

## CONDITIONS FAVORABLE TO THE REALIZATION OF THE RIGHT TO EDUCATION : ISSUES AND IMPLICATIONS FOR ABORIGINAL PEOPLES

by Charlotte Henay



*L'accès à l'éducation est très souvent présentée comme une condition de réalisation du droit à l'éducation de sorte, qu'à la limite, nous tendons à amalgamer les deux. La question est bien plus complexe que cela et ce, en dépit du fait que d'aucuns ont parfois tendance à la simplifier au profit d'intentions plus ou moins cachées. D'entrée de jeu, nous disons que l'accès à la scolarité obligatoire et le droit à l'éducation sont deux choses bien différentes, la première ne garantissant automatiquement pas l'application pleine et entière du second, du moins pour ce qui concerne la situation des peuples autochtones ; l'expérience acquise en milieu scolaire amérindien, au Canada, tend à confirmer cette affirmation.*

*El acceso a la educación es, a menudo, presentado como condición para la realización del derecho a la educación de manera que, por último, tendemos a unirlos. El tema es mucho más complejo, y eso que, a veces, algunos tienden a simplificarlo en beneficio de intenciones más o menos ocultas. Desde un principio, planteamos que el acceso a la escolaridad obligatoria y el derecho a la educación son dos cosas muy diferentes ; la primera no garantiza la plena y total aplicación de la segunda ; por lo menos, en lo concerniente a la situación de los pueblos autóctonos, la experiencia adquirida en el medio escolar amerindio de Canadá, confirma esta afirmación.*

*The accessibility of education is so often presented as the means to achieve the right to education that, in the end, we tend to combine the two. The question is far more complex than that, despite the fact that some persons have the tendency to simplify issues in order to hide other intentions. As a starting point, we propose that the access to obligatory schooling and the right to education are two very different things; the first not automatically guaranteeing full and complete implementation of the second. This is certainly the case for indigenous peoples, as confirmed by experience gained in the Amerindian scholastic environment in Canada.*

### **The Rights Language – An Aboriginal Context**

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The right to education as defined by the International Covenant on Economic, Social and Cultural Rights, Article 13, is explained as a human right in itself while at the same time being indivisible from other human rights and an indispensable means of realizing these rights<sup>1</sup>. The Universal Declaration of Human Rights states everyone has the right to education, to be directed to the full development of the human personality<sup>2</sup>. Many of us, inside and out of the educational field, take for granted the right to

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1. Committee on Economic, Social and Cultural Rights Twenty-first Session, November 15-December 3, 1999. *Implementation of the International Covenant on Economic, Social and Cultural Rights. General comment No. 13 (1): The Right to Education.*

2. *Universal Declaration of Human Rights. Article 26.*

education and spend little to no time considering the implications, ramifications and conditions inherent in the exercise of this right. Often lack of access to education in the developing world is at the forefront of the debate on the right to education and, at the worst extreme, access and right are believed to be one and the same. Let us begin with the understanding that compulsory education and the right to education are not the same, the latter in no way having been realized by provision of the former. The language of rights is an increasingly complex and subtle one that is often manipulated to suit varying agendas. We need to examine the right to education in an Aboriginal context, its definition, and the proposed tools for the realization of that right.

I am not speaking for Aboriginal peoples nor am I promoting cultural appropriation by discussing their perspective. I am writing in the interest of what can be learned by examination of the «rights dialogue» and current trends in educational reform. However, my views on this matter have been shaped by the understanding gained from time spent living, teaching, and working in and with First Nations communities. A time which has led me to the recognition of the subjectivity of rights terminology despite the strife to underline and define equality and equity in education as well as emphasize their components in the provision of it inclusively.

### **Conditions for Realization**

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The Convention on the Rights of the Child reaffirms the necessity for provision of equal opportunity, capacity-

appropriate education and the responsibilities of State Parties<sup>3</sup>. We are concerned about the future of the world's children, about preparing global citizens who are equipped to face the eventualities of a society that is more than chameleon. The result has been, albeit well intentioned, a move towards the establishment of standards, baselines, equality, sameness. We promote quality, non-differentiated curriculum, deplore enrolment and gender restrictions, agree that we need to educate our youth out of concern for the kind of society we want to be<sup>4</sup>. Obscured are the social, economic and cultural factors that prohibit equality, and the recognition that in absence of certain preconditions the rest is an impossibility. We look to jurisprudence, statistics, covenants, declarations and conventions to define a right we all know to be inherent and subjective at the same time. Let's recognize that it is highly probable there is no uniform solution, there certainly is no quick fix. I believe we need to go beyond the right to education. I concur with Michael Ignatieff when he says «rights are about defining minimum conditions», and describes the (Canadian) rights vision as advocating «no privileges for any groups, but equal rights for all. No distinct societies, one nation...Equality of individual rights is simply not enough<sup>5</sup>.» The presupposition is that justice is served by the assumption of equality. What's good for dominant, mainstream society is good for everybody.

