(ab. rights).

excerpts

ABORIGINAL RIGHTS - THE NATIVE AMERICAN'S STRUGGLE FOR SURVIVAL

DR. KENN WHYTE

Dr. Kenn Whyte is an Associate Professor of Education at the University of Saskatchewan, Saskatoon, where he serves as the Director of the Indian Teacher Education Program. He is presently on leave for the 1980 - 82 year and is serving as Director of the Gabriel Dumont Institute of Native Studies and Applied Research which is an educational institution serving the Metis and Non-status people of Saskatchewan.

ABSTRACT

Aboriginal Rights - The Native American's Struggle for Survival

Aboriginal rights cannot be understood from a strictly legal point of view. It has important moral, emotional and symbolic value for native people. Implicit in the aboriginal rights concept is the fact that native people want to have a part in the social and economic wealth of the land and its resources, but the issue is more than the native people simply asserting their ownership of the land. It is a struggle for the preservation of a people and their way of life because land, in native reality is the soul of their social, economic and political system. Above all, it is a struggle for the most universal of human rights, the right to be a self-determining people. This paper develops this theme and subsequently examines the major land claim settlements and disputes in Canada in relation to this theme. The rationale underlying the examination of the legal and economic aspects of the land claim settlements and disputes is the realization that significant economic independence, while it cannot in itself be sufficient, is nevertheless necessary for self-determination.

Protection, civilization, and assimilation have been the main goals of Canada's Indian policy. In the Pre-Confederation period (1830-1867) there was an evolution of attitudes in which Indians were seen as a separate and special group which had to be dealt with in a certain way. The protection of the Indian and his land was the paramount goal. A secondary goal which evolved starting in the 1850's was that Indians could be trained to cope with persons of European ancestry and eventually become "civilized". These attitudes were reflected in the legislation dealing with Indians at that time. In the Post-Confederation period there were a number of changes in the legislation to deal with Indians which were derived from a belief that Indians could be assimilated into the Euro-Canadian society. These legislative changes reflected the prime interests of the Euro-Canadian society, rather than those of the Indian peoples.[1]

The Government of Canada has always based its policies on the premise that Indians were incapable of dealing with non-Indian immigrants to this land without being exploited. To protect the Indians' rights, especially property rights, from exploitation by the newcomers, the Government of Canada gave the Indians a special status in the political and social structure of Canada. This special status was made part of the constitutional structure of Canada through Section 91, Subsection 24 of the British North American Act of 1867, which gave the government exclusive jurisdiction over "Indians and Indian Land".

Beginning in the 1870's, the new Dominion of Canada extended its authority over the Indians of the Northwest through the treaty system. Between 1871-1921, the Canadian government negotiated eleven land cession treaties with the Indians of Canada, thereby extinguishing aboriginal title to much of Western Canada. The primary purpose of these post-confederation

treaties was to extinguish the Indians' "personal and usufructuary rights" to the lands ceded to the crown. Of paramount significance is that the need for such an extinguishment evolved from the recognition given to aboriginal rights by British colonial policy, susequently confirmed by the Royal Proclamation of 1763. It is quite clear the language used in the treaties and the reports of the Government negotiators indicate that the purpose of the treaties was to extinguish Indian title in order that lands could be opened for white settlement[2] (Morris, 1971). In addition, the government--by means of these treaties--imposed the reserve system as a laboratory for cultural change on the Indians (Morris, 1971).

