Indian Self-Government: Triumph or Treachery

To many, recent events in Indian affairs are confusing. To this conclusion, Indian affairs have contributed exceptions. In the last two decades of the century, exclusivist policies of the article have been seen as facing the challenges of Can...
or Treason?

To many non-native people, Indian events and issues are clouded with confusion and controversy. Although this confusion is shared by some Indian communities too, Indian people have come to express their views with exceptional clarity over the last decade or so. Drawing almost exclusively from native sources, this article attempts to summarize their perspective on the key political issues facing Indian nations — and the rest of Canadian society — today.

On October 9, 1986, Chief Stan Dixon of the Seshelk Indian band from the coast just north of Vancouver celebrated his people’s attainment of self-government by holding aloft a tee-shirt emblazoned with the words: “You can kiss my ass, because we got Self-Government at last.” Clearly jubilant at the passage of Bill C-93, which provides for the transfer to the community of title to band lands and for a band constitution, Dixon was accompanied by Bill McKnight, Minister of Indian Affairs, who stated the federal government’s commitment “to developing a new relationship with Indian people.” “Self-government,” he continued, “is at the heart of this relationship.”

Little over a month later, a meeting between the Minister and native leaders, scheduled to take place in Kamloops, was cancelled because word got out that Indian people planned a demonstration at the event. A leaflet, produced by the organizers of the protest — the Confederation of Shuswap/Okanagan Action Committee — stated boldly “Self-Government is Treason.” It continued, “B.C. Indians must say No to the Constitution process, No to land claims settlement negotiations process, and No to Indian Self-Government!”

Faced with such diametrically opposed views, it is understandable if both native and non-native alike are confused. Self-government sounds like a positive achievement for native people, as do land claims and the process of defining native rights in the Constitution. But how do they really relate to the aspirations of Indian nations for cultural independence and the recognition of their aboriginal rights and titles?

THE TWO-ROW WAMPUM

In recent years a great deal of detailed research has been done by numerous Indian organizations on the history of their relations with non-natives in Canada. Indian people themselves insist that an adequate understanding of their present position can only come from examining their past and appreciating the philosophical basis of Indian cultures, so different from the dominant European culture.

They point out, first, that “Indians” is a general
"The relationship between the land, people and our creator is inseparable. This relationship is the basis of our position of sovereignty and 'Aboriginal Title' today."

Due to the shared land and resources, the native nations were clear in their claim to sovereignty over the land. The English and French settlers were welcomed and encouraged to settle in the land. The relationship between the English and the native nations was based on mutual respect and friendship. The English welcomed the native nations and adopted the peaceful settlements as the only viable alternative.

Subsequently, King George III’s Royal Proclamation of 1763 confirmed Indian sovereignty and set down a law in the terms under which Indian nations were prepared to negotiate settlement by the English. These terms include the fact that Indian land would only be extinguished by consent (not conquest); that title would only be ceded through a fair and open process; and that the Indian nations as protected people would have rights to self-determination. In the international context of the time, European powers asserted their claims to "neighboring" territories either by direct or indirect consent of the native peoples. Britain’s policy of "indirect rule" was established, with the Indian peoples having a "special relationship" with the British crown.

To this end, "reserves" were created — a tiny fraction of traditional tribal territories — and "band councils" formed to replace the traditional tribal governments and undermine their authority. All decisions of band councils are, in this day, subject to approval by the Department of Indian Affairs.

What has been termed a "consensus of legislature" by Chief Joe Mathias then followed: a concerted attempt to destroy the very basis of Indian cultures. Native religions and customs were attacked by the churches of Europe, and by the 1880s the potlatch and Tsimshian were outlawed. Education was compulsory for Indian children, who were separated from their parents and prohibited from speaking their languages. Colonial and provincial legislation opened up Indian lands to non-Indians and, anticipating parent, the Indian Act of 1927 made it illegal for native peoples to retain a warrior to advance their rights, or even raise money to do so! In addition, alcohol and disease — smallpox, measles, and plague — killed whole populations. Denied the right to vote until 1952, Indian people were told that their salvation lay in the Indian gaining a universal vote, a priest or a minister, the Chief Joe Mathias says, "to give up our lands, our culture, to participate in the late 19th century European order."
In the Seven Year War between England and France (1752-1759), it was the Indian nations who tipped the balance in favour of England, since the English had been able to make more Indian allies by promising to protect their lands.

