

The Treaty System and the Indian Act: Apartheid in Canada

Robert HUGHES

In Africaans, the word for separateness or apart-hood is apartheid. The word “apartheid” became currency as the label for white rule policies of race-based segregation and discrimination in South Africa. Apartheid in South Africa lasted from 1948 through to 1994. Although not well recognized, the colonial settler states of Canada and South Africa have a shared history promoting bilateral economic interests while brutalizing Indigenous people. Belanger and Yoon (2018) recently determined “there is sufficient evidence to suggest and confirm that South African government officials received direct information, influence, and inspiration from Canada and its Native reservation system in conceiving and establishing spatial methods of racial segregation (p.2).” This comes as a serious slap in the face for most Canadians who live their lives oblivious to the shameful past and continuing systemic racism that exists in Canada today.

As Yves Engler (2013) noted, in post-apartheid South Africa, Nelson Mandela’s death led to some interesting Canadian commentary in significant news publications like a *National Post* headline proclaiming “Canada’s Stance Against Apartheid Helped Bring Freedom To South Africa.” Contrary to national myth, this news declaration is not very accurate and sits as historical revisionism, something Canada has developed into a linguistic art. Just as readers today have become aware of fake news, the notion of fake or exaggerated history should, therefore, come as no surprise. Canada is pretty good at flipping reality into myths for national consumption, kind of like pancakes for Sunday breakfast, a Canadian tradition. The intention of this paper is to investigate the historical context and put some of these myths to rest. In mainstream circulation in Canada today, these myths are continuously recycled: treaties only benefit Indigenous people; through treaty, Indigenous people lost their sovereignty; treaties are no longer relevant today; and Canada helped end apartheid in South Africa. The contemporary situation of apartheid in Canada needs to be viewed through the bifocals of treaty history and the Indian Act of 1876 as it is all legally relevant today.

Treaty In Canada

In a review of colonial period activity, Venne (2007) points out that the British made use of the Doctrine of Discovery to claim possession of new lands in their territorial expansion but this was not enough to thwart other colonial powers from advancing their own competing claims. To assert their jurisdiction over colonial possessions, the British Crown enacted the Royal Proclamation of 1763. Interestingly enough, the proclamation stated there needed to be a treaty or agreement in order to gain access to Indigenous land or territory. It also stated that Crown subjects would have to be removed as squatters if there was no agreement. Furthermore, it stated the agreements or treaties were at the discretion of the Indigenous peoples (Venne, 2007). The proclamation made treaties a prerequisite prior to settler access. A big surprise here is that this situation has not changed to the present day. Hence, in recent years, residents of Canada often hear the mantra “We are all treaty people.” Yet, they fail to understand the significance of this slogan and the impact it has on their residency.

Canada as a country and its early provinces emerged from an Act of British Parliament in 1867. At the time of the British North America Act, Canadian government officials were still in desperate negotiations with First Nations to gain access to their lands. In fact, treaty negotiations have continued to the present time. Many Canadians falsely believe the nation or notion that Canada emerged with formal land title through the passing of the British North America Act. This is certainly not the case because the Government of Canada is still desperately negotiating with dozens if not hundreds of First Nations; albeit, mostly to disenfranchise them from their lands and resources. Today in Canada, government land claim policy begins with the assumption Indigenous groups must make claims to maintain ownership of land, resources, and territory. This is evidenced in recent treaty proceedings being conducted over much of the province of British Columbia where treaties were never previously negotiated (Venne, 2007).

Starblanket (2018) points out that Treaties prior to 1932 were concluded as nation-to-nation agreements between the British Crown and Indigenous people. These early treaties were neither negotiated nor concluded with the Government of Canada. Starblanket asserts “Canada as a successor state does not have the authority to alter Treaty without the consent of the Indigenous Peoples (2018, p. 4).” Starblanket (2018) further argues that Treaties were friendship agreements and she is adamant that Treaty agreement was not a surrendering of land. This is a matter of continuing Government dispute over Indigenous interpretation of the oral negotiations and Indigenous denial of a written clause that later appeared in Treaty text.

According to Starblanket (2018), the Crown has always operated with the assumption that they had sole jurisdiction over much Indigenous land in the numbered treaties in what is now central and western Canada. Crown authority is said to rest on a land transfer agreement with the Hudson's Bay Company. However, it is historically clear that Indigenous people were not party to any agreement with the Hudson's Bay Company regarding land ownership nor were they party to the so-called transfer of land to the Crown. In other words, whatever transpired between the Hudson's Bay Company and the Crown, there was never any recognition or agreement with Indigenous people that established Crown sovereignty and land ownership. To Indigenous groups today, this is just colonial hocus-pocus.

