) are not leading to a sufficient level of enhancement in the quality of that aspect of their sovereignty which is not under constraint.

Sovereignty and Democracy

The issue of sovereignty involves the desire to have substantial control over, or play a fundamental role in, shaping one's destiny. Sovereignty involves the desire to have access to, and the opportunity to exercise, real power. Such power enables one to structure, orient and colour the character one's living will assume. Having access to real power in an unmediated fashion goes to the heart of the difference between representational and participatory democracy.

Representational democracy is about people giving up power to other people, i.e., the elected officials and those whom these elected officials appoint or hire. Representational democracy is mediated by, and filtered through, the understanding, likes and dislikes, weaknesses and strengths, ambitions and visions (if not delusions) of the people who are seeking power through elected office. Representational democracy does for the few—namely, the elected officials and their appointed helpers—what participatory democracy intends for the many: namely, to provide access to the power which is necessary to work toward controlling one's own sovereignty. Representational democracy is indirect, unresponsive, and focuses on channeling power through the few. Participatory democracy is direct, responsive and focuses on sharing power with the many through a variety of channels that are specifically designed with such sharing in mind.

Participatory democracy is not a utopia, nor does it mean that everyone gets whatever one wants. However, it does come closer to the central principle underlying the historical reasons for moving toward democracy than does representational democracy. More specifically, participatory democracy emphasizes the structural character of the process through which we arrange and regulate the social contracts that we forge with one another. The operative principle in these contracts revolves around the issue of reciprocal sovereignty—for individuals, for communities, for regions and for governments.

Often times, when people are asked about the meaning of democracy, the buzz words that are used are: "majority rules", "rights", "equality" and "freedom". Without wishing to downplay the importance of the concepts which stand behind these words, these ideas may be somewhat misleading.

For example, if by "majority" one means the people in general, then, with the possible exception of elections, very rarely does the majority rule in representational democracy. Even in the case of elections, if there are more than two

parties contesting a given seat, the winner usually garners less than 50% of the vote. The majority of the people voted for the losing parties, but they do not rule.

In the case of a two-party election, the majority often still does not rule since: (a) not all eligible voters vote; and, (b) there are many people in the country who are not eligible to vote. As a result, the winning side may capture as much as 55% or 60% of the vote (which would be a huge landslide win) and still constitute the will of far less than a majority of the people.

Once elected, governments, especially in a parliamentary system, often are not run along democratic lines but autocratic ones in which power hoarding and manipulations of power tend to become paramount. The world of 'realpolitik' is about the seeking, gaining, wielding and hanging onto power. In this realm, the principles of democracy merely become watch words that are used to clothe the naked power game in order to create an illusion of democratic modesty when, in reality, nothing of substantive value actually exists as far as democracy is concerned.

When the members of the Supreme Court make judgements, or when Parliamentary committees cast votes, or when governmental boards and commissions arrive at decisions, although the rule of the majority holds within the restricted confines of the court, committee, board or commission, there is no guarantee that the respective judgements, votes and decisions reflect the wishes of the majority of the population. Consequently, all of these narrowly construed powers of majority rules constitute potential sources of encroachment upon the sovereignty of the people of a nation, province, region or municipality.

The individual often has little or no power to shape, constrain, modify or resist the aforementioned sorts of judgements, votes and decisions. Moreover, unless provisions are established that permit individuals, within certain limits, to have direct, unmediated access to the kind of power that will give them the opportunity to shape, constrain, modify or resist the process of realpolitik, then democracy becomes a vacuous exercise for the majority of people.

At this point, an argument may be put forth which says, in effect, that if people want to have an impact on events, then they should get involved in the political process: join riding associations, run for office, and so on. However, as indicated previously, indigenous to the idea of representational democracy is the fact that there tend to be strong forces which come into play and place severe constraints on the extent of participation that will be permitted.

While one may or may not agree with Lord Acton who spoke about the corrupting effect of power, the fact is that political/economic power carries with it a strong tendency toward being exclusionary of others. It is a tendency which can only be controlled with great strength of personal integrity and humility, and very few people who have walked the corridors of power have exhibited such strength.

The operative principle in a democracy is not that the majority rule. Instead, what actually rules is a set of principles to which the overwhelming majority of the people agree or to which they are committed as a means of defining, establishing and regulating the social contract that underwrites a democracy. This set of principles both determines boundaries of constraints as well as provides for a spectrum of degrees of freedom within which, or through which, individuals and the collective pursue their respective sovereignties.

Representational democracy tends to spin one kind of set of constraints and degrees of freedom, while participatory democracy generates another kind of set of constraints and degrees of freedom. Naturally, there is likely to be a certain amount of overlap in the structural character of these two different approaches to implementing democracy, but in many ways, these two perceptions have quite different sorts of priorities, emphases, interests, orientations and styles.

In effect, what rules in a democracy, whether of a representational or participatory variety, is a process or procedural framework which is accepted by the majority of people. This process or framework must offer a countervailing influence against arbitrary, prejudicial or autocratic assaults upon, intrusions into, and usurpations of sovereignty. Moreover, what permits such a process or framework to rule is the degree of confidence which people have in the capacity of that process/framework to provide a means of both protecting as well as helping to actualize the sovereignty of individuals and the collective alike. Presently, the Canadian public, on both an individual and a collective basis, is indicating that it has lost confidence in the capacity of the current approach to democracy in Canada to be able to resolve the problems which presently exist with respect to various aspects of the social contract—a contract that is supposed to bind us together within a common democratic framework.

Rights and Duties of Care

Another one of the buzz words of the mythology of democracy is that of the idea of rights. Everyone likes to talk about and assert their rights. Rights are expressions of our sovereignty as individuals and, therefore, we are jealous about any intrusion onto that sovereignty by the denial or

undermining of our rights. On the other hand, an unrestrained and mindless assertion of rights on the part of everyone is tantamount to chaos and anarchy.

The reality of our situation is that not everyone's "rights" can be honoured simultaneously. The claimed rights of one person often clash with the claimed rights of another person.

At a more fundamental level, democracy is not primarily about rights, per se. Democracy is about the search for a balanced, principled way of, on the one hand, protecting rights whenever possible and, on the other hand, providing various means of resolving competing or conflicting claims of rights.

Unfortunately, people often conflate and confuse rights with their interests, desires and likes. Many people seem to assume that if they are interested in something, or desire it or like it, then, somehow, there must be a right that entitles them to pursue that interest, desire or like in an unhindered manner. Rights, however, are not a function of just any sort of interests, desires or likes.

Rights are about the constraints and degrees of freedom that are to structure our interactions with one another within the framework of the social contract to which we agree as a means of making government and society possible. Rights are about the sovereignty of the individual, but rights also are about the sovereignty of the collective. Rights are about the search for win-win situations such that the quality of sovereignty of both individual and the collective can be advanced and enhanced simultaneously.

Of course, a win-win situation may not always be possible or feasible. Sometimes the individual's rights will gain ascendancy over the rights of the collective. Sometimes the collective's rights will be promoted to the detriment of the individual's rights. Nonetheless, in general, the emphasis should be on finding solutions to competing or conflicting rights that will protect and enhance the quality of the sovereignty of the different parties to a dispute.

In order to work toward such win-win situations, the idea of rights, in and of itself, will not point the way to how to go about resolving disputes concerning conflicting and competing rights. Another concept is necessary. This additional concept might be referred to as having a 'duty of care'. In order for the sovereignty of both individuals as well as the collective to be protected and enhanced, there must be a balance established between rights and duties of care.

The social contract is not just about demanding rights. It is also about reciprocity. Reciprocity requires one to undertake

the responsibilities of various duties of care toward other individuals and society in general.

Duties of care are not restricted to active respect for, and implementation of, the rights of other individuals or the rights of the collective. Duties of care are rooted in an understanding that acknowledges the need for sacrificing, within certain parameters, one's own interests. Duties of care involve a willingness, under various conditions, to place constraints on one's sovereignty in order to both enhance the quality of the collective sovereignty as well as to increase the likelihood that the quality of one's own long-term sovereignty will be enhanced. A duty of care is the finger in the social dike which keeps out the relentless ocean of competing and clashing claims of rights. Duties of care reflect a sensitivity and responsiveness to the kinds of economic, social, cultural, physical, political, moral and intellectual destruction that can be wreaked on others by a self-centred insistence on one's rights irrespective of the costs. Duties of care are an index of the preparedness of both the individual as well as the collective to take on the responsibilities inherent in not just making the social contract work, but in helping it to flourish.

Diversity of Equality: A Principle

Along with "majority rules" and "rights", "equality" is a further entry in the lexicon of democracy. Usually, people understand equality to mean that everybody must be treated in exactly the same way. Another way of giving expression to the idea of equality is that no one should be given an unfair advantage or opportunity that permits him/her to enhance his/her position or circumstances at the expense of other people. Alternatively, equality also refers to protecting people against being unfairly disadvantaged with respect to opportunity, status, treatment, and so on.

A key feature of the idea of equality is a function of what is meant by, say, being given an unfair advantage or being unfairly disadvantaged. Moreover, implied in this judgement of unfairness is the idea that standards or criteria of fairness exist by means of which one can distinguish between, on the one hand, fair and unfair advantages, or, on the other hand, fair and unfair disadvantages.

For example, suppose one student works hard to pass an exam, while another student spends his or her time having a good time doing whatever pleases the individual except studying for the exam. The fact that the former person passes the test while the latter individual flunks the test does not confer an unfair advantage on the first individual, nor does it unfairly disadvantage the second person.

The element of unfairness only enters the picture if there are forces at work which corrupt the situation and skew it prejudicially. Thus, if, in the case of the two students, the person who studied hard is marked down because of colour, race, ethnic origin, gender or philosophical beliefs, while the person who didn't study is given a passing mark largely, if not exclusively, on the basis of being liked by the teacher or because the person is a valuable athlete, then one student (the one marked up) is unfairly advantaged, while the other student (the one marked down) is unfairly disadvantaged.

Let's pursue the student example a little further, but this time a few changes will be introduced. Assume that the two students have studied equally hard and that they are equally intelligent. Further, suppose that there are no untoward forces present—such as racism, sexism or bigotry—which would prejudicially differentiate between the two. However, let us assume that person A does very well on essay type questions but does not do very well on multiple choice questions, whereas student B is just the opposite—doing poorly on essay questions but very well on multiple choice questions.

If the teacher gives a test that involves only essay questions, then student A is, in a sense, unfairly advantaged, while student B is, in a sense, unfairly disadvantaged. The teacher may not have intended this, but, nonetheless, a situation has been created in which unfairness of a sort has been permitted that treats the students in an unequal fashion.

The moral, so to speak, of the above example is that even if there should be no prejudice of any sort present, and even though people may be subjected to the same sort of condition and treatment, still, one may not have satisfied the conditions of equality. Equality is not necessarily about subjecting people to a monolithic process. In fact, real equality may only be possible in some, perhaps many, cases if one offers people an opportunity to choose, from among a set of alternatives, the one that best suits their circumstances or abilities.

For instance, let's return, for a moment, to the previous student example. Assume the teacher giving the test realizes students have different strengths and weaknesses. Suppose, further, the teacher really only is interested in finding out what the students know or do not know in order to be able to plan how, and what, to teach in future classes. Under such circumstances, the teacher could provide the students with a choice: namely, they could select either several essay questions, or they could do the multiple choice section. In this way, the teacher allows the various students to put forth their best academic effort and obtains valuable information that will shape the content of subsequent classes.

The students are treated equally, but they have been allowed to go about things in different fashions. Consequently, the principle of equality does not necessarily mean that everyone must be treated in the same monolithic, rigid, unvarying, static fashion. There is room within the principle of equality for a spectrum of possibilities.

In the United States, there had been, in the past, an attempt to maintain segregationist practices by implementing a policy of "separate but equal". There are a number of fundamental differences between this idea of "separate but equal" and the principle of diversity of equality being discussed above.

In the case of the "separate but equal" policy, blacks were not given any choice in the matter. The policy was thrust upon them, and they had no opportunity to participate in shaping, affecting or regulating that ruling. Moreover, the resources and finances made available to the black community were, in fact, not the equal of the resources and finances made available to the white community. Finally, the value of the end result of the two educational systems was entirely different, since white students would be given a multiplicity of opportunities to either get further education or to enter the work force. The same set of opportunities was not open to the black students.

In short, the policy of "separate but equal" was intended to give the appearance of freedom, while putting into play the reality of racist practices. The effect of this was to take away freedom from the black community.

The principle of diversity of equality alluded to above, on the other hand, is, in contrast to the idea of 'separate but equal', an exercise in participatory democracy. In this approach to equality, people are given access to real freedom of choice. This sort of freedom permits people to exercise control, within limits, over how they interact with a given set of circumstances. It permits people to choose, from among a set of alternatives, those possibilities which are most conducive to, and congruent with, their needs, interests, capabilities and resources. Furthermore, the set of alternatives is not imposed on people, but can be developed in conjunction with the individual's participation in the structuring of those alternatives.

The principle of diversity of equality is a means of providing people with alternative routes to equality of treatment. No one is unfairly advantaged or unfairly disadvantaged. Everyone is permitted to pursue their alternative of choice in a way that does not unfairly advantage them with respect to enhancing the quality of their sovereignty, nor does it unfairly disadvantage others in relation to the protection and/or enhancement of the sovereignty of the latter people. This is so because the alternatives from which people are permitted to choose, and which, ideally, they could have had

a hand in developing, are to be pursued within the framework or boundaries established by the dynamic tension between rights and duties of care with respect to both individuals and the larger collective.

For example, by permitting Native peoples to have autonomy in the manner in which they conduct their affairs among themselves and with the rest of Canada, one is providing them with an alternative means of seeking an equality of treatment with respect to the protection, development and enhancement of their sovereignty as a people that is congruent with their needs, interests and inclinations as a people. Similarly, by permitting the people of Quebec to have autonomy in the manner in which they conduct their affairs among themselves and with the rest of Canada, one is providing them with an alternative means of seeking an equality of treatment with respect to the maintaining and realization of their sovereignty as a people that is conducive to who they are as a people. In this sense, Quebec is a special and distinct society. At the same time, the societies of the Native peoples are also distinctive and unique in character.

Indeed, the very idea of multiculturalism is inextricably caught up with the acknowledgment that there are a multiplicity of special and distinct societies within Canada. Our task as a multicultural nation is to construct a set of alternatives from amongst which the different peoples of Canada can choose those which are most conducive to, and congruent with, the needs, interests and characteristics of different peoples and which will permit all of them the opportunity to preserve and enhance the quality of their respective sovereignties as a distinct and special people.

If one wishes to give meaning to the notion of sovereignty association, then it would seem to involve the principle of diversity of equality. In activating this principle, we must provide the peoples of Canada with the opportunity to participate in the decision process. The activation of such a principle will generate the alternative pathways which will provide each people with equality of treatment in the context of a diversity of choices. Through these choices, people seek, secure and realize their sovereignty as communities which are different one from another.

Furthermore, all of this must be done within a balanced, though dynamic, framework woven by the dialectics of rights and duties of care. It is the balancing of the dynamic dialectic that establishes the conditions of association which mark the character of the social contract governing our relations one with another. Moreover, realization of the principle of diversity of equality is what underwrites our respective quests for sovereignty.

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III. EXPANDING THE SCOPE OF PARTICIPATION

Senate Reform

The ways in which things are institutionally arranged in our present representational approach to democracy are inherently antithetical to the sort of steps that are going to have to be taken if the many problems facing us as a nation are going to be resolved in a direction that is more reflective of the needs of the different peoples of Canada. For example, the Senate is often neither representational nor participatory in character.

In terms of cost efficiency and providing tax payers with a fair return on their money, the Senate is probably one of the least productive and least effective Canadian institutions in existence. By and large, it is an old boys patronage club that on occasion, in spite of itself, accomplishes something of marginal value for the people of Canada.

