

Chrétien and the Aboriginals

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Before becoming prime minister in 1993, Jean Chrétien had already held no less than 10 portfolios, not counting his vice-premiership. But who remembers that he was head of Treasury Board or Secretary of State for Social Development? Or that he spent three months in External Affairs in 1984 or even six in National Revenue in 1968? Yet his name certainly comes to mind when one thinks of aboriginal affairs, where he definitely left his mark, for better or, rather, for worse. Appointed there by Pierre Trudeau in July 1968, despite protesting he knew nothing about the field, he stayed in that department a full six years until August 1974—his longest tenure except as prime minister.

A TURNING POINT?

However, it is less for the years he spent there that he is remembered than for the white paper produced under his leadership the year following his appointment. The *Statement of the Government of Canada on Indian Policy, 1969*, the third reform on aboriginal affairs that federal authorities initiated in the 20th century, and the first since 1951, had far-reaching effects. In line with these previous reforms—in 1951 assimilation was still perceived as an instrument for educating Aboriginals in the art of democracy, even though it was no longer politically correct to mention it by name, and the term was replaced by “special status” involving the same rights as other Canadian citizens—the white paper still promoted assimilation, but brought aboriginal rights to the fore of the debate. It stated as its “new policy”:

True equality presupposes that the Indian people have the right to full and equal participation in the cultural, social, economic and political life of Canada . . .

But even though this full participation required that

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- the legislative and constitutional bases of discrimination be removed,
- positive recognition be given to the unique contribution of Indian culture to Canadian life,
- services be provided through the same channels for all Canadians,
- the neediest be helped most,
- lawful obligations be recognized, and
- control of Indian lands be transferred to Indian people, the discourse and practices derived from this policy would favour plain assimilation.

Admittedly, the white paper was the watershed after which members of Parliament began to take aboriginal rights into account. The New Democrats were

already asking for their constitutionalization as early as 1969. But walking in the centre as usual, the Liberal government, led by Chrétien personally, refused to go along, deeming such constitutionalization an error, because the constitution must protect all citizens equally, and should not provide a special status for anyone, nor attribute to Aboriginals any other status than full Canadian citizenship.

1982 AND ABORIGINAL RIGHTS

The next 30 years were spent by the Liberal Party in an effort *not to define* those aboriginal rights, even after they were recognized in the *Constitution Act, 1982*. They tried to achieve this first by creating the Royal Commission on Aboriginal People and not implementing its recommendations. They then tried to sign agreements with First Nations with, as a precondition for signature, having them extinguish those rights unmentioned in the text. Mostly, they passed the buck to the courts. This last policy was explicitly based on the premise that if the constitution, from 1982 on, protected aboriginal rights, it did not define them, and since unresolved claims have hampered economic development, the courts should perform their interpretative duty.

We have extracted the meaning that the Liberals gave to these rights from the House of Commons debates. Our findings refer both to the specific and collective character of these rights, and to the content of political and economic rights.

THE LIBERAL RECORD UNDER THE MICROSCOPE

Specific and collective character of aboriginal rights

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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*,

but suffice it to say that they are just as restrictive as the discourse analyzed above would suggest.

The treaty practices first required explicit and, now, implicit extinguishment of rights not mentioned in the agreements, as the *Dogrib* formula for “certainty” has been described. Legislation recently both adopted and tabled was no better—it grants only administrative pow-

ers on land and governance on the precondition that the bands to whom these limited powers are recognized adopt codes regulating behaviour and dealing with prescribed topics, including alienation of lands, which was unacceptable in traditional aboriginal law.

Given the assimilative and restrictive policies that were defended in the Commons and implemented in government

while Chrétien was either minister for Indian Affairs, or influential on his colleagues even before he became prime minister and was able to appoint Robert Nault to finish his job for him, we can only conclude that if he leaves politics with a reputation for open mindedness or even enlightened self-interest, he will have earned it elsewhere than in the field of aboriginal affairs. ❁

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Once again the feds “negotiated” an agreement in which \$27 billion new dollars were transferred, but little was returned. With almost a year passed since the February 2003 accord, governments in Canada have shown little interest in acting on the major recommendations arising from Mr. Romanow, nor have they shown much appetite for living up to their end of the February 2003 bargain—that being, the establishment of a National Health Council, the definition of base elements in a national home care program, and the national establishment of a common, catastrophic drug insurance program.

So how has Chrétien fared? Notwithstanding the major fiscal squeeze arising from the recession of the early 1990s and the downward transfer of fiscal obligations to the provinces, Chrétien has quietly stood behind Canadian values in health reform. In the creation of the National Health Forum he advanced a moderate Canadian vision of reform with a wide consensus of policy elites in the country. In appointing Mr. Romanow, he stood once again close

to Canadian values in identifying a leader of immediate credibility and integrity for the Canadian public.

In contrast, Chrétien has failed to secure a solid footing for the future of Medicare and in particular to provide any significant improvement in the scope of coverage challenges that have plagued Medicare for the last 20 years, as care has shifted out of the hospital and into the community. In addition, with pharmaceuticals rising faster than other expenditures in the health care sector, there is no national formulary or national catastrophic drug program on the horizon to pick up from the calls of the National Forum or Mr. Romanow.

THE HEALTH CARE LEGACY

In many respects, Chrétien appears to have acted as a leader spooked by the extremely narrow victory of the federalist forces in the Quebec sovereignty vote of October 1995. He never quite recovered political stability on federal-provincial relations. The ghost of regional succession threats has stalked a fearful and tentative federal govern-

ment during Chrétien’s tenure. Nowhere is this truer than in the health care sector, where the federal government has had a strong and forceful mandate to act arising from the Romanow commission, and has been unable to expand coverage in a fashion anticipated by the National Forum and Romanow reports.

Chrétien has protected Medicare from the worst—wholesale privatization—but the triumph of the politics of pragmatism over the politics of principle has allowed creeping privatization, particularly in the financing of community care and pharmaceuticals. And this is slowly and surely eating away at the heart of Medicare—national coverage for medically necessary services. Without strong federal leadership, the prognosis for Medicare is poor. Ironically, perhaps it will fall to his successor, Mr. Martin, to finally announce the creation of a National Health Council for Canada, and take a more vigorous set of steps to re-establish a federal presence and extended federal base of coverage for health in Canada. ❁

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The city’s task force recommended that the federal government get tough with the province. In its view, the federal government was not enforcing the accountability provisions of SUFA. The task force argued that the federal government should provide additional support to those provinces that have integrated child care into their plans for early child-

hood development. And in cases where the provinces fail to comply, the federal government should enter into direct funding agreements with municipalities (the SCPI model).

In the 2003 budget, the federal government made a tangible and dedicated commitment to child care. The government committed \$900 million over five

years, and invited the provinces to the table. This set the stage for another Ottawa–Ontario confrontation; the federal government’s funds were to be spent on regulated child care, but the province of Ontario favoured the inclusion of informal child care arrangements. In the end, the governments agreed that the pro-

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