Inventing a New Canada

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The James Bay Crees, or Eeyouch as they refer to themselves, have recently taken up the issue of the Province of Quebec's claim to the right to determine whether or not the province will stay within Canada. Their main issue of contention is to ensure that the Eeyou traditional lands not be included in the geographical unit decided upon by Quebecers in a once and future referendum, without their consent.

The Eeyouch's point is that they are the original inhabitants of the territory they call the "People's Land" or "Eeyou Istchee" and therefore have rights as a "people" that are international in character. In spite of actions to the contrary, there are those who contend that the Crees are only claiming such rights in order to preserve the possibility of themselves making a future claim similar to Quebec's claim for independence. There are others who believe that the Crees are federalists trying to defend their rights in Canada at any and all costs. What are the Crees trying to do?

Statements made by the Crees and the consistency of their efforts since the 1970s would lead one to the conclusion that the Crees seek to reinvent Canada. The challenge that they pose for the citizens and governments of Canada is one of relative importance in terms of the ingredients that make up the recipe for the country. What is the importance of the commitments of the Crown to Canada's first peoples? More importantly, perhaps, is what will be the role of First Nations and local populations in the determination of how such issues are framed and decided upon?

L'invention d'un nouveau Canada

Les Cris de la baie James ou les Eeyou comme ils s'appellent ont récemment entrepris la question de la province du Québec disant qu'il a le droit de déterminer s'il restera ou non à l'intérieur du Canada. Les Eeyou veulent s'assurer que leurs terres traditonnelles ne soient pas comprises, sans leur consentement, dans l'unité géographique sur laquelle les Québécois décideront la question de séparation dans un reférendum futur.

Les Eevou avancent qu'ils sont les habitants originels du territoire qu'ils appellent la "Terre des Peuples" ou "Eevou Istchee" et qu'ils ont donc des droits internationaux comme "peuple." Contrairement, il y a ceux qui avancent que les Cris ne font que demander ces droits afin de préserver la possibilité de faire une demande future similaire à la demande du Québec pour l'indépendance. Il y en a d'autres qui croient que les Cris sont fédéralistes essayant de défendre leurs droits au Canada à n'importe quel prix. Ou'est-ce que les Cris essayent de faire?

Des déclarations faites par les Cris et la constance de leurs efforts depuis les années 1970 nous mênerait à la conclusion qu'ils cherchent à réinventer le Canada. Le défi qu'ils lancent aux citoyens et aux gouvernement du Canada se rapporte directement à l'importance relative des ingrédients de la recette du pays. Quelle est l'importance des engagements de la Courronne envers les peuples autochtones du Canada? Possiblement, de plus grande importance sera le rôle des Premières Nations et des populations locales dans la détermination et la résolution de telles questions.

I

The Executive Director of the Grand Council of the Crees was asked by a Quebecois journalist in the middle of the last referendum debate what the Cree territory would be called if it remained in Canada and Quebec separated. He replied that it would be called "Quebec," since this was all that would be left of the province if the rest left. "Well," said the journalist, "what would the new country of Quebec be called?" "Nouveau Quebec," he replied, using the old name that Quebec used to use in reference to the Cree territory, Eeyou Istchee, and before it decided to francize the territory by calling it "Radissonie." The latter of course was a reference to Pierre Radisson, who led the English interests to James Bay and who was referred to in the 17th century as a traitor to French interests in Nouveau France. The Crees are unwilling to submerge their interests in the political agenda of the province of Quebec. To the extent that the claim of Quebec is based on the status of the Quebecois as a people, in the sense of international law, the Crees have a competing claim as the original people of their territory. However, the Crees, as with other Aboriginal peoples in Canada also see themselves as competing with and having been cheated out of land and resources by Canada and by the provinces.