On the one hand, the Senate is highly exclusionary in character and, on the other hand, it represents the people of Canada only sporadically and, more often than not, only as the spirit of political caprice happens to motivate some of them. It is a body over which the people of Canada have virtually no control and upon which people can exert little or no pressure. Moreover, even if one could find a way to bring pressure to bear on the members of the Senate, such pressure, generally speaking, would contribute little more than a tilting at windmills since the Senate is extremely limited in real power. Its greatest claim to fame is that, at some considerable cost, it produces Royal Commission reports to which almost everyone alludes, few read, and to which almost no one within government pays any attention.

The idea of changing the structure of the Senate is not a new one. Furthermore, the winds of change in the current atmosphere of discontent with the institutions of democracy are blowing at gale, if not hurricane, force. Almost all of the proposals for change indicate that the Senate should be an elected body, but after this point of agreement, consensus gets blown to the four corners of political opinion.

Consequently, while the suggestions which follow do not reflect any sense of unanimity among Canadians, the possibilities discussed below may constitute a way of helping to establish the process of participatory democracy which is necessary both to complement, as well as to act as a countervailing force against, some of the tendencies of representational democracy.

The Senate should consist of elected members made up of four individuals drawn from each of the provinces, as well as the Northwest Territories and the Yukon. Three of the individuals elected from a given province or territory should represent the largest traditional parties, namely, the Liberals, Conservatives and NDP.

The fourth person could represent a non-traditional party that commands the respect of, say, at least 10% of the population of the province or territory in question. Or, the fourth person might be drawn from a group, party or community that commands less than the indicated level of 10% support.

One should even entertain the possibility of permitting the fourth position to be a sort of independent category that could be contested by people who have no party affiliation but who do have a desire to participate in the shaping process of political activity. There is a fairly large percentage of people in Canada as a whole, as well as within individual provinces and territories, who do not share the values, commitments and orientations of any of the presently existing parties, but who, nonetheless, are deeply concerned with what goes on in Canada.

The latter possibility might serve to induce people to seek alternatives to traditional party politics by providing an opportunity for entry into the political process that is not otherwise available because of the numbers game of mainstream politics. This might especially be the case in provinces that tend toward a sort of monolithic power structure revolving around an entrenched, incumbent party.

There should be a certain amount of flexibility in the character of the political affiliations of these elected officials in order to reflect the current political realities of a given province or territory. For example, if the politics of a certain province or territory exhibited a party profile that was different from the traditional one of other provinces, then, obviously, the people elected to the Senate would have to reflect these differences.

In addition, regardless of from which party a person is elected, the individual would not be required to follow the party line while making decisions concerning any given issue

before the Senate. The reason for doing things in this fashion has two aspects.

The first aspect revolves around being able to introduce into the Senate a spectrum of philosophical perspectives with respect to issues, policies, programmes and political style. These perspectives should be somewhat reflective of primary political/ philosophical currents running through the electorate. The second aspect underlying the reason for doing things in the way outlined earlier is to give the elected Senate officials some discretion concerning how and when they enter into dialogue, negotiation and co-operation with other members of the Senate.

From the point of view being advocated in the present document, the Senate should consist of six subcommittees (one subcommittee for each of the areas of responsibility to be discussed shortly) that are under the auspices of the Senate body taken as a whole. These subcommittees each should consist of eight members (assuming that four Senators have been elected from each of the 10 provinces and two territories) drawn by lot (more on this later). Furthermore, although each subcommittee would operate on the basis of the principle of simple majority in any votes it takes, the decisions of the subcommittees would be subject to the full vote of the Senate in which a two-thirds majority would be required to pass measures in order for them to be implemented. Measures that are passed through subcommittees, but voted down by the full Senate, are returned to the appropriate subcommittee for further disposition.

Senators should be elected for a period of six years. This differs from the four-year period that is suggested later in this document for members of the House of Commons. There are several reasons for suggesting that things be done in this manner.

For instance, because the functioning of the two parliamentary bodies would be quite different from one another, if modified along the lines suggested in the present document, and because their respective spheres of responsibility and interest also would be different from one another under the proposals being put forth, the interests of Canadians might be better served if the Senatorial elections be kept as separate as possible from the election for the members of the House of Commons. This would give Canadians an opportunity to concentrate on the issues germane to each body and become more focused in their study of the problems surrounding the respective elections.

However, if the tenure period of office for each body is made too long, then one loses the opportunity to infuse new energy, ideas and commitment into the political process. If,

on the other hand, one sets the tenure period of office for each parliamentary body for too brief a time, then one may prevent elected officials from having time to learn their jobs or do them with any degree of efficiency or proficiency.

Six years was decided upon for Senators, as opposed to four for House of Commons members, because there seems to be a need for a longer period of continuity for Senatorial duties than for the duties of the members of the House. At the same time, the needs of continuity have to be weighed and balanced against the need to revitalize the political process. In this respect, as well, a tenure period for Senators of six years seemed to be an appropriate choice for harmonizing the needs of continuity and revitalization.

The method of selection for these six Senate subcommittees would be as follows. The names of the 48 Senators (four from each province plus four each from the two territories) would be put into the technological equivalent of a hat. Names would be drawn from that process, one at a time, in a random manner.

Only one elected member per province could be on any subcommittee. Moreover, a maximum of two members from any party could be selected for a given subcommittee.

If a province was already represented on a given Senate subcommittee, or if a given party already had two representatives on a subcommittee, then further names would be generated through the random selection process until an elected member from a new province and/or party had been produced. In this way, a maximum number of provinces would gain representation on the various subcommittees, while, at the same time, ensuring a balanced diversity of political philosophies.

The subcommittee for which random selections are to be made lastly would be the Appointments subcommittee (discussed shortly). Due to the character of a random selection process, one could end up with an unbalanced Appointments subcommittee both in terms of provincial representation as well as in terms of political philosophy. If this should occur, then, on a random basis, switches should be made with other subcommittees in order to achieve provincial and philosophical parity in each of the committees.

Although not every province would be represented on any given subcommittee, eight provinces would be represented on a specific subcommittee. Furthermore, every province would be represented on a number of different subcommittees. Consequently, there would be considerable diversity and breadth of provincial representation on any given subcommittee.

If the Northwest Territories subsequently were to be divided into two provinces, as has been proposed by some people, then there would be an extra four Senate members to distribute among various subcommittees. This would mean that, for example, there would be four subcommittees with nine members each (instead of eight) and two subcommittees still with eight members each.

We suggest that the four subcommittees that are to have, under such circumstances, an extra member each, should be: (1) Education; (2) Environment; (3) Basic Research and Technological Development; and (4) Constitutional Issues. The other two subcommittees—namely, Budget/Finance and Appointments—still would have eight members each. The arrangement is somewhat arbitrary, but we feel the first four areas deserve a greater number of provincial representatives than do the latter two subcommittee areas.

The compositional structure of the Senate, as outlined above, is predicated on the premise that the best government often, though not always, is a result of minority government. In minority government, elected officials are forced to find ways of entering into alliances with one another in order to make the process work. Similarly, establishing a context in the Senate in which the political process would be run along the lines of shifting coalitions from issue to issue, may well provide the opportunity for a process that is: (a) more likely to be reflective of the needs of a wider proportion of the electorate; (b) more given to compromise and negotiation rather than to ideologically rigid confrontations; and, (c) more likely to be focused on the strengths and weaknesses of issues per se rather than getting entangled in partisan politics.

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Spheres of Senate Responsibility

The following pages outline the six areas of Senate responsibilities. Some of these areas are discussed in much more detail than others, especially in relation to the aspect of philosophical issues surrounding some of the proposed subcommittees. The discussion is intended to be suggestive rather than definitive.

The recommended spheres of responsibility of the Senate would be as follows. They fall into six basic areas.

First, the Senate should be responsible for all government appointments. This includes the members of the Supreme

Court. In addition, half of all such government appointments should be women, and these appointments should be equitably distributed across the board rather than restricted to certain areas of government activity.

The reasons for arranging things in this manner are fairly straightforward. It provides a countervailing force against the tendency of governments in power to, on the one hand, succumb to the practice of patronage, and, on the other hand, to choose people who will reflect their thinking or political inclinations. The interests of neither democracy nor the electorate are served well when governments in power are permitted to indulge themselves in either of these political pastimes.

By letting the Senate make such decisions, people are likely to be selected who are the best individuals available for the job. This is so because no one party or philosophy has a monopoly on power in the Senate. Therefore, appointment decisions will be based on consensus, cooperation, compromise and negotiation.

Secondly, the Senate should have the responsibility of approving the budget which is prepared by the government that rules the House of Commons. Included in this responsibility would be the power to: (a) suggest cuts, programme deletions and modifications in the proposed provincial budget; (b) send the budget back to the House for further deliberations; and (c) ensure that the government in power stays within the parameters of its budget.

The House of Commons is free to take heed of, or ignore, the suggestions of the Senate, but the course of action pursued by the House must be done with the understanding that until the Senate approves the budget, the budget cannot be implemented. In effect, by placing the power of budget approval in the hands of the Senate rather than at the sole discretion of the ruling government, one is forcing the government to be more sensitive and responsive to a diversity of opinions which reflect a wider proportion of the electorate than does the party in power.

One also may wish to equip this Senate subcommittee with other kinds of watchdog powers with respect to the financial affairs of the federal government. For example, the activities of the Bank of Canada might be one of the institutions that could be subject to a review process, as well as some degree of regulatory control, by this subcommittee.

The third, fourth and fifth areas of responsibility of the Senate concern particular portfolios that are of fundamental importance to the welfare of Canada as a vibrant nation. These areas involve the environment, education, together with basic research and technological development. All of

these areas possess the potential to have substantial impact on the quality of life of all Canadians, both now and in the future.

The above statement should not be interpreted to mean that other ministries of government have no importance or that they do not have the potential for having substantial impact on the quality of life of all Canadians. Obviously, neither of these interpretations is the case.

However, problems of environment and education, together with issues of basic research and development, touch on the lives of all Canadians in a way that may be far more fundamental and of essential importance than is the case with many, if not most, other ministries. Moreover, the aforementioned three areas tend to lend themselves more naturally to the potential for individual participation across all strata of society by non-politicians and non-government officials than do many of the other ministries which are either fairly exclusionary (e.g., Defence, Attorney General) or fairly narrowly conceived (e.g., Mining, Agriculture, Fisheries).

In addition, the three indicated areas of concern require not only a special sensitivity and responsiveness to the needs of the people of Canada—which often are not provided by a ruling party, but these areas need to be removed from the shifting priorities and commitments that mark transitions in going from one ruling party to another ruling party. All three areas require constant attention and nurturing in a non-partisan fashion. Therefore, a revised Senate having the characteristics outlined earlier seemingly would be in a better position to provide the sort of care, concern, sensitivity, responsiveness and constancy than would the House of Commons or even provincial governments.

Each of the foregoing five areas of responsibility should emphasize the principle of participatory democracy. Indeed, the Senate, as here conceived, is intended to be a body that stresses, encourages and provides opportunities for participation by, and involvement from, the general public in a way that the government, in general, and the House of Commons, in particular, does not. The House of Commons operates on principles of representational democracy with little or no opportunity for participation by non-politicians, and, generally speaking, is not interested in sharing power. The emphasis is on controlling power in order to pursue whichever of the two species of representational government strikes the fancy of the members of the House. Naturally, this is especially true of the party in ascendancy in the House.

In any event, each area of Senate responsibility should operate on the premise of drawing into their sphere of activity and concern as many people as is possible, feasible and practical. For example, the subcommittee on

appointments should actively go into the community and consult with professional groups, institutions, businesses, organizations, religious circles, unions, editorial boards and individuals that could provide the subcommittee with a list of candidates who might be well suited to the appointments to be made. The subcommittee could, at the same time, gain insight into the needs, problems and concerns of the community. This understanding would help them arrive at decisions that might better reflect the issues that are affecting the communities they visit.

Consider another example that gives expression to the theme of participatory democracy which is to be stressed in a reconstituted Senate. Education is an area of fundamental importance to individuals and communities alike. Education plays an essential role in the establishing, maintaining and realizing of sovereignty.

The Senate subcommittee on education should manage a dynamic programme of training, consultation, outreach, cross-fertilization, research, symposia and publication that would bring together, from diverse backgrounds, educators, theorists, as well as people who may have no professional experience but who are deeply concerned about educational issues. The idea would be to establish a national think-tank focusing on educational issues both theoretical and practical.

This think-tank could be centred in a variety of localities across the nation, but it also would be capable of moving around and setting up shop on a temporary basis in a variety of other localities and communities. The purpose of such efforts is to provide a venue through which the people of Canada could be united in a common cause: to improve the quality of education in Canada as a whole and at every level of educational opportunity. At the same time, a great deal of costly duplication might be eliminated.

The intent of all this would not be to take control away from the community or to impose, from above, a monolithic curriculum on all schools. Instead, the intent is to provide a powerful, multi-faceted, flexible set of resources which could be utilized at the discretion of the community. In addition, the intent would be to establish channels of communication that are conducive to a dialectical process of sharing: successes, failures, problems, needs, methods, expertise, theory, practice and goals.

One could continue the foregoing process of spelling out how each area of responsibility of a Senate could be developed in ways that emphasize the principle of participatory democracy. The foregoing discussion has been intended to be suggestive of the sort of things which are possible. However, there is no limit to the ways one could go

about implementing social participation on a greater scale in each of the six areas of Senate responsibilities.

In all of these cases, the subcommittees become like so many boards of directors that oversee the operations and management of these exercises in participatory democracy. Ideally, not only would the Senate be a body that invites participation and extends power sharing to a diverse group of non-politicians, but it also could be a body that promotes national unity in the very process of making available opportunities of participatory democracy to people in every province or territory of Canada and on every level of scale of society.

Concomitant with the creation of Senate subcommittees for Environment, Education, as well as Basic Research and Technology, we propose that the provincial ministerial counterparts to these three areas should become regional expressions of a Senate presence. In effect, our proposal means that the provincial ministries which are counterparts to the three Senate subcommittee areas would no longer be provincial ministries, per se. Instead, they would become mediators and arbitrators between various Federal and Provincial themes and currents within the respective areas.

Each of these areas is of sufficiently fundamental importance to, and with essential ramifications for, all of Canada that they should not be left to the partisan politics of either federal or provincial governments. Therefore, there should be a strong centralist/ federalist component to the decisions made in these areas, but the nature of the centralist/ federalist component should not be left to the vagaries, inconsistencies and politics of representational democracy.

On the other hand, precisely because each of the three aforementioned areas are of interest and of value to all of Canada, there should be an attempt to permit as many Canadians as possible to contribute to, and thereby help, organize, shape, colour and direct the decisions made in such areas. This suggests that the politics of participatory democracy assume significance here.

In both facets of decision making (that is, the centralizing and decentralizing tendencies in the areas of environment, education, as well as basic research and technology), a Senate reconstituted along the lines suggested in the present document would appear to be better placed to meet the challenges of the indicated areas than does representational government on either the federal or provincial level. This is so because what is needed is co-operation, compromise, consultation, and planning on a national basis. However, this must be done in such a way that the process lays heavy emphasis on local/regional participation in, and shaping of, national policies and programmes in the indicated areas.

Representational government often has difficulty accomplishing these sorts of things, whereas participatory government rooted in a federalist/centralist framework would seem to be well equipped to accomplish what is required.

The Judicial Problem

The final area of responsibility for a reconstituted Senate would be as guardians of the Constitution. This suggestion has a number of facets which have tremendous ramifications for how to conceive of, as well as conduct, the process of arranging the social contract that both preserves and enforces our sovereignty as individuals and as a collectivity of peoples in a multicultural society.

To begin with, the Constitution must be removed entirely from the judicial system. There are a number of basic reasons for doing this.

