

INDIGENOUS SOVEREIGNTY, JURISDICTION AND INTERNATIONAL LAW

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Presentation Outline

- 1. Indigenous Sovereignty
- 2. Indigenous Treaty Making
- 3. Canada's Jurisdiction over Indians
- 4. Indigenous Jurisdiction
- 5. International Law and Indigenous Peoples

Acknowledgements

- Elders
- Jimmy O'Chiese
- Dr. Diana Steinhauer
- Vincent Steinhauer
- Sharon Venne (Cree Lawyer)
- Arthur Manuel
- Russ Diabo

Questions to Consider

- What does it mean to be a 'Treaty Person'?
- What does it mean to exercise sovereignty (Self, Family and Nation)?
- What obligations does being a beneficiary of Treaty carry?
- What parties made Treaty? Why is this an important piece of information in current Canadian state – Indigenous relations?

What is Sovereignty?

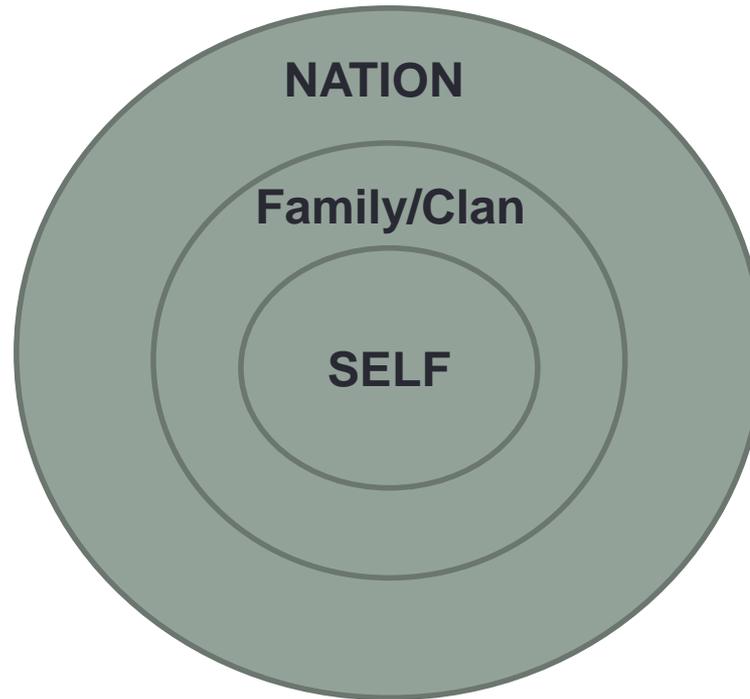
A Western Perspective:

- “The possession of sovereign power; supreme political authority; paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.”
- Source (Blacks Law Dictionary):
<http://thelawdictionary.org/sovereignty/>

What is Indigenous Sovereignty?

ORIGINAL INSTRUCTIONS

When we are born into a family/Clan, we come into the natural world with Creator given rights/responsibilities (this is Indigenous sovereignty).



The Clan/ Nation(s) we are born into (Nehiyaw, Anishnaabe, Dene etc.) have unique governance and law making authority. They have legal/political structures that serve the people.

What is the Royal Proclamation of 1763?

Document that sets out guidelines for European settlement of Indian territories in what is now called North America. Acknowledges Indian title has existed and continues to exist, and all land would be considered Indian land until dealt with in treaty.



Indigenous Reason for Treaty Making

- Crown and settlers were entering territories without consent of Indigenous people and without treaties (ex: surveyors, HBC etc.)
- Treaty (peace and friendship) required to enter into Indigenous territory; sharing land through treaty making was a known process to Indigenous peoples
- **Exercising, asserting and protecting Indigenous land jurisdiction**

Process of Making Treaty No. 6

- Treaty Commissioner came to Chiefs and Headmen -> for future security of settlers, Peace and Friendship Treaty be entered into.
- Indigenous People met and deliberated for days before 'making/ signing' treaty
- Treaty Pipe was used to solemnize the sacred covenant between the two parties.

