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Human Rights: Is Canadian schooling a privilege, a right, or an obligation?

Abstract

The fortieth anniversary of the approval by the United Nations of The Universal Declaration of Human Rights was observed in 1988. The spirit of this document is reflected in various Canadian and provincial legislation and in numerous school programs. Some principles for promoting human rights through schooling are well entrenched in Canadian traditions, but the process does not stop at a particular year. Selected recent key achievements (some of which are still controversial) are mentioned as a prelude to some speculation about priority items for the near future.

Résumé

Le quarantième anniversaire de la signature de la Déclaration universelle des droits de l'homme par les Nations unies a été célébré en 1988. L'esprit de ce document se reflète dans divers textes législatifs canadiens et provinciaux et dans de nombreux programmes scolaires. Certains principes de la promotion des droits de l'homme par l'éducation sont solidement ancrés dans la tradition canadienne. Certaines évaluations récentes (dont plusieurs sont encore controversées) servent de prélude à des spéculations sur les dossiers prioritaires à venir.

Privilege and Opportunities

After thousands of years of very essential, naturally structured but typically informal instruction by Indians and Inuit, and after many years of European style informal instruction among sojourning fishermen, traders, and explorers, schooling was introduced into Canada with the very earliest European settlers. Schools came with the churches, which were often considered to be more essential than mills or wharves, so they began operations soon after a permanent community had been established. For more than two centuries, the colonies of the French or British relied upon schools which were created by priests or other clergy, with some founded by nuns. School keeping or overseeing was one of the duties of the religious calling.

These early schools imposed no attendance requirement. For many children the distance to school was too great, the roads too hazardous, and the strenuous pioneer life permitted no "leisure." Well-to-do families started their children locally, then perhaps "finished" them with private instruction or religious colleges. Schooling was a mark of rank, expected to be acquired by middle class children, but only when convenient by others. The fruits of schooling were therefore class related. Education meant easier access to business and commercial opportunities, to the clergy and public service careers (Jobling, 1974), to automatic promotion in the army (Dyer, 1985), and to commissions in the merchant or naval ships of the day. Education was not then a right.

Schools of New France

In colonial Quebec, children of the habitants and trades families attended schools sometimes, usually without extra cost. The expectation that a prosperous *seigneur* would educate his sons (there was no such obligation for educating daughters) was usually discharged by building a school, then inviting some of his subordinates' children to attend school as a fringe benefit and demonstration of his largesse. Although money rarely changed hands, both benefit and cost went into the complex bargain of the typical contracts of the regime. Schooling already had a market value to accompany its social and political advantages. About a third of the population was able to sign the marriage register (Monière, 1981, p. 51). In sum, the French introduced schooling which was accessible to many and often free, but circumstances made it a privilege.

Schools of British colonies

Schools in British colonies are not easily characterized, for their variety extended from sea to sea and continued until the middle of the

present century. Individual communities were more important than colonies as a whole, at least in the initial stages. Although feudal arrangements were no longer significant, it is noteworthy that many communities were strongly influenced by a patron or patriarch, some of whom had a thirst for education and, through it, reform. Others had a notion of immortality by founding academies, some of which became locally and sometimes nationally eminent: McGill, Dalhousie, and Queen's are among the best known in Canada. The Scots gave substantial attention to general schooling; as a result, in their communities, it came close to becoming a right. The English, Irish, and Welsh were not all strident supporters of schooling, and (like the French and Scots) they usually relied upon the church to initiate, provide, and govern their first schools, which were established early and promoted vigorously in Protestant communities (Lutherans, Methodists, and various evangelicals rather more than Anglicans). This was due to the high value placed upon literacy so that the Bible could be read in every family. Fortunately the King James (Authorized) version was in language easily understood by the ordinary person (Purdy, 1987). These religious school systems served more than the children of the particular faith, but they were not accessible to all, nor were they intended for all.

