

Menno Boldt and J. Anthony Long editors: *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights*. Toronto: University of Toronto Press, 1985. 406 pages.

This excellent anthology brings together twenty-three papers reflecting the views of noted scholars, government leaders and representatives of Aboriginal people's organizations on a spectrum of issues including the constitutional position and entitlements of Aboriginal peoples, Aboriginal and land rights, semantic or definitional problems, and the development of self-governing institutions for descendants of the continent's first inhabitants.

In a succinct but wide-ranging introduction, the editors (Professor Boldt is a member of the sociology department and Professor Long is a member of the political science department at the University of Lethbridge) place the contributions in the appropriate historical context and review recent innovations in Aboriginal policy.

The editors note that the Constitution Act, 1982, defined "aboriginal peoples" in a formal sense to include Indians, Metis and Inuit, with Metis being so designated for the first time. Indians are divided into 323,782 status and some 75,000 non-status persons, with many of the former category living in 577 bands across Canada. Those in the non-status classification have lost their right to be registered ("registration" is the hallmark of "status" Indians) through such causes as voluntary renunciation, compulsory enfranchisement, or simply the laxity of public officials in maintaining a proper "registry." Some 25,000 Inuit live north of the tree line which extends from the port of Churchill to the MacKenzie Delta. The 1981 census fixes the Metis population at just over 98,000, but this figure is disputed by the Native Council of Canada which estimates the combined number of Metis and non-status Indians at about one million.

One of the great catalysts of Indian self-awareness, according to the editors, was the Trudeau government's White

Paper of 1969. The object of the proposed new policy was to integrate Indians fully and equally into the larger society. This would be achieved by repealing the Indian Act, abolishing "status," eliminating the Indian Affairs Department and extending a wide array of provincial social services to Indians. The immediate and vocal opposition by Indian leaders, the editors observed, was animated by the realization that the announced policy was "... a subterfuge for dispossessing Indian peoples of their lands and aboriginal rights, with the ultimate goal being the cultural genocide of Indians" (p. 8).

The 1969 "White Paper" ushered in a new era of Aboriginal militancy, with a number of organizations developing such as the Assembly of First Nations, the Inuit Committee on National Issues, and the Native Council of Canada. There was also an increasing resort to the courts to vindicate Aboriginal rights. The 1973 Calder decision, although representing a technical loss for the Nishga people, actually acknowledged the existence of Aboriginal title, in principle, and led to the establishment in 1974 of the Native Claims Office in Indian Affairs. Many Indians and Aboriginal peoples distrusted the patriation process in 1980-82, because in the elitist process of constitution-making they perceived themselves to be relegated to the status of a "minority group" or part of a complex multicultural mosaic, rather than affirmed as one of the founding peoples of the country. Once "existing aboriginal rights" were entrenched, however, and the initial constitutional amendments relating to Aboriginal peoples were promulgated on June 21, 1984, a new phase of giving deeper substantive meaning to abstract constitutional terms began.

In her article on "Federal Difficulties with Aboriginal Rights," Sally Weaver encompasses much of the problem in a few well-chosen words: "As a political symbol, the issue of aboriginal rights has what anthropologists call a 'multivalent' quality: that is, the symbol has many different layers of meanings depending on the speaker, the context of its use, and the time at which it is evoked" (pp. 140-141). Although Europeans and others often classify them generically, Indian

peoples are as diverse as the inhabitants of any far-flung continent. They have widely differing languages, laws, traditions and social customs. They regard themselves as Blood, Cree, Dogrib or Mohawk rather than as Indians *per se*. On a higher level of generality, however, they may recognize a uniform interest in negotiating with governments in unison because in many cases their political, economic and social problems are similar and strength in the bargaining process resides in numbers.

As Sally Weaver correctly emphasizes, however, 'aboriginal rights' is complex and multivalent, and may differ for different groupings. It would not necessarily have the same content for Indians with different backgrounds and traditions, or for Metis and Inuit. One Indian leader even suggested to me that 'Aboriginal rights' might have to be defined separately, perhaps in different schedules for different groups, but with all schedules having 'constitutional' force, so that the variety of Aboriginal cultures could be recognized. This might be too cumbersome and awkward. A good constitutional definition is more simple. Multivalence might better be enshrined in more general terms, allowing different peoples a "margin of appreciation" or the capacity to adapt the definition of Aboriginal rights to their respective needs within limits, under delegated powers.

