

**DISCOURSE ON INDIGENOUS SELF-DETERMINATION
IN MEXICO AND CANADA AND THE DISPARATE
NOTIONS OF CULTURE, 1992**

by

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ABSTRACT

In 1992, the Governor of Chiapas summoned a public hearing to resolve violent conflict in the highland of Chiapas, Mexico, between local political bosses and evangelical proselytizers. The *Audiencia Publica* in Mexico narrowly focused on the legal status of indigenous cultural self-determination and the content of indigenous culture. In the same year, the Prime Minister of Canada assembled the Royal Commission on Aboriginal Peoples. At the RCAP hearings many First Nations representatives deliberated on the content of aboriginal self-government and indigenous identity. At both of these public forums identity and legal status were negotiated simultaneously, making these public forums sites of cultural production. This paper examines the discourse on indigenous rights and culture at both of these hearings against one another to analyze the different ways in which delegates employed and represented the notion of indigenous culture and/or identity in each context.

Keywords: Indigenous-state relations; Mexico; Canada; Indians; cultural pluralism; law; culture; indigenous identity;

For Amir, thank you for making this journey with me

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INTRODUCTION

On April 22nd 1992, the state government of Chiapas convened a public hearing in San Cristóbal de las Casas to address the violent expulsions of evangelical Protestants at the hands of municipal authorities from the indigenous towns of highland Chiapas. At the hearing, municipal authorities alleged that aggressive evangelical proselytizers and converts posed a threat to the indigenous culture and identity of the highland towns because Protestants condemned many of the indigenous festivals and customs. Hence, municipal authorities reasoned that the expulsion of Protestants were acts of cultural self-defence or self-determination. The critics of the expulsions argued that municipal authorities responsible for the expulsions violated the constitutional rights of the *expulsados* -- such as freedom of religion and the right to personal security.¹ Also, many of the Protestant representatives argued that they were committed to their indigenous identity and community and that they only rejected cultural practices that hindered their personal and economic progress. In the opening remarks of the hearing, the Governor of Chiapas framed the issue of the expulsions as a legal debate. He asserted that while an individual right to freedom of religion is guaranteed in the Mexican constitution, the newly amended Article 4 of the Mexican constitution also protected the right of indigenous communities to cultural self-determination. At the public hearing then, indigenous spokespersons deliberated over what constitutes the legal right of indigenous peoples to self-determination and whether the leaders of Indian communities have the

¹ Christine Kovic, *Mayan Voices For Human Rights: Displaced Catholics in Highland Chiapas* (Austin: University of Texas Press, 2005) p. 93

right to defend their cultural practices, even if it denied the individual rights guaranteed to Mexican citizens. Moreover, as indigenous spokespersons negotiated over what indigenous cultural self-determination is in a legal sense, they also battled over which indigenous cultural practices need to be defended or discarded. Ultimately, notions of indigenous culture informed the legal debate on indigenous cultural self-determination.

On the same day as the public hearing in Mexico, Canada's Royal Commission on Aboriginal Peoples (henceforth RCAP) also commenced their first public hearing in Winnipeg. The mandate of the RCAP was much more extensive than the Congress in Mexico. It was commissioned to investigate the "evolution of the relationship among aboriginal people (Indian, Inuit and Metis), the Canadian government and Canadian society as a whole", the problems that afflicted those relationships and "all issues which it deemed relevant to any or all of the aboriginal peoples of Canada."² The RCAP public hearings were open to all and any aboriginal persons. Among the aboriginal chiefs, politicians and urban activists there were also students, single moms and dads, successful farmers, bus drivers, teachers, monolingual elders who came with a range of recommendations and grievances on issues that varied from aboriginal health, education, spirituality to aboriginal rights and treaties. One of the issues that numerous First Nations spokespersons placed at the forefront of their concerns was the constitutional right of aboriginal bands to self-government. At the RCAP hearings in 1992, commissioners and First Nation witnesses who sought to outline what constituted aboriginal right to self-government referred to the historical and legal origins of aboriginal self-government. At the same time, many First Nation delegates asserted that

² Canada. Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples V.1*, (Ottawa: The Commission, 1996) p.699-702

the importance of aboriginal self-government was to revive and protect distinct aboriginal identity and culture. In this way many First Nation witnesses linked aboriginal self-government to notions of indigenous identity and culture.

After the public hearing in Mexico, the Chiapas State Congress published the speeches presented at the *Audiencia Publica* in a 300 page *Memoria*. The RCAP held 178 days of public hearings over 2 years, which resulted in 76,000 pages of transcripts. Both of these texts record moments of public dialogue where indigenous representatives and the state debated over the content of indigenous rights. The *Audiencia Publica* in Mexico was only 2 days long and narrowly focused on the legal status of the expulsions and indigenous cultural self-determination. Since the RCAP was a more extensive inquiry on the relationships between aboriginal people, the Canadian government and Canadian society as a whole, I limit my focus to the testimonies of First Nations representatives who deliberated on aboriginal self-government and/or indigenous identity from the initial round hearings in the summer of 1992. In both contexts indigenous spokespersons negotiated over what constitutes indigenous right to self-determination. But, while delegates negotiated with the state on indigenous rights in a legal sense, they also linked indigenous rights to notions of identity and culture. At both of these public forums identity and legal status were negotiated simultaneously, making these public forums sites of cultural production. I read these texts against one another to analyze the discourse on indigenous cultural self-determination and the different ways in which delegates employed and represented the notion of indigenous culture and/or identity in each context. I suggest that in the Mexican context, notions of precolonial cultural

practices and romantic images of the Indian marked indigenous culture and identity. In the Canadian context, while aboriginal people sought recognition as culturally distinct people, when participants at the RCAP referred to aboriginal identity, many participants used genealogy and blood as principal markers of aboriginal identity. In this sense, in spite of claims to cultural sovereignty, the category of indigenous is rooted in biology and race in Canada, whereas in Mexico biology seems to be absent from the discourse.

Since I analyze indigenous-state relations as rendered within these two texts I make limited conclusions from a limited selection of voices. At these two public forums, leaders of indigenous communities played a role in their respective community's identity. Still, I do not claim that delegates at the RCAP or *Audiencia Publica* provide in totality all the ways indigenous identity are represented or what indigenous culture is in Canada or Mexico, but rather that these two texts reflect moments in which (some) people defined what it means to be indigenous.

