

Native History, Native Claims and Self-Determination

THOMAS R. BERGER

We think of native claims as something that has only come to the fore in the last decade, particularly in the recent constitutional debate. In fact native claims present the oldest question of human rights in Canada — indeed, in the whole new world, for the question goes back to the Spanish conquest of the Indies, Mexico and Peru. Columbus may at first have thought he had reached India, but the Spanish soon realized that they had discovered a new world, a world already inhabited by another race having its own languages, cultures and civilizations.

In Spain, lawyers and clerics struggled with the questions of law and morals that this epochal discovery presented. By what right did the Europeans conquer these people, take their land and subjugate them? There were two views. Juan Gines de Sepulvèda, the greatest Aristotelian philosopher of the day, relied on the doctrine propounded by Aristotle in his *Politics*, that some races are inferior to others, that some men are born to slavery. By this reasoning, the Europeans, a superior race, were justified in subjugating the Indians, an inferior race. On the other hand, there was the view propounded by Bartolomé de Las Casas, God's angry man of the sixteenth century. He argued that all men are endowed with natural rights, that the Europeans had no right to enslave the Indians, that according to natural law the Indians were entitled to live as free men, under their own rulers and their own laws.

In 1550, Charles V, King of Spain and Holy Roman Emperor, directed that a junta of theologians, judges and court officials — fifteen in all — assemble at the University of Valladolid to consider the arguments on either side. This they did and, as Lewis Hanke has said, "Then for the first, and doubtless for the last, time a colonizing nation organized a formal enquiry into the justice of the methods used to extend its empire."¹

¹ Lewis Hanke, *Aristotle and the American Indians* (Indiana University Press, 1959), pp. ix-x.

The question on which the King sought advice from the junta was: "How can conquests, discoveries and settlements be made to accord with justice and reason?" Here is Hanke's account of the argument advanced by Sepulvèda. Sepulvèda said that the Indians

require, by their own nature and in their own interests, to be placed under the authority of civilized and virtuous princes or nations, so that they may learn, from the might, wisdom and law of their conquerors, to practise better morals, worthier customs and a more civilized way of life.²

Compare then those blessings enjoyed by Spaniards of prudence, genius, magnanimity, temperance, humanity, and religion with those of the *homunculi* [little men] in whom you will scarcely find even vestiges of humanity, who not only possess no science but who also lack letters and preserve no monument of their history except certain vague and obscure reminiscences of some things in certain paintings. Neither do they have written laws, but barbaric institutions and customs. They do not even have private property.³

The bringing of iron alone compensates for all the gold and silver taken from America. To the immensely valuable iron may be added other Spanish contributions such as wheat, barley, other cereals and vegetables, horses, mules, asses, oxen, sheep, goats, pigs, and an infinite variety of trees. Any one of these greatly exceeds the usefulness the barbarians derived from gold and silver taken by the Spaniards. All these blessings are in addition to writing, books, culture, excellent laws, and that one supreme benefit which is worth more than all others combined: the Christian religion.⁴

Las Casas' views were already well known. He regarded the Indians as people with an evolved culture, possessing their own social, economic and religious institutions.⁵ (He had, in fact, been instrumental in securing the passage of the New Laws of 1542 abolishing the *encomienda* under which Indians were allotted to the Spaniards together with land — the New Laws, however, were never enforced because of the outcry from the colonists.) According to Las Casas, the Indians were rational beings, fit to be compared to the Greeks and Romans. In fact, as Hanke recounts it, Las Casas said that the Indians

are superior to the ancient peoples in rearing and educating their children. Their marriage arrangements are reasonable and conform to natural law and the law of nations. Indian women are devout workers, even labouring with their hands if necessary to comply fully with divine law, a trait which

² *Ibid.*, p. 47.

³ *Ibid.*

⁴ *Ibid.*, pp. 52-53.

⁵ Las Casas' views were compendiously set out in his *History of the Indies*, trans. Andree M. Collard (Harper Torchbooks, 1971).

