

**Where
do we go
from here?**

**Speaking
Truth to Power**

II

A Treaty Forum



**BC Treaty
Commission**

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How can we recognize aboriginal rights and reconcile them with the rights of others?

Where do we go from here?



Contents

1 Introduction

2 Speaker biographies

3 *Review of the Treaty Process*
Miles Richardson

7 *With Rights come Responsibilities*
Milton Wong

10 *Citizens Plus: A Roadmap to the Future*
Alan Cairns

16 *Nation-Building and the Treaty Process*
Stephen Cornell

23 Summary of Responses

29 Open Space Summary

30 Participant list



Introduction

Talking about Treaties . . .

In March 2000, the Treaty Commission and the Law Commission of Canada harnessed the “brain power” of leading scholars in law, philosophy, political science and public administration to get people thinking about the future of treaty making in British Columbia.

The two-day treaty forum — *Speaking Truth to Power* — brought together aboriginal and non-aboriginal people, business people and government, academics and opinion leaders to explore new paths towards the successful conclusion of treaties.

Building upon the momentum generated by *Truth I*, the Treaty Commission hosted *Truth II* — a two-day treaty forum focused exclusively on finding solutions. In addition to plenary presentations and open discussion, *Truth II* offered small working group sessions to tackle specific issues (see page 29 for a summary of the Open Space Sessions). In this capacity, participants had the opportunity to hash out real-world issues, share ideas and come up with constructive solutions.

What is the future for treaty making in British Columbia?

In hosting *Truth II*, the Treaty Commission hoped to generate creative, forward-looking solutions that participants could share with their respective organizations and take back to their communities.

To capture the unique exchange of ideas at *Truth II*, the Treaty Commission produced this compilation of speeches, summary of discussion and synopsis of the open space sessions. We hope you refer to this collection in your continued quest to find new paths towards the successful conclusion of treaties.

Speeches and commentary included within this collection represent speaker’s contributions to the forum and do not necessarily reflect the Treaty Commission’s perspective.



Speaker Biographies

Dr. Alan Cairns, University of Waterloo
Dr. Stephen Cornell, University of Arizona
Ron MacDonald, Council of Forest Industries (COFI)
Miles Richardson, BC Treaty Commission
Milton Wong, HSBC Asset Management Canada

Dr. Alan Cairns is Visiting Professor of Political Science at the University of Waterloo. From 1960 to 1995, Mr. Cairns served as part of the Faculty of Political Science at the University of British Columbia. Dr. Cairns has published numerous books on aboriginal issues, the Canadian Constitution, federalism and the Charter of Rights and Freedoms. In 2000 Dr. Cairns released a new book — *Citizens Plus: Aboriginal Peoples and the Canadian State*.

Dr. Stephen Cornell is Director of the Udall Center for Studies in Public Policy at The University of Arizona. Professor Cornell completed his Ph.D. in Sociology at the University of Chicago in 1980. In 1986, Professor Cornell and Professor Joseph P. Kalt co-founded *The Harvard Project on American Indian Economic Development* at Harvard University. Among other works, Dr. Cornell authored *What Can Tribes Do?*

Following a long and successful history of public service, **Ron MacDonald** now serves as President and Chief Executive Officer of the Council of Forest Industries (COFI). As Parliamentary Secretary to the Minister for International Trade, MacDonald directed the Canada/United States Softwood Lumber Agreement and played a key role in passing the Canada/Chile Free Trade Agreement.

Miles Richardson was appointed chief commissioner in November 1998 for a three-year term and reappointed in November 2001. Prior to this appointment, Mr. Richardson served three years as the First Nations Summit appointee to the Treaty Commission. Mr. Richardson served on the First Nations Summit Task Group from 1991 to 1993 and the BC Claims Task Force, whose report and recommendations is the blueprint for the treaty negotiation process. He holds a Bachelor of Arts (1979) from the University of Victoria.

A well-known B.C. businessman and community-builder, **Milton Wong** currently chairs HSBC Asset Management Canada. Amongst a long list of accomplishments, Wong founded international investment firm M.K. Wong & Associates and the Laurier Institution, a non-profit organization dedicated to creating awareness of cultural diversity. In 1999, Wong was elected Chancellor of Simon Fraser University.



Review of the Treaty Process

Miles Richardson, BC Treaty Commission

From an early age, a Haida child knows it is the duty of every Haida person to protect Haida territory and rights.

Ten years ago, as a member of the *BC Claims Task Force*, I participated in designing a tripartite treaty process for British Columbia. I've spent a lot of time since then defending the treaty process and the progress that has been made. I still believe in it and I am asking British Columbians to believe in it.

The treaty process is not perfect but it is fundamentally sound. It's a work in progress.

Ten years later, it is proper for the players in the process and other interested parties to recall the fundamental issues that the treaty process sought to address; to acknowledge its achievements and shortcomings; and, most importantly, to identify the steps needed to reinforce the commitments that were so solemnly made in 1991.

That's why the Treaty Commission has convened this forum. At last year's forum, we were able to clarify some of the underlying challenges to the treaty process. Now, we want to re-examine where we are going, so that the potential of the treaty process can be more fully realized.

The fundamental commitments agreed to by Canada, BC and First Nations are in the 1991 report of the BC Claims Task Force. Its opening recommendation is that "First Nations, Canada and British Columbia establish a new relationship based on mutual trust, respect and understanding — through political negotiations."

The new relationship must recognize and reconcile aboriginal rights and title with the Crown's title.

It must respect the fact that First Nations were self determining and distinct nations with their own spiritual values, histories, languages, and territories, systems of government and ways of life.

Economic opportunity and greater economic self-sufficiency, along with traditional and cultural activities, lie firmly within the parameters of the new relationship.

The Supreme Court's decision in *Delgamuukw* has underscored the Task Force's message. It shows us the Crown has an obligation to consult with, perhaps obtain the consent of, and provide compensation to First Nations for the infringement of aboriginal rights. The Supreme Court has, in effect, highlighted the imperative need for First Nations to be partners in economic development and share in its benefits and not be, as has been the case, its most persistent victims.

Greater access to natural and other resources is needed to promote First Nation prosperity and self government. But as we are also learning from experience in the United States and elsewhere, self government, more especially sound, culturally appropriate self government, is at least as crucial a precondition as more resources for achieving economic success. One obvious lesson is that treaties must provide both more land and resources for First Nations and also meaningful self government if they are to successfully address long-term economic issues.

In 1991, the Principals made a clear commitment to political negotiations as the preferred means of addressing the differences that separated them.

Given the experiences of the province in the 1970s and 1980s, the Principals were acutely aware that other choices were available to the parties to assert and secure their rights. Those avenues remain available. Indeed, the *Delgamuukw* judgment of 1997 seemed to vindicate the litigation route, and make it more accessible to First Nations by affording oral evidence the same standing as documentary evidence. To date, there has not been a flood of new aboriginal title litigation.

First Nations recognize that litigation is costly, cumbersome, and unpredictable, and generally will yield only piecemeal answers that need to be fleshed out through negotiations. That perception could change if First Nations have reason to believe that the mandates of Canada and British Columbia do not reflect the commitments they made in 1991 and cannot lead to fair treaties.

All of us here today have a role to play in revitalizing and safeguarding the negotiation option. We can all appreciate that a breakdown in negotiations will lead to continued economic and social uncertainty and more litigation, confrontation and expense as well as lost opportunity.



In the past, the cost of our collective failure to properly address and resolve the BC land question has been borne almost entirely by aboriginal people and First Nations. That is no longer the case. All of society will bear the cost of our failure, now.

A breakdown would be unfortunate in itself, and doubly so given the commitments of time, money, and sheer human effort that have already been made to the treaty process, and given its achievements to date.

It may be unfashionable to talk about the achievements of the treaty process, but it would be misguided to overlook them.

Ten years ago, only the Nisga'a were negotiating a modern-day treaty. Now, all First Nations in British Columbia have that opportunity. Many First Nations have chosen to negotiate, with the majority working towards agreements in principle.

Throughout the province, negotiations are continuing, elements of sub-agreements are being reached, and First Nations are resolving many of their overlaps.

The treaty process has succeeded in bringing the parties together to identify, better understand, and try to overcome their differences, as they attempt to build the new relationship.

And while completed treaties are the goal of the negotiations, they are not the whole story. The negotiation process has itself provided opportunities for aboriginal people and has served as a catalyst for strategic planning, needs assessments and skills development.

The Treaty Commission, too, can claim some successes within the limits of its mandate.

- It has prodded Canada and British Columbia to carry through on their commitments to interim measures and to create treaty related measures.
- It has prompted them to be more flexible in applying their policy of suspending negotiations when First Nations initiate litigation.
- It has encouraged the parties to address certain key subjects — fiscal relations, certainty and compensation — on a province-wide basis rather than at 42 tables.
- It has re-examined its funding role and successfully lobbied Canada and BC for more negotiation-support funding for First Nations and for the commitment of more personnel to negotiations.
- And it has managed to help resolve or ease a number of disputes at individual tables.

Although the Treaty Commission does not have the power to compel the parties to act, it has the authority as “keeper of the process” to address issues, with the parties, that are obstacles to efficient and effective negotiations.

No overview of the achievements of the treaty process would be complete without mentioning its openness. I know of no other negotiations of similar scope and gravity that provide so many avenues for third party consultation or offer such a wealth of public information.

The Treaty Commission has encouraged the parties to ensure information is readily available to anyone who wants it and that consultation efforts allow for meaningful participation. It should be noted, too, that local government representatives are part of the provincial negotiating teams.

Yet, when all is said and done, the parties have to demonstrate the firmness of their commitment to the treaty process by bringing mandates flexible enough to reach agreement across their differences. That will be the ultimate litmus test for the treaty process.

The differences are now clear precisely because negotiations have begun to seriously address the most difficult challenges.

I would leave the wrong impression if I did not mention the earnestness with which these gaps in vision are being discussed by the parties and the seriousness with which they are trying to address them.

Nonetheless, a lack of common understanding of the parameters of negotiations is detrimental to agreement-in-principle negotiations. This is particularly true with regard to land and financial matters, governance and certainty.

First Nations regard the land and cash quanta as inadequate compensation for past infringements and for the trade-offs within a treaty, and an inadequate foundation for economic self-sufficiency. There is concern Canada and BC are too inflexible and do not take sufficient account of the differences in First Nation needs.



Canada and BC believe that the expectations of some First Nations are unaffordable and would compromise Canada's obligation to deal equitably with First Nations right across the country.

There is substantial common ground in negotiating First Nations' governance authority over their own people, on settlement lands that First Nations will own exclusively. However, there are major gaps in other areas. Notably, First Nations are looking for jurisdiction and management authorities off settlement land to protect their interests, in lieu of outright ownership of those lands. Canada and BC are reluctant to move this far, since this approach is inconsistent with their model of certainty, and because of the potential impact on government revenues.

A significant debate is needed to reach a better and common understanding of First Nation roles in relation to lands and resources, along a spectrum from ownership and jurisdiction through management, revenue-sharing and access to consultation. This understanding could ease and expedite the task of negotiating individual treaties.