MEXICO: THE DEBATE ON CULTURAL RIGHTS VERSUS INDIVIDUAL RIGHTS

Although the representatives at the Congress in 1992 presented the expulsions as a cultural conflict, the expulsions were also a manifestation of contentious political structures in the highlands of Chiapas. In the 1920s and 1930s the post-revolutionary government in Mexico – the Partido Revolucionario Institucional (PRI) – had a very difficult time asserting its authority and its nationalist agenda in isolated and rural indigenous regions of Mexico.³ If bilingual and bicultural men proved that they were influential members in an indigenous town as well as an agent of the PRI, then the state would support these men in municipal offices within the towns.⁴ These local elites – or caciques -- ensured local electoral support for the PRI in exchange for partial local autonomy. Caciques also used their positions to ask for resources from the state, such as schools, hospitals, and roads for their community. Caciques allocated these resources to maintain the well-being of the community and to support indigenous languages, festivals and customs. At the same time caciques used their position to increase their own wealth and to suppress (sometimes violently) any political opposition to national or municipal power-holders. In other words, local autonomy coexisted with political repression.⁵

³ Alexander S. Dawson, *Indian and Nation in Revolutionary Mexico* (Tucson: University of Arizona Press, 2004)32, 143-144

⁴ Ibid, p.158

⁵ Alexander S. Dawson, *Indian and Nation in Revolutionary Mexico* (Tucson: University of Arizona Press, 2004), Jeffrey W. Rubin, *Decentering the Regime: Ethnicity, Radicalism, and Democracy in Jucitán, Mexico* (Durham: Duke University Press, 1997)

In the 1960s and 1970s, people in highlands Chiapas began to challenge political bossism and the monopoly caciques had on municipal offices, ultimately leading to the first expulsions in 1974. The initiatives of Father Hernández (funded by US based Catholic Relief Services) are one noteworthy example of opposition in highlands Chiapas. Father Hernández put together several social development projects in Chamula, including local credit unions, classes in health, carpentry and home economics. He also organized classes on the Mexican constitution, agrarian law, and community planning that attracted people who were unhappy with the political and economic power of the caciques.⁶ The participants in these courses went on to form the *Union del Pueblo* (Union of the People), which organized to protest the injustices of the caciques.⁷ Most significantly, Father Hernández and a small group of pastoral workers assisted an independent opposition candidate to run in the 1973 elections for Chamula's municipal president against Agustin López.⁸ Agustin López was affiliated with the PRI and declared his support for the traditionalist authorities who summoned the festivals and sold alcohol. He promised that if he won the election he would expel the Catholics and Protestants who supported the independent candidate.⁹ Agustin López won the elections but a year later, on October 13 1974, at the Indigenous Congress in San Cristóbal, 3000 Chamulas gathered to protest what they saw as Agustin López's fraudulent presidency and complained against the corrupt alliance between municipal leaders and the state.¹⁰

⁶ Christine Kovic, *Mayan Voices For Human Rights: Displaced Catholics in Highland Chiapas* (Austin: University of Texas Press, 2005) 82-83

⁷ Ibid, p.83

⁸ Ibid

⁹ Ibid

¹⁰ Benjamin, Thomas. "A Time of Reconquest: History, the Maya Revival and the Zapatista Rebellion in Chiapas," *The American Historical Review*, Vol. 105, No.2 (Apr., 2000): 417-450. <http://www.jstor.org/> p.428

These Chamulan dissidents also denounced the cacique's monopoly on land allocations and liquor concessions.¹¹

In November 1974, Chamulan authorities held an assembly to identify members of the opposition and subsequently jailed, threatened or burned political dissidents out of their homes.¹² Chamulan authorities indicted the *expulsados* not only as political dissidents but also cultural dissidents. Chamulan authorities, who were traditionalists – followers of a folk Catholicism mixed with Mayan beliefs – claimed that they expelled Protestants (and Catholics) for rejecting and undermining the cultural practices of traditionalists.¹³ Over the next 25 years, municipal leaders in the highlands of Chiapas expelled more than 20,000 people who they considered to be challenging the political, economic and cultural authorities. Many of the *expulsados* have ended up in the “misery belt” which is just outside of the mestizo town of San Cristóbal de las Casas.¹⁴ The state and federal authorities did not act to stop the expulsions because interference could risk thousands of votes of support in state and federal elections.¹⁵ Rather, they declared that indigenous communities were autonomous and had the right to defend their culture and tradition.¹⁶ However, in 1992 when the violence spread near the town of San Cristóbal

¹¹ Benjamin, Thomas. “A Time of Reconquest: History, the Maya Revival and the Zapatista Rebellion in Chiapas,” *The American Historical Review*, Vol. 105, No.2 (Apr., 2000): 417-450. <http://www.jstor.org/p.428>

¹² Christine Kovic, *Mayan Voices For Human Rights: Displaced Catholics in Highland Chiapas* (Austin: University of Texas Press, 2005) 84 – 85, Benjamin, Thomas. “A Time of Reconquest: History, the Maya Revival and the Zapatista Rebellion in Chiapas,” *The American Historical Review*, Vol. 105, No.2 (Apr., 2000): 417-450. <http://www.jstor.org/p.428>

¹³ Christine Kovic, *Mayan Voices For Human Rights: Displaced Catholics in Highland Chiapas* (Austin: University of Texas Press, 2005) p.8

¹⁴ Benjamin, Thomas. “A Time of Reconquest: History, the Maya Revival and the Zapatista Rebellion in Chiapas,” *The American Historical Review*, Vol. 105, No.2 (Apr., 2000): 417-450. <http://www.jstor.org/p.428>

¹⁵ Christine Kovic, *Mayan Voices For Human Rights: Displaced Catholics in Highland Chiapas* (Austin: University of Texas Press, 2005) 9

¹⁶ Christine Kovic, *Mayan Voices For Human Rights: Displaced Catholics in Highland Chiapas* (Austin: University of Texas Press, 2005) 84, Benjamin, Thomas. “A Time of Reconquest: History, the Maya

de las Casas, the Governor of Chiapas was forced to respond to the expulsions.¹⁷ At the public hearings, Governor Garrido introduced a new legal bill that would classify expulsions as a crime entailing specific punishments.

At the public hearings in 1992, Governor Garrido framed the issue of expulsions as a legal conflict between the indigenous right to cultural self-determination and individual rights, such as the right to freedom of religion and personal safety, guaranteed in the Mexican constitution. Garrido's opening remarks reflected the current economic and political changes in Mexico. Due to the debt crisis in 1982, the Mexican government had to cut public spending on social services drastically and privatized national institutions. This meant that the state could no longer offer indigenous communities resources important for the development, education and health of Indian communities and which had inadvertently helped maintain local autonomy in the past. And then, just before the public hearing of 1992, President Salinas de Gortari reformed article 27 of the Mexican constitution revoking the provisions, which provided safeguards for communally held lands, hurting the economic interests of indigenous and peasant communities in favour of the interests of agribusinesses.¹⁸ A second significant constitutional change in February of 1992 was the amendment to article 4, which respected the rights of indigenous populations and recognized Mexico as a pluricultural nation. The amendment affirmed that the Law would recognize, protect and promote the development of indigenous languages, cultures, and customs including indigenous

Revival and the Zapatista Rebellion in Chiapas," *The American Historical Review*, Vol. 105, No.2 (Apr., 2000): 417-450. <http://www.jstor.org/p.428>

¹⁷ Christine Kovic, *Mayan Voices For Human Rights: Displaced Catholics in Highland Chiapas* (Austin: University of Texas Press, 2005) p.199 fn 1

¹⁸ *Ibid*, 98

judicial procedure.¹⁹ The newly amended constitution held back rights to material benefits at the same time it imparted cultural rights to impoverished indigenous communities. In other words, the newly amended constitution encouraged isolated and rural indigenous communities to present themselves as icons of Indian culture as opposed to icons of modernity and progress.