Another major development during that time was the consolidation of all laws respecting Indians into the 1876 Indian Act. It became the foundation for all Canada's future Indian legislation. The Indian Act derives its authority from Section 91(24) of the British North America Act. The Indian Act of 1876 coincided with the extension of federal government jurisdiction and reflected the enormous interest of an expanding frontier society in land ownership and its regularization. This legislation grants the Federal Government extraordinary powers over Indian lands. In essence, the Federal government has arrogated to itself almost total control of lands situated on Indian reserves. This complete domination is unequivocally expressed in Section 18(1) of the Indian Act: (Indian Act, 1970, p 10-11)

> Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they have been set apart; and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

A major purpose of the Indian Act was "the gradual enfranchisement of the Indian". "Civilization" was the prerequisite for assimilation and enfranchisement was the means to achieve this goal. After the inception of the Indian Act, its major feature added was the concept of the "location ticket". (S.C. 1876). This concept was viewed as the essential feature of the "civilization process" and a necessity for enfranchisement. It was implemented as follows: The Superintendent General of the Department of Indian Affairs would have the reserve surveyed into individual lots. Each band member would then be assigned to a specific lot and given a location ticket, but before an individual received a ticket he had to prove he was "civilized". The major test of this was whether he would adopt the European concept of private property. When the Indian was assigned his location ticket, he would enter a three-year probationary period during which he had to demonstrate that he would use the land in the same manner as the Euro-Canadian. If he passed this test, he would be fully qualified for membership in Canadian Society. An alternative means of assimilation was also offered. If an Indian were to receive a professional degree at an university and become a teacher, lawyer, minister or doctor, he could be enfranchised immediately. The government believed that, by earning a professional degree, the Indian had demonstrated his acceptance of Euro-Canadian values.

In addition to the concept of enfranchisement, there was further legislation incorporated into the Indian Act which was also designed to further the government's goals of "civilization" and assimilation".

The 1876 Indian Act and subsequent amendments contained provisions which attacked traditional Indian sexual, marriage, and divorce mores and would further the Christian European values. (S.C. 1876, 1879, 1884,

1887, 1898, 1894). In 1894, amendments to the Indian Act were made empowering the Governor-in-Council to commit children to the boarding and industrial schools. (S.C. 1894). The government believed that, since schools on the reserve were not well attended, they were thus ineffectual instruments of "civilization". Residential and industrial schools, which removed the child from the "detrimental" influence of "uncivilized" parents and Indian traditions were regarded as better instruments of government policy. The traditional religious and cultural values of the Indians of the Plains and British Columbia also came under attack. The missionaries and other government officials were unsuccessful in persuading these Indians to repudiate them for being contrary to Christian and European values. In 1895, the government decided to prohibit many traditional practises. The "Sun Dance", "Potlatches", and all "Give Away" ceremonials were banned because they promoted pagan beliefs and were anathema to the development of private property. (S.C. 1894, 1895).

This brief survey of the major policies of the Government of Canada and subsequent legislation indicates very clearly that the government was determined to make Indians into imitation Europeans, and to destroy the Indians' traditional values and society through new economic and political systems, a new concept of property, and specific education policies. In short, it was hoped that the Indian as a distinct cultural group would disappear. Also, it was hoped that the reserve or "laboratory" where these changes were to take place would disappear. When the Indian became enfranchised, or, if you wish, "assimilated", he would take with him his share of the reserve. If all Indians were enfranchised, there would no longer be any Indian reserves.

Today there is an ongoing debate and struggle between the Indian

people and Federal Government about these policies and their continuation. I believe the evidence indicates overwhelming failure of these policies. Enfranchisement had limited results. There are still 566 reserves in Canada today.[3] The strongest evidence indicating the failure of the policies of the Federal Government is manifested in the great discrepancy between the economic and social position of Indians and non-Indians in Canada. Hawthorn et al., (1966) show that the "per capita income per year" for natives at that time was about $300, and about $1,400 for Euro-Canadians. There was a similar discrepancy between the two groups in yearly earnings per worker. For Indians, the figure was $1,361; for Euro-Canadians, it was $4,000. Using the standard set by the federal government at that time as a measure of poverty ($3,500) over 80% of the native people in Canada could be considered to be living in poverty. In a brief to the Special Senate Committee on Poverty (1970) indicated that 38.5% of the resident Indian population was on welfare and the figure for adults who were heads of households was 70.2% for all of Canada. The same brief reported that less than 20% of Indian homes had electricity or sewer and water facilities. Laing (1967) indicates that 28% of all male inmates and 25% of all female inmates at Canadian prisons are Indian and Metis. The proportion of Indian and Metis in Canada is approximately 2% of the total population. A report by the Ministers of Education of Western Canada (1972) indicated that in Western Canada for every 1 Indian in grade twelve, there are 14 in grade one; for every 4 non-Indians in grade 12, there are 5 in grade 1.

