The Native People and governmental responsibilities in the Northern Territories

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The Native People and Governmental Responsibilities in the Northern Territories

I Government and Responsibilities in the Treaty Period.

Until 1870 the North-Western Territory was under the legislative authority of Great Britain, and apart from the Royal Proclamation, the only statutes passed specifically in relation to this area appear to be the Imperial Acts of 1802 and 1821, neither of which dealt with the responsibility of the Imperial government towards the Indians. The British North America Act makes only one direct reference to native people and that is subsection 24 of section 91 which gives the Parliament of Canada exclusive legislative authority in all matters relating to 'Indians and lands reserved for the Indians.' The constitution does not stipulate how Parliament should exercise this grant of legislative power over Indians and their lands.

There is another section of the BNA Act which may extend special constitutional protection to the rights of Indians living in that part of Canada which was formerly Rupert's Land and the North-Western Territory. This is section 146, which provides that the terms of any Order-in-Council admitting these territories into the Dominion of Canada become part of the Canadian constitution as if these terms were enacted by the British Parliament. The Addresses of the Canadian Parliament petitioning the Queen to transfer Rupert's Land and the North-Western Territory to Canada and the schedules

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to the Order-in-Council effecting the transfer, recognize the Indians' interest in these territories and the obligations of the Canadian government to compensate the Indians for any of such lands taken for purposes of settlement 'in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the Aborigines'. (Schedule to the Order-in-Council of 1870)[1]

The BNA Act, then, explicitly bestowed legislative jurisdiction over Indians and their lands on the federal Parliament and implicitly recognized an obligation on the part of the federal government to protect the rights of Indian people. Beyond this it is indefinite on the precise ways and means whereby the federal government is to discharge its responsibilities with regard to native people.

The federal Parliament has provided a wide range of governmental arrangements over the years, beginning with the Act of 1869 establishing a temporary system of administrative control for Rupert's Land and the North-Western Territory, up to the establishment of the contemporary Territorial Council under the Northwest Territories Act in 1970. On 4 August 1870 Edmund Allen Meredith, Under Secretary of State for the Provinces, outlined for the Lieutenant Governor of the Northwest Territories the main thrust of his Indian policy for the new Canadian territories:

> "You will also turn your attention promptly to the condition of the country outside of the Province of Manitoba, on the North and West; and while assuring the Indians of your desire to establish friendly relations with them, you will ascertain and report to His Excellency the course you may think the most advisable to pursue, whether by Treaty or otherwise, for the removal of any obstructions that might be presented to the flow of population into the fertile lands that lie between Manitoba and the Rocky Mountains".[2]

The result was that between 1871 and 1877 Treaties 1 to 7 were signed covering the fertile Canadian prairies between Winnipeg and the Rockies.

In 1876 the Government of Canada signed Treaty 6 with the Indians of what is now central Alberta and Saskatchewan. North of this area the Northwest Territories and the northern half of both Provinces formed what was called "unceded portions of the Territories".[3] Moreover, as René Fumoleau suggests, life for the Indians of the Athabasca-Mackenzie District had always been a struggle. Until the end of the 18th century when the fur trade was introduced to the territory, the existence of these tribes, their sufferings and hardships were known only to their immediate neighbours.[4] The Hudson's Bay Company had always helped the Indians in time of famine. However, after 1870 it argued that the Canadian Government must assume responsibility for the Northwest Territories and its native people. In 1880 Roderick Macfarlane, Factor of the Fort Chipewyan post, complained to Lieutenant Governor Laird:

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> "... owing to the scarcity of food animals, and the comparative failure of the fisheries, numbers of Indians will doubtless suffer many privations betwixt [now] and the Spring. We have already expended a lot of fish and potatoes on them; in short, but for the assistance thus annually rendered to starving Indians, throughout the North, many of them would assuredly perish...
>
> Confirming my remarks as applicable to the District of Peace River, Athabasca, English River and the Mackenzie, I am really unaware of anything that has yet been accomplished by our rulers ... since the territory was transferred to Canada..."[15]

The Canadian Government did not feel it had any obligation toward a people with whom it did not have a formal agreement. Nor did the Government see any purpose in making a treaty with Indians whose land was apparently of such little value.

