

CanadaWatch

PRACTICAL AND AUTHORITATIVE ANALYSIS OF KEY NATIONAL ISSUES

a publication of the York University Centre for Public Law and Public Policy and the Robarts Centre for Canadian Studies of York University

SPECIAL ISSUE: THE RCAP REPORT AND THE FUTURE OF CANADA

ABORIGINAL SELF-DETERMINATION AND SELF-GOVERNMENT: SOVEREIGNTY BY INCLUSION

BY REG WHITAKER

Much to the chagrin of many Canadians, this country constantly finds itself interrogating its fundamental constitutional nature. In the 1997 federal election, the "national unity" issue was seen by many to have hijacked the electoral agenda. Was Canada to be a country that recognized the "distinctiveness" of Quebec within its federal structures, or was it to be a nation of strictly equal provincial units? There is the basis here for profound division and, of course, the potential for the breakup of the country. Yet this stark dichotomy of visions masks and is made possible by a missing dimension—an absence that is no accident, that is quite deliberate: the question of Aboriginal national self-determination and self-government.

Not only were First Nations left out of the so-called "national unity" debate, Aboriginal issues were shamefully absent from the electoral agenda altogether, despite the recent appearance of the for-

midable report of the Royal Commission on Aboriginal Peoples (RCAP). This silence was not the result of mere oversight; it was *strategic*. The politicians and the parties are co-conspirators in seeking to confine Aboriginal issues within square brackets, as it were, apart from the main business of the nation. This will not do, however, particularly in

WHY JEAN CHRÉTIEN—AND THE CANADIAN PEOPLE—SHOULD READ THE REPORT OF THE RCAP

BY FRANCES ABELE

Aboriginal peoples anticipate and desire a process for continuing the historical work of Confederation. Their goal is not to undo the Canadian federation; their goal is to complete it. [RCAP, *The Mandate*, 1991]

The final report of the Royal Commission on Aboriginal Peoples addresses longstanding and seemingly intractable problems from a long term perspective—a feature it shares with most Canadian royal commissions. Reports

light of the unavoidable centrality of the national unity issue. Just as putting Aboriginal peoples on reserves failed to put them out of sight, out of mind, so too putting the issue of Aboriginal self-government in square brackets breaks down in practice.

Memories are short. Only fifteen years ago the *Constitution Act, 1982* included sections 25 and 35 recognizing Aboriginal rights as fundamental to the law of the land. It was not that long ago that Elijah Harper provided the final straw that broke the back of Meech Lake. It was even

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that take the long view of complicated matters tend to be long and complicated themselves; occasionally their recommendations may seem politically awkward or even utopian.

Both the complexity and the "awkwardness" of royal commission reports reduce the enthusiasm with which governments and the major institutions of the national press receive them. In the case of the

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more recently that the Charlottetown Accord was hammered out by Aboriginal leaders sitting with the First Ministers as equals, recognizing the "inherent right to self-government" and envisaging Aboriginal government as one of three orders of government in Canada.

One way or another, the national question in Canada can no longer be addressed in terms of "duality", but must involve the more complex issue of multiple nationalities.

Not only are memories short, vision is short-sighted. If Quebec votes for sovereignty in the next referendum, a flashpoint of crisis will without doubt be the rejection by the Cree and Inuit of northern Quebec of the idea that they could be transferred like cattle from one jurisdiction to another on the basis of someone else's "right to national self-

determination". Yet no negotiated settlement of the conflicting claims of Québécois and Aboriginal self-determination (whether by partition, a Canadian-Quebec condominium in the north, international adjudication, or by joint constitutional protocol) could be concluded without major repercussions for relations with Aboriginal peoples outside Quebec. One way or another, the national question in Canada can no longer be addressed in terms of "duality", but must involve the more complex issue of multiple nationalities.

The first Chrétien government from 1993 to 1997 set about negotiating one-on-one "self-government" agreements with individual bands, as in Manitoba, bypassing the national organization of the Assembly of First Nations. These individual arrangements are not an adequate substitute for an overall plan based upon consensual principles. Indeed, there is some general anxiety among Aboriginal leaders that, under *ad hoc* agreements, individual bands may be taken advantage of by governments and by corporations and, given the historical track

record, such fears appear all too credible. Worse yet is a thrust toward "municipalization", where "self-government" is a dispensation from the provinces—which may of course be taken away (ask the residents of Metro Toronto!).

[T]he RCAP offers by far the most comprehensive and detailed set of proposals yet for what genuine Aboriginal self-government might look like and how to get there.

In this context, the RCAP offers by far the most comprehensive and detailed set of proposals yet for what genuine Aboriginal self-government might look like and how to get there. The section on "Governance", which takes up most of Volume 2, *Restructuring the Relationship*, is both a summation of the various strands of thinking that have gone into this question over the past two decades and a

specific plan of action. To some degree, it carries forward the thrust of the self-government proposals in the Charlottetown package, but the RCAP recommendations are not only immensely more detailed, subtle, and comprehensive than Charlottetown, but also forthrightly confront some prickly issues that Charlottetown either evaded or ignored: [1] the question of membership in the community (who can qualify as an Aboriginal person for purposes of self-government); [2] the effective units of self-government; [3] how Aboriginal governments would relate to each other and to the existing orders of government in Canada; [4] the financial requirements that existing governments would be obliged to provide if Aboriginal governments are to be anything more than empty shells. The last point is one central to the Report as a whole—and the one that has predictably cooled governments toward its recommendations. But the candour with which the costs are spelled out is typical of the approach of the Commissioners to the other

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TOWARD A NEW RELATIONSHIP WITH CANADA'S ABORIGINAL PEOPLES

BY DAVID V.J. BELL

Last month extensive celebrations were held to commemorate the 500th anniversary of the "discovery" by John Cabot of the "New Founde Lande" of North America. Aboriginal people were not alone in raising objections to this celebration. To be sure, a few First Nations refused to support the protest organized by Grand Chief Ovide Mercredi during the ceremony held in Bonavista to mark the landing of the replica of Cabot's ship, the "Matthew". But all would have agreed with Javeed Sukhera, "the 16-year old son of immigrants to this country" who made the key points with great eloquence: "Canada was not 'discovered' by Cabot. Long before Europeans landed on our Eastern shores, Canada had a vibrant population of aboriginal peoples. The Europeans killed the aboriginals with disease, and they committed many more atrocities. ... I urge Canadians not to remember the arrival of Cabot 500 years ago, but to remember the 500 years of justice the aboriginals of Canada have lost. I also urge our federal government to take this occasion as a reminder that it must take serious action to improve the state of the aboriginal peoples of Canada. [Letter to *The Toronto Star*, 20 June 1997.]

Despite a few awkward moments, the Bonavista ceremony proceeded with much fanfare and media coverage. The Queen paused briefly to acknowledge the small group of First Nations protesters; Premier Brian Tobin mentioned the sad plight of the Beotuks,

whose "journey on this planet" was made "far too short". In general, however, both the press, and by implication the Canadian public, paid as little attention to this as they have to the Report of the Royal Commission on Aboriginal Peoples.

Whether the Liberal Government likes the RCAP Report or not, it cannot long ignore it.

After working for more than five years and spending \$58 million, the Commission produced a Report 4,000 pages in length that has received neither media attention nor governmental response. The sheer bulk of the document accounts for some of this. The print version is both "too heavy to carry" and "impossibly expensive", according to the critics. But a CD-ROM version is available in most libraries, and the entire document is available on the Internet in a convenient free format [at www.indigenous.bc.ca/rcap/rcapeng1.html]. It would appear that few Canadians are interested, however. An Angus Reid poll taken last February reported that only one per cent of Canadians saw native affairs as a matter of "significant interest". This was down from six per cent in 1991 and four per cent one year later.

Whether the Liberal Government likes the RCAP Report or not, it cannot long ignore it.

Canada Watch agrees with the assessment of contributor Michael Posluns, who contends that "this Report will continue to command attention beyond the scholarly community as long as Aboriginal peoples and their friends continue to seek a genuine measure of self-government within Confederation and a more authentic relationship with those other peoples who are now, as the Report has it, 'of this land'." Nor can the issue of self-government, so thoroughly explored in the Report, remain off the agenda for much longer. As Reg Whitaker points out, "putting the issue of Aboriginal self-government in square brackets breaks down in practice".

Even though issues concerning First Nations failed to make it onto the agenda of the recent election, the Liberal Party Platform (Red Book 2) had some important things to say about Aboriginal issues in general and the RCAP Report in particular: "In finding ways to support the aspirations of Canada's Aboriginal peoples, a new Liberal government will draw from the valuable work of the Royal Commission on Aboriginal Peoples and from its report, tabled in November 1996. This five-volume, 4,000-page report has been called the most comprehensive examination ever of the realities facing Aboriginal peoples in Canada. ... The Commission's 440 recommendations call for the involvement of federal, provincial, territorial, and Aboriginal governments and local communities. While we are already implementing a number of the Report's recommendations, a full analysis of the Commission's findings and the opportunities they offer for broader action is needed. A new Liberal government will review all recommendations of the Royal Commission on Aboriginal

Peoples and will develop a plan, in partnership with Aboriginal peoples and provincial and territorial governments, to respond effectively to the Report's findings and proposals".