¹⁹ Christine Kovic, *Mayan Voices For Human Rights: Displaced Catholics in Highland Chiapas* (Austin: University of Texas Press, 2005) p.99

CANADA AND THE LANGUAGE OF NATIONHOOD

One of the major events that pushed Canadian Prime Minister Brian Mulroney to set up the RCAP was the Oka crisis in 1990 when a group of Mohawks from Kanehasatake occupied a small forest, called "The Pines", adjacent to the town of Oka. The Kanehsatake Mohawks raised a blockade in order to prevent the construction of a golf course on land they claimed were ancestral burial grounds.²⁰ While the federal government did not recognize Mohawks title to the Pines, the Kanehsatake Mohawks asserted that they never surrendered their aboriginal rights to the land in accordance with the Proclamation of 1763 – according to which, settlers cannot occupy aboriginal territory until aboriginal title is formally surrendered to the Crown by a recognized aboriginal leader.²¹ This produced a 78 day armed standoff in which a provincial police officer was killed and many on both sides of the dispute were injured.²² Prime Minister Mulroney appointed a Royal Commission on Aboriginal Peoples in 1991, and 4 out of the 7 commissioners were prominent aboriginal political figures.²³

At the RCAP hearings in 1992 numerous aboriginal witnesses complained about unfulfilled or inadequately implemented aboriginal rights in Canada, ranging from rights to self-determination, land, fishing, education and welfare benefits. In regards to the

²⁰ Linda Pertusati, *In Defense of Mohawk Land: Ethnopolitical Conflict in Native North America*. (Albany: State University of New York Press, 1997) p.6

²¹ Linda Pertusati, *In Defense of Mohawk Land: Ethnopolitical Conflict in Native North America*. (Albany: State University of New York Press, 1997) p.36 and Olive Patricia Dickason, "Making Claim" (Beaver 2000/01/01, vol. 80, Issue 1)

²² Ibid, p.28

²³ Olive Dickason and Moira Calder, *A Concise History of Canada's First Nations* (Toronto: Oxford University Press, 2006) p.288

right to aboriginal self-determination, most aboriginal witnesses asserted that aboriginal nationhood was the route to aboriginal self-determination in Canada and the foundation for a renewed relationship between aboriginal peoples and Canadian society. Although most witnesses who focused on aboriginal nationhood did not offer a comprehensive legal discussion on aboriginal nationhood, most did refer to treaties, oral agreements between aboriginal leaders and colonists, and precolonial aboriginal sovereignty as the legal and historical basis of aboriginal nationhood. The RCAP Report published in 1996 endorsed that a renewed relationship between aboriginal communities and the Canadian state had to restore or accommodate aboriginal nationhood.

Indigenous communities infrequently organized politically around the notion of aboriginal nationhood in Canada before the 1970s. For example, Meijer Drees observes that in 1946, treaties were less important for their recognition of Indian nationhood and distinct rights than for their recognition of Indian people as full and loyal citizens.²⁴ In 1946 Canadian parliament set up a Special Joint Committee of the Senate and House of Commons (henceforth SJC) to examine Indian administration, treaty rights, band membership, Indian schools, enfranchisement and other issues related to the “social and economic status of Indians and their advancement.”²⁵ The SJC consulted with aboriginal representatives on the matters of social, economic and political integration. In addition to the written briefs, Indian representatives from band councils, the North American Indian Brotherhood, and the Indian Association of Alberta spoke before the committee. In general, aboriginal representatives and the written briefs criticized the arbitrary power of Indian agents, the restrictive clauses of the Indian Act, and sought

²⁴ Laurie Meijer Drees, *The Indian Association of Alberta: a History of Political Action* (Vancouver: UBC Press, 2002) p.118

²⁵ Ibid, p. 108

social and material benefits for their bands. For example, IAA briefs asserted that the government was obligated through treaties to “promote progress among the Indians and make them self-sustaining, loyal citizens of the Crown.”²⁶ In fact, most Aboriginal representatives used treaties to demand rights to education, technical training, housing, and agricultural tools to assist aboriginal communities to become economically self-sufficient and to be incorporated into modern society.²⁷ In other words, aboriginal leaders interpreted treaty rights as reconcilable with or the source of citizenship rather than in opposition to Canadian society.²⁸

When aboriginal leaders did refer to self-government, they sought autonomy from the arbitrary powers of Indian agents and restrictive clauses of the Indian Act, rather than sovereignty.²⁹ This expression of self-government appealed to the SJC members. The committee believed that the “deficiencies” they saw in “the Indian”, especially the “lack of responsibility”, were the result of “too much paternalism” and of control having been taken from Native people in the past.³⁰ Moreover, the SJC viewed strengthening self-government through band council as reinforcing democratic sensibilities and responsibilities that go with citizenship, hence a step towards assimilation. The committee’s final report recommended the extension of additional social legislation to Indian people, greater self-government, greater powers to band councils and economic

²⁶ Laurie Meijer Drees, *The Indian Association of Alberta: a History of Political Action* (Vancouver: UBC Press, 2002, p.119

²⁷ Laurie Meijer Drees, *The Indian Association of Alberta: a History of Political Action* (Vancouver: UBC Press, 2002)p.119, J.R. Miller, *Lethal Legacy: Current Native Controversies in Canada* (Toronto: McClelland & Stewart Ltd., 2004) p.79

²⁸ Laurie Meijer Drees, *The Indian Association of Alberta: a History of Political Action* (Vancouver: UBC Press, 2002, p.108

²⁹ R. Scott Sheffield, *The Red Man’s On the Warpath: the Image of the “Indian” and the Second World War*. (Vancouver: UBC Press, 2004)p. 159, J.R. Miller, *Lethal Legacy: Current Native Controversies in Canada* (Toronto: McClelland & Stewart Ltd., 2004) p.79

³⁰ R. Scott Sheffield, *The Red Man’s On the Warpath: the Image of the “Indian” and the Second World War*. (Vancouver: UBC Press, 2004)p. 160

betterment of the communities. Both the committee and aboriginal representatives thought material and social benefits were fundamental to improving the condition of Indian people in Canada.³¹ Notably, the demands of aboriginal representatives were aligned with the assimilationist agenda of the SJC, which called for the social and economic integration of aboriginal communities.