To better understand the interest of Aboriginal peoples in the debate concerning the status of Quebec it is helpful to look beyond the debate of peoples and to certain aspects of Aboriginal policy within Canada. In the case at hand it is important to understand how this policy development has impacted the Crees and the Inuit of Northern Quebec.²

Prior to 1972, Aboriginal rights were not recognized as being particularly relevant to questions of the development of natural resources in Canada. The treaties had been signed but the settlement of western Canada and the creep of industrialization into the hinterland had not yet faced a significant challenge from Aboriginal peoples in Canada. Ken Coates commented on the situation as follows:

Treaties were signed, particularly the Robinson Treaties in Ontario and the Numbered Treaties that spanned the region from James Bay to the Mackenzie River valley, but these originated primarily in response to the desire by non-native settlers that all impediments to development be cleared away.³

Even where industrial development occurred outside of treatied lands, such as in British Columbia, the North Shore of Quebec, Labrador and in the Far North, Aboriginal peoples had yet to enforce their rights in such a way as to lead to an impasse in the designs of developers or promoters of development. Nor had any positive action been taken by governments to recognize their rights against those of promoters.

In 1972 the Crees launched a court action to oppose the start of hydroelectric development in the Eastern James Bay territory, or "Eeyou Istchee," as the Crees call it. I will not repeat the often-cited history of the Cree court case and subsequent negotiations that led to the signing of the James Bay and Northern Quebec Agreement in 1975. What needs to be said here, is that the James Bay and Northern Quebec Agreement was a Comprehensive Agreement signed as an out-of-court settlement to the Cree and Northern Quebec Inuit legal challenge to the La Grande Hydro-Electric Complex. The Agreement contains chapters on land, membership, local government, regional government, education, health, environmental protection, police and justice services, economic development and community development, as well as income security for hunters, fishermen and trappers. The James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement patterned after the JBNQA in many respects were the last truly comprehensive agreements. However the Northern Flood Agreement

(1977), signed within the context of an existing treaty, contains guarantees against poverty and measures for community development similar to the James Bay and Northern Quebec Agreement (used to contain, for the four bands in Manitoba have signed the so called "implementation agreements" that are in fact treaty extinguishment agreements).

The next major agreement, the Inuvialuit Agreement (1984), focused more closely on economic development, environmental protection, land and compensation. In the mid-1980s the federal government revised its comprehensive claims policy in the curiously named document "In All Fairness." The new policy, without specifically announcing it, removed social programs from the matters that could be negotiated and focused on land, economic development and land-use related issues. The new policy ended the possibility of treaty-recognized specific Aboriginal rights in respect to education, health, income security, police and justice services, local and regional government, etc. In other cases Canada has dealt with some of these through the self-government program of the Department of Indian Affairs, thus avoiding the constitutional protections for the specific arrangements that would have arisen had these been included in treaties and leaving the discretion of the type of services up to future federal policy development.

II

The main negotiation issues on the government table at that time involved the Inuvialuit and Dene-Metis claim in the Northwest Territories as well as the Nunavut negotiations. For those Aboriginal peoples in the Northwest Territories the removal of social services from the realm of negotiable items would not have had as severe an impact as it would in negotiations conducted in a provincial framework. In the Northwest Territories the Aboriginal peoples had significant representation in the Territorial Legislature. In other words, the control over social services that they could not get under the treaty negotiations could be obtained, at least for the foreseeable future through Aboriginal preponderance and participation in the governance of the Territory.

In the case of the Nunavut-Eastern Northwest Territories negotiations, opting for non-ethnic local and regional government structures would allow for the development of systems of government over the whole Territory with de facto if not de jure majority Inuit control. The Nunavut model is patterned after the Northern Quebec Inuit, or Nunavik model set out in the

James Bay and Northern Quebec Agreement. In both cases non-ethnic public government and a regime of non-ethnic social services are established.

Canadian liberal democracy has great problems in accepting the legitimacy of Aboriginal based governmental structures⁶. In the James Bay and Northern Quebec Agreement (1975) the Nunavik (Northern Quebec) Inuit opted for a non-ethnic public government combined with Inuit operated landholding and compensation management corporations as well as dispositions related to hunting, fishing and trapping rights. Special Inuit protections in regard to education and health were also secured so their regime is in some senses a mix of the ethnic-based Cree regime and the Nunavut public government regime though these lack constitutional protection.

