

Feb. 16 '72

## Land Question ① and Treaties

PLEASE MOVE CLOSER

Reading: Duff text - pp. 60-71

Native Rights in Canada pp 114-132

Duff - Ft Victoria Treaties BC Studies #3, 1969

#2 [also White Paper & Ungava Society]

1. Next 6-7 lectures will deal with BC Indian land question  
(list topics)

□

2. What is the issue?

a) Basic grievance: <sup>what is</sup> government took away the land without proper negotiation and compensation

Aboriginal rights are primarily rights to land.

It is the basis of whatever special legal rights Indians have in Canada

without it they have no special bargaining power  
has always been  
- main issue wanting Indian organizations

- " focus of their sense of grievance

b) Other people usually underestimate it, esp. governments,  
White Paper - <sup>strength,</sup> (and now we'll have a new government to educate)

□□ Trudeau

c) First order of business: (just mention) even precedes  
Mushka case: review of Indian Act

1969

Marion brief:



Nishga view: our aboriginal title has never been extinguished

Union view: still confidential  
: we had aboriginal rights - they have been taken away - we should be able to claim compensation.

+ The Concept of Aboriginal Title - it exists in 2 senses

a) Indian sense: we owned the land  
we have ownership rights we want recognized  
and we want to negotiate

b) It exists in a legal sense - a concept in English law  
- not sovereignty (British took sovereignty by discovery and settlement)

Indians not sovereign nations - (US recognizes nationality)

no law - not possession, but use usufruct (vary)  
rights of occupancy and use  
worth just as much as title

- a burden on the sovereignty of the crown  
it is what Treaty Indians gave up by treaty  
(and what BC non-treaty Indians did not give up)  
Canada has recognized it  
BC " denied it

Any questions?



3. When was the land taken away from the Indians?

(it came up with D. Fulton, and we couldn't work out a simple answer) Simple question

a) 200 yrs ago the Indians did own and rule

- anthropologists can describe rules

- English law does recognize native concepts NRC.

Now - don't rule

- don't own (exc. reserves, and that in a limited sense)

What happened? When?

b) Sovereignty? by "discovery" "settlement"

but that itself didn't extinguish rights of aboriginal inhab.

read MARSHALL <sup>19</sup>/<sub>20</sub> Crown Policy

c) Conquest? no war

conquest in a "just" war

d) Treaties? in  $\frac{1}{2}$  of Canada, but not BC

(Question of justice and interpretation)

e) Reserves? when "put on reserves"

- basis of reserves never negotiated or agreed

- when reserves granted, it was expressly understood that it didn't affect native title

f) Law? an act of a competent legist. authority?

a) Proclamation, statutes re land  
eg Douglas Proclamation

b) Cumulative effects of all the laws nibbled them away

Conclusions: (as Indians see it)

a) Their ownership never extinguished

b) Extinguished in some way, in which case they should be compensated.



TREATIES ②

1. Last time I introduced the concept of Aboriginal Title  
- as a legal concept in British Law <sup>incorporated</sup>

- question: is it still unextinguished in BC?

Today I want to talk about the actual history of the concept  
up. Treaties - (when it was explicitly recognized  
and extinguished)

2 Royal Proclamation Geo. III 1763 Justice case - judges have to decide whether it applied to BC

Royal Proclamation had force of statute in the Colonies  
made law

what it said about Indians became law of Canada

Read - NRC

1. It reserved certain lands as Indian territories

including - - all of the lands westward - - -

2. It specified the manner in which Indian lands  
could be given up (treaty)

3. Question: does it apply to BC?

No - unknown country  
not 'connected'

Yes - all the lands to the westward (claimed all to be)  
- the law continues to speak, follows the flag

Justice decisions so far say 50-50



3. Canadian Treaties follow from Royal Proclamation  
started c 1850 Ontario,  
moved west with settlement #1 - #11 (1923)

Treaty # 8 is of special interest to us. pp 70-71

Circumstances:

BC bands: brought in by adhesions

Terms

Then:

Reverses:

Today:

Significance - a precedent of Fed Gov't recognizing and  
extinguishing native title to lands in BC.

NWT Indians caveat - peace treaty?



3a Policy of Canada always has been to recognize and extinguish native title

Montal - 1969 White Paper: an about-face.  
"Just Society"

1973 Chretien agreed to negotiate

4 Colonial Policy of VI & BC  
- different from that of Canada

1849 Crown Colony

- need to free land for settlement
- HBC had been granted the land instrument of Imperial Policy

James Douglas - Chief Factor - Ft Victoria

- Barclay Instructions 1849

Douglas Treaties

14

1850 - 54

358 sq miles

eg Songhees

Procedure - called to Fort

Payment - 3 blankets = 17s = £ 2 - - 10

Victoria Albert Head to Gordon Head 371 bl. and a cap

$\frac{1}{40}$ th of VI

Sooke to Saanich - 11 treaties

1852 Ft Rupert - 2

1854 Nanaimo - (this was to be important)

- a "similar conveyance"

159 men made marks 650 blankets

Terms: (read a treaty)



## Summary

1. Douglas did, on instructions from London, make treaties to exting. native title

After 1860, he could not continue the policy

1858 - became Gov of BC, retired from HBC  
so couldn't use HBC funds

Asked London - NRC p 119

Newcastle reply - p 119-20

So he laid out reserves without treaties

1864 retired -

no more treaties made

his successors denied any Indian title

A reversal of policy during Colonial times

BC denied aboriginal title



## Aboriginal Claims

### White Paper:

Others /grievances/ relate to aboriginal claims to land.  
t These are so general and undefined that it is not reasonable  
to think of them as specific claims capable of remedy  
except through a policy and programme that will end injustice  
to Indians as members of the Canadian community.

Trudeau, in speech in Vancouver, Aug. 8, 1969

...one of the things the Indian bands often refer to  
is their aboriginal rights  
and in our policy, the way we propose it,  
we say we won't recognize aboriginal rights.  
We will recognize treaty rights...



301 Nov 6 '73

Treaties

AE Reading: Duff text pp 60-71 Treaty Map  
: Sanders The Nuchga Case (BC Studies)

Last week - mental fatigue  
midterm break - Portland show

Next 2 weeks : Land Question

Treaties

Nuchga case - background & judgments  
Possible solutions

This week - 2 lectures and movie (Gloria)



Week 8

(Nehga case)

- 1) Aboriginal title, Treaties  
White & Bob
- 2) Nehga case - background

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