

Indian Affairs

We should not confuse the issue before this House today. What we are debating today is recognition of the principle of aboriginal rights. We are not debating the machinery that will have to be established to work out these claims, the details of settlements involved, the kind of research that will have to be carried out, who and how many persons are involved or the length of time that will elapse before all claims are settled. None of these important aspects will be solved overnight. But they cannot even begin to be solved until the underlying, fundamental principle of aboriginal rights is accepted—and that is what we are debating today.

Let us take a brief look at the historical perspective of this question. The concept of aboriginal rights or title was developed in the colonial context of North America. The first major colonial power, Spain, did not initially recognize native land rights but gradually came to understand that recognition was necessary on practical and moral grounds. In the sixteenth century, Spain enacted its laws of the Indies which established clear, legal recognition of Indian aboriginal land rights. The leading American legal scholar, Felix Cohen, considered that the recognition of aboriginal title in the United States had its origins in the Spanish precept.

It is clear that the recognition of Indian land rights goes back to the early periods of colonial settlement and represents practical experience that non-recognition led to a real sense of injustice on the part of the native which endangered colonial settlement. Today, that real sense of injustice undermines any attempt to develop programs which can meaningfully respond to the problems of native communities of Canada.

• (1530)

The concept of aboriginal title which was developed in the context of North America was later applied to other colonial areas. The Prime Minister, the Minister of Indian Affairs and Northern Development (Mr. Chrétien) and the Indian Claims Commissioner, Dr. Lloyd Barber, have all publicly praised the native policies of New Zealand. The concept of legal aboriginal land rights was fully recognized in New Zealand and, as a result, a better foundation for race relations was laid there.

In Australia we see the other face of British colonial policy—a denial of land rights and a refusal to make treaties. This has led to public demonstrations and the need for reopening the issues of aboriginal land rights there. The new commonwealth government in Australia has appointed a commission to make recommendations on the entire question of aboriginal land rights. There is clear evidence that a policy which fails to recognize aboriginal land rights sows seeds of bitterness and distrust.

All we can do, to quote a phrase the Prime Minister often uses, is to try to be just in our time. We must, in our time, attempt to redress the omissions of the past and lay foundations for the future, based on recognition of real legal rights of native people to their historic lands.

Some hon. Members: Hear, hear!

Miss MacDonald (Kingston and the Islands): Let us not try to hide from the fact that as a nation we have proudly

[Miss MacDonald (Kingston and the Islands).]

proclaimed that we have recognized Indian land rights. Let me quote from a new publication of the Department of Indian Affairs, a booklet entitled "The Canadian Indian—A Brief Outline."

Early in the settlement of North America, the British sovereign recognized, as a matter of policy, an Indian interest in the lands they occupied—which could be extinguished by agreement with the Indians and only to the Crown.

This is similar to statements made in the past by officials of the Department of Indian Affairs in testimony before joint committees and in written statements by the department.

Over and over again during the treaty period in the west, the commissioners speaking for the crown, and the orders in council appointing the commissioners, refer to an Indian title which had to be extinguished. Mr. Justice Hall, in his judgment in the case of *Calder v. Attorney General of British Columbia*, states that if treaties were not designed to extinguish aboriginal rights, they were a fraud on the part of the government, and, he said, that was not to be presumed.

The treaties stand as a clear recognition of the aboriginal rights of the Indian people who signed them. They have not always been honoured or fulfilled, but the recognition is there. There are significant areas in this country where no treaties were signed and no reserves established for native communities. Much of this territory was covered by the royal proclamation of 1763 which, by its wording, is a clear recognition of aboriginal rights. It does not purport to create the rights; it assumes the rights exist. I quote:

And whereas it is just and reasonable and essential to our interests and the security of our colony that the several nations or tribes of Indians with whom we are connected and who live under our protection should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us are reserved to them or any of them as their hunting grounds—

According to Mr. Justice Hall, the royal proclamation applied to Hudson Bay territories, or Rupert's Land, and to lands west of the continental divide. Thus we see that treaties which were entered into as a recognition of native title to the land, and the proclamation of 1763 which assumed the existence of aboriginal rights in vast areas of the country not covered by treaties, provide the legal basis for this concept. The federal government was to remain the trustee for this concept, for when the British North America Act was written, "Indians and the lands reserved for Indians" were included under section 91 which sets out the exclusive legislative authority of the Parliament of Canada.

So we see the historical position of the federal government was always one of recognition of aboriginal title. This was always the position,—that is, until the government policy statement of 1969. That statement was considered unjust and threatening by Indian people all across Canada. We are only going to make progress in this difficult area if dealings with the native people are placed on a firm and clear basis and not on the shifting sands of temporary policies and programs which are viewed by the government as gifts which can be given or withheld.

I would like to turn now, Mr. Speaker, to some of the convoluted interpretations this government has brought