

PART FOUR

Epilogue



22

Native Claims and Political Development in the Northwest Territories

The widespread interest in the Inquiry and in Volume One of my report can be attributed, I think, to the fact that they provided a focus for the consideration of a number of profound national issues: the need of the metropolis for energy, the implications of the advance of the industrial system to the frontier, the protection of the northern environment, and, above all, the rights of the native people.

The Inquiry examined these questions from the point of view of social, economic and environmental impact. But many Canadians perceived in these issues something that was basic to them all: a broad moral and ethical dimension. In one sense, the pipeline debate is over. The Government of Canada has rejected the Arctic Gas pipeline route in favour of the Alaska Highway pipeline route. An agreement has now been reached with the United States to build a pipeline along the Alaska Highway. But the debate was never just a debate about a pipeline, and these decisions will not put an end to it. It was, rather, a debate about the issues that were thrown into relief by the pipeline proposals, and that debate will continue, for the future of the North will continue to be a concern of Canadians. It is important, therefore, that the debate be conducted with an awareness of the true nature of the issues.

A fuller understanding of the northern environment emerged during the course of the Inquiry. The proposals made in Volume One for the creation of an international wilderness park in Alaska and the Yukon, for a whale sanctuary in west Mackenzie Bay and for bird sanctuaries in the Mackenzie Delta and the Mackenzie Valley, have attracted widespread support in Canada and the United States. There is a felt need and a perceived responsibility to preserve critical habitat for caribou, whales, wildlife and wilderness, and there is an understanding of the special vulnerability of migratory species in the North to industrial advance. The foundations can now be laid for the development of a firm policy designed to protect the northern environment.

There is not, unfortunately, the same consensus regarding the views I expressed regarding native claims. I think this is so not only because the subject is controversial but also because the proposals I made in Volume One were not

understood by many, for the simple reason that native claims themselves are often not properly understood.

It is crucial to understand that, although they are often called land claims, native claims are not just about land. When we talk about the settlement of native claims, we are not talking simply about land or money. Neither are we talking about expropriation. Parliament has always had, and will continue to have, the power to expropriate lands that are required in the national interest. The Government of Canada could, at any time, expropriate the lands necessary for a right-of-way along the Mackenzie Valley, for the power of eminent domain is an attribute of sovereignty. What is really involved here is a matter of policy based on special status for native people.

The idea of special status is often misunderstood. In Section 91(24) of the Constitution, the Fathers of Confederation provided that native people should come under the exclusive legislative jurisdiction of Parliament. There is no such provision for any other people. Special status is a policy that acknowledges the common interest of native people – a common interest that arises out of their own history and their place in our history.

Special status for native people has long been the established policy of the Government of Canada, and this policy was reiterated in the government's policy paper on Political Development in the Northwest Territories, issued on August 3, 1977. This paper supports the transfer of greater responsibility to the Government of the Northwest Territories. But at the same time, it affirms the commitment of the Government of Canada to the settlement of native claims and, by means of such a settlement, to the transfer of land and renewable resources to native people, and to the receipt by native people of a share of royalties from non-renewable resources. The question of whether there is indeed special status for native people can be answered by asking: Do any other people in Canada have the right to assert aboriginal claims? Do any other people in Canada have, by virtue of ethnic ancestry, a collective right to renewable resources, and to royalties on non-renewable resources?

In its policy paper, the Government of Canada has committed itself to a “policy of supporting the concept of continuing Indian and Inuit identity within Canada.... It is assumed ... that local autonomy is central to the concept of continuing Indian and Inuit identity and status” (p.10). However, Metis people should benefit equally from this policy. By virtue of their Indian ancestry and a distinct cultural tradition of their own, they should enjoy the same special status afforded the Indians and the Inuit.