On the one hand (in the provincial context) the lifting of social services from the realm of issues to be negotiated under the treaty makes such services much more dependant upon general funding policies over which Aboriginal peoples exert minimal influence because they are at best very minor players in provincial and federal politics. On the other hand, it removes any possibility for special constitutional guarantees with respect to the nature of such services and how they are to be managed. Such guarantees are often essential to the protection of Aboriginal cultures and communities. Among other things it is this guarantee that the Crees got through the constitutionalization in 1982 of the James Bay and Northern Quebec Agreement – a constitutionally protected social services regime for the Cree delivery of social services.

While article 2.2 in the 1975 James Bay and Northern Quebec Agreement purports to extinguish the Crees rights in and to lands, Cree rights with respect to other issues are left intact. A major difference between the Crees and others who have signed land claim agreements in recent years is that the section on education (and by extension perhaps all sections of the James Bay and Northern Quebec Agreement on social issues) has recently been construed by the courts as an expression of original Cree sovereignty. Or, as Judge Croteau in his decision concerning the Cree School Board expressed it: "the Cree right to the evolution of their own society."

While the Nunavut, Nunavik and Inuvialuit models are consistent with public government, the Cree regime under the James Bay and Northern Quebec Agreement is based upon the recognition of Cree right to control and operate the Cree School Board, the Cree Board of Health and Social Services, the Cree Income Security Board, Cree Local Government and

Regional Government and as well as the Cree right to participate and have special status in environmental protection, in economic development over the whole territory and in the administration and management of the territory. The latter are not recognized as exclusive rights because the Crees exercise them as Crees and not just as citizens of the province of Quebec and Canada. Neither Canada nor Quebec accept this fact in their public policy. At every turn both governments have taken whatever opportunities available to minimize and oppose the recognition of these collective rights especially in as much as they impinge on the parts of Eeyou Istchee beyond the limits of the reserve or Category 1 lands.

Ш

In the case of Canada, the legislative base with which the state deals with the Aboriginal peoples in the provinces is still primarily the Indian Act. However, even in those self-government acts which have gone beyond the Indian Act, for example the Cree-Naskapi (of Quebec) Act and the Sechelt Act, the collectivity recognized by the government of Canada never goes beyond the level of the community. Echoing Canada's 20th century restructuring of Canada-Aboriginal relations, many of the Aboriginal leaders in Canada refer to each of the more than 600 Aboriginal communities or "bands" as they are called under the Indian Act, as a First Nation. This is done at the expense of the large culturally and historically derived collectivities, such as the Algonquins, the Innuch or the Mohawks. Such reference reflects the idea that the band, the creation of the Indian Act, is the primary point of reference in Aboriginal politics. This sometimes creates division within larger political formations when the basis for local empowerment, stemming from the Indian Act, is seen as contradictory to the will of the larger political unit.

The Crees under the James Bay and Northern Quebec Agreement came together as the Grand Council of the Crees and created the Cree Regional Authority, the Cree School Board, Cree Board of Health and Social Services and the Income Security Board. Canada, however, recognizes only the individual Cree Bands under the federal Cree-Naskapi (of Quebec) Act. While political relations with Canada are conducted by the Grand Council of the Crees, Canada itself has not accepted the fact that the Grand Council signed the James Bay and Northern Quebec Agreement is a sufficient legislative basis for guiding its relationship with the Crees. An important consequence of this for Canada is that relations with the Crees almost

always start with the general policies applied to bands across Canada under the Indian Act. This ignores the special treaty relationship established under the Agreement. As a result, the specific obligations of Canada to the Crees tend to be continually left to one side or forgotten as exceptions to existing policy. When it comes to implementing the 1975 Agreement, officials argue with the Crees on by piece by piece basis over elements of general policy, trying to apply these rather than modifying the policy or writing new policy, as promised in 1975, to take into account prior treaty commitments.

The jury is "still out" about whether the model of social services and public government represented by the Crees, which is based upon the status of the Crees as a people, or whether that which has been developed with respect to the Inuit, based upon a model of public government, is going to be more successful. Certainly the Inuit model could not be implemented with the Crees, since the Crees would be outvoted in the southern part of their territory. They would lose more control of the ability to protect their cultural and linguistic rights and would likely not have even the as-of-yet-unfulfilled promise that they obtained under the Agreement, that development of the territory be protective of Cree traditional rights and inclusive of Cree society.

