REMOVING BARRIERS: A LISTENING CIRCLE

A CONFERENCE OF THE CITY OF CALGARY

COMMUNITY AND SOCIAL DEVELOPMENT DEPARTMENT

NOTES FOR A KEYNOTE ADDRESS BY

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CHECK VS. DELIVERY

Greetings

I am honoured to have been invited to speak to you today at the opening of your conference. I offer my humble congratulations to the sponsors, the National Crime Prevention Centre, the Calgary Homeless Foundation, the Metis Nation in Alberta, the Treaty Seven Economic Development Corporation, and the organizers, the City of Calgary's Community and Social Development Department, and especially Linda Manyguns, the Listening Circle Coordinator. I also look forward to listening tomorrow to some of the discussions on the particular topics with which the Listening Circle is concerned.

As one of the seven commissioners on the Royal Commission on Aboriginal Peoples, I am heartened to be told that the recommendations in Volume 3 of the Commission's 1995 *Final Report*, which is entitled '*Gathering Strength*', may have inspired some reflection on appropriate directions to address the concerns of the participants.

I should begin with a brief review of what RCAP was about and what it tried to do. The Commissioners, including four Aboriginal persons representatives of the Aboriginal peoples, were appointed by order in council in September 1991 on the recommendation of the late Chief Justice of the Supreme Court of Canada, the Honourable Brian Dickson, who had been appointed as the Prime Minister's special representative to consult widely across Canada and to propose a

mandate. His sixteen point mandate was accepted by the Prime Minister and it essentially included all aspects of policy concerning Aboriginal people. This was an historic mandate; it was the first time a Commission or Task Force had a power and a duty to take a comprehensive look at all aspects of policy concerning all the Aboriginal peoples. Our appointment came in difficult times. The country's leaders were arguing about the place of Aboriginal people in the Constitution. First Nations were blockading roads and rail lines in Ontario and British Columbia. Innu families were encamped in protest of military activities and installations in Labrador. A year earlier, armed conflict between Aboriginal and Canadian forces at Oka, Kanasestake and the Mercier bridge had tarnished Canada's reputation abroad and in the minds of many Canadians. But it was also a time of hope; there was in fact wide support for Aboriginal people and aboriginal rights. Aboriginal people were rebuilding their ancient ties to one another and searching their cultural heritage for the roots of their identity and the inspiration to solve community problems. The Commission directed its work to one overriding question; 'What are the foundations of a fair and honourable relationship between the Aboriginal and non-Aboriginal people of Canada?

We concluded, after 178 days of public hearings in 96 communities, consultations with dozens of experts, scores of research

studies and examination of numerous past inquiries and reports, that the main policy direction of the last 150 years, of trying to assimilate or absorb Aboriginal people into Canadian society and thereby eliminating their identity as distinct nations, had failed. Fundamental change was proposed, based upon the recognition that Aboriginal peoples are nations. This means they are political and cultural groups with values and lifeways distinct from those of other Canadians. To this day, Aboriginal people's sense of identity, of confidence and well-being as individuals remains tied to the strength of their nations. Only as members of restored nations can Aboriginal people reach their potential in the 21st century. This RCAP approach required some fundamental changes not only in policy but in the way that Canadians perceive Aboriginal people.[1]

From my perspective in November 1999 this emphasis on the rights of Aboriginal 'nations' has not only provoked some strong reactions from defenders of the status quo and opponents of Aboriginal rights, but has obscured the significance of the large number of Aboriginal individuals today who have no immediate association with an ancestral community, and especially those who live in urban areas. RCAP's 'rights-based' approach does not apply to individuals. Furthermore, the liberal concept of affirmative action is entrenched in

[1] See RCAP, *People to People, Nation to Nation*, Minister of Supply and Services 1996.

section 15 of the *Charter*, quite outside the part of the Constitution that protects Aboriginal rights, and the relationship between affirmative action and special programme and service delivery in urban areas can be explained quite apart from the framework of Aboriginal rights.

The task I have set for myself in this opening address is an attempt to debunk the myth of 'race' which has been used in media commentary to attack a policy of recognition of Aboriginal rights, and to propose that the current law of the Constitution, whether based on the *Charter* and affirmative action, or on the rights of historic Aboriginal nations which are protected in Part II, section 35 of the *Constitution Act 1982*, is adequate to allow real progress in the cooperative delivery of programmes and services to urban Aboriginal communities. My assumption is that cooperative action requires a dialogue of good will and that such dialogue is made easier if the participants agree on the basic and substantive ideas with which they have to deal. We have to recognize each other for who we are and avoid the ambiguities of mythology and political fantasy.