What does local autonomy, which the government paper calls the keystone to continuing Indian and Inuit identity, imply? How can it be achieved? The paper says:

To move farther in the direction the native groups are looking, representative government in the Northwest Territories (whether divided or not) could be heavily decentralized primarily to the local communities, where in many places the native peoples will continue to be the clear majority. These communities would have an option of establishing regional institutions, which in effect would be an amalgamation of community effort to further Indian and Inuit group interest in such matters as education, land use control, game management and renewable resource development. These are interests distinct from community-level needs such as housing, sanitation, social services and recreation. [p. 13]

The government has acknowledged, therefore, that in the North, the common interest of the native people is quite distinct from the interests they share with other residents of the Northwest Territories, and that regional institutions should be established that reflect that common interest.

Difficulties arise when the government comes to the question of the exercise of political power at the territorial level. The collective native interest in the education of their children, in the land, and in the strengthening of the renewable resource sector of the economy is clearly apparent, and has been acknowledged in the policy paper. But the native people believe that their common interest should be reflected in political institutions at the territorial level. They are also apprehensive about the limits that may be imposed by existing government structures: recognition of special status requires something more than an extension of local or municipal government programs. There is the question of dominance, that is, the nature of the relationship between the native interest and the larger society’s institutions. The task is daunting, for it will mean the checking of a long historical process. But this is what the native people seek.

I do not think that anyone would disagree with the government’s insistence, in its policy paper of August 3, 1977, that:

Legislative authority and governmental jurisdiction are not allocated in Canada on grounds that differentiate between the people on the basis of race. Authority is assigned to legislatures that are representative of all the people within any area on a basis of complete equality. [p.11]

Yet having said this, how do we come to grips with the fact that the Dene, Inuit and Metis see themselves as distinct

peoples; that they constitute a majority of the permanent residents of the Mackenzie Valley and the Western Arctic; and that, from a demographic point of view, they constitute a larger proportion of the population in the Northwest Territories than do native people in any other political jurisdiction in Canada?

The Government of Canada has obviously struggled with this matter. The policy paper says that any political division of the Northwest Territories:

would take into account common interests such as distinctions of language, culture and way of life; economic needs and opportunities; transportation and communication facilities; potential resource revenues. [p. 12]

But the government’s statement wisely goes no further. It does not attempt to answer all of these questions.

The point is this: the rejection of a racial basis for allocating governmental powers and jurisdiction does not leave existing governmental institutions as the only alternative. With the passage of time, others may emerge. It would be a mistake, therefore, to adopt a dogmatic insistence on retaining existing institutions in their present form.

In Volume One, I said that, because a large proportion of the white population in the North does not remain there, a new concept of residency for voting purposes in the Northwest Territories should be considered. All those who meet such a residency requirement, regardless of race, would have the right to vote. The Government of Canada has indicated its willingness to consider “some degree of residence requirement for specified political purposes” (p.9). This residency criterion in combination with naturally or historically defined geographical areas could meet the native people’s need for institutions at the territorial level that reflect their common interest.

It should be apparent that the political development of the Northwest Territories and the settlement of native claims are closely linked, for the native people have shown that their collective goals are goals that they will not abandon. It is all too easy for us to misjudge their determination in this regard. In the Statement of the *Government of Canada on Indian Policy, 1969*, the Government of Canada 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. [P. 11]

This policy was a rejection of special status, because aboriginal claims are the hallmark of special status. Prime Minister Trudeau, speaking in Vancouver on August 8, 1969, expressed the government’s position on aboriginal claims:

Our answer is no. We can’t recognize aboriginal rights because no society can be built on historical “might have beens.” [p. 12]

In saying this, the Prime Minister spoke for all of us. Yet the policy of the government was 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.

Thus, we find ourselves engaged today in the settlement of comprehensive claims based on aboriginal rights. These are claims that the Government of Canada now welcomes as the principal means for achieving the social and economic goals of native people in Canada.

It is essential that native people be given an opportunity to work out their future for themselves and to define for themselves what it shall mean today and in the future to be Dene, Inuit or Metis. Postponement of the pipeline presents the native people with a whole range of opportunities: the strengthening of the hunting and trapping economy, development of the local logging and timbering industry, development of the fishing industry and of recreation and conservation, participation in an orderly program of oil and gas exploration, and, in due course, participation in pipeline construction. I have urged that priority be given to renewable resource activity – not because I feel that such activities are universally desirable, but because they are necessarily on a scale appropriate to northern communities. They are activities that local people can undertake, that are amenable to local and regional management and control, and that are related to traditional values.

