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to the

JOINT COMMITTEE ON THE CONSTITUTION OF CANADA

by

THE UNITED CHURCH OF CANADA

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OTTAWA
DECEMBER, 1980

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I. INTRODUCTION

The United Church of Canada shares both the exhilaration and concern of these present days of constitutional debate. Exhilaration, because the debate marks an important step in establishing a new ethos and identity for Canada. Concern, because the debate, as it attempts to move us to a new and firmer unity, has had the unfortunate effect of straining relations and sharpening differences.

We in the United Church are sharing in the wide sense that there is nothing inevitable about the arrival of a new dawn of Canadian unity with justice for all. For too long we have been uncritically optimistic. Recent events make us reflect in a new way that nothing as momentous as turning the corner of our history can be achieved without mental and spiritual struggle by all the social, ethnic, religious, economic and political communities that comprise Canada. For this reason the Executive of the General Council of the United Church has called for an extension of the hearings by the Joint Committee, and that hearings on the government of Canada proposal be made widely accessible.

As representatives of the United Church, privileged to appear before the Joint Committee, we do not have a

mandate from our membership to speak on the wisdom of patriating the Constitution as proposed by the government of Canada. We do have the mandate to raise with the Committee certain concerns pertinent to the constitutional question which reflect the ongoing positions of the United Church's General Council and other policy bodies within the United Church. This is particularly so with respect to native peoples' rights. As a Church we have a commitment to stand in solidarity with the native peoples until their rights are ensured in full.

For us there is a call to speak for human rights and the sharing of wealth that arises out of a Bible shaped faith. The United Church has repeatedly affirmed mission goals related to personal and distributive justice. It would be inconsistent to remain silent when national attention is focused on these areas through the constitutional debate.

II. AREAS OF PARTICULAR CONCERN WITH RESPECT TO PATRIATING THE CONSTITUTION TO CANADA

1. Native Peoples And The Constitution

Among all the groups in Canada that are concerned about guaranteeing essential rights and freedoms in the proposed Constitution, the aboriginal peoples stand out as a special case. We draw their situation to the attention of this committee with the utmost urgency.

The proposal to patriate the Constitution in the very near future has created a state of emergency for the aboriginal peoples of this country. In some cases, they stand in danger of having the diminished rights they now experience virtually cast in stone, with little room left for manoeuvring. As great an obstacle as their rights represent to the development plans of some provinces, the aboriginal peoples are unlikely to find many supporters of their rights during the post-patriation period. Theirs is therefore a case that must be dealt with before patriation.

The British Crown recognised the aboriginal nations, guaranteeing all rights and sovereignties in the Royal Proclamation of 1763. Yet these peoples have endured numerous efforts by settlers to extinguish their aboriginal rights and to enforce their assimilation into the new society established in this land.

As well as all know, many aboriginal nations never did sign treaties. Today, they are still struggling

to hang onto the aboriginal rights guaranteed to them by the British Crown. For a variety of reasons, various governments have found it more convenient to negotiate with aboriginal nations as if the only issue in dispute were hunting rights on pieces of property. The discussions of the past decades have focused on "lands claims" negotiations: but such a phrase obscures the real issue.

By functioning as if this were a simple negotiation over the use of a piece of land, we perpetuate the myth that the aboriginal peoples of Canada are simply another ethnic minority, who require special status to protect them. Few recognize that the "land claims" negotiations are actually between the representatives of nations -- the aboriginal nations and the government of Canada.

Our involvement as a church with native groups in their struggles for justice in the North have convinced us that the pressure on them to simply abandon their aboriginal nationhood is enormous. Foreign and domestic oil companies offer tempting proposals for development of northern resources, with the jobs and the royalties most Canadians want. But the oil is only accessible to those companies if it belongs to the government of Canada. Until the aboriginal nations and the government of Canada reach satisfactory agreements on the question of aboriginal rights, every decision to go ahead and develop oil found on traditional native land simply creates another precedent for believing that we are dealing with a troublesome group of people who want to hold up development of land that is

really ours by virtue of our greater need, or our numbers.