WOLF IN SHEEP'S CLOTHING

The modern era in this saga begins in 1951 with the repeal of the laws outlawing Indian religion and preventing Indians from pursuing their land claims. Indian people subsequently began organizing for the recognition of title.

With the rise to power of Pierre Trudeau in 1968, the pressure was on to settle the Indian lands "problem" once and for all. Accordingly, Trudeau and Jean Chrétien, then Indian Affairs Minister, concocted the ironically-named White Paper policy. Its objective was to complete the job of assimilating the Indian people by placing them under the jurisdictions of the provinces. They proposed repealing the Indian Act and amending the constitution to eliminate all references to Indian people. Reserves would eventually disappear along with the Indian peoples' special status once they became ordinary citizens.

However, the White Paper galvanized Indian people across the country, stimulating groups like the Union of B.C. Indian Chiefs to form and strengthening young organizations like the National Indian Brotherhood. Under intense pressure, Trudeau shelved the policy and launched a process of consultation with the Indian people.

Soon after this, in 1973, the Nisga’a — from the Nass Valley in northern B.C. — took their land claims case to the Supreme Court of Canada, whose judgement was split on the issue, three of the seven judges ruling in favour of the Nisga’a, three against, and one essentially abstaining on a technicality. All of a sudden, Trudeau’s assertion that there was no such thing as Aboriginal Title was up for question.

Realizing that if it were left up to the courts, they might rule in favour of the Indian people, Trudeau announced a land claims policy and a process of negotiations for resolving land issues. It seemed, on the surface, that the tide had turned. But key to the land claims process was the condition that native people would have to accept extinguishment of their title in return for monetary compensation and other negotiated programs. Unknown to the native people at the time, Trudeau and Chrétien had agreed to maintain the same objectives of the White Paper policy, disguised as a liberal negotiation process. This strategy was revealed in a letter of April 30, 1971, from Chrétien to Trudeau. It outlined the goals of the process clearly as extinguishment of title and the shifting of jurisdiction over Indian to the provinces. Priority, the letter said, was to be given to those areas where major resource development was to occur, and pressure provided by imposing tight time limits on negotiations, enforced with threats of legislated settlements. Because the land claims process would satisfy international standards for obtaining title by consent, Indian people have seen it, in retrospect, as a particularly dangerous path for Indian nations to follow.

PATRIATING THE CONSTITUTION

Not satisfied with land claims negotiations as a secure enough means of doing away with aboriginal title, Trudeau also turned to the Constitution again. Because the federal and provincial governments had been unable to agree on an amending formula for changing the constitution, it had remained in England since the passing of the BNA Act. Frustrated with making no progress, Trudeau decided in 1980 to patriate the BNA Act unilaterally, including in the resolution to be put before parliament a Charter of Rights and Freedoms. Part of the charter recognized and affirmed the Aboriginal Treaty Rights and aboriginal peoples of Canada.

Fearing that once Canada could amend the constitution, all references to aboriginal rights would be removed, and fearing also the consequence of breaking the political link between the Indian nations and the English Crown, native peoples across the country opposed the move. When, following federal-provincial negotiation in 1981, all reference to aboriginal rights was dropped completely, Indian opposition became solidly united. At home and in Europe, Indian protest severely embarrassed the Canadian government. Subsequently, aboriginal and treaty
rights were put back in the resolution but qualified as “existing” rights. An additional section called for a First Ministers Conference to be convened after patriation which would identify and define aboriginal rights; representatives of the aboriginal peoples would be invited. The date for this conference was set for March 1983.