Las Casas feels many Spanish matrons might well adopt. Las Casas is not intimidated by the authority of the ancient world, and he maintains that the temples in Yucatan are not less worthy of admiration than the pyramids, thus anticipating the judgment of twentieth-century archaeologists.⁶

Las Casas discussed the Indian economy, architecture and religion. (He seems not to have been aware of the achievements of the Indians in such fields as mathematics or even agriculture.) He sought to demonstrate that Indian culture, customs and institutions deserved respect on their own terms. "All the peoples of the world are men," he said. Sepulvèda and Las Casas addressed the junta in turn. The debate apparently went on for weeks, after which the junta adjourned to consider what advice to give the King. Unfortunately it is not now known what decision the junta came to, and there is still controversy as to whether or not they ever did deliver an opinion to the King. In any event, Charles V soon abdicated and entered a monastery, to be succeeded by his son, Philip II. Thereafter events overtook the Indians and the other native peoples of the New World.

The great debate at Valladolid took place in 1550. Yet it still moves us today. Why should this be so? I think it is because our own history goes back to that earliest encounter between the Europeans and the indigenous peoples of the Americas. It was an encounter that was repeated throughout the New World. Here, in what is now Canada, it was an encounter first between French and native people, then between British and native people. It is an encounter that has ramified throughout our history, and its consequences are with us today. It was a brutal encounter. The Beothuks were exterminated, the Hurons were overwhelmed, the Cree were displaced, the Salish were dispossessed. But those were the bad old days. They have been replaced by the welfare state. Our view has been, for many years now, that the native "problem" can be solved by education and by industry. With schooling, with vocational training, native people will be able to hold down any job. To secure them a place in the labour market, employers will be encouraged — if need be required — to employ native people. Has the native "problem" been solved? No one can be unaware of the poverty, violence and degradation which disfigure life in many native communities. The problems have not gone away; if anything, they appear to have been aggravated. The penetration of industry has resulted in increased violence, social disarray and even increased unemployment. Why? Because the problems of native

⁶ Hanke, pp. 54-55.

people are not simply problems of poverty, but of a people trying desperately to preserve their cultural identity. The white presence — from the missions and the fur trade to the advent of industry and the proliferation of government institutions — represented, and continues to represent, a domination of native society. There is an intrinsic relationship between this domination and the cluster of social pathologies and economic difficulties that afflict native communities.

We have pursued policies designed to suppress native languages, native culture and the native economy. Our attitude has been founded on the belief that native society is moribund, that their “culture” consists of crafts and carvings, dances and drinking — that it is at best a colourful reminder of the past, and that what we observe today is no more than a pathetic and diminishing remnant of what existed long ago. Man puts his unique stamp on the world around him. His values, ideas, language and institutions exhibit his understanding of himself and his world. These things are his culture. All people seek to ensure that these things are transmitted from one generation to another, to ensure a continuity of the beliefs and knowledge that a people hold in common. We sought to erase the collective memory of the native people — their history, language, religion and philosophy — and to replace it with our own. The astonishing thing is that the drive to assimilate native people, whether by draconian or liberal measures, has never succeeded. The native people have clung to their own beliefs, their own ideas of themselves, of who they are and where they came from.

The great debate at Valladolid has been rejoined in Canada. The arguments Sepulvèda and Las Casas addressed to the junta in 1550 are still before us today.⁷ How far has the debate progressed since 1550? Do we really recognize the place of native history, of native culture? Many people are inclined to view the extension of the commercial and industrial system as the very definition of progress; accordingly they regard native societies as poor and acutely disadvantaged. It is not a long step from there to dismiss native culture as having no place in the modern world. Then there are those who see the aboriginal past of native peoples as a time of happiness and social cohesion, if not necessarily of economic

