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SELF-DETERMINATION WITHOUT A DISCRETE TERRITORIAL BASE?

A paper prepared for the MARTIN ENNALS SYMPOSIUM ON SELF-
DETERMINATION

SASKATOON, SASKATCHEWAN

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INTRODUCTION

Every society that is distinguished by a particular history and culture naturally seeks to maintain and promote the unique ways in which it understands and organizes the universe. People say, "This is the way we do things around here." With that statement they tell us about the purposes of establishing autonomous political units, of establishing places with political boundaries drawn around them to define the relevant community. Such places include countries, autonomous parts of federations, and tribal territories. People repose confidence and pride and assert not only a particular corporate identity but also a political commitment to maintaining that identity when they assert, "This is the way we do things around here."

This paper offers a brief consideration of the circumstances of Aboriginal people in Canada for whom it is difficult if not impossible to draw out particular places with political boundaries. Putting it another way, if "This is the way we do things around here" adequately explains the reasons for drawing such boundaries, then, among others, these societies have difficulties in determining who is we, and where is here?

These are the indigenous peoples who are not separated from others by place. Furthermore, being in the midst of others, it is not simple to determine the identity of each member of the relevant indigenous people. Some Aboriginal people in Canada live on reserved lands set aside for their exclusive use and occupation, but many do not.

The modest contribution intended in this paper is to offer an introduction to the circumstances of the Metis people in Canada to illustrate both the significance and the complexities of applying a norm of self-determination to the aspirations to greater autonomy within Canada, of an Aboriginal people without a discrete territorial base.

THE CLAIM OF SELF-DETERMINATION

I assume that self-determination is a broad claim that falls within the category of arguments available to challenge the existing distribution and exercise of power. I understand that the claim has particular significance in international law and practice, that it is a dynamic and evolving concept the significance of which, for Aboriginal peoples in Canada, is being worked out.¹ I pass over these matters, except to make the following points.

In Canada, there remains a strong public perception that views Aboriginal peoples as historically disadvantaged racial minorities

rather than distinct societies of an inherently political nature, societies which are relevant political communities entitled to participate in crafting a legitimate political order.² This perception is balanced by another factor, that is, an increasing acceptance of the participation of Aboriginal people in constitutional reform debates with Canadian government officials. This acceptance comes from both the politicians and the public.³

Nevertheless, the actual public discourse is not usually characterized by debates on the right of politically, historically and culturally distinct peoples to give free and informed consent to their political status, that is, to give the requisite consent to the questions of who shall govern and how.

Although such debates do surface from time to time, most of the public discussion focuses on a "made in Canada" notion of "self-government". This domestic approach relies heavily on an assessment of historical circumstances, particularly on the former status of Aboriginal societies as "self-governing" entities. The evolving notion of self-determination, on the other hand, appears to discount such historical reliance, and emphasizes the present inherent right of free choice today. There are significant implications flowing from these distinctions, which are beyond the scope of the present discussion.⁴

There is probably wide agreement that the goal ought to be the promotion of social harmony by the establishment of legitimate political institutions.

And I think it is helpful to distinguish between the right of self-determination as such, and the exercise of the right. The right can be recognized as being, in principle, the same for all peoples. Its exercise, on the other hand, can vary depending upon the circumstances within which the right must be exercised. So, in situations like Canada, where Aboriginal peoples are caught as enclave populations, the available options for the exercise of the right will need to balance the competing claims of self-determination of other peoples and the entire range of institutional and other relations between each people and its neighbours. An underlying principle might be this, namely, that the exercise of the right of self-determination must respect competing claims and must recognize realistic prospects for self-determination. In other words, the exercise of self-determination must allow reasonable prospects for a harmonious future; it does not license a political decision to commit collective cultural suicide. Self-destruction is incompatible with the basic goal of self-determination.

ABORIGINAL PEOPLES WITHOUT A DISCRETE LAND BASE

It is necessary to understand why some Aboriginal people today live on lands set apart for their exclusive or particular use,⁵ and why many live amongst the general Canadian population, either in small, predominantly Aboriginal rural communities without any particular status qua Aboriginal community, or as individuals within the towns and cities of Canada. It is also necessary to consider the complexities of contemporary Aboriginal identity that has resulted from the dispersals effected by Canadian intrusion. These matters permit the elaboration of a number of issues relative to the notion of Aboriginal self-determination without a discrete land base.