The settlement of native claims will provide the means to enable native people to thrive, and native culture to develop, in a way denied them in the past; the means to ensure that the young people of the North grow up knowing who they are and where they came from: they will know their own history, their own languages. They can become hunters, trappers, fishermen, lawyers, loggers, doctors, nurses, teachers, or workers in the gas fields. But most important of all, the collective fabric of native life will be affirmed and strengthened. The sense of identity of individual native people – indeed their very well-being – depends upon it.

Whatever political institutions evolve in the North, they should reflect the common interests of the native people. They should not be merely extensions of the huge bureaucratic structures already in place in Ottawa and Yellowknife. Rather, these institutions, and the programs developed under their auspices, must be designed and implemented by native people, otherwise, they will undermine, and not enhance, the very thing they are designed to achieve. The settlement of claims, and the institutions established as a result of that settlement, will enable native people to defend their own common interests,

Most Canadians live in a world that is largely – and increasingly – urban, industrial and bureaucratic. Our educational system, our governmental bureaucracy, our economic modes, are all defined by these tendencies. But native people do not necessarily share this view of the world. They have a history of their own, a culture of their own, and

languages of their own; they therefore seek to achieve goals of their own – goals that may not always coincide with ours. The imposition of an educational system that uses a curriculum not very different from the one used in Edmonton; the subsidization of the non-renewable resource sector, and the neglect of the renewable resource sector; and the establishment of bureaucratic modes that were developed by other people in other places for other purposes: these are policies that have not worked and that will not work in the North.

Thus, the emergence of native claims should not surprise us. After years of poor achievement in our schools, after years of living on the fringes of an economy that has no place for them as workers or consumers, and without the political power to change these things, the native people have now decided that they want to substitute self-determination for enforced dependency.

So, although the claims that have been submitted by the Inuit Tapirisat of Canada, the Indian Brotherhood of the Northwest Territories, the Committee for Original Peoples Entitlement, and the Metis Association of the Northwest Territories begin with the land, they are not limited to it. 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 in the North.

Inuit Tapirisat of Canada proposed the establishment of a new political entity comprising the land north of the tree line. Political control of that territory would lie with the Inuit, at least for the foreseeable future – not through an ethnic franchise, but through a ten-year residency requirement for voting. The Dene made a similar proposal, for the establishment of a government with jurisdiction over a geographical area and subject matters now within the jurisdiction of either the Government of Canada, or of the Government of the Northwest Territories. The Dene too proposed a ten-year residency requirement for voting. The Committee of Original Peoples Entitlement proposed a regional government in the Western Arctic for the Inuvialuit communities. The claim of the Metis was submitted after the release of Volume One. Despite the divisions between Dene and Metis, the proposals advanced by both groups reflect similar goals. The Metis claim supported an extended residency requirement for voting, and urged the establishment of native political institutions for aboriginal lands.

These are serious and imaginative proposals. While we may not accept them in their entirety, it may be that, on the whole, these proposals are better suited to the conditions of northern life than any likely to be developed under the direct aegis of either Ottawa or Yellowknife. We are not bound by the Constitution to insist upon institutional arrangements for the North that will justify the past. Indeed, proposals similar to those submitted in the North are beginning to emerge all across Canada, sometimes with a view to the modernization of treaty arrangements, and sometimes with a view to the

settlement of aboriginal claims. Special status has given rise to a call for self-determination. The call should not be regarded as a demand for native states, but as an attempt by native people to come to grips with their condition today, and to resolve, in a realistic manner, their place in the structure of Canadian society.

Under the constitutional authority of Parliament to legislate for the peace, order and good government of Canada, a wide range of administrative arrangements were instituted in the Northwest Territories. They began with the Act of 1869 (S.C. 32-33 Victoria, Ch.3), which established a temporary system of administrative control for Rupert's Land and the Northwestern Territory, and continued right up to 1970, with the establishment of the contemporary Territorial Council under the Northwest Territories Act (R.S.C. 1970, Ch.N-22). It is certainly within Parliament's power to reorganize the territorial government so as to permit a devolution of self-government to native institutions.

