

# COMPARATIVE THOUGHTS ON THE POLITICS OF ABORIGINAL ASSIMILATION

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*Land Claims ... BC's Already Paid*

Social Credit Party campaign sign, 1996

*Why must we buy America from the Indians all over again?*

US Republican Congressman, 1946

*One country, one people, one law*

Slogan of BC Reform Party

*It is the policy of Congress ... to make the Indians ... subject to the same laws ... as are applicable to other citizens of the United States, and to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship."*

Excerpt from resolution establishing policy of termination in the United States, 1954

**A**S AN ANTHROPOLOGIST who has lived in both the United States and Canada — and as a student of Native policy in both countries — I am struck by the familiar ring of much of today's rhetoric surrounding Native issues in British Columbia. Political parties and other critics of current directions in Native policy claim to be offering new and innovative solutions to the "Indian problem," yet their solutions are anything but. Recently, I came across an article written thirty-five years ago by the American anthropologist Alexander Lesser, and I was impressed by its relevance to contemporary issues:

The sense that Indians are a special "problem" comes ... from their unique position rather than from their minority situation — their distinctive legal status in relation to the nation and their stubborn insistence on their Indian identity. Neither of these is clearly

understood by the public, and the intrusion of either or both may so color a situation that public reaction is confused and uncertain...

Americans not in direct contact with Indians may not even be aware of their existence most of the time, and the experience of rediscovery, when Indians make headlines, may itself be disturbing. Indians are a reminder of a past that troubles the American conscience. More than that, their existence as *Indians* unsettles the firm conviction in this country [that] assimilation is proper and desirable and in fact an inevitable, automatic process...

The unique legal status of Indians, when it obtrudes and reveals that Indians may have special rights other citizens do not have, is equally disturbing. It offends the American sense of fitness and equality, the feeling that there should be no special groups — none at a disadvantage and none that have advantages over others.

Some Americans see assimilation, and ending Indian communities and special Indian status, as in the best interests of Indians. The legal forms which now safeguard the status of Indian communities are seen as restrictions or limitations of Indian activity and opportunity and not as marks of Indian freedom...

Perhaps the more important question about the restrictive or liberating character of the protected status of Indian communities is what kind of freedom we are talking about. The freedom of Indians to become as non-Indians and assimilated as they wish cannot be the issue here. The Indians are citizens with the full rights of citizenship, and many have exercised their freedom to become completely Americanized. But there are many who want and need the freedom to be Indian within the framework of America. For them the existence of the community to which they belong is essential to that freedom, and some defined legal status of the community is essential to its continued existence.

In a world that may be moving toward greater internationalism ... we cannot avoid the responsibility for a democratic resolution of the American Indian situation. Our attitude toward the Indians, the stubbornest non-conformists among us, may be the touchstone of our tolerance of diversity anywhere...

We may have to come to terms with a people who seem determined to have a hand in shaping their own destiny. (Lesser 1961)

If one were to substitute "Canada" and "Canadian" for "America" and "American," Lesser could just as well be describing current debates about Native rights in British Columbia. Indigenous peoples worldwide continue to insist upon their historically distinct status as being essential to achieving their goals, while still preserving their unique identity and heritage (i.e., refusing to assimilate). However,

democratic nations are equally insistent on defending the principle that a country should have a single category of citizenship. Nations such as Canada and the United States are reluctant to entertain the idea that a minority population possesses special rights by virtue of Aboriginal status (Dyck 1989). Indeed, any claim that members of one group are entitled to special status and rights contradicts the firm Euro-North American belief that, while groups may differ from one another, no one is intrinsically better than anyone else (Dyck 1991). As Lesser said, non-Natives are disturbed by what they perceive as the stubborn insistence by Native peoples that they deserve not only all of the rights and privileges of citizenship, but more besides, and much of this misunderstanding is based upon the public's lack of knowledge about the historical origins of special status.

Increasingly, those in British Columbia who oppose current government policy, at both the federal and provincial levels, of negotiating treaties and recognizing Aboriginals' rights to govern themselves and to determine their own future, do so by emphasizing the liberal-democratic ideals of individualism, private property, and equality for all. They believe that the market — not the government — should determine the direction of Aboriginal policy. Provincial Liberals and Reform Party leaders, as well as those further to the right on the political spectrum, are offering their own responses to current directions in Aboriginal policy, and alternative visions of what that policy should be. Often, their proposed changes are touted as offering visionary, courageous, and, above all, “new” approaches to Aboriginal policy — approaches that will solve once and for all the “Indian problem.”

In fact, many of these proposed “new” policies have been recommended and even tried before — both here and in the United States. Specifically, in Canada the 1969 White Paper and the Neilson Task Force Report (which, fifteen years later, resurrected many of the White Paper's recommendations) and in the US the policy of termination (in the late 1940s and 1950s) embodied the same rationales and methods as do the current crop of policy alternatives offered by critics of the Canadian and BC governments. These policies and would-be policies were and are essentially assimilationist, though contemporary political reality necessitates rhetoric that stresses equality for all, economic rationality, and the necessity of emphasizing future opportunities rather than reparations for past wrongs.

