The betrayal of First Nations in Canada

By Mary Ellen Turpel

"We have nothing. And I think that's the greatest injustice in this country" ... Brian Cromarty of Norway House to the Aboriginal Justice Inquiry of Manitoba. These words express the views of many First Nations citizens toward the country formed by their dispossession. Through disregarded treaties, the lie of two founding nations, and relentless imposition of colonial governance, First Nations have been robbed of their autonomy and prevented from sharing in the wealth of their homeland.

Now, having gone hungry for so long, some scraps have been thrown from the constitutional table. The Federal Government's constitutional proposal grants First Nations next to nothing. Both National Chief Ovide Mercredi and MLA Elijah Harper described the proposals as a "betrayal" demonstrating that lessons of Meech Lake and Oka had been ignored. It was especially bitter for the National Chief who had worked in a spirit of cooperation and generosity throughout the summer with the Unity Cabinet Committee. The National Chief had even welcomed Minister Joe Clark with a traditional pipe ceremony in Morley, Alberta. There it was agreed that First Nation Government would pursue a process parallel to that of the Federal Government's so that First Nations citizens would speak directly to their leadership on their vision of a new relationship with Canada before constitutional talks were to begin.

The Federal proposals are subtle in their betrayal and exclusion. They obfuscate by paying lip service to 'self-government' and procedural inclusion. These are not proposals for dialogue with First Nations; they are an attempt to appease the Canadian public with a non-familiar term diluted to an absurd degree. Once again, First Nations have had no say in the crucial stage of agenda setting. Would it not have been more honourable to present the people to Canada with the aspirations of First Nations as articulated by themselves rather than commence the process with an insulting position concocted by Federal officials? The reform package is not even a reflection of consultation with the First Nations of Canada; the Chiefs saw the proposals for the first time when they were publicly released. They are outsiders in a process designed to make paternalistic adjustments.

Leaving aside the betrayal which the process of putting forward these proposals represents for the First Nations, the substance of the Federal proposals reflects the fact that the Government is not willing to listen to the legitimate constitutional claims of the First Nations. When National Chief Ovide Mercredi addressed the Premiers of Canada at the 32nd Annual Premiers Meeting in August, he outlined four general constitutional objectives these were purposely brief because the First Nation parallel process is taking the position of the Assembly of First Nations to the people for their specific direction during the Fall of 1991. The four principles are:

Constitutional recognition of our legal and political character as distinct peoples. This will be achieved through constitutional guarantees of our treaty and inherent aboriginal title and rights,

Constitutional recognition of the limitations of federal and provincial authority over First Nations peoples and First Nations lands.

Constitutional recognition of the participation of First Nations in cooperative economic federalism, including the articulation of fiscal responsibilities for self government, and

The involvement of the First Nations as full and equal participant in all constitution reform processes.

The proposals offered violate each of these clearly set forth principles. Most notably, the National Chief Mercredi has repeatedly said that self-determination for the First Nations must be recognized as an inherent right. In other words, it is a right which the First Nations enjoy by virtue of their having always governed themselves prior to the coming of the first immigrants. They never surrendered this right of self government nor the responsibility given to the First Nations by the Creator for their homelands.

The Commissioners of the recent Aboriginal Justice inquiry of Manitoba state that "we believe that there is no longer an issue as to whether aboriginal people have the right to govern themselves in accordance with their customs and tradition. It is clear, we believe, that they have that right ... Those who assert that the right is already limited are the ones who should bear the onus of proving this contention. Their inability to do so would mean that the right still continues in force .. " First Nations self-government is an inherent and natural right, historically based and ongoing - it is not subject to nor dependent on anything - it is not contingent upon Canadian government recognition, and it is certainly not based on delegated authority nor nourished on scraps from the Constitutional table.

The Federal proposal suggests that an amendment be made to the constitution to entrench a general justiciable right to self-government. This amendment is subject to numerous caveats. To start, it must be defined before it can be entrenched. The insistence on definitions is opposed by the First Nations who assert that to insist on definitions fundamentally contradicts the nature of empowerment. Self-government is the ability to shape a political relationship between a given First Nations and the Crown whereby a structure is established to meet the needs of First Nations citizens in whatever areas are required. Secondly, the federal proposal on self-government subjects the right to Federal and a provincial laws of general application. This reinstatement of section 88 of the archaic Indian Act would disable First Nations Government from responding to the culturally unique needs of First Nations peoples. It has been used time and time again to frustrate First Nations in their enjoyment of hunting, trapping and fishing rights in Canada.

The federal proposal also provides that self-government will be subject, without exception, to the Canadian Charter of Rights and Freedoms. This is a gross imposition of cultural dominance because the Charter is premised on values considerably different from those cherished by First Nations. The Aboriginal Justice Inquiry Report recognized this and even suggested that First Nations government draft a charter in keeping with aboriginal customs and values so that those values are not eroded by the Canadian Charter.

Some might console us with reference to the justiciable enforcement of the proposed 'self-government'. How could this be anything but a red herring? After 10 years of inevitable stalling, while newly entrenched property rights infringe on Aboriginal lands, First Nations are to line up at a court they have had no part in shaping and plea for enforcement of an unrecognizably watered-down limited right. This grossly expensive ritual has had highly unpredictable and sometimes demoralizing outcomes in the past, as demonstrated by this year's British Columbia Supreme Court decision, in the Gitksan case, that characterized aboriginal life as nasty, brutish and short. Would Canada place its claim to Arctic sovereignty before the American Supreme Court or trust an Egyptian court to rule on the fundamental character of Canada? Putting self-government aspirations into the hands of a Canadian court that does not know or understand aboriginal history and needs would present similar conflicts of interest and culture. This is why we are moving toward the establishment of Aboriginal justice systems as so many recent studies have proposed.

The federal document has betrayed the First Nations. It prefigures a space for constitutional reform on self-government which so fundamentally misses the mark that the Assembly of First Nations is wondering whether to forget the whole process. The provision on self-government, if entrenched as they now read, would lead to a constitutionalized form of Indian Act rule. One in which the First Nations would have to kowtow not only to the Great White Father (the Minister of Indian Affairs) in Ottawa, but to the Provincial Premiers as well, as their laws of general application could override those of First Nation Governments. In rationalizing the rejection of inherent self-government, a notion already supported by the Ontario Government among others, Minister Clark's vague reference to technical constrictions relating to international law are not only rubbish but unwittingly ironic: for if First Nations walk away from this process the next step will be a brisk one to increasingly sympathetic international fora.

When National Chief Mercredi advised the Premiers in August that "you do not perfect a society by excluding people and their rights," the Prime Minister responded with a promise of "full and appropriate participation" in constitutional reform. The package presented this week takes away more than it grants. It will require more than modification, it will require a complete rewrite in order for First Nation participation to become anything other than empty and inappropriate.

What is the status of women in the Atlantic Provinces?

Abstract of the presentation by Jeanne d'Arc Gaudet Chairperson of the New Brunswick Advisory Council on the Status of Women to OPTIONS EAST

The situation of women in all four Atlantic provinces is basically similar. An economic union of the Atlantic provinces may have economic advantages for women as well as men, but the status of women will not improve relative to men unless direct efforts are made provincially, regionally and nationally to bring about equality. Political union, however, may well disadvantage women, since it would reduce our chances of being involved at decision-making levels and would disadvantage Acadian women and men.

Cooperation between Atlantic area women is nothing new. Women's groups and Advisory Councils have regularly joined forces to advocate changes and to work more effectively.

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