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## Discussion after the Speech of William Graham

Discussion

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## DISCUSSION AFTER THE SPEECH OF WILLIAM GRAHAM

QUESTION, PROFESSOR KING: I have a fundamental problem with a question of sovereignty, which seems to be the fundamental barrier to better institutions in the United States, and internationally, in terms of surrendering local authority to international bodies. The problem is, of course, in the electoral system. The individual in Canada, such as yourself, has to be elected by a binding or a congressional district. You have to appeal to your local constituency. If you do not do it, you do not get elected.

The problem is the question of interest. Local interests are very particular; they are frequently very confined to local areas. The problem is the dimension in the electoral system. What I am wondering about is how you tackle the question of sovereignty in terms of selling it to the public. You get security through surrender of sovereignty; they did it in Europe. Why can they not do it in other areas? Do you have any thoughts on that, just changing the media, or what thoughts do you have? Is that too tough a question?

ANSWER, MR. GRAHAM: It goes to the fundamentals of the political structure. All politics is local, as the adage goes. And yet, the curious thing is that, in today's world, the international dimension is affecting the agendas of our local politicians. For example, you mentioned Helms-Burton, which is a case of an international issue becoming a domestic issue in the United States because of the large number of Cubans who reside in the Miami area.

In my constituency I have a lot of people of Tamiloric origin, and they are very interested in what is going on in Sri Lanka. I have a lot of people of Philippine origin, and for years we got involved in Vietnamese politics and in Chinese politics. There are now 400,000 Chinese living in the city of Toronto. Imagine the dimension that makes in terms of an interest in China and Hong Kong, where many of them come from, and therefore Hong Kong is a domestic political issue in Canada today for many of us, both in Vancouver and in Toronto. But the question is, how do you marshal that new world into a way which people say, okay, we have to give up something to get something, which is what your problem is. The problem is everybody says, I am not going to give up what I have. I do not know how we get over that next step.

COMMENT, PROFESSOR KING: What you are doing is getting security.

ANSWER, MR. GRAHAM: Yes.

COMMENT, PROFESSOR KING: And you have to give up some leeway in your freedom of action.

ANSWER, MR. GRAHAM: Yes.

QUESTION, PROFESSOR KING: In Europe they did it after a bad war. France and Germany created the European Community after a war that destroyed a lot of Europe. So it is a tough question, but I think it is fundamental how you approach it. You do it through media education.

ANSWER, MR. GRAHAM: I think there is a worry, I will tell you, if you want to talk about media. If you look at this month's or last month's *Foreign Affairs*, there is an introduction in there by a very knowledgeable person on television. He was the former head of CBS in London, and he was writing about the lack of foreign news on the channels in the United States. As the United States becomes economically interdependent and more integrated in the world, in fact, it is getting less and less satisfactory news services for reasons of economic interest among other things, and cross ownership, which really concerns people. I talked to Mr. Zedillo, the President of Mexico. I spent an hour with him when he was in Toronto. One of the things he is concerned about there is cross-ownership of a lot of these things and how it is possible to maintain an independent culture doing so. I do not know what the answer is.

COMMENT, PROFESSOR KING: That is food for another conference.

QUESTION, MR. SHANKER: I quite agree that it would be nice if we could do these things. One wonders how come in 1787 we were able to do it. The Articles of Confederation were obliterated in favor of a Constitution which did just about everything you could think an essential government can do, or the European Union does now. One wonders what happened in 1787 when you were able to do it in that kind of so-called primitive society, and we seem almost incapable of doing it now. I do not have the answer.

COMMENT, MR. GRAHAM: Mr. Jefferson was brighter than the rest of us.

QUESTION, MR. NADAL: I have a couple of comments or questions. One is on compensatory funds in European integration, and this is something that is spoken about a lot in Mexico. If we renegotiate NAFTA, forgetting about the political liability of the renegotiation, it is a different question. I am thinking only about the technical aspect. If we

renegotiate NAFTA, people will ask if we can introduce compensatory funds. This is a big issue in circles in Mexico when people consider how to improve on NAFTA. I would like your opinion on that one. I imagine it is going to be that there is no way we are going to be doing that. People are worried about jobs and investments going abroad. They are blaming NAFTA for whatever is going wrong, be it closing hospitals or whatever. Just imagine what they would say if we would have to give the Mexicans more money now because of NAFTA.

I would also like to comment on Chapter 21 in NAFTA. It is something that has received virtually no attention by analysts or the media, and I believe that in the context of the 1994 crisis in Mexico, it was probably one of the most important fundamental chapters in the entire agreement, particularly Article 2104. If you look at Article 2104, the balance of payments provisions in the NAFTA as compared with the European Union, it is interesting to see that there is much more power given to the International Monetary Fund (IMF) in NAFTA. As it were, you are evolving jurisdiction to the IMF. If you look at the process of very deep economic integration in the European Union, you see that that jurisdiction is given to the European Commission. So I wonder if you would like to comment on that.

