



PRESENTATION

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From 1974 to 1977, as Commissioner of the Mackenzie Valley Pipeline Inquiry, I travelled to the Native villages in Canada's Mackenzie Valley, from Old Crow to Fort Franklin, from Tuktoyaktuk to Fort Smith, to take testimony from more than 1,000 Native witnesses on issues relating to Native self-determination and land claims. In my report, Northern Frontier, Northern Homeland, which came out in 1977, I made recommendations to the Government of Canada.

From 1983 to 1985 I conducted a similar undertaking in Alaska, under the sponsorship of the Inuit Circumpolar Conference. I travelled to 60 villages, from Barrow to Metlakatla, from St. Lawrence Island to Fort Yukon. I heard the testimony of 1,450 witnesses. I wrote about what I learned in my report called Village Journey (Hill & Wang), which came out in September, 1985. This commission was about the Alaska Native Claims Settlement Act, 1971 (ANCSA); but, more important, it was about the deep concerns that Alaska Natives have about ANCSA and about the future. These were very similar to those expressed by Native people in the Canadian north.

I found that the concerns of Native people in Alaska were essentially land, self-government, and subsistence. In fact, there is a constellation of Native villages - Inuit and Indian - extending across the Arctic and sub-Arctic regions of North America, from the Bering Sea to Greenland, that share these deep concerns.

The Alaska Statehood Act, (1958), ANCSA (1971), and the Alaska National Interest Lands Conservation Act (ANILCA) (1980), constitute a great division of Alaska lands among the federal government, the state government and the Native people. Under ANCSA, Alaska Natives received 44 million acres, approximately 10% of the land in the state. The land (and \$962.5 million) became assets of the Native corporations, 200 village corporations and 12 regional corporations established under the Act. Native people living at the time were issued shares; shares cannot be transferred to non-Natives until after 1991. Deep structural flaws in ANCSA make it likely that, if nothing is done, Native people will lose their land.

I found that Native people in the villages want to keep the 44 million acres received under ANCSA in Native ownership. They sense - quite rightly - that as long as it remains a corporate asset it will be vulnerable. The fact is that most of the village corporations are in financial difficulty. Many will be facing bankruptcy before 1991. So, long before 1991, Native lands may be lost to creditors.

After 1991, shares in the Native corporations can be sold to non-Natives. After 1991, there will be corporate takeovers, and whoever takes over a Native corporation will control the assets of the corporation, including the land.

Later on in the 1990's ANCSA land, even where it is undeveloped, will become taxable by the state and local authorities. This could lead to Native land being forfeited.

For Alaska Natives, the loss of their lands would be catastrophic. The severance of ties with traditional life and the foreclosure of any possibility that the villages might achieve a greater measure of self-sufficiency would have tragic implications for Alaska Natives.

As well, the passing of 44 million acres from Native ownership would upset the delicate balance of the Alaska National Interest Lands Conservation Act (ANILCA) passed in 1980. Once Native lands contiguous to federal conservation lands fall into private hands they will be used as beachheads to obtain access to conservation lands for development purposes.

The great urgency lies in ensuring the village people retain control of their land. So I have urged that the village corporations should transfer their land to the village tribal governments (I.R.A. councils established under the Indian Reorganization Act, 1934 and 1936, and traditional councils). The land can be held by the tribal governments or can be placed in federal trust. Either way, this will keep the land in Native ownership; it will also solve the problem of the New Natives, or "after-borns", who would, as tribal members, have the same rights of access to and use of tribal lands as anybody else. To do this without having to cash out dissenting shareholders, Congress will have to pass enabling legislation.

I made a distinction between village corporations and regional corporations. The village corporations were undercapitalized; the regional corporations received the lion's share of ANCSA funds. The situation of the regional corporations is not perilous but some of them might wish to take advantage of measures enacted by Congress to protect the village corporations. I have suggested that any legislation enacted for the benefit of the village corporations should also be available to the regional corporations.

There is no reason why village corporations that are engaged in successful business activity should not continue in business. Where land is placed in tribal ownership but a parcel is needed for business purposes it can be leased back to a Native corporation or an IRA corporation.

