SELF-GOVERNMENT OR SELF-DELUSION?
BRIAN MULRONEY AND ABORIGINAL RIGHTS

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ABSTRACT/RESUME

The concept of self-government expressed during the April 1985 constitutional conference on Aboriginal rights is compared to the patterns of Indian administration of the nineteenth century. The author outlines the nature of the historical processes behind conferences on Aboriginal rights. The recent type of self-government seems little more than a new structure of municipal government which masks the extension of provincial jurisdiction over Indians.

Le concept d'autonomie exprimé lors du colloque constitutionnel d'avril 1985 sur les droits aborigènes est comparé aux types d'administration indigène du XIXe siècle. L'auteur expose la nature des processus historiques qui entourent les colloques sur les droits aborigènes. Le type récent d'autonomie paraît un peu plus qu'une nouvelle structure du gouvernement municipal qui dissimule l'extension de la juridiction provinciale sur les autochtones.
April in Ottawa, 1985: for the third time in as many years a two-day constitutional conference on Aboriginal rights holds centre stage in a town which pulses on the power of political theatrics. While shows of Native culture add "colour" to the media's reporting of the event, most attention is directed at the meeting's Chairman, direct from his performances in Washington, New York and Quebec City. The Conservatives' new leader, the Right Honourable Brian Mulroney, is about to lay out his vision of the place of Indian, Inuit and Métis people in the Canadian federation.

The Prime Minister, an ambitious understudy of the Great Communicator, reads his speech with an the appropriate displays of earnest concern: "Canadians have rightfully objected to excessive intrusion of government into their lives. Governmental control is resented by us all. Yet the most regulated, controlled and intruded upon in Canada are the aboriginal peoples. One of the changes which must be made in the current state of affairs is the removal of these excessive interventions. The alternative - which is our main agenda item - is self-government" (Mulroney, 1985:162).

And so it went at the third of four such spectacles, the last to take place in 1987. "Self-government" has clearly emerged as the dominant buzz phrase from this process of constitutional consultation. Mulroney very quickly appropriated the expression in order to describe his government's policy. As he explained, self-government "will enable Indians, Inuit and Métis to play their full roles as active and important contributors to the national economy". Among its benefits would be enhanced Aboriginal "entrepreneurship" (Ibid.:163), making for "productive, happy lives" (Ibid.: 161). In other words, Brian Mulroney's version of self-government would seem to justify cutbacks in government programmes directed at Native people, all in the name of better enabling them to participate in the fabled magical marketplace.

Near the end of the conference, several Indian politicians articulated their fears that the promises which lured them to the negotiating table were fast becoming obscured in the misty alchemy of federal-provincial relations. What had been described to them originally as a process in order to achieve constitutional recognition of their inherent Aboriginal rights, had instead become a forum giving the appearance of legitimizing the encroachment of provincial control over their destinies. With the slogan "old rhetoric", Mulroney dismissed the protests,¹ asserted by defenders of ancient nations. Such nations face threats to their cultural survival which rival even those menacing present-day Canada! While the master of Torytalk may have made some headway restructuring the language of Aboriginal affairs, his terminology in fact cloaked a return in government Indian policy to some of the older patterns of paternalism. Lurking behind Mulroney's use of the term, "self-government", were the familiar concepts of integration and assimilation, long the cornerstones of Canada's relationship with the First Nations.

In the nineteenth century, Indian policy took as its priority the incorporation of Native people into the religious systems of Christendom. From this, it was anticipated, their eventual absorption into all aspects of non-Native society would follow (Upton, 1973 Hall, 1984). By describing enhanced Aboriginal
contributions to the national economy as a major justification for his policy initiatives, Mulroney seems merely to have substituted a secular vision of increased integration for the old, religiously-motivated ideal. Indeed, in suggesting that the key to Native self-reliance is their greater involvement with the dominant modes of production in capitalist society, even the rhetoric of the Prime Minister is little changed from that so often advanced by the armies of missionaries and government officials who set off to solve the "Indian problem" during the last century. What Mulroney is describing as "self-government" could even be viewed as the practical fulfillment of their assimilationist aims, most endurably set in legal form by the infamous Indian Act.