Dissenting religious roots

A few communities (of which only some were British) came into being through the initiative of religious leaders with a special mission, to be achieved in part through schooling. In the eighteenth century there were settlements started by Quakers, Tunkars, and Mennonites (Epp, 1974); the nineteenth century saw escaped slaves (often Baptists), Hutterites, Doukhobors, Barr colonists, Mormons, and others settling in blocks of still vacant land, just beyond the usual frontiers of their period. They made it evident that British colonies were not settled uniformly by immigrants from the United Kingdom, and that religious conformity was not essential to obtaining citizenship rights. Through various letters of agreement, these diversified settlements established the legal and moral right to maintain different religious ideals, non-official languages, or other distinctive cultural identities – features which have only recently been extended to other groups through multicultural programs. The question that has survived from the earliest debates is less whether such educational rights exist than whether they should be paid from the public purse (Dickinson, 1987). Religious dissent was more generously accepted than linguistic pluralism.

In the many communities where settlers were not united by religion, they faced a task of deciding whether and how schooling might be provided for their children. This was really the local version of the debate about religious or lay control and provision of schooling, i.e., church vs. state. Some resolution was typically achieved (usually in favour of public control

and funding) within a few years of the initial settlement, whether that was achieved in 1534 or 1934. Nevertheless, cultural rights which had been recognized by international treaty (such as the Hutterite Letters of Accord or Indian treaties) and various other contracts did not disappear. Although early attention focussed considerably upon the Anabaptists, because of Tolstoy's historic intervention on their behalf, the most obvious examples of controversies over cultural rights were those concerning the Native population. A special status for Indian schools had been introduced under Sections 114 – 123 of The Indian Act, thereby reinforcing the claim to cultural responsiveness in schooling.

Public schooling

By the early nineteenth century, community effort was usual, bringing a pattern that would gradually become dominant. Although schools were sometimes founded by a church (and the sole building might become a church-cum-schoolhouse) or by a public spirited individual (including "remittance men" trying to win some public acceptance), more often the birth of a school was akin to a barn raising. Most families contributed materials and labour to get the job done. Colonial and then provincial grants never covered the whole cost of establishing or running a school. It took local initiative. Even when keeping the taxes as low as possible, Canadian efforts were not out of line with what was achieved elsewhere at the time, for few nations were sending all their children to school (Lawr and Gidney, 1973, pp. 61-62). In Canada, both required attendance and free tuition came gradually and unevenly, with Ontario and the Maritimes first, and Newfoundland last (pp. 64-67). Fortunately for many, families were allowed to meet their financial obligations in various other ways, such as providing the wood for the schoolhouse, digging the well, raising a barn for the children's horses, boarding the teacher, and other tasks essential to pioneer schooling. This set of conditions began in the late eighteenth century in Atlantic Canada, Quebec, and Ontario, but it still existed until about the mid-twentieth century. It enabled schooling to be an affordable right earlier than might otherwise have been achieved (Chalmers, 1975; Charyk, 1971).

During the long period when schooling was popularly considered to be a privilege rather than a right, it may have mattered little about the early rules. Ontario passed its first compulsory attendance law in 1870, but average attendance remained below 50%, whereas in Quebec, where not all the children were registered, the average daily attendance was over 80% (Leacy, 1983, Tables W61 – W80). Opportunities depended upon family or personal initiative. Most of the population gained some rudimentary education. Early in this century, most adult Canadians could read, write, and do arithmetic. For the thousands of persons who grew up before schools were established in their communities, there were cheap and limited

opportunities like Frontier College that provided (and still provide) similar basic literacy in the camps of workers (Bradwin, 1972). Even more important for education, there were thousands of correspondence and extension courses. Opportunities for learning were gradually being extended, and poverty was no longer an absolute bar to formal education.

Opportunities Became Rights

Opportunities may have been widespread, but there were occasions when children were denied access to schooling – even when buildings, teachers, and books were theoretically available. This challenge sometimes came to individuals in stingy communities. For example, British orphans were often sent to Canada during the nineteenth and early twentieth century (Bagnell, 1980) to work in return for limited wages and training. The Bracebridge school board tried to deny one of these youths access to the local schools, but succeeded for only a short time. The courts backed the orphan and provincial law, ruling that education was to be free and accessible to all (Bagnell, p. 82). Schooling was clearly becoming a right!