An important insight in Brian Slattery's incisive article on "The Hidden Constitution" is that the Royal Proclamation of 1763 did not merely apply to lands in the hinterland of the European-settled area, but that the significant words "or upon any other lands" would embrace unceded Indian lands anywhere, which were protected from speculation or spoliation by the injunction that they could be surrendered only communally to the Crown. He rightly stresses, also, that 'aboriginal rights' extends not only to property rights but to customary laws and governmental institutions which were not automatically arrested when the Crown acquired sovereignty (pp. 121-123).

In canvassing "Metis Aboriginal Rights," Thomas Flanagan lays emphasis on the epistemological difficulties. Who are the

Metis, and what are their rights? "Metis aboriginal rights," he declares, "are a kind of word magic. They conferred no lasting benefit on the Metis when they were invoked in the nineteenth century, nor will they be of any real help today" (p. 245). With respect, this is too pessimistic and obscurantist a viewpoint. Adopting Sally Weaver's "multivalent" approach, Metis Aboriginal rights would embrace rights parallel to those of other Aboriginal peoples which were appropriate to Metis society. They would extend to land, self-government and, in some instances, customary law, although they would not be the identical rights enjoyed by other 'peoples.' The community at St. Laurent over which Gabriel Dumont presided would be a model.

In his piece on "The Inuit Perspective," Peter Ittinuar itemizes as an essential element in Inuit Aboriginal rights: "our relationship to the land and all it provides" (p. 49). Hunting and fishing rights and self-government in "Nunavat," north of the tree line, and in the Arctic Archipelago, are also ingredients of Inuit Aboriginal entitlement. Shared decision-making powers, more of a consensus nature than the Westminster adversary or "confrontational" system, is an Inuit inheritance, especially as it relates to environmental protection and communal economic development.

Recent constitutional conferences envisaged by sec. 37 of the Constitution Act, 1982, have centered largely, but not exclusively, on the problems and prospects of establishing Aboriginal self-government. Prime Ministers Trudeau and Mulroney have successively convoked conferences to develop constitutional modalities of self-government. In his article on the recent Penner Report, Paul Tennant remains moderately hopeful, despite some opposition and obstacles, that a significant degree of Indian self-government can be achieved. During the waning days of the last Liberal government, the Honorable John Munro introduced model legislation for such a purpose in Bill C-52, which was introduced in the House of Commons on 27 June, 1984, too late for effective legislative action.

The procedure for establishing self-government, as described by Professor Tennant, would be as follows: "An Indian

nation, having drawn up its own constitution and having received official recognition from a federally appointed panel, would possess delegated powers comparable to those normally held by Canadian municipal councils. With specific cabinet approval in each case, additional and broader powers not unlike those envisioned in comprehensive land claim settlements could be delegated" (p. 331). While this is too modest a proposal to satisfy some of the more ambitious proponents of self-government, it has an attractive flexibility and the incremental feature could gradually, and pragmatically, expand the ambit of Indian government.

The book also contains opening statements to First Ministers' conferences by Prime Ministers Trudeau and Mulroney, an essay on "Aboriginal Rights in the Constitutional Process" by former Saskatchewan Attorney-General Roy Romanow, and a useful appendix of documents ranging from the Royal Proclamation of 1763 to a list of constitutional proposals at the 1985 First Minister's Conference. This is a rightly-varied and useful book for all students of Aboriginal rights.

W.H. McConnell

Bradford W. Morse, editor: *Aboriginal Peoples and the Law. Indian, Metis and Inuit Rights in Canada.* Ottawa: Carleton University Press, 1985. 794 pages.

A whole is often more than the sum of its parts. Native law, for example, is more than just law with Native people as litigants. It is, in the words of Chief Justice Brian Dickson of the Supreme Court of Canada, "woven with history, legend, politics and moral obligations."¹ It is also bound up with the survival of a people. This book is less than the sum of its parts. While the contributions are generally of a high quality, unfortunately, their nature varies and the book as a whole fails to gel.