Local, regional or territorial political entities may evolve that have a predominantly native electorate – an electorate in which a native majority might be entrenched by a suitable residency clause. Or political instruments may be developed by which the native people can, under an ethnic franchise and within a larger political entity, control matters that are, by tradition and right, theirs to determine. One approach would be geographical, the other functional. Having affirmed both these approaches in its paper on *Political Development in the Northwest Territories*, the Government of Canada should now be prepared to explore the possibilities they offer with the native people.

The establishment of a vast governmental and bureaucratic apparatus in Yellowknife may predispose us to think in terms of reproducing governmental forms as we know them. This militates against the development of a new model that might be useful in working out, both in the North and in the provinces, a means for the expression of native ideas of self determination within the context of our constitutional tradition.

Both white and native northerners realize that the government's decision on how to settle native claims will determine whether the political evolution of the North will follow the familiar pattern of the history of the West, or whether it will find a place for native ideas of self-determination. The settlement of native claims must be the point of departure for any political reorganization in the Northwest Territories.

Regardless of the state of government policy, whether past, present or future, it is vital to understand that the continuing strength of the native people in the Mackenzie Valley and the Western Arctic has depended primarily upon their powerful sense of belonging to a group defined by distinct social, economic and cultural traditions. What will decide the future of the native people in the Mackenzie Valley and the Western Arctic is their own collective will to survive as a people. No federal ukase will settle the matter once and for all; no tidy,

bureaucratic chart for the reorganization of northern government will be of any use, unless it takes into account their determination to remain Dene, Inuit and Metis.

It is perhaps unfortunate that these issues should arise in such a prominent way at a time when the future relations between Canada's two main linguistic communities are being re-examined. It makes clear thinking all the more essential.

It is worth reminding ourselves that, while our Constitution has always provided for special status for native people, it does not stipulate special status for any province – although it does, of course, provide guarantees for the use of English and French. The question of special status for native people in Canada and the forms it may take in the future is one thing; the continuing endeavour to reach an accommodation between anglophones and francophones in Canada is another. These questions are both of the first importance, but they are not the same question. The claims of the native people have a basis quite different from the claims of the two linguistic communities. Indeed, the native people find themselves defending their interests against the encroachments of a dominant society – whether anglophone or francophone whose essential characteristics are the same. Recent events in Northern Quebec, as elsewhere in the Canadian North, illustrate how easy it is for the dominant society to discount native aspirations whenever they are inconveniently opposed to the cultural, political or industrial imperatives of the dominant society.

The native people see themselves as distinct peoples in history. For them, their history is not a book in which the last chapter has already been written. Rather, it remains to be written, in ways neither they nor anyone else can foresee. Their determination to retain their identity as native people does not mean that they want to return to live in tents or igloos. Just as the rifle replaced the caribou corrals and the snowmobile replaced the dog team, so aircraft and radio today can make the hunt more efficient. But because the native people use the technology of the dominant society does not mean that they must learn no language in school except English, and learn of no one's past but ours, and be governed by no institutions except those of our sole devising. You might as well say that because we made use of gunpowder, we should all be speaking Chinese.

I began by referring to the debate about the future of the North. It is a debate that will continue but it should not be a sterile one, imprisoned in political clichés. Rather, it should address itself to the underlying truth about Canada.

The great strength of our country is its diversity. Our Constitution has always recognized that we are a plural, not a monolithic society. We are a non-homogeneous country. We rejected in 1867 Lord Durham's ideal of a monolithic state and a monolithic British culture. We have tried to remain true to an ideal of tolerance and diversity, resisting those who would have all of us think the same thoughts, speak the same

language, read the same books, and make the same choices in life.

The settlement of native claims offers a uniquely Canadian challenge, certainly the greatest challenge we face in the North. It

is by this means alone that we can fairly pursue frontier goals in the northern homeland.

