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**Discussion following the Remarks of the Hon. Mr. Rae and
Ambassador Giffin Proceedings of the Canada-United States Law
Institute Conference on Multiple Actors in Canada-U.S. Relations:
Multiple Issues, Multiple Actors - The Players in Canada-U.S.
Relation**

Discussion

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DISCUSSION FOLLOWING THE REMARKS OF THE HON. MR. RAE AND AMBASSADOR GIFFIN

MR. GIFFIN: I have to respond to your point about your hope that our election will resolve some questions, I think our election has tried to resolve those very questions. I think there is a very vital debate going on between the President of the United States and the U.S. Senator who will be the Democratic nominee about our role in the world and whether or not it ought to be unilateral, multilateral, or whether it ought to engage the U.N. more. That debate is going, and in November, I think 50 percent of the people, maybe a little less than that if Ralph Nader stays in it, will chose one view or another.

I recognize that is a broader set of questions than I was suggesting might be discussed in Canada.

That goes to another point, when you hear Canadians talk about the United States, it usually is in economic terms. It is usually exports or trade dispute, as opposed to some of the more geopolitical issues. However, I do think that the dialogue between Canadians and Americans and the two governments needs to be on issues broader and bigger than simply economic terms.

On your point about getting the attention of the United States, I think that is valid, but I think Canada, has, and does successfully do that when they choose. In respect to transiting the border, the United States has pre-clearance facilities in seven Canadian airports. It is not reciprocal. I have to stand in line at the Toronto airport to get into Toronto all the time. I cannot go through pre-clearance in New York before I get there.

Secondly, as you know quite well from personal experience, the President of the United States during the period that I served there came to Canada on issues relevant to Canada, and he was quite focused on these issues. Therefore, it is possible for Canadians to get the attention of the United States when a coherent, focused effort is introduced.

MR. RAE: I think that is right.

MR. GIFFIN: The last thing, I want to be provocative again. I am a Canada-phile or whatever you call it. I was accused often times by the State Department of going native, that I was arguing the Canadian side of the argument. However, I do think that a risk we have in the relationship is that Canada might become progressively less relevant to the United States. Not in economic terms, but the U.S. is playing in a bigger game and Canada historically has been involved in that game in a material and important way. I see Canada receding from that role. I do not mean introduction of military forces when I say that. For example, I think we are at critical stage in the world today. I do not think it is in the interest of democratic countries or cor-

rect/right thinking people to want the United States to fail in Iraq; regardless of whether one might disagree with the policy that got us there.

I see countries like Canada that should try to act as a catalyst for rational resolution of this problem sitting on their hands. I think the Canadas of the world could become enormously relevant to the United States by being a catalyst, not only for the benefit of the United States, but because it is in Canada's interest and the rest of the free countries of the world that this get resolved appropriately.

Canada wants the United States to be more multilateral. I suggest Canada start something with the U.N. There is an attitude in the world, and to some degree, evidenced in Canada, that the United States made their bed and they can sleep in it.

That is not very productive and Canada could enhance it is relevance to the U.S. and at the same time do things that are in its principal interest, as well as the rest of the world.

It would not require the first soldier, the first battleship, or the first plane.

MR. RAE: I think that is going to happen. I believe very strongly that this is something that this Prime Minister wants to happen. I think that is something that is already happening at the U.N. I think there is a representation from Canada on issues about the Iraq democratic process. In the US, we committed 150 million dollars to the aid package, to the bid process, and that has gone ahead. That did not happen without significant internal debate. There was significant objection within the government to allocating that much money, as opposed to all the other issues that are there.

I do think that is something that can happen creatively and constructively. That may emerge from the first real bilateral meeting between President Bush and Prime Minister Martin.

I guess I would not take issue with your last point. I do not think that can be the exclusive basis for Canadian foreign policy. Some people, I guess it was Michael Hart, I saw him rather provocatively say the only issue for Canada is the question of the relationship of the United States, if we do not get this right then we cannot do anything else in world.

In my own view, that is not sustainable in public opinion. Canadians, in fact, want their government to have a broader view and a broader vision, but I do think that the kind of automatic anti-Americanism that we saw being expressed by a number of MP's and others in the aftermath of the Iraq invasion was dreadful.

I think the fact that the Prime Minister at that time, at that day, did not more aggressively indicate how inappropriate that was and how that did not reflect the opinion of the government was short-sided, because I agree with you. It is not very constructive to go back and say it should not have happened a year ago. The question today is, "what do you do now?"