Canadians may find much to admire (if not imitate) in the Aboriginal values of environmental stewardship and concern for future generations.

In this issue of *Canada Watch*, we have attempted to provide an overview of the key recommendations concerning lands and self-government, and a discussion of their implications from several perspectives, including that of Phoebe Nahanni, a Dene from Fort Simpson. We have also included an article about Aboriginal communications and the media by Valerie Alia, who together with Bud White Eye submitted a brief to RCAP that helped shape several recommendations that appeared in Volume 3. [Recommendations 3.6.13 and 3.6.14 closely followed their advice, urging that "Colleges and universities with programs in communications, journalism and film cooperate to support access for Aboriginal students by providing transition courses, scholarships and counselling services"; and that "Public and private media outlets address the need for training and better representation of Aboriginal people in public communications by developing and implementing employment equity plans".]


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Understandably, we have focused on only a few aspects of the Report which, as Frances Abele points out, was written in response to a broad, comprehensive mandate. The entire document is a rich repository of data, knowledge, and insights about the Aboriginal peoples of Canada. We particularly recommend the Thanksgiving Address, which graces the opening of the first Volume of the Report. Canadians may find much to admire (if not imitate) in the Aboriginal values of environmental stewardship and concern for future generations, as the fol-

lowing brief excerpt indicates: "Finally, we acknowledge one another, female and male. We give greetings and thanks that we have this opportunity to spend some time together. We turn our minds to our ancestors and our Elders. You are the carriers of knowledge, of our history. We acknowledge the adults among us. You represent the bridge between the past and the future. We also acknowledge our youth and children. It is to you that we will pass on the responsibilities we now carry. Soon, you will take our place in facing the challenges of life. Soon, you

will carry the burden of your people. Do not forget the ways of the past as you move toward the future. Remember that we are to walk softly on our sacred Mother, the Earth, for we walk on the faces of the unborn, those who have yet to rise and take up the challenges of existence. We must consider the effects our actions will have on their ability to live a good life."

The twenty-first century begins in less than two-and-a-half years. If our country is to survive for another hundred years, we will need to respond successfully to several funda-

mental challenges. Undoubtedly, we will have to work out with Canadian Aboriginal peoples a new relationship that is rooted in fairness, equity, and mutual respect. What better place to begin than with a full public discussion of the RCAP Report? 

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SOVEREIGNTY BY INCLUSION *from page 70*

central issues. This is a Report that does not shrink from taking on tough issues, even those that divide native communities themselves.

Sovereignty is "the natural right of all human beings to define, sustain and perpetuate their identities as individuals, communities and nations" or, more simply, "the right to know who and what you are".

On the issue of membership, the RCAP rejects race, or the establishment of a "blood quantum". It does so not so much on the grounds of liberalism but on the basis of Aboriginal traditions: culture, the relationship to the land, and a collective sense of identity have been more important than

consanguinity; people can and have chosen to belong. The RCAP is quite aware of the dangers of traditionalist fundamentalism. They are, for example, firm on the stipulation that all rights to self-government must be equally available to men and women, and they delineate carefully where the *Charter of Rights* should apply to Aboriginal governments and how its provisions should be interpreted in light of Aboriginal cultures.

On the effective units, the Report recognizes that many bands and local communities are simply not large or viable enough to exercise self-government. "Nations"—relatively sizeable bodies of Aboriginal people with a "shared sense of national identity that constitute the predominant population in a certain territory or collection of territories"—will be the units, and the RCAP estimates these to number between 60 and 80, which might be fewer with cross-provincial groupings (this contrasts with an estimate of about a thousand local Aboriginal commu-

nities across the country). Of course, some powers can be devolved down to the local communities on the subsidiarity principle.

Whereas Quebec sovereignists would simply replicate the Canadian state on a smaller scale but with the same expectations of uniformity, Aboriginal voices generally do not see why many trees cannot grow in a forest, as part of a "complex ecological system".

Sovereignty is usefully distinguished from self-government. Sovereignty is "the natural right of all human beings to define, sustain and perpetuate their identities as individuals, communities and nations" or,

more simply, "the right to know who and what you are". For Aboriginal people, this is not a secular, political concept, so much as a spiritual one: "as a gift from the Creator, sovereignty can neither be given nor taken away, nor can its basic terms be negotiated." While Aboriginal and non-Aboriginal concepts of sovereignty are expressed in very different languages that arise out of differing cultural backgrounds, Aboriginal understandings present a less absolutist notion of sovereignty than European versions (James Tully has described Western constitutional discourse as the "empire of uniformity"). For Aboriginals, sovereignty can be shared among different peoples so long as the right to self-determination ("the power of choice in action") is recognized. Whereas Quebec sovereignists would simply replicate the Canadian state on a smaller scale but with the same expectations of uniformity, Aboriginal voices generally do not see why many trees cannot grow in a forest, as part

of a "complex ecological system".

Within this context of inherent sovereignty, self-government is one of a "range of voluntary options available to Aboriginal peoples who wish to take advantage of it". Forms of self-government may vary. Here the RCAP is sensitive to the diversity of Aboriginal cultures and to the range of governmental forms that might be adopted. There is no one model, whether of consensual decision-making or formal written constitutional structures that can, or should, be imposed upon this diversity.

It also has interesting, if incomplete, extrapolations about one of the most difficult problems of all: how forms of self-government might be extended to Aboriginal people living off reserves in minority urban settings. This is one of the weaker points of the Report, but given the apparent intractability of some of the issues (especially where Aboriginal and non-Aboriginal rights come into conflict), it has at least provided a thoughtful start.

Particularly interesting is the consideration of how specific forms of taxation will impact upon non-Aboriginal jurisdictions and upon the wider political economy within which Aboriginal economies will function.

Another gap tentatively filled in by the RCAP is the institutionalization of representation of the third, Aboriginal, order of government in the existing Canadian political sys-

tem. The important point here is that Aboriginal governments, however structured, cannot be seen as municipalities, that is, subordinate to higher "levels" of government. Nor, as an "order" of government, can they be seen as simply like provinces, that is to say, jurisdictions created by the *BNA Act* under a particular "distribution" of powers. Instead, deriving their authority from an existing or inherent sovereign right of self-determination already recognized in the *Royal Proclamation* of 1763, in treaties, in judicial decisions, and in the 1982 Constitution, Aboriginal governments would be separate from and co-ordinate with the provinces and the federal government. This requires broader institutional representation than simply a series of governments, and the RCAP Report does sketch out some plausible forms up to an elected Aboriginal parliament, or House of First Peoples, that would share responsibility with the Parliament of Canada for matters relevant to Aboriginal peoples on a "Nation-to-Nation" basis.


To the Commission's credit, a good deal of detailed attention is paid to the problem of financial arrangements for Aboriginal governments, especially around issues of taxation and revenue sources. Earlier discussions had often given inadequate focus to this critical dimension. Particularly interesting is the consideration of how specific forms of taxation will impact upon non-Aboriginal jurisdictions and upon the wider political economy within which Aboriginal economies will function. Yet looming behind all these plans is the nasty nettle that the RCAP has grasped honestly: none of this will work unless Canadian society is willing to provide the substantial short-term fiscal transfers

that alone will make possible the reduction of the huge long-term costs of continued neglect and indifference toward nearly one million indigenous people in this country.

There is a worrying tendency throughout to try to resolve correctly identified problem areas by creating yet more governmental or bureaucratic structures; there are perhaps a few too many projected tribunals and commissions and other administrative mechanisms. But, despite the inevitable warts, we don't need any more studies or any more specifications of the problem than have been provided here.

The RCAP Report has spelled out in far greater and more careful detail than ever before what can and should be done in relation to governance. Certainly, as in any large-scale collective effort like this, there are weak points that can be identified. The problems of separate governmental forms for Aboriginal people living in cities have not been fully or even adequately addressed. There is a worrying tendency throughout to try to resolve correctly identified problem areas by creating yet more governmental or bureaucratic structures; there are perhaps a few too many projected tribunals and commissions and other administrative mecha-

nisms. But, despite the inevitable warts, we don't need any more studies or any more specifications of the problem than have been provided here. The Report clearly provides the basis for proceeding. Whether the lead will be followed is up to the re-elected Liberal government.

The former minister of Indian Affairs, Ron Irwin, did not seek re-election. With a new minister with a reputation for a constructive, non-confrontational approach to politics (Jane Stewart), a new majority government, and a deficit heading rapidly toward zero, the Liberals have a window of opportunity. As they contemplate the coming challenge of yet another Quebec referendum on sovereignty, they might well consider the intriguing philosophical lesson that this Commission poses to the fundamental idea of governance in Canadian society. Sovereignty, Aboriginal voices are telling us, is not an absolute, not a zero-sum of authority; it is something that can, and should, be shared. How sovereignty could be shared without one people triumphing over another, is thoughtfully spelled out in this Report. There is no shortage today of those who are defining sovereignty by exclusion. We could well listen to those speaking of inclusion. 