Under the guise of equal rights for all Canadians, the White Paper and the Neilson Task Force Report based the future of Aboriginal

participation in Canadian society on eliminating, or at least minimizing, special status for Native peoples. Self-government was to be allowed only along the lines of the municipal model: that is, it was to be subordinate to and dependent upon federal and provincial authorities. Economic problems on reserves would be addressed through existing federal and, increasingly, provincial regional development programs, which tend to view Native communities not as distinct social groups but as aggregates of individuals. The consequence of these policies would be the transfer of title to reserve lands to Native bands and the granting to band councils of powers roughly equivalent to those held by municipalities. Native opposition to such policy directions would be dealt with by conceding that Native communities should have control over their own affairs, but there would be no substantial economic commitment to ensuring the long-term economic viability of these communities. As a result individuals and families would increasingly be obliged to leave their reserves to pursue livelihoods in urban areas (Dyck 1991, 154-55). Not only do current opposition policy recommendations echo these themes, but the rhetoric associated with them has not changed much from the rhetoric that politicians used fifty years ago and that led to the American termination policy.

#### THE DISASTROUS POLICY OF TERMINATION, 1950-60

In signing the bill establishing the Indian Claims Commission (ICC) in 1946, President Harry Truman optimistically stated his belief that it would "mark the beginning of a new era" for Native Americans and would see them taking "their place without handicap or special advantage in the economic life of the nation and shar[ing] fully in its progress" (Fixico 1986, 28). The establishment of the ICC was the first step in a process that sought to:

- settle once and for all Native claims against the government,
- end federal trusteeship over tribal and individuals' lands, resources, and funds as well as abolish special status for Natives,
- phase out the Bureau of Indian Affairs (BIA),
- transfer ownership of Native lands to the tribes, and
- devolve responsibility for Natives and programs related to them onto the states and make tribal members subject to the same state laws and jurisdiction as were other citizens, and, in general, get the federal government "out of the Indian business."

These measures were combined with a relocation program that encouraged and facilitated Native migration from rural reservation communities to urban centres.

The roots of termination can be traced to the post-Second World War era; Native American soldiers and sailors acquitted themselves with distinction during the Second World War, and several were decorated for bravery. The fact that these returning veterans continued to be treated as second-class citizens in their own country was shameful to many Americans, and Native veterans began to call for greater opportunities, both for themselves and for their people, to participate in American society. The war had brought Native and non-Native Americans into close proximity in pursuit of a common cause and against a common enemy. It was now time, many believed, to end the discrimination and segregation that impeded Native advancement — a belief that increased the momentum for Native American assimilation (Fixico 1986).

As Vine Deloria (1969, 81) later wrote of this period, termination was disguised as a plan to offer Native peoples full rights as American citizens. In the US Congress, senators from western states, in particular, argued that Native Americans had difficulty assimilating because of their special trust relationship with the federal government — a relationship that hindered them from attaining a standard of living equivalent to that of their White neighbours. Montana senator George Malone asserted that special status gave Native Americans an inferiority complex and that the removal of guardianship and trusteeship would remedy this. Senator Hugh Butler of Nebraska asked, “Does the Indian desire to be considered Uncle Sam’s stepchild forever?” to which he declared an emphatic “No,” asserting that “wardship with all its paternalistic trappings is increasingly distasteful to [the Indian]” (Fixico 1986, 55). The majority of Native people, however, held other views: one spoke for many when he said to Commissioner Myer: “For anyone to say that soon we are going to have all Indians in the society of the white race doesn’t go over very good with me. I am proud to be an Indian” (p. 71).

Despite the misgivings of Native Americans, Congress entertained resolutions in 1953 and 1954 establishing the policy that later threatened all US tribes with termination of their federal trust status. These resolutions promised to entitle Native people to all of the privileges, prerogatives, and responsibilities of citizenship by ending their status as wards of the government (Fixico, 93-94). In a fit of hyperbole, Utah senator Arthur Watkins — a leading proponent of

the “let-them-pull-themselves-up-by-their-own-bootstraps” philosophy — declared, “I see the following words emblazoned in letters of fire above the heads of Indians — THESE PEOPLE SHALL BE FREE!” (Berkhofer 1978, 87).

The process of the final dispossession of Native Americans began in earnest with the General Allotment Act, 1887. The intent of this act was to break up tribally held lands into privately held individual parcels while simultaneously destroying tribal identity and integrity. The act had devastating consequences, as tribes collectively lost millions of acres while “surplus” lands were opened to White settlement. Unprepared for fee simple land ownership, many Native Americans were defrauded of their property as unscrupulous land speculators took advantage of allottees’ limited English and their unfamiliarity with documents such as deeds, mortgages, and loan agreements. Many allottees were physically abused by speculators who would stop at nothing — including murder — to obtain Native lands.<sup>1</sup>

The Indian Reorganization Act of the 1930s and early 1940s ended the policy of allotment, but in the name of “Indian control over Indian lands,” termination resumed the process of dispossession. Supporters of termination advocated the removal of restrictions on the lands of Native Americans, arguing that they kept individuals and tribes from developing their lands as they saw fit and, thus, impeded economic improvement in “Indian country.” The policy was not without its critics: former Commissioner of Indian Affairs John Collier (architect of the Indian Reorganization Act) and anthropologist Oliver La Farge (president of the Association on American Indian Affairs) both accused the federal government of outright cupidity. Collier further accused Dillon S. Myer, who became commissioner in 1950, of intending to “atomize and suffocate the group life of the tribes — that group life which is their vitality, motivism, and hope” (Fixico 1986, 76). Collier understood that a crucial component of group life was the retention of a land base.

