PARTNERSHIP AND RIGHTS IN CANADA

ABSTRACT

Of the many words and phrases mentioned in the terms of reference handed to them by the Pearson government, the RCBB Commissioners identified one phrase – "equal partnership" – as especially important. But what was to be the shape of this equal partnership?

As the world approached, then passed, the new millennium, it became faddish to announce the obsolescence of some the intellectual baggage we carried from the past. Daniel Bell proclaimed the end of Ideology in 1960, Francis Fukuyama the end of History in 1991, and numerous observers have told us of the futility of the assumptions underpinning the UN Security Council since the Second Gulf War. In such an intellectual climate, the tenets of an enquiry dating back forty years would seem to have little chance of retaining their validity.

Nonetheless, a case can be made for a more than antiquarian review of the Royal Commission on Bilingualism and Biculturalism (RCBB) that began its work in 1963. Its conclusions, on how our inter-cultural relations must adapt if the country is to fulfill itself, merit reflection.

A strong reason for another look at the concepts that were central to the RCBB inquiry is that they marked an early formulation of a range of problems that preoccupied political theorists during the last two decades of the 20th century. The politics of identity and recognition, the exploration of authenticity, and the analysis of multiculturalism rose high on the agenda of political philosophers and, in spite of recent doubts about their durability (v. Maclure CJPS, March 2003), they are likely to engage us for years to come.

Canadians, such as Charles Taylor, Will Kymlicka and James Tully, influenced by the circumstances that led to the RCBB and often reacting to the Commission's approach, have been central to this discourse.

It is useful to remember that the Commission did its work in the troubled 1960s. Bombs had gone off in Montréal and people had been killed. The atmosphere of crisis, difficult to imagine today, inevitably affected the Commission's outlook; but the Commissioners did not allow the tensions of the day to prevent them from fulfilling their terms of reference with thoroughness and scholarly deliberation.

The most difficult element in the Commission's approach to its task came from the opening phrases of the terms of reference handed it by the Pearson government:

> to inquire into and report upon the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races, taking into account the contribution made by other ethnic groups to the cultural enrichment of Canada and the measures that should be taken to safeguard that contribution (RCBB, Book 1, App. 1)

The Commissioners, not surprisingly, identified one phrase as the "mainspring" of the inquiry: "equal partnership". And throughout the books, volumes and research reports that became its output – covering official languages, the work world, education, the federal capital, parliament, cabinet, the Supreme Court, voluntary associations, other ethnic groups, arts and letters and the media – the keynote on which they rang the changes was "equal partnership".

There are few topics more daunting than "equality". Compare the richness of Isaiah Berlin's essays on liberty with the thinness of his essay on equality (1955). To understand what it means to be equal and different, unique and common, is strenuously demanding. André Laurendeau, Co-chair of the Commission with Davidson Dunton, took the plunge into this conceptual morass in his draft of the "Blue Pages" (RCBB, Book 1, xv-lii). Crucially, he set out to explain "equal partnership"; and we will shortly turn to that.

But think for a moment how different the Commission's approach might have been if its mandate had been phrased, as Pierre Trudeau would have wanted, in terms of rights: protecting the language rights

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of French-speaking and English-speaking Canadians. Something like the language provisions of the Canadian Charter of Rights and Freedoms might have been the outcome of the Commission's work. There were models for language protection, spelled out in interestingly different ways in the countries the Commission actually studied (especially Belgium, Finland, Switzerland and South Africa), that could have been adapted to assure language rights and the courts could have been given the primary responsibility for securing them.

It is arguable that if two (or more) groups of people, each with a different language and culture, simply want to co-exist and follow an extremely limited agenda of common projects, such a rights approach would be quite sufficient. But the purview of the modern state, even one where federalism limits central state jurisdiction, is anything but the "night-watchman" dream of 19th century liberals, where the role of the state was limited to protecting persons and property. If, as certain signals suggest, we are beginning to shake off flimsy neo-liberal beliefs in the omnipresent, inherent and benevolent wisdom of unregulated markets, the role of states, if it is only that of creating a rules-system for planetary problems like environmental preservation, humanitarian protection, and common security, will extend well beyond the short list of common action that neo-liberalism envisages.