Almost any day you can read in a Canadian newspaper the bleating of the myth that Canadians should not support 'race-based' self-government, or indeed any legal distinctions based on 'race.' Now, at first blush who could possibly oppose the idea that it is wrong to treat people differently as a matter of law or policy on account of their

biological makeup alone, a factor about which no individual has a choice?

This myth is further strenghtened by relying on the stock-in-trade argument of reactionary ideology, that is to argue that a policy however well-intentioned, can be demonstrated by its opponents to contain within it the seeds of disaster for the beneficiaries of the policy. The policy will have a perverse effect that must be avoided. The theory of the perverse effect has a pedigree going back to the French Revolution and is the strongest undercurrent of all media attacks on aboriginal rights today.

The 'race' myth can be further strengthened, by those who peddle it, by loosely associating it with the evils of 'racial persecution' such as the Nazi Holocaust or South Africa's apartheid regime, and cause the eyebrows of well-meaning Canadians to rise even further. In fact, I have been surprised at how much general support is given by many Canadians to the idea of Aboriginal self-government despite the fact they have absorbed this first myth. This 'raised-eyebrow' support for Aboriginal self-government, however, is unprincipled and can not withstand reasoned scrutiny. [2]

Others, convinced by the loose jargon of 'race-talk' mythology,

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[2] The false association of Aboriginal self-government with apartheid and with the African-American civil rights movement has been conclusively debunked by Will Kymlicka. See *Liberalism, Community and Culture* Oxford University Press 1991 and *Multicultural Citizenship.* Oxford U Press. 1995.

sincerely and naively, or worse, raise the policy cry of 'special needs, not special rights', a specious formulation behind some provincial policy regimes which resist whatever weak-kneed federal 'self-government' policies Canada might propose.

And the false political rhetoric of 'racial difference' has not always been promoted only by opponents of Aboriginal rights, but also by some Aboriginal spokesmen, anxious to assert a difference that matters in making claims to self-government, and possibly moved by the weight of the Aristotelian notion that difference is important to avoid the principle that 'like cases ought to be treated alike'.

But the concept of 'race' is the wrong difference; the right difference is the difference of history, the difference of the prior existence of socially and culturally distinct communities who lived here on their own homelands, on lands not wrongfully taken and therefore, that by fundamental principles of justice recognized by all societies rightfully belongs to them. Parenthetically, it is the Canadian exercise of control over these very lands, which in some cases *were* wrongfully taken, that requires moral and legal scrutiny, not the prior rights of the 'aboriginal' inhabitants.

The right difference is the difference emanating from the value humanity ascribes to cultural difference and the respect due to the diversity of belief in organizing and understanding the universe.

Before explaining what RCAP viewed as the right difference, let me explain what I mean by 'myths' when I use the term today. All societies have their stock of myths, which perform the functions of serving as models of and for cultural attitudes and behaviour. Myths reflect the beliefs and give sanction to the actions of society, and this is equally true of legal myths, the existence of which not everyone is aware. So myths are not useless; they have social value, because they make thinking, as a problem-solving exercise, unnecessary.

Myths are nurtured by ambiguities and uncritical use of language, and 'can achieve an integrity, a validity, a power, which is impregnable to any attempted demonstration of the unreliability of their component parts. We realize that many people have different investments in their beliefs, that humans are governed more by emotion, custom, and precedent, than by logic and reason, that errors and illusions, serving some explanatory purpose, frequently become endemic myths shared in common in the world of unreason and political fantasy. Myths that at one time may have served a socially useful purpose may live into a time when they have not only become useless, but thoroughly baneful, decayed, degraded, and degrading....'[3]

To emphasize that this perception of myth applies universally and not singularly to apologists for Aboriginal rights, let me cite an example

[3] Montagu, *infra,* footnote 4, at page 42.

ON MYTHS

having nothing to do with Aboriginal rights or Aboriginal people. Listen to the final words of the hymn '*All Things Bright and Beautiful*;

The rich man in his castle,
The poor man at his gate
God made them high or lowly,
And ordered their estate.

The belief in wealth as evidence of divine grace, and poverty as a proof of moral error is unfortunately not consigned to history's dustbin, but being dusted off by contemporary proselytizers. I do believe, however, that most Canadians will consider ~~the~~ these particular ideas in this hymn as a useless myth that has done its time. So it should be with the myth of 'race', whether applied to Aboriginal people or not.

