

ABORIGINAL NATIONS AND THE CANADIAN NATION

BY SHIN IMAI

In the winter of 1763, Nipissing and Algonquin messengers were dispatched across Indian country. They carried strings of wampum and spread word of an important conference to be held at Niagara Falls. Two thousand chiefs gathered the next summer. There were Mic Mac from the east coast, Cree from the north, Iroquois from Lake Ontario, Lakota from the west—twenty-four nations in all. They were met by William Johnson, Superintendent of Indian Affairs, who presented wampum belts and gifts to negotiate a peace between the British and the First Nations.

One of the belts exchanged was the Two Row Wampum of the Iroquois. On this belt, there were two rows of parallel purple beads, on a bed of white beads. One row of purple represented the Indian canoe, the other the European boat. The two rows of purple were separated by three rows of white beads representing peace, friendship, and respect. William Johnson was told that, while the two boats shared the same river, they maintained their distinct identities. Neither nation was to interfere in the internal affairs of the other.¹

In the spring of 1987, there was another historic conference. Representatives of Aboriginal peoples from across Canada arrived in Ottawa to negotiate amending the Constitution to recognize the right of Aboriginal peoples to self-government. They met with Brian Mulroney and other First Ministers. Under the glare of television lights, an Algonquin Elder gave a reading of three wampum belts. One of the belts

showed three figures holding hands with a cross on the right-hand side. The Elder explained that the three figures represented the partnership, as equals, among the French, the British, and the Algonquin people. The cross showed that a priest witnessed the agreement.

“Canadians need to understand that Aboriginal peoples are nations ... To this day, Aboriginal people’s sense of confidence and well-being as individuals remains tied to the strength of their nations. Only as members of restored nations can they reach their potential in the twenty-first century.”

In the two centuries between these events, economic, social, and legal policies were designed to assimilate Indians and destroy the distinctiveness of their nations. What the Royal Commission on Aboriginal Peoples found in 1996 was that these policies had not succeeded: “Canadians need to understand that *Aboriginal peoples are nations* ... To this day, Aboriginal people’s sense of confidence and well-being as individuals remains tied to the strength of

their nations. Only as members of restored nations can they reach their potential in the twenty-first century.”²

So what does it mean for Canada if Aboriginal peoples are recognized as nations? Can the nation state remain intact? Similar questions are currently being raised throughout the world, as countries strain to find political accommodation for indigenous peoples within their boundaries.

At the United Nations, there has been a remarkable turnaround. Until 1989, the U.N. focused on the importance of assimilation of indigenous peoples.³ In that year, the International Labour Organization enacted a new Convention which recognized the right of indigenous peoples to maintain their own institutions, cultures, and identities within the framework of existing nations.⁴

At around the same time, the United Nations Working Group on Indigenous Populations went further with a draft Declaration on the Rights of Indigenous Peoples. This draft stated that “[i]ndigenous peoples ... have the right to autonomy or self-government in matters relating to their internal and local affairs.”⁵

Until the release of the Report of the Royal Commission, there was no comprehensive source of ideas on how to implement the principles being developed at the U.N. In spite of the existence of an extremely complex and diverse situation in Canada, the Royal Commission has succeeded in developing a set of perceptive proposals which will clarify the implications and guide the debate on these issues.

THE CHALLENGE OF THE CANADIAN CONTEXT

The diverse history, geography, and culture of Aboriginal peoples in Canada present

unique challenges for the implementation of self-government rights.

[T]he Report provides a flexible and creative array of options for giving political reality to the existence of Aboriginal nations.

The federal *Indian Act* organizes the 600,000 registered Indians into some 609 Bands. Most Bands have small reserves of about twenty square miles.

There is no registration scheme for the approximately 30,000-50,000 Inuit. Their land base is being negotiated through large land-claims agreements, such as the massive Nunavut Agreement covering the entire eastern Arctic.

There is no registration scheme for the Métis. Depending on one’s definition, the Métis may number from 100,000 to 200,000. Only in Alberta do Métis communities have small land bases.

The majority of Aboriginal people live in urban centres. In Toronto, for example, estimates range from 35,000 to 60,000 native people. There are almost two dozen native-specific institutions in the city.

THE RECOMMENDATIONS ON GOVERNANCE

Wisely, the Royal Commission does not gloss over the challenges created by the diverse circumstances of the Aboriginal peoples. Instead, the Report provides a flexible and creative array of options for giving political reality to the existence of Aboriginal nations.

