

# feature

## Legal, but breaks convention

by Richard Watts

Last Monday the Supreme Court of Canada handed down its decision concerning Pierre Trudeau's constitutional package. The courts, which from the outset resented having to make what they considered an essentially political question, came up with an ambiguous decision.

Yes, said the courts, it is legal for the federal government to move unilaterally and alter the constitution. Yes, there does exist a "convention" which requires unanimous consent from the provinces. Yes, the constitutional package will affect the rights and powers of the provincial governments.

A symposium was formed last Wednesday on campus to discuss the issue - "After the courts, what now?" The panel was made up of five political science professors: Dr. s Engelman, Carmichael, Dacks and Stevenson. The symposium was chaired by professor L.C. Green.

The constitutional issue quickly became as clear as mud. This is no reflection on the members of the panel. It is rather a reflection of the complicated tangle of moral, legal and political factors which combine to make the issue of Canada's constitution such a complicated one.

Professor Green opened the symposium with a discussion of the court's decision. The BNA act is an act of British parliament at Whitehall which they could, strictly and legally speaking, repeal tomorrow.

However, since neither the provinces nor the provinces nor the courts are empowered to interpret the BNA act, Whitehall will be more than likely carry out the requests of the federal government, according to Green.

But this raises a question: If the courts are not legally empowered to interpret the

BNA act, why were they asked to decide a political question?

The question of legality is further muddled. According to Green, under

British law - which is Canadian law - there exists both written and unwritten law. Unwritten law is referred to constitutionally as "convention" which is as legally binding as written law.

Nevertheless, the courts have handed down a decision which states that the federal government is legally empowered to alter the constitution. But a convention exists which says that the unanimous consent of the provinces is necessary to alter the constitution.

Although Green seemed to feel that legal jargon had been misused, Professor Carmichael applauded the decision of the courts. Now the questions of morality and "right", he says, can be discovered in an issue which up to now had been characterized by a good guys vs. bad guys attitude.

Says Carmichael, "Actions by a government are always strictly legal but not always right." The Americans in 1776 went to war over the issue of legality vs. right."

Carmichael continued by stating that Canadians have a dual political identity due to the federal and provincial governments. Both governments are expressions of their communities' collective will, and both should be equally respected. The provincial legislature is a perfectly legitimate spokesperson for the provincial communities.

"Any attempt to run roughshod over the provincial governments by the Trudeau government is a violation of our collective identity and a good example of tyranny," Carmichael concluded.

Professor Stevenson said that the

decision of the courts was a good one, since it forced politicians to deal with political issues. Stevenson claimed that the very purpose of unwritten convention was to give flexibility to the law.

The federal government is now in a position to flex that law, in order to make what Stevenson sees as much needed changes.

Professor Englemann spoke next and outlined a number of scenarios he considered now likely.

On the bleak side, Englemann's predictions included: widespread civil disobedience in Quebec, a bankrupt economy due to lack of proper attention, and the complete alienation of the West, which would mean a Francophone Prime Minister could never again win trust.

On the hopeful side, Englemann expressed the wish that perhaps Trudeau will swallow his pride and discontinue his attempts and bringing home the constitution. He felt that the Liberal party and Canada may yet survive Trudeau.

"I am speaking as a one-time supporter of Trudeau, until he locked up 500 people. We would be far better off waiting Trudeau out and then bringing our constitution home and rewriting it without him," says Englemann. Professor Dacks concluded the formal speeches with a discussion of what he saw as the most likely constitutional scenario.

Dacks stated that there would be probably be more talks with the provincial government and further parliamentary debate. This, however, would be purely for politically cosmetic reasons. Trudeau would then be able to go to Whitehall claiming he had acted responsibly.

Out of respect for Canada's in-

dependence, Whitehall will have no choice but to approve Trudeau's package, said Dacks.

Because of the distance between Ottawa and the provinces, and Canadians' general lack of political responsiveness, the country will suffer a slight division, which, like the Riel crisis will soon be forgotten, according to Dacks.

Carmichael, having read Trudeau's package, is not convinced that it is a very good document.

"Trudeau has yet to prove himself a great defender of human rights. Besides, some of his more controversial actions, he has had years to change the criminal code, both as PM and as Justice Minister. Why should he be allowed the responsibility of writing a Canadian Bill of Rights?" asks Carmichael.

The Canadian Constitution will alter Canada's destiny. Is the present federal government morally qualified to write our constitution?