Interim measures, including treaty related measures, pilot projects and even joint ventures, may be a useful way of testing some of these ideas and assumptions on the ground. In this way, interim measures can help the parties better understand each other and the elements that set their visions apart and find concrete ways to bridge those gaps.

Notwithstanding the progress made, First Nations have criticized the treaty process for being too slow and costly. These sentiments are echoed in the wider community. (This, of course, begs the question of how slow and costly the alternatives to negotiation might be in developing a new relationship.)

There are those, too, who warn of the danger of rushing into constitutionally protected arrangements with First Nations that may not yet be ready to make such far-reaching decisions, or to implement the terms of a treaty.

There may be new approaches and techniques that will help tables to complete agreements in principle more quickly. Several tables have already adopted a more modest version of the agreement in principle. This approach focuses on land, cash and resources and defers detailed negotiation of other matters until after the agreement in principle is concluded. The time may also be ripe for the parties to reconsider the idea of a "generic agreement in principle."

In thinking about the proper pace at which treaty making should proceed, I recall the words of the late Chief Joe Mathias, one of the authors of the Task Force Report. "Treaty making," he said, "is a process, not an event." These words sit well with the consensus that emerged from last year's "Speaking Truth to Power": treaties are the basis of a complex network of relationships that will be built over time, not just a quick one-off agreement. The building needs to begin before the treaty is signed and will continue within the overarching framework of the treaty after the ink has dried.

Many First Nations are still reconsolidating themselves after years of political disruption under the Indian Act. These First Nations need time to build their capacity to negotiate and implement modern-day treaties. The full scale of this issue was not clearly apparent in 1991.

Several steps have already been taken to address the often interrelated issues of First Nation capacity and definition. The Commission will hold First Nations who enter the process to a higher standard of readiness in the early stages of negotiations. It has also adopted measures to ensure that First Nations obtain the approval of their members, irrespective of where they live, to proceed with negotiations in a way that the other negotiating parties can rely upon.

Canada and BC have now begun to be much clearer at the outset of negotiations about the scope of the issues they are prepared to negotiate with smaller First Nations and the broad range of land and cash amounts that they have in mind.

Even where there are comprehensive agreement-in-principle offers, the offers and the associated fiscal transfer arrangements are often so framed that many governance powers could only be exercised where there is cooperation among First Nations.

One of the most persistent First Nation criticisms of the treaty process since its inception is that land and resources continue to be alienated while treaty negotiations grind on. This has prompted protest, threats of direct action, litigation, and repeated calls that Canada and BC negotiate interim measures agreements when an interest is being affected which could undermine the process.

Treaty negotiations are taking time — and more time than many assumed. There is a clear need to balance and protect the parties' interests until negotiations conclude and there is a clear need for the parties to demonstrate their continuing commitment to negotiating treaties. Interim measures can help to build trust and serve as a means of dealing in a preliminary or experimental manner with a contentious issue and so make treaties easier to negotiate.



First Nations tend to approach interim measures with the goal of securing vetoes and jurisdiction. BC and Canada, by contrast, often favour information sharing. As a result, frustration and distrust mount and the negotiations suffer.

But there are encouraging developments. Local governments, business and industry now support the call for interim measures, see the economic benefits for communities, and recognize that some certainty is better than no certainty at all. Pressed by the Treaty Commission, Canada and BC have provided new tools in the form of treaty related measures and have agreed to share the cost of interim measures equally.

Additional personnel are being assigned to negotiate agreements and the provincial government has allocated additional money for this purpose.

Several treaty related measures have been agreed to, as have a significant number of other interim agreements. These have spanned such fields as fisheries, aquaculture, forestry, culture and heritage, economic development, capacity building and so on, and have often taken the form of studies.

However, there is a clear need for still more concrete action on the ground. The parties need to look beyond the recently agreed studies and accords and protocols towards more concrete agreements.

From our perspective, interim measures initiatives should focus on protection, consultation, co-operation and co-management, on resource allocation and land-use planning, and on capacity building, specifically in the area of governance.

This concludes our brief survey of the status, achievements and needs of the treaty process.

In our view, the treaty process cannot be abandoned because the alternative is a grim one. The price would be too high, the lost opportunities too great. It should now be apparent that the ways to build treaties are within reach, with commitment, political courage, goodwill and innovative ideas from all interested parties. We have invited you to engage in a dialogue at this two-day forum to map out ways by which the promise of the treaty process can be more fully realized.

Thank you.



With Rights come Responsibilities

Milton Wong, HSBC Asset Management Canada

I am here today as an advocate and supporter of treaty rights and land claims settlement for First Nations. For many of you, it has been a long journey yet to be finished. Chief Joe Gosnell knows what I'm talking about. He led the ratification of the Nisga'a treaty last May after 23 years of talks, describing the glacial process this way: 'A generation of men and women has grown old at the negotiation table.'

Today I'd like to provide a social and economic perspective of our world in the 21st century. I'd also like to share my thoughts about the aboriginal relationship to Canada and beyond its borders. My objective is to provide some context to help explain the structural challenges facing aboriginal communities today. I will also make some suggestions for your deliberations over the next two days.

Undoubtedly we have all felt the impact of social change in every part of our lives – our family, our friends, our workplace, our schools, our community, our country. Never in our history have we experienced such dynamic changes that will continue for the rest of our lives.

Over the last twenty years, the threat of nuclear war began to dissipate and a new era has begun to emerge. Today, we can identify three mega trends that will affect all of us for the rest of the 21st century. The trends are Globalization, Regionalization and Democractization. When combined with technology revolution and the demographic profile of aboriginal nations, these underlying forces of causes of what I call the creative disintegration of social systems. From the First Nations' perspective, these forces have tremendous long-term implications in the development of our future generations of young people.

Fuelled by the technology revolutions in transportation and telecommunication, globalization of world economies have been led by transnational companies. Corporations such as Daimler Chrysler Corp., Nortel, Motorola, Bombardier and Johnson and Johnson. These companies are market driven and focused on 'survival of the fittest.'

They are accustomed to entering into alliances with organizations that once were deemed competitors. They seem to exist as "citizens of the world" without having to be accountable to anyone except the stock market. Even when giant firms form alliances, firms such as automobile manufacturers – Daimler, Chrysler and Mitsubishi. They can face significant downsizing aren't immune from the forces of extreme global competition.

To protect their interests, countries, in turn, begun to form regional economic alliances so to be assured of access to markets for their good and services. While Canada and the United States had already an Auto Pact agreement as early as 1967, they NAFTA accord broadened out significantly the trade and economic relationship between the two countries. Other similar relationships soon were developed among European countries as well as in Asia. And it is for this same reason that China wants to be a member of the World Trade Organization.

In Canada, businessmen, unions and workers have been faced with major competitive adjustments as the world moves to a market-based economy.

Ten years ago, B.C.'s forest industry represented 60 cents of every provincial dollar. Today, it is 40 cents of every dollar. And it continues to shrink. At the same time, commercial fishing has become a marginal part-time job for so many people. It is sad to see so many assets — boats and machinery tethered at the dock. And it is a travesty to see once proud families unable to cope with day-to-day survival needs.

It doesn't have to be this way.

Aboriginal communities could be part of the solution, making these industries become sustainable. This can only happen if aboriginal nations embark on a path of making the necessary changes from within.

One joint venture point to a brighter future: lisaak (eesok) Forest Resources. This is a joint venture between the Nuu-chah-nulth central region tribes on the west coast of Vancouver Island, and Weyerhaeuser. lisaak is remarkable because not only is it a majority owned First Nation company, but it involved the transfer of forest tenure to First Nations. Of course, this took place in the context of Clayoquot Sound, the biggest environmental controversy in B.C., so this case is somewhat special. But fundamentally, it is a rare example of First Nation led forest products venture based forest practices. They are proud stewards of their forests. I'm told that you can fly over the cut blocks and not even notice them. It is also important to note that they are now making money.



But these partnerships can only take place at a large scale if First Nations embark on a path of making the necessary social changes. But before I comment on these changes, it is necessary to describe governance in the context of human rights.

The megatrend of democratization may seem as a ‘rights revolution’ for the individual. The fall of the Soviet Union and Eastern European dictatorships in the early 1990’s, and more recently, the demise of corrupt governments in Peru, Mexico, and the Phillipines, are visible indications that democratization has become a dominant force of change in the world. Significantly, the collective action of citizens within these countries was the change agent. In Canada, the struggle of the aboriginal people for their rights can also be seen as part of this ‘rights revolution.’

We are familiar with the elements of democratic governance. They include sovereignty, constitutions, and the rule of law, periodic elections, checks and balances among the legislature, the executive committee and the judiciary. Importantly, civil society, which includes political parties, trade unions, media, as well as professional and volunteer organizations, is an important part of governance in a democracy. And in today’s world of dynamic change, human rights has become a major counter balancing force to the ‘market forces’ of globalization and regionalization. A democratic governance structure provides the framework necessary for ‘sustainable’ human rights.

Canada has a proud history of championing the values of democracy throughout the world. Indeed the Universal Declaration of Human Rights was drafted by John Peter Humphrey, a Canadian diplomat. Here in Canada, we have continued the ‘rights revolution’ to include gender equality, aboriginal land claims, as well as the acceptance of gay marriages. In my mind, the rights movement will soon include the universal right to nutrition, clean air and clean water.

I have long contemplated the difference of governance between aboriginal people and the rest of Canada. So has John Richards, an economist at Simon Fraser University. To quote Richards:

“The arrival of agricultural and industrial technologies and their attendant culture of individual rights and private property is a genie that cannot be put back in the bottle. Many aboriginal leaders believe that the “inherent right to self-government” should amount to what has been described as a “robust kind of property right – one that excludes much Canadian lawmaking authority over aboriginal persons and property.”

Richards put it well and I agree with him.

These leaders hope to recreate vibrant communities, based on reinforcing traditional culture and barring much of the modern. The fundamental obstacle to realizing this agenda, however, is that most individual aboriginals no longer want to live entirely within their traditional culture. Cultural transition may be painful, but most aboriginals simultaneously value components of the old and the new. They value the communal strength of their heritage; they also value the individual rights of non-aboriginal culture.

Governance is central to the natural progression of sustainable economic development for First Nations. Without consistent governance structure throughout the province, the ability to develop an aboriginal society of common values is virtually impossible. And without common values, it would be difficult to come together with a shared vision among First Nations.

Out in the global marketplace, time waits for no one. So many aboriginal people appear to lead lives of quiet desperation. On and off reserves. In tiny, isolated communities, in big cities. Just a few blocks east of here, in the disgrace of Vancouver’s Downtown Eastside.

The profile of First Nations is what demographers call a very ‘youthful’ age structure. In 1996, the average age of the aboriginal population was 25.5 years — roughly ten years younger than other Canadians. The question arises – has First Nation leadership developed a vision and strategy to educate these young people so that they become economically self-sufficient? Within a few years these vibrant people, your children will be questioning their leaders — they will ask: have you made the effort to prepare for a meaningful and purposeful life?

