

The Disunity Charter

In October 1995, the No side won the Quebec referendum by a slim majority. The sovereigntists made considerable gains. The squeaker vote has left many Canadians frustrated and helpless. Ordinary citizens have picked up the role of nation-builders in TV specials, such as CBC's 72 Hours to Remake Canada. Preston Manning proposed the appointment of "a new Canada task force" to consult people on their ideas about federalism, supported by "a major teledemocracy effort on this subject." He would also begin to raise the hard questions concerning territory, citizenship, the debt, and so on that would have to be answered in case of separation. Stéphane Dion, the new Intergovernmental Affairs Minister, has received an avalanche of mail on the unity question.

Grassroots, non-parliamentary participation has happened before, notably during the constitutional and referendum debates in the late 1970s and early 1980s. The grassroots was involved in the Charlottetown referendum of 1992. And we vividly recall the emotional outpouring of love for Quebec in last year's gigantic Montreal rally. But will the populist movement succeed where politicians have failed? Is there a national identity that binds Canadians?

National identity

In the booklet "Canada Take it to Heart" published for the anniversary of the Canadian flag and National Heritage Day, the government encourages Canadians to reaffirm their personal commitment to Canada and to the common values that all Canadians hold dear. These common values are supposed to be shown in "our bilingual and multicultural society, our willingness to serve as volunteers, a strong appreciation of our artistic excellence, and a commitment to fostering international peace and freedom." But do we still have common values?

The search for national identity is not new. Since the mid-fifties Canadians have been asking about their identity. They became increasingly aware of the extent their economy was intertwined with that of the United States, and with the advent of television they also become aware of the acute dangers of cultural domination by their southern neighbour. There was a dynamic tension between British and American cultures, and Canadians felt free to choose or reject various aspects of these models of cultures and society. And there were still shared values based on a common Christian heritage.

But in the 1990s, Canadians no longer have common principles to bind the federation. There is an incredible lack of understanding of Canada's heritage. The study of history is for the most part written off as unimportant. And the little history that is taught is politically correct, giving a wrong impression of our past. Richard Gwyn comments, "Indeed, we positively scorn the greater part of our history. . . as an unending chronicle of racism, sexism, homophobia, militarism, environmental-degradation." But a nation which no longer knows its history will not have a future. It is easy to break with the past; it is difficult to pick up roots, once broken. Canada's over-arching national creed is now

a vague reformist liberalism constitutionally enshrined in the Charter of Rights and Freedoms.

A strategy for unity

The government of Pierre Elliot Trudeau believed that the 1982 patriating of the constitution and entrenching the charter of rights would symbolize common political values of all Canada, secure the French fact from coast to coast and foster national unity. It provided a constitutional foundation for the federal Liberal strategy on bilingualism and national unity. Then Minister of Justice, Jean Chrétien frankly admitted that the aim of the charter was to rectify violations of minority education and language rights in both Quebec and English Canada. He promised all Canadians "a new foundation on which to build a more united, a more generous and greater country." It was the answer to Quebec's nationalism.

This belief became a so-called self evident truth for many. David Milne, who served as an advisor on constitutional matters to the PEI provincial government and taught Canadian politics, claimed that the charter had "nation-building potential" because of its broad and popular support throughout the country. He even asserted that over time, it could become a "venerable symbol of Canadians' collective political identity." But instead of nation-building, the charter is threatening to destroy the nation.

A nation without God

But how can the charter be nation-destroying if its preamble states that Canada is "founded upon the principles that recognize the supremacy of God and the rule of law?" Although Canada developed as a primarily Christian society in the 18th and 19th centuries, it is now pluralist, multicultural, and thoroughly secular. The way the charter functions demonstrates this change. It reflects Trudeau's secular political liberalism, in which God and religion have nothing to do with public and political life. It has become a means of stripping away all Christian values and traditions. Columnist Charles Lynch explained that Trudeau was "anxious to make the point that the mention of God in the document was honorific rather than substantial, contributing nothing to God's jurisdiction in the scheme of Canadian federalism." Trudeau's secular legacy and Machiavellian politics reshaped Canada and left it decidedly divided. Canadians no longer have confidence in their governments. Canada has become a fragmented, squabbling and rootless nation in spiritual crisis.