Lawrence Vankoughnet, Deputy Superintendent General of Indian Affairs in 1883, did not recognize the Government's responsibility to help the Indians at this time, as their territory was situated some fifty miles north of the boundaries of Treaty No. 6, and was therefore outside of Treaty limits, but he explained to Prime Minister John A. Macdonald that a treaty with the northern tribes could be a worthwhile investment in view of the Prime Minister's interest in railway construction. This did not move the Prime Minister to alter his opposition to a treaty with the Athabasca-Mackenzie District Indians. In the margin of a letter dated 1884, he notes: "the making of a treaty may be postponed for some years, or until there is a likelihood of the country being requested for settlement purposes."[16]

When Vankoughnet returned from his tour of the Northwest Territories in 1883, he was advised to cut down on Indian expenditures. Writing to the Prime Minister in December 1883, Vankoughnet declared:

> "I sent you down the estimates to-day. You will observe that in the N.W.T. we propose making a reduction of $140,000 which I think may safely be done. There has been too much reliance placed in the past upon agents' reports on requisitions as to the necessary expenditure. Careful consideration after personally visiting localities has convinced me that there has been much needless expenditure which works detrimentally in more ways than the intrinsic money value involved, although that is serious enough."[7]

Accordingly, Vankoughnet ordered wholesale dismissal of clerks, assistants and other employees of the Department in the North-West, and a stricter supervision over the issue of rations to the Indians. Again, in 1887 Vankoughnet maintained that the transfer of the Hudson's Bay Company's interest in the country to the Dominion of Canada in 1870 did in no way relieve the Company of its responsibility to assist the destitute Indians. This position rested on the fact that no"white" settlement had followed the transfer, and consequently, there had been no disruption of the hunting and trapping economy of the Indians.

After the hard winter of 1887-1888, Bishop Clut petitioned the Indian Department to make an annual grant of $500 to enable the Roman Catholic Bishop of the Mackenzie to buy fish hooks and twine for nets, to be distributed amongst the Indians. Superintendent General White advised

the Prime Minister that the Government could afford such an expenditure, as "it has not been unusual ... to authorize the purchase of fishing tackle and ammunition to a moderate amount for Indians outside of Treaty limit."[7] In May, 1889, Parliament voted in favour of appropriating $500. for this purpose.

During this period the Government began using the Hudson's Bay Company as an intermediary for distributing some scanty relief. In 1888, "an Order-in-Council was passed authorizing an expenditure of $7000 to relieve the pressing needs... throughout the unorganized territory."[8] In case of actual starvation the distribution of relief was left to the judgement of the factor at each trading post. For example, one invoice dated 30 November 1889, probably covering a one-year period, showed an expenditure of $4900.62 for supplies furnished to sick and destitute non-treaty Indians in the North.[10] In later years the Chief Accountant of the Department of Indian Affairs often complained that the Hudson's Bay Company was making too liberal use of this relief fund. In 1897 the $20,000 provided in relief for the Indians in the "Unorganized Territories" proved to be inadequate.

During the period 1870 to 1899, then, the Dominion government, with its many responsibilities, gave the "unorganized territories" only very slight consideration. The government's only concern with regard to Indian administration was offering grants to certain schools outside the treaty

limits on the same basis as those assisted under the "numbered" treaties and providing scanty relief to a few destitute non-treaty Indians.[11] It should be emphasized here also that the Territorial Government, as formed in 1875 by The North-West Territories Act, legislated only on matters of local interest such as taxation for local purposes, property and civil rights, and the administration of justice, public health and highways.[12] Moreover, the Liberal Government which introduced The North-West Territories Act in 1875 did not give any thought to future development in the Territories other than by providing for an expanding system of local but limited self-government.[13]

The negotiations for Treaty 8 were conducted in the summer of 1899 with Cree, Beaver, and Chipewyan bands at Lesser Slave Lake, Dunvegan, Fort Smith and Fond du Lac. Reacting first to the arrival of prospectors and settlers during and after the Klondike gold rush, the Indian Affairs Department made preparations to bring under treaty the Indians of the Athabasca and Peace River districts north of Treaty 6 and south of Great Slave Lake. Generally, the Federal Government assumed the responsibility of providing the Indians reserves on a scale of one square mile per family of five or 160 acres in severalty; presents of $32 for chiefs, $22 for headmen, and $12 per person; farming equipment or ammunition; medals and flags; hunting and fishing rights subject to Government regulations; school teachers; and annual treaty payments of $25 for chiefs, $15 per person.