What will the answer be? Today, all of you can make a huge difference to the well being of your nations, your children, with the collective resolve of your leadership, you can develop your own vision that encompasses the well being of every band member throughout the province. Based on shared common values, you will be able to develop much needed aboriginal-led institutions.



Institutions such as:

- A community foundation established for the education, health and welfare of the less fortunate. To teach individuals 'how to fish, and not to give them fish'
- A partnership with selected schools and universities to establish programs designed to foster a positive attitude towards education. The development of a learning environment that is culturally sensitive and at the same time inspire students to strive to excellence.
- To establish an institute that is focused on governance. The goals and objectives are to provide ongoing research and discourse on governance issues. It would include leadership training, administration skills, finance and fiduciary and trusteeship skills. It would also include issues surrounding collective and individual rights.
- In conjunction with Health Canada, we would establish a Health Institute that will research and explore health issues related to First Nation needs. It may also coordinate training of aboriginals with existing institutions to become nurse of social healthcare provider.

Now is the time for collective leadership to come together and take responsibility for helping aboriginal people to take care of themselves. With rights come responsibilities. Only through good and effective governance can human rights in aboriginal communities be protected and nourished. Only an enlightened leadership working together will be able to develop a new and vital civil society that is reflective of the desires of the people.

First Nations have an opportunity to chart out a new course for themselves. Imagine if 20 to 30 senior leaders presented a 'First Nations in the 21st century' strategy paper with goals and objective framed in a shared vision. First Nations might find a huge swell of support for their vision if they take the time to state it positively, and include other in it.

Given the dynamics of change throughout the world, I want to impart to you a sense of urgency in developing a common vision and strategy in raising the living standards of aboriginal people. Yes, past injustices have to dealt with in order to move on. Slowly but surely, the Canadian justice system will deal with them. The treaty process will continue to move at a speed that is in our control. In the meantime, the world is moving at an extraordinary pace and there is a danger these outside forces may overwhelm our abilities to control our own destiny.

A major problem facing aboriginal communities, and for that matter, the rest of the world, is that no one, aboriginal or non-aboriginal, can govern from the top-down anymore. It is up to each individual to make his or her mark in the community. And it is up to the community leaders to recognize and deliver the individuals' needs.

We must come together to realize the public good. It is the only way we can ensure that all Canadians — aboriginal and non-aboriginal — are free and equal. Only a new civil order, predicated on human rights, can bring hope and dignity as well as an inclusive sense of economic self actualization.

Thank-you.



Citizens Plus: A Road Map to the Future

Dr. Alan Cairns, University of Waterloo

My argument is straightforward. Appropriate policy or constitutional theory to fashion a harmonious relationship between aboriginal and non-aboriginal peoples in Canada has to satisfy two criteria. It has to respond to the desire of aboriginal peoples for differential treatment /distinct status in terms of self government and/or rights. Second, it has to do so in such a way that aboriginal and non-aboriginal peoples alike also and simultaneously feel and believe that they belong to the same Canadian community. A shared citizenship is the obvious vehicle to encourage the understanding that when we say 'we', we include each other. Policies or theories that address only one of these criteria will not endure.

I mean policy in the large constitutional sense that says 'who we are,' — that gives us a sense of direction — that is the vehicle for a rapprochement. In the contemporary era this requires a set of understandings that gives each one of us as individuals, and the communities/peoples/internal nations to which we belong, a recognized and acceptable place in the constitutional order. This, to say the least, is not an easy task in a society that is federal, multicultural and multinational. We need, in other words, what is now often called a 'story-line,' a narrative that makes sense. These story lines, of course, can be instruments of inclusion or exclusion. The story, or big picture, for most of our post-Confederation history has been one of exclusion for aboriginal peoples, especially status Indians (now First Nations).

That story line, from which we are now trying to escape, drew much of its sustenance from the international environment. From Confederation to the middle of the twentieth century, yesterday's big picture in Canada was the domestic version of the European empires that ruled much of humanity in that era. The non-aboriginal majority's view of the Canadian world was one of hierarchy with Euro-Canadians in charge, of wardship with indigenous peoples treated as children, and with assimilation as the objective of policy. The destiny of aboriginal peoples was to be absorbed into the larger surrounding society. This was assumed to be a benefit for its recipients, although for a transitional period it was accepted that this goal might not be immediately attractive to its proposed beneficiaries. This, however, could be considered a form of false consciousness to be disregarded by change agents who saw themselves as in the vanguard of a progressive, expansive civilization.

This picture drew its understandings from the international environment, specifically from the world of European empires in the era of European global hegemony. This was the world in which much of the global map was a riot of imperial colours. The simple message was that white or European rule over non-western peoples was natural, even if the indigenous population vastly outnumbered the missionaries, settlers and administrative class. The potent reality and symbolism of external empire sustained domestic versions of empire over indigenous peoples in societies with settler majorities. In other words, British rule in India was the backdrop to majority Canadian rule over aboriginal peoples.

By contrast, the two major policy documents of the last thirty years were responses to the ending of European empires in the post WW II decades. This meant that denial of the franchise to Indians, and in general their colonial status, no longer appeared normal. Formerly, colonial status was consonant with and drew sustenance from the spirit of the imperial age. Now, however, it offended the spirit of the post-colonial age. The end of empire meant that white states were a minority in the UN General Assembly, in the British Commonwealth, and more generally in the international state system. This new world put the internal colonialism of settler majorities over indigenous minorities on the defensive.

Let me turn now to the 1969 *White Paper* (Canada 1969) and the 1996 *Report of the Royal Commission on Aboriginal Peoples* (Canada 1996). In different ways, both were responses to a post-imperial world. Both of these major policy documents responded to the message that the policy of wardship was no longer viable. Yesterday's conventional wisdom no longer spoke to today.

The *White Paper* in a way was a Martin Luther King response. It assumed that Indian peoples were saying "We want in." Since there was no local Martin Luther King available, the federal government substituted itself for the absent leader. The *White Paper* did not challenge the historic goal of past policy, assimilation, but proposed an acceleration in reaching it. It argued that past policy was based on a faulty analysis of the means to the assimilation end. The bureaucratic elite, along with Trudeau, who fashioned the *White Paper* policy did not see reserves as schools for civilization, but rather as the source of backwardness and poverty. The geographic separation of reserves was the problem. Isolation stood in the way of the bracing winds of interdependence. Hence, the end of the special relationship was the solution. The thesis was that the historic policy of reserves, an Indian Act, a special branch of government to administer it, isolation from the provinces — in short, an internal colony — had in fact impeded the assimilation they were intended to advance.



The *White Paper* goal was not the survival or strengthening of Indian communities, but the liberation of individuals whose Indianness would progressively diminish as contact with the majority intensified. It is not too far fetched to view the *White Paper* as a repeat performance of the *Durham Report*, with Trudeau standing in for Lord Durham, and Indians replacing French Canadians.

It is important to remember that assimilation was the policy of the progressives in that era. The CCF government of Tommy Douglas/Woodrow Lloyd in Saskatchewan (1944-64) saw the reserve system as similar to the Gulag archipelago, to concentration camps, to displaced persons camps in Europe, and had the same vision of the future as was later to be given classic expression in the 1969 *White Paper*. There was no thought in the minds of the policy makers in Saskatchewan or in the federal government who produced the *White Paper* that they were dealing with Indian nations, let alone First Nations. Trudeau found it inconceivable that one section of society could have a treaty with another section.

The *White Paper* goal, therefore, was to accelerate the movement toward absorption by abolishing the system of separate treatment that impeded it. Those who fashioned the *White Paper* unquestionably saw it as a major statement of a desired Canadian future for Indian peoples and other Canadians. It assumed that the direction of change was clear, inevitable and positive — the erosion of cultural difference and full undifferentiated membership in the majority society. At best, some remnants of Indian culture might survive, kept alive by Indian initiatives.

The *White Paper* had a short official life. The manner of its creation, which was secretive and without Indian participation, was partly to blame. The more important explanation, however, is that the *White Paper* was insensitive to the Indian desire for a continuing distinct status in Canada, albeit not the negative stigmatization of the past. It was not defeated by Indian nationalism, however, as is often assumed. The language of nationalism was conspicuously absent. The major presentation by the Indian Chiefs of Alberta (1970), whose delegation to Ottawa led the organized Indian opposition, was titled 'Citizens Plus,' a phrase taken from the *Hawthorn Report* (1966-67) To the chagrin and surprise of Trudeau and Chretien, a policy they thought would go down in the history books as an act of liberation had to be withdrawn when its proposed beneficiaries vehemently opposed it.

A quarter of a century later the *Royal Commission on Aboriginal Peoples* issued its massive report of five volumes and over 3500 pages. There was an aboriginal majority among the commissioners and the co-chairs were Georges Erasmus, former Chief of the Assembly of First Nations, and Rene Dussault, a Quebec judge. The Commission met 100 times, had 178 days of hearings, recorded 76,000 pages of transcript, and generated 356 research studies. (Meekison 1997, 1)

The *RCAP Report* was the antithesis of the *White Paper*. It was a document of aboriginal nationalism. It defined Canadian treatment of aboriginal peoples as internal colonialism, and its proposals were directed to escape from the continuing legacy of colonialism. In contrast to the *White Paper*, its focus was on communities, not individuals. Its goal was not absorption or assimilation, but a separate existence based on the inherent right of self government directed to the goal of cultural survival and modernization.

The *Report* was the culmination of a quarter of a century of a developing aboriginal nationalism, and a constitutional theory that sought a prominent place for aboriginal peoples in the Canadian constitutional order. The *Penner Report* (Canada 1983), with its ringing advocacy of self-government, and its use of 'nation' in response to the presentations made to the *Special House of Commons Committee on Indian Self-Government*, was an important forerunner. The widespread diffusion of the label 'nation,' self-applied by individual Indian bands, was another sensitive indicator of the changed climate for policy. By the mid-nineties nearly one-third of Indian bands had officially added nation to their title. The National Indian Brotherhood changed its name to the Assembly of First Nations in 1981.

The *RCAP Report* was organized around the concept of 'nation.' Nation was the fundamental unit of aboriginal membership, of psychological belonging, and in the future was to be the key to cultural revival. The relation with non-aboriginal Canada was to be nation-to-nation. Treaties were to be the instrument of the nation-to-nation relationship. The concept of Canadianism in the report was very weak. Canada was to be a container — loyalty to and membership in which was to be mediated by the primary unit of solidarity, the individual aboriginal (Indian, Inuit, or Métis) nation. Canadian citizenship received minimal attention. The constitutional context was Canada as a multinational federation, with a multinational citizenship, with 60 to 80 aboriginal nations. The vision of the report was of parallelism — aboriginal and non-aboriginal societies/nations coexisting side-by-side, obviously locked in considerable and inescapable interdependence, but nevertheless going their own separate ways.



In contrast to the 1969 *White Paper*, the *RCAP Report* has not been rejected, but neither has it been adopted. The federal government has not responded to its analysis in a serious way — a disturbing failure of leadership which has deprived Canadians of the debate that a major royal commission is supposed to stimulate.

