SHARED CANADIAN VALUES, SOCIAL COHESION AND THE CHARTER OF RIGHTS: IT IS TIME TO RETHINK THE TERMS OF THE DEBATE

ABSTRACT

Are the rights and freedoms respectively incorporated in the Quebec and Canadian charters a reflection of our fundamental values? On the occasion of the 25th Anniversary of the *Canadian Charter of Rights and Freedoms*, how do the equality rights in particular contribute to the ongoing effort to define shared Canadian values and promote social cohesion? Or should we rethink both shared values and social cohesion as dominant paradigms in academic and policy discussions? ACS executive director Jack Jedwab suggests that it is time to rethink some of the terms currently employed that risk muddling debates about rights and freedoms.

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In the first decade of our new century one of the more intensely debated issues in political and academic circles involves the search for shared Canadian values. Many decision-makers insist that there exist a set of common Canadian values. Increasingly media, government and academic discourse is replete with references to shared Canadian values and the desire for social cohesion without which some ominously warn our society might cease to exist. Amongst these "shared Canadian values" most often mentioned are a commitment to democracy; universal respect for human rights; equity; fairness; diversity; and solidarity (Bourgon, 2003). Following this logic, the legal documentation which codifies such ideals are the distillations of the shared values. Recent debates in Quebec over reasonably accommodating religious minorities have abounded in pleas for respect for the shared values of Quebecers. Beyond the issue of gender equality however, discussions around accommodation reveal significant divergence over other shared values.

Do Quebecers and other Canadians possess a set of shared values (or two sets of values, given the presumed distinct set of values shared by Quebecers?) To what extent can the *Canadian Charter of Rights* (for that matter its Quebec equivalent) be described as the embodiment of such values? Or are such debates simply confronting the powerful rhetorical appeal of loosely defined notions such as shared values and social cohesion?

In a lecture entitled "*The Myth of Shared Values*", political philosopher Joseph Heath contends that like other liberal democratic societies, neither Canadians nor Quebecers possess a set of shared values. He maintains that "…shared values are neither necessary nor sufficient for social integration. Not only is the idea that we have shared values a myth, but the idea that we *need* shared values is also a myth."

Are the rights and freedoms respectively incorporated in the Quebec and Canadian charters a reflection of our fundamental values or as an expression of shared principles? Public opinion surveys directly asking whether the *Charter of Rights* reflect Canadian values generally elicit a high level of agreement. Are the rights themselves values rather or are they best described as value-laden? Tibbitts and Rehman (2003) point out that: "rights are based on reason: they exist regardless of whether or not they are codified by law. As such, these rights are non-conditional

and available to all. Furthermore, these rights are understood to have certain qualities or values. They are universal, inalienable, indivisible and interdependent." In other words, values may evolve, but codified rights may not change. However, interpretation can shift under modified circumstances.

Detractors of the *Charter of Rights and Freedoms* have traditionally raised concerns with the codification of rights and freedoms on the one hand, and on the other hand, their interpretation being relegated to a select group of unelected officials. Their views cannot be dismissed as they contribute to debates around checks and balances in the respective authority of the legislature and the judiciary. Even the most ardent defenders of the *Charter* can acknowledge the philosophical issues to which the presence of provisions that call for reasonable limits on certain rights as well as a clause that permit overriding rights under exceptional circumstances.

The *Charter* valued?

But critics of the *Charter* have been less effective in making the case that the *Charter of Rights* is neither a reflection of Canadian values nor an expression of Canadian identity. On the occasion of the 25th anniversary of the *Charter of Rights*, the President of SES Research, Nick Nanos, unsuccessfully attempts to articulate the view that "*Charter* values don't equal Canadian values". Unfortunately he provides no meaningful evidence for this assertion, since the survey he conducts in defense of his view asks no such question. Nanos arrives at this conclusion by asking two questions which do not permit a causal relationship to be established. The first question reads as follows: "Based on what you know, would you say that the *Charter of Rights and Freedoms* in Canada is moving our society in the right direction or in the wrong direction?" To this question, Nanos finds that nearly six in ten Canadians agree that the *Charter* is moving the country in the right direction. He then proceeds to ask a top of mind question as to why it moves the country in either direction, which ends up inviting over thirty unprompted responses as grouped by Nanos.