Venne (2007) states "The land claims policy of Canada works from the assumption that the title vests in the Crown and that the Indians are making a "claim" for our own lands and territories (p.3)." Admittedly, historic treaties that are still in effect today were used to establish a foundation for the use of land under respectful conditions between Indigenous people and the Crown. Settlers who live in Canada are exercising a right that results from Treaty. However, through discriminatory practices and policies, Canada has operated in violation and in complete disregard of these treaties. With the advent of Treaty 6 in Canada, covering a large portion of the Canadian provinces of Alberta and Saskatchewan, settlers were given land access for agricultural purposes to the depth of a plow. Venne (2007) makes an interesting point "There is some kind of weird idea operating here: somehow, the treaty making made Indigenous Peoples and our entire way of life subservient to the colonizers and their institutions (p. 7)." Eventually all resources, above and below surface level, were subsumed by the Canadian government through more colonial hocus-pocus.

Apartheid In Canada: the Indian Act

Nine years after confederation for Canada, the new state in 1876 created legislature to control, segregate, and assimilate Indigenous people into Euro-Canadian society. This legislature is known as the Indian Act. Prior to this, the Crown had already assumed that their "sovereignty" could be exercised over First Nation's people and their territories. The Indian Act was a complete betrayal of fiduciary duty through the utter failure of the colonial government to act in the interest of its Treaty partners. The Indian Act is a collection of assimilation policies intended to eliminate all cultural, economic, and political uniqueness of Indigenous people. By the 1920s, resistance was mounting through political organizing to challenge land claims. To dead-end such resistance and to terminate any favorable outcome, the federal government in 1927 added Section 141 to the Indian Act. Section 141 made it illegal for Indigenous people to hire legal counsel thwarting attempts to use the legal system to obtain their rights. The Indian Act

is evidence of a codified system of human right abuses by successive Canadian governments. Many of the Indian Act's most oppressive sections were eliminated in 1951 as a result of Canada's commitment to the U. N. Universal Declaration of Human Rights. Although detested by Indigenous people, the Indian Act affirms the constitutional relationship Indigenous people have had with Canada. The Indian Act has also become a powerful tool to combat government attempts to extinguish aboriginal rights. Treaties and the Indian Act were used to clear the plains for settler agriculture and resource extraction. There is poetic justice in the fact that the tables have been turned and these discriminatory and exploitive documents now serve for favorable court outcomes for First Nation bands across the country.

In 1982, treaty and aboriginal rights became enshrined in the Canadian Constitution. Section 35 opened the door for First Nations to seek redress through Canadian courts. Since then, First Nations have been on a winning streak with over 300 successful resource-related settlements (Cuthand, 2020). Radford (2020) writing in the Saskatoon *Star Phoenix* newspaper, reported on a land settlement claim the Peepeekisis Cree Nation recently won against the federal government. The settlement offer is in the amount of 150 million dollars. The most salient feature is that the grievance dates back to Indian Agent, William Graham's actions in 1898. Graham devised a plan to create a farm colony on the Peepeekisis reserve lands. Court submissions made in 2017 focused on Graham's actions to bring in non-reserve members to settle on reserve land recognized by signatories to Treaty 4 in 1874. At issue was how Graham's actions deprived Peepeekisis Band members of 18,840 acres of reserve land for his File Hills colony. Graham forcibly relocated non-Peepeekisis males from industrial schools for his farm project while Band members were deprived of their lands (Radford, 2020). Henderson (2015) states that the Indian Act "started out in 1876 as an official apartheid movement, remains in the form of marginalization, ghettoization, and societal exclusion (p.1)."

Canada and South Africa

Canada did, in fact, take measures against South African apartheid, but not as a direct result of disgust for apartheid practices. In 1961, to avert the dissolution of the British Empire's Commonwealth, Prime Minister at the time, John Diefenbaker from Saskatchewan, called for South Africa's expulsion from the Commonwealth. According to Engler (2013), this was not a rebuke to South African morality. Diefenbaker was deeply concerned that several former British colonies in South Asian and African former colonies would depart the Commonwealth. They were threatening to do so if South Africa was allowed continued membership. To protect the Commonwealth, Diefenbaker took a stand on South African membership. At the same time, he fully intended to continue business and trade as the 1932 Canada-South African Trade

Agreement was neither questioned nor dissolved (Engler 2013).