Neither the *White Paper* nor the *RCAP Report* provides a satisfactory answer to the two criteria I argued have to be met if we are to create a long-run viable relationship. This does not mean that these two competing visions are dead. The *White Paper* vision of the future has a home in the Canadian Alliance, in the editorial pages of the *National Post*, and has the support of various academics and journalists. Since the *RCAP Report* is less than five years old, was the product of extensive public hearings, and had an aboriginal majority among the commissioners, it must be assumed that it has a sizeable contemporary constituency.

The *White Paper* was based on the non-aboriginal majority's vision, or perhaps 'wishes' is the better word. It was drafted without Indian input. It was one of the last high profile acts of paternalism. In theory at least, it provided an apparent answer to the question of togetherness by ending separate treatment. However, it ignored the Indian desire for distinct treatment, for cultural continuity, for survival as peoples. The *White Paper* misread the future. It also misread the past. It assumed that the continued existence of Indian communities and the resistance to assimilation was due to artificial impediments, such as the *Indian Act*, the isolation from provincial communities, etc. Once the impediments were removed a natural process of assimilation would occur. At best, the *White Paper* provided only half an answer — it responded to only one of the two criteria I suggested must be met if we are to have a policy that endures.

The five volume *1996 Royal Commission Report* could be regarded as the voice of the opposition party that finally had the chance to be heard. In a sense, it is a direct refutation of the *White Paper*, which is now routinely described as the 'infamous *White Paper*.' However, the *Report* also provided only half an answer to the two criteria, although it was the other half. It was an explicit and passionate positive response to the reality of nation, to the community base of aboriginal societies with a land base, and to the desire for cultural survival. However, it had no answer, or at best a very weak answer, to the question of what will hold us together. What will be the source of an empathy that will induce members of non-aboriginal and Aboriginal peoples to view each other as belonging to the same 'we' group, which will induce us to feel responsible for each other. The *Report* did not, apparently, realize that this was a central, possibly the crucial, question.

The *Report* was very weak on Canadian citizenship, the basic moral bond of contemporary liberal democratic societies. It also had great difficulty with the urban setting, the home to 50 per cent plus of the total aboriginal population. Aboriginals in the city could not easily be thought of in terms of nation. The possibilities of self government in urban settings, while not entirely excluded, were clearly less promising than where there was a land base and a settled community. Further, the urban setting was seen as a site for cultural erosion. Consequently, urban aboriginal populations could not be in the vanguard of the drive for cultural survival and renovation that was the basic purpose of self government.

The limited attention paid to Canadian citizenship by the *RCAP Report* is part of a larger view, which portrays the Canadian political system as basically illegitimate from an aboriginal perspective. To the royal commission, past and present Canadian governments are simply illegitimate. "For roughly 400 years, aboriginal people in Canada have been ruled by foreign powers, first by the French and the British and later by Canadians. In the eyes of aboriginal people, none of these governments had any legitimate authority over them." (Canada 1996, vol. 2(1), 4) "It is important to recognize that whatever the formal legal position, in practice Canadian governments often have little political and moral legitimacy among aboriginal peoples. This reality reflects the historical fact that aboriginal peoples have been subjected to shockingly unjust and coercive governmental policies that have denied them their most basic rights, stripped them of their ancestral lands and attempted to suppress their very identities." (Canada 1996, vol. 2 (1), 243) (See also Canada 1996, vol. 2(1), 374-75) Such analyses do not support views of federal and provincial governments as allies. Legislatures are not viewed positively, and public opinion is something to be guarded against. The *Report* speaks pejoratively of governments being buffeted by the "tide of events and transient priorities...and the preoccupations of the day." (Canada 1996, vol. 5, 17-18)

To the commission, the difficulty with the standard politics of Canadian democracy is not simply numbers, or the cultural arrogance of the majority society, but the basic system of individual representation as such. The *Report* speaks of the "inherent ineffectiveness of the democratic political relationship as seen by aboriginal peoples. There has been a profound absence of representation for aboriginal peoples in Canadian democratic institutions. But more importantly, such representation, when cast in terms of conventional democracy, is itself regarded as illegitimate.



Aboriginal peoples seek nation-to-nation political relations, and these cannot be achieved simply by representation in Canadian political institutions.” (Canada 1996, vol. 1, 249, italics added) Not surprisingly, Canadian citizenship does not emerge in the *Report* as a highly valued possession.

It receives little attention and, in general, only lukewarm praise.

RCAP has an answer to the question “How are we to live apart?”, although its answer has limited application to over 50 per cent of the aboriginal population lacking a land base. It has only a half-hearted answer to the question “How are we to live together?” Togetherness was not seriously on its agenda. Its colonial analysis led it to focus its attention on attaining the maximum autonomy for aboriginal governments. That same colonial analysis, which in the world of overseas empire leads to independence, deflected attention from the (perhaps regrettable) fact that when independence is not possible, a rapprochement with the majority society — for which the bond of citizenship is the obvious vehicle - has to be worked out. Overall, then, the *Report* provided only half an answer to the two criteria noted at the beginning of this paper, and did so for only half of the Aboriginal population.

Citizens Plus: We need a concept both aboriginal and non-aboriginal Canadians can live with —one that recognizes both criteria— the recognition of difference and support for commonality. The concept of ‘citizens plus’, proposed by the *Hawthorn Report, A Survey of the Contemporary Indians of Canada* (2 vols.) (1966-67), was an early attempt to meet both criteria. Harry Hawthorn, Head of the Anthropology and Sociology department at UBC was asked to put together a team to write a report on the contemporary situation of Indian peoples in Canada and to make proposals to address the major problems that surfaced in the research. The *Hawthorne Report* was not the product of a royal commission. It was based on law and social science research. There were no hearings, although a considerable number of graduate students in anthropology stayed on Indian reserves and reported on what they found. The research took place after the 1960 extension of the franchise to status Indians, but before the 1969 *White Paper*.

The *Hawthorn Report*’s basic assumptions were the following:

- 1) Indian communities were not likely to disappear for any future that need concern policy-makers. They should be thought of as permanent features of the Canadian scene. This was innovative at the time, given the hegemony of assimilation policy and thinking for the previous century.
- 2) Indians should be thought of as ‘citizens plus.’ This is the most frequently cited proposal of the report. It meant the following:

It said ‘yes’ to Canadian citizenship. It argued that in the past Indian people had been in effect regarded as ‘citizens minus’, and that as a consequence many of the benefits of the welfare state, for example, had been denied to them. Citizenship was the way to make Indian peoples part of the ‘we’ community, and hence to be included whenever policy was under consideration.

They were, however, not to be ordinary citizens. They were to be ‘citizens plus’. ‘Plus’ meant that Indians were to have a distinct status, some degree of differentiated and positive treatment. The ‘plus’ was to be worked out in the political process. It had a twofold justification. Indian peoples had paid a heavy price in terms of dispossession, marginalization, cultural stigmatization, and impoverishment for the prosperous society that had grown up around them. Also, they were here first, and some special entitlements attached to that fact, especially since by and large they had been recipients of dis-benefits rather than benefits from their encounter with the majority society. The *Hawthorn Report* did not use the phrase “First Nations”. In the mid-sixties, ‘nation’ was not in the available vocabulary, but it clearly supported ‘First.’

- 3) The report also noted the extensive migration to the cities that was already well underway, and argued that much more attention than in the past had to be paid to this phenomenon.
- 4) The inquiry’s terms of reference applied only to status Indians, Inuit and Metis were excluded.

In general, then, Indians were to be citizens with a difference.

‘Citizens plus’ gained early support from Indian peoples. It played a major role in the defeat of the 1969 *White Paper*. In a sense, the battle was between the *White Paper* supported by the federal government, and ‘citizens plus’ supported by various Indian organizations, led by Harold Cardinal of the Indian Association of Alberta (Indian Chiefs of Alberta 1970). Although ‘citizens plus,’ in a sense, defeated the *White Paper* assimilation philosophy, it was an incomplete victory.



Its philosophy was not adopted by the federal government. It was, therefore, never officially institutionalized. It survived into the mid - and late 70s, when it was displaced by the language of nationalism. In the 80s and 90s, it surfaces occasionally in political and academic discussions of aboriginal policy.

In a recent book, *Citizens Plus* (Cairns 2000), I tried to revive the concept. I argued that 'citizens plus' is better suited to give us a sense of direction than are given by either of the two main competitors (RCAP and the *White Paper*) of the last third of a century.

It builds on citizenship, the moral bond, which generates reciprocal feelings of responsibility for each other. (The focus is on citizenship in the psychological/sociological sense, so that 'we' includes the other.) As already noted, RCAP pays minimal attention to the question of what will hold us together. By inference, it apparently assumed that citizenship was not up to the task, but it did not propose a viable alternative. 'Citizens plus' can also accommodate the Aboriginal desire for distinct recognition by 'plus'. The great deficiency of the *White Paper* was its complete lack of attention to that profound reality.

'Citizens plus' is not a compromise, lying between the assimilation of the *White Paper* and the parallelism of RCAP. I reject both parallelism and assimilation as unrealistic. They simply do not fit where we are. Each is blind to a crucial reality. Parallelism is indifferent to and incapable of answering the question "What will hold us together?" Assimilation, which assumes, among other things, the monopolization of our civic identities by a common, uniform citizenship, is unresponsive to what Patrick Macklem recently called "Indigenous Difference." (Macklem 2001) 'Citizens plus' responds to two realities, one of which, the desire for distinct treatment, is inescapable, and the other, a common citizenship, is essential, if we are to be responsible for each other. In the absence of a common citizenship, we are strangers. 'Citizens plus' overcomes the separate major weakness of both the *White Paper* and of RCAP. It has a supplementary benefit in that, compared to RCAP, it is much more accommodating of urban Aboriginals, who can be brought under its capacious rubric. Further, there is no obvious problem in applying it to Inuit and Metis.

Accordingly, I suggest 'citizens plus' for consideration as a possible road map for the future. It has to be, of course, a public road map. Ideally, 'citizens plus' would become part of the mental furniture of all parties.

Michael Ignatief, last year's Massey lecturer, appears to agree:

"We've got to find a way to do justice by aboriginal peoples and simultaneously maintain the unity of Canadian citizenship that depends on equal rights for all, but also to reconcile competing ideas of fairness - it is fair given that [the aboriginals] were the first inhabitants of this country for them to have special claims. And if we believe in the rule of law, we have to take our treaty obligations very seriously. The lectures are trying to say that we've got two visions of citizenship, and they've both got to be true." (Richler 2000, D4)

The proposal for a 'plus' component will generate opposition, similar to the critique of 'distinct society' as a description of the special place of Quebec in Canadian confederation. However, we have already traveled considerable distance on the 'plus' road. Although the rubric 'plus' was not involved, Canadians through their governments and the judicial system have been incrementally fashioning a distinct status for aboriginal peoples in the Canadian constitutional order. An abbreviated list would include:

- the state funding of aboriginal organizations
- the recognition of aboriginal title
- the major breakthrough in the *1982 Constitution Act*

- the S.35(1) statement: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed," and S. 35(2) defining "aboriginal peoples of Canada" [as including] the Indian, Inuit and Métis peoples of Canada," and S. 25 of the Charter protecting "any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada" from abrogation or derogation by the Charter

- a succession of Supreme Court cases from *Calder* to *Delgamuukw*
- the establishment of Nunavut
- the diffusion and acceptance of the 'nation' label
- and more.