There were several groups of Canadians who experienced many obstacles in securing access to public schooling for their children. Among these were Indians, for in most cases schools for them were separately funded and controlled, with their children having little or no access to public schools. With few exceptions, the Indian schooling was inferior, associated with ineffective instruction, brutality, religious bigotry, and racial discrimination. Often the children had to leave their home communities to attend. Not surprisingly, there were massive drop-out rates (Indian and Northern Affairs, 1980).

Black populations faced similar hardships, especially in Ontario, where separate schools for Negroes remained on the education act until 1965 (Prentice & Houston, 1975) and in Nova Scotia, where discrimination remained *de facto* (Hill, 1981). Apparently schooling that was distinctive for particular groups could be a right – or a denial of rights.

Social pressure and the displacement of manual labour by machinery made it less likely that parents would withdraw their children from school for labour, although "harvest leave" has not yet disappeared as a reasonable excuse for pupils' absences. It is still possible for children of itinerant workers to be found in the fields with their parents, living in shacks at the back of vegetable fields and fruit orchards. If they move often from farm to farm, from province to province, or even from country to country, the attendance laws are virtually unenforceable.

A relatively recent and very significant redefinition of the right to schooling came when most provinces massively expanded their secondary

schooling during the period from 1950 to 1970 (Ray, 1974). The explosion in numbers brought new school places and program diversity; it was accompanied by attention to equalizing opportunity for youth in isolated areas and in poor regions; it was accompanied by the most rapid expansion of the age cohort in Canadian history (Kettle, 1980); and it was achieved during a time of labour shortage when teachers became relatively prosperous for the first time! The total expenditure for education in Canada increased between 1950 and 1974 by twenty five times, with most of the growth occurring for voluntary attendance. Even when depreciated for inflation, a far higher GNP, and a larger total population, the growth is impressive. Educational opportunities were growing, and political realities quickly made them into essential rights, in that it was nearly impossible for any government to remove or reduce the new opportunities.

Equal opportunity

The most recent group of children to have their rights to schooling recognized, provided, and enforced are those with special educational needs (Goguin, 1980). In the past, attendance laws typically exempted those who "could not profit from instruction" – a phrase that was sometimes interpreted to mean that boards need not provide expensive instruction for the blind, Down Syndrome children, the tubercular... (McMurray, 1983). If their parents were unable to secure their education privately, such children were sometimes ignored. Most provinces have revised their educational acts and regulations within the last decade, and education of children with special needs is now growing in significance (Poirier & Goguin, 1986).

The increasing diversity of the Canadian population now poses a different opportunity for educational redefinition. Formerly, schooling was intended to assimilate all cultural groups, and tracts like Anderson's *The Education of New Canadians* (1918) were once widely consulted in the educational establishment. Cities such as Toronto, Vancouver, and Winnipeg have now become so cosmopolitan that no ethnic group can command a majority, and there are many religious or ethnic communities large enough to easily justify their own distinctive schools. The Jewish, Islamic, and sometimes the Sikh communities typically seek this autonomy, and their schools reflect both their religious and linguistic traditions and aspirations. In many cases, these private schools receive financial support so that exercising their rights to a distinctive education is not conditional on ability to pay (Shapiro, 1985, pp. 11-18).

Most other cultural and linguistic groups opt instead for common schools (either in the public or separate system), and request that the programs for general education be adjusted so that the multicultural heritage

of Canada – and its future as a multicultural society – should be evident to all students. These groups advocate that all children must learn to live together, and they claim that strident assimilationist education has resulted in forcing them to divide among schools identifiable by ethnic, linguistic, or religious traditions. They argue against the old traditions which conceived Canada in hierarchical terms, with Anglo-Celtic supremacy (Palmer, 1976). Many important groups debate these choices periodically (Ghosh, 1978). There is no doubt that integration must occur, and that term distinguishes the new philosophy from the old (assimilation). There will be important contributions from all newcomers, and it is intended that all will eventually identify with the objectives. They draw attention to the right to an education to "promote understanding, tolerance and friendship among all nations, racial or religious groups" as proposed in 1948 by *The Universal Declaration of Human Rights*, and reiterated in the *International Covenant of Economic, Social and Cultural Rights* (1966) to which Canada voluntarily but formally adhered.