On this basis, the pollster concludes that the *Charter* is by no means central to Canadian identity, as even amongst its supporters, when "unprompted", only 5.3 percent, one Canadian in 20, thought the *Charter* "makes Canada a great country". And among those who said the *Charter* was moving the country in the right direction, only 3.1 percent said it is because it "Reflects our values". Following Nanos' "logic", it might be assumed that some 97% of *Charter* supporters don't think that it reflects Canadian values. He does not suggest that the 29% saying that the *Charter of Rights* "protects rights and freedoms" (the most common response) and the 16% saying "it works" implies that a substantial majority believe it neither works nor protects rights. Those who are supporters of the *Charter* needn't worry however, because only 10% of those saying the *Charter* goes in the wrong direction say people have too many rights, 9% say it divides society/undercuts Canadian identity, and 15% say it doesn't work. This is very reassuring news for *Charter* supporters, as only a small share of its critics when unprompted say that people have too many rights, that it doesn't work and that it divides society or undercuts Canadian identity.

Elsewhere in the SES Survey, when asked whether the Courts or Parliament should have the final say in right issues, Nanos says "a clear majority, 54 percent" responded that the Courts should have the final say (his analysis would likely have been different if he based his conclusion on how many people said this in the unprompted answers). Nanos further notes that a "strong majority, 61.8 percent" supports the inclusion of gay rights amongst equality rights in the *Charter*. However, Nanos concludes that "fewer" than six out of ten Canadians (58.2%) said that the *Charter* was moving society in the right direction, thus giving it what this pollster describes as a thumbs-up or thumbs-down question. This demonstrates just how elastic the thumb can be when it comes to defining just how clear or strong the "level" of majority opinion needs to be.

The results Nanos describes as a "drilling down" of public opinion must have come as a surprise to those who have asked Canadians whether they thought that the *Charter of Rights*, its equality provisions or other aspects of it (i.e. language rights accorded to francophone and anglophone language minorities) reflected Canadian values. In effect, by directly asking questions on whether the *Charter* reflected Canadian values, most surveys find that a clear majority would agree with that view (Nanos would likely argue that such questions are leading the respondents, although on other matters pertaining to the *Charter*, he has no problem in similarly formulating the question).

An April 2007 survey of some 1500 Canadians commissioned by the Association for Canadian Studies from the firm Leger Marketing asked the

following question: "There has been much debate recently about the need to define things that reflect the shared values of Canadians. Do you think that the following issues and symbols are very important, somewhat important, not very important or not important at all?"

As observed below, when the question is put this way, some 69% of Canadians describe the *Charter of Rights* as "very important", and another 22% describe it as "somewhat important." Equality between men and women is considered "very important" by 76% and another 18% consider it "somewhat important". Universal health care seems to be the highest rated, with 76% describing it as "very important" and another 20% as "somewhat important".

There has been much debate recently about the need to define things that reflect the shared values of Canadians.

Do you think that the following issues and symbols are very important?

If anything, the results generated by Nanos on the basis of his 30 plus unprompted responses to questions about the *Charter* reinforce the argument made by Heath about the plurality of views in our society that discourse on shared values risks concealing. Again, much depends on the way the notion of values is defined. According to Heath, political philosophers use the term "value" to refer to a "conception of the good." A value specifies, not what we desire, but rather what we should desire or put another way what we think is good. A value serves as a standard to evaluate our own plans and preferences.

Heath states that conceptions of the good are intimately tied up with our personal identity: the values that one subscribes to essentially define what sort of person one would like to be (i.e what role to assign to family, where to live, how to spend our leisure time, and so on). Heath rightly observes that our society is characterized by an important pluralism of fundamental values. In a multicultural country like Canada, he concludes there is no single blueprint for how life should be lived.

The ACS-Leger marketing results do not speak directly to the question of shared values. Rather the preamble infers a relationship between the items listed and the values held by Canadians. To suggest these items are shared values invites a definition of the notion of values that risks being problematic. Hence the results do suggest that universal health care, gender equality and the *Charter of Rights* are indeed things that Canadians value. The approach provides a much closer approximation of whether the *Charter of Rights* may be value-laden than the SES method, which absurdly requires that the word values be evoked by respondents in order to meet the test of Canadian values – something never referred to by Nanos.