Once the land is in tribal ownership, it may be that tribal governments will assert jurisdiction over it. I am talking about ANCSA land that is now held by village corporations. It is private land. Non-Natives do not have any right to enter ANCSA land. A transfer of land to tribal jurisdiction would not diminish the right of access of non-Natives to such land, because they have no right of access to it now.

I also recommended that tribal governments assume a greater role in local government. I think that tribal governments should be recognized as appropriate vehicles for delivery of municipal services in Alaska. The state already makes grants to 55 tribal councils in unincorporated villages in Alaska. The state can delegate some of its functions to tribes. Such arrangements already exist in many states in the Lower 48.

the recognition of Native sovereignty. Native
is a well-recognized expression in United States
of Native self-government. Tribal councils would
sovereignty, but subject to the precepts of United
States. I envisage a much greater degree of cooperation
between state, borough and tribal governments in

recommendations relating to subsistence, that is,
to give people to fish and wildlife. Wherever I went
people talked about subsistence. ANCSA
original title; under ANCSA aboriginal rights of
hunting and trapping were also extinguished. It is not
that villagers are concerned about what steps can be
taken to assure Native subsistence.

In many of the villages in Alaska, subsistence
is a survival. In the future, in some villages,
it will be the main business of tribal governments, and
new arrangements with state and federal fish and
game agencies. These new arrangements will take time to

transfer tribal jurisdiction over Native subsistence
resources. Guaranteed Native access to fish and wildlife
resources on public lands used by Native people, and
coordination with state and federal authorities over
resources doesn't mean that non-Natives from Anchorage
can't go out and take a moose or go fishing. I'm

So I have urged that Congress should entrench Native subsistence rights, so they cannot be placed in jeopardy by any future state action.

There is nothing unusual in arrangements for Native participation in the management of fish and wildlife resources. They exist already, for instance, in Washington and Michigan, and in many other states, as well as in the Arctic and sub-Arctic regions of Canada. In Alaska, too, they already exist under the federal Marine Mammal Protection Act.

I think that unless the situation of Alaska Natives living in the villages is addressed, no true solution will be found to the issues raised by ANCSA. The land must continue in Native ownership, there must be increased Native access to fish and wildlife resources, and a measure of Native self-government at the local level - these were the themes that were struck by Alaska Natives who testified in my journey to the villages. My report reflects what they told me. No one put the case for Native subsistence rights better than Teddy Coopchiak, Jr., of Togiak, who said to the Commission:

How should Natives give up their hunting rights?
It is well hidden in our mind, and nobody could take it away, like a bird who flies, and nobody could take it or boss it around.

Congress should let the Natives boss themselves, because they have survived during the past. Had to make their own laws then, make their own decisions. That is why they are known to be smart people. That's why they survived in the Arctic for so long.

My most important recommendation, on which I urged immediate action, is that Congress pass legislation to facilitate the

transfer of land by the village corporations to tribal governments in each village. This would enable the land to be kept in Native ownership in perpetuity. Land held by tribal governments is Indian Country, safe from seizure, safe from corporate takeover. Representatives of the Alaska Federation of natives, Inc. (AFN), which represents the native corporations, and the Alaska Native Coalition (ANC), which represents the Native villagers, have asked Congress to make changes to ANCSA. The Native corporations want restrictions on the sale of shares to continue after 1991. The villagers want to facilitate the transfer of the land from the Native corporations to tribal governments. Last year, and again this year, bills have been introduced before the House and the Senate dealing with these issues. None has yet been passed. Some members of Congress oppose legislation which enlarges the scope of tribal government and tribal rights in Alaska.

Tribal rights are based on the idea of Native sovereignty: a limited sovereignty entrenched in U.S. jurisprudence. The movement for recognition of tribal authority exists in Alaska, just as it does in the Lower 48. The movement is in fact a world-wide movement.

It is a mistake to think that tribal ownership and tribal government are anachronisms. The Congress of the United States is 200 years old, but no one says it is not a contemporary institution. Tribal institutions have been around for a long time, too. That doesn't mean that they have no relevance to our own times.