When are Rights Insecure?

Rights, according to Thomas Berger (1981), are only secure if minorities have access to them – even if the majority should disapprove. Those with power may disregard minority interests and oppose the extension of rights to other groups. The rights of Canadians to secure various kinds of education are always dependent upon sufficient resources and the political will to provide the entitled services; otherwise the claim is impossible to secure. This limitation upon rights is constitutionally recognized in Section 1 of the *Canadian Constitutional Act* (1982), and interpreted by the courts as they define "reasonable limits."

The explanation of reasonable limits is self-evident, but its legal interpretation remains obscure. There are obvious differences in opinion about which rights should be protected, arising out of the perspectives of individuals and groups. And whether discussed in the political, legal, or administrative arena, the "rights" that a particular claimant believes to be automatic may turn out to be a forlorn hope, frustrated by bureaucracy at various levels, and scarcely supported by voters, neighbours, or workers. Even the courts may offer little solace for the typical victim, for it takes much money and many years to carry forward certain claims; and the court decisions do not always help solve slightly different cases in other jurisdictions (Sussell & Manley-Casimir, 1986).

Current and historical examples of denied justice are easily found in the extreme and unpopular cases – as diversified as the denial of certain medical and educational rights to those affected by AIDS; the expulsion from Canada, on some trivial basis, of those granted landed immigrant

status; the seizing, incarceration, and robbing of Canadians of Japanese descent because their cousins were at war with Canada; the banning of religious meetings for groups with unorthodox views. Because of the "notwithstanding clause" of the *Canadian Charter of Rights and Freedoms* (which permits the federal and/or provincial government to opt out of certain protections of the Constitution for five years), it remains to be seen if human rights commissions and ombudsmen will be able to offer speedy and effective assistance. Some rights are better protected and better served than others (MacKay, 1986).

There are evident differences in the security and the methods of protecting certain rights that are most important to Canadians as citizens in their attempt to gain to education. A catalogue is not possible in this context, but some examples show the kinds of concerns that remain.

Religion

The educational rights that are most firmly enshrined in law are those of separate or dissentient (confessional in Quebec) schools. Although these protect only designated religions, and even these in only certain provinces, constitutional protections assure to a large part of the Canadian population a level of publicly supported instruction with a measure of choice in religion, available according to the formally expressed wish of the parents. Although there is also official protection against religious discrimination, some apparently illegal actions go unchallenged for years (Schwartz, 1986) and attempts to end them are not supported by governments (including local governments) unless it is perceived to be politically popular. The protection of minority religious rights is not really adequate – particularly when the local majority is itself insecure (Berger, 1981; p. 165). One recourse is to establish private schools, and minority religious groups will find a degree of subsidy for this venture in every province (Shapiro, 1985, pp. 104-108), although they will not be excused taxes for the publicly supported schools that they find objectionable or inadequate. More than two percent of the Canadian school population is now in private schools, after a large drop in 1985-87, when "full funding" of Catholic Separate High Schools in Ontario was extended to include all pupils, and many "private" schools were reclassified as separate. In most other provinces, private schools are growing in popularity.

Canada has not taken the path of the United States in excluding religion from schooling in an attempt to avoid the creation of a *de facto* link between church and state (Brickman, 1966). In Canada, traditionally a majority of the population which wanted their children to have a particular form of religious instruction could over-ride a minority seeking to prevent that from happening. In 1988, this tradition was challenged successfully in

Ontario (*Zylberberg et al. v. Sudbury Board of Education*, 1988) where some children objected to being singled out as dissenters from the only "acceptable" religious worship when others were available. Traditionally, dissenters had the unchallenged right of conscience clause protection – they need not participate in such education or worship (MacKay, 1984, pp. 65-66). Religious rights, reasonable limitations, and obligations are still being defined.