That is the issue for policy makers, not “what should have happened months ago,” but “where do we go from here?” I think Canada can be constructive without being morally superior to anybody else. We have nothing to teach there. However, I do think we have something positive to contribute. I think it may contribute to a better relationship at the top.

That relationship at the top is a critical feature of the U.S./Canada relationship. It has to start from the top.

MR. KING: I had a question for Ambassador Giffin. He talked about a higher level of relationship between Canada and the United States. I wanted to have you peer into that world as you vision it. What would be your dream of a better relationship?

MR. GIFFIN: By better, you mean “what is the evolution?”

MR. KING: That is what you were discussing.

MR. GIFFIN: Well, I think it has to have more of a species of continentalism to it, recognizing that there is no interest in either country to change territorial sovereignty or cultural integrity. That is not the goal. There is a legitimate concern from the Canadian side that, there is a chance of creeping Americanization of the continent, which I think is a legitimate concern, not because that is the motive of the U.S., but because of the differential in size, it can be inexorable if you do not watch it.

You have to be careful about how we do it.

Canada is concerned generally about sovereignty and cultural integrity. The United States is concerned about security. In addition, we both have to deal with our phobias, put them on the table and do the best job we can of addressing those phobias in designing a more efficient continent both for economic purposes the legitimate movement of goods and of people, and for enhancing the security of the continent.

If you listen to what people want to do in their conversation, whether it is lumber, whether it is pigs, whether it is not standing in line at the border, when you just listen to their individual statements about what they want to do, they want a continental circumstance where they still have the integrity of their countries. So recognize that in a broad sense, that is what we are discussing. Bob wants Canadian lumber to come to the United States just as if it was Alabama lumber moving through the United States. I think that is right.

MR. RAE: It is called free trade.

MR. GIFFIN: It is called free trade, as long as a government does not subsidize the production.

MR. RAE: I would be willing to bet you we subsidize less in Ontario than you do in Georgia and Alabama, and I would be happy to put the two side by side.

MR. GIFFIN: Which is part of my point, whether it is pigs, or lumber, or people, inanimate or animate objects, on the economic side, we have a species of free trade.

When BSE, mad cow disease became a concern on the continent, Prime Minister Martin made the statement "this is not a Canadian problem," the cow was born in Alberta, it is not a Canadian problem, this is a continental market, and it is a continental problem.

Well, I totally agree with him. The problem is he picks and chooses what it is that is continental. So do we.

I am saying we have to get over it. It is all continental, I am sorry, it is. As you know, Senators in North Dakota need to understand that.

A CONFERENCE PARTICIPANT: Every six years, Gordon, it is only every six years.

MR. GIFFIN: Right. We need to engage in the dialogue. When you think of how hard it was for a while both in this country and in Canada to get to a Free Trade Agreement, you look back at that and wonder why was that so hard?

We need to posit the next big questions and have those debates and live through the agony and move forward.

MR. RAE: I think it is going to require - I agree with your premise, that because of the nature of the two countries' relative size and so on, in fact, it is Canada that is going to make up its mind. What do you want to get, what are you going to go for, how are you going to try to push the system so that is where it goes?

I think there has to be a degree of strategic thinking in Canada about those issues. They are very specific institutional changes that are required.

For example, if we get rid of antidumping on both sides of the border and say we are not going to provide antidumping rules, we are going to simply apply competition rules and fair trade rules and set up some other kind of tribunal to deal with it. That can happen. I can see many positive things. We can have much more open border and open skies with respect to air traffic, for example. But it would take a government saying, this is what we are prepared to do if it is reciprocal on the other side.

MR. KING: I think we have to discover what the Europeans discovered in 1957. You have to give us some sovereignty to relate to one another, and to live a life of peace and security.

I think that this is maybe one of the great lessons in the world today. I do not know whether I am right.

MR. RAE: Well, the one thing you are right about, Henry, is the European project - let's not forget, it did not grow whole from the brain of Jean Monnet.

It was painstaking and is a painstaking process. But, at every step of the way, every step of the breakthrough in those relationships has required a gift

of leadership saying we are going to go beyond iron and coal. We are going to go beyond iron and coal. We are going to into the U57. We are going to beyond this into a broader economic relationship that has a political ramification. Our Canadians, for example, are Americans. Are they prepared to consider - what are political institutions that we are prepared to create that will go beyond where we are today?

MR. KING: That is what we really have to focus on.

MR. RAE: I do not think that is a discussion we had in Canada or in the United States.

MR. KING: I think we are having it. I think we have to think beyond our environment; and its people who did think beyond our environment like Robert Jackson, who I worked for in Nuremberg and Jean Monnet, who had the vision of European Community who created a world that is better, and world ruled by law.

