

Aboriginal People (As a Social Problem)

Framing the Problem:

Aboriginal peoples constitute the indigenous (or original) occupants of (our) modern nation-state(s). They are highly varied in culture and custom; differences can also be discerned at levels of development and degree of absorption into Canadian society.

Some aboriginal peoples:

- are covered by the general provisions of a royal proclamation.
- others have ceded sovereignty in exchange for specific rights
- still others have neither been conquered nor signed treaty rights
- yet others were conferred benefits because of their role as British allies
- yet others still live in urban areas but identify themselves as aboriginal peoples.

Aboriginal peoples have long struggled to

1. retain control over the development of traditional lands and resources
2. cope with government intervention in their lives
3. survive as a culturally distinct population
4. sever the bonds of dependency and underdevelopment created by internal colonization

They do not regard themselves as immigrants or minorities. They believe their involuntary “minority” status was forcibly imposed. They see themselves as relatively independent communities. **Aboriginal peoples define themselves as descendants of the original occupants whose collective and inherent rights to self-determination over internal jurisdictions have never been extinguished but remain intact as a basis for entitlement and engagement.**

Canada is widely praised for its engaging diversity but Canada’s treatment of aboriginal peoples is generally considered a national tragedy and an international disgrace. Historically, Canada’s aboriginal peoples have either been pitied and condemned or denied and excluded by mainstream society. From the nineteenth century and on, aboriginal peoples were dismissed as a “problem people” whose problems were defined by refusal to discard the past in exchange for the realities of the present.

Questions:

1. What exactly is meant by the expression “Indian Problem”?
2. How is this problem manifest with respect to social and cultural indices?
3. Why does the “Indian Problem” still exist?
4. Have government policy initiatives contributed to the problem or the solution?
5. What can be done to improve aboriginal peoples-Canada relations?

The “Indian Problem”

Aboriginal peoples are extremely diverse, with numerous tribes of varying characteristics. According to the 1996 census, nearly 800 000 people reported they were aboriginal, of which:

554 000 were “North American Indian”

210 000 were Metis

41 000 were Inuit

Social, political, and cultural differences among aboriginal tribes remain as real and divisive as they did prior to European contact. Even the term “**aboriginal peoples**” is misleading, since this constitutional status can be further subdivided into the categories of ***status Indians, non-status Indians, Metis and Inuit.***

Who Are Aboriginal Peoples?

Status Indians

- The highest profile of all aboriginal peoples.
- Defined by:
 1. admittance to a general registry in Ottawa
 2. affiliation with one of 605 bands
 3. entitlement to residence on band reserve lands
 4. jurisdiction under the Indian Act.
- Resides on one of 2597 reserves across Canada and their interests are represented by 633 chiefs who constitute the Assembly of First Nations.

Non-status Indians

- Population varying from 75 000 and up.
- They are exempt from provisions of the Indian Act and jurisdiction of the Department of Indian Affairs.

- Some relinquish their official status in exchange for the right to vote, drink alcohol off the reserve, or (in the case of women) to marry a non-Indian.
- Have this status because of never having entered into any formal treaty agreement with the federal government.
- They do not live on the reserves and are scattered in small towns and large cities across Canada.
- Many non-status Indians still identify themselves as aboriginal peoples because of shared affinities.
- Inclusion of non-status Indians as aboriginal peoples by the Constitution Act of 1982 has legitimized the identity and concerns of non-status Indians.

The Metis

- “The third class”
- The offspring of mixed European-aboriginal unions.
- Numbering between 100 000 to 400 000, initially were restricted to those descendants of the Red River settlements in Manitoba who identified themselves with the Metis Nation, but now many Metis dwell in relatively remote communities throughout the prairie provinces.
- Because of the assumed constitutional rights of 1982 that claims over traditional lands can only be enjoyed by those who can prove original occupancy, it proved to be quite difficult to define where the Metis stood in that definition.
- In 1998, the Ontario provincial court ruled that Metis and non-status Indians have as much right to hunt and fish for food as status Indians and also confirmed the Metis as a culturally distinct aboriginal people.

