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CIVIL DISOBEDIENCE, DISSENT AND VIOLENCE—A CANADIAN PERSPECTIVE

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The fabric of domestic order in western democratic society appears somehow more threatened today than perhaps at any time since its hard-fought achievement during the past century and a half. International challenges were, of course, always raising doubts as to the underlying strength of this delicate balance between stability and the popular will. Certainly, World War I and the Russian Revolution, and World War II and Nazism, in their vitally different ways, were massive events that, among other things, questioned the network of mutual expectations, reliances, and "order" that characterized so-called democratic society, particularly among the North Atlantic, Western European peoples. Indeed, it is remarkable to consider how well these societies emerged from the spiritual and administrative rigours of World War II with their social patterns essentially intact—or at least so it seemed.

It is now evident that these patterns were not as secure as custom or habit led their participants to believe. Beneath the surface of reciprocal relations conferring or sharing power by votes, confidence and traditions, there lurked formidable pagan reservations to the social contract above. The capacity of man for disorder and violence as an "aggressive" ethnological fact was present in the group as a social fact, tamed only by the recent discovery of the rituals of the democratic process whose bare two-century performance raised hopes and suppressed memories about the nature of man and order. Nineteenth century premises about human perfectability did not destroy suspicion that original sin was omnipresent; but it surely minimized its role amid the euphoria of modernity.

If the violence of World War I was not an international warning sign, then the use of force to change men's lives, both in the Soviet Union and in Nazi-Fascist Europe, tore away the immoderate illusions of a too-optimistic era. Suddenly, by the end of World War II, a vortex of violent trends and memories had begun to put in jeopardy

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many of the assumptions about freedom and order. Concentration camps and gas chambers were the most dramatic of these sources of disenchantment with the self-image of free and progressive man. Everywhere there was a new kind of struggle: empires disintegrated and colonies became nations; passive resistance was found to be a powerful political persuader particularly with regimes that were reluctant to be brutal; as with the British in India; Africa and Asia were reasserting their place in history, and by this social statement were reopening a new chapter of dialogue among the races—but a chapter where the non-white voices would heavily outnumber their pale opposites; and finally, technology and communications pushed all societies toward some common standards of great expectations and pressed peoples toward believing that they could inherit the earth instantly—and if they did not, then rights denied would justify assertions up to and including statements in force.

Thus, the paradox of free and democratic western societies today is that despite affluence and the broad disappearance of major poverty, if not pocket-poverty, something of this global malaise of self-discovery has affected even the preferred among the nations so that their systems and stability are challenged as none could have predicted a decade ago. Symptomatic of this new self-doubt is the conversion of traditional student restiveness into a major source of disorder in North America, France and elsewhere. But in the United States—as distinct from Canada—“black power” and Vietnam have somehow provided a real or imagined critical mass of grievances reaching explosive magnitudes threatening the mutual reliances that must reinforce the fabric of a democratic order. In Canada there is no analogous “black power” catalyst since racial issues tend in general to be confined to the treatment of the indigenous Indian-Eskimo population numbering less than 325,000; while Vietnam, to Canadians in general, does not have all the moral and human overtones it must, by contrast, possess for the United States with its troops and its dead as a constant reminder of this corrosive national debate.

Nevertheless, the Canadian idyll is also in doubt. The image of post-colonial stability where WASP elitism in English-speaking Canada, together with church-bourgeois supremacy in Quebec, provided for so long an uncreative climate of restraint, now is yielding to the pulverizing effects of new groupings, new standards, and new leaders. The overriding Canadian issue, at the moment, is the resolution of social

tension between French-speaking Canadians, largely in Quebec, and English-speaking Canadians, where the demands for a redesigned federalism and language partnership may only be realized through the high and heavy psychological costs of national bi-lingualization, on the one hand, and improved economic and power opportunities for French-speaking Canadians on the other. Although Canada has a minor race question in the Indian-Eskimo situation, and has increasing demands from the "new Canadians" that are neither of French nor British extraction (and represent almost one-third of the population) for their place in the sun, none of these issues compares in depth and range with the problem of Negro-white relations in the United States, or the moral images and dilemmas of a nationally divided land created by Vietnam.

For these reasons, there is, in contrast with the United States, a degree of stability and relative non-violence in Canada that provides a quite different context for student extremism and activism already blossoming on campuses from New Brunswick to British Columbia. Indeed, the absence of Vietnam, or of Negroes, in large numbers, from Canadian life and politics has made the rationale of student unrest more difficult and essentially more artificial than its United States counterpart from which Canadian students derive their models and often their leadership, particularly at the junior staff levels.