In their ancient homelands, the Aboriginal societies lived within their own particular webs of family, kinship, and other ties, on territories that spanned the geographical boundaries of Canada.⁶ The new settlers who established Canada advanced into these homelands in accordance with their perceived political and economic needs, at varying paces and for varying purposes. For example, the western plains were taken for agricultural settlement, but only long after the initial settlements in the eastern portions. Vast portions of the North and West remained relatively undisturbed until fairly recently, when mining and defence considerations motivated the taking of Aboriginal lands.

In most cases Canada's intrusion has disturbed both the places occupied by the Aboriginal peoples, and the identity of the Aboriginal inhabitants. The current move towards Aboriginal self-determination in Canada has to deal with the effects of this. It is not easy to reassemble dispersed communities, disadvantaged in many cases by reformulated identities, especially in the case of the cities and towns which harbour Aboriginal individuals struggling to maintain some association with an Aboriginal community.

The complexities of historical and contemporary identification of Aboriginal people in Canada can not adequately be described here.⁷ It is necessary to note, however, that the federal government has historically legislated a definition of "Indians" for its policy purposes. This definition has not been drafted with any intention of conforming with traditional Aboriginal identities, nor with the groups with whom "Indian treaties" were entered into. A result is that there are today "status Indians", that is, those recognized in federal law as "Indians" for policy purposes, and "non-status" Indians, who are Aboriginal people by criteria other than those of the legislation itself. For some in the latter category, identity is a matter of family association, language, and other socio-political factors. Some might identify as "Ojibway" or "Cree", for example, conforming with their association with traditional groups. But there are many individuals for whom a

personal association with a traditional Aboriginal community is tenuous, or non-existent. For example, an individual adopted by non-Aboriginal people at birth might discover his parentage later in life; another individual might be descended from two distinct Aboriginal societies of parents resident in a city and who had lost contact with their Aboriginal community. Many individuals have mixed Aboriginal and non-Aboriginal parentage, and their community association is a personal matter that may involve difficulties.

These glimpses on the diverse circumstances of Aboriginal identity and residence are only a small indication of the complexities of the task of formulating norms of self-determination that would apply to the diverse groups and individuals ranging from historic societies still living on their traditional and perhaps isolated territories, to dispersed individuals living in towns and cities who acknowledge little more than a biological connection to an Aboriginal heritage.

In the case of groups more like the former category, it is easier to conceive principles that require free and informed consent to their political status. It should not be surprising to find the argument that such societies have a right to legitimize the exercise of political power over them, and that the concept of self-determination is a useful grounding for such an argument. It is also possible to argue that contemporary Aboriginal societies with identities that have been reformulated over time, largely because of the disruptions of the Canadian state, have a similar right. The rise of "peoples", or the development of a collective political consciousness, ought to be recognized as a dynamic process not subject to "cut-off" dates to conform to the preferences of other political societies. In principle, a pan-Aboriginal identity can develop with the same legitimacy as older or "traditional" identities, notwithstanding the difficulties of doing so in the case of scattered individuals and communities with diverse historical antecedents.

On the other hand, the circumstances of scattered Aboriginal individuals in the cities and towns, or in other communities than "Indian reserves", are more likely to attract the perception from Canadians that they are one of the minority groups or equality-seeking groups for whom equality means, not the equality of "peoples" to self-determination, but rather, equality of individual or group access to the benefits of Canadian society that are available to others.

Is the main demand of the current Aboriginal movement territorial self-determination, or is it a reaction to racist behaviour and policies that require corrective policies to achieve equality between Aboriginal and non-Aboriginal individuals? The rhetoric of the current movement suggests the former, while many of the policies, and their acceptance by Aboriginal people, suggest

the latter.

While the "Indian" people on the reserve lands seem to be striving to get rid of the historic yoke of administration by a paternalistic federal bureaucracy, Aboriginal groups without a discrete land base, especially in the cities and towns, appear to be entering into government programs that promise the encouragement of new organisations and powers over their affairs. This development should not be surprising because it is the government side that has the power, exercised largely by means of the allocation of public funds, to determine the nature of the responses that are made by Aboriginal peoples' demands for participation in the public affairs that affect their lives.⁸

In Canada, there is a current tension between ideas of individual equality, promoted by the Charter of Rights and Freedoms⁹ and historical liberal-individualism, and ideas of group rights, wherein entitlements and equality applies to groups rather than to individuals.¹⁰ The claim of Aboriginal self-determination makes sense if it is thought to be associated with the value of relevant groups being able to make group decisions; it makes no sense if it is associated in the minds of Canadians with notions of historically disadvantaged individuals. Such individuals might have a claim to participation in existing institutions; they can hardly claim to be entitled to their own governmental institutions. The problems associated with the latter notion are compounded in the case of Aboriginal people without a discrete land base, where the existence of a relevant community is not apparent. The idea of Aboriginal self-determination will face its greatest test in places where there is no discrete territorial base.