- The Alberta government has also recognized Metis self-governing rights along with the right to limited institutional autonomy.
- There are about 192 000 Metis across the prairies and are represented by the Metis National Council. {However, in the eastern provinces, groups such as the Native Council of Canada, argue that the Metis should include descendants of the historic Metis in western Canada -- "and" -- anyone of mixed European-Indian ancestry who defines himself or herself as Metis, and is accepted by other people as such.}

Inuit

- There are about 40 000 – 60 000 Inuit
- They enjoy a special status and relationship with federal government despite never signing any treaties.
- Inuktitut is widely spoken in the 53 communities across Northwest Territories, Northern Quebec and Labrador.
- Many continue to rely on hunting and trapping to secure food, clothing and shelter.
- Although there is much cultural integrity, there are still many social problems which are growing, including: teenage pregnancies, substance abuse, suicide rates, accidental deaths and diabetes.
- They are governed by municipal councils, with committees taking responsibility for health and education.
- At the national level they are represented by the Inuit Tapirisat of Canada
- They recently completed successful negotiations with Ottawa for control over their homeland, Nunavut, in the Eastern Arctic.

Socio-economic Status

With the coming of colonialism, there was also a powerfully negative effect on aboriginal people. In some cases, government policies deliberately undermined their capabilities of living as communities by depriving aboriginal peoples of their land, culture, and tribal authority.

No matter how evaluated or assessed, aboriginal peoples as a group remain at the bottom of the socio-economic heap. For example:

- Housing is inadequate or overcrowded on many reserves, failing to meet basic standards.
- Fewer than 50% of aboriginal homes have sewer or water connections.
- Unemployment rates of nearly 3 times the national average, causes more aboriginal distress, leading directly to poor housing, illness, a sense of powerlessness, cultural disintegration and social decay, and cycles of poverty.
- About $\frac{1}{2}$ or $\frac{1}{3}$ who have drifted in cities experience just as much problems in employment, exposed to inadequate services and are cut off by federal funding or reserve benefits.
- A positive side is that enrollments in post-secondary education has increased exponentially from 200 in the 1960s to 27 487 in 1997

Equally worrying is the demographic time bomb that is ticking away in many aboriginal communities. The aboriginal population has been rapidly increasing since the 1960s because of high fertility and dramatic declines in infant mortality. With a birthrate that is higher than 70% higher than the general population, the youthfulness of many aboriginal communities is causing concern. Nearly $\frac{2}{3}$ of the aboriginal population prefers to live off-reserve, including 44% of status, on-reserve Indians.

The psychological effects derived from a sense of powerlessness, alienation and irrelevance have been no less detrimental.

“One hundred years of submissions and servitude, of protectionism and paternalism have created psychological barriers for Indian people that are far more difficult to break down and conquer than the problems of economic and social problem.” (Buckley, 1992)

Alcohol and substance abuse are widely regarded as the foremost problems on most reserves, with alcohol-related deaths accounting for up to 80% of the fatalities on some reserves. Aboriginal involvement with the criminal system is quite woeful as well. Nearly three-quarters of aboriginal males will have been incarcerated in a correctional center at some point in their lives by the age of 25.

Lastly the situation for aboriginal women is slowly becoming that they are the most disadvantaged of the disadvantaged. Economically they are worse off than non-aboriginal women and aboriginal men in terms of income levels and employment options, with the result that the feminization of poverty bites deeply, especially for lone parent women in cities.

Accounting for the Indian Problem: A Canada Problem

The impression is created that poverty will disappear with better opportunities, thus ignoring structural problems and the fundamental changes required to a system that continues to deny or distort.

Improvements will occur only with changes that provide aboriginal control over institutions and a share of revenue from reserve mineral resources and aboriginal title to land. Instead of an “Indian problem”, there is a “Canada problem”.

Several questions come to mind:

1. How does Canadian society create problems for aboriginal peoples?

2. To what extent are government policies and programs central to this Canada problem?
3. What is it about Canadian society that makes it so problematic for the First Nations?