Between 1945 and 1960, when the majority of the damage was done, the US government’s termination policy affected 109 tribes, 1,369,000 acres of Native land, and an estimated 12,000 Native Americans. The

<sup>1</sup> The dispossession of the Five Civilized Tribes of Oklahoma (Choctaw, Chickasaw, Cherokee, Creek, and Seminole) has been well documented by Angie Debo (1940). In my own research I have described in detail the reprehensible actions of grafters who preyed upon the African-American members of the Seminole Tribe of Oklahoma — the Seminole Freedmen (Bateman 1991). The experiences of these allottees were shared by those in other tribes throughout the United States in the aftermath of allotment.

government encouraged thousands of people to relocate to urban areas — where they were promised training, housing, and jobs — in a program that was presented as a way of “liberating” Native Americans from impoverished rural areas and of making them a part of mainstream American life. In fact, relocation terminated costly services to these individuals and made lands available to non-Natives (pp. 183-86). Many relocatees found themselves trading rural poverty for urban slums, depression, alcoholism, prostitution, and, all too frequently, suicide.

The experiences of the Klamath tribe of Oregon, because of its rich lands and resources one of the first tribes designated for termination, indicate the drastic effects of termination on a tribe that was, in many ways, economically relatively well off. The Department of the Interior appraised Klamath lands at \$90,791,123 and estimated that, after selling tribal assets, the 1,659 terminating Klamaths would receive \$44,000 each. A revolving fund was to be established to make loans available to Klamaths who possessed at least one-quarter Native blood and who agreed to withdraw from the tribe. This persuaded many Klamaths to support the abolition of trust relations. When Congress finally set the date for Klamath termination in 1961, each withdrawing member was to receive \$43,000 in per capita payments, and the government distributed roughly \$68,000,000 to the tribe (pp. 130-31).

This sudden windfall was short-lived. The Klamaths who received the per capita payment quickly became game for local merchants, who sold them automobiles, televisions, and other expensive items at inflated prices. Many Klamaths were not used to dealing with such opportunists and, in a manner reminiscent of the allotment era, were coerced into parting with their money and alienating their property. The real beneficiaries of Klamath termination, it seems, were the merchants, banks, and, especially, the lumber companies of southwestern Oregon (p. 185). This pattern was repeated to varying degrees in other terminated tribes, many of which were even less prepared for the withdrawal of trust status than were the Klamaths.

Land claims settlements were a crucial prerequisite for the assimilation of Native Americans. The primary goal behind the creation of the ICC was to put paid to Native land claims; reduce government expenditures on Natives through termination and assimilation; settle questions of title; and rid the federal government, once and for all, of responsibility for Native American peoples (Davis 1994). Introduced by Washington Representative Henry M. Jackson,

the resolution to create the ICC envisaged a process for reviewing claims against the US for violations of treaties and other agreements and/or for the mismanagement of Native resources and funds. Because an 1863 statute barred all treaty claims that substantiated discrimination against Native Americans from coming directly before the Court of Claims, prior to the establishment of the ICC in 1946 tribal claims had to be presented before Congress as bills to be reviewed according to the jurisdiction of the US Court of Claims. Therefore, except for those claims brought before Congress as special legislation, Native American land claims had no legal outlet (Fixico 1986, 26-27).

The ICC had both its supporters and its detractors. Its supporters saw it as a way to help Native people, through compensatory awards, to become emancipated from their dependent, child-like status. These awards were to be in the form of monetary payments, based on the fair value of lands at the time they had been appropriated (the ICC had no authority to make payments in the form of land). Its detractors believed that the cost of such payments would be astronomical. One Republican congressman was prompted to ask: "Why must we buy America from the Indians all over again?" Other congressmen predicted that tribes would hire lawyers who would swindle the government out of enormous sums of money (p. 30).

When all was said and done, the ICC, whose activities were extended until 1978, awarded over \$800 million on nearly 300 claims, and the 133 remaining unresolved cases were transferred to the US Court of Claims (Davis 1994). Though some individuals who received per capita payments of thousands of dollars squandered, or were cheated out of, their money (Fixico 1986, 41), other tribes used their awards to underwrite scholarships, community centres, resource development, and tribal enterprises (Nash 1988, 270). The ICC was a mixed blessing to Native American peoples — a source of capital for economic development and the leading edge of termination. Congressional members who had expected the ICC's work to result in a final settlement with Native Americans were disappointed.

In sum, Native Americans in the post-war era were forced, in the name of civil rights, to assimilate — to be a part of the national dream of creating an America of one people (Fixico 1986, 77). They were to become land-owning (in fee simple title), urban-dwelling, taxpaying, responsible, and, above all, individual Americans, different from their White neighbours only in skin colour. Their claims against the US government were to be settled, their unique status dis-

continued, and the Bureau of Indian Affairs, which administers Native programs, was to be reorganized, streamlined, and eventually phased out entirely. The implied result of termination, left unstated by those who supported it, was the destruction of tribal cultures, the dispersal of Native communities, and the integration of Native peoples with the rest of American society.

Termination policy did not integrate most Native Americans into mainstream urban life. While some tribes requested the abrogation of their trust relationships with the federal government, others were coerced into termination or were terminated against their will. Often, tribes that had terminated voluntarily were unable subsequently to become completely free of federal support; many have sought to have their federal recognition reinstated. Advocates of termination had not anticipated the extent to which racism and discrimination would foil the attempts of Native Americans to integrate with their White neighbours. The extreme difficulty of developing a single policy that was applicable to culturally diverse tribal groups in different stages of preparation for economic self-sufficiency became readily apparent. At the same time, attempts to meet the needs of individual tribes drew fire because they made it seem that the government did not have a unitary policy (p. 197). The ideology of termination continues to influence American Aboriginal policy, but tribes are now much more prepared than they were in the 1950s to assert their intent to remain politically sovereign, culturally distinct, and in charge of their own futures.