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3. *Convention on the Rights of the Child*, Article 28.

4. Kuttner, Robert (1988). p.2.

5. Ignatieff, Michael (2000). p.65

The four A's to be exhibited in the realization of the right to education, by international definition<sup>6</sup>, are availability, accessibility (including physical and economic accessibility as well as non-discrimination), acceptability and adaptability. Educational facilities are to be available and equipped appropriately (to ensure the provision of quality education) according to the needs of the area in which they are situated, and to meet minimum standards (safe drinking water, sanitation facilities, and teaching materials, trained teachers). Programs and institutions must be accessible to all in a *non-discriminatory* fashion, within *safe* physical reach or via technology, and education must be affordable to all, with primary education being free to all. The form and substance must be acceptable, culturally appropriate and relevant to students and parents, and must meet such minimum standards as approved by the State.

Education must adjust to changing needs and meet those of students from/in varied cultural and social settings. We need to be clear on what these terms mean in light of Aboriginal education. As I mentioned before, availability and accessibility of education (as provided either by governments or First Nations communities/organizations) do not mean students are attending, nor does it mean they are getting an education. The responsibility of the State delivering Education is to ensure an acceptable educational context and setting are provided. This should encompass cultural relevance, contextually appropriate curricula and methodology as well as allow for parental exercise of choice as to the school they wish their children

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6. *ibid.* 1. *Part I Normative Content of Article 13(2) : the Right to Receive an Education.*

to attend. A school that educates their children according to their traditions, faith, convictions. In many isolated Aboriginal communities, there may only be one school or, in the case of public education systems in towns and cities, several choices of schools, all offering a standard mainstream program. If a First Nations school is available with a curriculum developed to meet the needs and address the priorities of the community, the programs are often not given equal status with those run by the State and do not lead to official certification or meet requirements for entrance into postsecondary institutions. Whether or not it is a priority for Aboriginal people for children to access education in the mainstream system is for them to determine. If students and parents are alienated from the educational system, as is often the case for Aboriginal peoples, the program is clearly not relevant nor is it culturally appropriate. Therefore, inaccessible. Making the choice for them makes a mockery of the principles inherent in the right to education. Since the rate of illiteracy and school drop-outs, low employment and high incarceration figures doesn't seem to be lessening amongst First Nations peoples, the mainstream system obviously hasn't adapted well enough to produce educational success. Certainly not on dominant society's terms. In addition, the access to original solutions on Aboriginal terms is controlled and limited. This creates a strong climate of exclusion. What about the definition of «getting an education» and a closer look at why, no matter how we define it, current standards for delivery of the right to education just aren't working for Aboriginal people.

## Common Language

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We know that dialogue is not possible without common language<sup>7</sup>. One of the difficulties is that dominant and aboriginal societies don't share the same views of terminology. What the mainstream sees as getting a quality education, preparing oneself for the job market and the assumption of civil responsibilities, can be perceived as assimilationist jargon. Why would Aboriginal students want to prepare themselves for a future in a system that can offer little unless much of who they are and what they believe is offered up in return ? Why would parents want to support such a system ? Education hasn't been a positive experience for indigenous peoples. Take the example of Canadian residential schools where students were prohibited from speaking their language, visiting their families (even siblings in the same school), and were victims of long-term physical and sexual abuse.

Fundamental principles we advocate are self-respect (in order to respect others) which leads to self-actualization and the honoring of one's identity by the political system. It wouldn't be accurate to say **aboriginal rights have been respected, entrenched in treaties regardless**. If the State within which one lives doesn't recognize the group to which one belongs (except for identification as separate from the mainstream) how are the above possible ? Education is increasingly being recognized as a cultural

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7. Commission on Human Rights, Fifty-fifth Session, Item 10 of the Provisional Agenda on economic, Social and Cultural Rights. *Preliminary Report of the Special Rapporteur on the Right to Education*. Pratt Paragraph 10.

process, born of and training students for membership in the society it reflects. There are clear links between learning, education, identity and the maintenance and reproduction of cultures<sup>8</sup>. Mainstream politicians, educational providers and policy developers not taking this into account, and realizing that both the need and service delivery of education should and will be determined by First Nations<sup>9</sup>, is both shortsighted and ethnocentric. The Canadian Assembly of First Nations Special Education Policy Draft goes on to say that «First Nations learners have a right to access an education that encompasses their spiritual, physical, social, emotional, cultural and intellectual development, and their education should prepare them adequately for lifelong learning... education that is based upon First Nations cultures and values is consistent with the principles of inclusion and holistic learning... First Nations learners learn best in an environment that reflects their experiences and understandings... First Nations schools aim to provide all learners with a solid foundations in their languages and cultures, values, understandings, and traditions. First Nations schools are one mechanism through which First Nations are exercising their jurisdiction for education<sup>10</sup>.» Many Aboriginal peoples share a sense of the connectedness of all aspects of life. Education,

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8. *Best Practice and Benchmarking in Aboriginal Community-Controlled Adult Education*, A project Report to the Australian National Training Authority from the Foundation of Independent Aboriginal Education Providers Ltd. Bob Boughton and Deborah Durnan Researchers. 1997. P.7.