Because of their historical and contemporary circumstances the case of the Metis people in Canada serves to illustrate the complexities of many of the points arising from the above brief discussion.

THE METIS IN CANADA

The Metis people is one of the Aboriginal peoples whose rights are recognized, affirmed, and otherwise dealt with in the Canadian Constitution. What are the relevant historical and contemporary circumstances of the Metis that can illuminate the present discussion?

The territory of what is now Canada was occupied by European

settlers over the course of several centuries, from East to West. Settlements were established in the East a long time before the West was swamped by strangers, a fairly recent event. But settlers intruded into the West in small numbers long ago to extract furs, and the contacts between settlers and Aboriginal peoples gave rise to a significant population of mixed parentage in the West. The time between these Western contacts and the eventual agricultural settlement of the West saw events that gave rise to the New Nation, the Metis whose life ways and political destiny came to be distinguished from both their Aboriginal and European forebears.¹¹

The Canadian government's policy in dealing with western Aboriginal peoples distinguished between the Metis and others, and in the result, the Metis people today are largely without a territorial base.¹² There are eight settlements in the province of Alberta that resemble the Indian reserves set aside by the federal government, but generally Metis communities have no distinct status.¹³ There are small communities comprised mainly of Aboriginal people scattered throughout the traditional territory, mainly along the old river routes, but there are also many Metis individuals who reside in towns and villages where they are a minority, and also many who have joined a general migration to the cities in the last two or three decades.

The migration to the cities gave rise to political organizations that tried to improve the conditions of not only Metis but other Aboriginal people in respect of whom there was no

federal government policy.¹⁴ The government generally concerned itself only with the administration of affairs on Indian reserves.¹⁵ Since the 1960s these organizations have moved to define themselves and their activities according to the people they represent. There has been a process of formulating and reformulating identity, as people with diverse personal antecedents work to establish the group solidarity that will sustain successful political action.¹⁶ Further, Metis political organizations have developed at the local, regional, provincial, and national level as accommodations are being sought for the requirements of local and more broadly based social, economic and political concerns. For example, the constitutional reform processes in the early 1980s gave rise to a coalition of western provincial associations called the Metis National Council (MNC), to represent the Metis in constitutional and international matters. In establishing itself, the Council split away from the Native Council of Canada, the national organization that had until that time purported to represent the interests of both Metis and other Aboriginal people who were not represented by the "status Indian" organizations. This development illustrates the difficulty of large Aboriginal organizations who seek to represent diverse constituents, differentiated by history, culture, residence, and government policy and practice. The split between the two organizations also illustrates the complexities that have recently arisen with respect to the identity of the Metis in Canada.

Many individuals whose identity as Aboriginal people rests largely on parentage, seek to join organizations that can assist them in formulating a group identity. In the case of the Metis organizations, their membership includes such individual members who then rely on the historical and cultural symbols of the distinct Metis Nation that arose in the West.¹⁷ In these circumstances, it is not difficult for external Canadian observers to confuse the goals of redressing social inequalities in individual cases with the distinct goal of self-determination for a distinct "people".

For many people in Canada, being "Metis" means only being of mixed Aboriginal and non-Aboriginal ancestry, perhaps because of the original meaning of the French term, which means "mixed". Other individual members without an historic community association with the historic Metis people are those who are "Indian" people under any criteria except those of the federal Indian legislation, that is, the "non-status Indians." The perception of the meaning of Metis identity of such individuals clashes sharply with the nationalist sentiments of people who grew up with a strong group identity as "Metis", without the slightest knowledge or regard for the original meaning of the term which had become their self-naming label.

Because of these circumstances, and because there are two distinct national organizations who purport to represent the "Metis", each with its own definition for its constituency, the

matter of the constitutional and other legal meanings of the term "Metis" is an open question that is loaded with political and other consequences.¹⁸ It is difficult to avoid one observer's point that the complications of identity of the Metis and Aboriginal people without federal "status" is a true indicator of the relatively weak position of Aboriginal peoples; they are unable to resist the influence of their own identity by external forces, especially federal government legislation.¹⁹

It is to be expected that within the Metis organizations across the country there will be different opinions about immediate and long-term political goals. In fact the idea of self-determination has usually been transformed into a demand for a domestic notion of "self-government within Canada", and various arrangements whereby local Metis organizations are allowed some administrative control over government designed and funded social service programs are being labelled and defended as "self-government" initiatives.