For instance, at the level of the Supreme Court, there is much in the judgements of the courts that is, strictly speaking, extra-legal in character. The systems of interpretation, the philosophical assumptions, the theories of law, and the styles of logical mapping which judges employ in reaching legal decisions are part of the practices and conventions which surround statutes, legal rules and the Constitution. However, they are not themselves either statutory in character (a legal rule which has been clearly articulated as such and which is legally incumbent upon justices to follow), or constitutional in character.

Justices are, of course, empowered to make judgements on legal issues and are permitted judicial discretion in reaching such decisions. However, the boundaries of this discretionary power are so extremely vague, arbitrary and problematic that, in fact, if the justices had to rule on a statute, for example, that exhibited the same qualities of vagueness, arbitrariness and contentiousness as does judicial discretion, the justices very likely would be unanimous in their opinion that such a statute is unconstitutional.

Although judicial discretion is integral to the process of generating legal decisions, this discretionary exercise is functionally dependent, as indicated above, on a whole set of considerations that are extra-legal in character. Consequently, the time has arrived for us to come to grips with the mythology that permeates Supreme Court decisions.

The mythology tends to claim that there is some self-contained body of law which can be discerned objectively through judicial methods which are entirely legal in character in the sense that those methods are universally agreed upon

by all justices and, therefore, are incumbent upon one and all justices to follow. None of this is necessarily true. What justices say is the law is what the law is, but the impression is often given that there is some body of law independent of the judges, and that judges are merely stating what the law is.

Justices of the Supreme Court are answerable to no one except themselves. They give their interpretations of the law. These interpretations have implications for the quality of sovereignty of individuals, as well as many ramifications for the sovereignty of various levels of government and institutions. Now, the question that must be asked is this: Why should anyone believe that such interpretations will best serve the interests of protecting and ensuring the quality of sovereignty which is at the heart of the social contract that binds individuals together? This question becomes especially critical when one realizes that judicial interpretations hold us hostage to the past in a variety of ways.

More specifically, justices purport to be able to determine what the structural character of legality is in a given issue or set of issues that are before the court. They meticulously map out the web of logic that supposedly links an issue in contention with, say, the "meaning" of the Constitution. But whose "meaning" is this?

Is the meaning that of the people who wrote the Constitution? Or, is the meaning that of those who voted the Constitution into existence? Can we be sure that everybody who voted for the Constitution understood the document in the same way that the authors intended it to be understood? Or, is the meaning of the Constitution that of those government officials who subsequently interpreted the Constitution and, thereby, generated a wealth of documented conventions, practices and methods for doing politics?

Even more importantly, what relevance does the intentions of either: (a) the framers of the Constitution; or, (b) those who voted for the Constitution, or, (c) those who subsequently interpreted it, have for us today if those intentions don't: address our problems, meet our needs, or provide a direction that makes sense in the context of our current circumstances? Why should we be held hostage to what other people in another time believed or felt unless what they believed or felt resolves difficulties to the satisfaction of a majority of the people in the present?

Judicial decisions are, by necessity, narrowly focused in the sense that they are inextricably tied to the past. The precedents justices seek, the logic they attempt to uncover, the meanings they try to unravel have to be justified in terms of legal documents as intended, understood and meant by the people who generated those documents.

However, we can ask whether these historical actors were omniscient. Did they ever make mistakes? Did they subscribe to positions of political/economic philosophy that are unassailable with respect to the wisdom, insight and comprehensiveness to which such positions gave expression? Were they really clear in their own minds and hearts about what they meant or intended by these documents? Was there a unanimity of opinion, or even a general consensus amongst those actors as to what was meant, understood or intended? Can we be sure that justices have captured what those meanings, understandings and intentions were?

Even if, through a miraculous stroke of serendipity, we could get definitive, unambiguous answers to all of the foregoing questions, none of this really addresses the issue at hand: Is the law as determined by justices at all relevant to what is going on today? What requires that we adhere to what people thought, believed or were committed to in the past? Are we under a moral obligation to do so? Is it a legal obligation and, if so, what exactly does this mean? What force is it that requires people today to be bound to the past in the same way and sense in which the justices of the Supreme Court are tied to the past?

To say that we must follow the law because it is the law is both circular and evasive. Besides, law, per se, is not what binds us together. Law itself emerges from, presupposes and derives its authority from the underlying social contracts to which people have committed themselves. Law is absolutely empty without the existence of the underlying covenant that encompasses people's willingness to both place certain constraints on their own sovereignty as well as to extend certain degrees of freedom within which the sovereignty of other individuals may be developed and realized.

That law which is not rooted in the willing compliance of people to adhere to it and observe its requirements will fail. Similarly, that society which is not rooted in the willing compliance of people to establish a social contract that supports the sort of sacrifices, constraints and freedoms which laws require also will fail.

The courts are, in many respects, inherently incapable of addressing the issue of the social contract. The courts are incapable of addressing this issue because they are looking to the past for their answers, whereas the people of today are becoming increasingly disinclined to continue to accept the terms of the sort of antiquated social contract that underwrites the legal issues which defines the parameters of the jurists' world. The jurists are stuck in another world and time. As a result, they cannot address the political, cultural, sociological, philosophical, economic, religious and

psychological issues of today from anything but a narrowly conceived legal focus that is rooted in the past.

In effect, what the justices are saying is this: If you wish to continue to operate according to the conditions of the social contract of a given time and place, then you must do X, Y or Z. However, the structural character of the social contract should not necessarily be tied to how things were done in the past. The desirability of doing so depends entirely on the character of how and why things were done in the past and whether or not those ways of doing things have a capacity to arrange and regulate people's lives today in a manner that guards and enhances the quality of the individual and collective sovereignty of people today.

The social contract is a living, breathing, ongoing, dynamic entity. It should be capable of being revised, altered, and modified under a variety of circumstances that are not a function of legal considerations. Moreover, this transformational process should be done according to the discretion and judgement of the people who have to live with, and are responsible for honouring the condition of, that contract in the present.

Because the courts are lost in the past, they are not the proper venue for issues involving that contract. At best, they could serve as consultants who would provide expert opinion about what the social contract meant to people at a particular time and place.

Consequently, the mandate of the courts should not be extended to empower them to dictate to people of the present time that the latter must subscribe to the requirements of the social contract as understood by the people of the past. Moreover, the mandate of the courts should not be extended to permit them to generate interpretations of how the social contract was understood and intended by people of the past and, then, proceed to impose those interpretations onto the people of today.

The mandate of the courts should be restricted to ensuring that proper procedures are observed with respect to evidence, testimony, examination and general conduct of all participants, both before and during the trial process, as well as during the sentencing and award phases of legal proceedings. Anything within the context of legal proceedings that raises constitutional issues should be referred to either the Senate subcommittee or its appointed body (more on this in a moment) for dealing with such issues.

The Constitution and Social Contract

The immediate response of some, perhaps many, people to the foregoing position is that constitutional issues will become inconsistent at best and chaotic at worst. Such people may argue that the woof and warp of the Constitution are made of legal materials, methods and processes, or that the design of the Constitution necessarily is a legal one. Such people may argue that only the judiciary is capable of consistently and methodically identifying the nature of the problems inherent in the Constitution, or that only the judiciary is competent to deal with such issues.

Without in any way wishing to impugn the integrity of the members of the judiciary, in point of fact, the judiciary is really not competent to deal with constitutional issues. The judiciary is narrowly focused. They engage, analyse, evaluate and understand constitutional issues only from a legal perspective.

Yet, the Constitution is far more than a document with legal implications. It is a document that is permeated by, and rooted in, a wide variety of political, social, philosophical, emotional, religious, economic psychological and historical influences.

Justices are experts in the law. They cannot claim to be, nor can they be expected to be, experts in all these other spheres of influence that shape, colour and orient constitutional issues.

Furthermore, one would be making a potentially disastrous mistake to suppose that, with respect to all of these influences and forces that are entangled in constitutional issues, the only dimension which matters is that which gives expression to the legal perspective. For a long time, this legalistic assumption or bias has veiled and skewed thinking about constitutional matters. In effect, this assumption requires one to suppose that the legal approach or perspective is the only way of trying to resolve constitutional issues. Moreover, this assumption tends to force one to conflate the idea of a constitution with the idea of law. As such, the assumption is inappropriately reductionistic since it makes the Constitution a function of law when, in reality, law is a function of the Constitution.

The Constitution is the fundamental written expression of the social contract which establishes how people are to arrange their affairs in order to be able to protect, maintain, preserve, develop and realize their sovereignty as individuals, as peoples, as communities and as collectives of people and communities. Law comes into existence as an attempt to reflect certain dimensions of the structural character of this underlying agreement. Without the underlying agreement, law becomes empty, meaningless and a mere exercise in imposed, non-reciprocal, non-participatory power

arrangements which have absolutely nothing to do with democracy of any species.

Because the Constitution is an ongoing, dynamic, social, cultural, political, psychological dialectic of individuals, peoples and communities, law cannot possibly keep pace with the changing currents of constitutional issues. The law, relative to the Constitution, is static and backward looking, whereas the Constitution, relative to the law, is dynamic and oriented primarily to the present and the future.

The Constitution is linked to the past only in as far as the past contains the sort of values, practices and insights that may help us to resolve our problems today. Nonetheless, the people of the past have no right to place obligations upon the people of the present with respect to which, if any, values, practices or insights are chosen to assist the people of today in their search for sovereignty.

In effect, the courts are arguing that not only do the people of the past have such a right, but the people of today, as well as the people of tomorrow, are obligated to identify with, honour and actualize such a right. This argument does a great disservice to both the constitutional process as well as to democracy; for, not only does such an argument deny the people of today and tomorrow representation, it also denies them participation except on the terms and conditions stipulated by the people of the past.

As far as the issue of consistency is concerned (in which the claim is made that law is the thread of consistency which alone permits a coherent constitutional fabric to be sewn), there are certain realities which one ought to keep in mind. Justices, lawyers and law professors do not understand constitutional issues with anything remotely approaching consensus. There are areas of agreement, but the history of judicial interpretation is fraught with disagreement, reversals and fractiousness. The idea of legal consistency in constitutional matters is more akin to acts of prestidigitation than it is to an expression of some incontrovertible truth. As is the case with the weather in Canada, so too in legal treatments of constitutional issues, all one has to do is wait long enough and such treatments will change.

What links the people of today with the people of the past is not law or consistency of law. The link of consistency is that we both have been confronted with the problem of the social contract as that affects issues of sovereignty.

What links us with the people of the past are not judicial pronouncements, but the common desire to have the power and opportunity to help shape our constitutional destinies. The people of the past made their own choices about how they would go about undertaking this shaping process. The

people of today also must make their own choices, irrespective of whether these choices reflect, to some extent, the values of the people of the past or divert, to some extent, from those values. Whatever the character of their choices may be, the people of today are better placed than the people of the past, with more up-to-date, intimate knowledge and understanding of what constitutional choices will be most reflective of, consistent with, and consonant in relation to, the needs, problems, pressures and issues that exist in the modern world.

The Constitution Act of 1982 was a disaster because the people involved in constructing that Act were caught in the past and holding the rest of the country hostage to the past. As a result, the main actors in the formation of the Act attempted to resolve modern problems and issues with antiquated methods, ideologies and processes. The Constitution Act of 1982 was, and is, a failure because the people responsible for that Act were using representational democratic procedures in a Machiavellian manner when what was called for was a participatory style of democracy that was rooted in reciprocity, duties of care and a sharing of the responsibilities for shaping our Constitutional destiny. The Constitution Act of 1982 was a failure because the people who bequeathed the Act upon posterity failed to address the fact that sovereignty is not just a matter of intergovernmental relations and the distribution of power between federal and provincial governments. Sovereignty is, first and foremost, a matter of people.

Governments exist due to the largesse of the people. Governments exist in order to assist individuals, peoples and communities to manage their social contract, one with another, in terms of how the interactions of people affect their respective sphere of sovereignty.

Unfortunately, the principle actors of the Constitution Act of 1982 somehow became confused and thought that sovereignty was the preserve of governments only. Indeed, even the one area of the Constitution Act of 1982 that purportedly dealt with the issues surrounding sovereignty of people as people—namely, the Charter of Rights—was undermined by the insistence of the political players that sovereignty was, by virtue of the notwithstanding clause, really a matter of governments, not people.

The reason for reconstituting the Senate along the lines suggested earlier is to re-establish the issue of sovereignty as primarily about individuals and peoples and only secondarily and derivatively about governments. The reason for reconstituting the Senate in the fashion previously indicated is to emphasize the fundamental necessity of providing opportunities and processes of participatory

democracy to complement processes of representational democracy.

Constitutional Forums

In keeping with the spirit of the proposed Senate reform and its emphasis upon the participatory aspects of democracy, the Senate subcommittee on constitutional issues would establish a number of constitutional forums across the country. This would include, perhaps, one forum for each of the provinces and territories, for a total of 12. However, in heavily populated areas, more than one forum might be necessary.

The forums would be made up of, say, thirteen people. Half of the people appointed to the forums would be women.

These people would be selected from a variety of areas of expertise—both professional as well as qualified "amateurs". These areas of expertise could involve business, labour, law, religion, science, psychology, mathematics, sociology, education, political sciences, philosophy, literature/arts and the media.

Those selected would serve tenures of three years in which, as with jury duty, their places of employment would have to hold open their jobs. In this sense, the places of employment as well as the individuals selected would be providing a community service.

The function of these forums is to hear cases involving disputes concerning the social contract as that contract is given expression in the Constitution of Canada after the Constitution has been rewritten to suitably reflect the themes of: sovereignty, rights, duties of care, participatory democracy, the principle of diversity of equality, a reconstituted Senate, a modified House of Commons structure (more on this shortly), the acknowledgment of the sovereignty of Native peoples, the principle of multiculturalism, and the transformed character of the election process. Almost all of these themes have been touched upon previously in this document.

The task of the forums would be to resolve disputes, complaints, problems and questions that arise in the course of day-to-day living. In a sense, these forums offer a process of binding arbitration concerning constitutional issues. Yet, they do so in an extra-legal context since the process, methods of investigation, styles of evaluation, theories of interpretation and so on that are employed will be rooted almost entirely in non-legal perspectives.

Evidence will be sought. Witnesses will be examined. Statements and depositions will be introduced. Arguments and cases will be made and questioned. But, all of this will be done from a variety of different perspectives which reflect the non-legal areas of expertise of the members of the forum.

The members of the constitutional forum have the responsibility of helping to work out the details and particulars of constitutional principles in the context of the present. Nevertheless, these decisions must be arrived at with an eye to the future as well. While later generations are under no obligation to accept the judgements of such forums, nonetheless, the members will be providing a great heuristic service to the community and nation if they can generate decisions that possess a lasting wisdom.

The Senate subcommittee for constitutional issues will have the task of managing and reviewing the conduct, performance and decisions of these forums, but the subcommittee will not be responsible for selecting the members of these forums. That aspect will be handled by the Senate subcommittee on government appointments. In addition, although the Senate subcommittee on constitutional issues is responsible for reviewing the conduct and decisions of the various forums, nevertheless, it has the discretion to bring under further scrutiny only those decisions that seem to leave certain problems unresolved or questions unanswered or which raise problems of consistency across forum decisions.

In the case of the issue of consistency, however, the measure of consistency will not be that of a self-sameness of rules in which one attempts to force a monolithic rule onto all situations irrespective of differences in those situations. Instead, the criterion of consistency will be a matter of the self-similarity of a principle as it is given expression in different circumstances.

As will be discussed in more detail in the section *The Quality of Tolerance and the Need for Guidelines*, a certain flexibility must be permitted in the way various constitutional forums arbitrate similar constitutional cases. At the same time, one of the tasks of the Senate subcommittee on constitutional issues will be to protect against the occurrence of too much flexibility. This will be accomplished by placing certain constraints on the degrees of freedom which are to be permitted to various constitutional forums that are arbitrating cases involving similar constitutional issues. Thus, while the judgements of these forums do not have to be self-same, one with another, they do have to exhibit a certain self-similarity within a set of boundaries or parameters that are to be determined by the Senate whenever the need to do so arises.