⁷ The very arguments advanced in 1550 were reflected in the submissions I heard as Commissioner of the Mackenzie Valley Pipeline Inquiry at the hearings I held in the Northwest Territories and the Yukon in 1975 and 1976. The Inquiry was held to examine the impact of a proposed pipeline from the Arctic to the mid-continent. The Inquiry visited all of the cities, towns, villages and settlements in the Mackenzie Valley and the Western Arctic. A thousand northern residents of all races gave evidence largely opposed to the construction of the pipeline without a prior settlement of their claims.

prosperity. They wish to see native people protected in a kind of living folk museum. These two ideas, the idea of Progress and the idea of the Noble Savage, are both products of the Western imagination. J. E. Chamberlin has said:

What was done becomes clear enough. What people thought that they were doing is much less clear, but often much more important. The attitudes towards the Indian and "the Indian problem" of generations of explorers, traders, missionaries, settlers, military personnel and government administrators are as critical as the actions which these attitudes precipitated. The idea of the noble savage and the idea of progress together conspired to create a very confused and ambivalent response to the native, combined as it was with personal and national ambitions and dreams.⁸

Both ideas assume that native culture is static and unchanging. The native people are seen as people locked into their past. Such an assumption becomes self-fulfilling. If we do not allow native people the means to deal with their present problems on their own terms, their culture may, in fact, tend to become degraded and static.

It comes down to our attitude toward native culture. That was what Las Casas believed. And our attitude, whether we have sought to preserve native culture or to eradicate it, has been a patronizing one. Those on both sides of the argument have too often rejected the notion that native culture is viable in the contemporary context, believing that it has no place in an urban, industrial society. This is the crux. For native people insist that their culture is still a vital force in their lives. It informs their view of themselves, of the world about them, and of the dominant white society. The culture and the values of native people amount to more than crafts and carvings. Their tradition of decision-making by consensus, their respect for the wisdom of their elders, their concept of the extended family, their belief in a special relationship with the land, their regard for the environment, their willingness to share — all of these values persist in one form or another within their own culture, even though there has been unremitting pressure to abandon them.

We have sought to make over these people in our own image. But this pronounced, consistent and well-intentioned effort at assimilation has failed. The Indians, the Inuit and the Metis survive, determined to be themselves. In the past their refusal to be assimilated was usually passive, even covert. Today it is plain and unmistakable, a fact of life which cannot be ignored. Canadians generally — and the descendants of Euro-

⁸ J. E. Chamberlin, *The Harrowing of Eden: White Attitudes Toward North American Natives* (Fitzhenry and Whiteside, 1975), p. 11.

peans whose institutions predominate not only in Canada but throughout the Western Hemisphere — must be prepared to accept the distinct place of native people in our midst. What measures, then, are required to provide a distinct place for native people within the larger society, in the modern context? How are they to defend their economic mode? How are they to defend their languages, their art, their history? How are they to be enabled to defend their right to a future of their own? This is what native claims are all about.

The native people claim a special status under the Constitution of Canada. They have always had special status. Indian treaties, Indian reserves, the *Indian Act* — all of these are special institutions devised by us for native people. Now they seek to devise a future of their own fashioning. Native self-determination is the contemporary expression of special status.

In 1867, the Fathers of Confederation provided in the Constitution that native people should come under the exclusive legislative jurisdiction of Parliament. Why should the native people of Canada be given special consideration? No such provision has been offered to the Ukrainians, the Swedes, the Italians, or any other race, ethnic group or nationality. The answer is simple enough: the native people did not immigrate to Canada as individuals or families expecting to assimilate. Immigrants chose to come to submit to Canadian government and institutions; their choices were individual choices. But the Indians and the Inuit were already here, and were forced to submit to the government and institutions imposed upon them. They were here with their own languages, cultures and institutions before the arrival of the French or English. They, together with the Metis, are the original peoples of Canada.

There are many instances of our history which show how easy it is for the dominant society in Canada, whether anglophone or francophone, to discount native aspirations whenever they are inconveniently opposed to cultural, political or industrial imperatives. Today the dominant society is largely — and increasingly — urban, industrial and bureaucratic. It is the same in every province. Native claims are the means by which native people seek to defend their interest against encroachments.