This legislation, which basically projected the old Indian policy of Upper Canada throughout the new Dominion of Canada (Leighton, 1975; Boxwell, 1978), established among other things the administrative basis for the management of Indian reserves. As openly articulated at the time, the objective was to make these management structures similar to those of municipalities. A system of elected band councils was established with this in mind (Milloy, 1983), and a form of land tenure was implemented which was supposed to move the collectivist orientation of Indians more towards the idea of private ownership of property. While both band government and land allotment were made subject to the veto power of the resident (non-Native) Indian agents, it was firmly anticipated that this authority would eventually be removed. This was to take place once Native people had become sufficiently schooled in the ways of White society, or, to use the language of Victorian Canada, once they had become "civilized", that is, Christian, agricultural, and fully absorbed in the ethos of individualism as best embodied in the private possession of land (Tobias, 1976).

Thus, Indian reserves were set on administrative footings whereby they could eventually become full-fledged municipalities with a maximum of ease. Indian people were subjected to a regime which was thought to be preparing them for a day when they could become regular citizens fully responsible for the management of their own local affairs. The objective was always to bring about the disappearance of Indians as a distinctive group. This, in turn, was to make the whole expensive mechanism of Indian Affairs, including the purchase of Aboriginal lands and the fulfillment of old treaty obligations, unnecessary (Harper, 1945; 1947).

The kind of self-government which the Prime Minister and several of the premiers were prepared to endorse seems little more than a new structure of municipal government operating within some kind of shared jurisdictional authority of the federal and provincial legislatures. Rather than representing a departure from the colonizing spirit which gave birth to the Indian Act, the proposed reforms could better be characterized as a contemporary realization of the paternalistic ideals of this antiquated legislation. Even municipal status was not guaranteed by the suggested accord which the Prime Minister presented to the premiers. All that was promised was yet more meetings "relating to self-government". Conspicuously absent from the proposers esoteric legalese was an unambiguous commitment to entrench self-government in the constitution as an Aboriginal right. The series of negotiations that the proposal was to have
set in motion would have made status Indians formally subject to the power of provincial jurisdiction in new ways which are clearly contrary to their interests. In the name of taking government off the backs of Aboriginal people, ten more governments were to have been constitutionally empowered to intervene in their self-determining rights! Some self-government!

Not surprisingly, the Métis and non-status Indian organizations were prepared to accept Mulroney's document as a basis for further negotiations, provided that these talks include consideration of a land base for them. Their interests had been so long neglected by governments in Canada that they had little to lose, so they clutched at the straw presented by the Prime Minister. As for the Inuit, whose representatives have been particularly noticeable for their diplomatic finesse throughout this constitutional exercise, they managed to avoid any firm position on either side of the question. The real test of the substance of Mulroney's proposal, however, was the reaction of the status Indians sitting under the banner of the Assembly of First Nations. It is they who carry the major part of the burden of Aboriginal peoples' historical relationship with the Crown; of course, their response to the proposed accord was an unqualified NO.

The new negotiating process into which they were being asked to enter would most certainly have led away from the recognition of Indian government as an inherent Aboriginal right, one flowing from the simple reality of indigenous nationhood. Instead, it would have set any future negotiations within frames of reference where self-government would become a delegated power derived from the higher authority of federal and provincial legislatures. Such a development would be quite inconsistent with the kind of changes which were called for by the special parliamentary committee on Indian self-government, chaired by Keith Penner (The "Penner Report"). Its widely respected report, published in the Autumn of 1983, recommended a constitutional amendment to recognize the First Nations as "a distinct order of government in Canada" (Penner, 1983:44). Moreover, it called for a federal Minister of State for Indian First Nations Relations to defend Aboriginal interests "against encroachment by other governments" (Ibid.:123). What other governments could the all-party committee have had in mind than those of the provinces?