IV

If one examines the Inuit situation in Northern Quebec and the Northwest Territories it appears that in at least certain respects they have a challenge in becoming empowered at a community level and as a people. It is difficult to untangle the web of causality but one does wonder to what degree present problems in Inuit society are related to political developments that challenge the Inuit capacity to assume control through participation. The machinery of government requires technical support that is presently often provided by non-Inuit and may only gradually be taken over by the Inuit. In the Cree territory, rates of suicide, while still high in terms of Canadian averages, are lower than those in most Canadian Aboriginal communities and certainly lower than the rates in the Inuit community. 8 The Crees have become highly politicized and experienced in Quebec politics as a result of hydroelectric development issues and the question of Quebec separation. This has led to a high degree of interest in the Cree communities in political and public policy matters at the provincial and federal levels. One notes also that in matters of concern to the Inuit community of Northern Quebec it tends to be the Inuit ethnic organization, Makivik Corporation, that is the

"spokesorganization," and not the non-ethnic Kativik Regional Government, which takes a low profile in such matters.

All of this to say that the Kativik/Nunavik and the Nunavut precedents while they maintain a *de facto* strong participation of the Inuit in public government over the whole of their territories also support the confinement of Aboriginal collective rights to smaller areas of land, economic development promoted through compensation funds and certain guarantees in respect of hunting, fishing and trapping. The confinement policies find their origin in the numbered treaties. The Inuit have bet on time being on their side and put their hopes as a people in controlling public government with their numbers?. The Crees in 1975 attempted to break with this treaty tradition by seeking rights to participate in territorial development and governance through, not in spite of, their collective rights as a people.

The Aboriginal challenge for the mid-north across Canada is how to increase Aboriginal involvement in the development of natural resources and at the same time protect their cultural richness and diversity. Natural resource development is both the largest source of employment and producer of revenues in the sub-Arctic.

V

The 1975 James Bay and Northern Quebec Agreement was an experiment which, in regard to the Cree involvement in territorial development and protection of traditional land use, has, to date, been a failure. The Cree leadership often cite the promise of the Agreement as presenting Crees with the choice of pursuing the traditional way of life or of seeking salaried employment or entrepreneurial opportunity anywhere in the Traditional Territory. However, the first twenty years of the James Bay and Northern Quebec Agreement largely preoccupied the Crees with getting sufficient funding in place to allow the Cree School Board and the Cree Health Board to provide the services promised under the Agreement. In addition, the battle involved obtaining legislation, funding and infrastructure to make local government possible. This work continues today, where, among other problems, the Crees still lack the means to provide adequate housing for approximately a third of Cree family units (or something over 1,000 families). The issue of the recognition of Cree government on a territorial level and issues concerning land planning and environmental and social protection also remain to be resolved. If one looks at Cree society today (1998-99) one sees that the average family income is in the neighbourhood

of\$35,000 per/year, that approximately one-third of the Crees are employed in the public service and government sector, another third are primarily pursuing traditional activities on the land, and the remaining third are either unemployment or underemployed.¹⁰

The Crees have chosen to pursue economic development largely through quasi-Cree public corporations. Most of the economic ventures in the community and at the regional level are either by band corporations or operated by the Cree holding company. The corporations under the holding company have as their corporate goals to organize and improve services offered to and available in the Cree communities, to provide Cree employment opportunities and to pursue a profit. There has been very modest growth of a Cree private sector.

In part, the present economic development mix in the Cree communities is due to the scarcity of capital available to Cree individuals. It is also due to the fact that present opportunities in the Cree public service and the Cree Crown corporations take up most of the best Cree graduates from post-secondary institutions. The limited availability of trained and especially experienced expertise in the Cree communities is a constraint on development. If we examine what is happening in Eeyou Istchee, the territory beyond the communities, we see that the Crees are not integrating very well into development. Fewer than 50 Crees benefit from the 15,000 jobs created in the forest sector on Eeyou Istchee. Less than five Crees are employed at any one time on a permanent basis by Hydro-Quebec, part of the 750-strong workforce required to operate and maintain the La Grande Complex. Only one of the many mines on the Cree territory employs any significant number of Crees.

