The Scope of First Nation Self-Government in Canada

Isabel Altamirano*

Courtesy of Isabel Altamirano

Mohawk artist Ellen Gabriel and one of her works.

Throughout the hemisphere in recent decades, indigenous peoples have waged many struggles for their political and cultural demands. Canada is no exception, though the response to the demands has been quite different from that in other countries. In Canada, the rights of indigenous peoples, or first nations, have not been established through constitutional amendments, but in treaties between different groups and the federal and provincial governments.

In this article, I will discuss some implications of indigenous self-government. My starting point is that it is a fundamental right of aboriginal peoples and is recognized as such by the government, native organizations and academics in Canada. The problem does not lie in its legitimacy, but rather in how to put it into practice in a country which has legal divisions among the different indigenous groups, differences about the notion of self-government and distinct cultural traditions. These distinctions have manifested themselves in each of the first nations' seeking the recognition of their rights in a treaty —rather than in Canada's Constitution. That is, each group pursues its own community's interests, putting them before the recognition of the rights of all the indigenous groups.

In Canada, the aboriginal groups are made up of the indigenous, the Inuits and the Méti. The Méti descend

* Political sociologist.

from the marriages of different indigenous groups and the first colonizers, mainly French and Scots. They were never considered part either of the colonizers' or the indigenous communities; they are a group apart which considers itself the "New Nation." The Inuits are communities that have inhabited the frozen tundra of Canada, Greenland and Alaska; their lifestyle and culture are adapted to the polar region. The indigenous are groups of different cultural traditions who inhabit different parts of the country.

The indigenous and the Méti in turn each have categories. The indigenous are divided into those with status and those without status: the difference is that some of the former signed historic treaties;[1] they are registered under the Indian Act; and they live on reservations, while others are registered but signed no treaties in the past. Those without status have never signed agreements nor have their rights and territories been recognized.[2] Some of the Méti have signed agreements and had their territories recognized by the Alberta provincial government, while others are still pressing territorial demands.

This complex division among the different groups has given rise to a lack of coordination and alliances among them which has been taken advantage of by government representatives during negotiations. The Canadian government recognizes two basic types of claims: comprehensive and specific. Comprehensive claims are all those based on natural or inherent rights of the communities who never signed treaties but who aspire to resolving the legal ambiguities about their territorial rights.

Specific claims are more explicit and are linked to rights established in signed treaties which have not been respected (this does not include questions such as hunting and fishing rights).[3] For the groups' claims to be successful, they must gather the pertinent documents and present them to the Office of Specific Claims of the Department of Indian Affairs and Northern Development (DIAND). If their evidence is accepted as valid, a negotiation process begins to determine the appropriate compensation, generally monetary.[4]

Specific claims have been criticized for being restricted and unfair, first because they take a great deal of time and, second, because many times they do not result in the restoration of the lands, but in economic compensation in exchange for the indigenous peoples' accepting restrictions of the rights originally recognized in the treaties.

Groups like the Inuit, the Méti, the Dene and the Yukon were confronted with the need to organize to demand their rights. The government's first response to the protests was to deny they had any legitimacy. However, their actions and denunciations, both domestically and internationally, forced the government to change its stance.

For the government to accept opening negotiations in the case of comprehensive claims, the groups must demonstrate, among other things, that: 1) they have inhabited the territory in question from time immemorial; 2) this territorial occupation excluded other organized societies; 3) they continue to occupy and utilize the land in accordance with their traditions; and 4) their aboriginal rights over the land and natural resources have never been abjured by treaties or other legal means.[5]

These comprehensive claims come out of the struggles in the 1970s in the Canadian North West by aboriginal peoples against the oil companies who left nothing to the communities and radically changed their way of life. Groups like the Inuit, the Méti, the Dene and the Yukon were confronted with the need to organize to demand their rights.[6]

The government's first response to the protests was to deny they had any legitimacy. However, these peoples' actions and denunciations, both domestically and internationally, forced the government to change its stance. The Supreme Court of Canada rulings on the Van der Peet cases were important precedents for establishing the aboriginal peoples' retaining their rights over lands they had inhabited and used traditionally, as well as over fishing and hunting grounds, and that these rights could only be relinquished through treaties or other laws approved by the Crown.[7]