In his first performance at a constitutional conference on Aboriginal rights, Brian Mulroney failed to assert the federal government's authority against provincial encroachment on Aboriginal interests. Instead, he actually used his power to advance some of the premiers' designs in order to diminish the minimal level of constitutional protection currently afforded to Native people. In so doing, he has badly betrayed Indians and subverted fundamental Canadian constitutional principles. He has achieved such subversion with a minimum of scrutiny from the national media, the majority of whom are, of course, White and middle-class. The media itself is a product of an educational system which has not given analysis of the Aboriginal fact in Canada a high priority. Hence, they have been ill-equipped to grasp the nature of the historical processes which lie behind the tungsten-lit facade that these constitutional conferences on Aboriginal rights have become.
The parliamentary committee on Indian self-government recommended that a federal Minister of State be specifically charged with defending Aboriginal interests against the encroachment of other governments, because of their research into the Crown's "trust relationship" with Indian First Nations (Penner, 1983). The roots of the relationship lie in an era before Confederation, when Indian nations held the balance of military power in the imperial struggle for control of North America between Britain and France, and later the United States. It was out of this experience that the basis of the treaty system was laid. Crown authorities needed Indian military support, or at least Indian neutrality, and the surest way to secure this was by making commitments to respect in perpetuity their territorial and national rights. Whatever remains within the collective domain of Native people, as overwhelming as the theft of their resources has already been, can be attributed largely to this historical legacy of exchanged promises and the willingness of succeeding generations to respect them.

The responsibility of fulfilling the Crown's historical obligations to the First Nations, as sometimes formalized in treaties (see Price, 1979), became the duty of the new Dominion's central government in 1867. Section 91(24) of the British North American Act, which still applies, details that "Indians and Lands reserved for the Indians" fall within federal jurisdiction. Public lands, on the other hand, were placed under provincial authority. Accordingly, the issues surrounding Indian resources were automatically flung into a zone of constitutional conflict, the most recent manifestation of which is this current round of First Ministers' conferences on Aboriginal rights. Under these circumstances, where the power of the provinces is founded largely in their control of real estate, it is almost axiomatic that provincial officials will be opposed to any interpretation of Aboriginal rights which recognizes the continuing collective interest of Native people in land. Yet, any system of "self-government" which fails to acknowledge forthrightly this fundamental Native interest can be little more than an exercise in public relations, masking the extension of provincial jurisdiction over Indians.

Historical experience has repeatedly demonstrated the hostility of the provinces to the land rights of Native people. Beginning in the late nineteenth century, when Ontario lawyers first took the federal government to court in order to challenge their broader interpretation of Section 91(24), provincial authorities have systematically used the judiciary in their attempts to undermine the legal force of Aboriginal and treaty rights. The position of British Columbia in the Meares Island case, and that of Ontario in the Bear Island case, are contemporary examples of this well-established pattern. The provinces' most brutal collective assault on the interests of the First Nations, however, occurred on the night of November 5, 1981, when Pierre Trudeau finally enticed nine of Canada's premiers to support a patriation package. As their final price of coming under the umbrella of a new constitution, some provincial First Ministers exacted and received a federal agreement to rip a positive assertion of Aboriginal and treaty rights from the Charter of Rights and Freedoms (see Morisset, 1983). A ground-swell of public indignation later forced a compromise on the issue.
Section 35 of the Constitution Act now reads: "existing Aboriginal and treaty rights are hereby recognized and affirmed". The word "existing", inserted at the insistence of several premiers, was clearly added in the expectation that it would severely limit judicial interpretation of the passage.

In the face of such antipathy, Indians have by and large held tenaciously to the exclusivity of their constitutional ties with Ottawa, as detailed in Section 91(24) of the BNA Act. Within the structure of Confederation, federal jurisdiction has been the only real line of defense separating their land rights from the acquisitive grasp of provincial governments, and particularly from the clutch of resource-exploitation industries that work primarily through them. Of course, as the history of encounter between Natives and Newcomers so poignantly shows, Ottawa's record as a trustee of Aboriginal interests has not been a proud one. Nevertheless, it is through the federal government alone that Indians can trace the single fragile thread of continuity which leads back to the Crown's original recognition of their national and territorial rights.

Indians almost fell victim to the enlargement of provincial jurisdiction in 1969, when Pierre Trudeau attempted to abolish the Indian Act and the Department of Indian Affairs. It was in their resistance to this initiative, soon labelled the White Paper Policy, that Indians began to emerge as a force to be reckoned with in national politics (Weaver, 1981). What the White Paper failed to accomplish, however, appears now to have been brought closer by the patriated Constitution. While the Constitution Act asserts existing Aboriginal and treaty rights, the country's First Ministers are claiming the authority to define these words through a process of constitutional amendment. In this exercise, it is the premiers who wield most of the power. On the other hand, the Aboriginal groups who sit with the First Ministers officially have no vote at all in the process (Sanders, 1983).