Three Things Requested by Treaty Commissioner

The Treaty Commissioner requested 3 things at time treaty was signed:

1. Use of land to depth of the plough for Queen's subjects to farm
2. Trees to construct houses
3. Grass for the animals brought by settlers

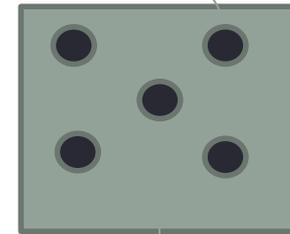
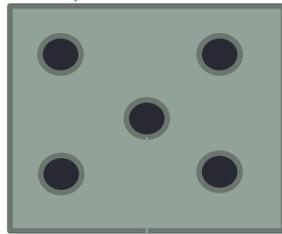
* Treaty rights of Queen's subjects were they could live in peace and share the lands with Indigenous Peoples. In return, Indigenous Peoples were to receive 'benefits' for 'as long as sun shines and water flows'

Promises Made to Indigenous Peoples

10 Sticks

- **Health Care** (medicine chest clause) – universal health care
- **Education** (school house clause) – universal access to education for all Indigenous Peoples
- **Water** – never gave up rights to water or what lived in water
- **Birds** – Queens subjects would bring own birds
- **Social Assistance** (pestilence and famine clause) – distribution of food in times of need
- **Minerals** – only share land to depth of plough
- **Indian Agent** – was to be a servant to Indigenous Peoples
- **Farm Instructor** – appointment of farm instructor and supply equipment
- **Treaty Money** – gift from Queen for entering into Treaty; monies set aside for future use (\$12 to \$5 – land trust)
- **Treaty Citizenship** – Indigenous People would control their citizenship (treaty citizens/ treaty cards)

Oral Understanding of Treaty



Treaties



Treaty Relationship

Promises/ Rights Under Treaty

Health
Education
Social
Protection

←
Canada's Legislation

Inherent Rights

- Education
- Health
- Housing
- Laws
- Language
- Culture
- Land
- Territory
- Ability to Make Agreements

**Imperial Crown
Dominion/
Canada
Provinces**

Royal
Proclamation
BNA Act, 1867
(s. 91.24)
Indian Act
NRTA, 1930
Canadian
Constitution,
1982

What did the BNA Act, 1867 do for Indians?

Division(s) of Power (Jurisdiction):

Powers of the Parliament.

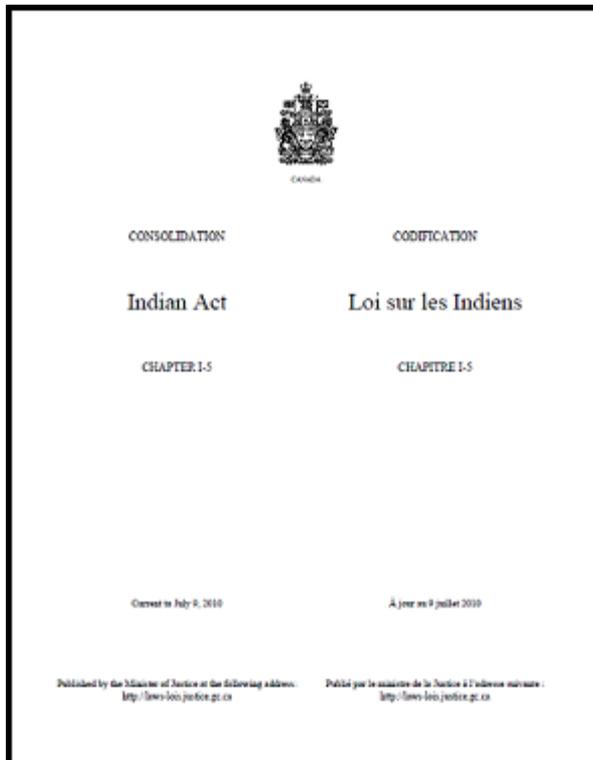
Legislative Authority of Parliament of Canada

- **91.** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, --

24. Indians, and Lands reserved for the Indians.

<http://www.justice.gc.ca/eng/rp-pr/csj-sjc/constitution/lawreg-loireg/p1t13.html>