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NATIONHOOD AND THE RCAP REPORT

BY PHOEBE NAHANNI

Once again, it appears as though Canada is extremely reluctant to settle its relationship with Aboriginal nations within its national borders. In 1992, it created a Royal Commission on Aboriginal Peoples to investigate the status of this relationship. At the end of 1996 this Commission presented its Report in five volumes. To date, the Federal Government of Canada has not acknowledge the Report in any substantive way.

One of the many recommendations in this Report proposes the recognition of Aboriginal nations (within Canada as a nation-state) through the creation of a third order of government for these nations.

The overall Report is expansive. I have not read every page of it, but I know the issues. These issues are not mysterious (at least to most Aboriginal peoples), but they are serious. And, they can and will be resolved. We have to be confident that they will. However, legal, political, and social interpretations have made them very complicated indeed. And that is what the Royal Commission Report is—a complicated interpretation of serious issues.

I would like to briefly mention some of the terms of ref-

erence of the Royal Commission on Aboriginal Peoples to remind myself what they were asked to do. Then I would like to discuss some of the prominent recommendations having to do with the concept of nationhood and how the Commission views the implementation of this concept.

The Commission was asked to investigate “the history of relations between Aboriginal peoples, the Canadian government and Canadian society as a whole”; “the means of integrating Aboriginal spirituality, history and ceremony into public and ceremonial life of the country”; “the recognition and affirmation of Aboriginal self-government, its origins, content and a strategy for progressive implementation”; “the historical interpretation and application, and potential future scope, of s. 91(24) of the *Constitution Act, 1867* and the responsibilities of the Canadian Crown”; and “the legal status, implementation and future evolution of Aboriginal treaties, including modern-day agreements.”

One of the many recommendations in this Report proposes the recognition of Aboriginal nations (within Canada as a nation-state) through the creation of a third order of government for these nations. How is Canada going to do this? It would first introduce a new Royal Proclamation which would state principles recognizing the new relationship. This would be followed by new legislation and institutions to implement these principles. The concept of nationhood of Aboriginal peoples

within the nation-state is the central theme in the larger picture (the Aboriginal—non-Aboriginal relations) as presented by the Commission. And, the Commission urges the federal and provincial governments to make room at the highest level.

Aboriginal peoples who signed treaties with the Crown say that the treaties recognized Aboriginal peoples as self-governing nations. The treaties did not create nationhood. Nationhood is an inherent right. Treaties were a common practice among Aboriginal nations in pre-colonial times. When treaties were made with the representatives of the Crown, they were nation-to-nation agreements.

Certain concepts are integral to the discussion on nationhood, and they are sovereignty, self-determination, self-government, human rights, and inherent rights. Sovereignty is described as “a natural right of all human beings to define, sustain and perpetuate their identities as individuals, communities and nations” (Vol. 2, 108). As a human quality, sovereignty finds its expression in self-determination. Self-determination is a power of choice in action and self-government is one way Aboriginal peoples make

choices and put into effect the principles of self-determination. How do these theoretical discussions apply to some of the Aboriginal peoples’ realities? Treaties are one very important reality for Aboriginal peoples. Aboriginal peoples who signed treaties with the Crown say that the treaties recognized Aboriginal peoples as self-governing nations. The treaties did not create nationhood. Nationhood is an inherent right. Treaties were a common practice among Aboriginal nations in pre-colonial times. When treaties were made with the representatives of the Crown, they were nation-to-nation agreements.

The Commission reports that the pre-Confederation treaties were on a nation-to-nation basis. However, post-1850 treaties clearly provide for the extinguishment of Aboriginal title (to land and resources). How did this come about? Does this mean that Aboriginal peoples have nationhood but do not have Aboriginal title? Well, yes they have nationhood, and no, they do not, because they and their lands have been engulfed in Canada since 1850. The Canadian courts have had and continue to have a direct hand in determining the way the Canadian government and the Canadian public should view Aboriginal peoples and their lands and resources. And up to now, the courts have decided on several issues (for example, fiduciary) that may make the future a tad brighter. But, *the big one*, the one on extinguishment of Aboriginal title, will not change: it has been settled, since 1850. The Commission says it is unlikely that the courts could change their minds on this issue. Therefore, it would be best to concentrate on lands and resources while at the same time stressing the “spirit and intent” of the trea-

ties and "sharing of land and resources" as implicit in the treaties. Spirit and intent "is a term that transcends the purely legal nature of treaties and includes their constitutional and spiritual components" (Vol. 2, 42).

Although the written terms of the original treaties were one-sided in favour of the Crown, the Aboriginal leaders continue to stress that the treaty process created a relationship between the parties and that is what the Aboriginal peoples want to keep.

Recognizing this, Aboriginal leaders have continued to stress the need for implementation of the treaties and the inherent right to self-government. Implementation requires that the written and unwritten terms of the treaties be acknowledged. Although the written terms of the original treaties were one-sided in favour of the Crown, the Aboriginal leaders continue to stress that the treaty process created a relationship between the parties and that is what the Aboriginal peoples want to keep. The Treaties also recognize the self-governing nature of the nations who entered into them. The Commission agrees, and suggests that a new relationship arrangement be one of partnership.

Nationhood of Aboriginal peoples is contemplated within the jurisdiction of Canada. In a way, this recognition has been partly accorded to Aboriginal peoples, particularly

those who have made modern agreements or treaties. It has given them formal recognition. The Commission would like to see this process go further. It would like this process to be legitimized by the recognition of a third order of government.

Two other things need to be added here. In this third-order-of-government arrangement, the Commission addresses the need to respect core responsibilities (internal) of Aboriginal nations, and that they in turn respect their responsibilities in the periphery (with provincial and federal relations). Secondly, consultations with provincial and federal governments should begin to ratify and implement United Nations agreements directly related to indigenous peoples.


In summary, here is what I learned from reading part of the Report. The Royal Commission found it could not change court decisions but it could recommend rearrangement of relations, such that Aboriginal peoples maintain nationhood and become partners within the Canadian jurisdiction through a third order of government on Parliament Hill. Written treaties will remain but they will be augmented by oral interpretation. The spirit and intent of treaties will be invoked by better sharing of land and resources. The Report does not dwell on treaties as international agreements *per se*. Aboriginal peoples will exercise their self-determination through self-government and there will be three categories of self-government to choose from.

In my view, three obvious concerns need to be addressed. First, legal and institutional interpretation of the Commission's recommendations needs to be scrutinized carefully. Aboriginal peoples must be assured that terms like "inherent right to self-govern-

ment" are not interpreted by bureaucrats so narrowly as to become virtually meaningless. Second, attention must be paid to whether the cultures of Aboriginal peoples are resilient enough to maintain their

[A]lthough the Commission Report provides a definition for "nation" and discusses the possibilities for Aboriginal nations within Canadian jurisdiction, clarification is needed regarding the Aboriginal nations who have always considered themselves nations outside of this jurisdiction.

distinctiveness in such institutional structures and rearrangement as contemplated in the Commission Report. Will the practice of consensus, collective rights, and other Aboriginal ethical values be practical and practiced in the state apparatus? Third, although the Commission Report provides a definition for "nation" and discusses the possibilities for Aboriginal nations within Canadian jurisdiction, clarification is needed regarding the Aboriginal nations who have always considered themselves nations outside of this jurisdiction. If the same Aboriginal nations continue to maintain their nationhood outside of the Canadian jurisdiction, what happens to them? Do they not have a right to self-determination also? And is their definition of self-determination the same as the one

Canada has? The last time I looked at the concept of self-determination as interpreted by Canada, I was not too encouraged. Canada does not accord us the same kind of self-determination it accords itself, internationally. Sometimes I think Canada would prefer that we self-terminate. Looking at the dismal social and political conditions and how Canadian laws control our lives, it looks as though Canada is allowing termination to happen. My personal understanding from many Aboriginal peoples is that there should be minimal interference of Canadian law. Is it that bad? Well, inform yourselves about the oral and written history of Aboriginal and non-Aboriginal relations. Read the other volumes of the Commission Report, talk to Aboriginal women, and then you judge for yourselves. 

Phoebe Nahanni is a Dene from Fort Simpson, NWT. She has worked on Aboriginal issues since leaving high school. The mother of three children, Phoebe attended McGill University and the University of Western Ontario. She now lives in Montreal.

Aboriginal Commission, the five-volume final Report had hardly reached the Band councils and libraries across Canada

In the false crisis of immediate Cabinet indifference and in the easy stories reporting statistics about the cost of the Commission (nearly \$60 million) and the number of recommendations (440), the main idea—and the fundamental contribution of the Report—have been lost.

Canada to which it was mailed before pundits were solemnly enquiring about the reasons for its obscurity. This is and was an unfortunate focus. In the false crisis of immediate Cabinet indifference and in the easy stories reporting statistics about the cost of the Commission (nearly \$60 million) and the number of recommendations (440), the main idea—and the fundamental contribution of the Report—have been lost.