The protections of the pupils' rights may not be matched by comparable consideration for teachers, particularly in denominational school systems. A long series of court cases has given authorities the legal right to require sectarian observances, even in matters removed from the classroom. Employers' interference with legally private life is permitted. For example, remarriage after a divorce is one example of a religious taboo that has resulted in loss of employment for reasons that were neither legal nor professional (MacKay, 1984, pp. 269-272).

Language

The right for official language minorities to use their mother tongue (and probably secure instruction in it) is constitutionally protected in only New Brunswick and Manitoba, although a claim can be made that some protection exists in the constitutions of Saskatchewan and Alberta. Elsewhere, the current legislation can be changed at any time. For example, Quebec extends similar legislative protection to the anglophone population (Bill 101), but denies claims to instruction in English for families who (1) have not previously attended English schools in Canada, (2) have neither siblings nor a parent who attended English schools in Canada, (3) is not a Native person, or (4) is not a temporary resident of Quebec. However, these regulations may vary somewhat with individual circumstances. In all the other provinces, rights to education in French are considered inadequate to maintain customary usage of the language, even for established French families (Lysons-Balcon, 1986). The language of the workplace and the community is even more powerful than that of the curriculum or school organization in shaping language competence and opportunities to secure exercise of linguistic rights.

There are substantial differences in the reasons for studying languages as a foundation for cultural survival and as a tool for professional or political advancement. The flourishing of immersion schools and better language programs will result in growing numbers of bilingual Canadians, but they will not necessarily protect other rights of official language minorities. In fact, the attempt to combine immersion with minority official language schools would result in greater pressures for assimilation. In several respects, the educational and legal rights seem to diverge, and the debate in provincial legislatures may not reflect these differences. The

reports (for example, Fortier, 1985) of official language commissioners generally give high praise to progress of official language instruction.

Sexual interests and equality

The rights of women are arguably protected in the *Constitutional Act* (1982) and undiminished in the *Meech Lake Accord*. They are also "protected" in every provincial human rights code (Tarnopolsky, 1982). Despite these formal protections, many studies indicate that women's rights to education and to its fruits are more theoretical than actual (Ayim, 1986). In addition, there are indications that sexual harassment is widespread, and that in some cases sexual assaults are not regarded as serious (Committee on Sexual Offences, 1984). The education of Canadians to deal with the preservation and protection of females' rights, including those peculiar to their sexuality, has been marked by controversy and reluctance. In some respects the issue has been forced by new concerns – like the AIDS epidemic which impelled ministries and boards to reconsider and even to extend their obligations to provide education on human sexuality. There is a recognition that education must play a more direct role in some controversial areas.

Native rights

The rights of Natives are not defined in the Constitution, they have not been clarified in subsequent constitutional conferences, and they are ill-defined by the courts. Almost every scholar in the field believes that the educational rights of Natives are inferior to those of the rest of the Canadian population, and are inappropriate for many purposes. Little Bear (1982) speculates that part of the reason may be that most Canadians do not know, and therefore cannot respect, the arguments of Native rights (See also Cumming & Mickenberg, 1972). Perhaps when they fully understand this argument, they will not believe these rights to be capable of being realized in a modern society. There may be a more serious difficulty; many Canadians are not sympathetic to the arguments for native rights and tend to discard or discount them despite their potential moral, legal, or political justifications. Native rights therefore represents a complex of political, economic, and cultural issues, ill-defined in some respects, and not highly valued by most Canadians or by most governments (Weaver, 1981).

The educational implications of these well-identified shortcomings are very difficult to secure agreement about, but they would seem to require changes in both the education of Natives and that of the majority of Canadians – especially concerning the rights of Natives. The presently recommended improvements rely upon an uneasy balance between group rights (Indian control of Indian education) and parental choice (Black, 1987).

Protection against discrimination – Right to cultural identity

A balance of rights and obligations must be achieved in this important matter, equivalent to the question addressed for religious, language, or racial schools. For the most part, Canadian schools have emphasized the right of all to attend, and recently have tried to reduce discrimination against all persons by any members of the school community. A model programme concerning visible minorities has been developed in several Ontario city boards and is winning provincial support (Ontario Ministry of Education, 1987). Typically such programs are aimed at avoiding racial incidents or propose to reduce negative stereotypes from the curriculum. There have been many important changes in these respects, but there remain challenges. Outside the cosmopolitan centres of visible minorities, boards and teachers remain remarkably impervious to the need for change.

