

Liberalizing Canada: A political calculation, not a question of principle

MARIJUANA AND THE PM'S PRINCIPLES

Liberalizing Canada's marijuana laws and legalizing same-sex marriage were two of the Chrétien government's last, unfinished initiatives. In answer to the controversy that accompanied each proposal, Jean Chrétien said: "I am a public person in a very diverse society, and I don't think I can impose every limit of my morality on others, because I don't want others to impose their morality on me." That account of the relationship between freedom and morality states a principled position on rights: no person, including the prime minister, can claim a right or freedom for himself that he would deny others.

That attitude could explain the Chrétien government's plan to decriminalize the simple possession of marijuana, and impose a fine on offenders instead. Though reforms of this kind have been under discussion for years, and marijuana laws have successfully been challenged under the *Charter of Rights and Freedoms*, it is unclear what prompted the federal government to take the initiative at this point in time. On that, Chrétien simply stated that decriminalizing marijuana use would be "making normal what is the practice"; he noted that "it is still illegal, but they will pay a fine. It is in synch with the times." Either to prove the point or indulge a moment of mischief, the prime minister added: "[p]erhaps I will try it when it will no longer be criminal." "I will have my money for my fine," he joked, "and a joint in the other hand."

MORALITY AND SAME-SEX MARRIAGE

The same approach to morality could also explain Jean Chrétien's decision to introduce draft legislation that would legalize same-sex marriage. The complication there is that his government defended the definition of "marriage" as the union of a man and a woman, to the ex-

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clusion of all others, in test cases that arose under the Charter. A different strategy emerged, however, when the Ontario Court of Appeal held that same-sex marriage is guaranteed by the Charter. Rather than appeal the decision to the Supreme Court of Canada, the government prepared draft legislation and referred three questions as to its constitutionality to the Supreme Court.

There is no way to understate the volatility of debate on this transformative issue that continued throughout the summer and fall of 2003. A variety of constituencies were offended, either by the perception that the courts had been high-handed or by the fear that Parliament would acquiesce in a Charter status quo of gay marriage. The prime minister responded that "[o]n . . . equality of rights the courts spoke," and added that "I am a great defender of the Charter of Rights." To those who insisted that Parliament should be deciding these issues, not the courts, he stated that "[t]here is an evolution in society" and "[a]ccording to the interpretation of the

court, they concluded these unions are legal in Canada."

Last fall, Jean Chrétien urged angry and divided Liberal MPs to vote against a Canadian Alliance motion that attempted to re-introduce a heterosexual definition of marriage and require Parliament to take "all necessary steps" to protect that definition. The problem for the prime minister was that if the Alliance motion passed, Parliament could be asked to use s. 33 of the Charter to override the courts' decisions on same-sex marriage. In pressuring Liberal MPs not to betray the government's position, Jean Chrétien argued that the override was unacceptable, because "[i]t is something what we, promoters of the *Charter of Rights and Freedoms*, never use, the notwithstanding clause."

PROTECTING AND DEFENDING THE CHARTER?

It bears noting, in passing, that as the late Prime Minister Trudeau's minister of justice, Jean Chrétien played a central role in Canada's decision to adopt the Charter. Yet in November of 1981, it was clear that there would be no constitutional rights for Canada unless the federal government agreed to include s. 33, the provision that allows legislatures to override some—though not all—of the rights and freedoms that are protected by the Charter. It made him extremely uncomfortable, Chrétien later said, to see Charter rights being bargained against more power for the provinces.

The evidence is selective, but it does support the claim that Jean Chrétien is a defender and promoter of the *Charter of Rights and Freedoms*. It is no doubt the way the prime minister would like to be remembered. Though a laissez-faire conception of morality might describe his position on marijuana use or the right to marry, it hardly describes his government's attitude on other rights issues.

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amount of goods and services shipped to the United States.