Indians have responded to these menacing developments in a variety of different ways. The increasingly powerful Coalition of First Nations (CFN), which represents about 30% of the 325,000 registered Indians in the country, rejects entirely the legitimacy of the First Ministers Conferences on Aboriginal rights. They assert that they are in no way subject to the Constitution Act, that the provinces lack entirely the constitutional competence to define Aboriginal and treaty rights, and that the Assembly of First Nations does not represent them. The Coalition has acted particularly vigorously in international forums, such as the United Nations Human Rights Commission in Geneva. There they have charged that Canadian Indian policy, in denying the simple rights of peoples to self-determination, is in direct violation of international covenants which Canada itself has signed. "We do not want a 'new relationship'," they write. "We merely want the government of Canada to recognize the original sovereign relationship that was established between Indian Nations and the Crown".9

In just sitting down at the same high-level negotiating table with the provinces, a second organization, the Assembly of First Nations, has already made a major compromise. When the AFN entered the process in 1983, however, its National Chief, David Ahenakew, stipulated clearly the terms of his
ABORIGINAL RIGHTS

organization's presence. He told the First Ministers: "Our relationships continue to be with the undivided Crown. How you divide yourselves up internally, for your own purposes, is your own business. Our relationship is with Canada, rather than its parts - In respect to Indian issues, it is Canada's business to decide what advice it requires from its parts. However, historically and under Section 91 (24) of the constitution, our relationship is directly with Canada".  

In the months before the last conference, yet another strategic rift appeared among the status Indians, although this third group too maintains that the provinces have no right to a jurisdictional presence in their relationships with the Crown. The Prairie Treaty Indian Nations (PTIN) are seeking their own negotiating seat with the First Ministers in the belief that their interests cannot be properly represented through the existing structure. As Indians who are all party to treaties, they feel that they face circumstances very different from those of other Native people in parts of the country where Aboriginal interest in the land remains absolutely unrecognized by Newcomer governments. This latter situation prevails, for instance, throughout most of British Columbia and the Maritimes. Accordingly, the PTIN have been developing its own distinctive voice as it becomes increasingly clear that it is unrealistic to expect the AFN to reflect genuinely the diversity of historical experiences, as well as the variety of national and linguistic backgrounds which, until now, have been rather awkwardly grouped together under the umbrella of the Indian Act.

But the dynamics of these developments among Indian nations remained by and large unrecognized by Brian Mulroney and the national media who covered the conference. Instead, the fiction was perpetuated that the First Ministers were negotiating with spokesmen who were capable of speaking for all the status Indians in Canada. The conspiracy of silence surrounding the Coalition of First Nations was particularly striking. They placed a thousand protestors on Parliament Hill to mark their opposition to what was taking place at the nearby National Conference Centre. Such actions, however, went all but unnoticed by the mainstream media who seemed to have joined forces with the federal government in order to assure the continued marginalization of the CFN. Thus, in a process allegedly to bring about Aboriginal "self-government", there was little willingness on the part of the non-Native power structure to recognize that it is perfectly appropriate for members of diverse Indian nations to disagree among themselves. This seems manifestly unjust in a country where it has long since been established that well-publicized debate between political parties, and between central and regional authorities, is the very life-flow of healthy government.

While there is widening controversy among First Nations people over questions of strategy, they generally share deep convictions about the nature of the Aboriginal rights which they are set on defending. The true source of these rights, they maintain, lies not in British or Canadian law but in the simple reality of their own Indigenous nationhoods accompanied by a continuing collective interest in their ancestral lands. Thus, "self-government" is nothing which Newcomer legislatures or their leaders have the legitimate authority to grant. What is sought, rather, is binding Newcomer recognition of Aboriginal
peoples' inherent powers of self-determination. The other major point of consensus linking the First Nations is their assertion that their historical relationship with the Crown flows exclusively through the federal government. While none would deny the importance of developing good-neighbourly relations with provincial governments, Indian people have learned from hard experience the necessity of resisting the formal enlargement of the provinces' jurisdiction over their communities and lands.