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Eskimos were excluded from the treaty, though the Deputy Superintendent-General in his report for 1910-11 referred to an increasing departmental responsibility for them as well. In the pre-1900 period neither the federal nor provincial governments were concerned about fitting Inuit into the political system. Gradually, however, the Inuit were drawn more and more into the southern economy and into government supervision. Although it became obvious that health, education, and welfare services were required, the responsibility for Inuit affairs was passed around during the early 1900's among different levels and departments of government. It was not until 1953 that Inuit affairs were brought under one department of federal government. The Department of Northern Affairs and Natural Resources was formed, with an Arctic Division responsible for Inuit affairs. In 1966 the federal programs for Inuit were brought together in the Department of Indian Affairs and Northern Development.[14]

II The Formation of "Colonial Institutions"

With the formation of the new prairie provinces of Saskatchewan and Alberta in 1905 [Statutes of Canada, 4-5 Edw. vii, c. 27 (1905)] there was an extension of the regional role in the North-West Territories government. The seat of government remained in Ottawa, the appointed commissioner of the NWT was the comptroller of the Royal Northwest Mounted Police, Lieutenant-Colonel Fred White, and not until 1921 was a council appointed. No new ordinances were passed, nor were any inherited from the previous government repealed, and no territorial administration was inaugurated.

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Although the Federal Government had sought to extend the area of its northern territories to the north pole, between 1905 and 1921, it found it unnecessary either to establish a council or to make new ordinances for the government of these areas before 1921. Federal expenditures in the Northwest Territories amounted to about six thousand dollars annually during these years, this amount being appropriated for the purposes of "general government." One of the first matters to be dealt with by the Territorial Government after 1921 was the well-being of the 150 white residents and future settlers of the Northwest Territories. However, there was no reference to the 3500 Indian people of the District. Neither the necessity for a treaty, nor the possibility that the Indians would refuse one, was ever considered. The fact that the Federal Government signed Treaty 11 with the Indians of the Mackenzie in 1921 did not effect territorial plans for development.

It was not until a private company discovered commercial quantities of petroleum near Fort Norman on the Mackenzie River that any interest at all developed with regard to Indian affairs. As a result of the discovery of oil at Norman Wells, the Federal-Government appointed a four-member council early in 1921 to assist the Commissioner, W.W. Corry, Deputy Minister of the Department of the Interior, who had succeeded Lieutenant-Colonel White a year earlier. At the same time a branch of the Department of the Interior was organized to carry out the active work of administration, and some local offices were established in the Mackenzie District. Later in 1921, the Council was increased from four to six members, and provision was made for one member to be appointed

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Deputy Commissioner and empowered to exercise the powers of the Commissioner in its absence. This structure of territorial administration remained unaltered from 1921 to 1951 when the people of the Northwest Territories were granted elected representation in the Northwest Territories Council. During the post-war years the development of representative institutions at the territorial level was accompanied by a transfer of government responsibilities from the federal department in charge of territorial administration to the Council.

As the Territorial Government emerged and gradually assumed more administrative power, the Department of Indian Affairs seemed less inclined to define its primary responsibility for the Indian population. In this respect, the Territorial Government was never compelled to respect the Treaty promises made to the Indians by the Federal Government.[15] Generally, therefore, Treaty promises made by the Federal Government were ignored by both the territorial government and by the provincial governments of Saskatchewan and Alberta. Especially serious was the breach of promises to guarantee the Indian his freedom to trap and hunt, and to provide protection from the encroachment of white trappers. As argued by Réne Fumoleau, "the Federal Government maintained a posture of responsibility for the Indians while taking only half measures to protect them."[16] In 1925, Deputy Superintendent-General Scott advised the Northwest Territories Branch:

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> "... it is my view both official and personal that the vital interests of the Indians should be paramount and should have precedence even over the protection of wild life."[17]

The Territorial Administration, however, did not agree. Indian Agents would continue to be in conflict with territorial officials if they supported Scott's policy. O.S. Finnie, Director of the Northwest Territories Branch of the Department of the Interior from 1921 to 1931, received the following memorandum from one of his men:

> "It would appear that the Indian Agents ... are not fully co-operating with us in regard to matters pertaining to the administration of the game laws inasmuch as they make mis-statements to the Indians regarding same.
>
> One Indian was tried ... on the charge of trapping beaver ... out of season. Mr. Card (Indian Agent) told the Court that he had told the Indians that they could, when hungry, disregard the game laws of the country and kill anything they required to eat...
>
> Regarding the Indian Agent, Mr. McCord, giving the Indians permission to kill game in and out of season when hungry, he has consistently done this for the past few years and adopts a very antagonistic attitude towards the Police in general whenever we (N.W.T. Branch) are concerned with any Indian. It is utterly impossible to enforce our Game Regulations under such conditions."[18]