At the heart of native claims lies the concept of aboriginal title and aboriginal rights. In the *Statement of the Government of Canada on Indian Policy, 1969*, the government said: "Aboriginal claims to land . . . are so general and undefined that it is not realistic to think of them as specific claims capable of remedy except through a policy and program that will end injustice to Indians as members of the Canadian

community." Prime Minister Trudeau, speaking in Vancouver on August 8, 1969, said: "Our answer is no. We can't recognize aboriginal rights because no society can be built on historical 'might have beens'." In saying this, the Prime Minister spoke for all of us. Yet the policy of the government was soon overthrown by the vehemence of the native people's reaction. The belief that their future lay in the assertion of their own common identity and the defence of their own common interests proved stronger than any of us had realized. They forced the government to reverse its policy on aboriginal rights.

One of the means by which this reversal was achieved was the lawsuit brought by the Nishga tribe against the Province of B.C., *Calder v. AGBC*, (1973), 34 D.L.R. (3d) 145 (S.C.C.). In that case Mr. Justice Wilfred Judson, speaking for three judges, found that the Nishgas, before the coming of the white man, had aboriginal title, a title recognized under English law. But, he went on to say, this title had been extinguished by pre-Confederation enactments of the old colony of British Columbia. Mr. Justice Emmett Hall, speaking for three judges, found that the Nishgas, before the coming of the white man, had aboriginal title, that it had never been lawfully extinguished, and that this title could be asserted even today. On this reckoning, the court was tied. Mr. Justice Louis-Philippe Pigeon, the seventh judge, expressed no opinion on the main issue. He held against the Nishgas on the ground that they had proceeded by issuing a writ against the Province of British Columbia. They should, he said, have proceeded by way of a petition of right. (This procedure, however, was in fact unavailable to them since it was in those days necessary to have the consent of the province to bring any proceedings by way of petition of right.) Mr. Justice Pigeon's vote meant that the Nishgas had lost, four to three.

Here is the crucial point. All of the six judges who had addressed the main question supported the view that English law in force in British Columbia when colonization began had recognized Indian title to the land. For the first time, Canada's highest court had unequivocally affirmed the concept of aboriginal title. Mr. Justice Judson, in describing the nature of Indian title, concluded at p. 156:

The fact is that when the settlers came the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means.... What they are asserting in this action is that they had a right to continue to live on their lands as their forefathers had lived and that this right has never been lawfully extinguished.

Although Mr. Justice Judson went on to hold that the old colony of British Columbia had effectively extinguished the aboriginal title of the Nishga Indians, his view of Indian title affirmed the legal concept of aboriginal title. Mr. Justice Hall, speaking for the three judges who were prepared to uphold the Nishgas' claim, urged that the court should adopt a contemporary view and not be bound by past and mistaken notions about Indians and Indian culture. Mr. Justice Hall tried to look at the idea of aboriginal rights and to see it as the Indian people see it. This required some idea of the place of Indian history in our own history. In 1970 the B.C. Court of Appeal had (13 D.L.R. (3d) 64) rejected the notion of aboriginal title. Chief Justice Davey, in asserting that the Nishgas were at the time of European settlement "a very primitive people with few of the institutions of civilized society, and none at all of our notions of private property" had assessed the Indian culture by the same standards that the Europeans had applied to the Indians of North America when colonization began. Mr. Justice Hall, at p. 169, rejected this approach:

The assessment and interpretation of the historical documents and enactments tendered in evidence must be approached in the light of present-day research and knowledge disregarding ancient concepts formulated when understanding of customs and culture of our original people was rudimentary and incomplete and when they were thought to be wholly without cohesion, laws or culture, in effect a subhuman species. This concept of the original inhabitants of America led Chief Justice Marshall in his otherwise enlightened judgment in *Johnson v. McIntosh*, (1823) 8 Wheaton 543, which is the outstanding judicial pronouncement on the subject of Indian rights, to say: "But the tribes of Indians inhabiting this country were fierce savages whose occupation was war. . . ." We now know that the assessment was ill-founded. The Indians did in fact at times engage in some tribal wars but war was not their vocation and it can be said that their pre-occupation with war pales into insignificance when compared to the religious and dynastic wars of "civilized" Europe of the 16th and 17th centuries.