In the 1940s Aboriginal leaders used treaties to demand social and material rights in order to be included in Canadian citizenship. This language concerning citizenship shifted in 1969. In 1969 the Minister of Indian Affairs issued “The Statement of the Government of Canada on Indian Policy” also known as the White Paper. The policy called for the elimination of the Indian Act and the termination of Indian status or rights stemming from treaties. The White Paper reflected the liberal assumptions of the Trudeau government that treaties undermined Canadian citizenship and the separate legal status and administration of aboriginal communities had impoverished aboriginal communities. Trudeau’s government conceptualized the remedy for aboriginal impoverishment was “equality” under the law.³² The majority of aboriginal leaders were outraged at the notion of extinguishing treaties -- and by extension, the legal force of aboriginal rights -- and repudiated the government’s assumption that progress for aboriginal communities required aboriginal people to become legally like the rest of the citizens in Canada. Also, Aboriginal leaders were afraid that if treaties were extinguished then aboriginal communities would lose their lands and be condemned to poverty.³³ According to Alan Cairns, the defeat of the White Paper marked the repudiation of the

³¹Laurie Meijer Drees, *The Indian Association of Alberta: a History of Political Action* (Vancouver: UBC Press, 2002) p.124

³² Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000)p. 51-52

³³ *Ibid*, p. 67-68

history of Canadian assimilationist policies regarding Indian administration.³⁴ From 1970s onwards, the federal government funded indigenous leaders and organizations to participate in federal policy leadership. Over the next 20 years indigenous representatives would influence the public discourse surrounding indigenous rights in Canada.

In 1982, the Constitution Act helped to stimulate aboriginal nationalism. The Constitution Act of 1982 recognized that First Nations had “existing aboriginal rights” but did not define what aboriginal rights were.³⁵ In the 1980s aboriginal groups and first ministers entered into a series of First Ministers Conferences to define what aboriginal rights were.³⁶ Three of the four Aboriginal commissioners in the seven-member RCAP participated in these intergovernmental meetings to define Aboriginal treaties and rights.³⁷ These talks shaped the notion of aboriginal self-government presented in the Charlottetown Accord 1992. The Charlottetown Accord was a set of constitutional reforms. With regards to First Nations issues, the Accord proposed a third order of aboriginal government, based on an inherent right of self-government, be exempt from the jurisdiction of federal and provincial governments and be guaranteed Senate representation.³⁸ The Accord envisioned the role of aboriginal government to safeguard and develop the languages, cultures, economies, identities, and institutions of their

³⁴ Ibid, p.65-67

³⁵ Olive Dickason and Moira Calder, *A Concise History of Canada's First Nations* (Toronto: Oxford University Press, 2006) p. 284

³⁶ J.R. Miller, *Lethal Legacy: Current Native Controversies in Canada* (Toronto: McClelland & Stewart Ltd., 2004) p. 53

³⁷ Alan Cairns, “Aboriginal People’s Electoral Participation in the Canadian Community,” *Elections Canada Online*, November 21, 2006, http://www.elections.ca/eca/eim/article_search/article.asp?id=21&lang=e&frmPageSize=&textonly=false

³⁸ Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000) p. 81

society.³⁹ The last major constitutional statement directed at aboriginal people prior to the RCAP linked aboriginal government to aboriginal culture. It also gave aboriginal people an incentive to present themselves as culturally distinct.⁴⁰

³⁹ Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000), p.70

⁴⁰ *Ibid*, p. 81, 95

READING THE MEMORIA

In the opening remarks, Governor Garrido framed the issue of expulsions as a cultural conflict between evangelical proselytizers and indigenous authorities. The Governor acknowledged that the violent nature of the expulsions violated the individual rights of the *expulsados*. At the same time, he asserted that the traditional and municipal authorities saw the expulsions as an act of cultural self-defence.⁴¹ While the new legal bill offered a way to contain or punish the violence of the expulsions, the Governor reminded the participants that the Mexican constitution recognized an indigenous right to protect indigenous languages and cultures. In other words, while the expulsions violated the constitutional right to freedom of religion and personal safety, the Mexican constitution also required that the right to cultural autonomy of indigenous groups could not be trampled on in the name of individual rights. He underscored to the participants at the hearing that they should consider how individual rights and cultural rights could coexist in Mexico.⁴² The Governor ignored the fact that the expulsions were also a manifestation of contentious patronage structures in the highlands of Chiapas.

Many of the critics of the expulsions agreed that indigenous people had the right to preserve indigenous culture, but critics emphasized that in the case of the highlands of Chiapas, local caciques forced Indians to preserve a series of practices that was called

⁴¹ Chiapas State Congress (Congreso del Estado de Chiapas). 1992. *Memoria de la Audiencia Publica Sobre las Expulsiones Indigenas y el Respeto a las Culturas, Costumbres y Tradiciones de esos Pueblos*. (Mexico City: Chiapas State Congress) p.28-29

⁴² *Ibid*, p.29

culture, but these cultural practices simultaneously signified the injustice of *caciquismo*. Juan Pedro Viquiera, a social anthropologist, argued that to tolerate the expulsions would create two types of citizens in Mexico: one who had the right to change their ancestral religion and traditions, such as the mestizos and ladinos, and the other would be the Indian, who were forced to keep the customs and traditions of their ancestors.⁴³ The critics of the expulsions supported the idea of a plural nation but they asserted that in a plural nation it was the duty of the state to foster a cultural, political, religious pluralism where different groups coexisted with one another.⁴⁴

Caciques conceived pluralism as the right to limit individual rights in favour of customary law and cultural practices. They also suggested that municipal and traditional authorities should yield the power to define and defend what constitutes culture. Deputy Secretary, Mariano Gomez López best exemplified the way in which indigenous authorities conceived of pluralism in Mexico. López proposed eight legal amendments to Chiapas' constitution in order to advance the principles of article 4 of the Mexican constitution in the indigenous towns of Chiapas. In one of the initiatives, he proposed that the law should recognize that festivals are an expression of authentic culture and that municipal authorities have the legal obligation to summon and celebrate these festivals.⁴⁵ In his last legal initiative, López articulated that any member of the community who refuses to observe the language, traditions or customs of an indigenous town would cease to be considered part of the community and should be transferred outside the jurisdiction.

⁴³ Chiapas State Congress (Congreso del Estado de Chiapas). 1992. *Memoria de la Audiencia Publica Sobre las Expulsiones Indigenas y el Respeto a las Culturas, Costumbres y Tradiciones de esos Pueblos*. (Mexico City: Chiapas State Congress) p.66-67

⁴⁴ Ibid, p.130

⁴⁵ Ibid, p.36

A communitarian assembly would decide who is a cultural dissident.⁴⁶ In effect, López applied article 4 and the idea of a plural nation to authorize municipal leaders as cultural leaders and to sanction the right to expel cultural dissidents from indigenous towns. Moreover, the deputy's legal initiatives implied that cultural practices were the source of indigenous identity.

Throughout the hearing, municipal leaders reinforced their position as cultural leaders or cultural brokers as they defined the content of "indigenous culture". Most delegates insisted that indigenous culture was composed of time-honoured traditions inherited from their prehispanic ancestors.⁴⁷ They claimed that indigenous communities have been protecting these ancient customs for the last 500 years from foreigners, including the evangelicals. Caciques maintained that even the Catholicism practiced in the highlands was a negotiation between the Catholic Church and ancestral traditions. For example, the municipal president of Zinacantan stated that despite the fact that the Spanish introduced the Catholic Church established in indigenous towns:

*Sin embargo no dejamos de amar a nuestros dioses en los cerros como parte de la conservacion de nuestras costumbres y tradiciones ancestrales y por eso es que siempre hemos procurado defenderlas de otras ideologias de sectas religiosas extranas a nuestra religion tradicional y nuestras costumbres propias*⁴⁸.