It has been suggested that after the signing of Treaty 11 in 1921 that the Territorial Government was geared to the promotion of transportation, mining, commerce, and the welfare of white residents. At the same time, a policy of developing natural resources independently of the native people was also followed by the Northwest Territories Branch. On the

other hand, the Federal Government, while committed to fulfilling certain responsibilities in the North, maintained essentially a policy of expediency. Moreover, reports filed by officials of both Governments had two views of the North, each with different goals and priorities. That there was not a clear delineation of the separation of powers was quite evident after the signing of the treaties. During the period 1921 to 1939 the Territorial Government had been preoccupied essentially with the formulation and enforcement of game laws and regulations.

III The Contemporary Scene

The post-War era saw a more defined set of responsibilities and policy priorities for the Territorial and Federal Governments. In a paper for "The January 1973 Conference On Policies Of Northern Development (Conflict And Cooperation"), Mr. D.A. Davidson, Acting Director, Territorial Affairs Branch, Department of Indian Affairs and Northern Development, suggested the following:

> "Although some federal departments such as Indian Affairs and Northern Development, National Health and Welfare, Transport and Defence, have continuing roles in the North, responsibility for providing the social or 'provincial-type' services to northern residents lies with the territorial governments. This is almost totally the situation in the Northwest Territories where the only social services are those provided by the territorial administration with federal government financial support. In the Yukon, there is an Indian Affairs Regional Office but all education services, health facilities and treatment, and some welfare services are territoral. The Indian Affairs Regional Office serves only the registered Indians, and on a community basis, the territorial government is expected to provide basic services to everyone."[19]

The education systems of the Territories try to provide the best education program to fit the abilities and ambitions of the native people. In 1955, the then Department of Northern Affairs and National Resources launched a major school program to build schools and public residences throughout the Territories, to replace the church schools, and to serve all the native children except those already accommodated

in established school districts in Yellowknife and Hay River. Social and welfare services are provided mainly by the Territorial Governments, with some shared responsibilities with the Federal Government for the provision of health services for the native people. Health facilities range from modern hospitals in the larger centres to nursing stations in the small communities. The bulk of welfare services, in the area of unemployment or social assistance, is given to the native population on account of their low income level and their problems of social change in both Territories. Housing is perhaps the most basic social need in the North and much of the housing of acceptable standard is heavily subsidized by the federal government or industry. In the early 1970's the Territorial Government (with federal funds) launched a Territorial Rental Purchase Program to provide some 460 houses for Indians throughout the Territory. Finally, all the natural resources of the Northwest Territories except game are controlled by the Federal Government.

The Federal Government, while continuing to fulfill its treaty obligations for the Indians in the North, also has, of course, an overriding influence in determining northern development policy direction. The Indian Affairs and Northern Development Branch has a direct responsibility for co-ordinating the activities of federal departments, branches, and agencies that are involved in developing the territories. Following from

the 1966 recommendations of the Carrothers Commission (the Advisory Commission on the Development of Government in the Northwest Territories), there was initially a government policy of encouraging regional councils. The Carrothers Report recognized the importance of people becoming aware of themselves as collective units, with rights to organize on a collective basis.[20] It did not take long, however, before it was recognized that such collective activity would create problems for the administration. The fact remained that the territorial administration wished to get a greater degree of administrative control from the Federal Government. It was agreed that the transfer of control could be made on the condition that the territorial administration establish a legitimate democratic government in the North through the formation of a municipal government infrastructure. In 1967, therefore, the administrative responsibilities for education, game and tourism, local government, personnel, public works, social development and finance were transferred to the Government of the Northwest Territories from the Department of Indian and Northern Affairs.

On 28 March 1972 the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development, in a report to the Standing Committee on Indian Affairs and Northern Development on the Government's northern objectives, priorities and strategies for the 70's, pointed out that one of the Government's national objectives in the North was to fulfill the needs of the native peoples. He explained:

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> "The degree of involvement in economic and social development, will increasingly require a maximum achievement in policy planning, co-ordination and control on the part of Federal and Territorial authorities, who must work in close partnership. Parallel cooperation is needed between the public and private sectors engaged in northern development. In sum all government activities should be directed toward meeting the challenges identified there ...
>
> . . . .
>
> In presenting this report to the Canadian people, on its approach to northern development in the coming decade, the Government seeks to emphasize a policy that is coherent, systematic and rational, directed as it is toward clearly defined objectives and showing a very special concern for the needs of the people of the North"[21]

According to the 1972 guidelines, then, the social, economic, and other needs of the natives were given first priority.