I do not know what those who wrote section 15 of the *Charter* of 1982 were thinking when they subscribed to the myth of 'race' and entrenched the odious notion in the most fundamental law of Canada. The Constitution contains other unusual things, like sawdust and woodchips. I really do not know what they thought they were adding to the ideas already captured by the concepts of ethnic and national origin and of colour. But they did it, despite the fact that Ashley Montagu had, as far back as 1942, effectively debunked the myth of 'race'. [4]

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[4] Ashley Montagu, *Man's Most Dangerous Myth: the fallacy of Race'* Altamira Press 1997, first published in 1942.

Probably known, if known at all by the public today, as the author of the book *The Elephant Man*, Montagu has been ranked as one of the most influential public intellectuals of the twentieth century, and the most important theorist in the area of race relations. Montagu, as a social scientist, was able to show that there is no such thing as a 'white race', a 'black' race, a 'yellow' race, or a 'red race' in even a biological sense, there being usually a greater variability in physical traits within any population than between populations, and a strikingly small number of gene differences between populations described by 'race'. The conclusion is not there are no differences between such groups, but that they are superficial, and far fewer in number than the traits we have in common. Racists, of course, wish to classify the distinct groupings or 'races' and classify them as superior or inferior, the classifier's group usually ending up at the top.

Montagu concluded that humankind may be regarded as comprising of a number of populations or peoples the members of which often differ physically and superficially from one another. These differences have come about as a result of the long isolation of such populations during which the physical differences have evolved. The *cultural* differences have come about as a result of the differences in the history of experience to which each population has adaptively responded, and it is these differences that are relevant to the protection

of the cultures and the rights of Aboriginal peoples.

Both the physical and the cultural differences are neither fixed nor permanent, but are subject to change. The inclination to see Aboriginal people and culture as fixed at the time of the arrival of the Europeans in their homelands, is an example of a racist notion that infects even the development of the evolving doctrine of Aboriginal rights law in Canada. As the great American folksinger Woody Guthrie expressed it, 'plagiarism is basic to all culture....'

s. 15 and 'race'

Holding our noses, we may proceed with an examination of two basic ideas in the *Charter* section that has entrenched the myth of 'race'. First, as required by section 15, (1) every individual is equal before and under the law, and has the equal right to the benefit of the law without regard to 'race, national or ethnic origin, colour, religion, etc...' This idea is pervasive in the public consciousness and generates cries of 'one law for all', meaning, of course, individuals.

affirm action

The second concept is a bit more contentious but has a long pedigree in Western thought. It is an aspect of the notion of corrective justice as propounded by Aristotle and repeated and refined by the most prominent moral philosophers of the twentieth century. It mandates affirmative action to redress historical inequities and to put everyone on the same footing before applying the concept of distributive justice, which requires that like cases be treated alike and everyone get the same.

I like my speech
— hands out [illegible] to all..!

Of course, where cases are unlike, they have to be treated differently, and affirmative action is the answer. That is the work of section 15 (2), however badly explained within the limits of the present address.

But notice that the concept of 'race' in s. 15 pertains to ***individuals***, and not to 'nations' or 'peoples' whose group rights are protected in s. 35. Much of the general confusion about aboriginal group rights seems to arise from the erroneous conflation of the two groups; that is, equating the s.15(2) groups of individuals identified by what is understood within the false idea of 'race' as persons of 'racial ancestry' with the groups that comprise the 'peoples', which are in their nature, as RCAP explained, historical, social and cultural communities.

RCAP borrowed the ideas about Aboriginal self-government from the international law notion of self-determination of 'peoples' and crafted it into a domestic legal and constitutional theory. The courts have not yet ruled on this issue. Aboriginal peoples should be understood in the same way that all peoples are understood, that is, not as racial groups but organic political and cultural entities. International law recognizes that a 'people' is the group most likely to protect the human rights of its members. It recognizes that no one community and no one 'people' has a monopoly on the truth about the best way to organize a community, and so 'the public interest' can not be decided by strangers. It recognizes that the public interest of the Cree is best decided by the Cree, that the public

interest of the Kainai is best decided by the Kainai, and so on. And a fundamental aspect of the right of self-determination is the right of self-definition. Each people is free to decide on what basis it will accept its members; it is the rational association between an ancestral community and an individual, the connection which demonstrates community acceptance of the individual as a member of the community that distinguishes individuals 'of aboriginal ancestry' entitled to the affirmative action policies of s.15, on the one hand, and the individual member of a s.35 'people' or 'nation' in which are vested group rights.