Often the statistics cited indicating the poverty, unemployment, social disarray and underdevelopment are taken by many as but proof of the inherent inferiority of Indians. In other words, the victim is to blame.[4]

I don't believe this is an acceptable explanation. It is not merely a coincidence that at the time the Indians are slipping further and further into the poverty welfare cycle they are also at the same time losing their struggle to preserve their traditions, language and distinct cultural identity. The policies of the Government of Canada have prevented the Indians the right to be a self-determining people which is the most universal of human rights. The Indian people have been struggling against the policies of colonization. The colonizer considers that certain people have inferior characteristics and inferior political, economic, and social systems, and that he must supervise, regulate, control, and replace these systems with his own. As a result, the Indian has been forced to relate to the greater society on terms unilaterally defined by the other. The product of this process is dehumanization, which manifests itself in feelings of hopelessness, apathy, poverty, welfare and social disarray.[5]

Unfortunately, the policies of colonialism outlined are not just part of the history of Canada: they are prevalent today. Despite continual statements otherwise, the ultimate goal of the Government of Canada is still one of assimilation of the Indians into the greater Canadian society. (Statement of Government of Canada on Indian Policy, 1969). The cornerstone of the government's policies, beginning over a 100 years ago, was control of the land. The Government of Canada signed agreements with the Indian people by which the Indians ceded their land and rights to the government. This is still the case today. The initial motivation for the control of the land is economic in nature. In the 1870's, the government wanted the land for white people to settle and develop. Today, the government wants the land for the resources which corporations wish to develop. The major difference today is that some of the Indians of

Canada are providing stiffer resistance to these policies. The native people often led by young, educated leaders and with the assistance of professional counsel are becoming more aware of the reasons and the processes which have resulted in their plight. Unless forced with no other choice, they are not as willing as they were earlier to surrender their aboriginal rights. They are not ready to accept various types of government programs and cash settlements for the loss of use and occupancy of the land, which in turn has resulted in the loss of a way of life. The Northern native peoples believe that their retention of identity and pride in Canada is directly related to the degree of retention of ownership of lands by them as part of a settlement of their land claims. With control of their lands they believe they can be self-determining people, retain their pride and identity, and integrate into Canadian society. They realize the complexity of the situation they are in, however, they believe that if they can provide reasonable maintenance of the traditional way of life, identity, and self-determination at the individual and local level they then can accommodate orderly development of the non-renewable resources in a manner that protects their renewable resources and thus maximize the benefits of all resources for all Canadians. They are no longer content to lose their lands, lifestyle and values in exchange for simply a white lifestyle and values. As a distinct and small minority they are also aware that they live in a world where the choice is not left simply to them.[6]

The struggle for title to Indian lands which began more than a hundred years ago has intensified and come into a sharper focus today. On August 8, 1973, the Government of Canada issued a new policy statement proclaiming that it "is prepared to negotiate" with non-treaty Indians and

Inuit on the basis of their "traditional interest in lands". (Statement on Claims of Inuit and Indian People, 1973). Also, the Government has been funding native organizations to research and present their claims to their land.