MR. RAE: It is interesting, though, the only one of the three leaders at NAFTA who is giving a whole lot of thought to what is the institutional structure, the next stage of institutional structure, is President Fox. Because, clearly, it's in Mexico's interest to start talk about equalization and talking about transfers and start talking about the economic and social impacts and how are we going to help the integration process along.

When he came to Canada and said I got this great idea, our Prime Minister said, forget about it. It is not going to happen, and the President in a slightly more diplomatic way said the same thing.

I believe very strongly that we have to once - and I was not on the winning side, if you like, on the free trade debate in the 1980's - but I was also was one of those people who believe once it is over, it is over. The debate is done. The integration has taken place. We cannot - imagine a universe where we would deconstruct all those things that have happened. Therefore, we have to say, "How do we really make this thing move forward?"

MR. GIFFIN: Are you willing to concede now that it was a good idea?

MR. RAE: Yes.

MR. KING: We had our first conference on that -

MR. GIFFIN: John Turner will not.

MR. KING: - on sectorial integration. People thought it was a vision, but it became realty and we are all better off today.

MR. GIFFIN: One thing I want to point out about the European experience, I am not a student of Europe that you two are, I suggest that one of the imperatives that compelled the progress in Europe was a political imperative, not just an economic imperative. They decided they wanted to figure out how not to fight each other anymore. Well, the good news is we do not have that imperative here.

The bad news is all we are talking about is economic imperatives. If all that drives people is improving the way they make money, that is not enough.

We have to acknowledge we have at the core some remarkably common, not identical, values and principles that we employ when we get up every morning and that permits us to do some of these things, not just because we want to make more money together.

MR. KING: I think we want to get the audience involved. We are open to questions. I can stimulate this discussion all morning because it is fantastic. Who has a question?

MR. KING: Tom Silvia.

MR. SILVIA: I am Tom Silvia. I am from the Indian Law Section of the Michigan State Bar as well as the Standing Committee on Indian Law. We draft rules for intertribal governments.

In that context, the issue of cultural integrity and sovereignty are very important to our people. They are never going to go away. We are never going to be doing it the way the federal government wants us to do it.

Nevertheless, I become acutely aware that there are regional commonalities that cross the border. For example, we referred to South Dakota being like Alberta and Saskatchewan much more than saying that Maine and the Maritimes are similar.

In addition, I wanted to bring this idea of particle wave theory. When light is propagated through a uniform medium, it acts like a wave. Border security is attempting to propagate a uniform wave.

In reality, what you have is a bunch of different media, say the western region, or the Maritimes, or the rust belt, and you get scattering when you propagate a policy. I wanted to refocus the observations that you made in that context.

MR. RAE: I think that there are regions in North America. I think there are many similarities and many parallels, and there is actually some institutional development. The New England Governors and Atlantic Premiers do have a stronger institutional relationship. BC, Washington and Oregon, this whole Cascadia idea, the western Premiers meet regularly with the western Governors. It is not just at that level. The fact of the matter is there is a real effort and real connections, but I think it is in its very early days. I do not think they are very profound. Speaking as a former Premier of Ontario, I used to make a point of coming to the Great Lakes Governor's Conference. It was always clear to me; it was a Great Lakes Governor's conference to which I was invited. It was not a hugely integrated sort of operation. We had very little institutional kind of heft.

On the aboriginal side, what I find fascinating, not just across North America, but, indeed, in the Americas, there is a much greater dialogue between aboriginal people about aboriginal self-government, about aboriginal employment, aboriginal financing, aboriginal issues. I think the fact that the border can be broken down in a whole variety of ways is enormously productive. It is very much part of the theme of this conference, that there is a real

multiplicity of actors that makes it very hard to say, here is the border; it is two governments talking to each other. The relationship is hugely vaster and more complicated than that.

I guess my point is about sovereignty, I work with a little group called the Form of Federations. One of my truisms is that sovereignty is not an absolute. It absolutely is not an absolute. It is a relative term. It is about relative degrees of power.

We have all agreed in various ways to give up our sovereignty in a whole variety of ways and circumstances. It is not an absolute thing.

Self-government is not an absolute thing. It is a government within a context of a number of other governments that are working. Therefore, I think these institutional relationships between province and states, between aboriginal governments on both sides of the border, these things will continue. Both central governments could not stop them even if they wanted to, because those relationships are in place and in play.

MR. KING: I would add that the more you institutionalize relationships, the better off you are because you do want to be dependent on a heartbeat and personalities. Michael Robinson.

MR. ROBINSON: I would just like to give a good news update to Bob's comment about President Fox being rebuffed in his efforts to get a better NAFTA.