It has been suggested by Digby Hunt, who in 1972 was the Acting Assistant Deputy Minister for the Northern Program, that the Federal Government has a responsiblity in the North to enhance social development and advancement, and environmental procedures. The guidelines for social improvement may be summarized by saying that the Government aims to improve employment opportunities, including the education and vocational training associated with this task, to maintain traditional pursuits for the native people, and to safeguard and strengthen the culture of the native community.

In conclusion, Wilf Bean, who was previously employed by the government of the Northwest Territories, in presenting a paper on the development of local government in a territorial administration, suggested that:

> "While the territorial administration had direct interests in the appearance of a grass-roots political development, whenever the process threatened to become more than appearance, immediate attempts were made to limit and control the process. Rather than welcoming this as the success of the Local Government Program, the territorial administration has attempted to diffuse and limit that development by channelling it into administrative complexities and bureaucratic lethargy. In my opinion, it is this continued response of attempting to control, diffuse, and undermine the policial self-determination of the native people within the Territories which most clearly shows the continuing colonial nature of the territorial administration in the North."[23]

In effect, Mr. Bean argued that the territorial administration was imposing a system of institutions and decisions that largely were foreign to the interests of the native people. The very nature of the responsibilities given, and more importantly not given, to the territorial administration confirmed its colonial character. With non-renewable resource development being the most significant issue in the Territories today, it is the Federal, not the Territorial Government, which maintains direct control in this area. In essence, therefore, in the carrying out of its responsibilities, and in the range of responsibilities it holds, the territorial administration is still a colonial institution.

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Footnotes

1. Peter H. Russell, "The Dene Nation and Confederation", in Mel Watkins ed. Dene Nation - the colony, Toronto, 1977, P. 167.

2. Canada, Sessional Papers, 1871, No. 20, P. 8.

3. PAC, RG10, Black Series file 241, 209-1, Vankoughnet to John A. Macdonald, 5 Nova. 1883.

4. René Fumoleau, As Long As This Land Shall Last, A History of Treaty 8 and Treaty 11, 1870-1939, Toronto, 1975, P. 30.

5. Ibid., P. 31.

6. PAC, RG10, Black Series, file, 241, 209-1, Dewdney to Superintendent General of Indian Affairs, 25 April, 1884. Macdonald's note is dated 27 May, 1884.

7. Vankoughnet to Macdonald, December 4, 1883: Macdonald Papers Vankoughnet to Macdonald, 1882-3. (G.F.G. Stanley, The Birth of Western Canada, P. 270).

8. PAC, RG10, Black Series, file 19, 502-1, Vankoughnet to John A. Macdonald, 30 May, 1888.

9. PAC, RG10,Black Series, file 19, 502-3, Scott to Pedley, 29 May, 1905.

10. PAC, RG10, Black Series, file 19, 502-1, HBC to the Dominion Government, 30 Nov. 1889.

11. Morris Zaslow, The Opening of the Canadian North, 1870-1914. Toronto, 1971, P. 95.

12. C.B. Koester, "The Agitation for Parliamentary Representation of the North West Territories, 1879-1877", in Saskatchewan History, Vol. 26, No. 1, Winter, 1973, P. 23.

13. Ibid.

14. Keith J. Crowe, A History of the Original Peoples of Northern Canada, Montreal, 1974, P. 206.

15. Fumoleau, op. cit., P. 242.

16. Ibid., P. 243.

17. Ibid.

18. Ibid.

Footnotes

19. D.A. Davidson, "The People in the North", in Nils Ørvik ed. Policies of Northern Development, Queen's University, 1973, P. 125.

20. Wilf Bean, "Colonialism in the Communities", in Mel Watkins ed. Dene Nation - the colony within, Toronto, 1977, P. 136.

21. Jean Chrétien, "A Report by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development, to the Standing Committee on Indian Affairs and Northern Development on the Government's northern objectives, priorities and strategies for the 70's, "in Nils Ørvik ed. Policies of Northern Development, Pp. 218-219.

22. A.D. Hunt, "The North in Canada's National Policy: Problems and Approaches", in Nils Ørvik ed. Policies of Northern Development, P. 14.

23. Bean, op. cit., P. 140.

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