References to “the Indian problem” imply that aboriginal peoples bear full responsibility for their bad and unfortunate situation. First Nations have problems that many see as of their own making, compounded by a refusal to assimilate.

The government has subscribed to the view that the solution to “the Indian problem” can only come about by eliminating aboriginal culture through the assimilation of aboriginal peoples into mainstream society. The federal government has employed 7 strategies to remove social and cultural “obstructions” to Western-style economic development and growth for if this transformation were successful, the so-called “Indian problem” would vanish. But it seems with this plan the opposite appears to have happened.

- A shift from assimilation to integration and “ordinary citizenship” gathered momentum after the late 1940s.
- These attempts at “mainstreaming” had the catalytic effect of mobilizing aboriginal peoples in protest against the ill-fated White Paper of 1969.
- The federal government then shifted toward **devolution**
- A passing down or descent through successive stages of time or a process.
- Transference, as of rights or qualities, to a successor.

Accommodation (to 1820s)

The Aboriginal Policy in the broadest sense began with the *Royal Proclamation* of 1763. The purpose of the *Proclamation* was to

establish the Crown sovereignty over unexplored land. It was also meant to acknowledge the Aboriginal interest in the land was a pre-existing right, rather than an entitlement delegated by the Crown. The Proclamation was intended to achieve the following principles: (1) create a harmonious and respected working partnership with Aboriginal people, (2) a mutual recognition of each group's shared use and inhabitance of the land, and (3) non-interference were to guide the Crown's relationship with Aboriginal peoples. However, the reality of the Proclamation has brought many disagreements when compared to its intended purpose.

Assimilation (to 1960s)

From 1775 to 1812, the British Indian department implemented the key tenet of British policy by forging relationships with Aboriginal tribes. This was to ensure the survival of the colonists and settlers. But once the British established a grasp of handling the living conditions, they assumed paramountcy. They virtually negated and bypassed all previous treaties and commitments made with the Aboriginal tribes, for the purposes of exploration, expansion and settlement. The post-1815 era was subsequently dominated by this commitment to pacify Aboriginal tribes through conquest-oriented acculturation or displacement into increasingly remote areas (pg. 181).

Canada was seen as the colonizing arm of the British empire. The *British North America Act (BNA Act)* of 1867 was created for these purposes through the use of British rule: (1) occupation, (2) negotiated settlements, and (3) threat of force. The *BNA Act* gave the state full responsibility for the Aboriginal people by establishing federal jurisdiction over Aboriginal lands and affairs. Essentially, this was seen as the most effective means of solving the “Indian problem” – by assimilating them into British civilization. One of the way it did that was through the Indian Act of 1876 – a repressive instrument of containment and control, its role in usurping Aboriginal authority (disbandment of traditional tribal governance), thus creating a dependence and learned helplessness towards the state.

Integration (1940s to 1970s)

An official commitment to assimilation merged with the principles of integration (also seen as a form of social engineering) as a blueprint for reform. Strategies to desegregate once-isolated Aboriginal enclaves through integration into the main stream proved increasingly attractive for political and economic reasons. In order to exercise the theory of integration, all people needed to be recognized, regardless of race or ethnicity, in order to achieve an integrated society.

The White Paper was meant to be that tool of integration. Essentially, it was meant to terminate the special relationship between Aboriginal people and the Crown, thus eliminating the status of Aboriginal peoples as legal entity. The belief was that any remaining Aboriginal issues would be left to the individual provinces to sort out and fix. However, what the federal government did not anticipate was the resistance they encountered by Aboriginal councils and activists.

Aboriginal Solutions (Ch. 7 of Unequal Relations & Ch. 11 of Social Problems)

Devolution (1970s to 1990s)

The shift to the devolution process began following after the White Paper “crisis”. The principles of devolution included: greater input by Aboriginals in local affairs, greater control over service delivery, administration of departmental programs and decision-making. This shift in power and governance changed the mentality of the federal government from a control-and-deliver directive to a more inclusive and awareness of the Aboriginal needs and recognition.