Native people now faced not only the federal government, but also 12 provincial/territorial governments, and had no veto and no veto. They agreed to push for a continuing process, with aboriginal title and the sovereignty of the treaties as a basic position. Four conferences were agreed to over a five year period. But the Indian nations were not united on a common strategy. Some who believe in their status as nations did not want to sit at the table with the provinces and territories, since the latter are known to be hostile to their aspirations — especially in the case of B.C. They believed, instead, that pressure should be exerted through international forums such as the United Nations Committee on Decolonization. Others believed that, if they did not attend, the government would simply go ahead and make the decisions for the native peoples anyway.

Under such “no-win” conditions, it was never clear what the constitutional process could formally accomplish for Indian peoples. In part a desperate rear-guard action to prevent their existing gains from being entirely swept away, it was also seen as an important forum for swaying national and international public opinion to recognize the Indian claim that a trust obligation does, indeed, exist.

The last constitutional conference on the topic of aboriginal rights was held in the spring of 1987. It ended abortively and with no surprises. The federal and provincial governments were unwilling to sanction a constitutional amendment to include aboriginal rights, claiming that it would give Canadian courts too large a role in defining the juridical status of native communities. The constitutional process had got nowhere.

Worse yet, a month later, the Meech Lake Accord ironically cleared the way for greater powers of self-government being handed over to the provinces, including what amounts to a provincial veto on native demands for self-government. Under section 41, any experimentation with alternative forms of jurisdiction — without unanimity among the provinces — is impossible. This leaves the Northwest Territories and the Yukon, for example, in a jurisdictional never-never-land, never being able to become full-fledged participating provinces of Canada. As George Erasmus, of the Dene nation, said, “The rest of the provinces do not have the right to determine our future.”

Meanwhile, a further Supreme Court decision — this time in the case of the Musqueam Band, in 1984 — strongly reinforces the argument that Canada is obligated to the native peoples by a trust agreement. Indian Affairs leased Musqueam Band land to the Shannonlodge Golf Course in Vancouver without following the band’s instructions and without the band’s full knowledge of the details. The band subsequently took Indian Affairs to court for breach of trust. The case went to the Supreme Court which ruled in favour of the Musqueam Band, saying that the federal government had not only a legal trust obligation, but a fiduciary obligation—meaning that it must carry out this trust with the highest standards of professionalism and integrity. The Court awarded $10 million in compensation to the band and reprimanded the government for the way in which it had handled the case. Clearly this ruling strengthens the Indian position in the international arena.

**INDIAN GOVERNMENT OR SELF-GOVERNMENT?**

Throughout this complex history, one thing at least has remained clear and simple: that the government, in the figure of the Department of Indian Affairs, has had too much control over Indian peoples. Calls for greater local control — Indian government — were made as early as 1976. Public hearings on Indian Self-Government were held, and the result — the Foner Report — was released in 1983. It recommended that Indian Affairs be phased out over five years, and that a process for resolving land claims be defined through Parliament, with extinguishment of title no longer a pre-condition for negotiation. In late 1983, a further report of a task force which reviewed Comprehensive Claims policy, and which was chaired by Murray Cosicin, not only recommended sweeping changes to the government’s way of dealing with land claims, but also came out strongly in favour of recognizing and affirming aboriginal title and self-government.

While all First Nations heartily endorsed the Cosicin report, the federal government rejected its key recommendation that aboriginal title be preserved, instead offering a compromise which the Assembly of First Nations called “an insult.” In the words of the UBCIC, “the federal/provincial version of self-government is as far away from the Indian interpretation as Pluto is from the Sun and is an unacceptable model to the Indian bands of Canada.”

Instead of bestowing a distinct order of government on the Indian nations, the Scheffler version of self-government — the one promoted officially — is merely a municipal form of government; a third order under the jurisdiction of the province. Furthermore, title to the land is transferred to the band in fee simple, meaning it is subject to taxation and can be bought and sold like other land. Worse yet, the fear is that the Scheffler people have surrendered their aboriginal title to the land with consent, a process that has removed the band from the trust obligation of the federal government.

By contrast, many other Indian peoples want Indian government. At base they want full title to the land, meaning full jurisdiction over and management of their traditional territories and resources, including subsurface rights. They want full legislative and policy-making powers on all matters affecting Indian people, including social and cultural development, revenue-raising, economic development, and justice and law enforcement. And they want this distinct order of government — Indian First Nation governments — to be explicitly recognized and entrenched in the constitution.