Mr. Justice Hall concluded that the Nishgas had their own concept of aboriginal title before the coming of the white man and were still entitled to assert it today. He said, at p. 190:

What emerges from the . . . evidence is that the Nishgas in fact are and were from the time immemorial a distinctive cultural entity with concepts of ownership indigenous to their culture and capable of articulation under the common law, having "developed their cultures to higher peaks in many respects than in any other part of the continent north of Mexico."

As a result, at p. 223, he upheld the claim to a declaration

that the appellants' [the Nishga tribe's] right to possession of the lands delineated . . . and their right to enjoy the fruits of the soil of the forest, and of the rivers and streams within the boundaries of said lands have not been extinguished by the Province of British Columbia or by its predecessor, the Colony of British Columbia, or by the Governors of that Colony.

Native claims, whether founded on aboriginal rights or treaty rights, begin with the land; but they do not end there. They extend to renewable and non-renewable resources, education, health and social services, public order and, overarching all of these, the future shape and composition of political institutions. Many of the proposals that native people are making are far reaching. (Consider, for instance, the proposals by the Dene and the Inuit for two new northern territories, Denendeh and Nunavut.) Some regard such proposals as a threat to established institutions, while others look on them as an opportunity to affirm our commitment to the human rights of indigenous minorities. It might be thought, however, that it is all very well for native people in rural and frontier areas in British Columbia and elsewhere in Canada to strengthen their society and their economy, but that native claims can mean nothing to the many native people who live in urban, industrial areas and who cannot return to the past. The reply is, of course, that native people do not wish to return to the past. They do not wish to be the objects of mere sentimentality. They do not say that native culture, native communities and the native economy should be preserved in amber for our amusement and edification. Rather, they wish to ensure that their culture can continue to grow and change — in directions they choose for themselves. Their determination to retain their identity as native people does not mean that they want to return to live in tents or igloos. Because the native people use the technology of the dominant society does not mean that they must learn no language in school except English or French, and learn of no one's past but ours, and be governed by no institutions except those of our sole devising.

It will take time for them to limn these claims, especially as regards their implications for native people entering urban life. Nevertheless, some elements are clear enough. For instance, native people say that their children are taught about the kings and queens of England, and about the brave band of settlers who established the colony of New France on the banks of the St. Lawrence. "This," they say, "is your history — what about our history?" They say that they want schools where their children can learn native history, native languages, native lore and native rights. Of course they want their children to learn to speak English or French,

as the case may be, and to learn the history of our European antecedents, and to study mathematics, science, and all the subjects that they need to know in order to function in the dominant society, but they must have schools where they can learn about who they are, as well as who we are. These proposals are not limited to a rural or a frontier context. Anyone who says that responding to these proposals is out of the question should be aware that it is already happening. Since 1973 the federal government has accepted the right of native communities to have their own schools, their own teachers and their own curriculum. Today, in province after province, programs are being established to train native teachers to teach in native communities.⁹ The same thing is happening in other fields. The federal government's new Indian Health Policy, adopted on 19 September 1979, is founded on the principle that Indian people ought gradually to assume responsibility for health care and health care programs in native communities. Indian health councils and Indian health boards are being established in Alberta, British Columbia and Saskatchewan.¹⁰

The native people say that the key to native claims is aboriginal rights. On 29 January 1981, the Joint Committee of the Senate and the House of Commons on the Constitution agreed to recommend an amendment to the new Constitution which would provide: "The aboriginal rights and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." The Prime Minister and the Premiers agreed, on 5 November 1981, to delete this provision. But within little more than a week they were forced by public opinion to agree to its restoration, although they did so in a qualified fashion. Now it is "existing" aboriginal and treaty rights that are recognized and affirmed. None of the other measures in the Constitution and the Charter is limited in this way. Nevertheless, explicit recognition of aboriginal and treaty rights may have its uses. These words appear now in the Constitution. They will be binding not only on the federal government but also on the provinces. They may provide the means by which the provinces will be brought to negotiations on native claims. (Section 25 should not be overlooked. It