Speaking in the House of Commons in June of 1964, Tommy Douglas, leader of the New Democratic Party, challenged newly elected Prime Minister, Lester Pearson, to request clemency for Nelson Mandela who had just been sentenced to life in prison for sabotage and conspiracy in contravention of South Africa's apartheid laws (Engler 2013). Pearson refused to take action, claiming that as the matter was before South African courts it was improper for the Canadian Government to criticize the verdict or sentences (Engler, 2013). Pierre Trudeau's government, in power from 1968 until 1984, sided with the apartheid regime, not the liberation movement. Several Canadian companies were the beneficiaries of cheap, black labor. It was not until 1986 that a Conservative government under Prime Minister Brian Mulroney challenged South Africa with economic sanctions. However, during the period of economic sanctions between 1986 and 1993, two-way trade with South Africa still totaled \$1.6 billion, down sixty-six percent from the previous six-year period (Engler, 2013).

Interestingly enough, it was also in 1986, that the Canadian Government created the federal Comprehensive Land Claims Policy. This policy did not adhere to the Royal Proclamation of 1763. The Canadian Government must fear that Canada is a house of cards, marginally propped up on treaty and contested Crown land. Without treaty, the farms, towns, and cities throughout the country would be illegal squatter settlements. To ensure continuity of the colonial project, the government has been advancing an ongoing policy of extinguishment of Aboriginal title. Recent land claim settlements contain the clause: "This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of X First Nation." If the Canadian Government were secure in land tenure, it would not need an extinguishment clause in claim settlements. Ownership has clearly rested with First Nations since the time of treaty.

Giesbrecht (2019), in a rather unsympathetic article towards First Nations, wrote "The integrity of land and resource ownership and the Crown's very sovereignty – everywhere throughout the country and not merely on reserves – are under threat (p. 8)" He raises the issue that given the situation today in Canada, if the same conditions were in effect in 1867, the Canadian Pacific Railway would never have been completed. He goes on to moan that Canada would have been crippled by conflict and litigation never becoming one of the world's most prosperous nations. Giesbrecht, a former provincial judge, is seemingly afraid of the end game. Perhaps the solution lies in an alternative approach. McCreary (2005) has suggested one: "Peaceful co-existence requires that we first recognize our interconnectedness, and then work together to fulfill the potential for harmonious co-existence to which the treaty process was dedicated." A more equitable sharing of resources may offer a solution. It is that simple.

In Canada, what needs to be addressed on so many levels, is the notion that settlers, granted residency through treaty, would then without conscience, introduce legislative processes to assimilate or eliminate Indigenous people through systemic containment, limited resource access, restricted movement, and controlled economic activity. The Canadian Government has never acted in good faith. Land has always been the issue and is the key to prosperity and the elimination of poverty among Indigenous people. The story of Canada is not a glamorous tale of settler rags-to-riches. It is a horror story of cruelty and exploitation. What does hypocrisy smell like? Spoiler alert: It does not smell like pancakes on Sunday morning. Hypocrisy is the smell of sunbaked road-kill. It is the stench of the rotten colonial soul of Canada! It is apartheid!

References

- Belanger, P. and Yoon. K. (2018) Canada's Apartheid, *Lapsus Lima*, <https://www.lapsuslima.com/canadas-apartheid/>
- Cuthand, D. (2020) Treaty rights are not being upheld, *Star Phoenix*, Saskatoon <https://thestarphoenix.com/opinion/columnists/cuthand-treaty-rights-are-not-being-upheld>
- Engler, Y. (2013) Our Shame: Canada Supported Apartheid South Africa, *Canadian Dimension*, December 26 <https://canadiandimension.com/articles/view/our-shame-canada-supported-apartheid-south-africa>
- Giesbrecht, B. (2019) A Plea To End Canadian Apartheid, *C2C Journal*, January 14 <https://c2cjournal.ca/2019/01/a-plea-to-end-canadian-apartheid/>
- Henderson, M (2015) The Indian Act: Teaching Apartheid in Canada, *Spectator Tribune*, Monday, July 20, 2015 <https://spectatortribune.com/the-indian-act-teaching-apartheid-in-canada/>
- McCreary, T. (2005) Settler Treaty Rights, *Briarpatch*, Aug. 1st
- Radford, E. (2020) Peepeekisis Members To Vote On \$150M Land Settlement, *Star Phoenix*, Saskatoon, Thursday, November 26 <https://thestarphoenix.com/news/saskatchewan/peepeekisis-members-to-vote-on-150m-land-settlement>
- Starblanket, T. (2018) Treaties: Negotiations and Rights, *Our Legacy*, http://ourlegacy.library.usask.ca/sites/ourlegacy.library.usask.ca/files/Starblanket_updated2018.pdf
- Venne, S. (2007) Treaties Made In Good Faith, *Canadian Review of Comparative Literature*, 34, (1) pp. 1-16