The most interesting proposals revolve around three ways of structuring a new re-

relationship within the existing nation state: the nation model, the public government model, and the community-of-interest model.

The nation model

Sixty to eighty Aboriginal nations are to replace the scattered *Indian Act* Bands, Métis communities, and Inuit settlements. It is these Aboriginal nations that will be able to exercise self-government over their land base and over their citizens.

Aboriginal authority cannot be exercised unilaterally when the Aboriginal laws have a major impact on neighbouring communities or are the object of transcendent federal or provincial interest. As well, the exercise of authority must conform to the Charter of Rights and Freedoms.

Consent will not be necessary for an Aboriginal nation to exercise its authority in "core areas", such as citizenship, family matters, and administration of justice. Once enacted, Aboriginal laws will override federal or provincial laws on those matters.

The exercise of Aboriginal authority, however, is circumscribed in a number of ways. For example, Aboriginal authority cannot be exercised unilaterally when the Aboriginal laws have a major impact on neighbouring communities or are the object of transcendent federal or provincial inter-

est. As well, the exercise of authority must conform to the *Charter of Rights and Freedoms*.

This is the model that will likely be favoured by most First Nations and the Métis with a land base. However, it will likely be some time before this model is utilized.

There are enormous practical difficulties with creating larger nations out of 609 fairly independent Indian Bands. Securing a land base for the Métis outside of Alberta will be a challenge. And the hostility of the federal and provincial governments to the exercise of Aboriginal authority will mean progress will be slow.

The next two models already exist on the Canadian political landscape.

The public government model

The territory of Nunavut will be established in the Eastern Arctic. Although the Inuit will be the majority in Nunavut, their government will allow the participation of all residents of the territory, Inuit and non-Inuit. The form of government may be unique. For example, the Inuit seriously considered having a legislature that had equal representation of men and women.

The community-of-interest model

In urban areas and communities without an exclusive land base, Aboriginal people may provide education, housing, or other social services to their members. The organizations delivering a service, or a bundle of services, will most likely exercise authority delegated to them through federal or provincial legislation.

THE FUTURE OF THE REPORT

The proposals on governance are one part of a massive set of initiatives recommended for Canada. They range from ad-

ressing lands and resources issues (see the article by Kent McNeil on page 77) to establishing an elected Aboriginal Parliament to advise on legislation affecting Aboriginal peoples.

The Report is not a plea to expunge the guilt for the past. It is a call to recognize the present and to prepare for the future.


Even with the twenty-year time frame proposed by the Royal Commission, the task of comprehensive implementation is daunting and probably unattainable.

From this, some have drawn the conclusion that the Report is irrelevant and unrealistic. To Jeffrey Simpson of *The Globe and Mail*, the Report is "an attempt in the next quarter of a century to recreate some of the conditions that the commission believes applied in the golden age that ended more than 150 years ago." Andrew Coyne relates to the Report as a personal attack, telling a conference, "I don't accept collective guilt or trans-generation collective guilt."⁶

This is unfortunate. The Report is not a plea to expunge the guilt for the past. It is a call to recognize the present and to prepare for the future. The Royal Commission has captured a moment in history when the world is coming to terms with *de facto* survival, and the importance of the continued survival, of indigenous peoples. The Report is the most ambitious, thoughtful, far-reaching contribution available to date. There is no doubt in my mind that the proposals will set the agenda for

discussions both in Canada and the international community for the next two decades.

NOTES

1. For a full account of this remarkable occasion, see J. Borrows, "Constitutional Law from a First Nation Perspective: Self-government and the Royal Proclamation" (1994) 28 U.B.C. Law Rev. 1.
2. Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation* (Canada Communications Group, 1996) at x-xi.
3. International Labour Organization Convention No. 107 of 1957.
4. International Labour Organization, *Convention on Indigenous and Tribal Peoples*, Convention No. 169 of 1989. Canada has not ratified this *Convention*.
5. Article 31. This draft was adopted by the U.N. Subcommittee on Prevention of Discrimination and Protection of Minorities in August 1994, but has yet to be ratified by the General Assembly.
6. *The First Perspective*, Vol. 6, No. 1, March 1997. 

Shin Imai is a Professor of Law at Osgoode Hall Law School, York University.