The first major land settlement with the Indians of Canada in this past decade has been in the Province of Quebec. On November 11th, 1975, the Cree and the Inuit of Northern Quebec renounced their aboriginal rights to 410,000 square miles (60% of Quebec) for compensation and benefits, by signing the James Bay Agreement with the Governments of Canada and Quebec, the James Bay Energy Corporation and Hydro Quebec (James Bay and Northern Quebec Agreement, 1976). The James Bay Agreement allowed the Inuit and Cree Indians in the area the retention as owners of approximately 1.3% of their traditionally used lands which are ceded. They will have a surface title ownership to 5,408 square miles and 50% of any subsurface benefits. In addition, they received hunting, fishing and trapping rights in 60,130 square miles.[7] In the rest of the land, (344,462 square miles) certain animal species will be reserved for native peoples, and forest products will be free for their use. Furthermore, the approximately 10,000 native people of the area will receive $225,000,000 over several years.

The James Bay Agreement was not unlike the historical land cession treaties in Southern Canada, signed in the 19th century. It was the same "land-for-money" formula. Special territories exclusively for native ownership were set aside. The James Bay settlement was simply a forced purchase or an "offer that could not be refused", in the sense that no other offer would be made. Construction on the hydro project was continuing throughout the negotiations, despite the interim injunction the

native people had succeeded in obtaining in November, 1973. (This injunction was removed by the Provincial Court of Appeal one week later). One is reminded that the Indians had a similar "take it or leave it" choice in the plains area of Canada in the 19th century.

I have stated that the land cession treaties of the 19th century afforded a peaceful colonization with the westward expansion of Canada. These treaties were founded on a particular social policy--the Government hoped to turn the Indians into farmers and have them adopt the values and lifestyle of the white colonizer. What about the intent and the effects of the James Bay Agreement on the Cree and Inuit of Quebec? There is nothing significant in this agreement which would effectively preserve their traditional identity. In retaining only approximately 1.3% of their tradtional lands, the people are removed from their traditional identity. The Inuit need approximately 50 square miles of hunting, fishing and trapping area per capita to sustain themselves. The Inuit retention as owners works out to slightly less than one square mile per capita. There is no doubt that not being owners of Category 11 lands, upon which they have hunting, fishing and trapping rights, development will take place and will surely diminish the traditional form of livelihood. It is my opinion that the other benefits provided in the settlement concerning the 344,462 square miles will be unconsequential in the long run; they will amount to no more than that of any other citizen of Quebec.

The essential part of the agreement is the ownership of the land. The Inuit and case of James Bay are not owners of sufficient lands to involve them effectively in non-renewable resource development. The agreement does not provide an effective means or a bridge for the people of that area to enter into the new identity of the emerging industrial society in

Arctic Quebec. Moreover, the public, believing a just settlement has been negotiated will not readily respond to the inevitable complaints of the native peoples in the future. As the traditional hunting and trapping identity inevitably disappears, and as the people realize they are not part of the identity of the newly emergent society around them, there is little doubt of the outcome. Once they realize they got very little substantial in the agreement they will inevitably show self-hostility and despair.[8]

An unfortunate result of the James Bay Agreement is that the Government of Canada regards it as a 'benchmark' for future land settlements with the native people. The agreement in principle signed in October 31, 1978, by the Government of Canada and the Committee for Original's People's Entitlement, is an example of the utilization of this 'benchmark'. The Inuit in the Western Arctic have agreed in principle to "cede, release, surrender and convey all their native claims, rights, titles and interests, whatever they may be" to their Inuvialuit lands in return for the following: (i) title to 5,000 square miles, including all minerals whether solid or liquid, selected in blocks of 700 square miles near each of the six communities there, plus a single block of 800 square miles in another area; (ii) title to 32,000 square miles (less oil, gas, related hydrocarbons, sand, gravel, coal, native sulfur and those minerals regulated under the Canada Mining Regulations): and (iii) guarantee of certain hunting and fishing rights in sections of the remaining land. In addition, they are to be compensated for surrender of their lands the sum of $128,000,000, to be paid over a thirteen year period between 1981 and 1994. (Inuvialuit Land Rights Settlement Agreement in Principle, 1978). Again, the Inuit were faced with a "take it or leave it" proposition. A number of mining and oil companies had already reserved numerous leases in areas

of the Inuvialuit lands. As had happened before, the agreement was the establishment of 'reserves of land', surrender of rights, guarantee of hunting, fishing, and trapping rights, and compensation by cash.

