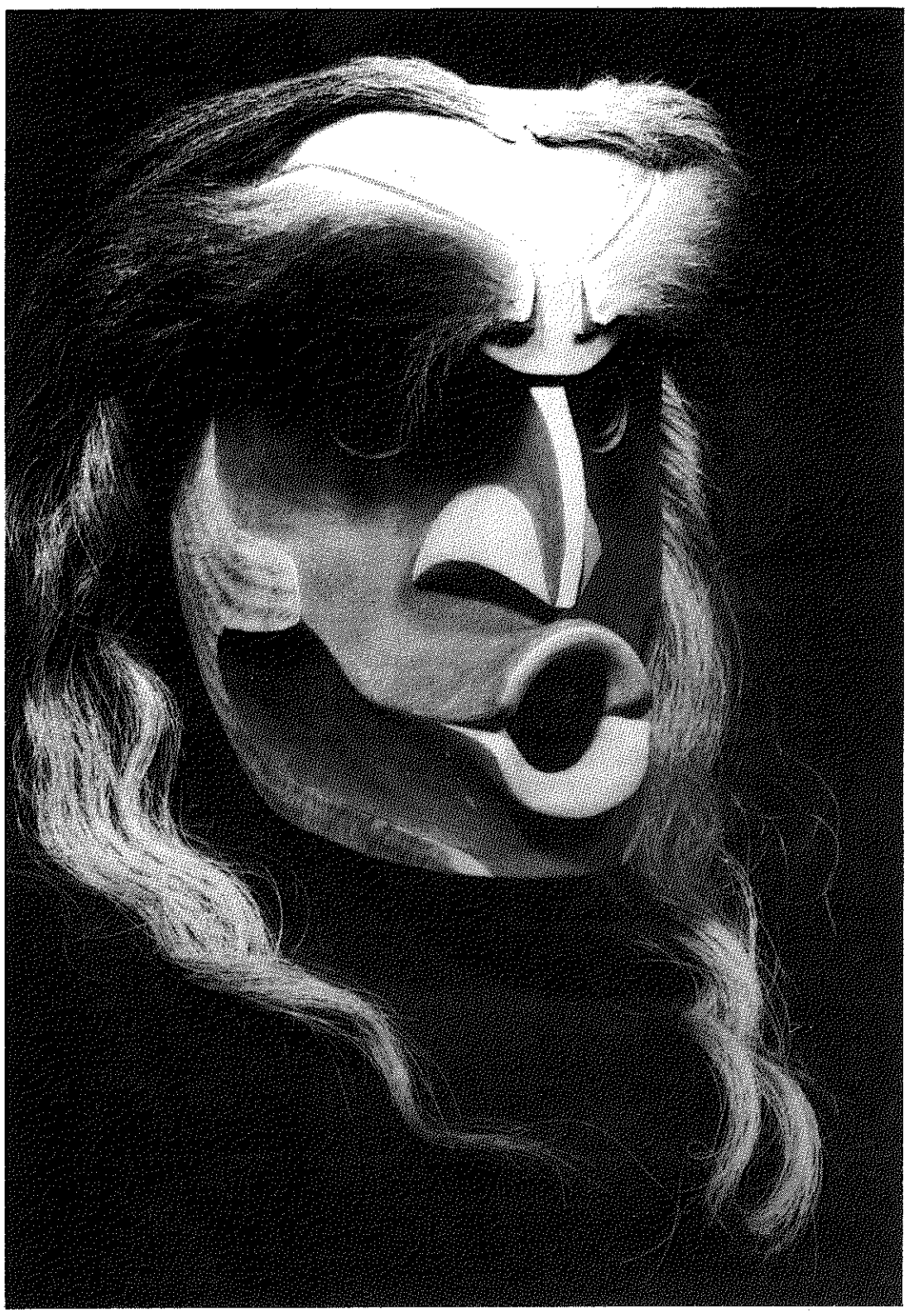
Indian Self-Government: Triumph or Tre



Christopher Plant

To mar

events

confusi

this co

Indian

have c

except

decade

exclusi

article

perspe

facing

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 Sechelt 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 title?