Native sovereignty - the idea of Native self-determination within the nation-state - is an American idea, developed by Chief Justice John Marshall in the 19th century and affirmed by the Warren Court and the Burger Court in this century. It is an American idea that has been adopted in many countries as the legal basis for asserting Native rights.

Beneath the technical language of the bills before Congress lies the real issue. Are Alaska Natives to achieve recognition as a distinct people in Alaska with distinct institutions? Some people in Alaska - and in the Congress - are opposed to modern ideas of Native self-determination. I think, however, the movement is irreversible.

All over the world we are witnessing a resurgence of Native culture, Native claims, and Native pride.

The expansion of the European powers, first Spain and Portugal, later France and England, into the New World raised the central question: By what right did Europeans take the land and subjugate the indigenous peoples of the New World? By what right did the Russians and then the Americans lay claim to the lands of Alaska?

We are struggling still with the implications of that question, though it does not arise in precisely the same terms as it did at the threshold of European occupation of the Native domain. Now we ask ourselves: What measures can be used to establish a fair and equitable relationship between dominant societies cast in the European mold and Native peoples?

Most Native peoples have no wish to assimilate. They have refused to become proletarianized. Their fierce desire to retain their own culture can only intensify as industry, technology, and communications forge a more deeply pervasive mass culture, excluding diversity of every kind. Native peoples the world over fear that, without political autonomy and their own land-based economy, they must be overwhelmed, facing a future that would have no place for the values they have always cherished. Native peoples everywhere insist that their own culture is still the most vital force in their lives; the one fixed point in a changing world is their identity as Natives.

When Native people talk about preserving their culture, some people become impatient. What, after all, is culture? Let me suggest what it is. We humans are social animals. We define ourselves by knowing our own people, our language, our customs, our traditions. Culture is the comprehensive summary of standards, values, patterns of behaviour, common attitudes, ways of life.

Culture, however, must have a material basis. This gives compelling urgency to the movement for self-determination and self-sufficiency among the world's indigenous peoples. In September 1984, when Pope John Paul II visited Canada's Native peoples, he told them, "Native people are entitled to take their rightful place among the peoples of the earth." His message carried to indigenous peoples everywhere:

You are entitled to a just and equitable measure of self-determination, with a just and equitable degree of self-governing. For you a land base with adequate resources is also necessary for developing a viable economy.

Home Rule in Greenland, the Kativik regional government in northern Quebec, the idea of Nunavut (a new territory, with a 90% Inuit (Eskimo) population to be carved out of Canada's Northwest Territories), and now the emergence of the tribal movement in Alaska - all these are manifestations in the Arctic and sub-Arctic of what is taking place in many other countries. With the independence of so many Third World nations, the condition and the claims of indigenous peoples who are locked into nations they can never hope to rule must now be considered. They constitute a Fourth World, and it extends from Alaska to Tierra del Fuego, it encompasses the Ainu of Japan, the Aborigines of Australia, the Maori of New Zealand, the Sami of Scandinavia, and the tribal peoples of the Soviet Union, China, India, and Southeast Asia.

Indigenous peoples are not engaged in a struggle to separate from the nation-state nor to achieve independence within national boundaries; they want mainly to retain control over their own lives and their own land. Even though Fourth World claims are claims to limited sovereignty, they have not achieved the same recognition as Third World claims to full sovereignty. The struggles of indigenous peoples do not fit into convenient ideological or political categories. This has made possible the attempt by the Inuit Circumpolar Conference to transcend the Cold War, by inviting Native delegates from the Soviet Union to their triennial assemblies. This makes sense, for not only are they the same people, they face many of the same problems. In

the Soviet Union, as far back as the 1920s, the regime decided that the tribal councils of the indigenous peoples of Siberia were inimical to the Communist Party's goals of industrialization and assimilation. Native hunting and fishing rights were curtailed. National Areas were established, and the indigenous peoples brought within them. In these National Areas, which serve as regional governments executing central policy, non-Natives predominate. For instance, the Chukchis and the Eskimos, with a combined population of 12,000 in the Chukotsk National Area, are outnumbered by 70,000 Russians who control the Communist Party apparatus and the government of the area.

