

"ABORIGINAL SELF-GOVERNMENT:  
TOWARDS A VISION OF CANADA AS A NORTH AMERICAN COUNTRY"

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PAUL L.A.H. CHARTRAND  
Associate Professor  
Department of Native Studies  
University of Manitoba (on leave 1995-96)

Commissioner, Royal Commission on Aboriginal Peoples

Interim President, Institute of Indigenous Government  
Vancouver, BC. Tel: (604) 602-3402 Fax: 602-3400



TITLE: "Aboriginal self-government: Towards a vision of Canada as a North American multinational country."

ABSTRACT: The goal of Canada should be to build upon its Aboriginal foundations, and create a vision of a country that is North American in its orientation, rather than a cold, legislated pale imitation of Britain and Europe. Aboriginal people must see themselves reflected in the national institutions of Canada. The project of aboriginal self-government, at this early stage, is still not well understood, as reflected in some of the language and ideas relied upon in the public dialogue.

Canada, and all Canadians, stand to gain from the recognition of Aboriginal self-government. This recognition and implementation would establish Canada as a place where a rights dialogue is effective to replace the civil warfare that often accompanies the claims of oppressed nations caught as enclaves within modern nation-states. The true vision is one of Canada as a North American multi-national country.

ABOUT THE AUTHOR: Paul Chartrand, Teach.Cert.; B.A.; LL.B.(Hons.); LL.M.; is on leave in 1995-96 from his position as Associate Professor of Native Studies at the U. of Manitoba. From 1991-1996 he has served as a Commissioner on the Royal Commission on Aboriginal Peoples and is currently the interim President of the Institute of Indigenous Government in Vancouver.

Re: Dilemma of searching for the Canadian identity, a current example is Trevor Lautens, "Lean leaders are not the people to inspire Canadians", Vancouver Sun, Saturday, March 9, 1996, p.A19.

The North is Canada. Canada is the North. It is its Northern image that distinguishes Canada from the United States in the eyes of many ordinary people who do not live in North America. Canada is the cold country to the North, a vast quiet place with a scattered population of Aboriginal people. Perhaps for those individuals who take a closer interest in history and politics, Canada also contains two large immigrant populations engaging in constant paper and literary warfare. As a whole, it is seen as a young country without homemade heroes that suffers from a sense of self-esteem and self-identity; a country that whispers its name.

There must be some hyperbole in this introduction, perhaps inevitable and even useful in a brief presentation as this one. And at least some of it is based on personal experiences that would make good stories for another day. In Australia it was insisted that I was an Eskimo because I was from Canada, that cold place north of the United States. In a gaasthouse in Vienna, a middle age Czechoslovakian with whom I shared a beer and a schnaaps longed to visit Canada, a place where you could sit in a forest and not hear a man-made sound.

If we view a country as a living, dynamic matter of the soul and the heart, my first proposition is that it would be better if Canada were to recognize its Aboriginal foundations in creating a self-image and a vision of its future as a truly North American country. The project of building Canada's image as a pale imitation of a transplanted Europe has seen its day and should no longer be pursued. On the other hand, if we turn inwards and reflect upon the philosophies, the traditional knowledge, the histories, the languages and the cultures of the historic nations of this northern place, there is hope to build a vision of a country that will stand as a model for the world. We all stand to gain from the Aboriginal value ascribed to the special relationship between humans and their land and environment, the spirit of place. And we need to recognize that in a world of

uncertainty, cultural diversity, like biological diversity, may be man's best bet for survival.

If on the other hand we view Canada as a series of cold winters and an endless series of constitutional refinements, then my proposition is that the Aboriginal peoples deserve recognition of their special status in Canada as a cold, constitutional entity.

Historically, the Manitoba Act provisions regarding the Metis lands and the treaties are constitutional compacts which represent the consent of external groups to join the Canadian federation upon certain terms. Canadian principles of law, politics and morality require that constitutional promises must be kept.

Contemporarily, the common law courts have to face the question whether and to what extent federal common law recognizes what is loosely called an aboriginal right of self-government. The Royal Commission on Aboriginal Peoples has presented an argument it does and the rights are protected by the Constitution. But the rights dialogue on aboriginal self-government is not taking place only in the courts. A number of distinct and overlapping foundations are being developed and debated for a right of self-government for the indigenous nations of the northern part of the Northern hemisphere [Kymlicka], including traditional liberal foundations.

Here I emphasize that the due incorporation of its Aboriginal foundations in a better Canada need not be based upon the notion of self-government, although it is the topic of my presentation today. For one thing, the notion of self-government is not the same as the notion of self-determination, and self-determination may prove to be a useful foundation for the dialogue of rights. [Hocking, Crawford] So may a human rights foundation. [Anaya, Hannum]

The essential goal I am espousing is to give a public and national voice and visage to Aboriginal Canada. In 1996 the burgeoning young Aboriginal population does not see itself reflected in the national institutions of this country. They must if not today then tomorrow have a voice in

making public decisions or Canada will face the consequences of an alienated, dispossessed, and disaffected group that can refute any Canadian claim to universal legitimacy among its citizens.

It is important and urgently so, that Canada embrace legitimizing institutional participation by the historic indigenous nations. Parenthetically, there are important distinctions between such matters as effective political participation and legitimate political representation that are not always appreciated. [P. Chartrand HOS article and committee on electoral reform.] Furthermore, the true goal of democratic participation must not be obscured by easy and false appeals to formal equality.