The principles that best guide the joint pursuit of multiple and complex common goals by groups with distinct identities extend far beyond those of rights-definition and rights-protection. Patterns of cooperation and partnership, patterns that ensure genuine participation in the setting of objectives and the means of achieving them, are required. Partnership principles do not displace rights, but they permit a much broader pursuit of common goals. If Canada is to play a full role in the working out of 21st century problems, it needs to face partnership issues. We can be grateful to the Pearson government for beginning this process as far back as the 1960s.

How did the Commissioners, discussing Laurendeau's Blue Pages draft, tackle the problem of "equal partnership"?

The first step was to designate clearly the partners between whom equality was to prevail. History could have been evoked, with a re-arguing of the "compact-between-races" interpretation of Canada's origins, and the reference in the terms of reference to "founding races" invited that course of action. It was rejected, however, and the notion of a biological frame for the partners disappeared. Instead, the Commissioners put together three factors – language, culture and society – to define the two equal partners.

Language was the foundation point for the identities of the partners. Sizeable numbers of Canadians had English or French as their mother tongue, and/or the language in which they communicated in most of their interactions with others. Living in the language meant perceiving the world around them through a set of categories that were at least slightly, and often robustly, different from the perceptions and experiences of those who spoke another language. Language and culture were inextricably interwoven, and together they shaped social institutions that expressed an identity and enabled those who led their lives largely through these institutions to develop a special character.

For anglophones and francophones in Canada, and for these two languages and cultural groups alone, numbers were large enough and concentrated enough for a full-scale society, answering most needs and aspirations, to have been built. For anglophones, their society extended over all of Canada (with perhaps some wobbly bits in Québec outside of Montréal); for francophones, the society was located in Québec with outlying elements, sizeable in New Brunswick and Ontario, throughout the country.

Equal partnership, therefore, had to bring together two societies, each distinct though linked, each porous (in terms of exit or entry) and somewhat amorphous though identifiable; each claiming recognition, though the anglophone society that already commanded recognition usually made its claims tacitly. How would this equal partnership be achieved between them? Before sketching the RCBB's answer to that question two points should be made.

Membership in the partner-entities was open to all Canadians; no one was excluded. [There was an exception to this proposition. The Commission, perhaps with an excess of caution, stated that it would not deal with the situation of Native Peoples. It was conscious that this is an issue that further challenges our concepts of equality, legitimacy and rights, in ways that go beyond the RCBB frame of reference.] Those who identified themselves as (or were identified as) members of "other ethnic groups" entered into the political power-sharing and the negotiation of partnership objectives as they associated themselves with either the anglophone or the francophone societies of Canada, as well, of course, as full, rights-bearing citizens of the Canadian state. This formulation never went down well in the West and in most Allophone communities. The idea that there were only two "complete" societies in Canada, only two absorbing cultures, "sociétés d'accueil" to use a more recent phrase, and that those facts justified a difference status for them, was unappetizing. Moreover, the Commission's assumption that both of the "equal partners" shared a willingness and capacity to "welcome" Canadians of any mother tongue or ethnicity may have looked less convincing in the 1960s than it does today. English Canada's vaunted mosaic in those days had brighter tiles and duller tiles. And only recently has the Québec-based francophone society actively and eagerly embraced all those who are willing to accept French as Québec's common language, in part so that it can compete with anglophone society as a pole of attraction. The rubicund features of former premier Bernard Landry, welcoming the enrichment provided by Québécois(es) of all creeds and colours contrasts sharply with the still common images of the fiercely flamboyant profile of Dollard des Ormeaux fighting "jusqu'au bout" for faith and race.