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 sovreignty and 'Aboriginal Title' today."

term which does not do justice to the great variety of distinct nations which have existed for many thousands of years on "The Great Island" — North America — each with their own languages, governing systems, traditions, social order and relations with other nations. Despite this diversity, these tribes and nations share a common underlying philosophy that they were placed in their territories by the Creator to care for and control the land. In return, as the Union of B.C. Indian Chiefs (UBCIC) says, the land would provide for all their needs:

"This relationship between the land, people and our Creator is inseparable. Our responsibility to care for and control the land is seen as an obligation to our Creator and each generation must consider seven generations into the future. The land belongs to the Creator, we belong to the land. This relationship is the basis of our position of sovereignty and 'Aboriginal Title' today."

Living in harmony with nature and with other nations ranked high among Indian values, and 'international' relations were built upon the principles of respect, friendship and peace.

Europeans arrived on the east coast beginning in the mid-1500s. Malnourished, sick with scurvy, these "new human beings" were welcomed and cared for in friendship. The basis upon which native peoples developed relations with Europeans — mostly English and French in this case — is best expressed by the Haudeno sau nee Confederacy (the Six Nations Confederacy). Observing the great cultural differences of the two peoples, they defined an "Original Compact" in the following terms:

"We call it Gus-Wen-Tah, or the Two-row Wampum Belt. It is on a bed of white wampum, which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of our ancestors. Those two rows never come together in that belt, and it is easy to see what that means. It means that we have two different paths, two different people.

"The agreement was made that your road will have your vessel, your people, your politics, your government, your way of life, your religion, your beliefs. The same goes for ours. ...We will be the same, the same height. Your Nation, your Government is over here. Our Nations and our Government is over here. Never do they cross anywhere, meaning that... you will not make laws for our people and we will not make laws for your people. It is simple."

Generous enough to share their lands with the newcomers, the native nations were clear in never surrendering title nor ownership of their lands — something that was, philosophically speaking, impossible anyway.

For the next hundred years or so, Indian nations continued to be a major influence in the European settlement of the Great Island. In the Seven Years War between England and France which began in 1752, it was the Indian nations who tipped the balance in favour of England, according to UBCIC research, since the English had been able to make more Indian allies by promising to protect their land. Following the war, the English were asked to remove their forts. When they refused to do so, Chief Pontiac and a Confederacy of many nations proceeded to burn them to the ground, until the British agreed to negotiate. Faced with the impossible prospect of subduing the Indian nations by military means, England adopted peaceful settlements as the only viable alternative.

Subsequently, King George III's Royal Proclamation of 1763 confirms Indian sovereignty and sets down in law the terms under which Indian nations were prepared to negotiate settlement by the English. These terms include the fact that title to Indian land would only be extinguished by consent (not conquest); that title would only be ceded through a fair and open process whose obligations would bind the parties forever; and that the Royal Majesty would continue to treat the Indian Nations as protected people — amounting, in modern terms, to a recognition of the right to self-determination. In the international context of the times, European powers asserted their claims to "newly-discovered" territories either by visible conquest, or by the consent of the people concerned. Seeing how expensive it was to conquer the Indian peoples by force in what is now the United States, and lacking the financial and military resources to be able to subdue the Indian nations, England clearly chose to demonstrate effective occupation of territory by consent and expressed this many times to other European nations.

Eighty treaties were then concluded in the east and west of what is now called Canada, including 14 on Vancouver Island. But at no time in the treaty-making process did Native nations agree to extinguishing title to their land. With the treaties, settlement occurred and colonies formed. By 1867 the colonies had decided to confederate and this was passed into law by the English Parliament as the British North America Act, creating Canada as a nation. Under the terms of the BNA Act, the federal government took over administering England's obligations to the Indian nations — an arrangement that was made without the knowledge of the native peoples. This essentially created a legal trust on Canada's part to protect the interests of the Indian nations against outside interests (including the provinces). And under international law, the obligation of the trustee is to lead the people to whom a trust is owed to self-determination and independence. In the Indian view, this trust relationship with the colonizing power provides the basis of their present claim to aboriginal title.

TRUST BETRAYED

The Indian Act of 1868, otherwise known as an "Act for the gradual civilization of Indian Peoples," marked the beginning of a gradual but deliberate policy of betraying this trust. Through assimilation — the killing of a people's spirit — the lands and resources of the Indian peoples would be obtained without the expense of direct conquest.

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, to this day, subject to approval by the Department of Indian Affairs.