In 1986, the government announced a devolutionary program of community-based, municipal-style self-government in conjunction with Cabinet-approved guidelines for community self-sufficiency, to be pursued on a band-to-band basis and outside any federally imposed blueprint. In essence, this was the beginning of addressing the formerly overlooked and neglected needs of the individual Aboriginal bands that the government had made commitments to. This was able to happen because of Canada’s *Constitution Act* of 1982. Canada

became the first country in the world to constitutionally entrench aboriginal and treaty rights. In doing so, Canada had finally and formally acknowledged Aboriginals as a nation of people on the international stage and was moving towards correcting the historical discrimination.

Conditional Autonomy (1990s onwards)

Conditional autonomy is a move towards the direction of self-governance, but with certain strings and limitations attached to the autonomy. Rising from conditional autonomy, three themes emerge: (1) renewing partnership, (2) strengthening aboriginal governments; and (3) supporting strong communities.

This all came on the heels of the Oka crisis. As a result of the crisis, four Policy pillars were introduced to serve as the guidelines for all future interactions between the federal government and the Aboriginal peoples. The four pillars are:

5. Accelerated land claims settlement.
6. Improved socio-economic status on reserves,
7. Reconstruction of aboriginal peoples-government relations; and
8. Fulfillment of aboriginal concerns.

This being said, this new form of autonomy comes with limitations. In a 1995 federal policy document, the terms and conditions were outlined in order for conditional autonomy to be pursued. Those conditions include, and are not limited to:

1. Aboriginal self-governance must operate within the Canadian federal system,
2. Cannot declare independence or impair Canada's territorial sovereignty,
3. Must be in harmony with other governments,

4. Must be consistent with the *Canadian Charter of Rights and Freedoms*; and
5. Must enhance the participation of aboriginal peoples in Canadian society.

Aboriginal Solutions

In order for solutions to available and possible, the situation between Canadian government and Aboriginals cannot be viewed as an “Indian Problem”. All past solutions made by the Canadian government have been “quick fixes” – processes of assimilation, integration and devolution.

Aboriginals have taken on the mantel and redefined this problem, such that they have focused the solutions on addressing their peoples’ needs, concerns, and aspirations. Three proposed solutions that encompass these are: Aboriginal-Plus Status, Self-Determination through Self-Governance, and Aboriginal Title and Treaty Rights.

Aboriginal-Plus Status

The very things that Aboriginal people want are the very things we have (and sometimes take for granted):

- Protection and freedom in exercising their cultural lifestyles and language;
- Select elements of their culture can be preserved and interpreted within our contemporary framework;
- Freedom from bureaucratic subjectivity;
- Elimination of discrimination and racism against them, socially and politically, which they have faced for hundreds of years; and

- Access to power, resources, status and meaningful decision-making capabilities.

In addition to these things, Aboriginals wish to be seen differently as well. Because of their existence in this land before the Conquest and as a result of the numerous treaties signed, they are pushing for an “aboriginal-plus status” – recognition of pre-existing rights that were afforded to them previously that were never honored.

This aboriginal-plus status entitles:

- The right to control land and resources;
- The right to protect and promote language, culture and identity;
- The right to conduct their affairs on a nation-to-nation basis; and
- The right to establish indigenous models of self-government.

Recognizing their aboriginal-plus status is vital because it signifies and validates not only their reasons for redress, but also the originality of their inhabitance of Canada as people of a nation that existed before European arrival.

Aboriginals desire the opportunity to have the same rights enjoyed by other Canadians, yet want an additional recognition in status as being a nation people whom co-habited Canada since the beginning (hence, aboriginal-plus status).

Self-Determination through Self-Governance

Aboriginal people tend to reject the idea of viewing themselves as a group of Canadian citizens living on reserves. Rather, they see themselves as sovereign and self-governing nations that have distinct political status within the Canadian nation-state.

This is the rationale for the self-governance of Aboriginal people:

- Aboriginals believe they have the right to control their own destiny;
- International law recognizes them as a nation people and thus justifies self-governance;
- Royal Proclamation of 1763 affirmed and protected aboriginal nationhood; and
- The process of self-governance would help to persevere and protect their culture and lifestyle from further erosion.