The five-volume Report responds to a comprehensive sixteen-item mandate drafted by former Chief Justice of the Supreme Court Brian Dickson, after extensive consultations with a wide range of Canadians. From health to education to constitutional change to access to land and resources, no area of the relations between Aboriginal peoples and Canada is omitted. A similarly broad approach was taken by the hundreds of Canadians

who made oral and written submissions to the Commission. The Commissioners embraced this mandate, seeking solutions to the broad range of issues put before them, while working to understand where the fulcrum for fundamental reform lay.

Of course, the Royal Commission devoted considerable effort to developing “actionable” recommendations whose practical consequences would be, and would be seen to be, well-considered. The final Report of the Royal Commission on Aboriginal Peoples, however, is not essentially a blueprint for the Cabinet order paper. It addresses the people of Canada, and asks them to consider and debate a new way of conceiving the country, as a consensual confederation capacious enough to include the heterogeneous and polyglot settler society as

Envisioning a period of negotiation, practical adjustment, and political development that might take decades, the Commissioners anticipate the ultimate emergence of “a just multinational federation that recognizes its historical foundations and values its historical nations as an integral part of the Canadian identity and the Canadian political fabric”.

well as the modern societies of the original North American nations. In a time of intense anxiety about the survival of Canada and in the face of the obvious mutual impact of Québécois and Aboriginal political dynamics, it is very strange that this most relevant and far-reaching feature of the Report has been overlooked.

The main elements of this vision are as follows:

1. The Aboriginal peoples of Canada have the right of self-determination.

2. The right of self-determination is grounded in emerging norms of international law and basic principles of public morality.

3. By virtue of the right of self-determination, Aboriginal peoples are entitled to freely negotiate the terms of their relationship with Canada and to establish governmental structures that they consider appropriate for their needs.

4. The above “does not ordinarily give rise to a right of secession, except in case of grave oppression or disintegration of the Canadian state.”

5. All governments in Canada should recognize that Aboriginal peoples are nations vested with the right of self-determination. The Aboriginal nations are not racial groups, but rather political and cultural collectivities with a shared history and contemporary self-awareness.

6. Canada requires a “a neutral and transparent process for identifying Aboriginal groups entitled to exercise the right of self-determination as nations.”

7. Once identified, the Aboriginal nations would either affirm, renegotiate, or commence to negotiate their relationships with Canada, in a spirit of mutual recognition and respect.


Envisioning a period of negotiation, practical adjustment,

“A country cannot be built on a living lie. We know now, if the original settlers did not, that this country was not terra nullius at the time of contact and that the newcomers did not ‘discover’ it in any meaningful sense. We know also that the peoples who lived here had their own systems of law and governance, their own customs, languages and cultures”.

and political development that might take decades, the Commissioners anticipate the ultimate emergence of “a just multinational federation that recognizes its historical foundations and values its historical nations as an integral part of the Canadian identity and the Canadian political fabric”. Questions of financing, jurisdiction, land reform, and institutions of integration and cooperation on many fronts would all be addressed within the basic framework provided by the solemn recognition of the right of self-determination. Reflecting upon many decades of frustration and stalemate (and worse) in the relations between Aboriginal peoples and Canadian governing institutions, the Commissioners decided that a fresh start was in order, this time based upon

the common knowledge of the real origins of Canada and upon *mutual* respect. As they note in the beginning of their long letter to Canadians:

"A country cannot be built on a living lie. We know now, if the original settlers did not, that this country was not *terra nullius* at the time of contact and that the newcomers did not 'discover' it in any meaningful sense. We know also that the peoples who lived here had their own systems of law and governance, their own customs, languages and cultures".

The first two Volumes of the final Report of the Royal Commission on Aboriginal Peoples explain the basis for this perspective on the future of Canada. The Commissioners did not come to this conception easily or lightly, and they surely did not expect that their views would find immediate and wide acceptance in the land. What they and the country have a right to expect is a full public exploration of the reasons for the conclusions to which the Commission came. To do less will be to toss away a potentially useful tool in the kit we will all need to establish a more stable and a more just federation. 

Frances Abele is Director of the School of Public Administration at Carleton University. She was seconded to the Royal Commission on Aboriginal Peoples during 1992-94, where she worked on research and policy questions. The views expressed in this article are her own, however, and do not necessarily reflect the views of the Commissioners or her former colleagues on the staff. The author would like to thank her husband, George Kinloch, for his help in several ways.

ABORIGINAL LANDS AND RESOURCES: AN ASSESSMENT OF THE ROYAL COMMISSION'S RECOMMENDATIONS

BY KENT MCNEIL

The Aboriginal peoples have been living on the land in what is now Canada and deriving their livelihood from its natural resources for thousands of years. Elder Alex Stead, at a public hearing held by the Royal Commission on Aboriginal Peoples (RCAP) in Winnipeg on April 22, 1992, put it this way: "We are so close to the land. This is my body when you see this mother earth, because I live by it. Without that water, we dry up, we die. Without food from the animals, we die, because we got to live on that. That's why I call that spirit, and that's why we communicate with spirits. We thank them every day that we are alive" (RCAP Report, vol.2, pt. 2, 435-36).

The Aboriginal peoples' connection with the land is not just economic—it is spiritual, and it is social and political as well. Their very existence as peoples with distinctive cultures depends on maintenance, and in some cases expansion or re-acquisition, of a land base, and on access to adequate natural resources. It is for this reason that land claims are of such vital importance for the Aboriginal peoples.

In its Report, RCAP points out many problems with the way the issues of Aboriginal lands and resources have been handled by the Canadian and provincial governments in the past. In many parts of Canada—particularly in the Atlantic Prov-

inces, Quebec, and British Columbia—lands were taken from the Aboriginal peoples without their consent and without payment of compensation. Where there was a form of consent in the treaties, these documents have usually been interpreted by non-Aboriginal governments and courts as absolute surrenders of lands, whereas the Aboriginal peoples who signed them often intended to share the lands with the newcomers while preserving their own land uses and traditional ways of life.

[M]any reserves have been drastically reduced in size by surrenders, sometimes through government coercion or misrepresentation, and occasionally through outright fraud.

Lands set aside as reserves for the Aboriginal peoples were generally poor lands with limited natural resources (although in a few instances there was undiscovered oil, gas, or minerals below the surface, as in the case of some Alberta reserves). As a result, the reserves generally do not provide adequate economic bases for self-sufficiency. Moreover, many reserves have been drastically reduced in size by surrenders, some-

times through government coercion or misrepresentation, and occasionally through outright fraud.

Due to these wrongs, most Aboriginal peoples today do not have adequate lands and resources to be economically self-sufficient, making it impossible for them to finance self-government. Their economies and ways of life have been seriously interfered with, and in some cases virtually destroyed. The RCAP Report contains a number of recommendations to redress these past wrongs, so that the Aboriginal peoples can regain their self-sufficiency and political autonomy within Canada.

The Report recommends that the treaties be interpreted in accordance with the understanding of the Aboriginal peoples who signed them, so that they involve a sharing of lands and resources where that was intended, rather than an extinguishment of Aboriginal title. The treaties should be implemented according to their spirit and intent, and violations of them should be rectified. Where lands set aside as reserves are insufficient for current populations to be economically self-reliant and politically autonomous, non-Aboriginal governments should provide additional lands to foster these objectives. This is in the interest of all Canadians, as the cycle of dependency that so many Aboriginal people are caught in is a debilitating burden on the whole of Canadian society.

The Report also contains recommendations for the settlement of Aboriginal title issues in areas of Canada where treaties and modern land-claims agreements have not yet been signed. Among these are recommendations

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that the federal government not seek blanket extinguishment of land rights in exchange for benefits in the agreements, and that self-government be included so that it becomes a constitutionally protected treaty right under section 35 of the *Constitution Act, 1982*.

How can non-Aboriginal governments purport to negotiate in good faith when they are undermining the very rights which are the subject of negotiations? RCAP recognized this problem, and recommended a Canada-wide framework agreement whereby the federal and provincial governments would acknowledge the necessity for interim relief agreements before Aboriginal land claims are settled.

There are also proposals in the RCAP Report respecting land-claims process, so that the federal government no longer acts as the judge where it has a vested interest in the outcome. The principal recommendation to avoid this conflict of interest is the creation of an Aboriginal Lands and Treaties Tribunal that would not only supervise and monitor negotiations of Aboriginal land claims, but would also have adjudicative powers over claims or parts of claims re-

ferred to it by Aboriginal claimants.

I think the recommendations outlined above provide a basis for fundamental reform where Aboriginal lands and resources are concerned. But the Report also touches on another major concern that I want to address in more detail, namely, interim relief while land claims negotiations are taking place. These negotiations tend to be complex and contentious, and often can go on for many years before a settlement is reached. In the meantime, non-Aboriginal governments—especially provincial governments—act as though lands subject to Aboriginal claims are Crown lands, and continue to grant third-party interests, such as timber licences, mining leases, and the like, for resource development on these lands. How can non-Aboriginal governments purport to negotiate in good faith when they are undermining the very rights which are the subject of negotiations? RCAP recognized this problem, and recommended a Canada-wide framework agreement whereby the federal and provincial governments would acknowledge the necessity for interim relief agreements before Aboriginal land claims are settled. These interim agreements would provide for:

1. Withdrawal of lands most likely to be selected by the Aboriginal party in the final land claims agreement, to prevent government dispositions of third-party rights to those lands during the negotiations, unless the Aboriginal party consents;

2. Aboriginal participation in the management of lands and resources throughout the claimed territory for the duration of the interim agreement; and

3. Taxes and royalties on new resource development that is authorized on the claimed land to be held in trust pending the outcome of the negotiations.