I think that was by a former Prime Minister, and the good news is that our current Prime Minister has established a special Canada-U.S. Secretariat in the PCO led by a supporter of this Institute since the beginning, John Fried, one of our very best friends in Ottawa, and my old law school classmate. The current Minister of Foreign Affairs did his Doctorate in International Law on EU Law, that's Bill Graham. He taught EU Law at the University of Toronto Law School.

He is inherently keen on the idea of looking towards the EU for models for strengthening NAFTA.

Therefore, I think there is a possibility there that after John Fried advises Paul Martin, and Paul talks to Bill, we may find a lot more support in Canada for the kind of thing President Fox is discussing.

MR. GIFFIN: The one thing I would say in response to that is all of that is well and good, but until a Canadian Prime Minister, maybe Mr. Martin in this case, provokes a dialogue, public dialogue in Canada, so that there is some coming together - maybe consensus is too strong - some coming together of view about where to go, I still think that, politically, you will find the leadership in Canada walking that fine line - I agree with Bob's comment there is no common view of this in Canada. There are plenty of people on both sides of the issue - but the nationalist view, vis-à-vis the United States, tends to get much stronger as you approach an election.

It is going to take leadership to do this, pose the question and argue for a particular outcome, not just have a jump ball, but also argue for a particular outcome, it is going to be difficult to get there.

MR. KING: Maybe we need like another McDonald Commission like the Free Trade Agreement up there.

MR. SCHAEFER: Matt Shaffer with the University of Nebraska. You talked some about the rules of private parties and the initiation of formal disputes between Canada and the United States and also the role in conclusion or settlement of disputes. I was hoping maybe you could look at the magazine case, the Sports' Illustrated case, and tell us what lessons might be drawn from that, or look at it as case study of what you've already discussed?

MR. KING: Did everybody hear the question?

MR. GIFFIN: Unfortunately, I am very familiar with that. I still got bruises all over my body over that. However, we resolved the Sports Illustrated dispute while I was there.

And, you know, it's interesting, from time to time, my successor in Canada now, Paul Celluci is taken to task for being too publicly blunt or forthright in his statements. People have forgotten to some degree, I think, that huge public dispute I had in Canada over magazines, and the then Heritage Minister, Sheila Copps, was in the press being less than diplomatic.

The magazine dispute, in short form, was a symbol of concern in Canada that American culture would overcome Canada. That is a very good example of where it began as a formal trade dispute, taken through formal trade resolution dispute mechanisms, but had to be resolved through political dialogue and political discourse. In the final analysis, we resolved it that way. We undertook to calm down the American publishing industry if you will. Calm down the concern in Canada, which had two voices.

One was the legitimate cultural concern that American publications would just overwhelm Canadian publications; and, therefore, Canadians would not be able to read Canadian material, which was a valid concern. That was supported by Canadian publishers.

We calmed down both sides and struck a deal that neither industry liked. The Canadian industry did not like it. The American industry did not like it. The dire consequences predicted did not occur.

The fear in Canada that Canadian magazines would go out of business was wrong. And the fear in the United States that somehow the policy would affect the ability to market Sports Illustrated in Canada was wrong as well.

It took political will to reach a solution. I had to go to the White House to get it done, because the trade specialists had a very technical, pristine view of how this had to come out.

In my view, I had responsibility for the totality of the relationship, and if we followed their views, it would disrupt all sorts of things because of the sensitivity in Canada to the issue. This was an issue that was on the front

page of every paper in Canada regularly during this period and nobody in the United States, other than the publishers knew it was going on.

How we handled ourselves in the resolution of it was going to affect the dynamic of how Canadians viewed us. Therefore, in my mind, it was imperative that the trade specialists not dominate the resolution. We had to do it right for the relationship in its totality.

I took it to the West Wing; and when you do that, it's high stakes, because if I had lost that debate and had to go back to the government of Canada, and say I tried, I can't deliver, I would have been out of business. I could go home, because I could never do another deal.

MR. KING: Jim Phillips.

MR. PHILLIPS: Very interesting dialogue this morning. I would comment on a couple of things that hit me; and then the question, if I might. Bob, you are right about 23 percent of exports of the United States going to Canada and 84 percent of Canadian exports going to the U.S., which is absolutely true, you have to remember the size of the economies are quite different, 23 percent of a bigger number, makes the equality much closer than you might think if you think about it.

I also would comment there are forces afoot to displace Canada, and no one has really - you have to look at the fact there are things about that are attending an interest of displacing Canada in some of the excellent positions it has with the United States.