In the ACS-Leger survey, we also have chosen to drill-down and dig deeper into respondent's views by using the SPSS program to correlate the responses to various questions to determine whether any pattern emerges. As observed below, the connections made by respondents in this regard are undeniable. Those who regard the *Canadian Charter of Rights* as "very important" also to a greater extent consider as "very important" such things as universal health care, gender equality, reducing income gaps, patriotism and multiculturalism as "very important".

Value of culture or cultural values?

Issues of values are often discussed interchangeably with cultural differences when comparing communal and national identities. Differences between Quebec and the rest of Canada or Canada and the United States are often expressed in terms of differences in values. But cultural differences do not imply diverging values as various cultural groups can share values irregardless of differences in language, customs and traditions. Ostensibly, Quebecers and other Canadians are committed to respecting fundamental rights and freedoms and, when asked about the *Charter of Rights*, generally express favorable opinions on its basic tenets. Many Quebecers express disapproval about the process by which the *Canadian Charter of Rights* came into being and some have gone so far as to pretend there are fundamental differences of values between the *Canadian Charter* and the Quebec Charter of Rights which was adopted seven years earlier.

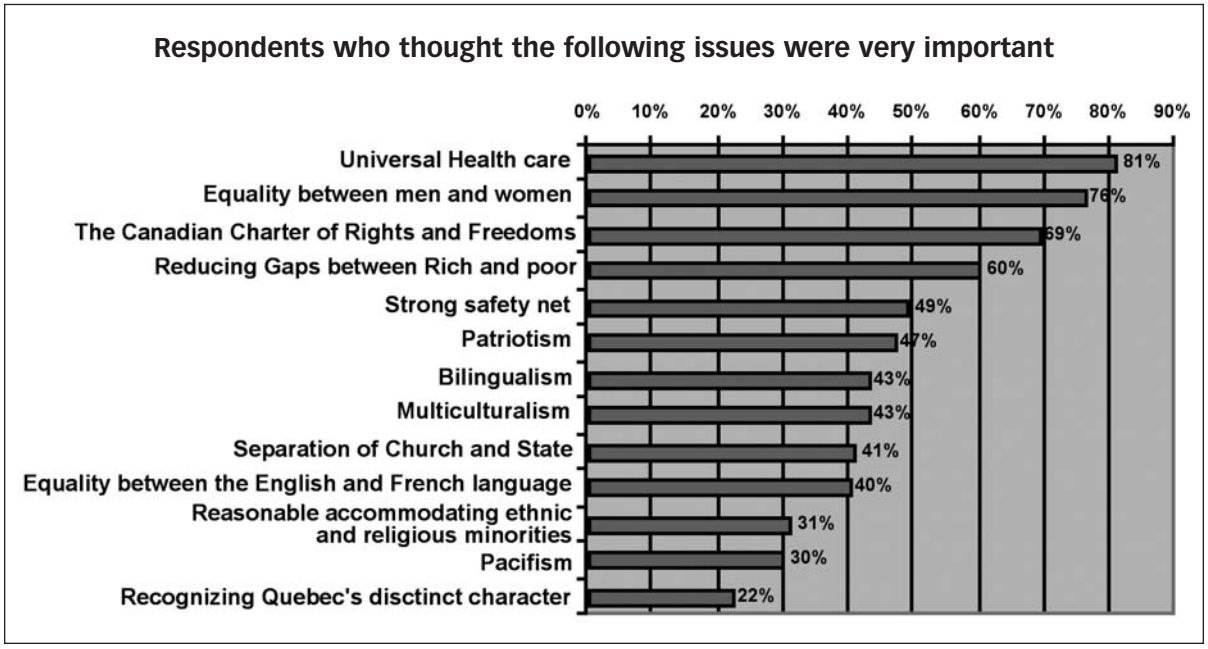
Undoubtedly, the interpretation of certain rights gives rise to competing views. Current debates over the issue of reasonable accommodation in Quebec have given rise to a growing perception of conflict between religious freedom and gender equality. By consequence, many Quebecers have reiterated that gender equality is a shared value in thinking that it faces a threat from the *Charter*'s extension of religious expression. Is gender equality less of a Canadian value – or for that matter a

Western value – than it is a Quebec value? The ACS-Leger marketing survey provides no support for the idea that Canadians outside of Quebec attribute any lesser degree of importance to gender equality than do Quebecers.