In the 1975 Agreement it was foreseen that the Crees would have certain priorities for employment and in obtaining contracts in development activity on their territory. Some contracts were provided on a preferential basis to the Crees during the construction of the hydroelectric complex. However, it has become evident to most Crees that the mega hydroelectric projects are too destructive of the natural environment and Cree society to be a viable development option. Hydroelectricity has not created long-term employment opportunities for Crees. Section 22 in the Agreement deals with the Social and Environmental Impact Review of proposed development projects. It sets out a framework for the creation of social and environmental policies to guide the review and permitting of proposed projects on the territory. The regime was to function to protect and elaborate the Cree rights set out in all

sections of the 1975 Agreement. Since 1975 both Canada and Quebec have acted to ensure that the regime established by the Agreement does not operate in this way. As a result, Quebec and Canada have never accepted Cree involvement in the development of the territory as an important goal. The promotion and protection of the Crees as an ethnic and political force promised in the 1975 Agreement has not been achieved and has been fought by governments every step of the way.

In addition to the policy development called for in the environmental and social protection regime (section 22 of the Agreement), section 28 on community and economic development calls for new specifically adapted economic development policies for the Crees. These, too, have failed because Canada did not set up the necessary structures and Quebec, under the newly elected separatist government in 1978, refused to co-operate in a process to enhance the Cree presence in economic development on the territory. Quebec in fact also refused to respect its Agreement commitments in regards to the Crees on Category I (Cree community) lands because they were federal in nature.

There are a variety of things that could have been done. Capital could have been made available to promote the development of a Cree private sector both in and outside of Cree category I lands. Training programs could have been developed targeting specific employment and entrepreneurial opportunities being created on the territory. Promised regulations in respect to employment and contract priorities could have been implemented. A portion of the revenues produced by development activity on the territory could have been reinvested in the development of the infrastructure and made available as Cree venture capital required to promote Cree involvement in the development of the territory. Entrepreneurs on the territory could have been encouraged and to some degree obliged to adopt employment targets and to work with the Cree government to establish means to attract Crees into this type of employment.12 The fact remains that while the Crees represent approximately one-third of the population in the southern part of the territory, they represent only 5% of those employed in the territorial development. In the northern part of the territory where the Crees represent three-quarters of the permanent and non-permanent residents, they represent less then one percent of the workforce in the resource development sector. However, the Crees do continue to occupy one hundred percent of the territory in pursuit of their traditional activities.

VI

Why, then, you might ask, do the Crees take it upon themselves to become players in the national debate on Quebec separation? The answer is of course not simple. There is the historical link between the Crees and English-speaking Canada through ties with Rupert's Land and the Hudson's Bay Company. While the Territory was transferred to Canada in 1870, in 1972 there were still Cree descendants of the Orkney Island and Scottish Company employees who spoke English with an Orkney Island-Scottish accent but who had never seen the other side of the ocean. Moreover, the Crees were influenced by the Baptist and Anglican Churches, and the Cree system of writing was developed, at least initially, as part of Christian studies. Moreover, the Cree people who went through the residential schools operated by the Anglican Church and the Department of Indian and Northern Affairs learned English. A minority attended the French Residential School in Fort George. But the largest number of Cree youth went through the English school system largely based in Ontario and English is the predominant language used by the leadership today (other than the Cree language). In spite of this, the residential system was traumatic and if the debate at the Language and Culture Conference held by the Cree School Board in November 1997 is any indication, the sentiment today is that this experience was a very negative one, not to be repeated with future generations.

However, the history of direct relations with English-speaking Canada cannot fully explain the present Cree strategy and concerns in respect to the independence of Quebec. The fact is that the momentum of the legal regime whereby Aboriginal and treaty rights are recognized and protected and the legal precedents that continue to be established in the Canadian courts, as inadequate as they are to Aboriginal peoples, still provide a necessary context and a basis for future developments. The direct involvement of Aboriginal peoples in the constitutional discussions at the time of the Charlottetown Accord was an important step in providing assurance to the Aboriginal community that their concerns would be heard in Canada. Both the backdrop of the developing legal context and the expressed political will for further involvement as well as inclusion in debate on the future of Aboriginal-Canada relations go hand in hand. The 1975 Agreement is seen by the Crees as an as-of-yet unfulfilled promise of participation in Territorial development and recognition as a people.