Nevertheless, we did not stop loving our gods in the hills, as part of the conservation of our customs and ancestral traditions and for this reason we always tried to defend, from other ideologies of foreign religious sects, our religious traditions and customs.

Municipal authorities argued that the boundary between Indians and foreigners was marked by ancient patrimony and rituals and they asserted that it was their right and responsibility to conserve this cultural patrimony. It was with reference to ancient

⁴⁶ Chiapas State Congress (Congreso del Estado de Chiapas). 1992. *Memoria de la Audiencia Publica Sobre las Expulsiones Indigenas y el Respeto a las Culturas, Costumbres y Tradiciones de esos Pueblos*. (Mexico City: Chiapas State Congress), p.37

⁴⁷ Ibid, p.58

⁴⁸ Ibid, p.55

patrimony, cultural symbols, such as festivals, and the legal right to cultural self-determination that caciques limited the political and religious goals of Protestants in the highland towns.

Municipal leaders also animated the image of an ignorant and vulnerable Indian in order to legitimize their own positions of authority. Municipal leaders complained that evangelical proselytizers manipulated ignorant Indians to sell out their convictions and cultures for false promises of personal and economic progress:

Pedimos que ya no se permita que extranjeros o gringos evangelistas, lleguen a nuestro municipio a enseñar a nuestros habitantes ideas contrarias a la tradición y a la cultura que heredamos de siglos atrás, ya que estos evangelizadores aprovechando la ignorancia enganan a nuestros pobladores a través de que los curan con medicina de farmacia, pero lo que realmente hacen es aprovechar esta situación para evangelizarlos, ya que también les dicen que los pueden curar a través de la palabra escrita en sus biblias.⁴⁹

We ask that it is no longer allowed that foreign or gringo evangelists come to our municipality to teach our people ideas contrary to the tradition and culture that we inherited centuries ago. Since these evangelists exploit the ignorance and deceive our people. Since they cure with medicine from the pharmacy, they take this situation to evangelize and to say that they can cure through the written word of their Bibles.

Caciques argued that most Indian converts did not end up being economically better off – although they obscured the fact that many Indian converts were more economically vulnerable because they were expelled.⁵⁰ Since caciques portrayed Indians as ignorant and easily manipulated, they undermined the idea that many Indian converts were political dissidents rebelling against cacique authority. Rather they portrayed conversion to Protestantism as a product of evangelicals confusing Indian residents and as dissent against traditional authority and custom.⁵¹ Caciques used this condescending image of

⁴⁹ Chiapas State Congress (Congreso del Estado de Chiapas). 1992. *Memoria de la Audiencia Pública Sobre las Expulsiones Indígenas y el Respeto a las Culturas, Costumbres y Tradiciones de esos Pueblos*. (Mexico City: Chiapas State Congress), p. 55

⁵⁰ Ibid, p.120

⁵¹ Ibid, p.58, 120

Indians to imply that Indians needed leaders to protect the interests of Indians and Indian culture from outside manipulators.

Many of the evangelical pastors challenged the claim that caciques exclusively represented indigenous peoples and indigenous culture in the highlands. Most representatives of the *expulsados* claimed that traditional rituals and fiestas fostered alcoholism, spiritual bankruptcy and depleted the household income of Indian families. In fact, many evangelicals viewed the festivals and alcohol-centered rituals, in particular, as a manifestation of cacique injustice. Delegates argued that these festivals were less an expression of culture than a vehicle for caciques to make profits off of Indians through alcohol sales. Saul Lopez de la Torre explained that when people refused to take part in the festivals they were directly hurting the economic interests of caciques as:

Sostienen los caciques, porque asi conviene a sus intereses particulares, que para poder vivir en un pueblo indigena se tiene que cumplir con "la obligacion" de ser catolicos; con "la obligacion" de participar en las festividades tradicionales; con "la obligacion" de transportarse en los camiones de su propiedad, y con "la obligacion" de consumir. Hasta embrutecerse, desde las mas temprana edad y durante todo el tiempo posible el alcohol que ellos producen y venden. Para ellos cumplir con estas "obligaciones" es preservar la cultura de los pueblos indios⁵².

The caciques contend, because it suits their particular interests, that in order to live in an indigenous village one must comply with "the obligation" to be Catholic, with "obligation" to participate in the traditional festivities, with the "obligation" to be transported in trucks owned by him, and "obligation" to consume alcohol until he becomes like an animal, even from the earliest age and for as long possible -- alcohol which they [caciques] produce and sell. For them to fulfil those "obligations" is to preserve the culture of Indian peoples.⁵³

Saul Lopez de la Torre continued to argue that:

Bajo tales circunstancias, adoptar la religion evangelica significa para los indios un verdadero acto de autodefensa: un instrumento para mantener su integridad familiar y accede a la satisfaccion de sus necesidades esenciales, y un acto de rebeldia frente al injusto orden establecido por el cacicazgo. El fenomeno de la expulsion se da entonces no como un problema de indole religiosa sino como una forma de reprision, por demas

⁵² Chiapas State Congress (Congreso del Estado de Chiapas). 1992. *Memoria de la Audiencia Publica Sobre las Expulsiones Indigenas y el Respeto a las Culturas, Costumbres y Tradiciones de esos Pueblos*. Mexico City: Chiapas State Congress p.160

⁵³ *Ibid*, p. 159 - 160

autoritaria e ilegal que se desprende de la perdida de control politico y de un Mercado cautivo sojuzgado, de parte de los caciques.

Under such circumstances, to adopt a evangelic religion signifies for the Indians is a true act of self-defense: an instrument to maintain its integrity family and going to the satisfaction of their basic needs, and an act of rebellion against the unjust order established by the cacicazgo. The phenomenon of expulsion is then given not as a religious problem but as a form of repression by other illegal authoritarian that emerges from the loss of political control and a subjugated captive market from some of the caciques.

The critics of the expulsions argued that when Protestants or Catholics refused to partake in festivals it amounted to a direct challenge to the economic and political interests of the caciques and therefore caciques expelled them from the communities under the pretence of violating Indian culture.⁵⁴ For these delegates freedom of religion translated into the freedom from alcohol-centred rituals, economic obligation to festivals and other cultural rituals imposed by caciques.⁵⁵ In other words, delegates appealed to the notion of freedom of religion in response to political bossism in the highlands. As well, freedom of religion was conceptualized as freedom from cultural rituals that they believed kept Indians backwards and economically impoverished. Some preachers felt that freedom from these traditions -- and by extension alcoholism -- would allow Indians to become better fathers, husbands, workers and citizens.⁵⁶ In this instance delegates appealed to the legal right of freedom of religion as a response to the local festivals, family and economic conditions, and power struggles in highland Chiapas.

