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I will address three general points. What are the circumstances of the Aboriginal people in Canada in relation to the present 'unity debate'? What is the issue to be resolved? How may it be resolved?

The Aboriginal peoples in Canada have been transformed, in time, from ancient societies in their homelands to strangers in a strange land. Having been colonized, marginalized, brutalized, repressed, depressed, and suppressed, they now suffer the fate of the dispossessed, the poor and the politically powerless. Being poor in a welfare state, they suffer, more than other Canadians, the treatment accorded by bureaucrats who despise them. This is not a happy lot. Like colonized people everywhere they have been denied a history, as part of the process of trying to eradicate their identity and sense of worth. There is a discernible start now in the rebuilding of the peoples' collective identity. Like nationalist movements everywhere, this process involves the contemporary crystallization of an idealized antiquity. Incidentally, in a recent expression of an individual Québécois' contribution to that process, I noted a curious overlap with the folk memory of the Métis. The Québécois included Louis Riel in a short laundry list of Canadian 'insults' to the Québécois! History shows that Québec sent some of its people to the West to try to recreate Métis society into its own image but the project failed for all sorts of reasons having to do with the power of Ontario. Having been marginalized by the society that developed in the West, the Métis now have firmly cast their identity with that of their Aboriginal brethren.

What is the issue to be resolved? The circumstances of the Aboriginal peoples have driven them to embark on the metaphorical constitutional train on its way to an unknown destiny. But the constitutional reform process is not the train to glory for Aboriginal peoples in Canada. A just resolution of their undesirable circumstances must determine a proper place for them in Canada. That does not mean they must be put in their place. For too long that has been happening. The present case requires more than an acceptance of a social responsibility on the part of Canadians "to do right by the Aboriginal peoples." What is required is acceptance by Canada of the legitimacy of the claims of the Aboriginal peoples to self-determination. Once that is done, the objects of the principle of self-determination can be tackled at every level. Some accommodations should involve constitutional reform. Others need not. Self-determination has a lot of meanings, including some rather personal

connotations.

How may the issue be resolved? The concept and the intelligent application of the right to self-determination for Aboriginal peoples in Canada need not frighten anyone. It is my belief that the application of the principle is probably necessary in the long run if the illegitimacy of the present system is not to be raised again. If the present crisis is Québec-driven then it is the circumstances of the Aboriginal peoples and the way in which their place in Canada is tackled that will determine the extent to which principle is added to power in the resolution of the 'unity debate'. That is important, to the extent that principle is important in crafting a just and enduring vision of the sort of society Canadians want. There must be more in the process of constitutional reform than the parcelling out of political power. The right of the Québécois to self-determination is back by significant power. The right of Aboriginal peoples to self-determination is backed by little power. But the right is the same. Shared sovereignty has been expressed as 'sovereignty-association' in the case of the Québécois. Canada must give Aboriginal peoples the chance to develop *their* versions of shared sovereignty. That requires at least two things: first, the formal recognition of the 'right' (which is essentially agreement on a broad vision of Canada), and second, the provision of circumstances calculated to permit Aboriginal peoples to proffer their informed consent to feasible forms of shared sovereignty with Canada.

The first step, that of recognizing the right of self-determination, could take the form of a constitutional provision, but it need not. The present debate is highly symbolic and there is room for symbolism in our unique Constitution which has already absorbed sawdust and wood chips, among other strange and practical things. A primordial value of the recognition of the right of self-determination has to do with political psychology, that is, the effect on a colonized and marginalized people in their ancient homeland of being recognized as an equal partner in crafting a new vision of the Canada that has subjugated them.

Canada is not being helpful by denying that 'peoples' in section 35 of the *Constitution Act, 1982* means 'peoples' in the international law sense. It is naive or mean-minded to suggest, as some do, that an incomplete concept of Aboriginal sovereignty within Canada, or the giving of an important interpretive role to the courts, are good reasons to avoid the even-handed recognition of the

right to self-determination for all historically and culturally distinct peoples. This leads to the second point, the ways by which the recognition of the 'right' might lead to political and practical accommodations.

The practical application of an abstract right to existing circumstances necessitates the making of realistic choices. Perhaps much of the present constitutional hand-wringing has to do with the difficulty of effecting large scale, peaceful constitutional change. If that is so, as a general proposition, then it can be expected that Aboriginal peoples would opt for relatively small institutional changes, were they given the real opportunity to do so. Much desirable change can be effected without constitutional upheaval and much can be done at the political level of recognizing the rights of peoples as equals without changing the basic law of the land. Note that successive U.S. governments have recently affirmed their policy of dealing with American Indian tribes on a 'government-to-government' bias. The basic object should be to provide opportunities for Aboriginal peoples in Canada to give their *informed consent* to their preferred form of association with Canada. The realistic choices available can all be accommodated within a federation. It might be useful in this context to examine the extensive constitutional and legislative 'asymmetries' which now exist in respect of Aboriginal groups in Canada. The Aboriginal societies themselves must be provided the opportunity, in the broadest sense, to be the agents of choice. No time limit can be put on this internal Aboriginal process and any schedule to tie 'the resolution of the Aboriginal issue' to the Québec-driven constitutional agenda is likely to fail. It is instructive to recall that Québec's capacity to give informed consent to its association with Canada has followed a three decades-plus revolution which saw the creation of home-grown intellectual and economic élites. Because the courts are finding the existence of a general fiduciary obligation in the relations between the Crown and Aboriginal peoples, governments must have a facilitative role to play in permitting the making of a free choice. Section 35 of the *Constitution Act, 1982* heralds a new era wherein Aboriginal peoples are recognized as 'peoples' and the shackles of 'race'-oriented thinking and policy-making must be cast away. Perhaps if western Canadians appreciated that the recognition of Aboriginal self-determination did not mean that they would have to read Cree or Ojibway on their cornflakes boxes, they might agree that self-determination need not frighten anyone.

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