ANSWER, MR. GRAHAM: Can we get into something like compensatory funds? First, I must ask you a question. By compensatory funds, I presume you mean group funds, in other words, Canada, the United States, and Mexico would have to create a pool themselves. Or are you talking about within each country?

QUESTION, MR. NADAL: I am talking about funds like in Europe, the funds that went into Spain and Portugal, for example.

ANSWER, MR. GRAHAM: I just do not see that going on. I agree with you. I do not think the Americans would even think of it. I am not sure that they would consider it in Canada, either. I must say in Canada, we had for a long time considered it a central tenant of confederation that one of the jobs of the federal government was to gather money at the center and then pass it out to the provinces. We still have that, a sort of a compensatory fund of that nature, whereby provinces that fall below certain standards have a right to funds coming back to them. Some provinces are net givers and some are net takers under that particular scheme.

That is really a very important part of our notion of our own federal structure, but it is under a lot of attack. It is not popular with a lot of modern economic theorists. So it is certainly not Chicago-Business-School-sort of economics, if I could put it that way.

I do not think that has any more likelihood of flying than something

even like the European Social Charter, which comes from the same concept, for which the English have fought like mad. I do not think we will see anything like that. Although, curiously enough, the labor side coat is kind of a social charter in reverse, because what it is trying to do is make sure that you do not have unfair competition from cheap labor. It is kind of a social charter to try and impose standards so we will not get competition. It seems to me we are going in the complete reverse on both of these issues than what you would like to see as part of the NAFTA.

I am sorry, I cannot answer the bonds payments question. I do not know enough about that. I am just grateful we have not had a problem in the last few years.

QUESTION, MR. DATTU: I hope you agree with me when I said earlier that one of the fundamental promises made to Canadians when the Free Trade Agreement was signed was that there was going to be a dispute resolution system both in the Chapter 19 and Chapter 20. But you may recall that was also, at least with respect to Chapter 19 and anti-dumping laws, an intrameasure until dumping laws in two countries were eliminated as was done with Chile. More recently we have not seen any progress on that score.

Where do we go from here? What is it that Canada can do to get the United States to remove anti-dumping laws between the two countries? Were we duped earlier on, seven odd years ago, when we were promised that there would be a working group to resolve the disputes between Canada and the United States on anti-dumping, and if we were not duped, then one would have thought that there would be some progress over the years in resolving these issues. We are not seeing that.

You mentioned earlier on the steel lobby in Canada coming to you and asking for laws and procedures in Canada similar to the United States. That is not, from what I am hearing, an acceptable remedy of means. What is it that you can offer the steel community or other domestic producers in Canada who are trying to access the U.S. market without getting into the very stringent anti-dumping laws?

ANSWER, MR. GRAHAM: I have three possible answers to that question. The first I will talk about after the election, which is certainly the safest one, because it is amazing how things get back. The second one would be to give you the answers that our Minister of International Trade gives when it comes before the committee which just asked a similar question. And the third one would be my own personal view of where we are really going.

I think what Canadians expected was the security of market access out of the arrangements, so nobody really cared about Article 19 or 20,

specifically as such, the nuts and bolts. People did not understand that. What we understood was that if we did not have a system where we had security of access to the U.S. markets. In fact, investors, instead of investing in Canada, are investing in the United States. Why would anybody invest in the big markets here? You would be a damn fool. Why do you not just put it in commission and ship the stuff north? So the security of access, and the security of the rules and the dispute resolution mechanism that applied, were fundamental to us. And, ultimately, it was the desire to get better rules which was certainly promised.

It is this darn glass being half-empty or half-full thing. You have many people saying that it is not working out badly, only five percent say that. Then we get a case like *Softwood Lumber* that comes up and whacks us from Seattle. Who can believe in a system where every time the political pressure in the United States gets so intense in that area, there is always a point where the United States will totally override it, whether it stems from Helms-Burton or lumber or seven pork appeals, or the agricultural thing, wheat, and things like that.

I understand that the *ad hoc* working group, which I do not know anything about, is actually coming up with some reasonable and attractive changes to practices in both countries. It will give comfort at least to that. Probably the best that we can do is to move incrementally. Then we have to decide overall if the benefit is greater than the law says. I would say probably, at the moment, the benefits are greater, but I do not know. What worries me is that we will get so far down the road of integration that there will be a case that we do not like, and at that point, it is too late. There is no way you can get out of it. The cost of moving and getting out of it is just too great. It is like Quebec, the transaction costs of a separation are so huge. Even if you thought it was attractive, can you really persuade yourself that it can be done?