I think these are important and essential recommendations, but a major problem is that provincial governments are unlikely to accept them because, up to now, the courts have generally tolerated provincially authorized resource development of lands that are subject to Aboriginal claims. I think the courts have sometimes failed to perform their judicial function in this respect, specifically their duty to uphold the rule of law by protecting legal rights from government infringement in the absence of legislation clearly and plainly authorizing the infringement.

Aboriginal title to specific lands, it is argued, does not exist until it has been proven in a court of law. This argument is wrong because it rests on a rebuttable presumption that the Aboriginal peoples did not occupy and use the lands when Canada was colonized by Europeans, when we all know the opposite to be true.

It has been clear since the decision of the Supreme Court of Canada in *Calder v. Attorney-General of British Colum-*

bia, [1973] S.C.R. 313, that Aboriginal title to land entails legal rights of possession and use that are entitled to common law protection. So, in the absence of clear and plain statutory authority, how do governments get away with creating third-party rights in lands that are subject to Aboriginal claims? Two explanations are generally given for this, both of which are inadequate:

1. Aboriginal title to specific lands, it is argued, does not exist until it has been proven in a court of law. This argument is wrong because it rests on a rebuttable presumption that the Aboriginal peoples did not occupy and use the lands when Canada was colonized by Europeans, when we all know the opposite to be true. So the presumption should be the other way around—since the Aboriginal peoples were already here, it should be presumed that all of Canada was subject to Aboriginal title at the time of colonization. The burden would then be on the Crown to rebut that presumption if it can by showing either that the lands in question were not in fact occupied by Aboriginal people at the time of colonization or, if occupied, that the Aboriginal title has been validly extinguished.


2. The second reason given for denying protection to Aboriginal title against government dispositions to third parties is that Aboriginal title is not proprietary—instead, it is said to be limited to traditional uses of the land which are non-proprietary in nature (this issue of the nature of Aboriginal title, which is presently unresolved, has been argued before the Supreme Court of Canada in June of this

year in *Delgamuukw v. British Columbia*, on appeal from the British Columbia Court of Appeal decision reported at (1993), 104 D.L.R. (4th) 470.

If the courts had been doing an adequate job in protecting Aboriginal title against government infringement, the interim relief measures recommended by RCAP would probably be unnecessary. However, given the judicial tendency to tolerate government-authorized resource development on Aboriginal lands, other protections are clearly needed to prevent governments from exploiting and diminishing the value of lands that are the subject of Aboriginal claims.

But whether Aboriginal title is proprietary or not is really irrelevant in this context, as it does entail legal rights which are just as entitled to common law protection against government infringement as any legal rights. Moreover, due to section 35 of the *Constitution Act, 1982*, Aboriginal title now enjoys additional constitutional protection which the property rights of other Canadians do not. As a result, Aboriginal title can only be infringed by legislation that meets a strict test of justifica-

tion laid down by the Supreme Court in *Sparrow v. The Queen*, [1990] 1 S.C.R. 1075.

If the courts had been doing an adequate job in protecting Aboriginal title against government infringement, the interim relief measures recommended by RCAP would probably be unnecessary. However, given the judicial tendency to tolerate government-authorized resource development on Aboriginal lands, other protections are clearly needed to prevent governments from exploiting and diminishing the value of lands that are the subject of Aboriginal claims. To encourage provincial governments in particular to enter into interim agreements, RCAP proposes that "the Aboriginal Lands and Treaties Tribunal be given jurisdiction over the negotiation, implementation and conclusion of interim relief agreements to ensure good faith negotiations, and in the event of failure, be empowered to impose an agreement in order to prevent the erosion of Aboriginal title" (RCAP Report, vol. 2, pt. 2, 589). Conferring such power on the Tribunal is no doubt necessary, as the provinces will be reluctant to give up their control and forego the benefits they receive from resource development on Aboriginal lands. 

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A BLUEPRINT FOR THE FUTURE: OVERVIEW AND SUMMARY OF THE KEY RCAP CONCLUSIONS AND RECOMMENDATIONS CONCERNING SELF-GOVERNMENT

BY DAVID C. HAWKES

THE TRANSITION TO ABORIGINAL SELF-GOVERNMENT

How will the transition to Aboriginal self-government occur? The Commission outlines a process comprising four distinct but related elements that will clear the path for Aboriginal self-government:

1. The promulgation by the Parliament of Canada of a royal proclamation and companion legislation to implement those aspects of the renewed relationship that fall within federal authority;

An Aboriginal nation's constitution would likely contain several elements: a citizenship code, an outline of the nation's governing structures and procedures, guarantees of rights and freedoms, and a mechanism for constitutional amendment.

2. Activity to rebuild Aboriginal nations and develop their constitutions and citizenship codes, leading to their recognition through a proposed new law—the Aborigi-

nal Nations Recognition and Government Act;

3. Negotiations to establish a Canada-wide framework agreement to set the stage for the emergence of an Aboriginal order of government in the Canadian federation; and

4. The negotiation of new or renewed treaties between recognized Aboriginal nations and other Canadian governments.

THE THREE PHASES FOR TRANSITION

The transition to Aboriginal self-government on a nation-to-nation basis must begin with Aboriginal peoples themselves. The Royal Commission estimates that there are currently between 60 and 80 historically based Aboriginal nations in Canada, compared with a thousand or so local Aboriginal communities. The first phase will involve Aboriginal people consulting at the community level, seeking a mandate to organize the nation's institutions. This mandate would be confirmed through a referendum or some other mechanism of community approval.

The second phase will involve preparing the nation's constitution and seeking its endorsement from the nation's citizens. An Aboriginal nation's constitution would likely contain several elements: a citizenship code, an

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outline of the nation's governing structures and procedures, guarantees of rights and freedoms, and a mechanism for constitutional amendment. A draft constitution would be subject to a "double majority" standard. Specifically, it would be considered adopted if

(a) 40 per cent of the eligible voters participated in the referendum;

(b) the constitution were approved by 50 percent plus one of those eligible voters across the nation as a whole (the first majority); and

(c) a simple majority of those voting in each community approved the constitution in 75 per cent of the communities (the second majority).

The third phase would involve seeking recognition as an Aboriginal nation under the new proposed Aboriginal Nations Recognition and Government Act. Assuming that a nation's constitution is approved and the decision to seek recognition is endorsed, application for recognition would be made to a neutral recognition panel appointed by and operating under a proposed Lands and Treaties Tribunal. The panel would consist of a minimum of three persons, the majority of whom would be Aboriginal. The panel would have broad investigative powers to ensure that fundamental fairness had been observed in the process and that the criteria for recognition had been met.

THE ABORIGINAL RECOGNITION AND GOVERNMENT ACT AND ITS ROLE IN TRANSITION

The Royal Commission's recommendation for an Aboriginal Recognition and Government Act is key to implementing the new relationship. The Act would establish the process through which the govern-

ment of Canada can recognize the accession of an Aboriginal group to nation status and the nation's assumption of authority as an Aboriginal government. The Act would establish criteria for the recognition of Aboriginal nations, including

- evidence among the communities concerned of common ties of language, history, culture, and of willingness to associate. This must be coupled with sufficient size to support the exercise of a broad, self-governing mandate;

It is the Commission's view that both the federal and provincial governments are required by the honour of the Crown to participate in treaty processes and to give effect to treaty rights and promises.

- evidence of a fair and open process for obtaining the agreement of its citizens and member communities to embark on a nation-recognition process;
- completion of a citizenship code that is consistent with international norms of human rights and with the *Canadian Charter of Rights and Freedoms*;
- evidence that an impartial appeal process had been established by the nation to hear disputes about an individual's eligibility for citizenship;
- evidence that a fundamental law or constitution has been drawn up through wide consultation with its citizens; and

- evidence that all citizens of the nation were permitted to ratify the proposed constitution through a fair means of expressing their opinion.

The Aboriginal Nations Recognition and Government Act would authorize the creation of recognition panels, under the aegis of the proposed Aboriginal Lands and Treaties Tribunal, to advise the government of Canada on whether a group meets the recognition criteria. The Act would enable the federal government to vacate its legislative authority under section 91(24) of the *Constitution Act, 1867* over the core powers needed by Aboriginal nations, and to specify which additional areas of jurisdiction the Parliament of Canada is prepared to acknowledge as core powers. Finally, the Act would provide the authority for enhanced financial resources so as to enable recognized Aboriginal nations to exercise expanded governing powers for an increased population base in the period between recognition and the conclusion or reaffirmation of comprehensive treaties.