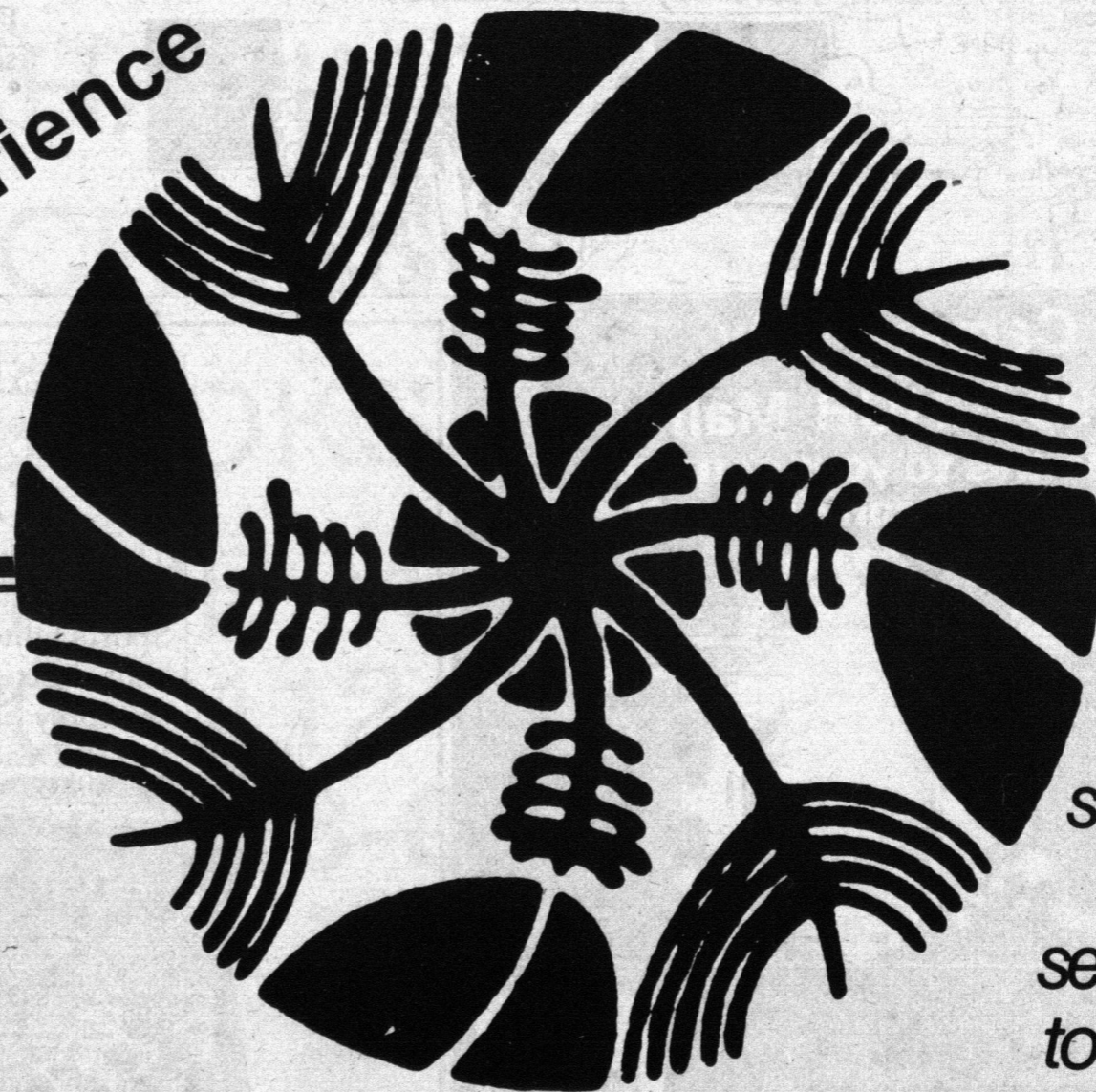
Few people would disagree that the Prime Minister has repeatedly displayed a preference for political expediency rather than honesty and truth. Pierre Trudeau is about to set on paper your rights as Canadians.

Eight provinces disapprove of the proposed constitutional package. Is this political pettiness as Dr. Stevenson seemed to suggest? or is their fear justified that their interests will not be looked after in a country where over half the nation's population resides in two provinces, as Dr. Englemann stated?

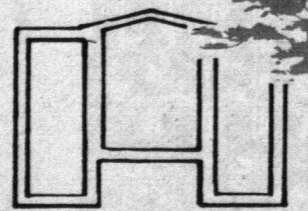
If the federal governments' constitutional package is approved will it only have a vaguely unpleasant political odour that will eventually dissipate as Dr. Dacks believed?

These questions and more can be raised over the constitutional question.

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