We have been appalled at the willingness of companies, governments, and indeed of many Canadians to simply put aside the question of negotiations between aboriginal nations in the rush for the resources of the North. At this point, the rights of the aboriginal nations within Canada are supposed to be guaranteed by the Crown. If aboriginal rights can be brushed aside under present conditions, what assurance can we possibly draw from the brief reference in Section 24 of the Canada Act? In fact, Section 24 is so weak that it calls into question our claim that we will bargain in good faith with the representatives of aboriginal nations once the Constitution has been patriated. Our fear is that once the Canada Act becomes law, the status quo rights of native peoples -- ie, the reduced rights, with no recognition of aboriginal nationhood--will be virtually guaranteed.

Our experiences with partner churches throughout the world have taught us to be extremely wary of weak and vague "guarantees of the rights of native people". In country after country, the aboriginal peoples have been forced off their land, assimilated into the poorest segments of the local population, and sometimes killed, whenever the resources under their land became attractive to industrialists. One of the most tragic cases has recently been widely reported in our papers: the slaughter of the native population of the Quiche population province of Guatemala, where the discovery of oil on their

land brought them into direct conflict with the government and military of that country.

The attacks on aboriginal peoples of the world have become so widespread that they are the subject of the hearings of the Russell Tribunal in Rotterdam at this very time. A global pattern of oppression has been developing, one in which we do not want to see Canada participate.

It is unthinkable that the aboriginal peoples of Canada would be treated as others have been in Guatemala or in Chile, or in other parts of the world, but neither did aboriginal peoples elsewhere expect the treatment they have received. In a world where nations have been known to go to war over resources, particularly oil and gas, we believe that the Canada Act must reflect the obligations we have undertaken as a former British Colony, as well as the reality of the pressures that will probably be placed on us as the world grows increasingly energy-hungry. As a civilized nation, let us respect the agreements made by the British Crown and let us guarantee that we will negotiate with the aboriginal nations in good faith. Let us do nothing to jeopardise that process.

We therefore strongly recommend that Section 24 (or another section) clearly set forth in detail guarantees with respect to the aboriginal and treaty rights of native peoples as understood by them, and that representatives of aboriginal nations be full members of all future constitutional talks.

2. Quebec and the Constitution

The United Church of Canada is overwhelmingly an Anglophone middle-class church. Nevertheless, it has recognized that considering itself a national church requires that it learn about, appreciate, and seek to support the aspirations of cultural and social minorities that make up the fabric of Canada. The two peoples that the church has concerned itself with most have been the native peoples and Francophones. We have already discussed the native peoples in terms of the constitutional debate so let us turn to the Francophones.

Though the United Church has been involved in parish work with the Francophones for many years, it is the church's involvement in political concerns that is relevant to the present discussion. The United Church has always seen its role as one of identifying some of the underlying value questions rather than endorsing one or other political option. In fact, at the 1972 General Council in Saskatoon, the church stated "that no political structure or movement to change such structure ought ever to be regarded as sacred or as more than an instrument to serve human ends" and further, "that a crucial factor in the shaping of future political structures must be the deliverance of French Canadians from any sense of subjection and that such deliverance requires an openness to a reconsideration of the present structure of Confederation." (1972 General Council)

As the General Council met in Calgary in 1977, it was very aware that the Parti Québécois, having won the November 1976 election, was preparing for a Referendum sometime in the future. The church reiterated its support for the democratic right of peoples to self-determination and in that context recognized that "this new context offers an opportunity to grow in our comprehension of what constitutes a human right. We expect protection for the rights of individuals, the right to a fully human life, the right to a personal cultural identity, the right to participate in social, economic, and political decisions, the right to express opinions differing from those of the majority. But we also call attention, as did the General Council in 1972, to collective rights, to the rights of communities and peoples. In this we include the right to take what measures are necessary for collective survival and fulfillment." (1977 General Council)

