

## The Cree Position

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Our position, the position of the James Bay Cree people, is clear and has been stated many times: our people – Eeyouch – have the right to choose to determine our own political future. We have the right to choose if we wish, in the event that the people of Quebec choose the path of separation, to remain, with our territory – Eeyou Astchee – in Canada.

We have resolved among ourselves and for ourselves to defend and promote the rights – the human rights – of the Cree People and the other Aboriginal peoples who live in Quebec and in other provinces and territories.

Only relatively recently have Aboriginal peoples developed the means and expertise to work formally for the protection of the rights of indigenous peoples. It is in this context that the James Bay Cree people are asserting a case based on justice, logic and fundamental human rights.

Our people have already voted on this issue, a week before the Quebec referendum of October 1995. Ninety-seven percent of our people voted not to be separated from Canada if the province of Quebec decides to separate from Canada and the Crees.

We have lived in our territory for thousands of years. Our territory was administratively annexed to Quebec only in 1898 and 1912. The government of the province only began to extend its administrative reach into Eeyou Astchee in 1963 – that is correct, 1963.

No other people but the Cree people can decide and determine what our government will be and what affiliation we will have. We cannot be “lumped-in” against our will with all of the other peoples who live in the province of Quebec, and simply passed with the land like cattle in a field. And yet this is what the separatists would have the world believe. This thinking is directly descended from practices and theories of law that – until only recently – held that Indians were inferior beings, not worthy of rights or capable of their exercise.

Well let the truth be told: we Crees have the fundamental right to determine the future of our people and our traditional lands.

So that is our position. A people cannot and should not be forced to be assimilated, or assimilate themselves, with another population. You have

heard me say: "We will not go." I am certain of this. This is our act of self-determination. We cannot be forced.

I want to say that this discussion always disturbs me.

First, our position is often misstated to ask if the Crees have a right to separate from an independent Quebec. Let me be clear: the Crees are not seeking to separate from anyone. We *are* seeking to defend our rights, and to ensure that we do not lose them if Quebec chooses to separate from Canada *and the Crees*.

Second, I am constantly asked, when I assert our position, if the Crees will be violent. This must be made clear, as well: anyone who will force the Cree People, against our collective will, against our right of self-determination and in violation of our basic human rights and fundamental freedoms, will be committing an act of oppression or force *against us*. That act against us will be an act of violence.

The Cree people will defend our rights. We will continue to assert our rights in the courts of law and court on public opinion, through ballots and books, and never with bullets. We will not perpetrate violence. That we will leave to those who have already threatened the use of force against us, those who would attempt to change the existing national constitutional and legal order by stepping outside of the law.

Those who refuse to recognize and respect the democratic institutions of the law and the Constitution, those who refuse to be bound by the authority of the courts; they will be responsible for any violence against us that follows.

As history makes clear, violence is often a natural consequence of the rejection of constitutional order and the denial of human rights. But if there is violence, do not blame the Indians; none of this upheaval and coercion is our proposition. We fully intend, however, to use every peaceful and legitimate means to defend our rights; and we will be fully within our right to do so under the Canadian Constitution and under international law.

When I spoke at the Center for Strategic Studies in Washington, D.C., just after the election of the Parti Québécois in 1994, I described the nationalism of the separatists as "ethnic nationalism," and the double standards of the separatists regarding the rights of the aboriginal peoples as "racially based." There was immediate outrage from the separatist leadership, and it was suggested that I be charged with hate propaganda.

I was accused of insulting Quebec, and accused of calling the separatists racists even though I was very careful to avoid such language. All of this

because we were defending our rights. A year later, when former Premier Parizeau spoke on referendum night, it became obvious to everyone that my analysis in Washington, and in the other places I have spoken, was quite circumspect.

I ask: Why should I have to be on the defensive for defending the rights of the Cree People? Why should I have to answer for the possibility of violence, when it is violence against Cree people that is at issue? Why should I have withstand attacks for drawing attention to discrimination against my people?

The debate – if you can really call it a debate – is about competing rights: The rights of the aboriginal peoples to continue to live where they have lived for thousand of years, and the rights of a post-colonial population, defeated in war by another colonial power, to occupy our territory and force us once again to be subjugated to a new master.

The Crees do not oppose the desire of people to seek independence if that is their decision. Our position is straightforward. Exercise your option if you will and if you legitimately can, but not at the expense of our Aboriginal, treaty, constitutional and other rights. In particular, if you are going to claim the exercise of “democracy,” then do not use force to stamp on the rights of others who would also like to enjoy their basic human rights and fundamental freedoms.

I say this debate disturbs me. I say this because of the separatists’ double-standards. Quebecers will decide, they say; but who does that include? Sometimes the Aboriginal peoples are included, for example when Quebec wants to lay claim to off-shore islands in James and Hudson Bays, but not when commissions are being formed on Quebec’s future.

Quebec rejects the idea of a Canada-wide referendum on its future. Quebec will decide its own future, they say; but if the Crees and Inuit hold our own referenda on our future and our territory, somehow that does not count—no, Quebec will decide “democratically.”

Quebec leaders can travel in the US and Europe, advancing their cause; but when I do so, this is “inflammatory” and “treasonous.”

The Crees have published an entire book: *Sovereign Injustice: The Forcible Inclusion of the Crees in a Sovereign Quebec*, a comprehensive study of our rights and the constitutional and international law. This study demonstrates conclusively that we may remain in Canada if that is our choice. However, these detailed arguments are never discussed by the separatists.