Be careful whose attention you get in the United States.

We have a way of having the fringe make single members that make a whole lot of problems. Michael Kergin is listening behind the scenes, but not so much in the media.

And I deal with the decision makers and the things of the reality of the U.S./Canada relationship are not what you read in the paper. Therefore, in some ways, I am glad Michael Kergin is not in the paper as much as you might think.

MR. RAE: I think you are probably right. I think that is a fair point. I was not making a point at all. I hope nobody misunderstood me in saying that Michael Kergin should or should not be in the paper. What I was saying was and I think its true is that his job is a very different job from the Ambassador of the United States in Ottawa.

If anything, the job of the Ambassador of the United States, because of the political nature of the relationship, because of the political and broad sense of being based so much in the public opinion of the two countries, because of the very open nature of the American system, there is inevitably going to be a view that says we've got to do whatever we can to get their attention in a variety of ways, provided it's done in a constructive and responsible and effective manner.

A lot of, I think the difference is if the United States seem to be “throwing it’s weight around in Canada” that immediately gets a political reaction, which is not necessarily beneficial to the United States in terms of their interest. I think that people have to judge themselves accordingly.

MR. PHILLIPS: That leads me to the point I would like to make to you, I think you mentioned attitudes, and there are perceptions in Canada about the elephant and the mouse. And some of it’s real, and Gordon’s point about stove pipes we have in many case, I would just hope maybe Gordon you might comment, perhaps the next level is how do we help insure the common sense prevails in this arena?

It really comes down to the two countries getting together and trying to have common sense and in reality prevail and we can talk about things objectively.

MR. RAE: I would make one brief comment; my view is usually it does. I agree entirely with your view that you have expressed. That, in fact, the relationship is much stronger and better at the institutional level if you like than the fact that, you know, there was a cooling in the relationship at the top level because of the difference over Iraq. I think, in fact, the other aspects of the relationship remain very strong. In fact, on issues like security and issues on intelligence, there is a huge amount of cooperation on a day-to-day basis that would only happen if there was a very substantial degree of trust between the two governments.

MR. GIFFIN: You have raised a very important point in my judgment. The secretariat at the PCO was mentioned over here and Jonathan Fried’s role there. When I was Ambassador, this may be an arrogant view, but my view was that the U.S. Ambassador had an extraordinary coordinating role and was permitted to have an extraordinary coordinating role in our government with respect to the relationship in Canada.

I do not mean to suggest that I made all the decisions, but there were very few things that did not come through a funnel in which I sat. And when it would go to the Defense Department or the State Department or HUD, or whatever it was, I knew about it and could impact it in some way.

In Canada, to some degree, I’m not trying to find fault, I’m just observing what I believe to be the situation, but every aspect of the government was very worried about the engagement with the United States and every department of the government was on any given day - I don’t want to overstate it - but could be every day, every department of the Federal government and a lot of the Provinces were doing something directed at the United States; and there was no institution in the government of Canada that caused this funnel to occur where people coordinated all approaches to the U.S. government.

It was not structured in a way where my counterpart in the U.S., the Ambassador in the U.S., had that coordination role.

I would go to the Prime Minister's office once every six months and say, "Jeez, would you guys do me a favor and get this set up so you can prioritize the U.S.-related issues. We'll be working on something big and then somebody over in the Transport Department will pop off about pre-clearance in Toronto and start criticizing us."

So I'm hoping that the new secretariat, which I think is more important in a way than the new cabinet committee, will be able to coordinate and prioritize.

The last thing I will say is during my tenure, the asset - the huge asset that Canada had in dealing with the United States and the huge asset that I use to resolve issues with the United States was the - I don't want to sound trite - but was the best friend asset. Not the next-door neighbor, not the biggest trading partner, but in the final analysis, this intangible bond that exists between Canadians and Americans, not Canada and the United States, but between Canadians and Americans.

Moreover, the great fear that I have, and this is why I may be over dramatizing the left brain/right brain challenge, the great fear that I have is there is not an appreciation for that in Canada. And that the best friend relationship makes a huge difference to the economics, for example. There were plenty of times where I could argue, no, we cannot do away with that exemption for Canadians. No, we cannot stop having pre-clearance in those seven airports, no, we cannot do this, not because I had a substantive basis for it, but because it is not right in this relationship.

If the U.S. Ambassador, whoever is making that argument, cannot draw on the intangible asset going forward, it will be a problem.

MR. KING: I think this was a hell of a good session. It has been a wonderful session.

Thank you Ambassador Giffin and Bob Rae for raising some fundamental things. I think they deserve a round of applause.

(Session concluded)