There are other areas in Canada where the 'land claims issue' is yet to be settled, and where the James Bay model is totally rejected. Most notably, there are the claims of the Nishga in Northwest British Columbia, the Indians of the Yukon Territory, the Dene and Metis in the Western Arctic, and the Inuit of the Eastern Arctic. In all these areas of northern Canada, the native people have made their position clear. Rights are not to be renounced; the land is not for sale.

The 2,000 Nishga Indians of Northwest British Columbia have had one of the longest struggles with the governments of British Columbia and Canada to receive rights to their land. As far back as 1869, two years before British Columbia entered confederation, the Nishga had formally articulated their claim to continue to use, occupy and control their homeland, starting from the unwavering premise that their land and their rights were not for sale. They stated that the land is for their people of the future, and it would continue to be handed down from generation to generation, as it always had been. The Nishga saw the land as a base for their continual way of life, the only way of maintaining their Indianess or Nativeness. Finally in 1969, Frank Calder, president of the Nishga Tribal Council, took the province of British Columbia to court, seeking a ruling that the Nishga had never lost aboriginal title to their lands. The case was finally taken to the Supreme Court of Canada in 1971, and, after 18 months, a judgement was delivered which dismissed the case on a technicality. What was significant is that out of the 7 supreme court judges, 3 rules in favor of the Nishga's claim. The Nishga saw this as a

victory. It was clear that, but for the technicality, the case might have been won by their people. If nothing else, it forced the Canadian government to negotiate land settlements with the Nishga and all other native peoples who had not signed treaties. The Nishga today are negotiating with the Government of Canada and the province of British Columbia. They have rejected the James Bay type of agreement and are pressing for regional self-government, compensation for extraction of natural resources for the past century, complete and unrestricted right to their own lands without government intervention, and the enshrinement of their rights in legislation.

The biggest struggle over Native land claims today are being fought above the 60^{o} parallel, where the native people of the Yukon and Northwest Territories are claiming the majority of the 1,511,979 square miles there.

In May 1, 1976, a draft "Agreement in Principle" was drawn up by a negotiating committee on behalf of the 6,000 Yukon Indians and a negotiating team representing the Government of Canada. Under the draft agreement the Indians were to receive ownership of 128 acres per person and 17,000 square miles in which there is exclusive hunting, fishing, and trapping rights. There were no subsurface mineral rights whatsoever given in respect to any lands. They were also to receive 70-90 million dollars over a long term period. This draft was repudiated by the Yukon Indians and their organization. Negotiations are still continuing; however, at present, there does not seem to be a great deal of concrete progress made in settling the claims.

The land claim struggle drawing the most public attention is that of the Dene and Metis of the MacKenzie Valley. In their land, two principle applicants, Canadian Arctic Gas and Foothills Pipelines were seeking to

build an 'energy corridor' from the Alaskan oil and gas fields, up the MacKenzie River Valley to southern Canada and the United States. This brought out an outcry by the native peoples of the area who insisted their claims must be settled before a pipeline is built across their land. In March 21, 1974, the Government of Canada commissioned Mr. Justice Thomas Berger of the British Columbia Supreme Court to undertake an investigation into the environmental and social effects of building an 'energy corridor'.

During the 18 months of the inquiry, hearings were held in 36 communities in the Western Arctic, Justice Berger heard testimony from 300 expert witnesses and from hundreds of local residents of all northern races. The report was issued on May 9, 1977. It stated:

> "no pipelines should be built now." "... the pipelines if it were built now, would do enormous damage to the social fabric in the North, would bring only limited economic benefits, and would stand in the way of a just settlement of native claims. It would exacerbate tension. It would leave a legacy of bitterness throughout a region in which the native people have protested, with virtual unanimity, against the pipeline. For a time, some of them may be co-opted. But in the end, the Dene, Inuit and Metis will follow those of their leaders who refuse to turn their backs on their own history, who insist that they must be true to themselves, and who articulate the values that be at the heart of the native identity."
> (Berger, 1977; page 200).