In my view, in light of the preceding, we do not have a choice. The 'plus' aspect of the presence of aboriginal peoples in Canada is already recognized.

Let me sum up on what I see as the virtue of 'citizens plus' as an organizing concept for the future sharing of a country that contains both aboriginal and non-aboriginal peoples. 'Citizens' brings aboriginal peoples into the 'we' community of other Canadians. Citizenship is the source of the empathy that induces us to feel responsible for each other. I do not mean the formalities of citizenship, but rather the emotional bonds of solidarity that accompany shared citizen identification. 'Plus' means that there is a supplementary component — a positive recognition of difference that might be manifested in a third order of government, in special start-up education programs, in programs to reduce the incidence of fetal alcohol syndrome, in a catch-up program of support for post-secondary education, and elsewhere. The relationship between 'citizens' and 'plus' is symbiotic. 'Citizens plus' is a package, not two separate components. Without some 'plus' component, citizenship will appear inadequate to many, perhaps most aboriginal individuals. On the other hand, citizenship sets limits to and shapes the 'plus' component. At some point, the elaboration of 'plus' could go so far that little is left of a common citizenship, that we have become strangers. In the long run, the 'plus' component is unlikely to receive marked non-aboriginal support if aboriginal peoples neither see themselves nor are seen by others as Canadian citizens.

Obviously, no rubric or concept such as 'citizens plus' can fill in all the details and particulars of where we should be heading. Nevertheless, a concept that satisfies the two criteria I suggested had to be met in my opening remarks can act as a road map, or a steering mechanism, and that is no small virtue. It has another virtue. It is perfectly compatible with a treaty process, which fleshes out the plus component.

I propose 'citizens plus' as a contribution to the discussion of how we can share a country.

Thank you.

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¹ Several of the paragraphs in this paper are repeated in slightly modified language in other published papers by the author.



Nation Building and the Treaty Process

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I hope you will forgive me if I begin with some disclaimers. I am not an expert on aboriginal affairs in Canada. I have worked with some First Nations in Canada, and I have made a number of presentations to aboriginal audiences, including First Nations leaders, to government officials from DIAND and other organizations, to a parliamentary committee, and to an assortment of other audiences in various parts of this country, but I have not studied the situation of Canadian Indians in detail. And while I am familiar with the treaty process in British Columbia, I cannot claim to be an authority on it.

You may wonder, then, why I am here and what I might conceivably have to offer you. I am here because the Commission was generous enough to invite me, and I am grateful to them for doing so. As for what I have to offer: I am a long-time student of American Indian political affairs and economic development, and, to a lesser degree, of the situations of indigenous nations in other parts of the world. I am not naïve enough to think that lessons learned in the United States or elsewhere are *necessarily* transferable to Canada. But the more time I spend here, the more I learn about the situations of First Nations, and the more I interact with citizens of those nations, the more convinced I become that there are important continuities and similarities between the situations of Native peoples in our two countries.

Perhaps most importantly, for the last fifteen years I have been directly involved in a major, research-based effort to understand the dynamics of self-governance and economic development on American Indian reservations. Part of what I want to do this evening is to summarize some of the key findings of that research.

Now what, you might ask, does research on Native nations in the United States have to offer to a group such as this, whose primary interest is in a contemporary treaty process that is attempting to reorganize relationships among First Nations, the province of British Columbia, and Canada? Is this just another presumptuous American headed north with a bunch of irrelevant information? Good questions. I'm going to leave the second of those two questions aside; you can determine for yourselves the extent to which I confirm your apprehensions or lay them to rest. But the first question — about whether or not research results on indigenous nations in another country, operating under different demographic, political, legal, and situational conditions, have much to offer north of the international boundary — demands at least a brief comment here.

In much of the world today, relations between indigenous peoples, on the one hand, and various kinds of settler societies, on the other, are in transition. Certainly in a number of societies of European settlement, from Canada to New Zealand, the U.S. to Australia, indigenous peoples are engaged in a massive effort to regain control of their resources and their futures, to restore their communities, to reestablish the right to govern themselves, to escape legacies of poverty and powerlessness, and to build societies that work. In some sense they have always been trying to do that, but in the last few decades this effort not only has become a major social movement; it has had some significant success. Thanks to legal and political decisions and to the assertions of indigenous nations themselves, aboriginal self-determination has been on the rise — admittedly to widely varying degrees — in these and some other countries.

Yet there is precious little systematic research that speaks directly to these efforts. Are indigenous peoples in fact improving their lives through these actions of various kinds? What impact are their efforts having on *non-indigenous* populations? What are the relationships between political assertions on the one hand and economic development on the other? What is happening in those situations where indigenous peoples are actually gaining substantive power? Are there lessons, not only for indigenous peoples but for policymakers at all levels, from the experience of political assertion and development so far? Surely the answers to such questions would have value for policymakers, both in indigenous nations and in the countries of which they are a part.

To date, however, the most comprehensive effort — perhaps the only comprehensive effort, in the sense of looking comparatively across a significant number of indigenous nations within a single society — to examine such questions is the project whose results I am going to summarize. In 1986, at Harvard University, an economist named Joseph Kalt and I founded the Harvard Project on American Indian Economic Development. That project continues to the present day. I hope that I can persuade you this evening that the results of our work are in significant ways relevant to your situations, although, given the limits of my knowledge, that is something you will have to decide for yourselves. And I will close by making my own suggestions of what the implications of this research might be for First Nations and for the treaty process in British Columbia.



THE PUZZLE IN THE PATTERN OF NATIVE POVERTY

Let me begin with a puzzle. In the United States, as in Canada, most indigenous nations are poor. American Indians living on reserved lands have long led the U.S. parade in unemployment figures, ill health, poor quality housing, and a host of other negative economic and social indicators: in the aggregate, they are among the poorest of the poor. But something interesting has been happening over the last three decades. Some Indian nations have been breaking out of this picture of relentless poverty. Here are a few quick illustrations.

First example: In the 1960s, the Mississippi Band of Choctaw Indians in the state of Mississippi was mired deep in poverty with high unemployment and more than half of Choctaw families earning less than \$1,000 per year. A third of Choctaws had no formal education at all; fewer than ten percent had finished high school. The better-educated tribal members were leaving, year after year, for economic opportunities elsewhere: not an unusual story on American Indian reservations (as reserved lands in the U.S. typically are called), where the brain drain among the young and education is substantial. But since 1978, in a remarkable economic turnaround, the Mississippi Choctaws have created more than 6,000 on-reservation jobs in a host of tribally-owned businesses. The tribe has become the largest employer in east central Mississippi, a mixed-race region of few opportunities and a long history of Black, white, and Indian poverty. The tribe now imports Black and white labor because there aren't enough Choctaws to fill the jobs they have created. For the last ten years Choctaw incomes have been rising faster than the state average while unemployment has fallen to just over half the state average: in other words, the Choctaws are outperforming the state of Mississippi economically. Furthermore, in the 18 to 34 year-old age group, Choctaws today have one of the highest rates of Native language retention in the United States.

Second example: At one point in the 1970s, in the state of Oklahoma, the Citizen Potawatomi Nation, which has only a few acres of tribal land, had about \$500 in the tribal bank account, few jobs, and little in the way of economic prospects. Today, the Citizen Potawatomis own the First National Bank of Shawnee, Oklahoma, as well as an array of retail and media businesses. The tribe is a major regional employer offering jobs not only to its own members but to non-members. In 1997, its unemployment rate was 10 percent — high enough, but dramatically lower than the average on American Indian reservations — and only 16 percent of tribal members holding jobs were employed in the tribal or federal government sectors, which are the sectors that employ a huge majority of Indians on most reservations.

Third example: In the 1980s, a decade in which economic conditions on aboriginal lands in the United States generally were deteriorating, the White Mountain Apache Tribe in Arizona was running nine tribally-owned and -operated businesses, including a trophy-quality elk hunt, a manufacturing enterprise making helicopter parts for the U.S. Department of Defense, a ski resort, and a forest and sawmill operation that was outperforming private sector operators in the western United States. Today, local, non-Indian chambers of commerce look to the Apaches as key to the economic future of the region.

Fourth example: The Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana oversee today a successful, diversified economy based on agriculture, tourism, and a vibrant retail and other private enterprise sector. The tribally-owned and -operated college now receives applications from non-Indians because it offers the highest quality education in the region.

Last example: In the 1980s and 1990s, Cochiti Pueblo — one of the 19 Pueblos in northern New Mexico — brought its own unemployment rate down to just over 10 percent. It put together one of the most efficient development corporations around and built an economy based largely on recreational and retirement services. According to *Golf* magazine, this tribe runs one of the finest public golf courses in the United States. Relative to other Indian nations in the US, Cochiti is a significant success. Yet it is one of the culturally most conservative tribes in the country, still governed today in ways essentially continuous with what the Spanish conquistadors encountered in the 17th century. It is a nation where indigenous culture remains elaborate, powerful, and vibrantly alive.

I could give you other stories as well, but these should provide you with a sense of what has been happening in the U.S. over the last three decades. And, in conjunction with the broader picture of poverty with which I began, they outline the puzzle: How do we account for these interruptions in the prevailing pattern of poverty? How do we account for these breakaway cases? Some things seem to be working in Indian Country. Why?

This is the puzzle that motivated our research. A decade and a half ago, we set out to try to understand this phenomenon. We



did so via both statistical studies of large numbers of Indian nations and through extended, field-based research on smaller samples of tribes. As our research expanded, we found ourselves working closely not only with Indian nations in the U.S. but with some First Nations here in Canada and with Maori groups in New Zealand. Over time, as both data and analysis accumulated, we became increasingly confident in a set of robust, core findings.

HARVARD PROJECT RESEARCH RESULTS

What are those findings? First of all, let me tell you what they are not. Like most people, we entered this research with a number of top-of-the-head answers that made good intuitive sense but turned out to be wrong or incomplete. For example, the key to successful economic development on reservation lands is *not* natural resource endowments, although certainly natural resources help. Neither the Mississippi Choctaws nor the Citizen Potawatomis have significant natural resources to work with, but they are startlingly successful, while other Indian nations, such as the Crow Tribe of Montana, have lavish natural resources that they have been unable to translate into productive economic activity and an improved standard of living. Likewise, the key to successful economic development is *not* location, although certainly a location with good access to markets is a major boost. And the key to successful economic development is *not* education, although I certainly would rather have skilled and educated labor and leadership than not. This is not to say that these factors do not matter, but they do not appear to be the key determinants of tribal economic success.

So if these things are not the keys to development, what is? Our research points to four things.

(1) Jurisdiction matters.

In the U.S., we talk about tribal sovereignty, but sovereignty is a more loaded word here in Canada and is often equated with secession. Think of it instead as genuine self-rule or jurisdiction: Native power to control what happens on Native lands. Put simply, self-rule appears to be a necessary but not sufficient condition for sustained economic development on American Indian reservations. After years of research, we have yet to find a single case of an American Indian nation demonstrating sustained, positive economic performance in which somebody other than the Indian nation itself is making the major decisions about resource allocations, project funding, development strategy, and related matters. In case after case, we have seen development begin to take hold when Indian nations succeed in moving outsiders from decision-making roles into resource roles and take their place as primary decisionmakers in indigenous affairs.

