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A Comparison: Canada and the United State Governmental Resolution of Indian Land Claims

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HONORS PROPOSAL:

A Comparison: Canada and the United States Governmental Resolution of Indian Land Claims

Submitted By:
Cheryl D. Guglielmo
October 29, 1985
"British and Canadian governments did formulate their policies and practices on the assumption that aboriginal peoples possessed certain rights (including perhaps political rights) independently of their recognition by the state." (Asch, 1984:56) Also the United States.

The U.S. and Canadian governments basically originated out of the sovereign power of Great Britain. The policies of both these governments have greatly affected native peoples living in these areas. Both countries have historically followed policies of "civilizing" followed by "assimilation" and "termination". Termination refers to detribalization and a basic policy of trying to dismantle tribes and incorporate them into the mainstream population. Both governments resorted to coercive legislation when the policy of persuasion failed. "New legislation instituted a system of wardship, colonization and tutelage in place of Indian self government." (Getty, Lussier, 1983:1-V)

Recently the Inuit were involved in reforming Canada's constitution. In August 1978, the Inuit Taperisat of Canada, called upon the government of Canada to provide a forum which "would offer us a fair opportunity to research, discuss and present our (constitutional) position. By April 1981, the aboriginal peoples had achieved constitutional recognition and the
opportunity to elaborate further the meaning and extent of aboriginal rights." (McInnes, 1983:321, 333)

Whereas the U.S. appears to lag behind the innovations of Canada, an editorial in Wassaja (a monthly U.S. native newspaper), 9/82 states "Politically we should be making much more of an impact than is being done now. But the Indians themselves must be taught to vote - that the vote is important and does make a difference. Indian isolationism can only hamper us."(4)

While the Inuit in Canada have worked alongside the Canadian government with the aim of achieving self-determination, the Delaware of the U.S. have not been as fortunate. The Bureau of Indian Affairs say it has "withdrawn recognition" of their bylaws, and refuses to acknowledge or respond to elected Delaware officials' communications. The Delaware insist that the tribe retains its sovereignty. The BIA has also withheld trust funds designed by the U.S. Congress to be used for tribal purposes until the Delaware adopt a governing document to the Bureau's liking, and will admit that they do not have tribal status. (Lewis 11-12/82:1)

In the recent past and present both governments have had to deal directly and indirectly with a "new problem", land claims brought by native peoples. This paper will attempt to discern the similarities and differences in the attitudes displayed by each government and their handling of land claims.
In both countries it has been the federal government's role to act as a negotiator between state/province and native group. Both Parliament and Congress have played a more favorable role than the courts in determining land claims. The U. S. Congress in 1975 overturned a monetary award to the Havasupai and instead transferred more than 180,000 acres on the southern side of the Grand Canyon to this tribe. (Sutton, 1982:358)

The U. S. Congress has readily turned land over to the Indians that has been within the "public domain", it however has balked when the land was held by the private sector. (Ibid.) And the Metis of Canada state that "Most court cases including the recent Baker Lake decision on aboriginal rights, have demonstrated the unlikelihood of native versions being upheld under present legal definitions, and that it is a good idea to stay out of court and negotiate with the government whenever possible." (Metis, 1981:74)

The resolution of land claims will be pursued as seen ethically and emically along with the end result of the action. Furthermore, why have land claims become such an issue for both the government and native peoples at this point in time? Is it simply a recognition of "Indian Title" and monetary/land settlement thereof or is it the beginnings of the development of self-determination and greater political sophistication?

A land-mark case in the U. S. was the case brought against Maine by the Passamadquoddy and Penobscot. It was settled out of court and Congress awarded them 300,000 acres and $27 million
in trust, the total cost of the award was $82 million. In 1977, U.S. News reported that "Few people took it seriously, but now the impact will be felt across the U.S." and "A tribal victory in Maine could set legal precedents elsewhere, regardless of what form the settlement might take." (53/4)

The key issue in this and many other U.S. cases revolves around the Trade and Intercourse Act of 1790 which states:

"(No) purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution."