Nevertheless, student unrest is a phenomenon which has already begun to unravel the fine seams of order even in a conservative Canada. For however artificial may be some of the issues raised by these students the plain truth is that many of their leaders, whether dealing with real or contrived claims, on the whole deny the validity of the democratic tradition, insisting on the moral supremacy of their views and the illegitimate status of the existing regimes in the university and outside. Thus, the twin arguments of moral rectitude and social corruption have become the crude ideological framework of their policies justifying behaviour that ranges from quite proper demands for certain university reforms to such improper exercises as break-ins, sit-ins, character assassination, group insults, and violent demands for participation. These do not merely disrupt the administrative life of the university, but perhaps equally important, disrupt the subtle rapport that must exist between teacher and student if there is to be any credibility to the teaching process and the learning experience.

From the social and legal aspects, the dilemmas posed by extremism

on the campus (and in the cities) are formidable. It is difficult to bring to bear the normal standards and procedures of the criminal law, with its policemen and its courts, to each infraction on the campus. Indeed, one of the minor glories of academic life has been the ability, without too great offense to notions of equality, to have a kind of double standard; the regime of the city and milder regime of the campus. For a long time, students have been beneficiaries of this relative immunity from the greater rigours outside. Vandalism, theft and cheating, all of which could have become the basis for quite severe repression through the mechanism of courts and detentions in the city, were, on the campus, treated with humanity and leniency in the name of youth and the higher freedom of the academe. One of the ironies of student extremism is the pretentious use of "human rights" to subsidize the questionable legitimacy of their posture, when in fact they are making impossible the continuation of the advanced human rights already achieved within the "privileged" world of the university.

One further Canadian variation on this North American theme should be observed. The city in North America, as throughout the world, is now the great source of society and of problems. In the United States black power and student dissent, along with ghettos and urban decay, are amalgams that have created an environment in which a walk on the streets after sundown is only a memory. This is not true of Canada. The major Canadian cities, although having their full share of renewal needs and repair, are still free, if not from crime at least from the pervading threat of disorder and personal violence that seems to have settled into the daily life of so many American cities, at least after dark. To that extent, student dissent and violence in Canada, together with the rising crime rate, may be problems; but they do not have quite the wholesale threat to order that seems present in the American mix of city, black power, and student activism, seen as some pattern of interpenetrating dilemmas.

What is common to both Canada and the United States, however, is the question of how to adapt the main institutions of Anglo-American and Anglo-Canadian criminal and public law and political institutions to these new confrontations, often made in the name of social change, sometimes with honest purposes, sometimes not. Answers will not be easy to find although they probably will be much easier in Canada because the social setting and the variety of challenges, together, pre-

sent less of a general threat to stability; while the smaller size of the society, its cities, and their problems render them easier to manage and possibly easier to effect accelerated changes. Undoubtedly the Canadian universities will undergo rapid shifts in power, leading toward the supremacy of the staff in policy-making, with a large degree of student participation in decision-making processes. Already it is clear, however, that the teaching staff must begin to find the means to protect itself from those student demands that are basically inconsistent with any rational teaching or research framework.

Equally, Canadian law and institutions will have to reflect the impact of "human rights" claims of Indians and Eskimos and, indeed, on a whole range of administrative and political processes heretofore operating with congealed stability, the price of which often was minimal participation by many minority groups. The art of national debate in Canada, at many levels, is being rediscovered, and the "science" of dissent, from passive resistance to violence, is being experimented with from university campuses to Indian reservations. But a Canadian perspective does not envisage serious challenges to the values and methods of representative and democratic institutions, even though the rate of response by those institutions to sectional claims, must be more sensitive than heretofore if real or artificial grievances are not to appear to give denial to the validity of the system itself.

For all of these needs, the role of Canadian law and lawyers is a mixed one. Organized and well-researched law reform in Canada has moved slowly, until recently, at the federal and provincial levels. The Bar generally has been too little aware of the whole poverty, welfare, human rights, and Indian-Eskimo sectors of social need. The courts, for the most part, have not had a policy-oriented point of view or candour in their judgments; and Canadian counsel, on the whole, have not assisted courts with the social footnotes for such an enlarged judicial role or judicial frankness. Yet, change with order is the Canadian goal, and for the moment some reasonable balance, weighted on the side of order, is being struck between these values in Canadian law and society.