EXERCISING ABORIGINAL SELF-GOVERNMENT—THE TREATY PROCESS

Once Aboriginal nations are recognized pursuant to the Aboriginal Nations Recognition and Government Act, they would then enter into a treaty process. Reorganization within the federal government in preparation for the treaty process would be substantial, since there is currently no government department or agency devoted to the fulfilment of treaties. The Commission recommends that a Crown Treaty Office be established which would implement, renew, and make treaties within a new Department of Aboriginal Re-

lations. The Office, which would be mentioned in the Royal Proclamation and mandated in the companion legislation, would be the lead Crown agency participating in nation-to-nation treaty processes.

It is the Commission's view that both the federal and provincial governments are required by the honour of the Crown to participate in treaty processes and to give effect to treaty rights and promises. The fulfilment of the Crown's duty is their joint responsibility. Since the provinces now share in the fiduciary duties of the Crown, there is also a need for each province to establish a Crown Treaty Office.

The Royal Commission recommends that permanent treaty commissions, established on a regional basis, provide independent and neutral fora where negotiations can take place as part of the treaty process. Several examples of similar commissions exist now, such as the B.C. Treaty Commission and the Saskatchewan Office of the Treaty Commissioner. These treaty commissions would be independent from the federal government, the provincial governments, the Aboriginal nations and the treaty nations, and would be created through legislation by all parties. Commissioners would be appointed in equal numbers from lists prepared by the parties, with an independent chair selected by the commissioners. In addition to facilitation, treaty commissions would have fact-finding and research capabilities, and would provide mediation services as jointly requested. Treaty commissions would monitor and guide the conduct of the parties in the treaty process to ensure that fair and

proper standards of conduct and negotiation are maintained. They would also supervise and facilitate cost-sharing by the parties, and provide binding or non-binding arbitration at the request of the parties.

Renegotiation or replacement treaties should be an option for treaty nations that regard their original treaties as fundamentally flawed. However, this alternative is extremely unlikely to be the choice of many of the treaty nations who have strongly advocated that their existing treaties be implemented.

There will be a need to resolve disputes within the treaty processes. In this regard, the Royal Commission recommends that an Aboriginal Lands and Treaties Tribunal could play a supporting role in treaty processes. The Tribunal should have three main elements in its mandate. First, it should have jurisdiction over process-related matters, such as ensuring that the parties negotiate in good faith. Second, the tribunal should have the power to make orders for interim relief. Third, it should have jurisdiction to hear appeals on funding for the treaty process. The tribunal would be a forum of last resort in treaty processes and every attempt should be made to provide for a negotiated, mediated, or arbitrated resolution of treaty disputes with the

assistance of treaty commissions.

In the Royal Commission's view, the most common outcome of treaty implementation and renewal will be a formal protocol agreement that defines specific treaty rights and obligations, perhaps for specified periods of time, with clearly defined mechanisms for review and renegotiation of the elements covered by the agreement. Such protocol agreements should be ratified legislatively to remove any doubt as to their legal status. Alternatively, treaty implementation agreements could be given the status of supplementary treaties that leave the original treaties intact and add to them. Based on the submissions the Commissioners heard, however, this is less likely to be preferred by treaty nations. A third possible outcome could be a new treaty that terminates and replaces the original one. Renegotiation or replacement treaties should be an option for treaty nations that regard their original treaties as fundamentally flawed. However, this alternative is extremely unlikely to be the choice of many of the treaty nations who have strongly advocated that their existing treaties be implemented. Irrespective of the type of agreement reached, legislation and regulations will likely have to be enacted by the treaty parties to formalize the renewed treaty and to provide for implementation, review, and dispute resolution.

SELF GOVERNMENT AND INHERENT JURISDICTION

The outcome of the treaty processes, then, is the exercise of Aboriginal self-government. In the Commission's view, the inherent right of Aboriginal self-government was recognized and affirmed in section 35(1) of the *Constitution Act, 1982* as an Aborigi-

nal and treaty right. The inherent right is thus entrenched in the Canadian Constitution and provides a basis for Aboriginal governments to function as one of three distinct orders of government in Canada.

The Commission concludes that the Canadian Charter of Rights and Freedoms applies to Aboriginal governments and regulates relations with individuals falling within their jurisdiction. However, under section 25, the Charter must be given a flexible interpretation that takes account of the distinctive philosophies, traditions, and cultural practices of Aboriginal peoples.

The sphere of inherent Aboriginal jurisdiction under section 35(1) comprises all matters relating to the good government and welfare of Aboriginal peoples and their territories. The Commission divides the sphere of inherent jurisdiction into two sectors: a core and a periphery. The core of Aboriginal jurisdiction includes all matters that

- (a) are vital to the life and welfare of a particular Aboriginal people, its culture and identity;
- (b) do not have a major impact on adjacent jurisdictions; and

(c) are not otherwise the object of transcendent federal or provincial concern. An Aboriginal group has the right to exercise authority and legislate at its own initiative without the need to conclude self-government treaties or agreements with the Crown.

The periphery of Aboriginal jurisdiction comprises the remainder of the sphere of inherent Aboriginal jurisdiction. It includes matters that have a major impact on adjacent jurisdictions or that attract transcendent federal or provincial jurisdiction. A self-government treaty or agreement would be required for an Aboriginal group to legislate in this area.

When an Aboriginal government passes legislation regarding a subject matter that falls within its core jurisdiction, any inconsistent federal or provincial legislation is automatically displaced. Where there is no inconsistent Aboriginal legislation in a core area of jurisdiction, federal and provincial laws continue to apply within their respective areas of legislative jurisdiction. With respect to matters on the periphery of Aboriginal jurisdiction, a self-government treaty or agreement is needed to settle the jurisdictional overlap between an Aboriginal government and the federal and provincial governments.

The Commission concludes that the *Canadian Charter of Rights and Freedoms* applies to Aboriginal governments and regulates relations with individuals falling within their jurisdiction. However, under section 25, the *Charter* must be given a flexible interpretation that takes account of the distinctive philosophies, traditions, and cultural practices of Aboriginal peoples. Moreover, under sec-

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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. 

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FIRST PEOPLES AND COMMUNICATIONS: AN EXERCISE IN HOPE AND FRUSTRATION

BY VALERIE ALIA

Canada is the world leader in Aboriginal communications, yet setbacks and cutbacks have followed every increment of progress. In broadcasting, there are about 30 First Nations radio stations in Canada, 20 in the United States, a few in Latin America and northern Scandinavia, Maori broadcasts on Radio New Zealand and a Maori radio network, and an Aboriginal station in Australia at Alice Springs. Many Canadian programs are small-scale and *ad hoc*. Others are ambitious and far-reaching—most notably, Television Northern Canada (TVNC), the pan-Arctic, satellite-transmitted television programming run by a consortium of Aboriginal broadcasters representing every northern region. With less consistent funding and the resultant scarcity of personnel, northern print media have a more checkered history.

A great many Aboriginal leaders have had journalism training, which has served them well, providing not only communicative skills, but also access to news, information, and crucial networks of policy and power. Knowing this, one might think that journalism education would be expanding, but that is not the case. A 1995 article in *Editor & Publisher*, the newspaper trade magazine, is headlined "Journalism schools get F in diversity". A survey of North American journalism programs showed little progress in recruiting minority students or faculty and the record for recruitment of students is not

much better.

In the early 1970s, Grant MacEwen College in Edmonton started the first academic program in Canada for native journalists, the Native Communications Program. In London, Ontario, the Program in Journalism for Native People (PJNP) opened its doors in 1980—only to shut them abruptly (ironically, after continuing success) a decade later. In 1983, the Department of Indian Communications Arts (INCA) was founded at Saskatchewan Indian Federated College (SIFC) in Regina. In 1992, the Gitksan Wet'suwet'en Education Society founded its own journalism school in Hazelton, British Columbia.

There is an underlying double standard which assumes that, although no self-respecting "mainstream" journalist would consider such an option, Aboriginal journalists should be willing to work for free to keep their publications alive.

After several difficult formative years, Native News Network of Canada (NNNC) continues, slowly and without core funding, to develop a First Peoples' wire service. Founded in 1990 by a group of

journalists, including its first President, Bud White Eye, and current President, Dan Smoke, it is incorporated and affiliated with the Native Journalists' Association and has made brief inroads into marketing print and radio stories.

In 1990, scarcely a year after the founding and funding of TVNC, the Alberta government cancelled the Native Communication Programme, cutting \$3 million to the 13 Aboriginal newspapers NCP had funded. The effect was devastating, the cause confusing. Part of the problem was the lack of communication among government departments. But the cuts occurred in another context, in which government has increasingly encouraged the privatization of news media. The implication is that media institutions are meant to be profit-making, or at least self-sustaining. The reality is that no one would suggest that the *Toronto Star* should switch to volunteer labour if it cannot afford to continue publishing. There is an underlying double standard which assumes that, although no self-respecting "mainstream" journalist would consider such an option, Aboriginal journalists should be willing to work for free to keep their publications alive.

Bud White Eye and I outlined the issues as we see them in a brief submitted to the RCAP on October 21, 1992, reproduced below.