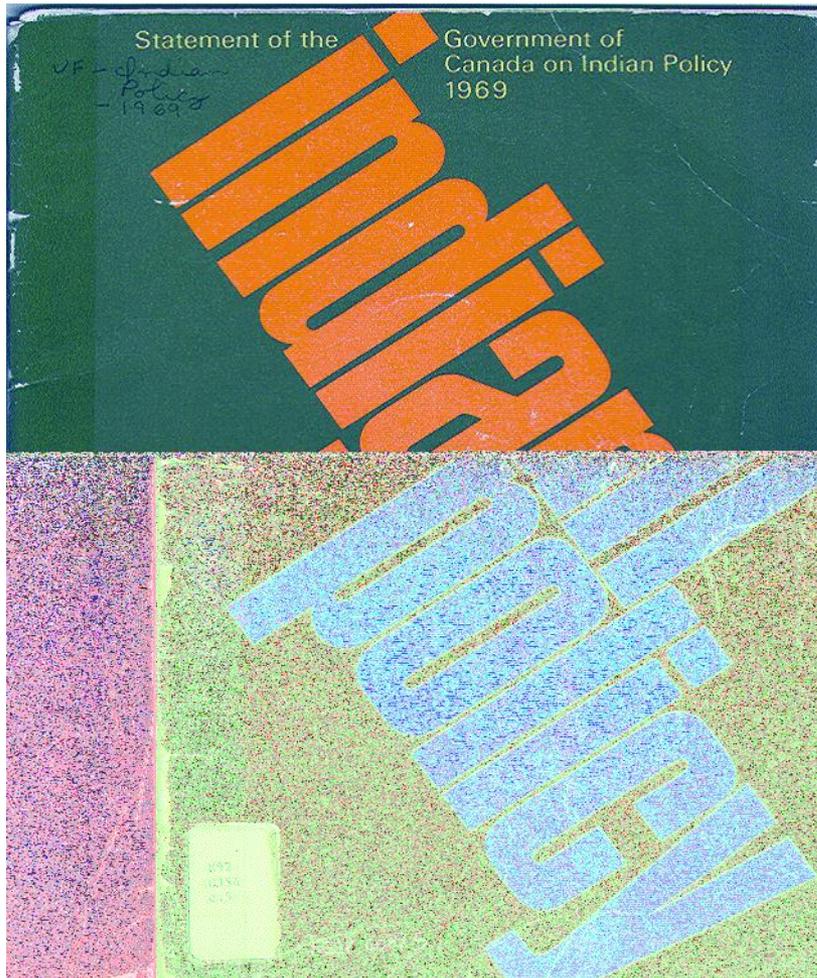
Indian Act – Its Purpose



- Protection
- Control
- Assimilation
- Civilization
- “The *Indian Act* has been an unjustified infringement on the Aboriginal and treaty rights of the First Nations”
- Infringement on Indigenous sovereignty/ jurisdiction

Source: “The Indian Act: Protection, Control, or Assimilation?”
A Review of Crown Policy & Legislation, 1670-1996

1969 White Paper on Indian Policy

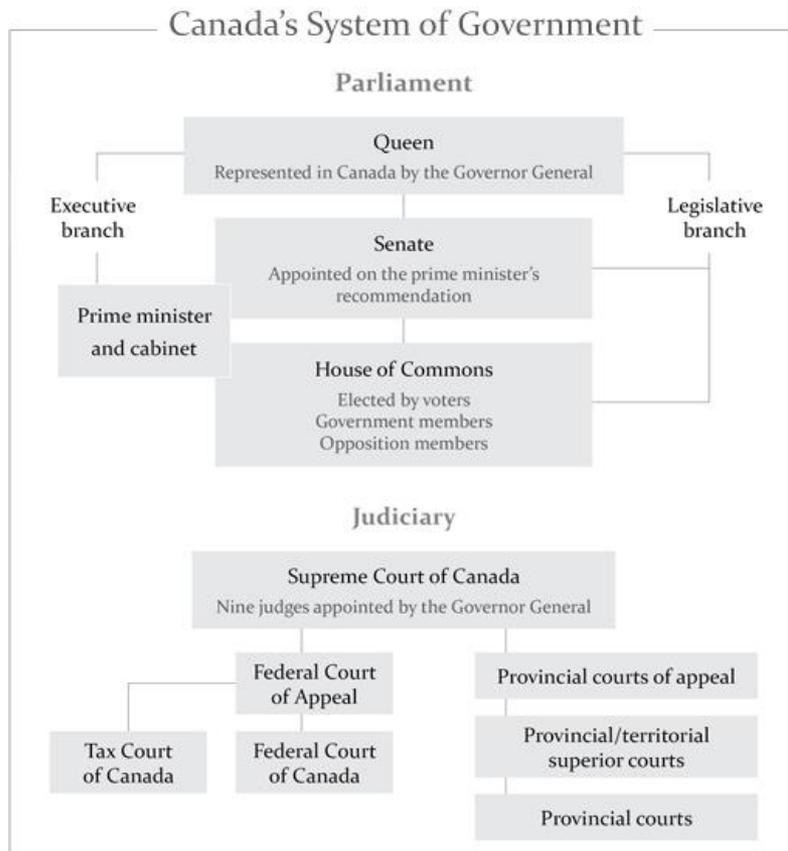


- “The Government believes that its policies must lead to the **full, free and nondiscriminatory participation of the Indian people in Canadian society.** Such a goal requires a break with the past. It requires that the Indian people's role of dependence be replaced by a role of equal status, opportunity and responsibility, a role they can share with all other Canadians.”
- Source: p. 3, “Statement of the Government of Canada on Indian Policy, 1969”

1969 White Paper Objectives

- Assimilation of First Nations
- Remove legislative Recognition
- Neutralize constitutional status
- Impose Taxation
- Encourage Provincial Encroachment
- Eliminate Reserved lands and extinguish Aboriginal title
- Economic underdevelopment of communities
- Dismantle Treaties.