Since this report has been issued, the Dene have made very clear their position in regards to their land. The main objective they seek is their

survival as a distinct ethnic identity, a distinct people. They see the threat of the western technological world to their way of life. They have articulated this many times over. Frank T'Seleie, the former Chief of the Fort Good Hope band, is one who has made strong statements in this regard:

> "(Mr. Berger) We want to live our own way on our own land and not be invaded by outsiders coming to take our resources. We saw ourselves then as we see ourselves now, as different from the whiteman. We are proud of who we are, proud to be Dene, and loyal to our nation, but we are not saying we do not respect you and your ways. We are only asking now as we have asked you then, to let us live our own lives, in our own way, on our own land, without forever being threatened by invasion and extinction--Mr. Berger, we too want to live. We want our nation to survive in peace, we want to be able to put our energy and time into living our lives in the way our fathers and grandfathers have taught us. We do not want to have to fight and struggle forever, just to survive as a people." (Frank T'Seleie, 1976).
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> "Mr. Blair, (President of Foothills Pipelines) there is a life and death struggle going on between you and me. Somehow in your carpeted boardrooms, in your panelled office, you are plotting to take away from me the very centre of my existence. You are stealing my soul. Deep in the glass and concrete of your world you are stealing my soul, my spirit. By scheming to torture my land you are torturing me. By plotting to invade my land you are invading me. If you ever dig a trench through my land, you are cutting through me. ...Don't tell me you are not responsible

> for the destruction of my nation. You are directly responsible. You are the twentieth century General Custer. You have come to destroy the Dene Nation. You are coming with your troops to slaughter us and steal land that is rightfully ours." (Frank T'Seleie, 1976).

Frank T'Seleie has articulated the issues very eloquently. The unique, essential element of native cultures is the intense special relationship to the natural environment and, to the extent that such a relationship lessens, there is a corresponding diminution of identity. The alternatives are clear. One is the loss of their land rights, which in turn forces the native people to various forms of assimilation. The lessons of history indicate that most often this means a loss of their way of life, culture, identity, language, pride and sense of self-worth. The other is the complete legislative recognition of the Dene's title to their homeland and their right to self-determination, that is, the Dene's right to make decisions regarding their land and their future.

Legislative recognition of their ownership of the land is essential to their cultural survival. Their land is their life--for it to be parcelled out for sale and exploitation in a manner similar to the James Bay and Cope Agreements is to alienate them from the essential physical base of their spiritual existence. Equally important is that the Dene have the power to make the significant decisions about how the land is used and developed. It is necessary that Dene institutions have this decision-making power as a means of preserving and fostering those aspects of the Dene culture which are best expressed through the communal institutions of the Dene.

The Dene have made it very clear that their choice is the preservation

of their identity as a distinct people, which means that they need control over their lands and rights of self-determination. They have expressed this choice in a set of negotiating principles which they have proposed to the government. The principles proposed by the Dene include:

i) recognition of the right to self-determination and ongoing growth of the Dene as a people;

ii) the right of the Dene to establish their own government within the framework of the Canadian constitution;

iii) the right of the Dene to keep enough of their land to ensure their independence and self-reliance, traditionally, economically and socially;

iv) the right to practise and preserve their own languages, traditions, culture and values; and

v) the right to develop their own institutions and enjoy their rights as a people within the framework of their own institutions. (Bulletin, Aboriginal Rights, December 1976).

The principles proposed by the Dene are nothing radically new in the realm of human rights; they seek rights that most of us have regarded as ours from birth and accepted by our government.