9. Assembly of First Nations Special Education Policy Draft. 2000, p.5.

10. *ibid.*



spirituality, and politics are not necessarily separate, and a strong sense of community prevails. This is not the time nor the place to examine the complexity of Aboriginal communities and people. Suffice it to say that a common language presupposes dominant society's acceptance of Aboriginal peoples' right to view education from a perspective that is entirely theirs, and to pursue the delivery of education on their own terms. In my opinion it is not appropriate to look at Aboriginal realization of the right to education without the presupposition that first Aboriginal people must agree on the terminology and accept the terms on which the international community has taken it upon themselves to lobby for delivery of this right. How can we advocate for the inherent right to education and not for the inherent right to self-government ? Education is political and must be openly accepted as so. I have heard an elder call education from the dominant perspective indoctrination. I don't think this is disputed. Neither is the affirmation that better education goes hand in hand with other social improvements. As members of Nation-States, Aboriginal peoples are dependent upon the colonizing governments to establish their funding norms and the guidelines for their educational practice. This catches them up in a vicious circle of social inequality<sup>11</sup>. Refusing what can be perceived as assimilative educational practice should not be surprising nor should it be termed failure. How can we continue to expect success from dominant methods ?

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11. *ibid.* 5, p.20.

## A Hidden Agenda

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In advocacy for the realization of the Aboriginal right to education we need to recognize that the culture of rights and rights-based language has been just as useful to dominant interests as it has empowered subordinate groups<sup>12</sup>. Let's look at the intent and then describe a direction for conditions favorable to its coming into effect. The point is that everybody get an equal opportunity and equity in the fulfillment of their needs for self-realization. We know that cultural authority creates the language of rights and that it is exercised by dominant society. We know we need a paradigm shift. I am fully in agreement with the Special Rapporteur on the Right to Education when she says that she is looking at the right to education in light of advocating changes within education<sup>13</sup>. Whether the right is being realized is irrelevant if other fundamental human rights are being ignored. We need to examine the agendas of the States we inhabit, the language we use in human rights advocacy and how it furthers or does not our intent, what that intent is, and how much of the hidden agenda to assimilate Aboriginal peoples slowly, through education and indoctrination, we are consenting to overlook. Maybe it is time to think about accepting that Aboriginal peoples do not need consensus (political, spiritual or otherwise) or to guarantee immediate success on our terms for assuming inherent rights and responsibilities in order for dominant society to feel comfortable. As per part B, paragraph 57 of

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12. Denis, Claude (1997), p.110.

13. *ibid.* 7. Part I Paragraph 13.

the Special Rapporteur's preliminary report, «non-discrimination is not subject to progressive realization but has to be secured immediately & freely<sup>14</sup>». Perhaps it's time to look at what the *rights* agenda is, go beyond education as a means of realizing other human rights, and recognize that the process for recognition of the declarations, covenants and treaties that ensconce these rights may be flawed in itself. In light of that, can we afford to get stuck in progress, is that and favorable conditions enough ?

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14. *ibid.* 7. Part II B. Paragraph 57.

## Bibliography

Assembly of First Nations (2000). «The Assembly of First Nations Special Education Policy Draft».

Commission on Human Rights (1999). «Item 10 of the Provisional Agenda on Economic, Social and Cultural Rights, paragraphs 10, 13, and 57 of The Preliminary Report of the Special Rapporteur on the Right to Education». Fifty-fifth Session.

Committee on Economic, Social and Cultural Rights (1999). «General Comment No. 13 (1) and 13 (2) of Implementation of the International Covenant on Economic, Social and Cultural Rights : The Right to Education». Twenty-first Session.

Denis, Claude. (1997). «We Are Not You. First Nations and Canadian Modernity» Peterborough : Broadview Press.

Foundation of Independent Aboriginal Education Providers, Ltd. (1997). «A Project Report to the Australian National Training Authority “Best Practice Benchmarking in Aboriginal Community-Controlled Adult Education”».

Bob Boughton and Deborah Durnan, Researchers.

Hooks, Bell. (1994). «Teaching to Transgress, Education as the Practice of Freedom». New York : Routledge.

Ignatieff, Michael. (2000). «The Rights Revolution» Toronto : House of Anansi Press, Ltd.

Kuttner, Robert. (1988), «The Right’s Wrong on Education and Savings».

United Nations (1948). «Universal Declaration of Human Rights». Article 26.

United Nations (1980). «Convention on the Rights of the Child». Article 28.

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