Comprehensive rights have been very criticized by Indian and non-Indian groups alike as a mechanism whereby the Canadian government completely eliminates aboriginal rights by exchanging economic compensation for them and lessens the possibility of

signing a treaty. However, I should mention that negotiation policy has changed: since 1986 the groups may even negotiate questions related to self-government as part of their comprehensive demands.[8]

The fact that two types of claims are recognized by the Canadian government implies that certain groups have signed treaties while others never have: that is, they are historically differentiated. At the same time, since the rights recognized are different from one community to another, the groups mobilize to fight for their own particular demands, which impedes their joining forces in a single effort to fight for all the rights of all aboriginal peoples. As an example, we can look at the Charlottetown Accords.

In October 1992, in the context of the celebration of the fifth centennial of the arrival of Christopher Columbus to the Western Hemisphere, Canadians in provinces with indigenous population voted on a referendum about a package of constitutional reforms to restore the right of indigenous peoples to self-government. If it had been approved, the country would have been at a vanguard of recognizing this right. However, voter response was quite low, and in the end the referendum was defeated. What is more, 62 percent of the indigenous population rejected the amendments.[9]

After the Oka crisis in which the Mohawk demanded the recognition of their land title,[10] Canadian public opinion shifted to favor the recognition of self-government. Nevertheless, the aboriginal communities themselves rejected it. This can be explained by several elements: the foremost is the role that the Native Women's Association of Canada (NWAC) played when it mobilized against the reform package. From NWAC's point of view, native women's rights had not been guaranteed in the negotiations process, which had been carried out fundamentally by indigenous men.[11]

NWAC considers that indigenous women face double discrimination in Canadian society: both gender and racial. For this organization, it is important to recognize aboriginal peoples' right to self-government, but at the same time, individual rights must be guaranteed, something which cannot happen if governments "simply choose to recognize the patriarchal forms which now exist in our communities."[12]

The Native Women's Association of Canada demands the recognition of aboriginal peoples' right to self-government, but also that individual rights be guaranteed, something which cannot happen if governments simply choose to recognize the patriarchal forms that now exist in these communities.

Native women seek a balance between collective and individual rights, or, stated in other terms, between tradition and modernity.[13] This was a critical factor in the process of the Charlottetown Accord since for native women it was fundamental that the Canadian Charter of Rights and Freedoms be adopted by indigenous governments to counter discrimination inside their own communities. The leaders opposed ratifying this legislation because they do not think it represents their system of values, history or traditions and it emphasizes individual rights and responsibilities.[14]

The second factor in the failure of the constitutional reforms was the lack of political representation of the different groups. The Assembly of First Nations (AFN), as a national organization, was one of the main negotiators of the content of the reform package. However, many important groups and organizations did not feel represented. The peoples who make up the AFN are those with status, that is, those registered in the Indian Act. This excludes Indians without status, the Inuit and the Méti. Thus, the different categories of aboriginals has not only created division among the groups, but also different material and political interests.

Since the Constitution does not recognize the same rights for all the peoples, the government negotiates a specific treaty with each group. The result is that the scope of each treaty depends on the political presence and negotiating capabilities of indigenous leaders. Despite these limitations, the treaties include self-government, title to land and natural resources, public policies, membership, the administration of justice and financing.

In addition to the distinct legal classification of the aboriginal groups, they also differ in matters of culture and how they perceive the notion of self-government as a central demand. Despite this, as Alan C. Cairns writes, "self-government has the potential to give

dignity to those who live it and practice it. It is a powerful symbolic indication of equality. It contributes to self-reliance by supporting the thesis that responsibility begins at home. Presumably it will erode the powerful tendency of dependent people to blame others for their misfortunes and to expect others to be their salvation."[15]

The exercise of indigenous self-government reflects the conflict between the universal and the specific, the individual and the collective. In addition, it makes it clear that constitutional recognition of inherent rights of these peoples is not enough to completely ensure new relations between them and the state. Real recognition of cultural diversity must stop conceiving of the majority of society and indigenous peoples as separate, independent identities, based on a differentiation of bad and good, based on the traditional past and the present modernity, to give rise to a notion that recognizes points of intersection between the two, establishing a civic relationship between them.