In disputes between specific provinces and the federal government, or in disagreements among provinces, or among municipalities and the provincial/Federal governments, or among different regions of the country, these sorts of problems would be handled initially by one or more of the constitutional forums. If, for example, an action were begun within a particular province against, say, the Federal government, one of the provincial constitutional forums would listen to arguments on the matter. A decision would be rendered by that forum, together with the reasoning on which that decision is based.

If any of the parties to the dispute were dissatisfied with the decision process and concomitant reasoning, such parties could launch an appeal to the Senate subcommittee on constitutional issues. The subcommittee would have several choices: (a) let the decision of the constitutional forum stand; (b) review that decision to determine if there were any procedural or evidential irregularities or omissions that could have altered the character of the decision; if substantial irregularities or omissions emerge during the review process, the matter is to be returned to the level of the constitutional forum, together with the subcommittee's recommendations for further deliberations; or, (c) initiate a new set of hearings under the auspices of a special intergovernmental constitutional forum that is designed to mediate and, if necessary, arbitrate disputes between provinces and the federal government, or between province and province, or between municipalities and the federal and/or provincial governments.

If choice (c) is made, then the Senate subcommittee has several more options once a decision is rendered by the special intergovernmental constitutional forum. First, the subcommittee can let that decision stand. Secondly, the subcommittee can review the special forum's decision in order to check for procedural irregularities and relevant evidential omissions. If such problems are uncovered, the matter would be sent back to the intergovernmental constitutional forum, together with recommendations for reconsidering certain aspects of the issue. Thirdly, once the second option has been selected and the intergovernmental forum has given a second decision (which may be the same as, or different from, the initial decision), the Senate subcommittee has the right to accept that decision or put the matter before the entire Senate.

If an issue should be debated within the entire Senate and voted on, then the House of Commons has the right to: (a) let the Senate vote stand; or, (b) discuss and vote on the issue. If option (b) is exercised, then the people of Canada have a right to seek a referendum on the matter.

In a referendum held under such circumstances, the people have the option of selecting from among four possibilities: (a) the position of the House; (b) the Senate's position; (c) the intergovernmental forum's decision; or, (d) the initial constitutional forum's decision. The choice would be yes or no with respect to each of these possibilities.

If the people did not show a two-thirds majority preference for any of the four alternatives, the issue would revert to the full Senate body for further discussion and a new vote. However, both this discussion and subsequent vote should make every effort to incorporate and reflect as much of the voting pattern displayed in the referendum as is possible.

The advantages of such constitutional forums are considerable. For example, they will be far more accessible to the community than is the Supreme Court. This is especially true in view of the fact that only lawyers are permitted to argue cases before the Supreme Court. In constitutional forums, on the other hand, people will be permitted, if not encouraged, to advance their cases by themselves or, if they wish, in conjunction with one or more consultants (who would be present on a volunteer only basis).

Moreover, the proposed forum approach likely also would be less intimidating and less inhibiting than courts since none of the formality of courts is to be used or encouraged. The emphasis would be on a serious informality.

Constitutional forums also could take a burden off already overburdened courts. At the same time, constitutional forums will not require complainants or participants to bear exorbitant legal costs since the forums would be conducted free of charge.

With respect to this latter point concerning costs, although the forums are to be run free of financial charges, all participants would be expected to pay some sort of a negotiated "fee". This fee would be paid by the individual through giving time to community service. Money could not be given in lieu of time. The only acceptable currency would be temporal. In addition, the temporal fee would have to be paid directly. It could not be delegated to a third party.

Hardship cases would affect the character of what fees are negotiated. However, such cases would not affect the fact and manner of how that fee must be paid—namely, by direct, undelegated, temporal service to the community.

None of the decisions of the forum would carry criminal penalties. On the one hand, forum decisions would result in the placing of enforceable constraints on the activities of certain people, or in providing added degrees of freedom for

those whose sovereignty had been breached in some unacceptable fashion.

On the other hand, sanctions could be levied in the form of compensatory fines or by requiring the individual to provide some sort of community service (e.g., providing volunteer help for the constitutional forum or during elections, referenda and recall activity) for a period of time. Such community service would be above and beyond the community service "fee" exacted from all forum participants on a negotiated basis.

In all of these cases, the emphasis and intent would be on finding ways of healing and restoring the social contract to a condition of balance where rights play off against duties of care in a more harmonious fashion than was the case prior to the arbitration hearing. However, if people fail to conform to the mediated/arbitrated decision of the constitutional forum, then, pending a review of the case by the forum, they could be faced with criminal contempt charges.

Principle of Civil Disobedience

Part and parcel of the responsibility of both the Senate subcommittee on constitutional issues, as well as the forums to which the former delegates authority, would be cases involving appeals to a principle of civil disobedience. Such appeals may be launched by people in the community as a defence with respect to certain criminal actions directed against them. In order to launch such an appeal, however, certain conditions must be met.

To qualify as a potentially defensible act of civil disobedience, the act cannot involve violence, physical injury or terrorism of any kind. In addition, the act cannot involve damage to private or public property, nor could it involve theft, extortion, fraud, prohibited sexual displays or illicit drug activity. Acts of civil disobedience concern acts that, on the basis of philosophical/religious principles, focus on intentional non-compliance with some provision of the rules and regulations that exist in society.

Generally speaking, the very nature of civil disobedience involves the violation of a law. When tried in court, the case often reduces down to whether or not the person did commit the offense. The reasons for doing so tend to be considered irrelevant or not germane to the evidential issues on which guilt or innocence is established, although such reasons may have some bearing on the kind of sentence given for the offense.

By appealing to the principle of civil disobedience before a constitutional forum, the individual has an opportunity to bring in the relevancy of the reasons or intentions underlying the action in question. Moreover, when such cases are heard by the forum, values, methods and perspectives would become activated which are more flexible and diverse than are allowed by the legal perspective. Nonetheless, if the constitutional forum should reject the individual's appeal to the principle of civil disobedience, then the individual stands trial for whatever infraction of the law that may have been committed by the individual.

The principle of civil disobedience is intended to provide a venue for permitting individuals, organizations, institutions, associations and governments direct opportunity to help shape and contribute to the structural character of the Constitution. By permitting individuals an opportunity, under certain circumstances, to be able to challenge the law, a recognized procedural means is established for breaking, where warranted, the circularity of legal thinking. Such thinking tends to be interested only in whether or not a law is broken, and not with whether or not justice is being done or with whether the law is a good one in the sense that the law enhances the quality of the social contract among people. The principle of civil disobedience provides individuals with direct access to the constitutional process, unmediated by judicial biases and preoccupations.

The Quality of Tolerance and the Need for Guidelines

One last point about the Senate subcommittee on constitutional issues and its appointed forums needs to be addressed. There must be a certain amount of willingness to tolerate, and make allowances for, a diversity of judgement from forum to forum with respect to similar constitutional issues. Just as municipal and provincial ordinances differ, respectively, from municipality to municipality and from province to province without everyone supposing that the Constitution, somehow, has been compromised in the process, so, too, leadway must be given to accommodate the likelihood that not every forum necessarily is going to reach the same arbitrated judgement about one and the same constitutional issues.

Democracy, at its best, is a study in experimental living. Individuals, organizations, peoples, institutions and governments all try things out in order to see: what works and what doesn't work; what brings piece of mind and what brings misery; what is of benefit and what is problematic; what is feasible and what is not practical.

Part of the responsibility of assuming duties of care, as a sort of fee that is exacted for enjoying the fruits of the social contract, is the willingness of all of us to accept, within limits, a certain amount of experimentation in our lives. Nonetheless, there is a big difference in our attitudes toward, and commitment to, duties of care when: (a) such experimentation is imposed on one as the result of some sort of authoritarian power play; and, (b) such experimentation becomes a matter of reciprocity and willing participation by virtue of the degree of control one has over the situation through a properly constructed Constitution.

In order to try to strike a happy balance among: democratic flexibility of experimentation; issues of sovereignty (both individual and collective); as well as the need for a certain degree of constitutional rigour, there should be a provision entitling the Senate subcommittee on constitutional issues to reserve the right to review various cases after a stipulated period of time. This period should be neither too long nor too short—perhaps a year. The cases which would be particularly appropriate for this sort of review process would be those in which an arbitrated judgement was given by one forum that conflicted, in some fundamental fashion, with the arbitrated judgement given by other forums when dealing with the same or a very similar constitutional issue.

If the nature of the constitutional issues involved were too critical, injurious or problematic to make waiting a year feasible, the Senate subcommittee could proceed to render a further arbitrated judgement. This review process could either: (a) endorse a given forum's judgement; or, (b) combine aspects from several forum judgements as a sort of constitutional compromise; or, (c) deliver an entirely different kind of arbitrated judgement.

When finally approved, this sort of arbitrated judgements would become guidelines or parameters within which the different constitutional forums would have to operate during the tenure of the Senate subcommittee. As such, these guidelines and parameters would serve to help delineate the arrangement of constraints and degrees of freedom that generate the constitutional framework out of which, and through which, the forums conduct their business.

At the same time, the constitutional forums should be entitled to make appeals to the principle of civil disobedience if they find themselves in fundamental opposition to the constitutional guidelines set down by the Senate. Under such circumstances, a hearing would be held before both bodies of Parliament, followed by a combined, free vote of conscience. A two-thirds majority would be required to carry a vote either in favour of the Senate's position or in favour of the forum's position.

If the people of the nation should be unhappy with the combined vote of both bodies of Parliament, then the people would have the option of calling for a referendum on the matter. Depending on circumstances, the referendum could call for: (a) a yes or no vote on the result of the combined Parliamentary vote; and/or (b) a yes or no vote on the Senate's position; and/or (c) a yes or no vote on the position of that constitutional forum which made the initial appeal under the principle of civil disobedience. In this way, the referendum could make clear how the people felt about a given constitutional issue.

However, as indicated previously, if the referendum does not establish any clear-cut, two-thirds majority preference of the electorate, the matter reverts to the full Senate body for additional deliberation and disposition. In addition, the discussion and vote of the Senate must reflect as much of the character of the referendum vote as possible. In order to do this properly, the Senate body may have to employ a variety of post-referendum polls as a means of probing the significance and meaning of the referendum vote.

The results of such a referendum, or of the full Senate's post-referendum vote, would be the final arbiter in all constitutional matters until the next referendum held on that issue. Moreover, such referenda would serve to help spell out some of the constraints and degrees of freedom within which the House of Commons, the Senate and the constitutional forums would have to operate.

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IV. SOCIAL CONTRACTS: A FEW, BRIEF CASE STUDIES

Diversity, Equality and the Social Contract

The willingness to tolerate a certain degree of diversity in the constitutional process is not a new practice or concept. In point of fact, Canadians have displayed such a willingness with respect to the manner in which they have tolerated, over the years, various courts giving differential rulings on similar, or the same, constitutional issues, as the compositional character of the philosophies of law characterizing the members of these courts have shifted.

Moreover, not all criminal courts are carbon copies of one another, as far as, what might be termed, their "styles of conduct" are concerned. The same is also true of civil courts.

More specifically, that different judges run their courts differently is a fact of life. Each judge has his or her own set of expectations about how lawyers will comport themselves in the judge's court. Each judge has his or her own set of do's and don't's within the court. Each judge has his or her own set of criteria for determining what they will and will not permit in his or her court.

Some judges run on a short fuse; others are more forbearing. Some judges are willing to provide more leniency and flexibility in the kinds of motions they are willing to entertain and under what circumstances; other judges are less flexible. Some judges are more biased than are other judges. Some judges are more stringent in the sentences they give for particular crimes; other judges are less stringent in this regard for the same sorts of crimes.

These differences lead to self-similar, rather than self-same, activity from court to court. In other words, these differences reflect the exercise of discretion which is extended to the judges. As long as the exercise of such discretion does not transgress beyond certain procedural lines, the diversity of conduct is tolerated.

Lawyers also introduce an element of diversity into legal proceedings. Gathering pre-trial evidence, processes of discovery, introduction of evidence, questioning of witnesses, cross-examination, presentation of their client's cases, making objections, seeking motions, and summation are all skills that a lawyer needs. Not all lawyers have these skills, or, at least, do not have them to equal degrees. However, as long as lawyers do not exceed certain minimum boundaries of conduct, practice and skill that mark the realm of malpractice, then such diversity of capacity and ability are tolerated by the legal community.

When one combines the diversity of judges with the diversity of lawyers, together with a soupçon of diversity in juries, one gets a diversity of treatment for those who are brought before the courts in civil and criminal matters. To claim that everyone gets the same treatment within the judicial system is a myth that is not true now, was not true in the past, and will not be true in the future.

Furthermore, these differences in treatment are not trivial, peripheral issues. They lead to real consequences in the lives of people ranging from: whether the individual will win or be convicted in his/her case, to whether or not the individual will be sentenced, and, if so, how long the sentence will be. However, such differences of consequences and treatment often are pushed into the background in the attempt to argue that the judicial system constitutes a uniform way of dispensing justice and a uniform way of providing for equality of treatment before the law.

As envisioned from the constitutional perspective advocated in the present document, diversity of judgement need not be a liability as long as certain conditions are satisfied. First of all, people must have a real opportunity to participate in the judgement process. This means that the process must be: accessible, inclined to participatory modes of interchange, inexpensive, and responsive to the needs and concerns of individuals.

Secondly, there must be considerable flexibility in the way the judgement process unfolds. For rules of diversity to be an asset, then the individual must be provided with a spectrum of alternatives from which to choose the one(s) that are most resonant to the individual's circumstances. Fairness does not necessarily mean that everything is done the same way, but it does mean that everything which is done will satisfy criteria that help bring rights into line with duties of care. Circumstances vary from place to place, and the balance necessary in one place may not be the sort of balance necessary in some other locality.

Thirdly, the very fact of the existence of diversity in the judgement process must be brought to front and centre stage as a focal issue, rather than as a background issue from which we try to hide or which we try to deny altogether. By being aware of diversity as an issue, we stand a better chance of finding ways to countervail its potentially adverse affects.

Fourthly, there is nothing necessarily intrinsically wrong with the idea of competing systems of justice, as long as people are happy with the sorts of choices and consequences that those competing systems may offer. One of the truly ironic and intriguing aspects of Canadian history is that a Parliamentary and judicial system which has been as concerned, over the years, about promoting and protecting the principle of open and fair economic competition should be so resistant to the idea of competitive fairness in the realm of justice.

The traditional defense for the aforementioned resistance is that our approach to issues of justice and law must be monolithic in character or else we will not be able to provide equality of treatment in different cases, and, surely, so the argument goes, equality of treatment is one of the cornerstones of dispensing true justice. Whether or not equality of treatment is a necessary condition for justice, the fact is, as indicated previously, that if one means by the idea of "equality of treatment", sameness of treatment, then such equality does not exist in Canada, nor has it existed in the past. Indeed, given human variability, one well might question whether equality of treatment—when construed as sameness of treatment—is either feasible or even possible.

On the other hand, if people are provided with a number of competing perspectives concerning the idea of justice, and if they are aware of the constraints and degrees of freedom associated with each of these alternatives, and if they are aware of the upside and downside of these alternatives, as well as the strengths and weaknesses of such alternatives, then let the people make their own choices. The important considerations are: (a) that each of the alternatives is a fair process; (b) that a person is prepared to accept the judgement of such a process, irrespective of whether the judgement will turn out in their favour or against it; and, (c) that a person feels their judicial system of choice is reflective of, or congruent, with his or her sense of what justice involves.

Just as is the case with other areas of competition, competition in the area of the judicial system could lead to a heuristically valuable process of cross-fertilization that generates improvements in the respective systems of justice. However, even if there were no process of cross-fertilization, the quality of sovereignty of both individuals and the collective would be enhanced through the diversity of judicial styles which permit selecting the one that was nearest to one's sense of justice.