⁹ Special teacher training programs for native persons, designed to enable them to teach in native communities, have been undertaken in every province. All of the native Indian teacher education projects in Canada are surveyed in More and Wallis, *Native Teacher Education*, produced in co-operation with the Canadian Indian Teacher Education Projects (CITEP) Conference, September 1979.

¹⁰ I have reviewed recent developments in the field of Indian and Inuit health care and health care programs in my Report on *Indian and Inuit Health Consultation*, Ottawa, Ontario, 28 February 1980.

says that nothing in the Charter shall abrogate or derogate from any aboriginal, treaty or other rights of the aboriginal peoples, including those recognized by the Royal Proclamation of 1763, and any that may be acquired under future land claims settlements.)

Ever since British Columbia entered Confederation, the province has refused to acknowledge aboriginal rights. This has been the policy of governments of all parties: Liberal and Conservative in earlier times, Social Credit and NDP in our own time. A shift in governmental attitudes and policies under both Social Credit and NDP administrations can, however, be observed within the past decade. Sometimes concessions have been made, agreements reached, even changes in governmental arrangements decided upon, which profoundly affect native communities and which serve the same purposes as native claims. In 1975 the government of British Columbia agreed that the Nishga Indians were entitled to their own school district. Formerly they had been included in the Terrace School District. As a minority within that district they had little or no control over the schooling of their children. Now that a new district, consisting of their four villages along the Nass, has been carved out of the Terrace district, the Nishga can adopt their own curriculum, hire and fire their own teachers, and control other aspects of the education of their children. They have begun to implement a bilingual, bicultural program in the schools. In this way they are able to ensure that their children grow up knowing about their own people and their own past, as well as learning all that the conventional curriculum requires. In early 1982 the province of B.C. awarded a tree farm licence to the Stuart-Trembleur band in northern B.C. In the past, tree farm licences have been granted only to forest companies. The licence gives to the licensee the right to cut timber within the licensed area, to saw it and to sell it; the licensee is responsible for fire control and is obliged to replant the forest on a perpetual yield basis. The Stuart-Trembleur licence, the first of its kind, gives the band an expanded resource base, and the opportunity to develop its own resources and to provide employment for band members. Nobody calls this native claims or land claims, but what else is it? Just as the Nishga school district protects Indian culture, so the Stuart-Trembleur tree farm licence gives to the band a measure of control over resources the Indians claim.

Nor is this all. At its spring session in 1982, the British Columbia legislature passed Bill 58, the *Indian Cut-off Lands Disputes Act*. The Act authorizes the provincial government to enter into agreements with Indian bands and the federal government to resolve long-standing griev-

ances over the loss of reserve lands in the early part of the century. As the result of the recommendations of the McKenna-McBride Commission, which reported in 1916, much valuable acreage was "cut off" Indian reserves laid out in the latter part of the nineteenth century. These claims affect twenty-two bands throughout the province. With federal co-operation, 12,000 acres of reserve lands cut off from the Penticton Indian Band have been restored. In addition, the band received \$14.2 million. The legislation should allow this process to continue.

In September 1982 a royal commission of inquiry into Canada's fishing industry recommended that Indian claims on fish should be acknowledged. Dr. Peter Pearse, the Commissioner, proposed that the fisheries department allocate a specific quantity of fish to each band involved in the Indian fishery, the quantity and kind of fish to be determined through negotiations with the bands. The catch allocated to bands should, he urged, have priority over commercial and sports fisheries and, if in any year a band fails to harvest its allocation because of conservation measures, they should be compensated with bonus quotas in future years. No royalties should be levied on these catches. The department should enter into 10-year fishery agreements with bands and the agreements should specify the band's allocation of fish and authorize the band to harvest its allocation according to an annual fishing plan determined jointly by the band and the department. There should be no restrictions on the sale of fish.