This civic relationship can be translated into what we call "differentiated citizenship"[16] based on the following premises: 1) it is not enough for the Constitution to recognize cultural diversity; this is only the first step; 2) concrete political agreements must be reached to exercise differentiated citizenship through a geographically autonomous government; and 3) since we are talking about citizenship, it includes all the indigenous groups and not only those with the greatest negotiating capabilities.

The idea here is not oppose the partial solutions embodied in each treaty since they express different geographical and cultural conditions, different forms of traditional government and distinct ethnic composition. The problem with this strategy is that it does not follow homogeneous criteria in negotiations, and therefore reproduces and deepens the already profound differences among Canada's aboriginal groups. VM

Notes

[1] Among these groups are the Chippewa, the Ojibwa, the Saulteus and the Blackfeet. Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North West Territories* (Toronto: Belfords, Clarke and Company, Publishers, 1991).

[2] Among these are the Inuit, the Méti and the Cree.

[3] The Department of Indian Affairs and Northern Development cannot deal fully with the demands for total respect for hunting and fishing rights, since in recent decades these questions have been taken to the Canadian Supreme Court. When the court has found in favor of the indigenous groups, it has forced the Department of Indian Affairs and Northern Development to comply with the ruling. Roger Townshend, "Specific Claims Policy: Too Little Too Late," Diane Engelstad and Joe Bird, eds., *Nation to Nation* (Toronto: House of Anansi Press, 1992).

[4] From 1990 to 1991 the Canadian government paid Can$15.5 million in compensations. Between 1973 and 1989, 515 claims had been presented, but only 79 approved. (DIAND, *Indian and Northern Affairs Canada. Federal Policy for the Settlement of Native Claims* (Ottawa: n/p, 1993).

[5] Joseph Mensah, "Geography, Aboriginal Land Claims and Self-Government in Canada," *International Journal of Canadian Studies* 12 (fall 1995), p. 265.

[6] Angus Murray, "Comprehensive Claims: One Step Forward, Two Steps Back," Diane Engelstad and Joe Bird, eds., op. cit., pp. 67-68.

[7] Ken McNeil, "New Directions in Aboriginal Rights: Reassessing Aboriginal Title and Governance" (paper read at the Fifteenth Biennial Congress of the Association for Canadian Studies in Pittsburgh, Penn., November 1999).

[8] This policy is linked to the 1982 changes in Canada's Constitution which now not only recognizes the existence of the three aboriginal groups, but also ratifies and recognizes existing treaties.

[9] Radha Jhappan, "Inherency, Three Nations and Collective Rights: The Evolution of Aboriginal Constitutional Discourse from 1982 to the Charlottetown Accord," *International Journal of Canadian Studies* 7-8 (spring-autumn 1993), p. 226.

[10] The Oka-Kanesatake conflict began when the city government approved a permit to expand a golf course onto land that the Mohawk considered their sacred burial grounds, that is, their land.

[11] Several women's organizations were denied government support for preparing and presenting constitutional proposals at the Charlottetown Accord discussion table.

[12] Stacey Moore, "Aboriginal Women, Self-Government, the Canadian Charter of Rights and Freedoms, and the 1991 Canada Package on the Constitution" (paper read to the Canadian Labour Congress, Ottawa, Ont., 1991), p. 5.

[13] Ibid., p. 7.

[14] Mary Ellen Turpel, "The Charlottetown Discord and Aboriginal Peoples' Struggle for Fundamental Political Change," Kenneth McRoberts and Patrick Monahan, eds., *The Charlottetown Accord, the Referendum, and the Future of Canada* (Toronto: University of Toronto Press, 1993), p. 135.

[15] Alan C. Cairns, *Citizens Plus* (Vancouver: University of British Columbia, 2000), p. 111.

[16] This proposal is more profoundly developed in Isabel Altamirano, *Los pueblos indígenas ¿ciudadanos diferenciados? Los pueblos indígenas de México y Canadá en una perspectiva comparativa* (master's thesis, Instituto José María Luis Mora, Mexico City, 2000).