Thus, if Native peoples have a totally different sense of justice than do, say, English or French Canada, how could anyone feel that one would be justified in imposing on the Native peoples a system of justice that is alien to, and in conflict with, values, beliefs and practices in which the understanding of Native peoples' understanding of justice are rooted? Only the worst, most virulent sort of ethnocentrism could be sufficiently deluded to suppose that such gross intrusions into, and abuses of, another people's sovereignty could be acceptable.

Similarly, if the people of a given province believe that, under certain circumstances, the death penalty is warranted—that the death penalty gives expression to one of the facets of justice, then what arguments are to be invoked which can be shown, to the satisfaction of one and all, that such a conception of justice is mistaken? One of the truly remarkable aspects of the House of Commons' free vote of conscience on the death penalty is that the result was in opposition to virtually every Canadian poll that had been taken leading up to that vote. The vast majority of people in Canada wanted the death penalty, but the people's conception of justice conflicted with the sense of justice of those members of the House of Commons who voted against retaining the death penalty.

The deciding factor was not necessarily who was right or who had the better concept of justice. The deciding factor was who had power, and, in the case of the death penalty

vote, the people were powerless. A small group of people were able to impose their sense of justice on millions of people who had a different conception of justice.

The concept of a social contract does not necessarily mean that each individual signs the same standard contract with some mythical, abstract entity called society. The social contract encompasses the entire realm of dialectical, dynamic negotiations between, and among, individuals. These constitutional negotiations establish the spectrum of constraints and degrees of freedom that are to regulate our handling of the issue of sovereignty. There is nothing in the dialectic which demands everyone's contract be the same. As long as the structural character of the social contract is such that it permits alternatives and that people have a right to select from among these alternatives, then the social contract is fully capable of handling, among other things, diverse approaches to the manner in which justice is implemented.

Quebec and Sovereignty Association

A sufficiently sophisticated social contract also is fully capable of dealing with the idea of sovereignty association which is being sought by many people in the Province of Quebec. In the experimental spirit that should form an integral part of the democratic process, there is enough fluidity and flexibility to entertain provisions for a variety of political/social arrangements. The kinds of arrangements which are possible are limited only by our failure to come to grips with the structural character of the principles involved in sovereignty and participatory democracy.

In effect, there is a strong current within Quebec which wishes to run an experiment in democracy. There are all kinds of opinions about what the short-term and long-term effects of such an experiment would be for both the people of Quebec as well as for the people in the rest of Canada. The truth of the matter is, however, that no one really knows. People have formulated their null hypotheses, but only real, live data has a chance of providing possible answers to this debate.

If Quebec establishes some sort of sovereignty association with the rest of Canada, and if that process should work well or moderately well for the people of Quebec, then the rest of Canada should be happy that things have worked out for Quebec. Moreover, if the experiment works out well, there may be valuable lessons in the results of that experiment for the rest of Canada, in terms of how things might be done differently in other parts of Canada.

If, on the other hand, the experiment does not work out well, then steps should be taken to assist the people of Quebec to enhance the quality of their sovereignty in the post-experimental context. Yet, such assistance does not mean that some arrangement should be arrogantly and contemptuously imposed on Quebec. Instead, a new experimental programme must be established that will display compassion, empathy or willingness to accommodate Quebecers, within negotiated limits, according to their needs in conjunction with the needs of non-Quebecers. The active principle should be a spirit of generosity in which there is a reciprocal eagerness to see one another enhance our respective sovereignties.

One must understand that Quebec may be on the verge of stepping into the unknown. They are taking a risk, but it is a risk that carries potential benefits for people beyond the boundary of Quebec. This is so because, whether the experiment works or it doesn't work, Canadians as a whole will have gained useful knowledge and understanding about the process of democracy.

All Canadians have a duty of care to one another. This means that, as far as the people outside of Quebec are concerned, they should be prepared to lend constructive assistance to the people of Quebec in ways that will permit the latter people to gain autonomy over their lives in a manner that reflects, both as individuals and as a people, the orientation of the Quebecois to the idea of sovereignty.

If the people of Quebec are willing to run a risk, then the rest of Canada should attempt to find ways of helping the people of Quebec to minimize those risks. At the same time, the people of Quebec need to give some serious consideration to establishing various precautionary measures that will serve to minimize their own risks in their possible venture, as well as help minimize the risks that the rest of Canada may be willing to run in order to help Quebec in our collective experiment in democracy.

One way of minimizing those risks for both Quebecers and non-Quebecers is to start with some intermediate position between the present situation and full-fledged sovereignty association. For example, instead of seeking provincial control over some twenty-two areas that are presently under federal jurisdiction (as has been suggested in several reports), why not start out with seven or eight such areas? Because so many unknown variables are entangled in the proposed experiment, Quebec's long-term and short-term interests may be best served by running a small-scale experiment before contemplating a more massive project.

Another way of helping to minimize the risks is to build a review process into the proposed undertaking. In other

words, if the people of Quebec decide to pursue the experiment of sovereignty association, let the people of Quebec sit down with the rest of the people of Canada after, say, four years in order to review the situation. The review process should be geared toward looking at both the successful aspects as well as the not-so-successful aspects of the process of sovereignty association. It would be an opportunity for both sides of the experimental set-up to make adjustments of a reciprocal nature that would be mutually beneficial. Such a review process could continue on a regular basis.

The duty of care principle, however, is a two-way responsibility. Just as the rest of Canada has a duty of care to help the people of Quebec enhance the quality of their sovereignty, the people of Quebec have a duty of care toward other peoples of Canada. Therefore, Quebecers have a responsibility to lend constructive assistance to other peoples in order to help those peoples enhance the quality of their respective sovereignties. In this regard, there are three issues which immediately come to mind.

First, if the people of Quebec enter into some form of sovereignty association, they are not free to do whatever they like with respect to Native peoples. As indicated elsewhere in this document, Native peoples are now, and always have been, a sovereign people or group of peoples. No one has had the right to extinguish that sovereignty, irrespective of whether that act is done in the name of some monarch or it is done in the name of the government of the Province of Quebec. Sovereignty association is not the private preserve of the people of Quebec, nor are they the only ones who qualify as a special and distinct society.

Extending a duty of care toward the sovereignty of Native peoples in Quebec means that the people of Quebec are going to have to make some decisions that will be as painful for them as will be the decision by the rest of Canada to let the people of Quebec explore the world of sovereignty association. If the people of Quebec want powers of immigration, unemployment insurance, energy, regional development and environment transferred from the federal government to the jurisdiction of the Province of Quebec, then the people of Quebec are going to have to be prepared to transfer the same power to the Native peoples in their province. As someone has once said, what is good for the goose is good for the gander. Thus, this means, among other things, that the entire James Bay project is going to have to be reassessed since it intrudes on the sovereignty of the Native peoples in, among other things, areas of energy, regional development and environment.

A second issue that arises with respect to the people of Quebec extending a duty of care to other people of Canada

concerns the non-Francophone people of Quebec. Those peoples are entitled to an arrangement in the social contract which will provide them with guarantees that protect and enhance the quality of their sovereignty. While such non-Francophone peoples may not want control over all of the sorts of powers that the Francophone people of Quebec may want transferred to the province, and while such non-Francophone peoples may be quite content to let the Francophone majority go about arranging provincial sovereignty in a way that is most consonant with the special and distinct characteristics of Quebecois society, nevertheless, such non-Francophone peoples are owed a duty of care by the Francophone majority. This duty of care requires the Francophone majority to be sincerely committed to constructively helping the non-Francophone minorities to establish a form of sovereignty that is most consonant with the cultural characteristics of those non-Francophone minorities.

The third issue which emerges in the context of working out the Quebec side of the duty of care relationship with the rest of Canada concerns the Francophone people residing elsewhere in Canada. Is the province of Quebec going to abandon those people, or is the province prepared to offer a variety of services in an outreach programme that is directed toward helping those people retain their distinct and special orientation toward their own sovereignty as Francophone people? Although the rest of Canada also has a duty of care to extend to the Francophone people living outside of Quebec, do the Francophone people of Quebec feel that a duty of care is owed to the Francophone people residing outside of Quebec only by the non-Francophone people of Canada?

One possibility does suggest itself with respect to the duty of care Quebecers owe to the Francophones outside of Quebec. An outreach programme might be established that would bring Francophone communities outside of Quebec under the provincial jurisdiction of Quebec.

Such an outreach programme would be administered, staffed and operated entirely in accordance with the specifications of the people of Quebec. However, the programme would be funded by Federal money, together with money from the provinces in which such Francophone communities existed. By underwriting the costs of this sort of outreach programme, the Federal and provincial governments would be fulfilling, in part, their own duty of care to the Francophone communities outside Quebec.

Some people may wish to argue that by transferring certain federalist powers to Quebec, one is destroying Canadian identity and unity, thereby reducing Canada to, in the words of one observer, little more than a post office. The defining

essence of Canadian identity and unity is not federalism, nor is it provincialism, nor it is a combination of federalism and provincialism. The essence of Canadian identity and unity is the dialectic between the democratic process and the issues surrounding sovereignty. By permitting the people of Quebec to change the character of the dialectic in a variety of ways, through something called sovereignty association, Canadian identity and unity will not be affected in the least. Such a move would simply be another chapter in the history of how we, as Canadians, have attempted to handle the many problems which are generated when the democratic process engages the phenomenon of sovereignty and vice versa.

As suggested previously in this document, neither monarchy, federalism, Via Rail, the National Film Board, the Maple Leaf Flag, CBC, the National Anthem, nor any other symbol or institution is what lies at the heart of Canadian identity and unity. What lies at the heart of these two cornerstones of our nationhood is our willingness to assist one another to seek our respective sovereign destinies through a democratic process. Everything else may pass away or fall into disrepair, but as long as we democratically permit one another to struggle toward those arrangements of sovereignty which are reciprocal and mutually beneficial, then Canada remains intact, and we will continue to know who we are as a collection of peoples.

A further item concerning the issue of Quebec sovereignty association remains to be touched upon. This item actually reinforces the nature of balance which needs to be sought between the centralist/federalist tendencies in the country and the decentralizing tendencies in Canada.

More specifically, if the people of Quebec were to take the route of sovereignty association, this would be counterbalanced by a Senate reconstituted along the lines suggested previously in this document. Nowhere would this countervailing function be more in evidence than in relation to the Senate subcommittee on constitutional issues and the concomitant constitutional forums which are to be implemented in the provinces.

Constitutional forums constitute an intriguing, complex and flexible mixture of centralizing and decentralizing currents. The centralizing aspects of these forums will link the people of Quebec in an intimate, if not inextricable, manner with the rest of Canada. At the same time, the decentralizing facets of the constitutional forums will introduce themes into Quebec society that will both place constraints on, as well as give degrees of freedom to, the people of that province in ways that the provincial government will not be able to control. As a result, the forums have the potential for enhancing the quality of sovereignty of all the peoples of Quebec, as well as the rest of Canada.

Before leaving the topic of sovereignty association in relation to Quebec, one further observation seems warranted. Many people in Quebec have become so preoccupied, if not consumed, by the issues of sovereignty association, separation and independence, that many individuals have permitted these issues to overshadow a fundamental reality.

There will be only one difference between a pre-independence (or pre-sovereignty association) Quebec and a post-independence (or post-sovereignty association) Quebec. This one difference concerns the names of the people who will have control of the province.

In neither case (i.e., before or after) will the people have effective, meaningful access to unmediated power. In neither case will the people of Quebec have gained real sovereignty and autonomy over their lives. In neither case will the people be permitted, except through elections, to participate in the decision process. In neither case will the people of Quebec have a fundamental hand in directly shaping the constitutional process that will govern the life of the province. In neither case will the destiny of the people's sovereignty be in their own hands; rather, in both cases, that destiny will be shaped by politicians who have their own agenda—an agenda that will be beset by problems if people are permitted real participatory power.

In short, independence, or sovereignty association, of whatever political character one cares to choose, does not address the critical problems of sovereignty unless that mode of association provides the people with a variety of alternative paths through which to pursue, protect and enhance that sovereignty—alternatives that are rooted in a rigorous, participatory methodology and not just a representational process. By defining oneself solely in terms of the presuppositions and properties of the separatist/independence/ sovereignty association dialectic among different levels of government, one lets democracy of a more substantive sort slip through one's hands. This latter democracy is a function of people, not governments, in which the latter serve the former and not vice versa.

Religious Freedom: Some Problems

Previously, various aspects of the constitutional crisis concerning the Native peoples and the people of Quebec have been addressed. These sorts of issues are well known to Canadians. Indeed, much of the talk which is devoted to the current crisis usually focuses on these two peoples. However, there are others in Canada whose needs and problems must be taken into consideration if a revamped Constitution is to serve all Canadians.

For example, although many different ethnic groups and races are represented within Islam, as Muslims—as those who follow the Islamic religious tradition—all these various ethnic groups and races are one people. As a people, Muslims feel there are a number of ways in which their reality as a people is marginalised, if not denied, by the present constitutional arrangement.

To begin with, there is the question of religious freedom. While Canada prides itself as a nation in which, theoretically, individuals are free to commit themselves, if they wish, to a religion of their choice without any interference from the government, in practice this is not always the case.

Religion is not just a matter of having places of worship or having particular beliefs or values. Religion is also a matter of putting into practice what one believes, as well as acting in accordance with the values one holds in esteem. Moreover, these beliefs and values are not meant to be activated only when one enters a place of worship and switched off when one leaves that place of worship. Religious beliefs and values are meant to be put into practice in day-to-day life.

In Canada, there is said to be a separation between church and state, or temple and state, or mosque and state. This separation is intended to curtail the possibility that people in power may try to impose a certain kind of religious perspective—namely, their own—onto the citizens of the country, irrespective of the wishes of those citizens.

What, in fact, happens, however, is that government officials either: (a) use a variety of strategies, diversionary tactics and Machiavellian manipulations to camouflage their religious prejudices; or, (b) wield a set of non-religious biases in order to place obstacles in the way of, as well as impose constraints upon, the way one can pursue one's religion of choice. Although, in the latter case, the people in power claim that they are being neutral with respect to religious beliefs and practices, in reality there is a huge difference between being neutral and being oriented in an anti-religious manner.

Being neutral in matters of a religious nature means, to be sure, that one does not favour one religion over another. On the other hand, being neutral also means that one does not favour a non-religious perspective over a religious perspective, or vice versa.

Neutral governmental decisions should establish constraints and degrees of freedom within the community that are based on a consistent principle (or set of principles). Such a principle should be geared toward helping people in general—irrespective of whether these people have a religious or non-religious orientation—to work toward enhancing the quality of their respective sovereignties while

balancing considerations of rights and duties of care for individuals as well as the community as a whole.

Unfortunately, what happens in practice is that many governmental authorities, elected officials and justices often tend to interpret the idea of separation of state and religion to mean that a non-religious, rather than a neutral, perspective should be adopted in interpreting law, policies, programmes, directives and the Constitution. This is the case, despite the fact that the Constitution Act of 1982 clearly states Canada is founded "upon principles that recognize the supremacy of God". In reality, if any governmental official or jurist actually made a decision based on an articulated principle which recognized the supremacy of God, that individual would wreak upon himself or herself the collective wrath of the gods and idols of secularism who would be exceedingly jealous of such supremacy.

No jurist or government has ventured forth with sufficient courage to delineate, in a legal opinion or in government policy, just precisely what is meant or entailed or encompassed by the notion that Canada is founded "upon principles that recognize the supremacy of God". They have not said what such principles are; nor have they said what it means for such principles to "recognize" the supremacy of God; nor have they said what the ramifications of such recognition and supremacy are; nor have they said what they mean by God. In fact, almost every decision the courts and governments have made virtually ignore such questions, problems and issues.