The reasons for this are several, among them the fact that it puts the development agenda in Indian hands. As long as some outside agency carries primary responsibility for economic conditions on Indian lands, development decisions tend to reflect those outsiders' agendas. In the U.S., this has meant that considerations such as protecting agency budgets or expanding agency authority or avoiding media-worthy disasters were frequently given disproportionate weight in decision-making. When tribes begin making the decisions, those decisions begin to reflect tribal agendas in which sustained economic development often has primacy.

But there's a still more important reason for such a shift: the link between decisions and their consequences. Outsiders bear fewer of the consequences of their decisions and therefore are subject to a much less dependable — i.e., less disciplined — learning curve. When outsiders make bad decisions, they seldom pay the price. The community instead bears the brunt of the costs, but it has no power to respond with better decisions in the future. Once decisions move into the hands of those whose fortunes are at stake, the decision-makers themselves begin to bear the consequences of their decisions, reaping the rewards of good decisions and paying the price of bad ones. As a result, over time and allowing for the learning experience, the quality of the decisions improves. In the long run, Indian nations repeatedly demonstrate that they are better decisionmakers about their affairs and their future than outsiders are. After all, it is *their* affairs and *their* future that are at stake.

This has concrete, bottom-line payoffs. In the timber industry, for example, a Harvard Project study of 75 U.S. Indian nations with significant timber resources found that for every job that moved from U.S. Department of the Interior control to tribal control, profits and productivity rose.

My colleague Joseph Kalt has pointed out that our finding on self-rule is predictable from other cases around the world. We are not surprised, for example, that economic development failed to take hold in Eastern Europe as long as the Soviet Union in effect was making the major decisions about resources, development strategy, and other matters. Why, then, should we be surprised to learn that Indian nations, too, benefit when they take the place of outsiders in the major decisions that affect their lives?



(2) Governing institutions matter.

But self-rule is not enough to produce economic growth. Sovereignty must be exercised effectively if it is to lead to significant, sustainable development. Harvard Project results show that the chances of sustainable development rise as Indian nations put in place effective, non-politicized dispute-resolution mechanisms, such as tribal courts, shut down opportunistic behavior by politicians, eradicate corruption, place buffers between day-to-day business management and politics, build capable bureaucracies, and so forth. Our second finding, then, is that sovereignty that is not backed up with effective institutions of governance is unlikely to yield sustained economic development.

Why are institutions so important? Institutions send a message to potential investors. If the message is positive (stability, depoliticized business management and dispute resolution, procedural efficacy, regulatory regimes that are fair and make sense, etc.), the chances of investment rise. If the message is negative (*instability, politicized* business management and dispute resolution, and so forth...), the chances of investment fall. And I should emphasize that I intend a broadly inclusive meaning of the term “investors,” embracing not only those with dollars but those with ideas, energy, time, or any other resource that can be an asset to development—regardless of whether or not they have dollars. Thus, tribal members of meager means are as much potential investors in the future of their communities as anyone else is. They may take a job in First Nations government, start a small business, or go to work in the local school. Importantly, they make investment decisions on much the same basis as outsiders or as those with greater financial resources do: where is my investment—of time, energy, ideas, or money — likely to be most productive, satisfying, and secure?

Institutions are a major part of the community’s answer to this question and, therefore, are one of the central pivots on which development turns. Investors have choices. In building effective governing institutions, Indian nations attempt to shape those choices, sending a message to investors, including their own peoples, inviting them to invest *here*. In sending that message and in backing it up with institutional integrity and real action, they pave the way for productive economic development. John Barrett, Chairman of the Citizen Potawatomi Nation in Oklahoma, which, as I mentioned, is one of the more dramatic economic successes not only in Indian country but in rural development anywhere in the United States, bluntly draws the connection. “If you’re not talking about constitutional reform,” he says, “you’re not in the economic development ballgame.”

For many tribes, this has meant reorganizing governing institutions to adopt separations of powers, checks and balances, independent court systems, and other tools of good governance. It means backing up governing power with governing capabilities.

(3) Culture matters.

So institutions matter, but not just any set of “efficient” institutions will meet the challenge. The third finding from our research has to do with something we call “cultural match.” If Indian nations are to mobilize community energies and resources on behalf of productive economic development, these governing institutions have to have the support of the people they govern. This in turn appears to be a matter of the fit between the formal institutions of governance, on one hand, and indigenous conceptions of how authority should be organized and exercised, on the other. Institutions whose form departs significantly from such indigenous political conceptions fare significantly worse than those that build, sometimes innovatively, upon such conceptions. In other words, institutions have to be effective, but they also have to resonate with indigenous political culture if they’re going to deliver the goods. People have to believe in them.

Historically, outsiders — typically the U.S. government — designed and, in effect, imposed the governing institutions through which many contemporary Indian nations attempt to achieve their goals. Most such institutions were never conceived as tools for the management of sovereign societies and, therefore, are notably ineffective. Furthermore, many are starkly at odds with indigenous political cultures and, consequently, find little support within their own communities. Small wonder many of these institutions don’t work very well. The successful Indian nations we’ve looked at for the most part have solved this problem, either adopting or inventing institutions that match their own contemporary political cultures and that are capable of governing well.

By the way, this is not necessarily an argument for a return to “tradition.” The point is to search out and organize a resonance between formal institutions and what people currently view as appropriate *for them*. For the Confederated Salish and Kootenai Tribes of the Flathead Reservation, this may mean classic parliamentary democracy with a strong, depoliticized,



judicial system. For Cochiti Pueblo, it may mean a system of government without any written constitution in which the spiritual leadership of the tribe appoints the senior tribal administrators. Both of these tribes are notably successful; both have matched formal institutions to contemporary indigenous political culture.

(4) Strategic thinking matters.

Our support for the fourth finding remains largely anecdotal, but the evidence is rapidly increasing that those Indian nations that think strategically do better than those that don't. In the last century or so, most Indian reservations have seldom been characterized by strategic thinking. There are good reasons for this. If political and economic control lies largely in the hands of outsiders, what's the point of strategic thinking? Without the power and resources to implement a thoughtful development strategy, why spend the time coming up with one?

Another reason is the often desperate economic and social conditions of many Indian reservations. Such conditions place enormous pressures on elected tribal leadership to "get something going." The "something" can be almost anything, as long as it produces jobs. Faced with typically short terms of office, frequent political turnover, and an endless stream of petitioners looking for relief, tribal leaders tend to look for quick fixes for development problems. Their development strategy, in effect, pursues whatever can be funded, typically via federal grants; pays less attention to sustaining businesses than to starting them; and puts a premium on hitting home runs instead of building economies incrementally. It also pays little attention to long-term goals, priorities, or concerns.

The alternative is strategic thinking: a systematic examination not only of assets and opportunities but of priorities and concerns. What kind of society do you hope to build? What do you want to change? What do you want to preserve or protect? What kinds of prices are you willing to pay for development, and what kinds of prices are you unwilling to pay? Unless such considerations are thought through, decision-making occurs in a strategic vacuum, simply reacting to the pressures of the moment or to funding decisions made thousands of miles away by governments serving diverse interests and handicapped by limited local knowledge. With a strategic perspective in hand, tribes at least have a set of criteria by which to evaluate development options.

It is worth noting that, with the exception of the analysis of assets and opportunities that a strategic approach requires, none of these factors is something we would identify as classically "economic." This doesn't mean that so-called "economic" factors matter little in the development of reserve lands. But our research indicates that the factors that do the best job of accounting for the variance in development outcomes are indeed political. Economic development is first and foremost a political problem.

This has directed our attention to what we call "nation-building" or "nation-rebuilding," and it has focused much of our energy on working with indigenous nations on institutional and policy issues. "Nation-building" refers to the effort to equip indigenous nations with the institutional foundations necessary to increase their capacity to effectively assert self-governing powers on behalf of their own economic, social, and cultural objectives. As our research results suggest, however, it is not simply a matter of transferring institutions from the dominant society to indigenous nations. These institutions not only have to be effective; they also have to command the support of Indian peoples. This means they have to be produced by indigenous peoples themselves.

IMPLICATIONS FOR THE TREATY PROCESS

So what does all this have to do with the treaty process?

I am struck by the fact that the British Columbia Treaty Commission has suggested that the process will be concerned primarily with three things: jurisdiction, governance, and cash settlements. It is the first two of these that interest me. Jurisdiction and governance correspond to the two central factors emerging from Harvard Project research. They have to do, first, with *powers of self-governance* — the question of whether or not First Nations will have substantive, meaningful, determinative control over their own affairs and resources — and second, with *capacities for self-governance* — the institutional capability of First Nations to exercise those powers effectively in pursuit of their own objectives.

[The four factors are summarized briefly in Table 1 at the end of this document]



These are the central components in nation-building. I realize now that I gave Brian Hewlett a slightly wrong title for this talk: it should been “Treaty-Making as Nation-Building,” for I view the treaty process as a nation-building enterprise. Whether it is an ideal process or not, I am in no position to say. I realize that it is controversial within both aboriginal and non-aboriginal communities, and I assume it has advantages and disadvantages for both. Just how those balance out is not for me to guess.

But while I might not know if this is an ideal way to do nation-building, I am convinced it represents a critical *opportunity* for nation-building, and one of enormous transformative potential. Much of the discussion of the treaty process, I gather, has been about correcting old wrongs and satisfying claims. But in addition, this process could — not will, but could — dramatically improve the chances of successful economic development for First Nations in British Columbia. The critical issues are these: will that process lead to genuine decision-making power in the hands of First Nations, and will it equip those nations with the necessary institutional mechanisms for exercising that power effectively?

My knowledge of the Canadian case is limited, but my sense is that across much of Canada, the federal and provincial governments’ approach to indigenous self-governance is oriented to “operational administration”: allowing tribes to deliver services that once were administered by somebody else. It’s a form of administrative subcontracting, in which bureaucrats in provincial or federal capitals allow indigenous nations to run the administrative show at the local level, while the big decisions still get made elsewhere. In both the U.S. and Canada, this approach to self-governance seldom takes seriously what I think of as nation-building: rebuilding indigenous power to shape and reshape aboriginal futures, to build societies of their own design, to realize their own visions in practical, day-to-day, substantive decision making.

What our evidence indicates, however, is that this more ambitious self-governance agenda is just what the needed transformation in the fortunes of Native nations requires, and I salute a treaty process that appears cognizant of that fact. In 1998 the Treaty Commission described a treaty as “a unique constitutional instrument.” A treaty that yields little more than administrative powers and structures qualifies as “a unique constitutional instrument” only in the sense that it is uniquely toothless, and it is unlikely to be the basis of a new era of prosperity and social health. But you appear to be working toward something much more substantial than that, and that is what makes this process a hopeful one. But the proof, of course, will be in the pudding.