#### ASSIMILATION AND CANADIAN ABORIGINAL POLICY

Sudden oscillations in direction and intent have been typical of Aboriginal policy in both Canada and the US. Dispossession, confinement to reserves (segregation and "protection"), and civilization (through education and Christianization) of Native peoples were rapidly succeeded by policies that emphasized integration, the break-up of reserves (by allotment and the location ticket system), the virtues of private property, and the exercise of citizenship (enfranchisement). For Native groups, sudden changes in the rules of the game tended to keep them off-balance and to render strategies developed in response to a particular policy useless in the face of another.

Assimilation, viewed as the ultimate solution to the "Indian problem," has a long history in Canadian policy. Integration of Native

peoples into the Canadian mainstream was to be achieved by civilizing and enfranchising them, thus eliminating the need for special status. Though the means by which assimilation was to be accomplished changed with the various versions of the Indian Act, it was not repudiated as the goal of Canadian Aboriginal policy. As in the US, public concern to do right by returning Native veterans of the Second World War (who were not yet Canadian citizens) precipitated a re-examination of legislation and government policy. In 1951 a new version of the Indian Act encouraged rather than forced the assimilation of Native peoples (Tobias 1983).

*The White Paper, 1969*

Canadian politicians who favoured a more rapid process of assimilation — again, in the name of equal opportunity for Native peoples — eventually arrived at conclusions similar to those reached in the US during the termination era. Claiming to be the culmination of a year's intensive discussions with Native peoples, the *Statement of the Government of Canada on Indian Policy 1969*, now known universally as the White Paper, declared that “the separate legal status of Indians and the policies which have flowed from it have kept the Indian people apart from and behind other Canadians.” “This Government believes in equality,” it went on, “[and] only a policy based on this belief can enable the Indian people to realize their needs and aspirations.” To that end, Indian status would be abolished, thus removing the legislative and constitutional bases of discrimination (Miller 1989, 226-27). Rather than disappearing into the melting pot, as in the United States, Native peoples in Canada were to become just so many tiles in the multicultural mosaic — which amounted to much the same thing.

Like the Truman and Eisenhower administrations, the Trudeau government firmly believed in individualism, equality, and the inappropriateness of government recognition of ethnic and racial collectivities (p. 228). Over a five-year period, and in terms reminiscent of the termination policy, the White Paper called for:

- the repeal of the Indian Act,
- the transfer of responsibility for Native peoples and programs to the provinces,
- the settlement of claims and treaties according to the “limited and minimal promises” made in the treaties, and
- the elimination of the Department of Indian Affairs.

The provision for turning reserve lands over to Natives as private holdings was sure to result in the transfer of lands out of Native control under the guise of Native self-determination. This the White Paper proposals shared with American termination policy. Notably absent from the White Paper, however, was any mention of a plan for the settling of land claims — a crucial issue for BC bands, most of which had never surrendered title to their lands. Though Ottawa had intended to introduce legislation to establish a Canadian ICC, the Trudeau government argued that such a commission was not an appropriate way to deal with Aboriginal grievances. Aboriginal claims to land, it held, were so general and unspecific that they could only be remedied through a program that made Native peoples members of the Canadian community (pp. 227-28). While it is doubtful that the inclusion of an ICC would have altered the Native response to the White Paper, it would at least have indicated that the government had listened to them when preparing its statement. As it turned out, the White Paper embodied the antithesis of what Native peoples were saying.

The similarities between the reforms called for in the White Paper and the earlier US termination policy were not lost on Native leaders, especially not on Harold Cardinal (1969, 133) who, in *The Unjust Society*, pointed out that the Canadian government's proposed policy "bears a more than marked resemblance to the recent American policy of termination, which proved an utter failure." In the US, Native opposition to assimilationist policies led to the formation of a new national Native organization — the National Congress of American Indians (Fixico 1986, 22) — and in Canada it led to the strengthening of the National Indian Brotherhood and provincial Aboriginal associations. These organizations became, and continue to be, outspoken critics of federal policy and programs, and they are articulate advocates for Native interests (see Weaver 1985; Miller 1989, 212-48; Dyck 1991, 108-18).

In both the US and Canada debates over Aboriginal policy reflected national concerns. In the US in the 1950s those concerns were with increasing civil rights for minorities and with opposing communism, the national enemy. The policies for the settlement of claims against the government, termination, and the relocation of Native people to urban areas were all developed and implemented with the intention of making Native Americans just like everyone else — of giving them the same opportunities as had other Americans to sink or swim on their own. Prime Minister Pierre Trudeau's personal support for individual and civil rights, coupled with his obsession with the claims

of French-Canadian nationalists for special status for Quebec, made him unsympathetic towards any governmental recognition of group rights (Miller 1989, 224). The latest calls for equal citizenship are undoubtedly related to the Quebec referendum, the preceding wranglings over distinct society, and the general public concern with Canadian national unity. The provincial election in British Columbia also contributed to the proliferation of alternative Native policies, prompting federal Indian Affairs Minister Ron Irwin to exclaim: "Every time we have an election, we start beating up on First Nations people" (*Vancouver Sun*, 13 January 1996).

#### THE CURRENT DEBATE

Land claims are very much on the minds of British Columbians, both Native and non-Native. Hardly a day goes by that provincial newspapers do not carry some article or opinion piece on the topic, and politicians across the political spectrum, along with Native leaders, have made their views on the subject well known. Issues such as Aboriginal title, overlapping claims, apparently secret Native-government negotiations, and inflated estimations of the costs of claims settlement have made it extremely difficult for the average British Columbian to make any sense out of an avalanche of media information.