In effect, the opening words of the Canadian Constitution, the single most important document in Canadian society, are devoid of official meaning and have no explicit, official role or function in determining government policy or judicial decisions. To the extent that such constitutional words have any role at all, they do so in the dark recesses of unstated assumptions, biases and predilections that shape, colour and orient the decisions made by officials—decisions that frequently have prejudicial consequences for the members of minority religions or for the members of majority religions with whom the officials disagree or for whom such officials hold antipathy.

The realm of education gives expression to just one facet of the aforementioned biases. Education should not be just a means to a job. Furthermore, education should not be a tool of assimilation as long as the meaning of "assimilation" requires individuals to submit themselves to someone else's imposed conception of sovereignty, identity, commitment and truth.

Becoming a loyal subject of Canada has nothing to do with being assimilated into some sort of pre-fabricated, monolithic,

standard set of assumptions, values, beliefs, commitments and practices which public education is, among other things, intended to promote. Supposedly, such a monolithic process constitutes an allegedly unifying social and political medium. Yet, one can be taught values such as freedom, rights, democracy, social responsibility, justice and multiculturalism without going to public school and without presupposing that everyone must engage these topics in precisely the same way.

On the other hand, public education cannot teach, say, a Muslim child about how to be a good Muslim. In addition, public education cannot actively assist a Muslim child to establish an Islamic identity or to adopt an Islamic way of life. Public schools cannot do this because they have virtually no expertise in, or understanding of, what Islam involves. They do not teach Arabic or the Qur'an or the *Sunnah* (practices) of the Prophet Mohammad (peace be upon him); nor do they teach Shariah (Islamic Law); nor do public schools have the capacity to help the individual learn how to put all of this into practice on a day-to-day basis.

Muslims are told, however, that such educational topics are not the responsibility of the public education system. Such issues are the responsibility of parents and must be done at night or on weekends or during the summer. Consequently, a supposedly neutral state has made it a matter of law, practice and convention that the public education system, despite being funded by Muslim tax money, cannot accommodate an Islamic education.

Muslims are free, of course, to begin their own educational system, but they are not permitted to have access to the taxes which they contribute to the government in order to be able to use that money for the purposes of religious education. Thus, Muslims—and this is also true of Jewish, Hindu, Buddhist, Sikh, Native Peoples and Protestant Christians—must bear a special burden of paying twice if they want an education that reflects the values and practices of their religious tradition. The Catholic community, on the other hand, is permitted, more so in some places than in other places, to have access to public money to promote an educational process that does reflect that community's religious values and practices.

That Catholics should be entitled to educate their children according to the values and religious beliefs of their tradition is not in dispute. What does need to be critically examined is the decision process which singles them out as being, when compared with all other religious traditions in Canada, the only ones entitled to such public support.

Apparently, to paraphrase an insight made by George Orwell in another context nearly 50 years ago, in the barnyard of

Canadian democracy, all animals are equal, but some are more equal than others. Those that are more equal than others enjoy the opportunity to pursue their religion of choice and learn about their religion of choice in ways that those who are 'sort of equal' do not enjoy the opportunity to do.

Such inconsistency is indefensible: morally, philosophically and logically. It is not neutral. It is discriminatory. It does not reflect the spirit of multiculturalism.

The aforementioned sort of inconsistency clearly points out that the religious freedom of a great many people in Canada, Muslims included, has been seriously circumscribed and inhibited. This is the case since the powers that be have taken something of fundamental importance to the pursuit and practice of religion—namely, education—and placed obstacle after obstacle in the path of certain peoples and communities of Canada with respect to their ability to pursue their religion of choice freely. These obstacles prevent many, if not most, religious minorities in Canada from having access to anything but a curriculum of subjugation to a preconceived master plan of assimilation. As a result, these people and communities are required either to: (a) submit to the values and practices of public education which are often antithetical to religious values and practices; or, (b) pay twice for the kind of education they want.

Education is an area that is very amenable to the implementation of the previously discussed principle of diversity of equality. Catholics, Protestants, Jews, Muslims, Sikhs, Buddhists, Native peoples, atheists, agnostics, humanists, and so on, all have their own ideas about what constitutes an appropriate educational process. The equitable way to handle this multiplicity of beliefs, values, interests, practices, and goals is not to impose a monolithic educational system on everyone and, thereby, treat everyone the same way by marginalizing, ignoring and denying, to an equal degree, the reality of everyone's perspective. The equitable solution is to provide people with educational alternatives from which they can select the one which is best suited to their needs, circumstances, and values.

In short, equality is best served by means of offering a diversity of alternatives. Educational programmes do not have to be the same to be equal. The conditions of quality are satisfied when different educational systems meet the needs and reflect the values of the communities being served, respectively, by these different educational systems.

One may never be able to achieve a perfect fit between the diversity of educational alternatives which are offered and the diversity of values which exist in the community. Nevertheless, one needs to struggle in the direction of

providing more flexibility and alternatives than presently exist.

Family and Personal Law

Another example of how Muslims are prevented from being able to realize the promise of religious freedom concerns the area of Muslim family and personal law. This area covers issues such as marriage, divorce, separation, maintenance, child support and inheritance.

In Islam, Muslims are required to follow a set of constraints and degrees of freedom that have been established in Divine Law. Following Divine Law is at the heart of what being Muslim means. Muslims are not free, according to their likes and dislikes, to pick and choose what they will and will not do with respect to Divine Law. Divine Law is inherent in, and presupposed by, the practices of the Islamic religious tradition. Muslim personal/family law is an integral part of such Islamic practices.

Muslims in Canada have no wish to impose their perspective, or way of doing things, on other Canadians. In other words, Muslims are not requesting that the non-Muslim people of Canada adhere to our practices, beliefs and values concerning Muslim personal/family law. Such an imposition would be an intrusion on the sovereignty of the non-Muslim people of Canada.

As indicated many times in the foregoing pages, however, sovereignty is a function of reciprocity in which there is a dynamic balance between rights and duties of care. This balance should shape our interactions with respect to one another. When such balance is missing, then steps must be taken to re-establish reciprocity. In this regard, Muslims feel that such an imbalance does exist in Canada in a variety of areas, one of which deals with the issues surrounding the implementation of Muslim personal/family law.

Many things in Canada are permitted as long as the people are consenting adults. Presumably, therefore, Muslim personal/family law, which also involves the actions of consenting adults, is not at all inconsistent with some of the basic philosophical principles at work in Canadian society. Nonetheless, the likelihood of consenting Muslim adults being permitted to arrange things in accordance with the Islamic principles underlying Muslim personal/family law is beset by a variety of problems.

Chief among the difficulties which attempts to establish Muslim personal/family law may encounter in Canada is the

resistance of the legal and political community. After all, the argument might go, there already are programmes, laws, procedures and policies in place for handling matters of marriage, divorce, separation, maintenance, child support and inheritance. These programmes, laws, and so on have evolved over a period of time and represent the way things are done in this society. Muslims who live in this society, therefore, are obligated to accommodate themselves to the existing way of handling these issues.

The problem with this sort of argument is that it totally ignores the issue of religious freedom to which Muslims are entitled. As previously indicated, for Muslims, religion is not just an abstract set of ideas that are to be taken out on special occasions and dusted off as Muslims indulge themselves in some sort of nostalgic ritual in homage to the past. Religion must be lived; it must be put into practice; it must be followed and adhered to with one's actions.

Muslim personal/family law is not an arbitrary afterthought that has been tacked onto Islamic religious beliefs and practices. Such law is rooted in, and derived from, the two most basic sources of Islamic law: namely, (a) the Qur'an (the Holy Book of God's Revelation); and, (b) the practices and teachings of the Prophet Muhammad (peace be upon him) who is accepted by all Muslims as the one who was most intimate with, and had the most profound understanding of, and commitment to, God's plan for the Muslim community.

Repeatedly, the Qur'an enjoins, encourages and instructs Muslims to follow the Qur'an and the example of the Prophet Muhammad (p.b.u.h.). Again and again, Muslims are informed in the Qur'an that one cannot consider oneself a Muslim—one who submits to the command of God—unless one adheres to the guidelines, counsel, principles, beliefs and practices that are related to human beings through the Qur'an and the Prophet Muhammad (p.b.u.h.).

Part of the guidelines, counsel, and principles to which Muslims must adhere are the spectrum of constraints and degrees of freedom which give expression to Muslim personal/family law. Consequently, if Muslims are prevented from implementing such law, they are prevented from freely pursuing and committing themselves to the Islamic religious tradition, since adhering to the various aspects of Islamic family and personal law are all acts of worship.

If one cannot worship God as one is required to do by the tenets of one's tradition, then severe, oppressive constraints have been placed upon one's capacity to exercise religious freedom. Such constraints on, and impediments to, the exercise of religious freedom are especially oppressive in the case of those religious practices that do not require sacrifices

from, or place any hardships on, people outside or within the given religious tradition.

In point of fact, the implementation of Muslim personal/family law would not entail sacrifices or hardships for anyone. This would be the case irrespective of whether one were considering Muslims or non-Muslims.

There may be people within the Muslim community who are enamoured with the Canadian way of dealing with and arranging issues of family/personal law. Those people should be left free to choose whatever they believe to be in their best interests.

There are many other people in the Muslim community, on the other hand, who feel that their sovereignty as human beings, in general, and as Muslims, in particular, has been intruded upon, undermined and marginalised through being prevented from following the requirements of their own religious tradition.

The irony of this situation is that the principles, methods, values and safeguards inherent in Islamic family/personal law are every bit as sophisticated as anything in the Canadian legal system. In fact, many aspects of Canadian law dealing with issues of personal/family law have begun, only recently, to put into practice what has long been an integral part of Islamic law. For example, the easing of restrictions with respect to divorce, which have been introduced into Canadian law just a few years ago, have been a part of Islamic law for more than 1400 years.

One also might maintain that, in many ways, Islamic personal/family law is more flexible, accessible, simple and progressive than are its Canadian counterparts. For instance, human beings have both strengths and weaknesses, and, in addition, human circumstances are quite variable and diversified. Rather than impose one system of law on everyone, Islam provides people with a variety of alternatives from which to choose the one which best meets the individual's needs and inclinations. Generally, this is not the case in the Canadian legal system, although Quebec does practise a different brand of civil law based on principles drawn from a French/Roman code of law.

Finally, many of the things for which people in the feminist movement have been fighting for many years now have been regular features of Islamic personal/family law for more than eleven hundred years. Thus, the sovereignty of women is a principle which is firmly established in Islam, and such sovereignty encompasses a great many entitlements that have surfaced only recently in North America.

For example, the right of women to be able to specify, by way of contract, precisely what arrangements are to be observed by the man during a marriage has been available to Muslim women since the early part of the ninth century. Only people's ignorance of Islam—including, unfortunately, far too many Muslims themselves—has made this truth appear otherwise.

Issues of sovereignty and religious freedom aside, there are a number of advantages that could accrue to Canada in general if official recognition concerning the right of Muslims to implement their own personal/family law were granted. To begin with, this recognition could save Canadian/provincial taxpayers money since Muslims would be underwriting the financial costs of administering and running such a system themselves. For example, tribunals for handling dispute resolution issues in areas covered by Muslim personal/family law would be set up, staffed and monitored by people from the Muslim community. All of this would be financed by user fees and contributions from the Muslim community.

Furthermore, by assuming such responsibilities, Muslims would be taking a certain burden from the shoulders of an already overwrought judicial system. This could result in a more efficient and responsive judicial process for other, non-Muslim Canadians.

The bottom line on all of this is as follows. If Muslims were permitted to govern their own affairs in the realm of personal/family law, then a win-win situation would have been generated for Muslims and non-Muslims alike. Muslims would have the opportunity to realize more of their religious freedom than previously had been the case, and non-Muslims would have a more efficient, less costly, and less burdened system for dealing with their own approach to family/personal law.

In addition, by permitting alternative methods of dispute resolution in matters of family/personal law, one would be providing Muslims with a way of doing things that reflects fundamental aspects of their own sense of justice. As a result, Muslims would be shown that the promise of multiculturalism, when properly implemented, is capable of creating conditions conducive to the generation of the peace of mind and happiness that come with true autonomy. Rather than feeling alienated within Canada, Muslims would become integrated, active participants in the Canadian mosaic.

Some people may have reservations about the foregoing possibilities, feeling that if such recognition were given, then one is inviting anarchy and chaos into our society. This would be the case, or so the argument might claim, because legal authorities and governments would no longer have control over what Muslims do in the areas covered by personal/family law. Moreover, what if problems arose during the administering of such a system? How would they be handled?

Although Muslims are as prone to folly, mistakes and ill-considered actions as are non-Muslims, Muslims are not children. Among them one will find intelligent, knowledgeable, insightful, wise, committed, just, compassionate, honest, sincere, hard-working, creative people. While problems undoubtedly will arise, it is a rather paternalistic ethnocentrism which supposes that Muslims are not capable of resolving, within the limits of human capacity to achieve such things, their own problems in ways that utilize values, beliefs, principles and practices that exhibit integrity, responsibility, fairness and wisdom.

All kinds of organizations, institutions, administrative tribunals, universities and colleges are permitted to run their own internal affairs with little or no interference from the courts and the government. Canadian society has not disintegrated as a result of this.

Canada also will not fall apart or into an abyss of chaos if Muslims are permitted to control their own affairs in the realm of Muslim personal/family law. Canadians should look at this matter, not as if they are losing control, but as if they were broadening the mandate of sovereignty, and thereby enhancing the quality of that sovereignty. In any event, establishing such a system of law is not something which is either impossible or impractical.

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V. RENEWAL AND RESISTANCE

Repairing the House

In addition to the radical programme of reconstruction that has been recommended for the Senate, there are also a few structural changes that are to be proposed with respect to the House of Commons. The most fundamental of these changes stipulates that every House member be given at least one, and perhaps two, free votes of conscience per sitting of the House. How and when, or if, these free votes would be used would be left to the discretion of the individual members of the House. The intent of this proposed change is to allow for more than one kind of representational democracy to be exercised during the legislative process.

As things presently stand, the members of the various parties are required to follow party discipline and policy with respect to how the respective parties are oriented toward any particular legislative issue. Yet, the stance of a party does not necessarily reflect the will of the people who voted for that

party or who voted for the members of that party who were elected to the House.

By giving members of the House one or two opportunities per sitting to vote against party policy, one would open up the possibility of allowing elected members to serve their constituents according to the actual desires of those constituents, rather than according to a "visionary" party policy which is imposed on people, irrespective of whether the latter like that policy or not. At the same time, by limiting the free votes to one or two per House session, one still permits parties—especially the one in power—to try to fulfil their legislative programme or policy agenda for the country.

The presence of this discretionary power also could encourage a range of negotiations, compromises and co-operation that is difficult to achieve under the present Parliamentary set up in which aggressive, if not hostile, partisanship is the bedrock of legislative etiquette. Such antagonism naturally follows from the political need of the opposition to challenge, if not embarrass, the ruling power. This sort of conflict naturally follows, as well, from the attempts of the ruling power to skirt around the problems, questions and issues being raised by the opposition.

In addition to the foregoing suggestion for change in the House of Commons, there are several other possible modifications that are proffered here. First of all, the rule should be abolished which stipulates that a government loses its authority if it is defeated on matters of finance, such as the budget. In conjunction with the jettisoning of this rule, however, will be the fixing of a specific date, occurring once every four years, for elections to be held with respect to the members of the House of Commons, including, of course, the position of the Prime Minister.

By fixing a specific date as the time when House elections are held, one frees the election process from the caprice of choices based upon the ups and downs of a ruling party's popularity. Parties in power should not have the luxury of choosing times for elections which are most advantageous to them and/or least advantageous for their political opponents or for the people of Canada. Elections should be focused on issues, and the capabilities of candidates rather than on opportunistic strategies.