The constitutional reform discussions which ended in 1992 focussed on endeavours to establish the recognition and implementation of Aboriginal self-government. The Metis without a territorial base will have no participation in that if self-government necessarily requires a territorial base, and the MNC has pressed for a land base. At the same time it has argued for the implementation of other arrangements to provide a collective voice in public decision-making and participation in the delivery of

public services. There have been and continue to be discussions that aim at reaching such forms of institutional accommodation.

The Metis, as other Aboriginal peoples, take advantage of whatever process is available to press their claims, and the constitutional process has secured considerable advances. There is a tension to secure now the protection of collective interests in the face of prospects that the Canadian population, and its demand for resources, will continue to increase and to take up an increasing share of Canada's resources. Whenever power and resources are being parcelled out in Canada, the Metis insist on being there, arguing not only for distributive but also for corrective justice.

If self-determination emphasizes the right of a people to freely consent to its particular political status, then there are factors that suggest time will be needed for the Metis to exercise it fully. Not only have the Metis been dispossessed in their own land and scattered among a dominant settler population, but they have been denied access, as a group, to the wealth, health and education available to Canadians generally.

It takes time for a people in the circumstances of the Metis to establish the necessary group solidarity to assert their place in the sun among powerful neighbours.

It takes time to explore alternative ways of increasing political autonomy and social and economic well-being.

It takes time to ponder alternatives that can reasonably be

expected to endure in the face of the competing interests of powerful neighbours. The alternatives are much more limited when the neighbours are scattered among you and not confined to the other side of the political or territorial boundary.

The prospects for Metis self-determination might be enhanced as the benefits of not only education but increased access to income and profits make themselves felt. Will access to these resources increase or diminish the intensity of claims to self-determination?

CONCLUSION

The right of self-determination is an equal right of all peoples. Only its true exercise can vary with the circumstances. There is no obvious reason why a people that has been dispossessed of its former use and occupation of its homeland by the unconscionable actions of former governments ought now to be deemed to have lost a right that might usually be associated with a people on a discrete territorial base. To date the Metis and other Aboriginal peoples have been essentially petitioners to the powerful governments of the country within which they exist as population enclaves without a discrete territorial base. In these circumstances they have taken advantage of whatever tools of reason or petition might be available to them to press their claims, generally eschewing resort to violence. The increasing movement of

self-determination by indigenous peoples around the world has been a significant contribution to the discourse on the rational basis for the claims of the Metis, whose nationalism has existed for a century and a half.

One thing seems certain. Canadians have to re-examine the way they think about Aboriginal peoples, and about the Metis people in particular. Many look forward to the day when Canadians stop to think about Aboriginal peoples as a problem, and wonder how they can solve the Indian problem, or the Metis problem.

Many look forward to the day when people are inclined to look for ways of creating institutions wherein the Aboriginal peoples can solve their own problems, and solve them by dealing with them as their own political issues. The development of the British parliamentary model certainly illustrates how institutions can perform that role.

Every people wants to define and resolve its own problems. No people likes the idea of others who seek a final solution to their problems. In Canada today the Aboriginal peoples demand the right and the institutions to determine for themselves the resolution of their political issues.

1. Compare, for example, Russel L. Barsh, "Indigenous peoples and the right to self-determination in international law", in Barbara Hocking, ed. International Law and Aboriginal Human Rights Sydney. The Law Book Co.Ltd. 1988, pp.68-82; and S. James Anaya, "The Capacity of International Law to Advance Ethnic or Nationality Rights Claims", in [1990] 75 Iowa Law Review 837-844. See also, James Crawford, The Rights of Peoples Oxford. Clarendon Press. Oxford. 1988.

2. See the discussion of this point in Paul L.A.H. Chartrand, "Aboriginal Self-Government: The Two Sides of Legitimacy", in Susan D. Phillips, ed. How Ottawa Spends: A More Democratic Canada...? 1993-1994 Ottawa. Carleton University Press. 1993, pp. 231-256.

3. Much of the substance of the debate can be glimpsed in the following publications; Douglas Sanders, "Prior Claims: Aboriginal People in the Constitution of Canada", in Stanley M. Beck and Ivan Bernier, Vol. One, Canada and the New Constitution: The Unfinished Agenda Montreal. The Institute for Research on Public Policy. 1983, pp. 225-280; Bryan Schwartz, First Principles. Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft Montreal. The Institute for Research on Public Policy. 1986; "Toward native self-rule", The Globe and Mail Thursday, October 8, 1992, p.A8; Jeffrey Simpson, "Politics, native and non-native style: there isn't much difference", The Globe and Mail, Tuesday, October 13, 1992, p.A18; Robert Matas, "B.C. No group attacks package on native self-rule", The Globe and Mail, Thursday, October 15, 1992, p. A3; "Constitution Special: Including the complete legal text", Winnipeg Free Press, Thursday, October 15, 1992, pp.D1-D14.