1982: Canadian Federal Government Structure



- Section 35 of the new constitution “recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples”
- A series of First Ministers’ Conferences were held under s. 37 of Constitution, in 1983, 1984, 1985 and 1987, to identify and define the scope and content of s. 35, but these constitutional conferences failed.

Indigenous Jurisdiction

Western Understanding:

- “*The geographic area over which authority extends; legal authority; Jurisdiction generally describes any authority over a certain area or certain persons. In the law, jurisdiction sometimes refers to a particular geographic area containing a defined legal authority.*”
- <http://legal-dictionary.thefreedictionary.com/jurisdiction>

Indigenous Understanding:

- Law Making and ability to determine how laws are enforced within our designated territories. Ex: Onion Lake’s Convention Law (in nehiyawewin) and subsequent laws based on inherent authority.

Work on Est. Indigenous Juridical Body to Exercise Indigenous Jurisdiction

- Discussions/ Meetings between BQFNC, OLCN and other interested parties/ nations to create a working group (with Elders) to conduct research and establish a structural body
- Purpose of working group – create a judicial body that will be the law making enforcement authority.
- Goal – exercising Indigenous jurisdiction. Occupying field to implement our Inherent rights/ Indigenous laws.

Why is International Law and Utilizing UN System Relevant for Indigenous Peoples?

Treaty Work at the UN

- Our people have been going to the UN since the 1970's to advocate for our Treaty Rights
- In 1982, UN created Working Group on Indigenous People
 - Created out of need to develop standard-setting regarding HR of Indigenous People

United Nations Study on Treaties

Getting a Treaty Study

- 1983 – Motion put forward to have a study on Treaties
- UN accepted that our Treaties were Intn'l agreements
- Study (Martinez Report) was to determine what UN could do to assist in Treaty implementation

Martinez Report

- 1997 - Martinez Report:
 - Miguel Alfonso Martinez, Special Rapporteur: “Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations”
 - Special Rapporteurs – make reports to the UN which contribute to evolution of International Law
 - 20 years to work on
- Key Points:
 - Treaties made by our ancestors were as good as the day they were created
 - Area a Source of Rights
 - Canada as a successor State has to implement Treaties in good faith

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What is a Successor State?

- Treaties made with British Crown
- State of Canada did not make our Treaties
 - Ex: Treaty No 3 (1873), Treaty No. 6 (1876)
- When the Constitution of Canada was given to Canada in 1982, the State inherited legal obligation to implement Treaties in Good Faith
- Canada can't change terms of the Treaties without our FPIC

Understanding International Law to Advocate Indigenous Rights

- **What is Intn'l Law?**
 - “[T]he system of law governing relations between states”
 - In Intn'l law, state practice becomes the basis for development of legal principles

International Law and Human Rights

- Core Intn'l HR Instruments and their Monitoring Bodies
 - There are NINE Intn'l HR Treaties
 - Each of these Treaties has est. a committee of experts to monitor implementation of the Treaty provisions by its States parties.
 - Some of the Treaties are supplemented by Optional Protocols dealing with specific concerns.

International Law and Universal HR Instruments (Relevant to Indigenous People)

- Instruments have moral force and provide practical guidance for States in their conduct
 - Right of Self-Determination
 - Rights of Indigenous People and Minorities

Source: <http://www2.ohchr.org/english/law/index.htm>

UN Bodies and Indigenous Advocacy

- Office of the High Commissioner for Human Rights (OHCHR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Economic and Social Council (ECOSOC) - United Nations Permanent Forum on Indigenous Issues (UNPFII)

Source: <http://www.un.org/en/>

Free Prior and Informed Consent (FPIC) and Indigenous People

- **FREE:** Consent is given without coercion, intimidation, or manipulation
- **PRIOR:** Consent is sought before every significant stage of project development
- **INFORMED:** All parties share information, have access to information in a form that is understandable, and have enough information and capacity to make informed decisions
- **CONSENT:** The option of supporting or rejecting development that has significant impacts on Indigenous lands or culture

Free Prior and Informed Consent (FPIC)

- The underlying principles of free, prior and informed consent can be summarized as follows:
 - (i) information about and consultation on any proposed initiative and its likely impacts;
 - (ii) meaningful participation of indigenous peoples; and,
 - (iii) representative institutions.

Source: UN Department of Economic and Social Affairs – Intn'l Workshop of Methodologies Regarding FPIC

Where do we go from here?

- DEVELOPING STRATEGIES:
 - Local/ Reserve
 - Parents
 - Regional
 - National