Some ethno-cultural groups believe that they would benefit, at least under present conditions, by having schools which support their language, religion, and culture, and they have almost unchallenged rights to develop such schools. Sometimes (as in the case of Ukrainians in Edmonton) they have been successful in securing public support for their unique program (Lupul, 1982).

Equalization of opportunities

Although it seems to be enshrined in *The Canadian Charter of Rights and Freedoms*, equal opportunity for social services in poorer provinces has been eroded for several years without significant challenge (Ross, 1980). This erosion of rights is concealed among various transfer programs which are continually being reshuffled, with the net consequence that the richest provinces secure far more money from the federal government than the poorest ones, and the quality of various social programs is falling, particularly in Atlantic Canada. Part of the reason for the decline in the equality of opportunity for education is that provinces protect their autonomy on schooling matters and use as general revenue their federal grants and transfers, although they were originally justified and granted as support of education, equalization of opportunity, and relief from high taxes. In some provinces, these revenues subsidize many services other than education (Dibski, 1987). The right to equal educational opportunity for the poor is not yet secure.

Political education

The right to political education is one of the most important and disturbing problems in a democracy. It is assumed that education will

provide the basis for effective participation in a democratic society (Humphrey, 1987, pp. 235-236), but many features of schooling prevent meaningful autonomy among adolescents. Perhaps worse, the academic analysis of controversial issues is limited for fear of silly or even pernicious outcomes. For example, no teacher would introduce as a guest speaker an advocate of high-jacking or lynching, but are other social discussions undesirable influences in high schools? By failing to agree upon what should be taught about society, Canadian educators have made it possible (and now customary) for many adolescents to avoid courses discussing the affairs of their society. The problem is not that such courses are denied to students with a serious interest, but that there is a declining minimum level of understanding of civic affairs. The expectation that youth would be well informed about society has been a casualty in the wake of the quest for various forms of technical education.

Basic education

The right to adequate education was once "protected" by requiring all youth to attend school between the ages of 6 and 16, or various other intervals peculiar to certain provinces. Not all pupils emerged literate, and the fault may have been poor teachers, or inadequate courses, or books, or even the lack of medical treatment and nutrition. Recent studies indicate that one adult in five is unable to read well enough to function effectively in modern society (Statistics Canada, 1984). Many more are unable to take further courses and upgrade their skills because they lack the necessary proficiency in mathematics, science, or communication skills. This problem of "functional illiteracy" is to be attacked by a program announced by the Prime Minister sometime in the near future, apparently with sufficient general backing to ensure that the promise survives the next election (*Globe and Mail*, Sept. 9, 1988).

Vocational outcomes

There are shocking indictments of the Canadian schools of the past. The immediate concern, however, is the failure of Canadian society to offer more than welfare for the more than one million unemployed, many of whom are unemployable because their lack of basic education made them useless once their bodies had no value in the market place. The problem is partly one of political organization, for various levels of government each disclaim primary responsibility for the required and expensive vocational and social training. Although most school systems are trying to develop the kinds of programs that will help some adults to receive further training, and simultaneously to develop systems that will reduce the risk that pupils of today will face a similarly unrewarding future, their efforts remain inadequate. There seems to be little doubt that they are casualties of the

pressure by the present beneficiaries to spend most educational resources on the education of the middle class – in other words, on the education that will produce more university graduates – even if it is at the expense of the trades programmes.

Conclusion

Canadians may assert with confidence that their education deals more effectively with many rights than was customary, and it receives high marks in international reviews (Organization for Economic Cooperation and Development, 1976) and domestic opinion (Livingston & Hart, 1987). But nothing is perfect. The listing contained here is a sample of the kinds of debates about how fine-tuning of the public system can and will continue. The involvement of the professional community in this debate is advocated, despite the risks of divisions arising from involvement in the political process.

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