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**OBSERVATIONS ON THE CURRENT
 CONSTITUTIONAL IMPASSE**

Canada's constitutional system has become dysfunctional. Québec will not participate in Canada's constitutional processes. Without that participation, Canada's constitutional mechanism is cumbersome to operate and lacks perceived legitimacy. Canada's constitutional structure works in a state of constant crisis. Constitutional breakup — with attendant drastic consequences — is continually threatened from important quarters.

Are there problems of governmental design that have ruptured the efficient functioning of Canada's constitutional system? I think not. Although I have many suggestions for reform of the way we are governed, and have studied many others more, none are critical to the survival of our institutional structure. Our institutions work. But for the shock of the Meech Lake debacle, our constitution could have endured centuries more — unchanged. In the history of politics, Canada serves as a powerful example of successful democracy in a bi-national state.

Our current constitutional predicament results from symbolic flaws, not defects in institutional design. In the Meech Lake process, Québec bargained for constitutional amendments to protect it against the possibility that the constitution could be operated or changed in ways unfavourable to its interests. This was the theme of Mr. Remillard's speech at Mont Gabriel, and it is why he called for more power for Québec over immigration, limits to the federal spending power, a right of veto for Québec and Québec participation in selecting Justices of the Supreme Court of Canada. Québec was seeking protection against demographic change, central institutional change, and indirect attacks on its powers by the federal authority. The accommodation of these reforms in the Meech Lake Accord was not without controversy, but the controversy was manageable. In depth and strength the controversy did not approach the same order of magnitude as the rage provoked by the symbolic aspect of the Meech Lake Accord, the recognition of Québec as a distinct society.

Mr. Remillard began his historic speech at Mont Gabriel with a quote from the Québec Liberal Party's Paper, *Mastering Our Future*: "Nothing less than Québec's dignity is at stake in future constitutional discussions." The Meech Lake process proved the truth of that observation. Québec's dignity became the central issue with the death of the Meech Lake Accord; Québeckers have been exhorted to feel offended, and many do — deeply. Our constitutional dysfunction results from that offence to dignity.

It would be wrong to try to break the current deadlock in the technical spirit. No exercise in technical crafting of efficient institutions will mend the hurt feelings on either side of the Ottawa River, no matter how brilliant the institutions proposed.

What is required is a symbolic manoeuvre. There are certain elements appropriate for most constitutional symbols: simplicity, ambiguity, low cost and beauty. Constitutional symbols should be simple. Otherwise they are not generally comprehensible, and cannot therefore command loyalty. They should be ambiguous. Different constituencies may therefore read different agendas into them. There are no immediate losers. Any lingering controversy is postponed to a day when, in a situation of actual confrontation, one group attempts to convert the symbol into a weapon of principle. Constitutional symbols should be low cost. They should not be attached to the power apparatus, and not alter the institutions of government. Constitutional symbols should be beautiful. Beauty produces feelings of transcendence, which are crucial to patriotism.

Section 2 of the Meech Lake Accord does not meet these conditions. Whatever else one may think of it, it is a bad symbol.

Beyond advocating symbol creation and deployment, I would suggest that there are some existing symbols with which we ought not to tamper. They are too explosive in feeling, too uncontrollable, the downside is too great. I am thinking, among other things, of bilingualism. Although controversial, official bilingualism is an essential element of what it means to be Canadian — of Canadian identity. So we should read with considerable caution the observation of the Spicer Commissioners that "our participants ... almost uniformly reject the treatment of our official languages." As readers of the Official Languages Commissioner's Reports know, support for bilingualism comes and goes. If the Spicer Commissioners are correct that support for bilingualism is at a low, I would interpret that as part of the general malaise in toleration that has overtaken us. This is not a reason to open up the seam of the federation further, by attempting to weaken the bilingualism machinery. Weakening bilingualism would send a bad symbol. It is unambiguous, high cost and may be ugly. In the present situation bad symbols are to be avoided at all costs.

We should also be careful about expanding the substantive agenda of constitutional reform. In the current charged climate, failure to reach consensus on issues will be regarded as yet another affront to dignity in some quarters: whether in Québec, the West, among Aboriginal Peoples or others. And Canadian history teaches that consensus on substantive constitutional reform will be notoriously hard to reach.

My prescription for getting out of the current constitutional impasse is to reach for consensus on a modest package of institutional reforms, to which are attached a bundle of low cost symbols, symbols which are not coupled to the power apparatus in a significant way. The negotiations should focus on trading off symbols. Particular symbols sought in different quarters are not mutually

exclusive. A package of symbols could be proclaimed together in a low cost preamble, or in other parts of the Constitution not significantly entwined with the power apparatus.

Of course, it is always difficult to go backwards in negotiations. Québec achieved a high cost symbol in the Meech Lake process. The "distinct society" recognition was coupled to the power apparatus, as it occurred in a interpretative provision. At least, this is how the recognition of Québec as a distinct society was ultimately perceived, within and without Québec. It is difficult to think that Québec's dignity can now be assuaged in any lower cost way. That is a likely result of the past four years, and it is a reality certain constitutional actors would do well to understand.

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The forum brought together about 20 academics from across the country, including 4 francophones and 1 anglophone from Québec, 1 Métis, 1 aboriginal, and other participants representing the different regions/provinces of English-speaking Canada. The group included supporters and opponents of the Meech Lake Accord, those looking for modest changes in existing federal arrangements, others convinced that only a more radical rearrangement of our constitutional landscape based upon some variant of a 2+ nation formula would do the trick.

The discussions were informal, helped by the fact that there were no papers to be presented and no attempt on the part of the organizers to force consensus on any of the issues that we face.

The most useful part of the get-together, from my point of view, was the chance it gave us to collectively think through the moves likely to come out of

the federal government in the coming months and the timetable for constitutional debates into 1992. The symposium also made it clear that our future thinking about Canada-Québec relations needs to be along two-track lines: 1) in the event that some new arrangement within an ongoing federal system can be worked out and sold to the Canadian people through referendum and the like; 2) in the event that we are heading toward a disentanglement in the Canada-Québec relationship. Each scenario has different implications for such questions as the use of constituent assemblies, Senate reform, or official language policy. In either case, scrupulous attention will have to be paid to aboriginal issues and to questions of minority language rights and the multicultural character of both Canada (outside Québec) and Québec. What must be avoided at all costs is the intolerance of ethnic nationalism of the sort we have been witnessing in the Soviet Union or Yugoslavia where multi-national federations are coming apart.