Even the possibility of continuing the present slow process of legal

recognition would amount to no more than a political promise in the context of separation. There are no assurances that Quebec could now provide that could not be reversed by the leaders of the New Republic after it is constituted. Moreover, how would the Crees and their interests in the full extent of their traditional lands fit into the negotiation priorities of Canada, if the day came that Canada negotiated the terms of separation? There would be too many uncertainties. Neither government inspires confidence in any separation scenario.

For instance, would commercial interests and pressures override the strength of Canada's fiduciary obligation to the Crees which, to date has been much more in evidence in its breach than in its fulfilment? How would Cree interests be weighed in the Quebec independence negotiations, given the pandering to provincial interests that has characterized recent history in respect to adult training, environment, and economic development to give just a few examples? It is in large part for these strategic reasons that the Crees go back to first principles in the debate over Quebec. Who has lived on Eevou Istchee since time immemorial and continues to occupy the territory? If the 1975 Agreement with the Crees was signed in a federal context and was subsequently afforded constitutional protection, will it not be dissolved and cease to be valid if one of the main parties to it, the province of Ouebec, withdraws? In spite of the Canadian government's historic refusal to acknowledge Aboriginal title to their original territories and the resources on them, would ownership not revert to the original inhabitants if Quebec successfully separates?

Will there be a need for a new relationship between the Crees and the government of Canada or barring that, between the Crees and the New Republic? How will Cree international rights be observed and respected by Canada, the so-called New Republic, as well as the international community? For these questions to be of importance beyond the borders of Eeyou Istchee, the Crees will have to continue to be players on the national and international levels. The less they participate on these levels, the more they risk cultural and social extinction as a distinct people in either the Canadian state or a new Quebec Republic.

Notes

- I Personal communication with Mr. B. Namagoose
- 2 See the report of the Royal Commission on Aboriginal Peoples: "Canada's Fiduciary Obligation to Aboriginal Peoples in the Context of Accession to Sovereignty by Quebee" for a discussion of the legal context.

- 3 Aboriginal Land Claims in Canada, A Regional Perspective; see "Introduction," p.1
- 4 Such discussions are provided in "Chief" by Roy McGregor, and also in Morantz 1992.
- 5 See Canada (1981), In All Fairness, A Native Claims Policy," where the focus in on claim settlements not diminishing access to normal programs and not on specially crafted programs although it mentions on page 29, without commenting on the JBNQA, the Cree and Inuit control over: "education, social and economic benefits."
- 6 See Menno Boldt, Surviving as Indians, where he states on page 84: "By imposing the western-liberal principle of individual rights, the governments of Canada can legally void most problematic Indian rights and claims."
- 7 See the Canada (1982), Review of the Implementation of the James Bay and Northern Quebec Agreement, for discussion of this problem from the point of view of the Government. Little has changed since in resolving this basic problem.
- 8 See the 1998 report of the Cree Board of Health and Social Services report on suicide.
- 9 It is interesting that Governor General Romeo Leblanc in his speech on the creation of Nunavut seemed to have ignored this non-ethnic aspect of Nunavut when he stated: "You have managed to turn a lands-claim agreement into a territory. You have elected a government to manage your affairs. You have taken control of your destiny. The peaceful establishment of Nunavut provides a model of co-operation to the rest of Canada, and to the world. "Aboriginal culture pays great respect to elders. But may I add that in a sense, all Aboriginal people are elders to the rest of us. You were here first. You first gained the wisdom of this land. Today in Nunavut, Inuit are again breaking a new path. Once again, the rest of us place our trust in your knowledge and your judgment. And may the new territory always reflect your ancient traditions of generosity."
- 10 Report by Norman Hawkins (1994), Cree Social and Economic Conditions Report.
- 11 Quebec, Letter from Francois Levesque of the Quebec Government to the Cree Regional Authority.
- 12 Inmet Mining's "Troilus Project" has in fact implemented a Cree employment target of 25% of its workforce. But it is the only example of this. Hydro Quebec has been unwilling to implement these provisions.

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