While pastors were critical of cacique monopoly on political offices, at the public hearing, pastors and evangelicals directed most of their criticism at the monopoly caciques had on cultural practices. They also rejected the accusation that Protestantism

⁵⁴ Chiapas State Congress (Congreso del Estado de Chiapas). 1992. *Memoria de la Audiencia Publica Sobre las Expulsiones Indigenas y el Respeto a las Culturas, Costumbres y Tradiciones de esos Pueblos*. Mexico City: Chiapas State Congress p.123

⁵⁵ Ibid, p.187

⁵⁶ Ibid, p.126

destroyed indigenous culture. Most evangelical pastors claimed that they only rejected traditions they saw as fostering paganism, alcoholism or were a hindrance to economic and personal progress within indigenous communities. Evangelicals insisted that they supported positive forms of Indian culture such as herbal medicine, regional folklore, crafts, costumes, music and dance. As well, Protestants claimed that indigenous identity was tied to language and region; therefore they demanded that converts and *expulsados* have the right to live in their region of birth without fear of assault.⁵⁷ Others claimed that indigeneity was constitutive of (romanticized notions of) indigenous values and that outward economic or personal progress could not corrupt indigenous values such as “kindness, hospitality and the joy of living”⁵⁸:

*los autenticos valores de los pueblos; la verdadera cultura popular; las mejores tradiciones y costumbres, aquellas que a lo largo de milenios se han enraizado en la conciencia y en los sentimientos de los pueblos y de las comunidades indigenas, no se pierden con el desarrollo economic ni con los avances de la ciencia y la tecnologia.... No es por lo tanto, el desarrollo el que corrompe las culturas. Tampoco lo ha sido ni lo sera la participacion en el proceso modernizador que ahora vive Chiapas. Por el contrario, son el atraso y el oscurantismo propiciado por los caciques, y entre ellos de manera particular los caciques religiosos, los factores que inducen la descomposicion de las sociedades indias, corrompiendo sus sentimientos de identidad al coartarles el valor cultural que por excelencia es inherente a los indios: el de la libertad.*⁵⁹

The authentic values of the pueblos; true native/popular culture; best traditions and customs, from time immemorial have been rooted in the conscience and feelings of peoples and the indigenous communities. It, true native culture, is not lost with the economic development or the advances in science and technology....Its not therefore the development which corrupts cultures. Nor has it been, nor will the participation in modernizing process that now Chiapas lives. On the contrary, backwardness and obscurantism led by caciques, including in particular the religious caciques, those are the factors that induce the decomposition of Indian societies corrupting their feelings of identity alibi to the cultural value par excellence that is inherent to the Indians: that of freedom.

The evangelicals rejected the idea that indigeneity was tied to ancient patrimony. They argued that Indians should be given the freedom to pursue economic and personal

⁵⁷ Chiapas State Congress (Congreso del Estado de Chiapas). 1992. *Memoria de la Audiencia Publica Sobre las Expulsiones Indigenas y el Respeto a las Culturas, Costumbres y Tradiciones de esos Pueblos*. Mexico City: Chiapas State Congress, p. 123, 126, 185

⁵⁸ *Ibid*, p.154

⁵⁹ *Ibid*, p.160

progress and advancing modernity among indigenous groups even it if entails discarding some local traditions. Evangelicals felt that abandoning “anti-Christian” customs or economically injurious festivals would help reform Indians into responsible fathers, husbands, workers, and citizens for the prosperity of the nation.⁶⁰ Protestants tried to offer other sources of indigenous identity, such as region and romanticized notions of indigenous values and asserted that indigenous people could be prosperous citizen and indigenous at once.

⁶⁰ Chiapas State Congress (Congreso del Estado de Chiapas). 1992. *Memoria de la Audiencia Publica Sobre las Expulsiones Indigenas y el Respeto a las Culturas, Costumbres y Tradiciones de esos Pueblos*. Mexico City: Chiapas State Congress, p.125, 126, 147

READING THE RCAP

Canadian academics, such as, Kiera Ladner, Chris Andersen, Claude Denis, Alan Cairns, and Timothy Schouls, have observed that the RCAP promoted the nation model as the primary vehicle for aboriginal self-determination and the basis of a new relationship between Canadian and aboriginal societies. These academics have also pointed out that the Commission conceptualized aboriginal nations as political *and* cultural entities. In his book Citizen's Plus: Aboriginal People and the Canadian State, political scientist, Alan Cairns is critical of the RCAPs' focus on cultural difference as the source of aboriginal rights in Canada.⁶¹ For Cairns, the discourse of difference is less relevant in a time where intermarriage, urban living and education among aboriginal people have diminished cultural differences between aboriginal people and mainstream society. In Shifting Boundaries: Aboriginal Identity, Pluralist Theory and the Politics of Self-Government, Timothy Schouls analyzed the transcripts of the RCAP hearings and the way in which participants linked identity, culture and claims to self-government.

⁶¹ For a more comprehensive discussion on the legal, historical, and moral basis for aboriginal rights in Canada please see Joyce A. Green. "The Difference Debate: Reducing Rights to Cultural flavours," *Canadian Journal of Political Science / Revue canadienne de science politique*, Vol.33, No. 1 (Mar., 2000): 133-144. <http://www.jstor.org>, Avigail Eisenberg, "The Politics of Individual and Group Difference in Canadian Jurisprudence," *Canadian Journal of Political Science*, Vol. 27, No. 1 (Mar., (1994) : 3-21. <http://www.jstor.org/>, Katharine Fierlbec, "The Ambivalent Potential of Cultural Identity," *Canadian Journal of Political Science* Vol.29 (Mar., 1996): 3-22. <http://www.jstor.org>, Patrick Macklem, "First Nations Self-Government and the Borders of the Canadian Legal Imagination," *McGill Law*, vol.36 (1991), Patrick Macklem, "Normative Dimensions of an Aboriginal Right of Self-Government," *Queen's Law*, vol. 21 (1996), David Schneiderman, "Theories of Difference and the Interpretation of aboriginal and Treaty Rights," *International Journal of Canadian Studies*, vol.14 (1996)

Schouls observes that participants made historical and moral claims to self-government. Importantly, participants argued that the right to self-government stems from the fact that self-government existed prior to contact. Moreover, participants argued that they were unjustly dispossessed of their traditional lands and institutions and the claim to self-government is also a claim to restitution, justice, and emancipation from a racist history.⁶² At the same time RCAP participants reasoned that aboriginal rights flow from aboriginal cultural difference and that self-government is needed to protect the aboriginal right to cultural survival.⁶³ Similar to the participants at the *Audiencia Publica* in Mexico, aboriginal participants in Canada did not envision self-government as exclusively a function of legal rights. Aboriginal participants also negotiated for self-government with notions of aboriginal culture and identity. The RCAP public hearings were sites at which aboriginal participants produced a discourse on aboriginal culture.