Paradoxically, the effort to make shared Canadian values a strategy for uniting Canadians and/or rallying them around the idea that the *Canadian Charter* is a shared value has perhaps reinforced the resolve of other "nations" or communities within Canada to make their autonomous or sovereignist claims on the basis of their "distinct-shared values". In fact, the survey does reveal that there are differences in the value attributed to cultural priorities that some may construe as uniquely Canadian values. This raises the question of whether such things as bilingualism, the equality of the English and French languages and the recognition of Quebec's distinct character are values; as opposed to something which many Canadians value as reflecting important elements of their cultural identity. It is a distinction that is not made sufficiently in discourse around values.

However, it is worth noting that there is an important gap in the degree to which Quebecers and other Canadians attribute importance to pacifism, a difference often explained by the historic experience with international conflict. On this issue, there may be a case made that value differences underlie the divergence.

There has been much debate recently about the need to define things that reflect the shared values of Canadians. Do you think that the following issues and symbols are very important…?



Very Important	Charter of Rights Very Important	Charter of Rights Somewhat Important	Charter of Rights Not Important
Universal Health Care	89	65	62
Gender Equality	84	62	53
Reducing Gaps Between Rich and Poor	66	46	46
Strong Safety Net	57	33	29
Patriotism	54	33	34
Multiculturalism	53	22	15
Equality between the English and French languages in Canada	45	29	25
Separation of Church and State	45	30	37
Bilingualism	40	25	24

On shared values and cohesion

While the *Charter of Rights and Freedoms* is something that Canadians value and many of the principles that it embodies are widely supported by Canadians, it does not by definition mean that it provides the basis for public policy decisions based on shared values. This is in part because the rights prescribed therein give rise to lively debate about values in pluralistic democracies. Deliberations over the equality provisions of the *Charter of Rights* are designed to reinforce the very kind of pluralistic views and values that worry shared values enthusiasts and concerned cohesionists – very frequently the same group. Ringing support for shared values and social cohesion tends to transcend ideological differences, that is, until thinkers on the left or right of the ideological spectrum meet to identify the way to achieve the goal of cohesion based on common values. When it comes to the *Charter of Rights*, some will contend that to achieve cohesion, certain rights need to be limited, while others may argue that the rights need to be expanded (this may involve such issues as the wearing of hijabs by Muslim women to the recognition of same-sex couples). In the pursuit of shared values and social cohesion, some will argue that we need to ban the wearing of hijabs in public schools, while others will argue that doing so is the far greater threat to social cohesion.

There appear to be three types of cohesionists, those who say that it is about reducing inequities between individuals and communities, those who believe it is about stressing the things we share over our differences and those who say it is simply about establishing collective goals. As Eliadis (2007) notes; "Canada's basic concern is equality; it is not cohesion-nor should it be. We know this for two reasons. First a cohesive society that is capable of effectively implementing collective goals may be implementing the wrong ones…the second reason is that cohesion is conspicuously absent from our constitution, including the equality rights contained in the *Charter*".

Heath argues that to reach consensus, values get defined in terms of extremely abstract ideas like "diversity," "community," "democracy," or "dialogue emerging from a process of "redescription". Social cohesion needs to added to the list of "values" that are too abstract so as to permit a facile commitment to it. Sharing itself is a value that, in principle, often more so than in practice, is widely endorsed. Often the biggest challenge to sharing is the explanation of the benefits and costs associated with it which when discovered this basic cohesionist goal.

Still the rhetorical power of shared values and cohesionist discourse is not to be underestimated. We may say that Canadians value "cohesion" and to reinforce this statement ignore the fact that, when we possess the liberty to attain this obscure end, we very often diverge over the means to get there.

Very Important	Quebec	Rest of Canada	Difference
Equality Between Men and Women	75	77	-2
Universal Health Care	65	86	-21
Reducing Gaps Between Rich and Poor	58	61	-3
Equality Between the English and French Languages in Canada	57	35	+22
Separation of Church and State	56	42	+14
The Canadian Charter of Rights and Freedoms	55	73	-18
Bilingualism	54	30	+24
Pacifism	51	23	+28
Strong Safety Net	51	48	+3
Recognizing Quebec's Distinct Character	46	15	+31
Multiculturalism	33	46	-13
Patriotism	29	53	-24
Reasonably Accommodating Ethnic and Religious Minorities	28	33	-5

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