MORE ECONOMIC INTEGRATION

Chrétien has also kept his nation at arm's length from the United States while still pushing for greater continental and hemispheric economic cooperation and integration. He and most Canadians looked disapprovingly on the chummy relationship between Mulroney and Ronald Reagan, which was exemplified by the Shamrock Summit. He insisted that Canada was sovereign and independent and that its point of view should be respected by Washington. This stance would not keep him from developing a good working relationship with Bill Clinton and he would even sneak away from time to time to play a round of golf with Clinton south of the border. He was also able to call on Clinton and Secretary of State Warren Christopher when things were going badly for the federalists during the 1995 Quebec referendum campaign. Both Clinton and Christopher were encouraged to issue veiled warnings to Quebecers that a vote in favour of separation might result in Quebec's exclusion from NAFTA, adding to the sense of economic uncertainty if Quebec voters opted for the Yes option.

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Jean Chrétien may have been reluctant to impose his morality on others, but did not flinch from asserting his political authority.

APEC AND THE DISREGARD FOR DEMOCRATIC RIGHTS

Whatever the above examples show, the Asia-Pacific Economic Cooperation (APEC) summit of 1997 is an unforgettable example of the Chrétien government's disregard for the democratic rights of Canadians. There, the RCMP cracked down on students and others who had gathered to protest the presence—on Canadian soil and at Canada's invitation—of Indonesia's President Suharto. The police seized signs and

BAD BODY LANGUAGE

In sharp contrast to his warm ties with Clinton, Chrétien's relationship with George W. Bush was abysmal. Bush would never make an official state visit to Ottawa during Chrétien's term in office, and Chrétien never received an invitation to visit the ranch in Crawford, Texas. Canada's prime minister should be justly criticized for not fully explaining his remarks after 9/11, when he exclaimed that Washington was at least partially responsible for the dastardly attack on New York and Washington by the 19 fanatics. He was also too slow to respond diplomatically to the "moron" remark by his director of communications, the "failed statesman" remark by his minister of natural resources, and the "Damn Americans, I hate the bastards" utterance by a Liberal backbencher from Toronto.

On the other hand, Chrétien was fully justified in opposing US pre-emption policy and unilateralism vis-à-vis Iraq. His invitation to piece together a consensus among the Security Council members for some form of multilateral intervention in Iraq, if only the United States would delay by a few days its incursion into Iraq, was an excellent suggestion which should have been heeded by the Bush administration.

banners that could not conceivably be regarded as a threat to security but were banned, anyway, because they were offensive and politically embarrassing to the prime minister's summit guests. Not only that, the RCMP arrested some participants and threatened others. Most controversial and offensive was the RCMP's decision to use pepper spray on a crowd that was engaged in activities that should be, and are, protected by the constitution.

The APEC summit's implications for Canadian democracy are troubling at many levels. It was worrying enough that the RCMP's crowd control tactics demonstrated an abuse of authority; the further question that arose, however, was

Canada's rightful objection to US unilateralism in the Persian Gulf earned Chrétien the personal enmity of Bush, but he was in good company with Chirac, Schroeder, and many other eminent leaders scattered around the world.

CHRÉTIEN POLITICAL SMARTS

In conclusion, Jean Chrétien's policy toward NAFTA has had a significant impact upon contemporary Canadian society, and, within a decade or two, Canadians will probably have strong opinions on whether the dire warnings uttered by the economic nationalists over NAFTA membership were justified or vacuous. My perspective is that his gamble on NAFTA has already paid big and tangible benefits for most Canadians and that Canadian "distinctiveness" today is as apparent as anytime in modern history.

Paul Martin has been handed a powerful economic hand to play, and he will be able to use the change in leadership and his more refined interpersonal skills to smooth the ruffled relationship with the White House and move forward with FTAA negotiations and with new plans for North American economic cooperation once NAFTA is fully implemented in 2008. 

whether the police acted under direct orders from the Prime Minister's Office. There was an inquiry, which was constituted under the RCMP Public Complaints Commission, but it was plagued by resignations and disputes about the funding of legal fees. When Prime Minister Chrétien refused to testify, key complainants withdrew from the proceedings. In the circumstances, it is difficult to conclude that either the RCMP or the Prime Minister's Office was held fully accountable for the assault on democratic values that occurred at the APEC summit.