Now why, someone might ask, should non-Native people care, other than on moral grounds? I think moral grounds ought to be sufficient, but let’s be realistic and see what else we can offer. Forgive me if I return once more to US cases, but again, I think there may be lessons there. The evidence from the U.S. is emphatic: genuine indigenous self-government — what in the U.S. is called tribal sovereignty — is a win-win proposition. Over and over again, Indian reservation economic success spins off benefits to non-Indian communities. Our data indicates that as reservation economic fortunes improve, we see reductions in welfare rolls, decreased burdens on taxpayers, growth in job opportunities for non-Indians, and major contributions to regional economies. It takes time, and it happens in fits and starts, but in the long run, successful Indian economies add significantly to the economic pie. And at the heart of successful Indian economies lies genuine self-rule. The evidence is that you are unlikely to have one without the other.

IMPLICATIONS FOR FIRST NATIONS AND OTHER GOVERNMENTS

Finally, then, what are the practical implications of this research? Let me offer, from the distinct disadvantage of an outsider, my sense of things.

First, for non-indigenous governments — the provinces and the federal government — the critical issue, it seems to me, is this: what does self-governance truly mean? Will it be limited to operational administration? Will it mean Ottawa or British Columbia ultimately calling the shots? Or will it embrace genuine control over resources; significant and consequential dispute resolution (which means, ultimately, First Nations courts); funding via block grants instead of program funds (which moves substantive decision making power into indigenous hands) until First Nations can support themselves; a partnership — not consultation but a partnership — in major decisions wherever indigenous interests are at stake; and genuine jurisdictional



power? If we are serious about self-government, then we have to include these things, and we have to invest not only in the treaty process, but in building the institutional capacity of First Nations to back up their power with capable and effective governing systems that operate under their own control.

Which brings me to First Nations. There are implications for them as well. Governing power without the determination and the institutions necessary *to exercise it effectively* won't amount to much. As Chairman John Barrett of the Citizen Potawatomi Nation said to some of us just a few weeks ago, "a tribal government without good institutional rules is just a bad family reunion." The questions are these: can you back up genuine self-governing power — by which I mean substantive jurisdiction — with good government? Can you eradicate corruption? Can you depoliticize judicial decisions and dispute resolution, so that everyone — from the First Nations citizen who is trying to decide whether to stay at home or move to Kamloops or Vancouver, to the potential non-Indian partner in an enterprise — knows that their investment will not be hostage to politics? Can you work with other First Nations to overcome the disadvantages of small size and population, perhaps forming institutional cooperatives where size demands larger organizational scale, assisting each other in providing the kinds of effective institutions without which no nation — not Canada, nor the United States, nor the countries of eastern Europe nor the developing nations in Africa — can succeed? Nation building is not a matter of power. It's a matter of power coupled to its effective, fair, judicious, and culturally appropriate exercise.

That is the nation building challenge, not only here, but around the world. It is a difficult challenge, but it also is a crucial one on which the future of First Nations may well depend.

Thank you very much.²

REFERENCE NOTES

Table 1. Summary of Harvard Project Research Results

For Native nations seeking development success:

Jurisdiction matters — exercising control over the development agenda and resources; coupling decisions and their consequences;

Institutions matter — sending a message to "investors" that their investments will not be hostage to politics or corruption;

Culture matters — matching formal institutions to indigenous conceptions of how authority should be organized and exercised, and matching political boundaries to collective identities;

Strategic thinking matters — searching not for quick fixes but for ways of building societies-that-work, over the long run.

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² Harvard Project work continues today through the Harvard Project itself and through the newly-established Native Nations Institute for Leadership, Management, and Policy at The University of Arizona. For additional information, see our websites at: udallcenter.arizona.edu and ksg.harvard.edu/hpaied.



Summary of Responses

INTRODUCTION

The Treaty Commission has prepared this summary of the discussion from the participants that followed each of the five presentations. The opinions expressed are those of the participants and do not necessarily represent the views of the Treaty Commission.

SESSION 1

Presentation by Ron MacDonald, President, Council of Forest Industries

Mr. MacDonald's presentation on the forest products sector elicited much comment and many questions. There was agreement that First Nations needed to understand the current economic state of the forest products sector and that the parties should find a way to create more First Nations' successes in forestry. However, it was also noted that First Nations had been seeking forest tenures and other opportunities for more than a century, but had been rebuffed and excluded.

The comment was made that the forest industry needed to be educated about First Nations issues more than First Nations needed to be educated about the forest sector. It was important that everyone realize that First Nation involvement in the forest sector was essential to the economic health of the province as a whole, and that First Nations required adequate tenures of their own to escape poverty. One participant also pointed out that the forest stewardship council called for First Nation consent and involvement in the industry for the purposes of certification, and that this requirement could provide opportunities for further dialogue.

It was conceded that there had been confrontations and bad practices in the past. The challenge for all the parties was to identify those practices and to move ahead by avoiding them and learning from successes. Companies were already moving forward every day on environmental and other issues.

Several participants alluded to the fact that joint ventures and consultation were being considered and implemented in a context of unresolved aboriginal rights. Consequently, First Nations were looking for the assurance of government and industry that participation in the former activities would not prejudice those rights.

In response, it was stated that joint ventures do not jeopardize aboriginal rights issues. Rather, they provide a means by which the parties could knock down some of the walls that separate them and by which First Nations could build capacity to implement a treaty. Treaties would take time, and joint ventures should not await the finalization of treaties. It was also important that First Nations' entrepreneurs work together to identify immediate opportunities. The recent aboriginal forestry conference at UBC was an important step in this direction.

However, based on the example of fisheries, another speaker noted that First Nations had become disenfranchised, not because they lacked experience and capacity, but because a public resource was being allocated as private property through tenure allocations. The speaker noted that allocations were declining in number, and the most valuable tenures were being made to non-aboriginals. The comment was also made that joint ventures, being more expensive, are often the first casualties of an economic downturn, and do not adequately protect First Nation economic and community interests. This could only be done by resolving the fundamental issue of aboriginal rights and title. The public needed to be educated to understand that such resolution would lead to major economic shifts and dislocations.

Another participant picked up on this theme of education and dislocation. Democracies worked best when there was an informed public, and it is in the interests of all that they understand the implications of the *Delgamuukw* judgment. These were that there would have to be major transfers of tenure.

It was noted that the need for education was the greater, given the superficiality of the coverage of the issues in the media, which most interest groups were guilty of attempting to exploit to their advantage.

The further point was made that forests might be distinguishable from fisheries, in that the industry was not running out of trees, especially given the requirements of the Forest Practices Code. It was also noted that, notwithstanding low lumber prices, the forest products industry had become more competitive, and that a large part of its costs arose from the regulatory regime. Moreover, the market for lumber was growing, and there were significant opportunities for First Nations in the value-added sector.



Industry had difficulty with tenure transfers, particularly in regard to the Nisga'a Final Agreement, but only because the related issue of compensation and the sector's continued access to fibre had not been adequately addressed. Forest companies were less concerned with the change of landlord or with cash compensation than they were with securing fibre to support the manufacturing plants that their licences compelled them to build. Tenure transfers, if done right, could enhance opportunities in the forest products sector.

First Nations responded that there was a double standard, in that industry wished to be compensated for its legal interests affected by treaties, while Canada and BC refuse to include compensation to First Nations for their legal interests on the treaty menu. An industry representative acknowledged the pertinence of this point, but noted that compensation to the forest sector was necessitated by the treaty, but was not part of it. That said, this participant noted that compensation should be equally and evenly accessible to all parties.

Finally, several participants raised the issue of resource-revenue sharing. One respondent noted that this would not add to companies' costs of doing business, although it would lead to a loss of revenue to the provincial government.

It was noted that the Council of Forest Industries (COFI) supported the need to reinvigorate negotiations and to funnel economic benefits to First Nations earlier rather than at the end of treaty negotiations. COFI believed that the allocation of a percentage of stumpage fees to First Nations had merit as an idea, but would have to be matched by cash compensation from the federal government to the provincial government to make up for lost revenues.

A third respondent highlighted resource-revenue sharing as a possible means of addressing:

- the concept of shared ownership raised by the *Delgamuukw* judgment;
- First Nations' desire to participate in and derive benefit from the forest sector; and
- industry's reservations about tenure transfers.

In this participant's view, there were no legal, constitutional, or economic grounds for viewing revenue-sharing as a federal responsibility, and it was suggested that the group might wish to explore the subject further.

SESSION 2

Presentation by Milton Wong, Chair, HSBC Asset Management Canada, Chancellor, Simon Fraser University

There was considerable overlap between the first two sessions, in part because of conceptual relatedness and in part for practical reasons of time.

What linked the various remarks was the emphasis on the need for a new vision among First Nations and of the changing place of First Nations within wider society. Such visions, it was suggested, would need to be informed by the overarching context of globalisation, regionalisation, and democratization (notably, the rights revolution as it had been recently enunciated by Michael Ignatieff).

One speaker stated that the rights revolution included an assets revolution. The historical arrangement between government and the corporate sector for the allocation of forest assets in BC was having to change to accommodate not only the rights, but also the values and visions of First Nations. Treaties involved more than simply a change of landlord, they involved a change of landlord values. First Nations did not view forests as fibre factories and were well aware of issues of over-cutting and over-capacity. Consequently, projections about the future Annual Allowable Cut must take more realistic account of the consequences of the fundamental transfer of assets to First Nations through treaties.

In related vein, another participant noted that the rights revolution entailed a wider philosophical shift from the ownership of investments to the stewardship of investments. This approach focused on the stewardship obligations that grants of legal rights placed on grantees. As the forest industry was learning, failure to meet these obligations resulted in unavoidable price discounting in the global market.

Several respondents picked up on the issue of globalisation. One remarked that treaty settlements needed to take account of the limits that overarching global trends placed on what they could promise. Another noted that globalisation, coupled with the rights revolution and technological change, provided First Nations with the opportunity to engage with other interests in a way that did not compromise their nationhood and ensured that those wishing to do business in their territories honoured the cost of addressing aboriginal interests in a meaningful way.



A participant suggested that talk of a rights revolution raised the question of the type of rights that First Nations were considering. Would they, and the system of governance that institutionalized them, be collective or individual? And how would the challenge of large powers being exercised by small governments be addressed?

Not all participants, however, accepted that there was a link between the accommodation of aboriginal rights and a new rights revolution, believing instead that the accommodation found its basis in long established Common Law principles of property ownership and compensation.

Several respondents welcomed the suggestion that First Nations in the province might wish to develop a common vision among themselves. It was suggested, however, that formulating and realising this vision would be constrained by extraneous circumstances, notably the imbalance in power between aboriginals and non-aboriginals in their access to forestry, fisheries, and water.

In part this arose from the inadequacy of the government response to *Delgamuukw* and the higher priority afforded shareholder interests, even in joint ventures. It was also remarked that First Nations were being obliged to approach industry on the basis of Crown tenures that conflicted with aboriginal rights, at internal political cost to themselves. In only one case, Iisaak, had their been a tenure transfer to a First Nation, and that was in the highly charged legal and environmental context of Clayoquot Sound. Consequently, the imbalance in power and wealth had not been generally addressed.