QUESTION, MR. MURPHY: I would be interested to learn how Canada goes about negotiating these free trade agreements. The conventional wisdom in the United States is that we cannot even start doing it without the Fast Track, which is very complicated and very political. Does Canada have anything like the Fast Track?

ANSWER, MR. GRAHAM: No. In a Parliamentary democracy, such as Israel, that has so many minority governments, they always have to renegotiate with fifty people to get anything done, so it gets to be a little like the Congressional system. In our system where we have majority government, constitutionally, the federal government has total control over international affairs, so it cannot negotiate anything. There are constitutional restraints on that in Canada where we possibly ran into trouble in NAFTA and the Free Trade Agreement. Many of the

parts in the Agreement fell to the exclusive jurisdiction of the provinces, depending on how you look at it. So the Attorney General of Ontario, Ian Scott, said that the Free Trade Agreement itself was the single most important constitutional amendment that had ever been involved in Canada, because what it was doing was eviscerating the right of the provinces in respect to control over services. So there is a constitutional framework in here that comes into play, but apart from that, in Parliament itself, once the government has negotiated something, if they control the House, they control the situation.

In my election, people are voting for the party and the party leader. They are not voting for me. It is not like your congressional system. It is a very different political system, and the party delivers. I believe very strongly in that, because what is the point of having a party platform? There is no point in my going out and running on a platform, saying, if you elect the Liberals, we will do this when in fact we cannot deliver. If we get elected, we will deliver it, including international agreements. So we do not run into that problem.

**QUESTION, PROFESSOR SCHAEFER:** I just had one question on rule-oriented diplomacy which you brought up, and also on private causes of action in domestic courts which you also mentioned. You spoke in support of allowing the private cause of actions in domestic courts for violations of international trade agreements. I was wondering if Canada would support that if their trading partners were willing to reciprocate?

**ANSWER, MR. GRAHAM:** I think you would have to build a constituency for it. I think today there would be a considerable reticence to do it. In fact, there are certainly provincial governments in Canada who are talking about a looser Canadian federation where they all have a WTO-type dispute resolution procedure instead of a federal court. Mind you, this is just totally crazy. It is anti-democratic and nuts. But, after all, if NAFTA creates the rules of law, those rules of law should be directive.

You have to persuade people that this is a more democratic way of dealing with the issue. If you look at the European experience, it is remarkable, because it has given people access directly to the system, rather than having to depend on it state by state. This is not something the average Canadian is wandering around the streets wondering about; would happen to us if we had the rule of directive? People seldom stop me on the street with that question. So I do not know.

**COMMENT, PROFESSOR SCHAEFER:** It is interesting that in the Internal Trade Agreement they did not even provide for private remedies in domestic courts. They give individuals the right to take something

similar to a GATT panel, but there are no private remedies even in domestic courts for the Internal Trade Agreement.

QUESTION, MR. GRAHAM: In the Canadian internal agreement?

ANSWER, PROFESSOR SCHAEFER: That is right.

COMMENT, MR. GRAHAM: I agree, and that was a fundamental objection I had to it. I think it was a totally cockamamie scheme. That part of it is ridiculous. We have federal courts. They can apply the rules. It is absolutely absurd to have introduced that. That was introduced at the insistence of Bob Ray, who has been the Socialist Premier of Ontario. He cooked up that scheme, which I in fact told him. I said, Bob, it is totally typical of you to talk democracy on one end and be totally anti-democratic on the other. But anyway, that is the way it falls. I was surprised at that, and I agree with you that it is inconsistent.

QUESTION, PROFESSOR SCHAEFER: Would you have any concerns about Canadian citizens having to go into U.S. courts? One of the reasons for Chapter 19 was that it was thought U.S. courts were a little too favorable to U.S. administration of anti-dumping and countervailing duties. I wonder if that would be a more general concern.

ANSWER, MR. GRAHAM: My understanding of the Chapter system is that the U.S. courts would not be relied upon; that the track record of the Fifth Circuit, or whatever it is in Washington State, was very respected, but that the problem was at the lower level of the administration, particularly because they were largely people like former politicians and political appointments and things like that.

If you read the old GATT case on Section 337, you remember that one of the objects of the complaints was that there was a bias in the American system. Appointees were all biased by virtue of where they came from, and the whole system was rigged against foreigners. There was that feeling at that level. But I do not think there was ever a feeling that the courts were pertinent. I would be willing to give myself a fair shake in the U.S. courts. I think that would have had a better chance in a U.S. court than in a Canadian court since the U.S. courts have always been more open to international law than Canadian courts because of our British constitutional and international law inheritance. Again, many people in this room would certainly contradict me on that.