If all peoples are equally entitled to the right of self-determination, that must include the Aboriginal peoples. People develop particular cultural preferences within communities, and learn to cherish them. Individual identify is bound with community identity and individuals defend their idea of community with vigour. They prefer to do things their way; '*this is the way we do things around here...*' and accordingly draw political boundaries around themselves to delineate what is meant by 'around here'.

So it was that RCAP defined an Aboriginal people or 'nation' as a sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain territory or group of territories. On this view RCAP opined there may be 60 to 80 such 'nations' in Canada that could be so recognized. Contrast that with

the 600 or more Indian 'bands' and Inuit and Metis communities which comprise together about a thousand communities.

It is apparent that RCAP proposed the recognition not only of group rights, but of rights of sizeable groups. That is a long way from a notion of rights of individuals based on a myth of 'race'.

The official recognition of group rights is not well understood or well tolerated in Canada, as evidenced by the history of denominational schools and French language rights. But the idea of group rights recognizes that it is only the group in some circumstances that can have the legitimacy and the resources to create conditions in which the exercise of particular rights by individuals may be possible. Language rights are the obvious example, and entrusting one's human rights to the protection of strangers is not appealing to most people.

No useful policy purpose would be served by a notion of group political rights of self-governance where the group composition was pre-determined by biological makeup. Aboriginal people told RCAP that their individual identity is associated with a culture; with aspects of their identity which attaches them to their ancestral community. No one proclaimed the unilateral rights of individuals to attach themselves barnacle like upon a community of strangers and claim membership on account of ancestry alone. The aboriginal right of self-government, according to RCAP, exists to permit the survival of distinct historical

and social communities. The Courts also are developing a similar theory of rights which protects cultural activities that are integral to a distinctive Aboriginal culture. It is culture that is valued in offering protection for the right of self-government; it is not biological cultures from laboratories but human cultures or ways of doing things together.

PAST BAD POLICY ATTACK ON CULTURE

The legacy of past bad policy examined by RCAP emphasized the lack of tolerance and respect for different ways of life, for cultural activities different from those inherited from the unique cultures of Europeans. In this part of what is now Canada the law was used as an instrument to crush beliefs that were different from those of the European and Christian societies that took over the ancient homelands of the Cree, the Blackfoot, the Blood and Stoney peoples. The more difference the more severe and swift the historical sanction and the destruction. Polygamous families were destroyed by the sanction of imprisonment; wehtigo killings were stopped by prosecutions and convictions of homicide under Canadian criminal law.

It would be wrong to conclude from this that the cultural destruction wreaked by Canadian intrusion has effectively leavened all aboriginal cultures into a monolithic whole. Values and beliefs are a matter of the head, the heart and the soul; cultural difference is pervasive and subtle. I suspect any red-blooded Albertan might put up a staunch defence of that proposition if faced with the assertion of sameness with

Americans and Englishmen, in fact, perhaps with those odd people from Saskatchewan and British Columbia!

It is in fact the differences of history, the differences of cultural beliefs and values, the differences of relationship to the lands, that are protected by the idea of human rights; the concept of self-determination of 'peoples' is a basic norm in the United Nations Bill of Rights and in the current Draft Declaration on the Rights of Indigenous Peoples.

So I have argued that a proper understanding of the differences between individual rights and aboriginal group rights can promote a better dialogue about the place of Aboriginal peoples in Canada and the basis for cooperative action to deliver programmes and services in urban areas. I have reflected upon some of the illusions and the myth of 'race' and its poisonous influence on the public dialogue. It may be that media commentators that some media commentators have been blinded by some of the mythology of 'race' but time and the weight of moral opinion around the world is against them. The concept of self-determination of all peoples, including Aboriginal peoples has become an important focus of international human rights law, and Canada has officially recognized its application to indigenous peoples.

on vol 3

Before concluding, allow me to review the principles urged by RCAP to guide discussions about the delivery of social services to Aboriginal people, especially in urban areas.

In Volume Three, the RCAP made recommendations on new directions in social policy, including respecting education, housing, health, family services.

In addition, an entire chapter of Volume Four addressed these issues in the urban context, that is, in cities and towns. This chapter noted that the influx of Aboriginal people into Canadian cities is a relatively recent phenomenon and that Canadian policy, which has traditionally been designed for Aboriginal communities (and not *by* or *with* Aboriginal communities) has not kept pace, but has developed in a piecemeal, uncoordinated fashion, leaving gaps and disputes over jurisdiction and responsibility. ALSO RT REPORT

What do Aboriginal people in the cities want? According to the views received by RCAP, desiring to maintain their identity as Aboriginal people, they want urban institutions that reflect their preferred values, the values that make them who they are. In this respect, they are the same as Aboriginal people everywhere, indeed the same as people everywhere. They wish not to have to shed their identity at the city limits, and to be respected for who they are, and to be able to live their lives with their families in happy neighborhoods.