Opponents of the current provincial government's willingness to negotiate treaties and countenance Aboriginal title have seized the opportunity to capitalize on the public's confusion and frustration. The issues are extremely complex — even scholars who have studied them for many years find them so — and those who would proffer simplistic solutions to complex problems appeal to citizens who are crying out for someone who can tell them both what is really going on and what to do about it.

The majority of the opposition policy directions currently being proposed are cosmetic variations on familiar themes. Stating that his book, *Our Home or Native Land? What Government's Aboriginal Policy Is Doing to Canada*, is a "wake-up call to all Canadians," Melvin Smith (1995) asserts that a major problem confronting Aboriginal societies today can be laid at the feet of non-Native society and, particularly, government.<sup>2</sup> "Natives are different because governments,

<sup>2</sup> Smith, a former deputy minister in a variety of ministries under Social Credit governments in British Columbia, is highly critical of the treaty negotiation/land claims process — especially the province's involvement in it. Ironically, the process itself was begun during the Social Credit government of Premier Vander Zalm. For a thorough discussion of

and by extension the non-native population of Canada, sees [sic] them to be different," Mr. Smith concludes, and, as a result, the public regards Natives as inferior. Therefore, Aboriginal peoples suffer from low self-confidence and low self-esteem and lack self-reliance (p. 262). Smith shares with US Senator Malone the belief that special status impedes social interchange with the surrounding non-Native community, and that this has resulted in a Native inferiority complex.

As one of his "new directions" for Native policy, Smith recommends that it be built on two principles: Native self-reliance and equality under the law. Under Native self-reliance he proposes what he calls "jurisdictional integration," which "breaks down the thicket of laws, regulations, and procedures that separate natives from their fellow Canadians and with it would break down stereotype attitudes and mindsets" (p. 261). Under equality under the law he calls for a new policy that would follow the Constitution by honouring existing rights and Aboriginal interests as defined by law; that is, their rights to reserves and their rights in their established Native communities. But it would also insist on equal treatment of all Canadians under the law (pp. 263-64). To this end, Smith calls for phasing out, over time, all Native programs and, instead, making existing federal and provincial programs applicable to all Native peoples. This phase-out would include:

- closing down the Ministries of Indian Affairs at both the federal and provincial levels,
- repealing the Indian Act,
- ending all tax exemptions for Natives,
- transferring responsibility to the provinces for provision of services to Natives,
- transferring ownership of reserve lands to the bands, thus ending the "patronizing and demeaning" trust relationship that now exists,
- settling Aboriginal claims against the government according to the limited definition of Aboriginal interest found in the *Delgamuukw* decisions,
- establishing a treaty ombudsman to represent the interests of "ordinary Canadians" in land claim negotiations, and
- allowing self-government but only in the form of a kind of delegated municipal model, similar to that followed by the Sechelt Band (pp. 261-78).

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the history of Aboriginal issues in British Columbia, including the beginnings of the current treaty negotiations process, see Tennant 1990.

“New” directions? Hardly. Senator Watkins would have been perfectly at home with these recommendations, and they bear more than a passing resemblance to the provisions of the White Paper, which Smith considers to have been a “fresh approach of government policy towards the native people.” It was never pursued, he says, because of the opposition of the Native leadership and the infamous “Indian Industry” (pp. 5-7).

The Reform Party’s policy statement has many elements in common with Smith’s, including:

- allowing individual Aboriginals to opt for private ownership of a share of any land entitlement or revenue generated by resources taken from treaty lands,
- ending special tax exemptions for Aboriginal individuals and companies,
- abolishing the Indian Act,
- allowing Aboriginal peoples “to free themselves from the paternalism of the Indian Affairs Department,” and
- publicly negotiating land settlements and honouring existing treaties, in accordance with court interpretation.

Again, the Reform Party platform, as enunciated by Preston Manning, emphasizes giving Aboriginals the same “rights and responsibilities ... as other Canadians” and freeing them from dependency on the federal government (*Vancouver Sun*, 7 October 1995; *The Reformer*, October 1995).

As for the Liberals, BC party leader Gordon Campbell has provoked irate responses from Native leaders (as well as from some of his own party members) with his assertion that, should he become premier, he would not ratify any treaty negotiated with the Nisga’a Tribal Council “unless it enshrines the principle of equality for all British Columbians.” He went on to assert that “the people don’t want special status created in British Columbia” (*Vancouver Sun*, 20 November 1995).

#### SPECIAL STATUS AS RACISM

An aspect of the argument for single citizenship is the contention that special status for Aboriginal peoples is inherently discriminatory and racist. This view disregards the fact that the unique position occupied by Native peoples in Canadian and American society is based not on their skin colour, but on the fact that they are the

descendants of the original occupants of North America. Their ancestors entered into alliances, agreements, and treaties with European colonial powers — and, later, with the Canadian and American governments — on a nation-to-nation basis, and their status as Native nations is a political designation that has been formalized administratively and constitutionally. Their uniqueness is not the result of policy or public perception but, rather, of a 500-year history of resistance. Insistence on equal treatment for all serves as a convenient way of eliding a long and frequently violent history of racism directed against Native peoples, and it blurs the distinction between the beneficiaries of colonialism and those who have struggled against it. Equality for all may be a morally attractive (and certainly a politically expedient) objective, but when it is used to deny or downplay a history of enforced inequality it becomes a cynical attempt to promote social amnesia.