Another suggested structural change concerns the question of who has the right to commit the Canadian people to war. In the recent Persian Gulf war, there were those who argued that the Prime Minister had the authority to commit Canada to war. Others claimed that the Prime Minister was not empowered to act on his own, but needed the vote of the House of Commons and the Senate.

We suggest that, with the exception of those cases in which Canada is physically attacked by hostile forces and, as a result, the Prime Minister orders immediate defensive measures to be taken, the ones who really ought to make this sort of decision, by means of referendum, are the people of the country. Moreover, there should be a clear choice offered between four kinds of options—namely: (a) offensive war (carrying the attack to an opponent in a way that is designed to lead to the opponent's defeat); (b) defensive war (i.e., Canadian forces will defend themselves if attacked, but will not initiate hostilities or carry out offensive strategies designed to defeat an enemy); (c) peacekeeping operations; and, finally, (d) none of the above.

A final suggestion in connection with changes concerning the House of Commons is more a matter of convention than of legal requirements. More specifically, the person selected for Prime Minister should be chosen on the basis of the quality and integrity of the person, and entirely independent of linguistic abilities. Leadership should not be distorted by linguistic issues. There have been capable people, both within the French community as well as the English community, who have been passed over for consideration only because they did not speak English or French.

There will be those people, of course, who wish to argue that a person cannot be an effective Prime Minister unless such a person can communicate with the people of both linguistic communities. This sort of argument seems weak from a number of perspectives.

To begin with, there are an increasing number of people in Canada who have, at least, only marginal fluency in either English or French. These people are more at home in, and understand issues better when approached with, some language other than English or French. As long as there are people within government who can communicate with these people so that all parties concerned can address issues of substance, then the linguistic capabilities of the Prime Minister are not of paramount importance.

Secondly, someone once described the English as a people divided by a common language. One possible moral, so to speak, of the foregoing observation is that communication is not a matter of what is conveyed by the tongue, but what is spoken by the hearts and actions of people. A person may be a brilliant speaker but a lousy person. Or, a person may say things that are inspiring to hear, but the person may belie those words with his or her actions.

Considered from another perspective, the same words do not always have the same meaning for different people. Interpretation often varies from person to person. As a result, misunderstanding occurs quite frequently because people

communicate as if they are speaking the same language, when, in reality, the underlying semantics is altogether different, despite the sameness of the surface meaning of the words being spoken and heard.

Indeed, in this latter regard, one might even argue there are some advantages to not knowing the language of the Prime Minister, since, in translation, one can concentrate on issues and not get caught up in rhetorical style. Under such circumstances, more care and consideration might be directed to the problem of how translation can change meaning and, consequently, more attention might be devoted to making sure the speaker and recipient were understanding the words in the same way. Some features may be lost during translation, but not as much as one might suppose to be the case.

In any event, as indicated earlier, actions speak a lot more loudly and clearly than do words. Indeed, actions often times are a much truer reflection of someone's state of heart or sincerity than are that individual's words.

The Centralist/Decentralist Dynamic

All of the suggestions made in the previous pages of this document provide for a strong central/federalist presence in Canada. At the same time, the structural character of that presence has been transformed substantially, from what is currently the case in Canada, by the various proposals in this document.

On the other hand, the centralist/federalist presence is counterbalanced with an extremely strong theme of decentralization which is manifested in the form of various kinds of power sharing arrangements and opportunities for participation by a far larger number of the people than is presently the case. Especially noteworthy in this push toward decentralization is the manner in which the constitutional process is made accessible to the people in a variety of ways that permit the average individual a greater array of choices through which to protect and enhance the quality of the individual's sovereignty.

Another way of stating the centralizing/decentralizing character of the proposals being advanced in the present document is in the form of a simile. From the perspective being advocated here, Canada is like an ellipse in mathematics.

The structural character of an ellipse is defined by the mathematical character of its two foci. These foci are the two

points of mathematical moment, as it were, about which the perimeter of the ellipse rotates. Alternatively, each point of the ellipse's perimeter can be said to be under the dual influence of the mathematical function being given expression through the two foci.

Translated into concrete terms, the simile means that each social/political aspect of the structural character or form of Canada is governed by the influences of the dialectic of Canada's internal foci—namely, representative and participatory government. Said still less abstractly, from the perspective of the present document, the constraints and degrees of freedom which outline the perimeter of Canada as a social/political entity are a function of the dialectic between the Senate and the House of Commons.

Both bodies of Parliament should give complete expression to a combination of centralizing and decentralizing influences. In the altered character of the House of Commons which has been discussed in these pages, the ratio of centralizing to decentralizing tendencies is weighted in the direction of the former. On the other hand, in the proposed reconstituted Senate, the ratio of centralizing to decentralizing tendencies is weighted in the direction of the latter sort of influences. In both cases, however, clear centralist/federalist themes are present.

Vested Interests and the Constitution

The proposals in these pages are fundamental in scope, import and ramifications. They call upon Canadians to look at the process of democracy in a way that is quite different from what Canadians historically are used to. In addition, the proposals introduced in this document will alter considerably the way power is acquired, exercised, delegated, distributed and implemented.

There may be many people who, for a variety of reasons, will resist these suggested changes. For example, presently, there are three facets of the Constitution Act of 1982 which cannot be changed without unanimous consent of the provinces, together with the federal government. These three features involve: (a) the continued presence of the monarchy; (b) the composition of the Supreme Court; and, (c) the amending formula.

Each of the foregoing themes is supported by vested interests that will resist any attempt to change the character of these constitutional precepts. How else is one to explain the fact that out of all the, quite possibly, far more worthy themes that could have been considered untouchable with respect to constitutional tinkering, just these three were selected?

All three of these constitutional themes, along with a number of other themes, will be jettisoned if the transformation of the Constitution suggested in the present document were to be adopted. Therefore, one can be sure that the previous proposals will generate considerable resistance. Such resistance, however, is not necessarily based on sound, democratic thinking.

As an illustration of what is meant by the claim at the end of the previous paragraph, consider the following. The idea of the monarchy has absolutely no place in a Canadian Constitution. It is a symbol of colonialism, not Canadian identity or unity. It is an intrusion upon Canadian sovereignty since our loyalties and our duties of care are to other Canadians, not to the Queen or King of England. Monarchy is a relic of history that belongs in the archives of Canada and not in the Constitution.

For those people in Canada who have a deep respect and love for monarchy, let them be free to observe that in their own fashion. Such people should be free to honour the occasions and events that give expression to the tradition of monarchy. However, there is absolutely no tenable justification that can be given as to why paying homage to the English monarchy is incumbent upon, and must be imposed on, the sovereign citizens of Canada. Canada is a distinct and special society which is functionally, morally,

politically, legally and socially independent of the English monarchy.

Similar sorts of arguments can be advanced against other entrenched themes of the Constitution Act of 1982. For instance, on the surface, the amending formula theme which is entrenched in the Constitution would appear to be a safeguard of democracy. In reality, the amending formula protects existing power structures of both federal species as well as provincial varieties.

The Constitution Act of 1982 is a Constitution of the governments, for the governments and by the governments. The vast majority of the people of Canada have no place in the present Constitution. The one area of the Constitution—namely, the Charter of Rights—which pays even token attention to people as people is elsewhere in the Constitution made subservient to the whims of governments.

In effect, the amending formula renders the generality of Canadian people powerless, for they are at the mercy of politicians to "represent" them. Unfortunately, in the political dictionary, the entry under "represents" all too often has a primary meaning of: the act of imposing one's ideas on others.

The current amending formula ensures that the vast majority of Canadians have no direct access to the constitutional process. Everything in that process is mediated through those over whom one has no control.

Contrary to the hype of politicians, elections do not constitute effective control, since, far too frequently, elections are merely the point of contact between a rock and a hard place. In other words, either one can vote people out of office once irreparable damage has been done, or one can vote people into office and watch helplessly as they proceed to do irreparable damage. If Canada is to become a truly democratic society in which more than politicians can participate in a meaningful, fundamental and empowered manner in relation to the constitutional process, then the amending formula, as presently conceived, cannot be retained.

The final entrenched, untouchable theme of the Constitution Act of 1982 concerns the composition of the Supreme Court. Much already has been said in the previous pages about the problematic nature of using the judiciary as the point of leverage through which the constitutional fulcrum moves Canadian society. Nonetheless, one might repeat the following point.

Let us suppose (and this is a highly contentious supposition) that the Supreme Court jurists could definitely

capture the structural character of what was believed, thought, intended and felt by those who created, voted for and implemented laws, statutes and constitutional directives. Let us further suppose (and, again, this is a highly contentious supposition) that the jurists could demonstrate the logical links between present cases and what the "creators" of the past intended. Despite these "givens", the fact of the matter is, all of this is largely, if not entirely, too narrow in scope to be of much value in helping the people of today resolve the issues of sovereignty, social contracts and participatory democracy.

Moreover, in many ways, such legalistic pronouncements are irrelevant since, in effect, they enslave the people of today to what was thought, believed and intended at another time and place. Why should the people of today legally be held responsible for a contract which they had no part in shaping, arranging, ordering or making?

To be sure, there must be some framework which permits continuity of sorts from one period to the next. Otherwise, there would be complete anarchy and chaos. However, the constitutional process we bequeath our children should be one that is flexible, fruitful and fair, rather than one which is stagnant, stale, and star-crossed. Consequently, while one may wish to keep the composition of the Supreme Court intact, the role of the Supreme Court, vis-à-vis the Constitution, must be terminated and replaced with something like the Senate subcommittee on constitutional issues and its associated constitutional forums.

How many people will seek out those alternative constitutional rooms (such as have been proposed in the present document) that have the potential for freeing the former from the shocks and pain caused by the present constitutional set-up remains to be seen. The uncertainty surrounding the willingness and capacity of Canadians to find a 'safe', or safer, less shocking, constitutional context is uncertain. This is the case because the degree to which Canadians have succumbed to a spiritual/conceptual condition akin to learned helplessness is still an open, unanswered question.

On the other hand, the amazing events in Eastern Europe which have taken place relatively recently have proven radical change is possible to achieve peacefully. One might suppose that if the people of those countries have been brave enough to seek to take control of their own lives, can Canadians afford to show any less courage as we step into the future?

Some people may wish to argue that the people of the Eastern bloc countries were in a desperate situation due to the brutal authoritarian, dictatorial manner in which they had

been treated by their respective governments. In other words, sometimes desperation drives one to take chances that one wouldn't take under more congenial circumstances such as exist in Canada.

Furthermore, this line of argument might wish to maintain that we already have democracy in Canada, and, consequently, our situation cannot be compared, even remotely, with the situation that confronted the people in the Eastern bloc countries. We are free; they were not. We have democracy; they did not. Therefore, there is no need for Canadians to have courage with respect to our constitutional crisis.

The most difficult shackles of bondage to lose are those that are built from self-deception. In a sense, the people of Canada are faced with a more insidious form of totalitarianism than were the people of Eastern Europe. In those countries, the enemy was external, concrete and palpable. In Canada, the enemy is internal and invisible. Here, the enemy is a mythology that has shaped and coloured how Canadians see themselves and the world.

More specifically, despite the existence of a great deal of evidence that shows each of us to be: (a) powerless in many fundamental ways; (b) marginalised from the real essence of the constitutional process; as well as, (c) lacking in any effective autonomy with respect to the structural character of our own sovereignty, we still believe we are free participants in a democratic society. Consequently, because our political vision is blinkered, coloured and distorted by the mythology of democracy which we are fed from infancy, we need even more courage than did the people of Eastern Europe.

We must not only come to grips with our own, internal demons of self-deception, we also must throw off the habits of a false mythology of democracy. Like some incredibly potent narcotic, this mythology binds us to constitutional ways which are not serving the interests of our sovereignty, either as individuals or as a collective.

Constitutional issues are far too important to be left to politicians. The non-elected people of Canada, who comprise over 99.9% of the population, cannot afford any more presumptuous, prematurely self-congratulatory Meech Lake travesties. The idea that politicians should negotiate our future, whether behind closed doors or in open sessions, is no longer, if it ever was, acceptable.

Canadians have an opportunity to do something very special with respect to constitutional issues. Canadians have an opportunity to be a shining example for the whole world. We have an opportunity to undertake a grand experiment in participatory democracy in a way that few, if any, other countries in the world have ever tried, let alone achieved.

The Constitutional Challenge

There has been considerable discussion recently concerning the idea of holding a constituent assembly to deal with the constitutional crisis. This idea has considerable merit, but it also entails a variety of potential problem areas. For instance, two questions that readily come to mind are the following: Who is to be picked for such an assembly, and who is to do the picking?

The first question raises the issue of representation. Should just first ministers be invited to such an assembly? Should the participants only be elected officials of one sort or another? Should just provinces be represented? What about municipalities or regional governments? Should the invitees only be drawn from recognized political parties? Should partisan politics have any role in the deliberations of the proposed assembly? Are minorities to be included? Will half the delegates be women? Will the people attending the assembly be restricted to experts or professionals? Or, will so-called "common" people be admitted to the proceedings? How many people will be selected for the assembly?

The second question stated above—namely, Who is to do the picking of the delegates to a constituent assembly?—is a process issue. Is selection to be done by election? If so, how are candidates to be identified? Are participants to be appointed? If so, how will the appointment procedure be implemented? Who will make the decisions concerning such appointees? Will appointments be done on a random basis, or will certain kinds of criteria be applied in determining suitable constituent assembly participants?

In addition to the foregoing sorts of questions, there are numerous other problem areas. Each of these further areas involves critical issues. For example: Who is to set the agenda for the assembly? What is to be the mandate of the assembly? How long will the assembly proceedings last? What procedural process will regulate the assembly meetings? Who will ratify the finished product of the assembly? What if the assembly's efforts are not ratified? Can the assembly's effort be modified in any way? If so, by whom and to what extent? Who will ratify such a modified document? Who will pay for the expenses of a constituent assembly?

Whatever answers one gives to the foregoing questions, there will be the additional problem of having to justify the judgements one makes with respect to each issue. Attendant to the justification issue will be disputes about the degree of persuasiveness of the various justifications that are given.

Finally, as if the foregoing questions, problems and issues are not enough of a burden with which to have to deal, there

is one further difficulty. More specifically, none of the foregoing questions addresses the issue of what criteria are to be used to determine the substantive shape and character of a new or modified constitutional package. In other words, there needs to be an articulation of the principles of democracy that are to be given concrete expression in any proposed constitutional package. Quebec, Native and aboriginal peoples, the status of women, senate reform, the amending process, electoral reform, regional disparities all have been the focus of an underlying desire for change with respect to how the present Constitution Act handles, or fails to handle, these issues. However, there is a need to discuss, in specific detail, the democratic principles and values which will link these issues together in a consistent, comprehensive, equitable and flexible fashion.

As we understand the situation, there seem to be at least four conventional ways of attempting to resolve the current constitutional crisis. Each of these has several variations associated with it.

1. The government in power decides on its own what constitutional course to pursue. This could be done with or without debate in the House of Commons. Moreover, if there were a vote in the House, this could be according to party discipline or a free vote of conscience.
2. The government in power puts forth a constitutional package and seeks ratification either through provincial legislative assemblies or by means of a public referendum. If provincial legislatures are involved, this may or may not involve one or more first ministers conferences.
3. A constituent assembly is selected or appointed to draft a constitutional package. This package, then, would be subject to ratification through: (a) the House of Commons; and/or, (b) the provincial governments; and/or, (c) a public referendum.
4. The status quo is maintained although some minor, cosmetic tinkering would be undertaken in accordance with the existing amending formula.

Although all of the foregoing possibilities have their upsides and their downside, we don't propose to discuss them. Instead, we would like to outline a further possibility.

One might refer to the suggestion which follows as: the Constitutional Challenge. In essence, it would be an essay-like competition (20 pages or less) whose theme would be the construction of a Canadian constitution. Anyone, 17 years of age or older who was either a citizen, a landed immigrant or had refugee status, would be eligible for the competition.