What has been termed a "conspiracy of legislation" 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 in 1880 the potlatch and Tamanawas dance were outlawed. Education was made 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 protest, the Indian Act of 1927 made it illegal for native peoples to retain a lawyer to advance their rights, or even raise money to do so! In addition, alcohol and disease — smallpox, the flu and tuberculosis — decimated whole populations. Denied the right to vote until 1952, Indian people were told that

In the Seven Years W
had been able to mak

their salvation lay i
Indian gained a uni
a priest or a minist
says, "if we gave u
our lands, our cultu
participate in the l

WOLF IN SHEE

The modern era in
repeal of the laws
venting Indians fro
dian people subse
recognition of title.

With the rise to
the pressure was o
lem" once, and for
Chrétien, then Indi
ironically-named
was to complete t
people by placing
provinces. They p
and amending the
ences to Indian pe
disappear along wit
once they became

However, the
people across the c
Union of B.C. India
young organization
hood. Under inten
policy and launche
Indian people.

Soon after this
Nass Valley in nort
case to the Suprem
ment was split on t
ruling in favour of
essentially abstaini
den, Trudeau's ass
as Aboriginal Title

Realizing that
might rule in favo
announced a land
negotiations for re
the surface, that the

In the Seven Years 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 land.

engravings courtesy of The National Archives

their salvation lay in enfranchisement obtainable if an Indian gained a university degree or became a lawyer, a priest or a minister. In other words, as Joe Mathias says, "if we gave up being Indians, gave up claims to our lands, our culture and our heritage, then we could participate in the larger society."

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 jurisdiction 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.

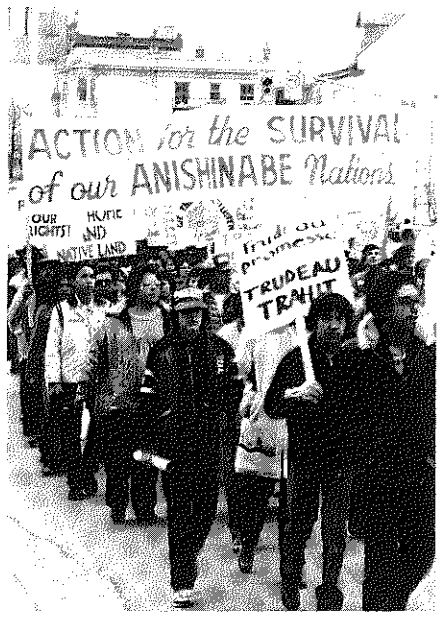
Realizing that if it were left up to the courts, they might rule in favour of the Indian people, Trudeau announced a land claims policy and a process of negotiations for resolving land issues. It seemed, on the surface, that the tide had turned. But key to the land claims process was the condition that native people would have to accept extinguishment of their title in return for monetary compensation and other negotiated programmes. 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 outlines the goals of the process clearly as extinguishment of title and the shifting of jurisdiction over Indians to the provinces. Priority, the letter said, was to be given to those areas where major resource development is to occur, and duress provided by imposing rigid 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 recognised and affirmed the Aboriginal Treaty Rights and aboriginal peoples of Canada.

Fearing that once Canada could amend the constitution, all reference 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

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 Indian nations and the English Crown, native people across the country opposed the move.



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 people 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 vote 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 governments 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 jurisdictional status of native communities. The constitutional process had got nowhere.

Worse yet, barely 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 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 Shaughnessy 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 Penner 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 redefined through Parliament, with extinguishment of title no longer a pre-condition for negotiation. In late 1985, a further report of a task force which reviewed Comprehensive Claims policy, and which was chaired by Murray Coolican, 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 Coolican 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 Sechelt 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 Sechelt 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 people 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 sub-surface 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 Sechelt model of self-government, some Indian nations believe that the legitimate demands of native peoples for autonomy and control of their own affairs have been turned into yet another government ploy 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,

George Erasmus of the Dene nation: "The rest of the provinces do not have the right to determine our future."

photos courtesy of Ontario Indian

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 blockades protesting logging practices have been set up by tribal council members trying to prevent the further destruction of their lands.

BESIEGED ON ALL FRONTS

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-warily for fear of falling into the trap of signing away the very rights they have for 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 quirk 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.