Nevertheless, proponents of individualism and of one citizenship for all continue to search for the origins of special status in racial characteristics, in the European romanticization of Aboriginal cultures, and/or in collective White guilt over the mistreatment of Native peoples. In an article published by the C.D. Howe Institute, libertarian economist Brian Lee Crowley (1995) argues that Canadian legal and moral tradition contains no warrant for considering Aboriginal culture to be more inherently noble or desirable or more worthy of special protection than any other. He also asserts that the “legal and constitutional position aboriginals occupy in Canadian society is now an unjustified anomaly that needs to be regularized.” This would be done by bringing all Canadians fully under the law and ending the “offensive system of basing legal status and entitlements on racial origins” (pp. 87-89).

Some of those critical of special status and land claims settlements employ the term *apartheid* in a curious “reversal of symbols,” as Paul Tennant (1992) calls it. Melvin Smith follows this line of reasoning and quotes former BC Liberal Party leader Gordon Gibson:

South Africa has taken the definitive steps to shutting down its massive, evil and failed system of apartheid. Now maybe we in Canada should stop expanding our own smaller, but equally failed apartheid system relating to natives. We still assign political rights on the basis of race where it affects Indians... The South Africans have ended “homelands,” where blacks were hived off into a kind of “third order of government,” as we say in Canada. We are not just continuing our homeland (Reserve) system, we are expanding it —

perhaps mightily so in British Columbia, where the details of land negotiations remain secret (Smith 1995, 250).

The BC affiliate of Canada FIRE (Foundation for Individual Rights and Equality), which holds Smith's book in nearly Biblical regard, condemns the treaty negotiation process, Native self-government, the Aboriginal Fishing Strategy, and any other government attempt to "create" special rights for Natives as a repugnant example of racial discrimination and apartheid, stating emphatically: "We are all Canadians. Period." The organization also calls for the scrapping of the Indian Act and the Department of Indian Affairs, individual fee simple ownership of the majority of reserve lands, Native self-government on the municipal model, and the termination of special protection for Native culture (Canada FIRE *Report*, December 1996; BC FIRE pamphlet and Internet web site ).

These arguments can be very persuasive indeed, since they purposely invoke terms that are highly charged and that elicit emotional rather than rational responses: Canadians do not want their government supporting a form of forced segregation for Aboriginal peoples. But what Native peoples are asking for are not walls around their communities and reserves, rather, they are asking for the opportunity to become economically self-sufficient while maintaining their ties to communities and landscapes that are integral components of their histories and cultures. They want to be able to choose to remain in rural areas, often considered isolated and undesirable by non-Natives, without sacrificing a reasonable quality of life.

Rather than being forced to remain in "homelands" by supposedly racialized policies, many Natives have been compelled to leave their reserves in order to make a living. The ensuing migration to urban areas forms the rationale for proposed policy directions that would both expand opportunities for the majority urban-dwelling Aboriginal population and call for an end to federal policy that, critics believe, biases "the locational choice of aboriginals toward remaining on-reserve" (Richards 1995, 162-63). While increasing programs and services for urban Natives is a worthy goal, encouraging Native rural-to-urban migration is more than a little reminiscent of the relocation era in the US and is based on the same underlying assumption: rural reserves are poor prospects for significant economic development. "Rational" market-driven economic behaviour — and policy based upon it — dictates that Natives will leave those communities if offered greater employment opportunities in cities, where the government

should concentrate its job-creating efforts. The corollary of this is that Aboriginal peoples will come to see the benefits of relocating and abandon the idea of staying on isolated reserves where they have little hope of economic advancement. This would solve the problem of Native "apartheid" while facilitating Native integration into the Canadian mainstream.

#### THE FREE MARKET SOLUTION

Since the days of the fur and hide trades White observers have expressed wonder and frustration at the apparently irrational actions of Native people who seemed to operate according to principles not entirely compatible with the concept of individual profit maximization. The idea that what constitutes rational behaviour could be based on principles other than Western market-based economics continues to puzzle conservative policy analysts, who believe that the only solution to "the Indian problem" lies in letting the free market — not the government or Native politicians — determine the direction of Native policy.

Like most of the Fraser Institute's publications, *Out of Our Past: A New Perspective on Aboriginal Land Claims in British Columbia*, written by senior policy analyst Owen Lippert (1995) (and reported on in the *Vancouver Sun*, 14 December 1995), emphasizes "the role of competitive markets in providing for the well-being of Canadians." In this case, Lippert argues that Aboriginal Canadians will benefit economically and socially from the attachment of a market price to Crown lands. In Lippert's scenario, those lands would be distributed through a "Douglas lottery" that would randomly assign a specific piece of land in fee simple title to all British Columbians, including Aboriginal peoples. After the Crown land is divided and distributed, individuals may choose to sell, trade, or reassign their share. In what the author calls the "Potlatch of the millennium," individual owners who want Aboriginal peoples to receive more land could contribute their shares, thus making land transfers personal and voluntary rather than political and coercive. In this way, the government-to-government model of political negotiation would be replaced by a "people-to-people" exchange model and would probably result in Natives receiving more land than they would under the current system (pp. 53-55). "*Buying, trading, and selling must replace land politicking*" as a solution to the Aboriginal land question (p. 3, emphasis in

original). Transfer in fee simple title would also help to restore Aboriginal economic freedom, the report continues, since “political property perpetuates aboriginal poverty” while private property “creates the opportunity for aboriginal prosperity” (p. 62). Aboriginal bands would be free to choose whether bands, families, corporations, or individuals should hold the land in fee simple title, thus enabling them to re-establish their strong tradition of “family stewardship.” This transfer of land to Aboriginal families would test the “communal bonds” of Native societies but would “re-vivify their internal social compact.” In the event that some Aboriginal people unwisely alienate their allotted lands, well, then they will have learned something. “It is patronizing,” the report asserts, “to state that aboriginal peoples should not be given land because they may sell it. That was the rationale behind the federal government’s owning aboriginal reserves. It was a bad idea then and a worse idea today” (p. 53).