At the same time within Quebec, the Francophones represent the majority and have within their boundaries various minorities who similarly have rights that need to be respected. "We call for safeguards of both individual and collective rights in a situation full of conflicting interests." The 1977 statement recognized that "No solutions are ideal. New political solutions bring with them new political problems." (1977 General Council)

The constitutional discussion was seen as being broader than just a debate between Quebec and Canada. "It is vital in the entire debate that other groups of people in this multi-cultural country not be ignored ... the many issues

concerning the rights of the native peoples, minorities and immigrants come crowding in for attention, and must be discussed and dealt with. A reworking of the Canadian Constitution would provide an exceptional opportunity to take these other groups into consideration, and to respond to the native peoples' demands for justice, in particular." (1977 General Council)

The church acknowledged that conflict was inevitable but saw that as an opportunity for growth and participation and not as a tragedy or reason for avoidance. "We know that there must be a solution worked out in the context of a political process of which conflict is an essential element. Christians believe God acts in history, therefore Christians are urged to view the present political struggle in the light of God's living Presence in history and to participate in it on the basis of this faith." (1977 General Council)

In August of this year, 1980, several months after the Quebec Referendum, General Council was meeting in Halifax and again turned its attention to the Canada-Quebec debate. The church again reiterated the vital importance of the involvement of many participants in the discussions on the future of Canada. "The heart of the matter within the process of designing the future is the recognition of the right to self-determination of peoples in Canada without prejudging the eventual structural and constitutional result. This involves the acceptance of minorities as responsible participants in building the future ... Unilateral action in designing solutions to problems, without adequate participation, would only demonstrate the attitude against which minorities have protested." (1980 General Council)

III. RIGHTS OF MINORITIES

Let us turn briefly to several other minority groups the rights of whom the United Church has been concerned with and whose voices seem not to have been heard so far in this discussion. As the Canadian government in 1972 was preparing Bill C-25, The Canadian Human Rights Act, the Department of Church in Society of the United Church urged that several further categories be included on the basis of which discrimination would be prohibited in employment, accommodation, and access to services. Those categories were "physical handicap", "mental and emotional handicap" and "sexual orientation". We were pleased that "physical handicap" was included in the Act but disappointed that it related only to employment.

We are aware that the Advisory Committee of the Canadian Organization on the International Year of Disabled Persons 1981 is encouraging the government to amend Article 15, Clause 1, to include "physical and mental disability". We support their efforts. Physically and mentally handicapped persons have experienced discrimination for years but with next year designated as the International Year of Disabled Persons, the timing is particularly critical for such protection to be extended.

The inclusion of "sexual orientation" is admittedly a more controversial though no less important area. Though there continues to be differences of understanding about homosexuality in Canadian society and in the church, there nevertheless is a growing consensus of the need to have "sexual orientation" as one of the categories on the basis of which discrimination is

to be prohibited. Mr. Gordon Fairweather, the Canadian Commissioner of Human Rights, has long advocated that the government amend the Act to make such an inclusion. We support him and others who argue that the proposed Charter of Rights and Freedoms include "sexual orientation" as one of the grounds on which discrimination is to be prohibited.

Three of the most deprived groups within our society, with respect to protection under human rights legislation, are refugees, immigrants and the inmates of both penal and mental institutions.

If Canada is to be a just country, and to be seen as such in the eyes of the world, then justice must extend to all, and not exclusively to those who are holders of full and intact Canadian citizenship.

- i) The provision of cities of refuge was written into the law of ancient Israel. (Numbers 35:14). We would like to see it written into Canadian human rights legislation (entrenched or otherwise) that political refugees whose bona fides are established by the United Nations High Commissioner for Refugees may find asylum in Canada as a right. In the proposed Charter of Rights and Freedoms a section to this effect could strengthen the universal cause of human rights and serve as a model for other countries.
- ii) A measure of the justice of every country is its hospitality and fairness to newcomers. Will the Charter of Rights and Freedoms be specific with regard to the rights of immigrants before they

achieve full citizenship e.g. will it be stated that immigrants are to have all the human rights accorded full citizens? Will the rights of illegal immigrants be also stated?

iii) Offenders of the law and the mentally disturbed are still persons. Is it enough to write into law that "everyone has the right not to be subjected to any cruel and unusual treatment or punishment"? (Sec. 12) Does not this section need some strengthening by mentioning the right to normal levels of health care, exercise and sanitation; the right to communicate with family; and the right of access to legal counsel and to members of Parliament or provincial legislatures?