Other First Nation speakers focused on governance, and the fiscal and management issues that needed to be addressed to build the infrastructure that would enhance economic development and governance. The work of the Assembly of First Nations fiscal table, the aboriginal tax commission and the native management board was referred to as responding to these needs. Concern was expressed that many First Nation governance initiatives operated in a vacuum without adequate support from other levels of government. Little if any of the royalties paid to the province, or of federal-provincial transfer payments, benefited aboriginal government. It was suggested that revenue sharing would be a means to redress this situation. It was also noted that there could be valuable lessons to be learned from the experiences of other communities, such as the Ishmaelis, in devising and giving effect to community visions of economic self-sufficiency.

Other speakers welcomed the idea of a shared vision between aboriginals and non-aboriginals, given their economic interdependence and the many basic interests — health, education, spiritual, familial well-being — they had in common. Another spoke of precisely these shared human needs as the starting point for building relationships and economic partnerships. The point was again made, however, that there needed to be structural safeguards and changes to enable First Nations to participate more fully in the national and world economy. For that reason, for example, First Nations reserved the right to get compensation from the Crown separate from business deals. For that reason also, industry organizations were challenged to inform their membership of the benefits of treaties.

Several respondents, while acknowledging that there would be many paths to giving effect to a new vision, stressed the significance of joint ventures as one of them. Business's growing receptivity to initiatives such as *Business at the Summit* was alluded to. It was suggested that the first presentation of the morning (Ron MacDonald) also reflected this new more positive, flexible, and constructive approach. In place of the two solitudes of only a few years ago, there had been a dramatic increase in the number of joint ventures, and there were now hundreds of mutually beneficial equity partnerships. Such joint ventures allowed for further mutual learning and reciprocal understanding.

Companies should also consider training opportunities and more equity and tenure transfers. Joint ventures were also helpful in addressing the major capacity challenges that faced First Nations in achieving good governance and in a wide range of other spheres.

The significance of this new relationship has to be seen in historical perspective to be better appreciated. In the past, First Nations had to create the political will to address issues of justice and equity, understanding and knowledge, by mounting major legal challenges and through direct action.



SESSION 3

Presentation by Miles Richardson, Chief Commissioner, BC Treaty Commission

One respondent noted that for the treaty process to survive, the title of the symposium should be kept in mind: those who currently held power needed to be truthful if negotiations were to progress. And there had to be progress if First Nations were to keep faith in negotiations, particularly as they were borrowing money to negotiate.

Another participant spoke of two sets of tensions that were enveloping treaty negotiations. One set arose from the balance between First Nation autonomy and the integration of First Nations into the Canadian constitutional and political framework. Some thought that the Nisga'a Final Agreement had successfully struck that balance. Others disagreed, believing either that it veered dangerously in the direction of autonomy or that the self-government components were too severely constrained.

The second was the tension between the resolution of legal rights and the requirements of economic development. It was the latter that had surfaced recently as the major thrust of federal policy. Clearly, joint ventures were compatible with this approach. On the other hand, *Delgamuukw* spoke of rights-based compensation, without providing much guidance on how resources should be shared. Again, the matter of revenue sharing was raised. It was suggested that it represented the middle ground between the two approaches and did not deny the validity of either.

Another participant noted that the Nisga'a Final Agreement had suffered from being so highly politicized and having been attended by so much political rhetoric and so little public discussion of the facts. The reality is that negotiations would continue as they had in the past, no matter what the political stripe of the government, but that they would proceed more smoothly if they did not become hostage to party politics and involved more public discussion and debate.

Another participant argued that substance, not process, should be the focus of any First Nation treaty vision and the focus of any review of the treaty process. For First Nations, negotiations were about getting back power and wealth and about social change. Governments, on the other hand, were trying to minimize all three elements in negotiations, rather than acting with generosity and imagination. As to the nature of the treaty rights a First Nation would exercise, it is hard to imagine how these could be exercised except within a community. However, it was for First Nations to strike the balance between individual and communal rights for themselves. The alternative approach, imposition of a model of individual rights by non-aboriginal government, had failed in Alaska, and did not deserve to be repeated. Finally, the point was made that the elements of the First Nations vision should be worked out in the details of negotiations, not in trying to redesign the negotiation process.

SESSION 4

Presentation by Alan Cairns, author of Citizens Plus: Aboriginal People and the Canadian State

During the discussion, it emerged that many of the presenter's concerns about parallelism and treaty federalism arose not from the treaty process itself but from the Royal Commission on Aboriginal Peoples' (RCAP) emphases and omissions and from the literature of the intellectual vanguard. The writings of Mary Ellen Turpel and James Youngblood [sakej] Henderson were singled out for comment, as was some of the legal literature. By contrast, the Nisga'a Final Agreement was thought of as a reasonable compromise, compatible with a "Citizen's Plus" approach.

Much attention was given to the federal government's response to RCAP. One respondent noted that the Minister of Finance had made it clear that there would be no extra funding to implement any of its recommendations and that the Minister of Indian Affairs of the day was averse to dealing with the national aboriginal leadership, preferring to concentrate on community-level initiatives.

Another participant conceded that it had been difficult to engage the federal cabinet on making a concerted response to RCAP. In part this difficulty had arisen from the sheer bulk of the report and in part from the evidence of the polls showing minimal public support for RCAP-type proposals. It was also true that the federal responses to date had focused on First Nations and had not addressed the interests of the Metis and the urban aboriginal population. These had continued to be seen as a provincial responsibility.



Nonetheless, the federal government did have a distinct vision of future policy. In this vision, treaties and treaty making were important tools for dealing with issues of lands, resources, and powers of governance. Second, the federal government had wanted to build legislation that would recognize self-government and bring about good governance (e.g., accountability, judicial recourse), so as to achieve a level of self-determination for First Nations. While the *Charter* and other limitations would apply, it was felt that even limited self-determination would afford First Nations citizens a sense of dignity.

However, this self-determination was to apply to nations, not communities, and would entail cooperation among nations. Some attempts had been made with Saskatchewan First Nations to implement elements of this vision, but the will and the public policy skill to make it work has been largely lost. Consequently, the question remained open as to whether treaties would achieve self-determination and good governance within the context of Canadian citizenship.

Other speakers debated the merits of the notion of “Citizens Plus”. On the one hand, it was felt that politicians would be terrified by it, given the current popular preoccupation with equality and aversion to special status. Nor was it obvious how this approach would apply to urban aboriginals. On the other, it was felt that the term had a positive ring, implying harmonious and prosperous coexistence, and was consistent with modern pluralist notions of democracy. Moreover, there was a symbiotic relationship between the two elements in the formulation, and the “plus” component had the potential to expand quite freely. It was suggested that all the parties in treaty negotiations might wish to proclaim that their intention was to pursue “Citizen’s Plus”-type goals, and so forestall the irrational polarizing discussions that had surrounded the Nisga’a Final Agreement.

It was also noted that the concept of “Citizen’s Plus” goes to the root of local government concerns. Local government had come to accept the differential element in the aboriginal/non-aboriginal relationship and recognized its legal, historical, and moral basis. But if local government were now fully part of provincial teams and understood these issues, the problem remained that provincial treaty mandates had been developed in absolute isolation from the electorate and without regard to what voters would accept. A “Citizen’s Plus” approach was helpful in taking account of the ties that bind all citizens together and of the realities, quality, and equality of the relationships between self-governing entities.

It was clear that public education remained a vital need. More dialogue between the people who would be affected by treaties was required, more credible information should be made available, and new approaches to the teaching of history in schools and colleges were needed.

SESSION 5

Keynote presentation by Stephen Cornell, co-author of Harvard Project on American Indian Economic Development

The question was asked about how significant private ownership and private enterprise were to economic development. Based on American experience, there was no one answer. A combination of communal ownership and no regulatory regime was certainly inimical to development. However, private enterprise was not necessarily more successful than tribal enterprise. The key variable appeared to be the existence of a sound regulatory regime. This, in turn, needed to take account of cultural variation.

Political leadership was certainly a key ingredient in triggering and sustaining economic and social development. It too, needed to be culturally appropriate and could take many forms. However, strong political leadership could be a drawback if it led to the neglect of institutional development.

It was noted that a third of aboriginal communities in BC numbered fewer than 500 members. Smallness of size had not been consistently examined in the US as a factor in economic development. However, in California several small First Nations shared a common court system, while in Alaska institutional cooperation was crucial at a level between villages and development corporations.

There was no doubt that culture was a key ingredient in economic development, but this did not have to be traditional culture. Traditional culture might not even survive in some instances, or might require adaptation by the community to be appropriate to current conditions. On the other hand, externally imposed systems of governance were more likely to fail in creating economic development.



Generally speaking, states in the US opposed aboriginal self-determination. Moreover, there had been some indication that the US Supreme Court was taking a more restrictive view of the powers of sovereign dependent nations in those areas where treaties were silent and where Congress did not have plenary power. However, the choices Americans faced were perpetuating despair and dependency by restricting self-government, or letting native people take back control of their lives, even at the risk of some failed experiments.

Finally, it was suggested that the criteria outlined in the address could usefully be built into and given a trial run through interim measures. Indeed, interim measures could serve as a valuable opportunity for experimentation, given the difficulty of developing effective governing institutions and predicting the likelihood of their success in the abstract.



DISCUSSION THEMES

- A New Model for Treaty Making in B.C.
- Achieving Effective Public Consultation
- Compensation versus Revenue-sharing
- Does the Treaty Commission have enough 'teeth'?
- Gaps in 'world views' amongst aboriginal and non-aboriginal peoples
- Government Mandates
- Incremental Treaty Model
- Interim Measures
- Meanings of Certainty, Sovereignty and Finality
- Nation Building in the Treaty Process
- Preparing for Change
- Public Education

Many participants at Truth I felt the conference was an important start to discussion on the future of treaty making, but did not provide enough time to really delve into solutions.

Responding to this gap, the Treaty Commission organized one full day of "open space" as part of Truth II.

WHAT IS OPEN SPACE?

Open space is a large discussion forum made up of individual working groups around one central theme. Participants can initiate their own topics and form a discussion group, or join discussion groups generated by other participants.

PRINCIPLES OF OPEN SPACE

- 1 Whoever comes are the right people;
- 2 When it starts is the right time;
- 3 Whatever happens is the only thing that could have happened; and
- 4 When it's over; it's over

WHY OPEN SPACE?

"Open space works best when the work to be done is complex, the people and ideas involved are diverse, the passion for resolution (and potential for conflict) are high, and the time to get the work done was yesterday."
— Michael Herman, in support of worldwide open space

In addition to the intrinsic benefits of encouraging solution-driven dialogue, the Treaty Commission used the open space forum to gather and share new ideas. Each open space group provided the Treaty Commission with a brief summary of their discussion so that this information could be shared with other participants at Truth II.

The Treaty Commission considered many of the ideas put forth by the open space discussions as part of the *Review of the BC Treaty Process* released in September 2001.

A *Review of the BC Treaty Process* is available on-line at www.bctreaty.net. Hard copies may be requested by email: info@bctreaty.net or by phone: 800 665 8330.

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