These suggestions represent an extreme expression of the belief in the value of free market principles and private property with regard to solving the problems associated with an untrustworthy provincial government, unwarranted and excessive spending on the settlement of land claims, and the dire economic situation of Aboriginal communities. Lippert also offers what is arguably the final solution to the “problem” of Aboriginal control over land. The reports of both the Fraser and the C.D. Howe Institutes emphasize the recognition of individual rights — both to self-determination and to property — as the only way in which Aboriginal societies can hope to improve their situation.<sup>3</sup>

#### LEADERS, GOVERNMENTS, AND THE NATIVE “GRASS ROOTS”

Though all these authors profess to know what is best for Native peoples, thorough discussions of what Native peoples think or want are strikingly absent from their writings. Natives usually appear in the form of negative comments about Native leadership. Sally Weaver (1985) has persuasively argued that the “representivity” of Native leaders and organizations is a political resource that governments —

<sup>3</sup> Lippert and Crowley both assert that collective and individual property rights can co-exist, but their preference for the latter is clear. This hedging around the issue of communal versus individual ownership was also characteristic of the attempts by BIA representatives to sell termination policy to Native Americans, whom they reassured of the retention of federal trust status for Native lands while they simultaneously advocated the rights of individual Natives to be able to dispose of their lands as they saw fit (Fixico 1986, 71).

or, in this case, their critics — assign or withhold to serve their own interests (pp. 115, 144). If Native leaders can be vilified as representing only their own interests and/or that of a small element of their constituencies, then policy-makers and would-be policy-makers can justify dismissing them in order to appeal directly to the “common people.” The work of the Reform Party’s Aboriginal Affairs Task Force makes this plain. “Our approach,” said Preston Manning, “is based on listening to the concerns of both aboriginals and non-aboriginals at the grass roots level... We found a common lack of understanding of land claims and self-government demands. And we found a common mistrust of the federal Department of Indian Affairs, and politicians.” The Native rank-and-file, Manning stated, are more concerned with “jobs, personal safety, social services, and control over their own governments” than they are with land claims and treaties (*The Reformer*, October 1995). Though the *Vancouver Sun* (7 October 1995) reported that “only a handful of BC aboriginals participated in the BC meetings,” Reform party members insisted that the task force had talked with a number of disgruntled on-reserve Natives who were dissatisfied with unresponsive and vindictive band leaders and who considered their local governments to be out of touch and unaccountable.

Smith is even more critical of Native leaders: “The whole process,” he writes about present governmental policy, “is driven by the unrelenting efforts of what has been called the ‘Indian Industry’; the national native leadership, the many lawyers, consultants, advisers and academics — all government funded — who would keep it going in perpetuity” (p. vi). Furthermore, he asserts, even if the national Native leadership doesn’t like his outline for future Aboriginal policy, “ordinary native people ... may well take a different view” (p. 278). He condemns the National Indian Brotherhood for derailing the White Paper (p. 5), and quotes favourably Reform MP Dave Chatters (Athabasca), who holds that the initiative for land claim settlements in the far north comes from “the real root of the problem in Canada, the insidious parasitic Indian industry. That group of lawyers, consultants, bureaucrats and Indian leaders year after year swallow up the vast majority of money designated to solve the problems of poverty, illiteracy, substance abuse and suffering among our native people.” (p. 41). BC FIRE echoes Smith’s concern about the claims of “Native Indian radicals” (Canada FIRE Internet web site).

Crowley (1995, 79) argues that self-government for Aboriginal peoples will be used as a tool by “self-government negotiators [who] seek a range of coercive powers to use against their own members.” It will only lead to “rent-seeking aboriginal leaders” forcing their views of what being Native is on individual Aboriginals (pp. 86–87). He implies that self-government — if allowed to happen — would result in a kind of Aboriginal fascism, with coercive “traditional” societies impeding or even preventing individual Native people from making their own life decisions and pursuing their own dreams (e.g., pp. 80, 86). Aboriginal culture, he believes, is one choice among many, and Native individuals will judge it on its own merits, “on how it enriches their lives and helps them to be more fully themselves. People having eaten of the fruit of the tree of knowledge, there is no turning back; the gates of Eden have slammed shut” (p. 84).

Clearly, band councils, Native leaders, and national Aboriginal organizations do not reflect the views of all Native people all of the time. Few leaders and representative bodies of any kind can claim such support. And self-government will necessitate the balancing of the protection of individual rights — such as those of Native women — with laws that protect the collective rights of Native societies.<sup>4</sup> But to assert that the *majority* of Native leaders are out-of-touch, self-serving elitists who only advocate self-government to solidify their own power justifies ignoring what they have to say, dismisses the idea of self-government as unreasonable and unworkable, and is a classic example of the situational denial of representivity. The crediting of “outside agitators” — lawyers, consultants, academics, and the like — with “stirring up the Natives” is a component of what Tennant (1992, 79) describes as the “traditional white view” of Native claims regarding land and self-government. This collection of attitudes, at least 120 years old, includes the suspicion that Native peoples “could not, and would not, on their own have developed and maintained the same ideas of land ownership as have most other human groups.” Those ideas must have been introduced to them, first by missionaries and then by lawyers and academics — especially anthropologists.