(Wallace, H., 1982:925)

The eastern states have held that this act applied to western territories which were expanding at the time. The courts have ruled that it applies to all states, however. The Maine settlement helped to trigger about two dozen other suits, many in areas owned by non-Indians for more than a century. (MacDougall, Ragsdale, Jr., 1982:63)

The Royal Proclamation of 1763 has been described as the Imperial Constitution of Canada. It "reserved certain lands to the Indians and provided that Indian lands could not be purchased or otherwise alienated except by way of surrender
to the Crown and then only according to the procedures prescribed in the Proclamation." (Lysyk, 1973:453) In January, 1973, the Supreme Court of Canada handed down its decision on the Nishga land claim in British Columbia (Calder). The case was decided against the Nishga, but the seven judges were divided four to three on the issue, and six of the judges accepted a limited concept of aboriginal title. While this court case did not resolve the issue of whether aboriginal rights have any legal force, it at least gave the concept some validity, and caused a reversal in attitude on the part of the government. (Metis, 1981:64)

The number of cases that I have researched, so far is twenty-one. Thus a great deal of work has already been done since I began this project in June. Nevertheless, there is still a good deal more to do, especially concerning U.S. government publications. My research so far has entailed over 25 articles and books which include popular magazines, scholarly journals, law reviews and U.S. and Canadian governmental publications. There are at least ten to twenty other sources I wish to consult.

In North American Indians (A324) and Comparative Law and Justice (A303) the question of North American (Canada and U.S.) Indian Land Claims was discussed. As I became interested in this issue I found that it was very difficult to find any comparative or comprehensive information on Indian Land Claims, especially
those in the U.S. I have long expressed an interest in Indian issues and feel that research and study in this area may be useful to me in future graduate work. A by-product of my research will be an annotated bibliography with sources available at the Adams and Lindquist Libraries duly noted. This annotated bibliography could be a useful resource to others.

It is my general hypothesis that while Canadian court decisions have been influenced by U.S. court decisions, (Calder was based on Tee-Hit-Ton Indians vs. the U.S. - majority and U.S. vs. Tillamooks - minority) the Canadian government has become far more progressive in dealing with native rights and need for self determination than the U.S. government has. I believe this is due in part to a more politically vocal and active native population in Canada which gave the government its impetus to change its attitudes.
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<thead>
<tr>
<th>Author</th>
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<tr>
<td>Asch, Michael</td>
<td>Home And Native Land Aboriginal Rights and the Canadian Constitution</td>
<td>Methuen, Canada</td>
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<tr>
<td>Getty, Lussier</td>
<td>As Long As The Sun Shines And The Water Flows</td>
<td>University of British Columbia Press, Vancouver</td>
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<tr>
<td>Lewis, Jim</td>
<td>&quot;Delawares Election of Defiance of the BIA&quot;</td>
<td>Wassaja V9 #2, American Indian Historical Society, San Francisco</td>
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<td>Sutton, Imre</td>
<td>&quot;Indian Land Rights and The Sagebrush Rebellion&quot;</td>
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<tr>
<td>Wassaja (ed.)</td>
<td>&quot;Indian Isolationism&quot;</td>
<td>American Indian Historical Society, San Francisco</td>
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APPLICATION FOR ADMISSION TO THE HONORS PROGRAM IN ANTHROPOLOGY GEOGRAPHY

TO: Chairman, Department of Anthropology/Geography
Rhode Island College

1. I am a declared anthropology / geography major.

2. I am currently in the _____ semester of college

3. My grade point average at RIC is _____ as of _____

4. My grade point average in my major is _____ as of _____

5. I have completed the following A / G courses: (please show grade for ea.)

   201 - B  
   202 - B
   203 - B
   206 - B
   303 - B
   310 - A
   311 - B

   314 - B
   319 - A
   324 - A
   339 - A
   360 - A
   375 - B
   389 - A

6. I am taking the following A / G courses at present:

   313 - European Archaeology
   360 - Seminar: History of Anthropology

7. I expect to enroll in the following A / G courses: (show anticipated date)

Rhode Island Folklore

8. I anticipate the need for _____ Independent Study _____ Directed Readings _____

   during _____ with _____ (semester - year) (instructor)

9. My preliminary proposal is attached. The tentative title is:

   A Comparison: Canada vs. the U.S. Governmental Resolution of Indian Land Claims

10. I request Dr. Elvis L. Lobban as my faculty sponsor.

   (instructor)

Date: 10/30/85

Signature: Cheryl D. Hughes

N.B. Attach a complete proposal to this cover sheet.

Deadline: Oct. 15 for Spring. March 15 for Fall.