True participation as a goal is being urged in a dialogue of rights; a dialogue of rights that not only appeals to Canadians' sense of themselves but also reflects the relatively pacific philosophies and pacific historical relations between Aboriginal peoples and settlers in Canada. The norms upon which the country is built ought to reflect the shared ideals of all Canada's historic nations. It is not fair to pretend to compare the ideals of one society with the worst aspects of the other, an unfortunate exercise that is behind much bad history and some distorted contemporary political rhetoric

This dialogue of rights suffers a number of infirmities, including some quite general misunderstandings of ideas and words if not deliberate misrepresentations by some participants. I will outline a very few examples.

#### ABORIGINAL SELF-GOVERNMENT VS. ABORIGINAL SELF-DETERMINATION OR 'WHAT IS THIS INHERENT RIGHT ANYWAY?

Self-determination is a concept applied to 'peoples', whether they are Aboriginal or not. A 'people' is a group of humans defined by a collective consciousness, by culture, geography, political heritage and so on. If a right inheres in such a group then the right is inalienable and persists with the group. You terminate the right by terminating the people.

On the other hand, the right of Aboriginal self-government that most public speakers seem to be concerned about is a limited right of self-government recognized by Canadian law which is not only protected by the Constitution but also limited by it. Such a right is almost always accompanied by the qualifier inherent. From the perspective of Aboriginal politicians this is a signal to their constituents that they are not succumbing to the notion that the distant government with which they are dealing are giving them any rights. As a matter of strict law and logic, however, the rights at issue can only be inherent in their source or origin, and not in their nature.[RCAP Partners]

#### SOVEREIGNTY VS. JURISDICTION

#### ABORIGINAL SELF-GOVERNMENT SEEN AS AN ISSUE OF 'RACE'

It is plain to any student of this policy area that Aboriginal peoples comprise societies of people that are communal and political in nature. Membership in the relevant group is never sufficiently determined by reference to a 'blood' or 'race' criterion. Membership is a political issue. A child born to Aboriginal parents may leave and live as a stranger; a child of strangers may be adopted. Outsiders marry in. It is sometimes difficult to believe that politicians who wish to attack Aboriginal self-government would use this obviously mistaken 'race' notion, but in fact it is effective and is one of the greatest obstacles of the mind in the road to public acceptance of Aboriginal self-government.

There is more incidental rhetorical detritus in this area. For example there is the common expression 'Aboriginal origin or ancestry'. This ostensible emphasis on birth usually distorts the speaker's intentions because it implies that persons who are accepted into an Aboriginal group but are not born into it are illegitimate, such as status Indian spouses prior to 1985 and at the same time implies that an individual who happens to have an Aboriginal ancestor is legitimately a member of a group with which he may have no rational association.

## ONE LAW FOR ALL

This most perverse of all bleatings against any move towards Aboriginal political autonomy is a favourite of many politicians who must be taken to know better, whether raised as the cowardly wail of Attorney-General Andrews of Newfoundland against the powerless Innu of Labrador or the sham of the briefly Prime Ministerial Kim Campbell reneging on a recognition of Aboriginal self-government. The question is who is captured by 'all'? Canadians don't include Americans in the cry of one law for all. Ontarians don't include Manitobans. Youth courts don't try adults and special language and denominational rights don't apply to everyone in Canada. What is especially galling for Aboriginal people is that this perverse cry gives the back of the hand, without addressing, the absolutely fundamental issue of the legitimacy of the political boundaries which have included distinct peoples without their consent or legitimate participation. Canada has never been able to answer the challenge to the legitimacy of its exercise of power over the Aboriginal peoples of Canada.[PC: HOS 1993.]

.It should concern everyone to clear up the ambiguities to clarify the rights debate. The identity and moral stature of Canada are at stake. All Canadians have a duty to act to make this a place where rights talk is recognized as morally superior and more politically effective than guns talk. To illustrate, an appeal to idealistic norms or rights talk will only be relevant where the person addressed has a sense of being a moral being with a duty to act morally or in accordance with the norms advanced in the debate. "You are a good person and this is the way a good person ought to behave." What kind of country do you want to live in? Is the proposition important to you that the exercise of state power always needs to be justified not only in respect to the State and the individual but also with respect to the State and historic nations who have not given consent or legitimized the exercise of power by free,informed,legitimate and effective political participation? Is it important



to you that solemn promises made by public officials, like all promises, ought to be kept? Is it important to you that the government ought to act in accordance with the law of the Constitution? That is the scope of what is in the question of Aboriginal self-government for all Canadians; for non-Aboriginal people, reflect on what the implications are for you may be the Indians of tomorrow..

Even if we go beyond the scope of moral and normative arguments, it can be observed that people, when conditions are right, will fight to maintain their culture, that is, for control to decide "the way we do things around here". Even the basic goal of social harmony suggests that the claims of the indigenous peoples to national stature and distinct group political participation ought not to be rejected. Surely, the true vision of Canada is not that of a polyethnic country dominated by two recent immigrant groups. No, the true vision of Canada is a vision of a multinational North American country.

Such a vision is one of Canada built on its Aboriginal or North American foundations, a place where the histories of all its historic nations matter, a place where peoples matter, a place where rights matter.

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