In other words, with the Scheffler model of self-government, some Indian nations believe that the legitimate demands of their peoples for autonomy and control of their own affairs have been turned into yet another government policy to lure Indian nations into renouncing their aboriginal rights.

**TO THE COURTS AGAIN**

Acutely aware of government intransigence in any of the official processes, the Gitksan Wet'suwet'en Tribal Council initiated a Supreme Court land title action against the province of B.C. in October 1984, seeking a declaration that B.C. was not ready or able to enter into a treaty relationship with the Gitksan and Wet'suwet'en with respect to their traditional territory. A similar response followed in British Columbia, where the Tsilhqot'in Tribal Council challenged the province’s jurisdiction over its traditional territory.

**BESIEGED ON TWO FRONT LINES**

While the ‘outside’ threats have been won by
seeking a declaration of continued ownership and jurisdiction over their traditional territories encompassing 57,000 square kilometres. The province successfully brought forth a motion to add the federal government as a co-defendant, and the court case began in Smithers, B.C., in May 1987, with extensive testimony being given by native elders.

Following a summer recess, the trial venue was moved to Vancouver, making it extremely difficult and expensive for the Tribal Council to have elders and others give testimony. Soon afterwards, federal "test case" funding was withdrawn with no warning. Initially thought to last a matter of months, it appears that the case will now extend beyond the end of 1988. Clearly both levels of government are actively trying to thwart the native peoples' attempts at securing justice.

Inside the courtroom, the governments are maintaining that if aboriginal rights did once exist, they have long since been extinguished by previous laws or by native acceptance of Indian reserves. Or, alternatively, that the Gitksan-Wet'suwet'en no longer have a distinct way of life that it has been replaced by the wage economy, Christianity, public education, cars, and so on. In other words, the governments are arguing precisely that any and all "acquiescence" to the dominant white society — seen as "progress" by the rest of the world — is proof that the native people have long since been assimilated. Consequently, the Gitksan-Wet'suwet'en are in court to explain who they are: what the basis of their land ownership is; how their institutions of jurisdiction operate — in short, the fact that they are distinct peoples.

But as the court drones on, the plundering of Gitksan-Wet'suwet'en traditional lands has been stepped up in an apparent attempt to remove all resources possible before the case is settled. Consequently, traditional fishing sites have been illegally reactivated, and blockading protesting logging practices have been set up by tribal council members trying to prevent the further destruction of their lands.

**BESIEGED ON ALLFRONTS**

While to "outsiders" it might appear that great gains have been won by Indian peoples in recent years, to many Indian nations the situation is almost the reverse. They feel, instead, besieged on all fronts: they have faced a full-frontal legislative attack over the constitution, and now have the Meech Lake Accord to contend with; they are increasingly having to fight battles over lands and resources in the courts; and, by pursuing negotiations with the government over land claims and self-government, they must tread ever-so-warily for fear of falling into the trap of signing away the very rights they have fought so long sought. As at least one Indian leader has recently pointed out, the Indian people and the Canadian governments are further from agreement over these issues than they were in 1973.

And if the military metaphor appears melodramatic to white sensibilities, it is not to Canadian Indians who remember that only a quick of European history prevented their being wiped out by conquest, as Indian people were in the U.S. In both nations, the same end has been pursued by the European powers, no matter what words were said or written; only, in Canada, the battle is not yet over.

Today, with governments anxious to finally resolve the "Indian problem," many Indian people believe that an armada of sophisticated weapons — ranging from sweet-sounding agreements, through large cash settlements, individual political prestige, and simply by-passing the issue in a tangle of new constitutional arrangements — is being used against their interests. It is no wonder, in this context, that triumph for one Indian nation might well be another's treason.

The major source for this article was The Indian Nations Story — A Summary, by the Union of B.C. Indian Chiefs, June 1986; also, Conspicuous of Legislation, by Joe Mathias, January 21, 1986; and Self Government is Treason, by the Confederation of Shuswap/Okanagan Action Committee, Chase, B.C.

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