Rapid secularization eroded the influence of the church in community and national life. Our culture is now relentlessly heading towards the days before Noah's flood as a consequence of its rejection of God. The guiding rule of social conduct is no longer based on moral absolutes but on the question of whether it is legal. For many, choice and self-determination are now the nation's highest good. Canadians no longer share common values. They are identified by their social security numbers, credit cards, driver's licenses, statistics and harsh winters, rather than by their heritage.

Christian ideas are considered irrelevant, intrusive, reactionary and divisive elements. Despite the talk of a spiritual revival, Christians have become marginalized in public political debate. Our laws are no longer based on British common law and its Judeo-Christian heritage. Canada has been robbed of its religious inheritance. "Canadian law," says Ian Hunter, "has become secularized, cut adrift from its moorings in the divine, no longer infused by natural law conceptions, looking for its ultimate validation not in eternal truth, nor even in the two thousand year heritage of Judeo-Christian legal system, but rather in the recently minted Charter of Rights, a Lilliputian statute fit for a nation of pygmies."

A lawyer's delight

The British North America Act of 1867 never once referred to liberties or freedoms. It said that "Canada ... shall have a constitution similar in principle to that of the United Kingdom." This meant that liberties were protected by parliamentary democracy, by its traditions, customs, by common law, and by Her Majesty's Loyal Opposition. The Charter of Rights and Freedoms redefined the country. It represented a radical departure from the British common law heritage. It changed the nature of Canadian politics by Americanizing it, shifting authority away from Parliament and the legislatures towards the courts.

In 1980, Premier Sterling Lyon of Manitoba warned against this shift of power in a debate on the constitution. He charged that entrenchment of the charter was "contrary to our traditional and our successful Parliamentary government" and would move our system "towards that of a republican system." He declared that

such a transfer of legislative authority (from Parliaments to courts) would amount to a constitutional revolution entailing the relinquishment of the essential principle of Parliamentary democracy, the principle of Parliamentary supremacy.

The Charter became the supreme law of the land, superior to Parliament. Many decisions affecting the lives of Canadians would be made in the courtrooms without any influence from the electorate. Canadians are now ruled by judges. Ian Hunter points out that sweeping new powers were given to judges to decide contentious issues, issues that once would have been the prerogative of parliament - abortion, euthanasia, mandatory retirement, cruise missile testing, and homosexual rights. Richard Gwyn observes that this change has turned Canadians into litigious rights-seekers on the American model.

In 1992, the Supreme Court ruled that judges could "read into" legislation meanings not specifically spelled out in them. The Ontario Court of Appeal used this ruling to "read" sexual orientation into the prohibited grounds for discrimination as enumerated in the Canadian Human Rights Code. The charter became a lawyer's delight. Lawyers could now capitalize on the need to interpret the new document.

Canadians have never been asked what to think of the charter. It was forced upon them. Trudeau's government had no mandate from the electorate to embark on constitutional reform. The Charter became the property of unelected judges rather than of the people's democratically elected representatives. If this is so, why not have American style-conformation hearings to determine the personal and political biases of the Supreme Court candidates?

The charter fosters disunity instead of unity. It stresses individual rights at the expense of community protection. On April 17, 1982, the day the Constitution Act became law, René Lévesque said that "Le Canada" bill would lead to uncalculable consequences for Canada. As for the charter, it was "the most soporific lawyerishness you could find anywhere in the world." He was right. Quebec used the charter to its advantage by invoking section 33, the so-called notwithstanding clause, in order to restrict the right to use the English language in the province. This action deepened the political and linguistic crisis in Canada. Section 33 permitted lower levels of government to override the most fundamental rights of Canadians.

A repeal of the charter and a return to parliamentary democracy would be a major step forward towards fostering unity in the federation. "But that would require," observed Ian Hunter, "constitutional amendment, a virtually impossible process in contemporary Canada."

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