There is not a debate because there is not an exchange of ideas. Arguments come and go. The separatists claim the right of self-determination. When it is shown, however, that the right of self-determination does not include a right of secession, they then assert the international law doctrine of *uti posseditis*. When that right is shown to be inappropriate, they deny the applicability of international law except to rely on the doctrine of "effective control," which is really to say that you can come to sovereign rule by brute force.

This last argument was the essence of the separatists' case as stated to the Supreme Court of Canada in the reference case on Quebec secession. The government of Quebec did not appear before the court in this case; it stated that the matter is a political one, and beyond the jurisdiction of any court, whether a Canadian court or an international one.

The Supreme Court fully accepted neither the federal government's nor the separatists' arguments in this reference case. Importantly, from our perspective, our Aboriginal and treaty rights in this context were affirmed, and the fundamental importance of our arguments was acknowledged.

But in the end, the separatists claim to rest their case on an argument of the exercise of "democracy" and popular will. However, they deny the relevance of our Aboriginal referendums, the clearly expressed will of our people, and reject the authority of the Canadian Constitution and the courts.

As for the arguments we have so carefully advanced regarding Cree rights, they say nothing because they have no answers. They avoid a rigorous debate just as they avoid the courts on questions that do not provide the answers they want. They want a separate Quebec no matter what, and the rights of the Aboriginal peoples are "covered" with the catch-all that we should not worry because they promise that we will be given the same rights in a separate Quebec that we now have in Canada.

With that we are dismissed. All Canada has to do is negotiate that guarantee from an independent Quebec and we can all go home.

However, the Crees do not see it that way.

Not too long ago, the government of Quebec made an historic argument in the Côté case before the Supreme Court of Canada. (Yes, Quebec does go to the Supreme Court of Canada when it wants to oppose the recognition of the rights of Aboriginal peoples.) It attempted to persuade the Supreme Court that Aboriginal rights do not exist anywhere in the whole of Quebec, that section 35 of the Constitution (which guarantees and affirms Aboriginal

rights) does not apply in Quebec.

It attempted to persuade the Supreme Court that Quebec was *terra nullius* (a doctrine based on theories of Aboriginal inferiority), and that there never were any Aboriginal rights recognized in Quebec because it was under the jurisdiction of French civil law and not English common law.

Fortunately, the Supreme Court rejected Quebec's arguments, saying they were discriminatory against us. But in the process Quebec showed what it would likely do with the rights of Aboriginal peoples if it had the opportunity.

The federal government wants to recognize Quebec as a "distinct" or "unique" "society," one with a civil law tradition. We ask: will that mean the end of our common law rights, and effectively the end of our rights under the Constitution? Quite possibly so. Is the federal government willing to take this risk with our Aboriginal rights to meet its "distinct society" promise to Quebec? Quite possibly so. Are there other risks? We think so.

But this leads us to the final question: What is Canada prepared to do to defend our rights, the rights of Aboriginal peoples under the Constitution, as both the government and the Parliament are bound to do?

When we first raised this issue some years ago, there was silence from the federal government. Now there is worse than silence: the federal government appeared before the Supreme Court in the federal reference case on Quebec secession, and argued that our rights — while important — do not count in this lofty context of Quebec separation.

This is a matter for the "senior" levels of government, it would seem. The original peoples of this land, according the arguments of the federal government before the Supreme Court, can be handed between the Crowns once again, like cattle in a field. Once again it is being proposed that we will pass with the land. This is what the federal government has indicated, in so many words, that it intends to allow with respect to the rights of Aboriginal peoples.

In closing, there are those who would have you believe that it is "premature" to raise issues of territory in the present context in Quebec. I reject this argument without hesitation, at least as far as the James Bay Crees and our traditional lands are concerned. At least four times in the last three hundred years — in 1670, in 1870, in 1898, and in 1912 — kings, governments and companies have simply transferred and dealt with us and

our lands, each time without our knowledge or consent. It was simply assumed and stated that we were too primitive and inferior to warrant consideration as a people and a society that owned, occupied and governed our lands.

Then in 1972 the government of Quebec came to our land to flood it for dams, and told us to move aside because Quebec and Canadian law said we were squatters!

Are we Crees to allow this colonial debate about us and our lands to be shaped once again in our absence? This has been a centuries-long squabble between Ottawa and Quebec, and between London and Paris. On the basis of what we now know about what has been going on for more than three hundred years, if we wait until the time is somehow "right" for us to defend our rights, it will be too late. The die for my people will once again be cast. To those who say that it is "premature" for Aboriginal peoples to now assert and defend our legal and constitutional rights, we say: the cost is too great. It is manifested in the misery of our people. We now say, after centuries of experience with those who have ignored our presence, denied our rights, or much worse: never again. We will not wait for the right time, or for an expedient moment to let the world know: we Crees have always been here, and we will not now be forcibly included into an independent Quebec.

As I said at the outset, ours is a case based on fairness, justice, and fundamental human rights. We Crees have a concept that encompasses all of these concepts: for thousands of years, we have used the Cree term *tabitiw ehtotatonanotch*.

I believe that Quebecers and Canadians, and many in the international community, have a deep commitment to the concepts of fairness, justice, and fundamental human rights. *I believe that they can see the double standards, discrimination, inequities and injustice that permeates the policies of the governments of Canada and Quebec in this debate.*

The authors of the various papers in this issue of *Native Studies Review* have examined these and related questions from a number of vantage points. We Crees believe that this debate is critical, because it is only in the context of the absence of debate, that perspectives and points of view that are based on exclusion, denial and domination can prevail.

And we Crees believe that whether these things involving the breakup of a country come to pass or not, that our position based on respect for our fundamental human rights will prevail, because it is just.