One of the issues dealing with self-governance is that there are so many forms and models that it's hard to pick one that works. Plus, given that there are so many bands, it is equally challenging to find a model that accommodates all of them.

Other limitations:

- Self-governance must be within the limits of Constitution of Canada and Charter of Rights and Freedom, which affect all levels of government;
- Aboriginal laws must work within and comply with federal and provincial legislations and criminal codes;
- Third-party interests must be taken into account; and
- Self-governance must also enhance the participation of aboriginal in Canadian society (must not be self-isolating).

Levels of Aboriginal Self-Governance

Statehood

- *absolute (de jure) sovereignty
- *internal + external jurisdiction
- *complete independence with no external interference

Nationhood

- **de facto* sovereignty
- **self-determining control over multiple yet interlinked jurisdictions within a framework of shared sovereignty*
- *nations within/province-like

Community/Municipality-based

- *conditional sovereignty
- *community-based autonomy
- *internal jurisdictions, limited only by interaction with similar bodies and higher political authorities

Institutional

- *nominal sovereignty
- *decision-making power through institutional accommodation
- *parallel institutions

Aboriginals see self-governance as part of the only viable solution because they have never voluntarily relinquished their Aboriginal rights for the sake of Canadian government assistance.

There are no guarantees that self-governance will “fix” everything, but it’s a good first-step to helping and redressing the neglect of Aboriginal people.

Aboriginal Title and Treaty Rights

In order to affect change, there are three principles that must be applied when dealing with aboriginal title and treat rights: recognition, definition, and implementation.

The concept of treaties, and more importantly, the ownership of personal property, was a European concept. Aboriginals were under the impression that they would be co-habiting the land, while Europeans had a more capitalistic and Alexandrian mindset.

Aboriginals’ view on treaty: semi-sacred and binding documents, exchange of land and resources for goods, services, guaranteed homeland, and Crown assistance.

Europeans’ view on treaty: legal surrenders of aboriginal land, doctrine of “terra nullius”.

There are two types of treaty rights: specific claims and comprehensive claims.

Specific claims deal with violations of existing treaty violations, while comprehensive claims require proving claims through historical and contemporary proofs while dealing with the fact of a lack of a treaty.

Delgamuukw clause: case in B.C. The Court ruled that aboriginal peoples have a constitutional and exclusive right of use and ownership to land they occupied prior to European arrival, in effect going beyond an earlier conception of aboriginal title that included only the right to traditional hunting, fishing and good gathering. As long as aboriginal title is unextinguished and aboriginal people retain interest

in the land, *Delgamuukw* ruled, aboriginal people can use the land or resources in almost any way they wish – traditional or non-traditional – except in a destructive way that might imperil future use.

From “Cutting Deals” to Constructive Engagement

The current means of addressing this so-called “Indian Problem” is through the use of claims-making approach, whereby claims are made *after* a violation, a somewhat retroactive, after-the-fact approach.

The pro of this approach is that so far, it has worked (i.e., James Bay-Cree settlement of 1975, Nunavut Agreement in 1993).

The con of this approach is that it can potentially create a bigger divide of “us” verse “them”.

Constructive engagement of redress and renewal of the relationship between people-nations require principles of partnership, recognition, respect, sharing, and responsibility, while being anchored in a commitment to cooperative coexistence and a relative, yet relational autonomy.

Contesting the Terrain

Aborigines continue to work towards overcoming dependency on government supplement despite the bondage they face.

They continue to push for self-governance within a Canadian framework and remain consistent with their demands for redress.

In order to affect change, the following must be recognized:

- Assimilation is not an option;
- It is a process of preserving culture, language and identity;
- The opportunity to progress forward without the loss the uniqueness; and

- Political and economic power to enable to encourage meaningful society participation.

As a Canadian society, both as a nation of people and a democratic government, we must:

- Stop seeing it as just “their problem” or an “Indian problem” – it’s a Canadian disenfranchisement;
- Must not be content with merely maintaining the status-quo – they did not arrive there on their own, therefore we cannot expect them to fix it themselves.