It encourages us to learn that the proposal to guarantee equalization is not a matter of contention between the government of Canada and the provincial governments, or between provincial governments. The practice of equalization is one of the distinctive features of Canadian polity and is a development that has been healthy for Canadian unity and a sense of national identity.

The need for equalization through taxation and sharing measures is obvious in a federal country where the natural and human resources to meet the needs of people are distributed unevenly. While it is important to provide a balance between regions through equalization grants, the fundamental concern is to ensure that all individuals and families across the country are brought up to a basic physical standard of living and are assured of basic services related to health, education and old age.

For over a decade The United Church of Canada has supported the concept of the Guaranteed Annual Income and other related income security measures. In addition we have supported medicare, social housing, and employment opportunity programs.

If there is to be a constitution which guarantees human rights and equalization, it is our opinion that the section on equalization must have a footing in the Charter of Rights and Freedoms with a section on the rights of individuals and families to a basic standard of living and social security. (See Article 25 Universal Charter of Human Rights)

A charter of human rights should properly include the right to work, the right to a minimum standard of housing, the right to a minimum standard of nutrition and the right to a minimum income. Other rights are hollow without these rights, and in turn the denial of basic living standards and services becomes the source of extremism and disunity.

These rights should be secured in a framework of law that will protect both the worker's welfare, a particular exemption and the wages paid. It is not without the complexities that surround the violation of these rights. Every right is a demand to be upheld in the spirit of respecting rights. We demand that workers in every sector of the economy have the right to enter into collective bargaining associations for their mutual protection and benefit. States which suppress the rights associated with collective bargaining inevitably go on to suppress other human rights. The whole fabric of human rights is weakened unless these rights are secured. (See Article 17, 19, 20, Universal Declaration of Human Rights)

V. THE RIGHTS OF WORKERS TO JOIN OR FORM UNIONS AND TO JOIN IN COLLECTIVE ECONOMIC ACTION

The right of workers to join or form unions is basic. The denial or suppression of workers' rights to (a) become part of a collective bargaining unit or (b) withhold labour during a legal strike, is indispensable in a free society.

These rights should be ensured in a framework of law that will protect both the workers within a particular enterprise and the larger public. We do not minimize the complexities that surround the guarantee of these rights. Every right is a standard to be upheld in the context of competing rights. We contend, nevertheless, that workers in every sector of the economy have the right to enter into collective bargaining associations for their mutual protection and benefit. States which suppress the rights associated with collective bargaining inevitably go on to suppress other human rights. The whole fabric of human rights is weakened unless these rights are ensured. (See Article 23 (4) Universal Declaration of Human Rights).

VI. SUMMARY

1. The Executive of the General Council of The United Church of Canada believes that the creation of a Canadian Constitution that will reflect the aspirations of both majorities and minorities can be best achieved through an unhurried process of participation by many groups.
2. Section 24 (or another section) of the proposed Constitution should set forth, in detail, guarantees with respect to the aboriginal and treaty rights of native peoples. Representatives of aboriginal nations should be full members of all future constitutional talks.
3. A Charter of Rights and Freedoms should include sections on the rights of refugees, immigrants, and inmates of penal and mental institutions. The rights of the physically and mentally disabled should be stated. Discrimination on the basis of sexual orientation should be prohibited.
4. The basic purpose of equalization should be identified in the Charter of Rights and Freedoms under a section on the right to minimum standards of housing, nutrition, income and services.
5. A Charter of Rights and Freedoms cannot serve its intended purpose without including a section on the rights of workers to join unions and take collective economic action.