COMMUNICATION AND JOURNALISM

A brief to the Royal Commission on Aboriginal Peoples by the Native News Network of Canada, Bud White Eye, President, and Dr. Valerie Alia, Member, Advisory Board

Communication is the core of the First Nations' concerns. In a democratic society, news media ensure that information is

communicated to the public. Many of the myths and misperceptions which persist

At the same time that Television Northern Canada (TVNC) received funding and captured the northern airwaves, Aboriginal Communication Societies and journalism training programs experienced distressing, sometimes devastating, funding cutbacks. The result has been the demise of programs for training Aboriginal journalists—including opportunities for early years, or first-year experience after graduating (apprenticeship year), the curtailment of news services by and for First Nations, the cutting of jobs for qualified First Nations journalists, and the extension of already overburdened facilities and personnel, sometimes to the breaking point.

among non-Aboriginal people are perpetuated by non-communication, poor communication, or one-sided communication.

Current efforts to remedy

inaccuracies in "mainstream" news coverage of Aboriginal issues are an important beginning. But they are not enough. Non-Aboriginal journalists are slowly becoming better educated about the issues and peoples they report. "Mainstream" news media are broadcasting and publishing reports and columns by (usually part-time or freelance) Aboriginal journalists.

Aboriginal people remain under-represented in these media, both in actual coverage and in employment. Where they are hired, they are often subject to the last-hired, first-fired syndrome, leaving employment statistics at the status quo. The Aboriginal-run news media are unfunded or under-funded, and must often rely on volunteer labour to continue. The crucial and highly successful Aboriginal Communication Societies which government helped to establish are threatened with extinction.

Non-Aboriginal news media are not hiring many First Nations journalists, and even if they were, this would solve only a small part of the problem. First Nations journalists must be employable and employed and they must have the option of this employability in Aboriginal and non-Aboriginal news media.

The depth and diversity of Aboriginal perspectives must be communicated through both First Nations and "mainstream" news media, and to as broad a public as possible.

The past several years have seen a number of developments in Aboriginal communications—some of them sharply contradictory. At the same time that Television Northern Canada (TVNC) received funding and captured the northern airwaves, Aboriginal Communication Societies and journalism training

programs experienced distressing, sometimes devastating, funding cutbacks. The result has been the demise of programs for training Aboriginal journalists—including opportunities for early years, or first-year experience after graduating (apprenticeship year), the curtailment of news services by and for First Nations, the cutting of jobs for qualified First Nations journalists, and the extension of already overburdened facilities and personnel, sometimes to the breaking point.

[T]he possibility of a connection between journalism and the false assumptions the Report ascribes to "the non-Aboriginal world view" is never spelled out. Nor is there any connection made between First Nations journalistic coverage of local and world events and the prospects for self-government.

Communications training programs have produced leaders—in politics, business and social services, as well as journalism. Graduates of these programs have gone on to lead national organizations and found newspapers and radio stations. There is a need for increased training. Yet, the training programs are disappearing.

Among the casualties of cutbacks were the University of Western Ontario's Program in Journalism for Native People (PJNP) and the program sponsored by Arctic College

in the Northwest Territories. These programs bypassed obstacle-creating credentials to open doors for prospective journalists—and the result was excellence on many fronts.

First Nations newspapers, magazines, radio, and television provide an effective training ground for journalists, as well as an opportunity to sell their work. If we are to increase the participation of First Nations journalists in the communication of the communities' priorities and perspectives, we must continue to foster these crucial training programs. This means promoting programs which facilitate entrance of Aboriginal students into university, as well as those which exist outside the college or university system.

In a depressed economy, equal-opportunity legislation and private company programs are of little use to Aboriginal journalists who have not earned conventional credentials—regardless of the extent of their skills or expertise.

It is more urgent than ever that Aboriginal perspectives reach a wider public. We, therefore, offer the following recommendations, for consideration by the Royal Commission on Aboriginal Peoples:

RECOMMENDATIONS FROM THE NATIVE NEWS NETWORK OF CANADA (NNNC)

1. That there be immediate and substantial efforts to revitalize the Aboriginal Communication Societies, and fund transition programs aimed at facilitating their financial independence.

2. That a program be established, of incentives to journalism schools to encourage and educate Aboriginal journalists, to include transition programs, scholarship funds, and adjustments to entrance requirements as needed.


3. That a counselling pro-

gram be established, earmarked for the development of programs and projects in Aboriginal communications.

4. That a funding program be established, as a bridge between First Nations students, teachers, administrators, and news media.

5. That the central importance of effective communications be acknowledged in according recognition to the sovereign rights of the First Nations peoples in Canada.

6. That programs be created and supported with long-term funding, for the purpose of promoting understanding and collaboration between Aboriginal and non-Aboriginal journalists.

Although some comfort can be taken from the decision to include much of our recommendations in the RCAP Report, celebration would be premature. The gist of our own analysis is included in volume 3, *Perspectives and Realities*, but the possibility of a connection between journalism and the false assumptions the Report ascribes to "the non-Aboriginal world view" is never spelled out. Nor is there any connection made between First Nations journalistic coverage of local and world events and the prospects for self-government. Lastly, there does not appear to be much discussion on the need to influence provincially funded institutions or to develop federal funding to enable the teaching of First Nations journalism within self-governing First Nations institutions. 

Valerie Alia is a Distinguished Professor of Canadian Studies at Western Washington University.

EVADING THE UNSPEAKABLE: A COMMENT ON *LOOKING BACK, LOOKING FORWARD, VOLUME I* OF THE REPORT OF THE RCAP

BY MICHAEL W. POSLUNS

One way to understand the present movement for First Nations' self-government is to examine the discourse about First Nations' autonomy which has been going on between First Nations' speakers and political and military representatives of the various European powers since the earliest contact. Until the publication of the Report of the Royal Commission on Aboriginal Peoples, this discourse on First Nations' autonomy could have been conveniently sorted into two broad categories: a *discourse of affirmation*, consisting of all those statements affirming the reality, dignity, and endurance of

simple denial of the First Nations' realities.

Looking Back, Looking Forward, Volume 1 of the Report of the Royal Commission on Aboriginal Peoples, comes down firmly on both sides of the public discourse about First Nations' autonomy, at least when the larger discourse is sorted between affirmation and prevarication. Contrary to much of the impression created by the popular media when the Report first appeared, I do not consider that this Report, and certainly not its historical volume, is consistently and unequivocally affirmative either of the First Nations or of the larger category of "Aboriginal peoples", defined in s. 35(2) of the *Constitution Act, 1982* to "include Métis, Inuit and Indians."

As Mary-Ellen Turpel repeatedly tried to tell her colleagues on Peter Gzowski's panel a day or so after the Report was released, the mere fact of a public inquiry challenging Canadians to examine very closely the history of this country's relations with the First Nations and to reflect upon how these relations continue to shape our identity as a country is worthy of some serious attention. And had Jeffrey Simpson paid close attention to the historians, Aboriginal and non-Aboriginal, at the McGill conference on the Report in January of this year, he might have been better equipped to understand Aboriginal nationhood as it has been recognized by the Crown

intermittently at least since 1763. He would also have understood better the role played by the Crown's use of "equitable fraud" by the Crown—to borrow a phrase from Madam Justice Bertha Wilson's decision in *Guerin*—has played in the impoverishment, dispossession, and displacement of the First Nations.

Looking Back, Looking Forward succeeds in moving far beyond the works of earlier periods, in which whatever scant space was devoted to Aboriginal peoples at all focused not on First Nations' relations in Canada but on Canadian Indian policy.

Looking Back, Looking Forward deserves our close attention as an historical analysis primarily because it does provide us with an encyclopaedic account of First Nations' relations in Canada from the earliest times to the present. And, for the most part, it is a history of *relations* between Canada and, to paraphrase the *Royal Proclamation of 1763*, "the several First nations". In this sense, it succeeds in moving far beyond the works of earlier periods in which whatever scant space was devoted to Aboriginal peoples at all focused not on *First Nations' relations in Canada* but on *Canadian Indian policy*.

By balancing a sense of compassion with an awareness of *realpolitik* in a panoramic view of the history organized by themes rather than by regions, the Report allows the reader to appreciate both

the variety of political issues underlying First Nations' relations, and the diversity of the First Nations in the space which has latterly become Canada. These strengths alone will make this volume compulsory reading for serious scholars for years to come.

Politically, the rumours of this Report having been shelved are greatly exaggerated. The present Government may well dislike a Report that was written under the direction of commissioners appointed by Brian Mulroney. Those recommendations most favoured by First Nations advocates will find few friends in the next Parliament if, as in the last Parliament, the Liberal Government continues to play to a neo-Conservative regionally based opposition. And certain federal officials who have been trying to sell Parliament on their own vision of "Optional Indian Band Government" since 1978 appear to have succeeded in gaining yards with the *Indian Act* amendment bill presented a few months ago by Ron Irwin. Nonetheless, this Report will continue to command attention beyond the scholarly community as long as Aboriginal peoples and their friends continue to seek a genuine measure of self-government within Confederation, and a more authentic relationship with those other peoples who are now, as the Report has it, "of this land."