<sup>4</sup> Anthropologist Bruce Miller (1995) has argued that not only is this balancing act possible, it is being effectively carried out in the development of tribal codes among Coast Salish groups in western Washington.

## CONCLUSIONS

Canadians, especially British Columbians, are being sold a bill of goods. Far from being courageous, creative, and new solutions to old problems, current alternative policy directions are, in fact, quite shopworn. They have been tried, and rejuvenated, in both Canada and the US. In summary, these policies hold that:

- The abolition of special status for Aboriginal peoples is not only just, fair, and in keeping with democratic principles, it is also the most expedient way to address the inequalities currently experienced by Native peoples. And it is the only way to ensure equality for all, regardless of race, colour, or creed.
- Along with the abolition of special status must go the dismantling of the federal government apparatus for administering Aboriginal programs.
- It is futile to dwell on past injustices as a basis for current policy, since nothing can be done to change history. We must look forward rather than backward in seeking a new direction for Native policy.
- Collective property rights and communal social and cultural ties are fundamentally incompatible with contemporary industrial/capitalist societies, with their emphasis on individualism and private property. Therefore, either Native peoples must be compelled to accept these principles, at least to some extent, or they will continue to experience the poverty and social pathologies from which they now suffer and that drain the public purse.
- National Native leaders and Aboriginal organizations do not speak for the common people; therefore, their views can be discounted in favour of programs directed towards the Aboriginal "grassroots."

And last, but most disturbing,

- Aboriginal peoples still — after all these years — are incapable of knowing what is best for them.

British Columbians, polls indicate, want to see a fair and equitable solution to the problems plaguing Native communities. They want to do the right thing, which makes them all the more vulnerable to the pronouncements of ideologues who insist that only *their* policies will achieve this goal. And there is evidence that these messages are having at least some impact on public opinion. In letters to the

*Vancouver Sun*, 22 January 1996, opinion page, one writer stated that he was “tired of constantly being told that Aboriginal people have rights under the Constitution... We must remember these rights are deemed equal to — never of greater importance than — the rights of all Canadians. Injustices of the past must not be the foundation for decisions that mould the future of British Columbia.” Another letter strongly suggests that the writer has read Melvin Smith’s book: “We don’t trust the government to represent us: Just look at the Yukon and Nunavut settlements [to which Smith devotes considerable critical attention] ... Democracy is to balance the rights for everyone, not to give one more than the other. Our federal and provincial governments are having difficulty with this concept.” Another writer — who describes the Native population of Canada at contact as “only a handful of scattered stone age people ... who happened to have immigrated into the land for hunting and gathering long ago” — specifically recommends Smith’s book as “an eye opener for the still sleeping public” (*Vancouver Sun*, 8 January 1996).

Since the signing of an agreement in principle by the federal and provincial governments and the Nisga’a Nation, reactions from the stakeholders in Aboriginal land claims have been predictable. The usual cast of characters has weighed in: the Liberals, the Reform Party, Melvin Smith, the BC Fisheries Survival Coalition, BC FIRE, various newspaper editorialists, lawyers, and members of the public have all had their say. The argument that the treaty provisions constitute nothing other than apartheid has been particularly prominent. The Fisheries Survival Coalition has adopted the slogan “Equality, Not Native Apartheid” to express its contention that the Nisga’a treaty will “forever divide Canadians along a racial basis” (*Vancouver Sun*, 7 May 1996). Corporate lawyer Peter Jensen employed the term “consensual or negligent apartheid” to describe a process by which well-meaning Whites focus not on “helping them [Natives] adapt to and join the wider Canadian society” but, rather, on isolating them in “non-viable enclaves” that will necessitate “financial welfare for as long as those homelands last” (*Vancouver Sun*, 27 March 1996).

And so on. With the calling of the provincial election, the issues of Aboriginal status, land claims, treaties, and related issues came to the fore (as Minister Irwin predicted), with the parties vowing to accelerate, slow down, repeal, or scrap the treaty process and its products. The same calls for one law and equal rights for all, and an end to racially based apartheid and special privileges, were key

components of the party platforms of the Liberal, Reform, Progressive Democratic Alliance, and Social Credit parties, with the New Democratic Party pledging to stay the course. The release of the final report of the Royal Commission on Aboriginal Peoples in November 1996 also precipitated a flurry of outrage over the waste of taxpayers' money and over the call for more, not less, spending on Native peoples. Aboriginal groups once again found what, to them, are life and death issues reduced to sound bites and media copy.

While some policy recommendations based on questionable economics and biased interpretations of historical and anthropological evidence are easily dismissed, the *Delgamuukw* decision has shown us that antiquated and misguided assumptions and beliefs about Aboriginal peoples can have dire consequences when held by those in positions to interpret the law and to formulate policy.<sup>5</sup> All those who respect the rights of Native peoples to self-determination should insist that decisions about the future of Native communities be left to those who know them best — Aboriginal peoples themselves. They must not only “have a hand in shaping their own destiny,” they must have the opportunity and the resources to be the architects of their future. As Lesser stressed, Aboriginal peoples desire and need the legal recognition of their Native identity and communities within a national framework that guarantees the rights of all. Assimilationist policies will not work any better today than they did thirty, forty, or a hundred years ago, for Native peoples will continue to assert their right not to assimilate.

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<sup>5</sup> For discussions of the ideological underpinnings of Justice McEachern’s decision in *Delgamuukw*, see the collection edited by Cassidy 1992; Culhane 1992 and 1994; the articles in Miller 1992; and Mills 1994.

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