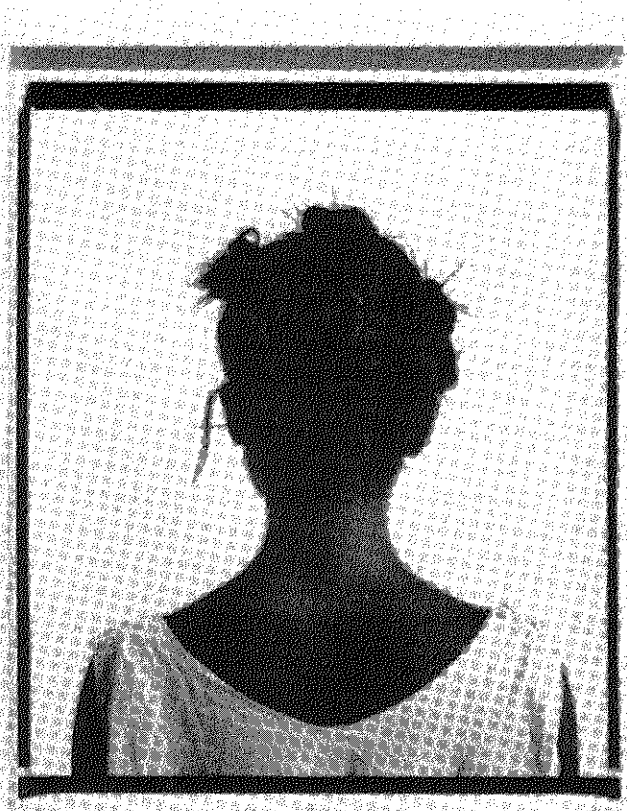
Today, with governments anxious to finally resolve the "Indian problem," many Indian people believe that an armada of sophisticated weapons — ranging from sweet-sounding agreements, through large cash settlements, individual political prestige, and simply by-passing the issue in a tangle of new constitutional 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.

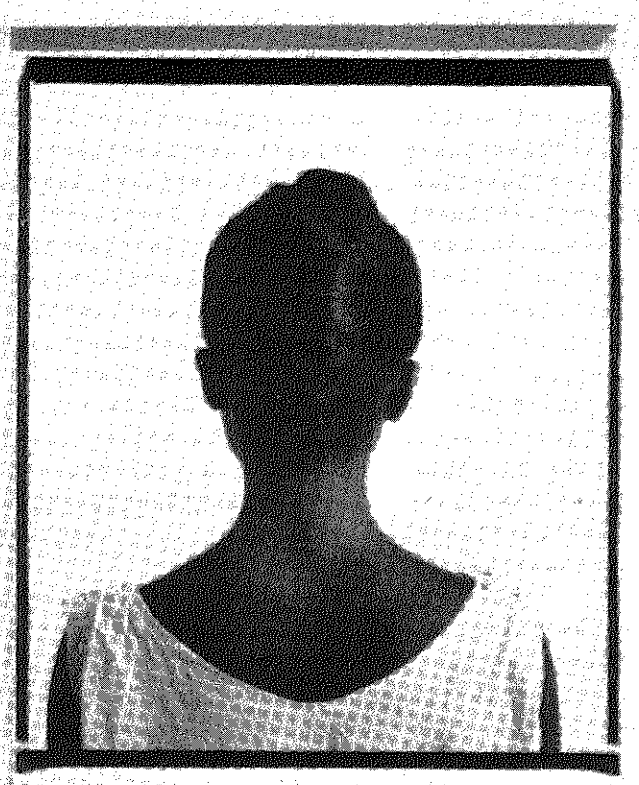
The major source for this article was *The Indian Nations Story — A Summary*, by the Union of B.C. Indian Chiefs, June 1986; also, Conspiracy of Legislation, by Joe Mathias, January 21, 1986; and *Self Government is Treason*, by the Confederation of Shuswap/Okanagan Action Committee, Chase, B.C.

Reprinted, with revisions, from *The New Catalyst Quarterly*, Issue No.6, Winter 1986/87; subscriptions $12.00 from P.O. Box 99, Lillooet, B.C. V0K 1V0.

Christopher Plant is one of the Editorial Collective of The New Catalyst *magazine.*

Daring Sensible Severe Long & Silky Boyish Ageless





Stereo-styles Lorna Simpson

Ageless Silly Magnetic Country Fresh Sweet

Lorna Simpson