Even so, Jean Chrétien's response to what had gone wrong at the summit may be the most shocking element of the

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story. When asked about the RCMP's use of pepper spray, the prime minister quipped, "[p]epper," I put it on my plate." The excuse he then gave for this cavalier and dismissive reaction to the violation of rights was that "I made a joke. You know me. I tried to get you to laugh. Relax a bit in the nation, I say." Nor did it improve matters when he later defended the use of pepper spray on grounds that "[r]ather than taking a baseball bat to do something, they're trying to use civilized measures." It is as if he thought Canadians should be grateful that pepper spray was the RCMP's weapon of choice.


CHRÉTIEN'S AUTOCRATIC LEGACY

The APEC summit may have been cataclysmic for rights, but what took place there was not uncharacteristic of Prime Minister Chrétien's attitude toward freedom in the political domain. Far from being laissez-faire or libertarian, Chrétien can more accurately be described as autocratic or authoritarian on these is-

sues. As prime minister and leader of the government, he brooked no dissent in Cabinet or caucus but ruled, instead, with an iron hand. Nor did he hesitate to reward his friends and punish or isolate those he viewed as enemies or rivals. Significantly, in breaking ranks with the party to vote in favour of the Alliance's marriage motion last fall, a Liberal MP defiantly stated: "You can no longer bully the caucus."

Bill C-36, the *Anti-Terrorism Act*, is also part of the Chrétien government's legacy. This legislation grants authorities a variety of investigative and preventive powers, which can be exercised

against individuals and organizations that are suspected of engaging in terrorist activities. In operation, much of Bill C-36 is shrouded in secrecy, with as yet unknown consequences for the fairness and transparency of proceedings under the Act.

Other examples could be cited of the government's willingness to subordinate the rights of Canadians to the demands of expedience. For the purpose of this brief article the point is that, contrary to what Jean Chrétien claims, the protection of rights under his administration was a matter of political calculation, and not a question of principle. 

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thusiastic support from Liberal MPs. Since the white paper, the only rights mentioned as specifically aboriginal in the House of Commons by Liberal MPs were undefined linguistic and cultural rights—rights to special medical facilities, to police services adapted to aboriginal culture, to housing, and to vote.

Political rights

Political rights fare somewhat better with Liberals, as self-government was indeed included in aboriginal rights as an essential requirement of economic and community development. Borrowing from the Royal Commission on Aboriginal People, one aboriginal MP came forward with a suggestion for implementing this right in the form of a third chamber of government where First Nations would sit. However, the basis on which these rights were to be

grounded varied over time for the Liberals. Until 1990, they were deemed to have existed as inherent rights since before contact between Aboriginals and Europeans. But, after the Oka crisis, the Liberals wavered on that question and Chrétien himself declared that they derived from the multicultural provisions of the constitution. It was only after Charlottetown that mainstream Liberal MPs came back to their party's former position, and qualified aboriginal rights, including self-government, as inherent.

Economic rights

While in opposition, the Liberals gave three definitions of the meaning and scope of the most important native economic right—aboriginal title. Before the Oka crisis, they defined aboriginal title as the right of Aboriginals to have their lands protected through the fiduciary re-

lationship; during the crisis, as a right to a specific territory; and later, as a moral right on land. Until more recently, it was mentioned only in connection with land and resources management. It is not surprising then that when in power, the Liberals offloaded responsibility for that definition to the courts.

A TARNISHED RECORD

From this analysis of the Commons debates, we can see the influence of Chrétien's assimilative policy toward the Aboriginals on his Liberal colleagues (with the exceptions of the two Aboriginals among them), even before he could control them as prime minister. But his ideology has influenced actions even more than words, be it the treaty practices, or recent legislation. It is not possible to analyze those tools of neo-colonialism in the context of this symposium or the space allocated in *Canada Watch*,