Indians, then, had everything to fear from the package placed on the First Ministers' negotiating table by Brian Mulroney. In his performance as Chairman, the Prime Minister failed entirely to uphold the federal government's constitutional obligations to act as a trustee of Indian interests against the encroachment of the provinces. Instead, Mulroney entered the conference with a position which was absolutely unacceptable to the AFN, the most moderate of the Indian organizations. In fact, during the proceedings, he shifted yet farther away from the AFN's ground to accommodate the wishes of the premier of Saskatchewan.

Of course, as the self-proclaimed messiah of harmonious federal relations with the provinces, Mulroney could not have surprised many with his conciliatory gestures towards his fellow, mostly Conservative, First Ministers. What is more disturbing however, was the media's apparent blindness to the Prime Minister's abandonment of his special responsibilities to "Indians and Lands reserved for the Indians". Instead, reports of the conference tended to resemble an account of a giant Bingo game. Would Brian Mulroney score the required seven provinces in a row to win a constitutional amendment and a public relations victory? As it happened, the PM did mark a lucky seven on his card, but continued Indian insistence on defending their own interests convinced the First Ministers to withhold their exclusive powers to change the constitution. And so the event's journalist interpreters were left to explain why it was that spokesmen of the First Nations had been the most outspoken critics of Brian Mulroney's plan for Aboriginal "self-government". The shallowness of their attempts to account for this seeming anomaly is reflective of a country fast becoming alienated from a sense of its own indigenous cultural roots.

Without a far greater national effort to come to grips with the burden of colonialism that has characterized relationships between Newcomer governments and Aboriginal people in Canada, the new constitution can be nothing more than a vehicle to project this oppressive historical legacy into the future.

NOTES

1. Prime Minister Mulroney used the phrase near the conclusion of the second day of the meeting. He then repeated it at the press conference afterwards.

2. The importance of engendering the spirit of individualism among Indians, especially with respect to ownership of land, is mentioned often by the
Bagot Commission. Their proposals were the basis of the province of Canada's 1858 Indian Act, which in turn was adopted by the Dominion of Canada after Confederation. See the "Report on the Affairs of the Indians of Canada" in the *Sessional Papers* of the Legislative Assembly of the Province of Canada, 1858, Appendix No. 21.


5. In his most recent bibliographic essay on the subject, James W. St. G. Walker explains that although the last decade has seen the appearance of many specialized studies pertaining to Native people in Canadian history, the fruits of such work have not often been used in the writing of more general accounts of the country's past. Thus it appears that the growing level of research on Native themes taking place at some institutions of higher learning has not yet significantly affected such mainstream activities as the teaching of introductory courses in Canadian history at Canadian universities. See Walker, "The Indian in Canadian Historical Writing, 1972-1982" in Getty and Lussier, eds, *As Long as the Sun Shines*, pp. 340-357, see also Sylvie Vincent et Bernard Archand, *L'image de l'Ameridien dans les manuels scolaires du Québec*, Québec, Hurtubise, 1979. On the low level of public interest in Aboriginal questions, a situation which mirrors the importance afforded such matters by the media and by educational institutions, see J. Rick Ponting and Roger Gibbins, *Out of Irrelevance: a socio-political introduction to Indian affairs in Canada*, Toronto, Butterworth, 1980, pp. 67-94.


7. As in the Royal Proclamation of 1765. It is published in Getty and Lussier,
eds., As Long as the Sun Shines, pp. 29-37.


12. The following headlines are representative of the media's reporting of the conference: 5 provinces okay PM's scheme to give native self-government", Toronto Star, 3 April, 1985; "Mulroney Fails to Get Deal", Globe and Mail, 4 April 1985; "Mulroney tout pros d'une ente sur les gouvernements autonomes", la presse, 3 avril, 1985; "Les autochtones rejettent le compromis edulcore", Le Devoir, 4 avril, 1985.

13. See Jean Morisset, "La Couronne Contre La Terre", recherches americaines au quebec, Vol. 13, No. 3, 1983. The theme of this very interesting issue of recherches is described as: "pour une anthropologie des droits authochtones."

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