Secondly, the Commission makes only limited use of the concepts of majority and minority. Léon Dion was wont to remind the Commission of the "two majorities" (anglophone in Canada, francophone in Québec), but equal partnership based not on numbers but on distinct identity prevailed as the mainspring of the report. Numbers reasserted themselves, however, at the level of practicality, when questions of the viability of schools and the boundaries of language districts arose.

What then was to be the shape of equal partnership? Clearly, there could not be equality in all contexts. Rather,

RCBB called, in comparable situations, for comparable opportunities and facilities. Underlying the recommendations, but never fully spelled out, was the principle that there should be an equal distribution of the costs and benefits of partnership, and thus attention given to the overall balance of advantages and disadvantages. But because in one setting after another – school, work, public service, media availability – it was practical to provide Anglophones opportunities and facilities and impractical to provide them to Francophones due to low population concentrations, an off-setting factor had to be found. An obvious candidate for the off-set was the jurisdictional scope of the Québec government. Greater autonomy for Québec, compared to provinces where the anglophone partner predominated, could right the balance. And it was difficult, without Utopian proposals, to find any other balancer.

If the equal partnership balance is examined as a dynamic system, it becomes clear that the more Francophones see respect for their language, and the more they share in power and recognition in running the federal government, in running the provinces like New Brunswick and Ontario where there numbers are significant, and in the business and non-governmental organizations of the whole of Canada, the weaker becomes the logical, and much more important, the emotional need for a gathering of all powers in Québec.

Not surprisingly, this reciprocal relationship is fiercely denied by Québec nationalists, among whom the romance of statehood is deeply held. It is more surprising when anglophone federalists cast doubt on the usefulness of francophone recognition outside of Québec as a means strengthening the fundamental Canadian partnership.

The RCBB saw its major task as helping Canada to survive the life-threatening crisis in French-English relations it identified in its Preliminary Report. But its terms of reference spoke not of survival, nor of "regime maintenance", nor of remedies, but of development within an equal partnership. And indeed the Commissioners were not just concerned with the expedient, or with plastering over a deep split in Canadian unity. They were concerned with justice and fairness; they called for generosity in intercultural dealings and for mutual respect and recognition. It is important to stress this point, for maximizing Canadian unity is hardly a profound good in itself. Only if we have reason to believe that this state can be the arena for the exercise of power for worthwhile purposes is it essential to study the ways to strengthen equal partnership. A radically decentralized Canada, with a watch-dog central government, based on enforcing the Charter of Rights and Freedoms, and with courts more important than Parliament, can be envisioned. Within it, the problems of partnership would have little significance.

But it was argued earlier that states like Canada have crucial roles to play in managing the transition to a world where even broader partnerships for achieving common security, equitable distribution and just relationships can be assured. We must look also for models to improve our international system, where concerns about equal partnership and division of powers and responsibilities are even more complex. For such tasks, a Canada that pays close attention to the RCBB problem of equal partnership is needed.

TRUDEAU'S LEGACY: A NEW CANADIAN NATIONALISM BASED ON THE DENIAL OF THE *QUÉBÉCOIS* HEART OF CANADA

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ABSTRACT
Why is a growing majority of Quebecers feeling alienated by the existing Canadian federation? The refusal to listen to and to integrate Québec into the reflection of what is Canada has negative consequences for the Canadian political system. Ironically, Trudeau's vision for Canada seems to be at the root of a new emerging Canadian nationalism.

When former prime minister Pierre Elliott Trudeau died in September 2000, nearly every Canadian appeared deeply moved, even those who fiercely fought Trudeau's political ideas during his lifetime: English Canadians from Ontario, but also from the West and from Québec, Canadians from neither French or English origin and Aboriginals all over the country, and French speaking Canadians outside Québec. The emotion, the pain and the pride were sincere and surprisingly intense: everybody mourned the great Canadian man, the