

Our Land: Native Rights in Canada by Don Purich. Toronto: James Lorimer, 1986. Pp. 252.

The recent refusal of the first ministers to entrench a clear statement concerning aboriginal rights and their nature in the constitutional amendments of 1987 lends importance to any work seeking to expound native rights in Canada. In his *Our Land*, the Director of the University of Saskatchewan's Native Law Centre has given us what is primarily a bird's eye view of the historical treatment of Natives, together with an outline of the land problem dating from the beginnings of European settlement and progressing through the development of the treaties and the reserves, until we are presented with a rather brief statement of the current position.

As with so many protagonists of aboriginal peoples, the author tends to write as if the Canadian experience was unique. One might inquire, for example, whether the Anglo-Indians, whose position has to some extent been entrenched in the Indian Constitution, would accept without question that the "Métis of western Canada are unique; there are almost no other mixed-blood populations in the world who have developed a political and cultural consciousness" (p. 155), and what of the Coloureds in South Africa? Further, he tends to ignore the fact that the white settlers and the administrators sent out from England were applying in North America the same sort of policy that was being pursued by colonial powers everywhere and which, while it undoubtedly ignored the rights of the aboriginal populations — of course in the transfer from the Hudson's Bay Company to the Crown "none of the Indian or Métis inhabitants of the west were consulted" (p. 81), for even today plebiscites are more an exception than the rule — was fully in accord with the then-acceptable concepts of international law regarding settlement, discovery, occupation and conquest. Perhaps it is this "Canadocentricity" that leads the author to assert that the Hudson's Bay Company is the "best-known" of the British trading companies" (p. 44). Can the East India Company be dismissed quite so peremptorily?

There is a basic difficulty in examining the practice of previous centuries in the light of developments and ideas which are prevalent today. This may be seen in the criticism of those who condemn the Natives for over-hunting (p. 26), especially as the problem of conservation and the question of Canada's responsibilities under international conventions are not discussed. It may be questioned whether "today, federal legislation such as the Migratory Birds Convention Act would be found to be non-applicable to Indians who have received a guarantee of hunting and fishing rights" as is asserted on page 196. What is the ordinary reader to understand by the statement that "multiculturalism is now constitutionally entrenched" (p. 213)? Any discussion of aboriginal rights should at least consider whether a modern country with a growing non-Native population can really

be bound by what the majority of the population may well consider outdated and sentimental attitudes, and do we really want to see the development of some sort of aboriginal provinces (p. 217), whether based on reserve boundaries or not? This proposal has an unholy resemblance to South Africa's black homelands! While it may be moral and ideal to seek to preserve the way of life of particular groups, one cannot help questioning whether any country can really afford to allow a segment of its people to "contract out" of the mainstream.

The author tends to agree that the "treaties" were not what international law considers as such (chapter 4, especially pp. 111-12), but he does not explain the legal character or significance of these documents. The word itself had a number of meanings in the real property and contract law of that time and many would argue that they were a type of contract which, when taken over by the Crown, depended on nothing more substantial than royal grace. It is when discussing legal issues that most reservations arise in relation to *Our Land*. It is submitted that the analysis of Vitoria's views on Indian rights (pp. 41-43) is somewhat one-sided. In view of the non-state character of the aboriginal peoples it does not tell us very much by stating that the Indians "can always lobby in the international forums using such avenues as the United Nations" (p. 63). One is inclined to ask how and to what effect, despite the decision of the Human Rights Committee in the *Lovelace* case (pp. 137, 203-4), which Canada could well have ignored without any adverse effect upon itself. In fact, there were already indications that this provision of the Indian Act was likely to be reviewed. Moreover, there was nothing unique in the position of the Indian woman marrying out, nor the white woman marrying in. The author comments that "the concept of a woman's status being determined by her husband's continued until 1985" (p. 136). Surely this has been the rule in nearly all common law countries until comparatively recently, and still prevails in much of the civil law world.

It cannot be denied, as the author points out in relation to Baker Lake, that much of aboriginal discontent reflects "a classic conflict between development and a centuries-old life style" (p. 57). But this situation is found wherever there are multiethnic populations. Does it need special legislation or constitutional entrenchment to make an adjustment possible? Most ethnic groups find a way to preserve their culture and background while adjusting to the needs of the country in which they dwell. Most, in the case of Canada, regard themselves as Canadians. They might find it difficult to accept that, merely because they are governed by the same laws as those around them, they "are *citizens* [italics added] of the province that they live in" (p. 68).

There is much to criticize in this little book, including a modern bias that is seen in the comment that "Government treaty negotiators kept detailed notes (often made by a secretary — typically male. . .) [and] the

government negotiator . . . may have a militia unit with him, in full dress uniform (lots of red). . . ." (pp. 97-98). One might ask what arrangement the author might have found more acceptable, given the period of which he was writing. However, *Our Land* does provide a short account that may help some to begin to understand a complex Canadian problem.

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Indian Education in Canada Volume 2: The Challenge edited by Jean Barman, Yvonne Hébert and Don McCaskill. Vancouver: University of British Columbia Press, 1987. Pp. 256.

This book is the second of a two-volume series dealing with the education experiences of Indian peoples in Canada. Whereas the first volume focusses on the history of Indian education, the present volume represents a collection of twelve essays relating to recent attempts by Indian people to control their own educational institutions in keeping with the general goal of Indian self-government. The content of the papers ranges from general surveys to specific case studies and statements of principle, and among other things, includes discussions of Mi'kmaq literary, Indian cultural survival schools, the Cree educational system stemming from the James Bay Agreement, and the Sacred Circle Project in Edmonton. As the preface declares, "Almost all of the essays are original, appearing in print for the first time; and, as a group, they take an activist stance favouring Indian control of Indian education."

What is important about the book is that it offers insight into what has been happening in the field of education since 1972 when First Nations initially began to articulate publicly their demand for some say in the education of their children. Its specific contribution is that it goes beyond what is generally known about the advent of Indian control of Indian education and details some of the ferment and diversity of educational experimentation that has taken place over the past fifteen years. A recurring theme is the similarity of experiences which gave rise to educational reform in certain segments of the Indian community: the willful neglect of education by Indian Affairs, the abiding determination of Indian parents to take control of their own educational institutions, and the birth of new and often radical departures from mainstream education. Commonly, the goal of these departures is a bicultural education through which Indian children, steeped in their own language and traditions and yet trained to participate fully in the larger Canadian community, can enjoy the best of what Indian and Canadian societies have to offer. For that reason, many of the educational schemes under Indian control have a significant cross-cultural component targeted not only at Indian students but at non-Native society as well.