In conclusion, the Dene are not prepared to sign an agreement renouncing their rights. They ask that the Government of Canada recognize their aboriginal rights instead of withdrawing them. This position is vastly different from all previous examples of "settlements" imposed by the Federal Government on the aboriginal peoples of Canada.

The proposal for the settlement of the Inuit land claims in the Northwest Territories is also different from the previous examples of settlements of aboriginal land claims. On February 27, 1976, the 15,000

Inuit of the Northwest Territories presented their Nunavut Proposal to the Federal Cabinet. Two of the major goals of the proposed settlements are i) to preserve Inuit identity and the traditional way of life as far as possible; and ii) to enable the Inuit to be equal and meaningful participants in the changing North and in Canadian Society. The Inuit hope to achieve these goals through several provisions. A major one is to be the creation of Nunavut Territory which will comprise approximately 750,000 square miles of land north of the treeline of the people and, through their numbers and voting power, will be able to decide on the issues of their future and better reflect their values and perspectives. They are not asking for any form of 'special status'. Also, the Inuit will have strong control over hunting, fishing and trapping within traditionally used areas. In addition, the Inuit are to hold surface title (the land from the surface to 1,500 feet below the surface) to at least 250,000 square miles within the Nunavut Territory. This means that they will retain complete title to approximately 20% of the land they currently use. They are also to get 3% royalty on the subsurface rights (below 1,500 feet), should there be such development (Nunavut, 1976).

This proposal was drawn up by legal advisors in Ottawa, and presented to the Federal cabinet. It was subsequently withdrawn a few months later when it became obvious that the inhabitants of the 32 communities of the Northwest Territories could not understand all the legal terminology. In addition, they felt that the proposal ignored the realities and values of the Inuit.

The communities, often led by young Inuit leaders, perceived that, if the Inuit were to achieve self-determination, it would never be through a real estate deal developed by legal advisors, but rather through political,

economic, and cultural self-determination. As a result, the Inuit moved their base of operations from Ottawa to Frobisher Bay and set up the Inuit Land Claims Commission (ILCC), which became a separate entity from the Land Claims Project which drew up the original proposal. Areas of the old proposal which were found to be wanting or vaque became the starting points for the development of a new proposal. The people in the communities wanted clear statements about the locus of their control of the land, political institutions, and economy. Inuit identity in relation to these statements was important. In December 1977, the ILCC presented the Federal Government with a proposed agreement in principle, outlining the principles which must be central to any claim settlements. Since then, there have been several negotiating sessions, and the proposal has been further refined. As with the Dene, the struggle still continues. The Government of Canada has pressured both groups to deal with political rights in a process separate from the land claims negotiations. The Dene and the Inuit continue to insist that political rights cannot be divorced from other aboriginal rights. They continue to refuse to sign a 'treaty' with a government which will withdraw their aboriginal rights. The northern native groups are seeking a formal recognition of their aboriginal rights as a foundation of a new relationship with the rest of Canada.

The Canadian government's position in relation to Native land claim settlements indicates that its policies have changed little over the past 110 years. The emphasis is still one of assimilating the Native into the 'mainstream' of Canadian society, which clearly results in the destruction of the identity of the native person, and, on the other hand, paternalistically isolating the native person from the mainstream of Canadian society through denying the means to truly gain equality of opportunity. The

original treaties signed by the Indians in Canada, and subsequent legislation were not designed to equip Canada's original peoples with the tools and means necessary to participate with pride and independence in an ever expanding Euro-Canadian society. The treaties were designed so that the native people would renounce their claim to the land and the west might be opened for settlement. It is no coincidence that the sudden eagerness to resolve native land claims is occurring at a period of time when industrialized southern Canada and the rest of the world is feeling the pinch of the depletion of the non-renewable natural resources. Now these lands are very important, because of the resources beneath the soil; and, again, the government wants the native peoples to renounce their claim to the land so that corporations can legally gain access to develop these resources.