In Volume Three the Commission identified four essential characteristics of social service systems that would respond to what Aboriginal people want. They were proposed in respect to health

services but certainly are intended to apply to all social services. These characteristics are the following;

-*equity* in the sense of access to services and results that are equivalent to those available to other Canadians,

-*holism* in the sense that services must be designed and delivered, not in a way that splits human problems and needs into separate symptoms and assigns them to separate offices to be dealt with in a segmented, disjointed manner, but based on an approach that problem-solving be comprehensive, coordinated and integrated, and that services be flexible enough to respond to the complexity of human needs.

-*control*, in the sense that service systems must be returned to the control of Aboriginal people. The evidence is that control by outsiders simply does not produce good results - in any community. Powerlessness is related to ill-health and this was emphasized to us by Canadian medical experts.

-*diversity*, in the sense that service systems must be able to reflect the preferred public, cultural and organizational values of the various Aboriginal traditions. Aboriginal people come from diverse communities with diverse world views, histories, and diverse family and social relations systems. Programmes must be designed and delivered by people familiar with the languages and traditions of the relevant community.

It is interesting to compare these points with the conclusions of the joint Law Commission and National Association of Friendship Centres study, which is entitled '*Urban Aboriginal Governance in Canada: Re-Fashioning the Dialogue*'[5] In taking the dialogue further, participants are encouraged to embrace the following fundamentals, and to begin 'the crucial task of engaging youth';

- balance the two sides of justice: treat like cases alike and unlike cases differently;

- flexibility to reflect the various demographic patterns in cities;

- the democratic inclusion of people within governance design;

- sharing techniques, tools and talents between organizations and Aboriginal organizations and governments.

The conclusions about engaging young Aboriginal people are particularly instructive. In cities and towns across Canada there are many individuals who are genetically descended from the indigenous and historic nations of Canada but who, on account of their personal circumstances, do not belong to any particular Aboriginal community. Perhaps they were adopted to strangers at birth; perhaps they were born of parents who themselves are descendants of , or even members of Aboriginal nations, but because of the lack of official recognition of

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[5] The National Association of Friendship Centers (sic) and The Law Commission of Canada, Urban Aboriginal Governance in Canada: Re-fashioning the dialogue ISBN 0-662-27891-7. 1999, at page 1.

these nations in Canadian policy, are not able to assert their community affiliation and have it accepted. Others are in different circumstances and have moved to the cities from communities that are indisputably 'core' communities descended from Aboriginal people, but current policy and practice does little or nothing to provide them with services in cities as members of their historic nation.

The Law Commission and Friendship Centres publication emphasizes that these young people are the main repository of hope for the renewal of Aboriginal societies and cultures, but that they are facing desperate conditions in urban areas, and many of their home communities, if they have them, are desperately fragmented. In the absence of effective Aboriginal governance, young people may turn to alternative structures and institutions to find relevance and meaning, including youth gangs.

I have offered my comments in the hope they may persuade you that when you sit down to talk about dealing with problems of mutual concern, you will see the others for who they are, people like yourselves, who share the same humanity, and the similar social objective of seeking happiness within families and communities organized upon diverse beliefs that reflect the diverse origins, geographies and histories of diverse communities. I can assure you that there is no need to fear that recognition of the rights of the others somehow lessens your commitment

to your most cherished values of democracy and justice.

With or without rights, there is no substitute for people of good will who get together to resolve, on the basis of experience and goodwill, matters of mutual concern. We can all learn from one another. In the field of education, I have been particularly impressed by a New Zealand model of putting community members in each classroom to be the eyes and ears of the community and help each child to stand tall. Some of the children in this system have never before experienced encouragement in their school work. It is a model developed by the Maori, the indigenous people of New Zealand, but it is applied to community schools everywhere, including in urban areas, and applies to all children whether indigenous or not. It has been received with great enthusiasm by the community and has expanded to over fifty sites in Aoteoroa and into Hawaii. It is a model that is accepted because it works; it reduces absenteeism, increases school success, and reduces juvenile delinquency. People can do powerful things when they get together with goodwill.

RCAP recognized that when it proposed the guiding principle of 'participation' as the basis for the making of all future policy having to do with Aboriginal people. I like that part best; I wrote it.

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