Essays would be judged according to a variety of criteria. Among these criteria would be: originality, fruitfulness,

clarity, completeness, fairness, feasibility, potential for resolving outstanding constitutional crises, fiscal responsibility, flexibility, capacity for growth, rigour, and simplicity.

The competition would have a deadline, and the jurors would have six months to evaluate the entries. Furthermore, there would be a \$20.00 entry fee to help defray the expenses of running the competition.

The jury judging the competition would consist of 13 people. At least six of the jurors would have to be women. The 13th juror's sex would be determined by some random means.

One juror would be drawn from each of the ten provinces plus two territories. The thirteenth person would be drawn from the federal government.

In addition, a number of different political groups would have to be represented. These groups include: Conservatives, Liberals, NDP, Social Credit, Reform, Christian Heritage, Parti Quebecois, Libertarian, Communist, Monarchist, Green Peace, Rhinoceros and Independent.

Furthermore, a number of different religious orientations would have to be included among jury members. Suggested possibilities are: Protestant, Catholic, Anglican, Jewish, Muslim, Hindu, Sikh, Buddhist, Native spiritual traditions, Zoroastrian, Taoist, Agnostic and Atheist.

The people appointed to the jury also should be drawn from a variety of different backgrounds. For example, one might select from among the following areas: business, labour, media, arts, law, medicine, science, humanities, technology, politics, religion, volunteer groups, police and retired people.

Finally, the jury members should be selected to ensure as much racial and ethnic equitability as possible. Obviously, not all ethnic and racial groups may be capable of being accommodated on a 13-person jury, but every effort should be made to be as inclusive as possible.

In order to satisfy the foregoing criteria, each juror will have to fulfil multiple roles. For example, a selected juror could be a black female Catholic medical doctor from British Columbia who is a member of the Social Credit party.

The positions of juror would be selected on a random basis. Each time a juror was selected, a number of categories of personnel criteria would be eliminated so that subsequent juror choices would involve a narrower set of parameters that had to be satisfied.

The task of the jury would be to select four finalists from among the competition entries. These finalists would be judged according to the kind of criteria outlined earlier.

Once the finalists had been selected, these entries would be forwarded to the House of Commons. The members of the House would debate the pros and cons of each of the candidates.

Eventually, after an agreed upon time limit for debate (set before the competition begins), the House members would be given a series of free votes of conscience through which two candidates are to be selected from among the four finalists.

The two finalists, then, would be subject to a public referendum. The winning entry would have to garner 51% of the vote in the country.

There would be no provincial distribution requirements with respect to the vote since there would be an agreement by all provinces and the federal government to abide by the results of the competition. The fail-safe point for this agreement would be after the four finalists had been selected by the jury, but prior to the House of Commons debate and vote.

There are several guiding principles underlying the essay competition process outlined above. First of all, politicians and lawyers are not the only ones in Canada who are capable of constructing workable constitutional documents. In fact, there is considerable evidence to suggest that many politicians may be incapable of creating a workable, fair constitutional arrangement since they are too preoccupied with maintaining, or extending, their power base at the expense of, and to the exclusion of, the people.

In any event, there are a lot of talented, creative, intelligent, committed individuals in Canada. Politicians are doing Canada and Canadians a huge disservice if they do not call upon the plentiful human resources that exist in Canada to help resolve our constitutional crisis. The essay competition process provides a way of permitting this to happen in an equitable, representative, practical manner that invites, rather than discourages, the participation of Canadians.

For far too long, politicians have cajoled the sort of trust from Canadians that would enable the former to have virtually carte blanche authority to do whatever they pleased. Very rarely has this degree of trust ever been reciprocated by politicians with respect to the non-politicians of Canada.

In fact, even elections cannot be cited by politicians as an example of how politicians place deep trust in the wisdom of the people. Unfortunately, too many politicians tend to look at the election process as a calculated gamble rather than an exercise in trust.

The time has come for politicians to demonstrate a fundamental expression of trust in the people of this country. To paraphrase Prophet Moses (peace be upon him), we say to the politicians of Canada, let the Canadian people go. Give us an opportunity to resolve our own problems in our own way.

Secondly, the essay competition idea would offer women, Quebecers, Native peoples, minorities, Westerners, Maritimers and others who are deeply dissatisfied with the present Constitution an opportunity to come up with a package that addresses not only their own individual interests, but the interests and problems of Canada as a whole. While the essay competition process is certainly unconventional and non-traditional in style and substance, it offers a plausible and feasible methodology to afford many Canadians the sort of opportunity to participate in the constitutional process that very likely will be denied to them if any of the four conventional choices outlined previously on page 125 become the method of choice for dealing with the present constitutional crisis.

the theory and practice of both democracy and multiculturalism are inextricably interwoven in Canada.

* * *

VI. CONCLUSION

The Basic Approach

The basic approach of this "Discussion Paper" or this "Thought-Piece", in general, and its exploration of the principles underlying the notion of multiculturalism, in particular, is mainly of a philosophical nature. The rationale behind adopting this type of approach is to be found in our belief that, in the words of M. Hamidullah: "the vitality of a society, a people or a civilization depends in a large measure on the philosophy of life conceived and practised."

All civilized societies aim for liberty of conscience, freedom of choice, tolerance and equality for their citizens. This is the conceptual side of philosophy. The litmus test, however, of all philosophy concerns its implementation. Only when one comes to the point of putting theory into practice, and one tries to concretely realize the principles of an ideology or set of beliefs, can philosophies be shown to succeed in certain ways, while failing in other ways.

This is the case with respect to the theory and practice of democracy in Canada. This is also the case with respect to the theory and practice of multiculturalism in Canada. In fact,

Two Major Causes of
the Current Constitutional Crisis

Acceptance of the principle of multiculturalism as a publicly approved and officially sanctioned policy of the government has been an important advancement in the history of Canada. One becomes more conscious of this "step" being "in the right direction" when one takes into account the following point, aptly put by Erna Paris in a *Globe and Mail* article:

. . .until recently the French believed that, as the custodian of 'culture', they had a civilizing mission to the rest of the world; and the British laboured under a similar burden—the 'White man's burden' of improving 'primitive' peoples.

We might add that the British attempted to expand their sense of Divine mission by chasing both the French and the aboriginal people into a melting pot of assimilation. Paris continues on by saying:

Before 1945, Canada was overtly, perhaps proudly, racial . . . Our Canadian ethos emerged with the waves of immigration that changed the face of the country. What this meant in blunt terms was that a post-war generation that did not derive from 'British stock', as the phrase went, grew up as comfortable Canadians while many of our parents did not.

According to the interim report of the Citizens Forum Commission on Canada's Future, headed by Keith Spicer, Canadians speak of our "willingness to compromise, our tolerance of ethnic and cultural diversity, [and] our equality for all." However, to borrow again from Erna Paris' article:

Surely, people who were 'willing to compromise' and be 'tolerant of diversity' would gladly recognize the enormous difficulty of maintaining a separate language and culture in the Anglophone sea of North America. They would be far more generous in acknowledging and accommodating the obvious distinctness of Quebec and its special needs. Instead, we act as though granting the necessary

extra to Quebec somehow diminishes the rest of us.

Thus, we come to the first cause of the current crisis. This concerns the anxiety or fear which many Canadians have that resolving Canada's constitutional problems requires a diminishment of their basic rights, freedoms, integrity and entitlements as human beings.

The second major cause of our constitutional crisis is captured quite well, although somewhat narrowly, by Keith Spicer when he says:

What we express from east to west is nothing less than terminal meanness; matched by terminal bitterness in Quebec. We need psychiatrists, not politicians.

The 'terminal meanness' of Canadians of all stripes and colours is a function of the way we all have a tendency to define "culture" in a very narrow, self-centred, simple-minded manner.

For example, interpretation of "multiculturalism" often is confined to a superficial approach. This is expressed in terms of a sensitization to things ethnic, such as: folk dances, music festivals and culinary extravaganzas, along with a few quaint, visually appealing tribal activities and/or clustered gatherings. On the other hand, even the more sophisticated attempts to raise people's consciousness about various literary, artistic and scientific achievements of minority groups does not do justice to the real spirit of the concept of multiculturalism. The true spirit of multiculturalism extends to much deeper and more essential aspects of human life than can be encompassed by cultural artifacts, irrespective of whether these artifacts are simple or complex.

As such, there is a fundamental blindness about multiculturalism on the part of many Canadians from a diverse set of racial, ethnic and religious backgrounds. This blindness prevents people from understanding that if the Constitution is going to work, it must reflect, in substantial ways, the diversity that is Canada.

The Solution

In view of these two aforementioned root causes of Canada's constitutional crisis, there is an urgent need to realize and appreciate the existence of certain core dimensions of human reality. These ennobling dimensions are constructed from the fabric of human brotherhood and sisterhood. This fabric transcends the narrowly defined regional, ethnic, linguistic, tribal and racial interests through which all too many people view, and interact with, the world.

The idea of capital H Humanity which encompasses a collective human purpose or destiny is, these days, a politically tainted idea. In the words of Carole Giangrande, a Toronto writer, "some see it [i.e., capital H Humanity] as a crude form of Western dominance, or euphemism for a world view imposed by white, male humanity".

As an exploration into constitutional arrangements, the present document deals with certain principles underlying basic themes such as: social contracts, sovereignty, democracy (both representative and participatory), rights and duties, religious freedom, family and personal law, etc. In the course of such explorations, one major principle stands out for special attention. This principle underlies our attempt to propose a just, reasonable and practical solution to the current crises facing Canada.

The principle is expressed by the motto-like phrase: "*Diversity of Equality/Equality of Opportunity*". The essence of this phrase has been stated in the report in the following manner:

No one should be given an unfair advantage or opportunity that permits him/her to enhance his/her position or circumstances at the expense of other people. Alternatively, equality also refers to protecting people against being unfairly disadvantaged with respect to opportunity, status, treatment, and so on. . . . Equality is not necessarily about subjecting people to a monolithic process. In fact, real equality may only be possible in some, perhaps many, cases if one offers people an opportunity to choose from among a set of alternatives the one that best suits their circumstances or abilities.

Elsewhere, the report states the same idea slightly differently:

Indeed, the very idea of multiculturalism is inextricably caught up with the acknowledgment that there are a multiplicity of special and distinctive societies within Canada. Our task as a multicultural nation is to construct a set of alternatives from amongst which the different peoples of Canada can choose those which are most conducive to, and congruent with, the needs, interests and characteristics of different peoples, and which will permit all of them the opportunity to preserve and enhance the quality of their respective 'sovereignties' as a distinct and special people. . . . Moreover, realization of the principle of diversity of equality is what underwrites our respective quests for sovereignty.

If the principle of 'diversity of equality/equality of opportunity', as conceived in this report, is applied not only to those who, at present, reside in Canada, but also to future immigrants, the multicultural mosaic of Canadian society will be transformed considerably. In fact, if the above principle is permitted full extension in practice, and not just in theory, a multiplicity of distinct and special societies will emerge within Canada. Stated in yet another way, the principle of multiculturalism need not be confined in its implementation to only three special charter groups—namely: the aboriginals, the British and the French.

Recently, in an article appearing in *The Globe and Mail*, Mr. Willard Z. Estey, a former Supreme Court of Canada justice, and Mr. Peter Nicholson, Executive Assistant to the Chairman of the Bank of Nova Scotia, appear to deem the issues of immigrant minority groups unworthy of even a passing reference when they presented their case to the Beaudoin-Edwards Committee which is entertaining various proposals for amending the Constitution. According to the article, the distinguished witnesses do state clearly that, in the amending process:

. . . there must be enough breadth and flexibility to confront the full range of major issues facing Canada, including the position of native people, Senate reform, federal and provincial powers, the distinctiveness of Quebec and the Charter of Rights and its notwithstanding clause'.

Meech Lake demonstrated the futility of a narrow agenda.

If the foregoing quote is an accurate and complete list of the sorts of issues Mr. Estey and Mr. Nicholson believe to be of importance, then multiculturalism, except in a very limited form, does not appear to be a major or relevant issue when such people are discussing the process for amending the Constitution.

Canadian multiculturalism was officially recognized only in October 1971. Just ten years later, in 1981, the distribution of ethnic populations were recorded as being: British 40.1%; French 26.7%; and all other ethnic minorities 33.2%. Yet, despite pointing out, quite correctly, that: "There are extraordinary times in a nation's history when the enormity of the challenge calls for an extraordinary response. This is such a time," apparently, the challenge of full-fledged multiculturalism is not of sufficient enormity to persuade Mr. Estey and Mr. Nicholson to urge that the requisite extraordinary response be extended to those who are not British, French or aboriginal.

A Muslim Perspective

To quote, once again, Carole Giangrande, writer-in-residence at the North York Public Library:

Without forgetting that 'cultural appropriation' is a painful and sensitive issue for many, we are also in real danger of denying what is most human in us by cluttering our psychic landscape with 'no trespassing' signs. Glutted as we are with politics, we keep forgetting that there are other, equally profound dimensions of human understanding and reality.

In the context of Canadian society considered as a whole, Muslims are just one small group of people. Nevertheless, we are Canadian citizens. Moreover, we are citizens who happen to have a somewhat different understanding of "culture" than do some of the other citizens of Canada. We consider culture to be one of "the profound dimensions of human understanding and reality" to which Ms. Giangrande alluded toward the end of her previous quote.

More specifically, "culture" involves cultivation. This aspect of cultivation especially applies to the human mind, heart and

spirit. On the other hand, to quote Marmaduke Pickthal, the aim of culture

... is NOT the cultivation of the individual or a group of individuals, but of the entire human race. It [culture] aims at nothing less than universal human brotherhood. .

. . . Literary, artistic and scientific achievements are regarded as the incidental phenomena of culture [and serve to] act as either aids to the end, or refreshment for the wayfarer.

In other words, from the Muslim perspective, culture, in the words of Mr. Pickthal: "aims NOT at beautifying and refining the accessories of human life: it aims at beautifying and exalting human life itself."

From such an understanding of the nature of cultural life, flows the notion of a society that places great value on the sovereignty of both the individual as well as communities. Inherent in such a conception of culture is an active principle of unity which is rooted in a shared framework concerning a progressive belief in the ideals of universal brotherhood and sisterhood—without distinction of race, religion, ethnic background, language or place of abode.

The practice of universal brotherhood and sisterhood requires tolerance of differences. Tolerance can be helped to become established and to flourish by ensuring that there are an array of social, judicial, political, educational, and constitutional means of protecting, preserving and enhancing the sovereignty of individuals and communities. This is especially true in relation to minorities who, because of their relative disadvantage of not belonging to the ethnic/racial/religious majority, need to be treated as a "protected community" within the larger community. Indeed, governments have a duty of care to protect the legitimate interests of these "strangers", rather than forcing on them a culture of assimilation which is not conducive to the preservation of the identity and integrity of such minority groups.

From a Muslim religious perspective, in order for a society to serve its function, it must assist both the individual and the larger collectivity to work towards harmonious equilibrium. This harmony needs to be inculcated within the individual, as well as between the individual and the community, and also among communities.

For Muslims, personal/family law is an integral ingredient in helping the individual and the community to struggle toward

harmonious equilibrium. Muslim personal/family law governs fundamental aspects of individual and community affairs. It encompasses issues dealing with wills, inheritance, marriage, re-marriage, marriage contracts, divorce, maintenance, custody and maintenance of children. Official recognition, by municipal, provincial and federal governments in Canada, concerning Muslim personal/family law would only enhance the cultural richness of Canada. It would not diminish Canadians in any way.

Official recognition and sanctioning of Muslim personal/family law is but one possibility inherent in the principle of "diversity of equality/equality of opportunity". We believe there is a treasure house of such possibilities inherent in the aforementioned principle which could enhance the sovereignty of all Canadians.

Suggested Further Reading

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