In Nicaragua, the Miskito Indians, together with the Sumo and Rama Indians, are trying to establish a regional sovereignty within the nation-state. The Sandinista regime has described them as an ethnic minority, but the Miskitos insist they are an indigenous people. Still the Sandinistas have refused to acknowledge the rights of the Miskitos. What is it the Miskitos want? It is what Alaska Natives want. They seek recognition by the Sandinistas of their claim to Native sovereignty.

Some people say that even though Native sovereignty is recognized in the Lower 48, Native sovereignty should not be recognized in Alaska. But how can the U.S. wage war to uphold Native sovereignty in Nicaragua and reject it in Alaska?

President Woodrow Wilson espoused the idea of self-determination of peoples in the peace treaties that followed World War I and in the League of Nations. The Charter of the United Nations,

which has the force of a treaty, affirms the idea of self-determination of peoples. In 1966, the General Assembly of the United Nations approved the International Covenant on Civil and Political Rights, which has been ratified by many countries (though not the U.S.), including Canada in 1976. The Covenant asserts the right of peoples to self-determination. The principle is reaffirmed in the Helsinki Accords of 1975, to which the United States subscribes. It is the principle on which decolonization of the nations of the Third World has proceeded.

Article 2 of the United Nations International Covenant on Civil and Political Rights also reaches the special situation of Native or indigenous peoples; specifically, it says that no people shall be deprived of their subsistence. Furthermore, Section 27 upholds the right of a minority "to enjoy their own culture." It reads:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Nations have an obligation to protect traditional forms of economic activity on which the cultural integrity of indigenous peoples depend. It is arguable that the principles reflected in the 1966 Covenant have entered the body of customary international law, and are binding even on those nations such as the United States, that have not yet signed the Covenant. Whether or not they have, the Covenant is ample demonstration that indigenous peoples, in their search for self-determination, occupy the moral high ground.

The Native peoples are making many proposals, and some of them reach far. They encompass renewable and non-renewable resources, education, health, social services, and public order and they extend to the shape and structure of political institutions. Proposals of this kind are no threat to established institutions. The U.S. and other nations, should regard them as opportunities to affirm our commitment to the human rights of indigenous peoples.

Many persons are inclined to dismiss Native claims of every kind as so many attempts to secure present advantages by the revival of ancient wrongs. Why should anyone today feel guilty because of events that occurred long ago? Arguments of this kind are beside the point. The question is not one of guilt, present or past. The question is one of continuing injustice, and the distinctive feature of the injustices, past and present, done to indigenous peoples is the fact that these injustices were committed against peoples. These peoples are still with us, and the nations that committed these injustices are still with us in one form or another. The injustices continue, and they are within the power of remedy.

The Europeans came to America and, on grounds that would be unacceptable today, they occupied lands that belonged to the Native peoples. The Russians did the same thing in Siberia and Alaska. If we wish to live in a world based on the rule of law, we must acknowledge that the claims of the Native peoples of the world are not ancient, half-forgotten, and specious. They are, in fact, current and contemporary. Arguments for the rule of

law in international relations can never be soundly based until the powers that have dispossessed and displaced indigenous peoples accept the precepts of international law - precepts that now require a fair accommodation with indigenous peoples.

If governments continue in their efforts to force Native societies into molds that they have cast, I believe they will continue to fail. No tidy bureaucratic plan of action for Native people can have any chance of success unless it takes into account the determination of Native peoples to remain themselves. Their determination to retain their own cultures and their own lands does not mean that they wish to return to the past, it does mean they refuse to let their future be dictated by others.

The indigenous peoples of the world are raising profound questions that cannot be answered by the conventional wisdom of science, material progress, or liberal democracy.

The standards adopted by this U.N. Committee must reflect what is truly happening; the insistence of indigenous peoples on a land base and their determination to achieve self-government.