The text as it has been given to us, however, is desperately in need of redemption. An uneven style is frequently the price paid for an encyclopaedic work with multiple authorship. There are, however, a series of key terms (favoured perhaps by the commissioner-authors, perhaps by the scrivener-writers), a series of unexamined assumptions which, taken together, convey

[T]he mere fact of a public inquiry challenging Canadians to examine very closely the history of this country's relations with the First Nations and to reflect upon how these relations continue to shape our identity as a country is worthy of some serious attention.

any First Nation or group of First Nations or of the reality of First Nations' culture in general; and a *discourse of prevarication* tending to the destruction, undermining, or

an impression of error compounded by wrong-headedness. A close reading of the Report's discussion around these key terms will, I suggest, encourage us to reopen the public debate around these concepts and to question the political analysis underlying them.

From the many troubling concepts running through *Looking Back, Looking Forward*, there are five which seem to me to be quite central to the thinking shared with us by the Commission and also representative of what I find pervasively problematic: an Aboriginal world view; non-Aboriginal people; assimilation, relocation, and deconstruction.

What is troublesome is the portrait of an Aboriginal world view which depends so strongly upon a contrast of the differences "in culture and perspectives between Aboriginal and non-Aboriginal people." The notion that a public inquiry in contemporary Canada can set out a portrait of a "non-Aboriginal world view" is disturbing.

It is not the concept of an *Aboriginal world view* which is troublesome. The idea of a world view that is, in broad brushstrokes, representative of a way of seeing the world shared more often than not by the speakers, story tellers, leaders, and teachers of Aboriginal nations throughout

North America is one that the Commission could hardly help but address. Difficult as it may be to portray such a world view with sufficient nuance and subtlety to do it justice, any Aboriginal person who has moved from one part of the country to another and yet felt at home in the communities of the local Aboriginal nation searches for words to express their commonality. And any non-Aboriginal friend who has felt drawn by the warmth of traditional communities struggles to find words within his or her own dialect to express a parallel experience.

What is troublesome is the portrait of an Aboriginal world view which depends so strongly upon a contrast of the differences "in culture and perspectives between Aboriginal and non-Aboriginal people." The notion that a public inquiry in contemporary Canada can set out a portrait of a "non-Aboriginal world view" is disturbing for several reasons. First, because for several years I taught a course called "Public Policy and Aboriginal Issues" in which the largest plurality of students were non-Native, non-European young women. The failure to distinguish between the perspectives these students had and, for example, the interests represented by John A. Macdonald and his protégé-turned-treaty commissioner, Alexander Morris, simply serves to create new stereotypes.

Furthermore, many Aboriginal and First Nations teachers have demonstrated that an Aboriginal world view—centred largely on a devotion to the land and understanding life through a cosmology which describes the cycles of the Creation as they are observed in that land—provides a surprising link between the Aboriginal peoples of North America and other indigenous

peoples throughout the world. The late George Manuel, the founder of the World Council of Indigenous Peoples, was certainly not the first North American First Nations leader to point to Aboriginality as a uniting rather than as a distinguishing feature. The use of this valuable concept to foster a sense of negative otherness can not be counted as part of

A close reading of the use of the term non-Aboriginal people in Looking Back, Looking Forward strongly suggests that the Commission has hit upon this term as a euphemism which it has chosen to use when it does not wish to be more straightforward in its criticism of federal governments.

the Discourse of Affirmation. It reduces the Aboriginal world view to something much narrower and more sectarian than the visionary representations offered by First Nations leaders.

A close reading of the use of the term *non-Aboriginal people* in *Looking Back, Looking Forward* strongly suggests that the Commission has hit upon this term as a euphemism which it has chosen to use when it does not wish to be more straightforward in its criticism of federal governments. However the phrase *non-Aboriginal people* came to be adopted by the Commission, it is unlikely that they ever had my undergraduate students in mind. The Commis-

sion simply did not want to offer a more direct account of the relations between the Indian Affairs Branch and the classes who have been its primary clients from the earliest times. Instead of offering some semblance of a class analysis of the historical relationship between Indians, the Indian Affairs Branch, and the development interests, the Commission has chosen to provide us with a political equivalent of "dark meat and light meat". Taken as a whole, this volume is ripe with inappropriate figures of thought which may continue to blunt the thinking of Canadians on these issues for another generation.

Assimilation is, in my mind, the most troublesome of the many misappropriated figures: "Non-Aboriginal society made repeated attempts to recast Aboriginal people and their distinct forms of social organization so they would conform to expectations of what had become the mainstream. ... We suggest that the period of displacement and assimilation ... was concluded by the federal government's 1969 white paper." The notion that the Government of Canada had a consistent policy for more than six months or from one agency to another will come as a surprise to many. Assimilation must then be one of those all-encompassing terms which include (a) moving communities off reserves which are wanted for urban development or other kinds of European settlement and sending them off to the hinterland; (b) drawing Aboriginal communities into urban areas; and (c) keeping them on reserve; or, in more summary terms, assimilation as a consistent policy over 99 years includes "Go!", "Come!", and "Stop!". Further, the news that the policy of assimilation

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ended with the White Paper policy will come as a surprise to all those who, following Harold Cardinal and the late George Manuel, were persuaded that assimilation was at the very heart of the 1969 White Paper. The Commission

The Report presents a deeply moving account of the residential schools, characterized by malnutrition, overcrowding, and more aggressive forms of physical abuse resulting in mortality rates of up to 40%.

never seems prepared to acknowledge that, etymologically, "assimilation" is a euphemism, if not a litotes,

for the extinguishment either of persons or of peoples.

The Report presents a deeply moving account of the residential schools, characterized by malnutrition, overcrowding, and more aggressive forms of physical abuse resulting in mortality rates of up to 40%. Even more stirring are the stories of a long series of communities which were repeatedly uprooted, displaced and, despite promises of food, clothing, houses, and the tools of economic development deserted in conditions of extreme impoverishment. But there is something deeply inappropriate about referring to the peoples dispossessed and displaced in this way as "relocatees". Although a later sub-section is entitled "Displacement and Assimilation", the major account of these events is given in a unit called "Relocation of Aboriginal Communities". The use of the term "relocation" is strangely resonant with the Nazi use of

the same term to describe the forced movement of European Jews into Poland for "re-settlement", meaning less than benign neglect.

Finally, there is a sub-title "Displacement and deconstruction of the Indian nations as policy". The word "deconstruction" does not occur in the text of that sub-section. In the absence of a whole sentence, I can only guess that this title is yet another understatement intended to make the history the Commission is intent upon telling more palatable to the reader. Just which reader's sensibilities they intended to appease will remain a mystery until someone publishes a study on relations between the commissioners and their research staff. Perhaps, to paraphrase a commentator on the Holocaust, it was necessary to find words to reduce the unspeakable into the merely unsayable.

Looking Back, Looking

Forward, euphemism, litotes, and obfuscation notwithstanding, brings us—two steps forward and one step back—haltingly closer to what Winona Stevenson pleaded for: "the deconstruction of our colonization [to shed] light on why our communities are so troubled today and why Aboriginal women are at the bottom of Canada's socio-economic ladder".



Michael W. Posluns was the founding director of the parliamentary relations program of the Assembly of First Nations. His most recent book "Voices from the Odeyak" (Toronto: NC Press, 1993) is a study of the James Bay Crees' resistance to the Great Whale Hydro Development Project. He is currently a doctoral student at York University where he is writing a dissertation on "The Discourse of First Nations' Autonomy".

KEY CONCLUSIONS AND RECOMMENDATIONS OF THE FINAL REPORT OF THE RCAP from page 81

tion 33, Aboriginal nations can enact "notwithstanding" clauses that suspend the operation of certain *Charter* sections for a period of time. However, by virtue of sections 28 and 35(4) of the *Constitution Act, 1982*, Aboriginal women and men are in all cases guaranteed equal access to the inherent right of self-government and are entitled to equal treatment by their governments.

The constitutional right of self-government is vested in the peoples who make up Aboriginal nations, not in local communities. Aboriginal nations have the right, under

section 35 of the *Constitution Act, 1982*, to determine which individuals belong to the nation. However, this right is subject to two limitations. First, it cannot be exercised in a manner that is discriminatory toward women or men. Second, it cannot specify a minimum "blood quantum" as a general prerequisite for citizenship. Aboriginal peoples are not racial groups. They are organic political and cultural entities, often with mixed genetic heritages and often including individuals of varied ancestry. Their identity lies in their collective life, history, ancestry, language, culture, val-

ues, traditions, and ties to the land.

In order to assume their rightful place in this vision, Aboriginal peoples need to have tools at their disposal to ensure their success in reclaiming nationhood, in constituting effective governments, and in negotiating new relations with the other partners in the Canadian federation. Aboriginal peoples will need capacities to rebuild their nations, to set up Aboriginal governments, to negotiate new intergovernmental relations, and to exercise government powers over the longer term. This will require in-

creased training of Aboriginal government officials, enhanced planning and management capacities, the development of codes of conduct and accountability regimes for public officials, and the establishment of data collection and information management systems.



David C. Hawkes was the Research Director for the Royal Commission on Aboriginal Peoples. This article is an excerpt from a paper that Mr. Hawkes delivered at a Public Forum held on the Final Report in early March 1997.