Regardless of band affiliation, region, education, or economic status, numerous aboriginal witnesses who made claims to self-government did so within the tropes of cultural genocide and aboriginal alterity. Aboriginal witnesses advanced the narrative of cultural genocide as they lamented the loss of traditional aboriginal government, culture and language due to the assimilationist policies of the state, namely the Indian Act and residential schools. Aboriginal witnesses also furthered the narrative of cultural genocide when they recounted “how they lost their language, their culture” as a result of “the policies of the government, policies of assimilation, policies of genocide.”⁶⁴ Several aboriginal witnesses at the RCAP public hearings recounted personal experiences of

⁶² Timothy A. Schouls, *Shifting Boundaries: Aboriginal Identity, Pluralist Theory, and the Politics of Self-Government* (Vancouver: UBC Press, 2003) p. 42-49

⁶³ Ibid, p. 42-44

⁶⁴ Ibid

humiliation, abuse and powerlessness at the hands of Indian agents, the Church, and child welfare programs. Aboriginal witnesses who lived on reserves argued that the humiliation of asking Indian agents for shoes, the trauma of physical abuse in residential schools, and the scars from racist school curriculum all contributed to spiritual and cultural loss -- or cultural genocide.⁶⁵ Typical of many of the testimonies given at the RCAP, Blair Paul, a member of the Membertou Reserve, Nova Scotia, blamed government policies for the high rates of teenage pregnancy, suicide and drug abuse, which plagued aboriginal communities. She explained that these social problems were never a part of aboriginal "culture" or "history" but that native people were "dying from these policies, [were] dying from government policies, federal and provincial, made by the Canadian government for native people."⁶⁶ The experiences of dependency, loss of aboriginal culture and other social problems were depicted as the legacy of colonialism, loss of culture and loss of autonomy. The narrative of cultural genocide posits aboriginal people as victims of European colonialism, and the racist assumptions that undergird the Indian Act and other federal policies regarding Indians.

At the first venue of the RCAP hearings, Elijah Harper, a prominent aboriginal figure and Member of the legislative Assembly of Manitoba, nourished this narrative of cultural genocide as he condemned legal and political discourse on aboriginal peoples in Canada:

"As an aboriginal person, I looked at history and reviewed even some of the debates that have gone on in the House of Commons and the legislations that have been passed in respect to the aboriginal people in this country, that it was not based on respect, it was not based on equality. As a matter of fact, it was based on one of assimilation, I would

⁶⁵ John Joe Sark, Captain of the Micmac Grand Council, RCAP *Public Hearings*, Charlottetown, PEI 05 May 1992., Greg Johnson, Micmac Social Worker, RCAP *Public Hearings*, Eskasoni, NS 06 May 1992.

⁶⁶ Blair Paul, Member of Membertou Reserve, RCAP *Public Hearings*, Eskasoni, NS, 06 May 1992.

*call it, assimilation, integration and genocide and exploitation of aboriginal people in this country.*⁶⁷

What upset Harper and many other aboriginal witnesses at the RCAP were the racist assumptions and discourse within legislation regarding aboriginal people since late 19th century. The majority of the witnesses felt that the Indian Act was premised on the assumption that aboriginal people could not administer their own affairs. In this way, the Indian Act fostered a paternalistic relationship between Canada and aboriginal communities, which ultimately undermined aboriginal self-government and culture. Many witnesses nourished the narrative of cultural genocide by condemning the racist discourse of government policies.

Aboriginal witnesses used the trope of cultural genocide to make claims to compensation and justice. At the opening hearing of the RCAP, Chief Phil Fontaine announced that it is important that the federal government take responsibility for “social, cultural, spiritual and individual loss and suffering resulting from the residential school system, and its successor, child welfare system” and the Indian Act.⁶⁸ In their recommendations, aboriginal witnesses demanded compensation for the languages and cultures destroyed. While witnesses held the state responsible for destroying aboriginal culture, some aboriginal witnesses suggested that the state should fund projects for the purpose of cultural revival, hence inviting the state to play a role in restoring aboriginal culture.

Aboriginal witnesses also used the trope of cultural genocide to make claims to aboriginal self-government. Regina Crowchild of the Indian Association of Alberta

⁶⁷ Elijah Harper, Member of the Legislative Assembly of Manitoba, *RCAP Public Hearings*, Winnipeg, Manitoba, 21-23 April 1992.

⁶⁸ Phil Fontaine, Grand Chief, Assembly of Manitoba Chiefs, *RCAP Public Hearings*, Winnipeg, MAN, 22 April 1992.

(IAA) contended that the way to counteract “acts of genocide which were committed against the indigenous peoples in Canada under the Indian Act” was to get rid of the Department of Indian Affairs and the Indian Act and reclaim aboriginal self-government. Aboriginal witnesses did not conceive of Aboriginal nationhood simply as a tool for self-administration. When aboriginal witnesses defined aboriginal self-government, they underscored that aboriginal government was a model of government culturally distinct from or in opposition to the Canadian or dominant models of government. Marlene Buffalo, a member of the Samson band, Alberta, asserted that aboriginal people did not want a “European western model of government that is run by Indians.” Rather, she wanted an “Indian government that operates in accordance with traditional principles and customs, one that rests on a spiritual base and emphasizes group, not individual rights.”⁶⁹

Ms. Mary Guilbeault, the vice-chairperson, of the Aboriginal council of Winnipeg, also envisioned self-government as antagonistic with European culture:

I want to say this, about 500 years ago the two cultures collided, two cultures that were very different from one another. One was very giving and willing to share. One had the concept that land cannot be owned and that they were only caretakers of this land. We did not separate our medicines from our spiritual beliefs. In fact, our spiritual beliefs were very much a part of the health care. We believed in sharing rather than self gain and our very existence was based on this concept. We believed in communal living - living in family units. Today, I hardly know my next door neighbour.⁷⁰

Guilbeaults’ testimony is typical of many aboriginal testimony, in which witnesses imagined self-government and aboriginal laws as a type of political utopia based on “spiritual”, “communal” and “holistic” -- and distinctly aboriginal principles -- which were in discordance with European principles of “individualism” and “private

⁶⁹ Marlene Buffalo, member of Samson band, RCAP *Public Hearings*, Hobbema, Alberta, 10 June 1992.

⁷⁰ Mary Guilbeault, Vice-Chairperson Aboriginal Council of Winnipeg, RCAP *Public Hearings*, Winnipeg, Manitoba, 22 April 1992.

property”.⁷¹ In other words, some aboriginal witnesses who espoused aboriginal sovereignty simultaneously participated in a discourse that reinforced the alterity of aboriginal communities.

