

Do we need a Charter?

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The obvious argument against a Charter of Rights enshrined in the Constitution is that it will impinge on the supremacy of both Parliament and the provincial legislatures. Each within its jurisdiction is the so-called "final court."

Once the "rights" are enshrined the Supreme Court, a non-elected body of judges appointed in effect by the prime minister, becomes the last resort, not the elected politicians and their respective forums. By interpreting the rights and directing the dispositions of challenges to federal and provincial laws and regulations the Supreme Court would have a massive role in legislative interpretation both of laws to come and those already on the books. As Chretien half-jokingly told some new lawyers last week, it opens new vistas of litigation for them.

One goes back to Trudeau's essays in *Cite Libre* and *Vrai* in the '50s and early '60s to understand his drive for a Charter. It grew from his hatred of the Duplessis government and the sorry state of democracy in his home province. In essence an enshrined Charter means that Quebec must be very much a province like the others, its laws and regulations conforming to a national standard enforced by a national court.

To understand the origin of Trudeau's motive doesn't answer the good question for today. Is democracy and fair play for citizens still endangered, despite "the Quiet Revolution" and the enormous reforms undertaken in Quebec (and elsewhere) in the interim? Are human rights and all that phrase connotes in a bad way in Canada now, federally and provincially?

Whenever I ask such questions with advocates of enshrining rights they invariably raise three issues with past, grievous effects: first, the treatment of the Japanese Canadians in WWII; second, the hundreds of unjustified arrests after the invocation of the War Measures Act in 1970; and third, the inequity in rights of those who would use the French language outside Quebec. If I'm arguing with New Democrats they always raise the issue of our treatment of native peoples.

It doesn't seem to move the "Rights" zealots when you point out that the first two examples were based on extraordinary powers given the central government to meet emergency situations, and not even the enshrinement of rights will delete the War Measures Act from this government's armory.

And on language rights, the great proponent, Trudeau, as a condition of support from Premier Davis, has written that province and others out of the effects of any enshrinement.

As for the enshrinement of "aboriginal rights," whatever that may mean, nowhere in Canadian politics, including spending and administration, have we got a greater foul-up in waste and confusion.

Let me give an example from early this week. It had been a "light" news day. Almost every network news telecast featured Harry Daniels, a spokesman for the Native Council of Canada, belaboring the constitutional proposal. Again and again I saw mention that Daniels spoke for

750,000 or more Metis and non-status Indians. This is simply nonsense. Neither Daniels nor anyone else knows how many Metis there are in Canada. Just a year ago in Ontario I was told that there were some 100,000 Metis in the province yet none of the governments nor the Metis associations (funded mostly by Ottawa) had a clue on the figures. In terms of genuine membership the best figure I found for Metis in Ontario was 3,500.

Federally, our annual bill for native affairs is close to \$1.4 billion, largely to sustain the 300,000 odd "status" Indians. On top of this ramshackle administration and high spending we're going to pile something called aboriginal rights. This will enrich current and future generations of lawyers in translating these rights in land claims and buy-outs, including the ferreting of consanguinity entitlements. If the figures of native spokesmen should be right, one in twenty of us have a claim in blood in those rights. What a pig in a poke for us to assume.

The native issue is only a smidgin, however, of the package for the future. The larger matter is the state of human rights in Canada today. Is it bad? Haven't we been creating like crazy all sorts of means and channels for citizens with grievances ever since the dreadful days of Duplessis?

Just over 20 years ago most MPs had half a secretary; today they have a staff of at least four, and a much larger case-load. Similar aid has been given to provincial legislators. Most provinces have ombudsmen (including Quebec). Nationally, we have watchdogs galore — a human rights commission, a language commissioner, even a penitentiary commissioner. Name almost any sticky matter — rents, the handicapped, women at work, cottagers, athletes, artists, musicians, egg-producers, labor unions, safety and occupational health situations, land use, etc. — and there's a board or a commission, federally or provincially.

Last week I asked two veteran Liberal MPs what the situation is, compared with that in the '60s regarding grievances of citizens and their access to political and administrative consideration and redress. The answer of each, given separately, was that there is no comparison. As one put it, "It's very rare today to find a case of an individual or group which cannot get a hearing for a wrong or a grievance. That's far from saying they get satisfaction but they can be heard, they do have access."

In summary, Canada is not an Eden in the biblical sense but where is there a country which has less need of an enshrined Charter of Rights? There isn't.

Of course, you can always imagine a reversion to the Duplessis era. In that case, a surfeit of lawyers and the white knights of the Supreme Court would save us from the politicians.