These changes, in little more than a decade, in public attitudes and official perceptions are remarkable. They have not come as fast or gone as far as native people wish, but they represent progress that will not, I think, be turned back.

The settlement of native claims ought to provide to native people what has been denied them in the past: the means to enable them to thrive and to develop their culture; the means to ensure that they know who they are and where they came from. They can become hunters, trappers, fishermen, sawmill workers, loggers, doctors, nurses, lawyers or teachers. But most important of all, the collective fabric of native life will be strengthened.

It is my conviction that if, in working out a settlement of native claims, we try to force native social and economic development into moulds that we have cast, the whole process will be a failure. No governmental ukase will settle the matter once and for all; no tidy bureaucratic chart will be of any use. There must be an affirmation of the right of native people to a distinct and contemporary place in the life of our country. At the same

time they must have access to the social, economic and political institutions of the dominant society. At times it is suggested that native claims are based on the idea of apartheid. This suggestion misses the whole point of native demands. In South Africa the blacks are confined to "homelands," without any right to citizenship in South Africa itself and without any right to live, work or own property in South Africa. Blacks who live and work in South Africa do so on sufferance. The native people in Canada are seeking access to the social, economic and political institutions of the dominant society. What they are seeking is the exact opposite of apartheid. Only if we were to deny them that access could it be said that we were guilty of apartheid.

Nevertheless, the argument may be made that the entrenchment of the rights of the native people is anomalous, since no group should have rights not enjoyed by other Canadians. Put another way, some believe that to provide a formal place within the Constitution for aboriginal peoples is an affront to the conventions of liberal democracy. The new Constitution, however, recognizes and affirms the existing rights of aboriginal peoples. While this may be said to be only qualified recognition, there can nevertheless be no turning back. The recognition of such anomalies may in time constitute Canada's principal contribution to the legal and political order. J. E. Chamberlin has said that "Canada is Canada not only because of its unique commitment to French and English cultures, but because of its unique commitment to native nations." Constitutional protection of French and English makes the way easier for other languages, because it negates the idea of a monolithic culture. In the same way constitutional guarantees to the Indians, the Inuit and the Metis (imperfectly rendered though they may be) exemplify the Canadian belief in diversity.

Pierre Trudeau once said:

Canada could be the envied seat of a form of federalism that belongs to tomorrow's world.... Canada could offer an example to all those new Asian and African states who must discover how to govern their polyethnic populations with proper regard for justice and liberty.¹¹

The Canadian experience may also be useful to the other countries of our own hemisphere. It is not only we in Canada who must face the challenge that the presence of native peoples with their own languages and their own cultures presents. In the Western Hemisphere there are

¹¹ Pierre Trudeau, *Canada and French Canadian Nationalism*, 1962, in *The Peacable Kingdom*, ed. William Kilbourn (Macmillan of Canada, 1970), p. 16.

many other countries with indigenous minorities — peoples who will not be assimilated, and whose fierce wish to retain their own culture is intensifying as industry, technology and communications force a larger and larger mass culture, excluding diversity.

It is, in fact, in our relations with the people from whom we took this land that we can discover the truth about ourselves and the society we have built, and gain a larger view of the world itself. It is worth reminding ourselves of what Claude Lévi-Strauss said, in *Tristes Tropiques*, when discussing “confrontation between the Old World and the New”:

Enthusiastic partisans of the idea of progress are in danger of failing to recognize — because they set so little store by them — the immense riches accumulated by the human race on either side of the narrow furrow on which they keep their eyes fixed; by underrating the achievements of the past, they devalue all those which still remain to be accomplished.¹²

¹² Claude Lévi-Strauss, *Tristes Tropiques*, trans. John and Doreen Wightman (Atheneum, 1974), p. 393.