These 'errors' in the Canadian government's policy must be realized and remedied if native people are to take their rightful place within Canadian society. The settlements of the native land claims in northern Canada offer the Canadian government the opportunity to make the required changes in their approaches to native and non-native relationships. The government must realize that a settlement must emphasize native ownership and management of the land and resources through their own political institutions. With this ownership, the native peoples can achieve some preservation of their identity and also integration within the mainstream of Canadian society.

The commitments of the early treaties were never realized, because the native people were never provided with the political and constitutional authority to enforce these commitments. They were not allowed to participate meaningfully in their own political and economic affairs. They were denied the right to self-determination. Unless today's treaties or

agreements allow meaningful political participation and involvement in the control of their lands and resources, they will prove as inadequate as the previous treaties. The native people will be left in a vacuum which will only repeat the mistake of southern Canada. The price is too high in both human and dollar terms.

The Government and the people of Canada must realize that the problems of native people are not simply problems of poverty, but of a people trying desperately to preserve their cultural identity. Despite the predominant Canadian view that the native culture is not viable in a contemporary context and has no place in modern industrial society, the native people think otherwise. This is the crux of the matter. This is what the struggle for aboriginal rights is about.

NOTES

1. For a detailed account of the development of this legislation, see The Historical Development of the Indian Act. (August 1978).
2. See the last chapter of this book which provides an excellent summary of the issues of the men responsible for negotiating many of the western treaties.
3. The Enfranchisement Act of 1869 intended to free Indians from their state of wardship under the Federal Government. However, it was also designed to effect gradual assimilation only after the Indian could manage the "ordinary affairs" of the "whiteman". Should an Indian meet the necessary requirements of the Crown and become enfranchised, he was still denied fee simple to the land; the legal authority and control over the management of Indian lands and property remained with the Superintendent General of Indian Affairs. This contradiction or paradox did not foster independence or responsibility; it only effectuated cultural destruction. A further example of the policy of protection was that it wasn't until 1960 that Indians in Canada were allowed to vote and purchase liquor legally. Again this was at the same time the Government was actively pursuing assimilation of Indian peoples as their goal.
4. An excellent analysis of the logic that it is the characteristics of the poor themselves that are the fundamental causes of poverty is Blaming the Victim (1970) by William Ryan.
5. See the Dene Nation - The Colony Within (1977) edited by Mel Watkins which details how the Dene of the Northwest Territories have recognized the extent to which they have become a colonized people and how they

have begun to move down the long and difficult road to decolonize themselves.

6. The struggle for self-determination and decolonization is not only with the Federal Government but is an issue of ongoing dialogue within the native communities and between the native and non-native communities. The education institutions of the colonizer, for the most part, has not given most of the native peoples the knowledge and skills to analyze their own situation. It seems that the very old and the new young leaders have the understanding and are articulating the issues and leading the struggle for self-determination. Since the James Bay Agreement was signed in 1975, there has been a rapidly increasing awareness of the issues concerning aboriginal rights. Unfortunately, there doesn't seem to be the increased awareness and understanding of the importance of this critical issue by the non-Indian population. To remedy this some of the native groups with support from religious and social institutions have directed considerable energy and money traversing parts of Southern Canada attempting to explain their position and educate the public to the issues of aboriginal rights.

7. The Agreement provided the following:

Crees: Category 1 - 2,158 square miles

Category 11 - 25,130 square miles (hunting, fishing, and trapping rights).

Inuit: Category 1 - 3,250 square miles

Category 11 - 35,000 square miles (hunting, fishing, and trapping rights).

The native people receive a surface title ownership to Category 1 lands, plus 50% of any subsurface development benefits. They receive hunting, fishing, and trapping rights to Category 11 lands, but not ownership.

8. At the present time the Cree of James Bay are suing the Quebec government for non-compliance of certain aspects of the agreement. The Inuit of the Western Arctic are wanting to declare the Cope Agreement void and wish to renegotiate their claims.

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