4. Russel Barsh makes the point, and discusses some of the implications, in Barbara Hocking, International Law, supra, note 1.

5. There are the "reserves" that have been set apart by the terms of the Indian Act, R.S.C.1985, c.I-5, as amended, and other lands set apart for exclusive or shared use and occupancy by modern land claims agreements. See chapters 8, 10,11 and 12 in Bradford W. Morse, Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada. Revised First Edition. Ottawa. Carleton University Press. 1989.

6. See, for example, Alan D. McMillan, Native Peoples and Cultures of Canada:An Anthropological Overview Toronto. Douglas and McIntyre.1988; William W. Warren, History of the Ojibway People St.Paul. Minnesota Historical Society Press. 1984; Bruce G. Trigger, The Children of Aataentsic: A History of the Huron People to 1660 Kingston and Montreal. McGill-Queen's University Press. 1976.

7. See Paul L.A.H. Chartrand, "Terms of Division": Problems of 'Outside-Naming' For Aboriginal People in Canada", in [1991] Vol.2, no.2, The Journal of Indigenous Studies, Regina, Saskatchewan. Gabriel Dumont Institute of Native Studies and Applied Research. pp. 1-22.
8. See Paul L.A.H. Chartrand, How Ottawa Spends supra.
9. Part I, Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c.11.
10. This tension is producing a scholarly debate about Aboriginal aspirations, liberalism and group rights. See, e.g. Bryan Schwartz, First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft. Montreal. The Institute for Research on Public Policy, 1986; and Will Kymlicka, Liberalism, Community and Culture Oxford. Clarendon Press. 1991.
11. See Marcel Giraud, The Metis in the Canadian West 2vol. Edmonton. Canada. The University of Alberta Press. 1986. (translated by George Woodcock. Originally published by l'Institut d'Ethnologie, Museum National d'Histoire Naturelle, Paris, France, 1945, under the title, Le Metis Canadien.); George F.G. Stanley, The Birth of Western Canada. Toronto. University of Toronto Press. 1936.
12. Paul L.A.H. Chartrand, "Aboriginal Rights: The Dispossession of the Metis", [1991]29 (no.3) Osgoode Hall Law Journal, pp.457-482; ----- Manitoba's Metis Settlement Scheme of 1870 Saskatoon. University of Saskatchewan Native Law Centre. 1991.
13. See T.C. Pocklington, The Government and Politics of the Alberta Metis Settlements Regina. Canadian Plains Research Center. University of Regina. 1991.
14. For an historical account of the founding of the Manitoba Metis Federation, see Emile Pelletier, "A Glimpse of the Manitoba Metis Federation", in Antoine S.Lussier and D.Bruce Sealey, The Other Natives: The Metis Winnipeg. Manitoba Metis Federation and Editions Bois Brules. 1978, pp. 155-169.
15. But see Sally M. Weaver, "Federal Policy-Making for Metis and Non-Status Indians in the Context of Native Policy" [1985] XVII no.2 Canadian Ethnic Studies Special Issue: The Metis: Past and Present. pp.80-102.
16. See, for example, Joe Sawchuk, The Metis of Manitoba: Reformulation of an Ethnic Identity Toronto. Peter Martin Associates Limited. 1978.
17. Harry W. Daniels, We Are The New Nation: The Metis and National Native Policy Ottawa. Native Council of Canada. 1979.

18. Catherine Bell has argued that there are two distinct Metis "peoples" for constitutional purposes. Her contentious view seems to place a heavy emphasis on recent political developments. An interpretation of "Metis" for constitutional purposes that focussed on the usual social, anthropological antecedents of identity might well conclude that there is but one Metis nation and that the mixed-parentage pan-Aboriginal identity promoted by some political organizations is an "Indian" identity: Catherine Bell, "Who Are The Metis People in Section 35(2)?", [1991] 29 Alberta Law Review pp. 351-381.

19. Joe Sawchuk, "The Metis, Non-Status Indians, and the New Aboriginality: Government Influence on Native Political Alliances and Identity", Canadian Ethnic Studies Special Issue: The Metis: Past and Present. (1985)XVII (no.2)pp.135-146.