One of the more striking examples of “othering” was when commissioner for the day, Andrew Thomas, suggested that aboriginal people in the twentieth century have a primordial claim to land and resources and an inherent attachment to aboriginal law.⁷²

*Our people have our own laws in place. They are natural laws, laws that are connected to the land, the resources, because there is times in our lives when we cannot even take those resources...So, what I am saying is that Canada has to realize that we do not want to be beggars. We do not want to be called poachers any more. We have a rightful place in this land. We have our own natural laws, laws that govern us. They have to recognize that if we do not follow our own laws, then we will be hurting ourselves.*⁷³

Many witnesses at the RCAP asserted that aboriginal people had the inherent right to self-government. What is significant about Andrew Thomas’ testimony, and many other witnesses who emphasized the importance of aboriginal government, is that he suggested that there is something inherent in aboriginal people that makes them incompatible with other models of government and culture. It was common for aboriginal witnesses at the RCAP to advance the idea that aboriginal people are linked to culture inherently. For example, at a RCAP hearing in Ontario, Commissioner Georges Erasmus suggested that aboriginal people “can never become the other culture” without suffering psychologically, suggesting that aboriginal people are inherently linked to the traditions from the past.⁷⁴ In this sense, Erasmus suggested that culture was not only an extrinsic

⁷¹ Willie Seymour, Native Advisor to the Coast Salish Nation, RCAP *Public Hearings*, Esquimalt, BC 21 May 1992, John Joe Sark, Captain of the Micmac Grand Council, RCAP *Public Hearings*, Charlottetown, PEI 05 May 1992

⁷² I use the term “primordial” to allude to the assumption/notion that people have a strong sense of ethnic or racial identity that shapes their world-view, actions, loyalties and affinities -- as defined by Deborah Yashar in Yashar, Deborah “Contesting Citizenship: Indigenous Movements and Democracy in Latin America,” *Comparative Politics*, Vol.31, no.1 (Oct., 1998) <http://www.jstor.org> p.27

⁷³ Andrew Thomas, Commissioner for the Day, RCAP *Public Hearings*, Esquimalt, BC 21 May 1992

⁷⁴ Georges Erasmus, Co-Chair, RCAP *Public Hearings*, Moose Factory, Ontario, 09 June 1992

set of values, institutions, and practices but also that people of aboriginal descent were intrinsically connected to aboriginal culture. While the statements of Thomas and Erasmus were immoderate or an out of proportion characterization of aboriginal people, it is noteworthy that they felt that such a conceptualization of aboriginal people was available or appropriate to express in a political context. In fact, no one objected to their characterization of aboriginal people – but many witnesses reiterated similar characterizations of aboriginal people at RCAP hearings.

Aboriginal witnesses who lived in cities or off-reserve also included themselves in the narrative of cultural ruination and aboriginal alterity. Many off-reserve aboriginals had lost their legal status as Indians through intermarriage or were the children or grandchildren of aboriginal people who had left the reserves. Even off-reserve aboriginals who retained their legal status as Indians had a diminished relationship with the DIA as they stopped receiving welfare and health benefits available to Indians living on reserve. Many off-reserve witnesses asserted that they did not move off the reserve by choice. They argued that the federal government hindered any kind of economic development on reserves, forcing them or their parents to leave reserves to look for work. Off-reserve aboriginals – status and non-status aboriginal -- lamented the loss of culture and language as a result of living away from reserves. They also lamented the loss of legal status and by extension the loss of special rights that status entailed.

Interestingly, some witnesses suggested that the loss of legal status entailed the loss of aboriginal identity. Damon Johnston from Winnipeg expressed that until he got his status from the federal government he was a “non-Indian, a “non-person.”⁷⁵ Barbara

⁷⁵ Damon Johnston, *RCAP Public Hearings*, Winnipeg, MAN, 23 May 1992

Johnson, a Micmac woman who gained Indian status in 1985, expressed her anger that for 20 years of her life Indian Affairs considered her “non-existent”. Barbara Johnson expressed that the importance of having her Indianness recognized was a claim to rights:

In 1985 when the equality clause came in through under the Charter of Rights, I've got my status back. I went to Indian Affairs and they said, "no, you cannot have it right then and there. We have to go through a process." I said, "Listen, I'm demanding my right under the equality clause." I said, "I am a Micmac person and I want my children to be recognized as such." And I said, "From here forth onward," I said, "I want the same programs that are available for my children. They are just entering university and one had just completed first year of university and I said "I want his education looked after." And they did look after it.⁷⁶

In effect, Barbara Johnson and Damon Johnston suggested that their indigenous identity was tied legal status or rights -- that is, recognition by the state and to material benefits received from the state. While aboriginal representatives from reserves used notions of “Indian” alterity to make a case for political autonomy, suggesting that the Indian exists outside of the state, the claims that Barbara Johnson and Damon Johnston made tied Indian identity to the state and to the material benefits of the state – espousing a notion of Indian that is less than subversive or autonomous.

Johnson and Johnston asserted that the Indian Act should not be allowed to exclude them from legal status as Indians, and the material benefits that come with it, simply because they lived away from the reserve or because they married non-status persons. They both argued that the state should legally recognize them as Indian, regardless of where they lived, because they could prove that they descended from aboriginal people. Johnson and Johnston claimed an Indian identity based on their genealogy or blood. Interestingly, using blood or genealogy to define a person’s race is a colonial concept but at the RCAP, aboriginal representatives appropriated it for the purpose of claiming an Indian identity that the state will recognize. Johnson and

⁷⁶ Barbara Johnson, RCAP *Public Hearings*, Eskasoni, NS, 05 June 1992

Johnstons' testimonies illustrate the way in which some aboriginal people conceptualized aboriginal identity, legal status and blood as mutually reinforcing concepts.

Regardless of whether an aboriginal person was an off-reserve or on-reserve native, the assumption that Indigenous identity was rooted in blood or genealogy was pervasive in the RCAP testimonies. For example, Danny Montour, a member of the Samson band in Alberta, asserted that membership of a treaty nation is based on blood:

A friend of mine from the Blackfoot inquired for me the definition of a treaty Indian. The office of the Minister of State replied: A treaty Indian is a direct descendant of an original signatory to a treaty. Therefore, as such, a treaty Indian adheres and honours to hereditary chieftainship and customary law and supports the view that the spirit, terms and conditions of the treaties must be honoured.... The treaty Indian is supposedly entitled to more rights than the Indian Act Indian. Why? Because of the fact that the treaty Indian is a direct blood descendant.⁷⁷

Similar to Johnson and Johnston, Danny Montour asserted that blood was the source of identity and inclusion into a treaty nation. According to Montour's testimony blood was also the source of making claims to rights and federal monies. While aboriginal witnesses defined self-government as a vehicle for restoring and maintaining aboriginal culture, discourses on aboriginal identity at the RCAP hearings rooted aboriginal identity in blood.

⁷⁷ Danny Montour, RCAP Public Hearings, Hobbema, Alberta 10 June 1992

DISSENT IN CANADA

For the most part, the RCAP testimonies in 1992 suggest that aboriginal peoples were in confrontation with the Canadian government. However, while band council leaders represented aboriginal bands or nations in opposition to the state, the band council and the state are also mutually reinforcing bodies. In 1869 the federal government instituted an elective system for the selection of chiefs and band councils in local Indian governments. Many indigenous people resisted this imposition because it undermined indigenous systems of selecting leadership.⁷⁸ Also it placed band leaders in a situation where they were elected by the aboriginal community, yet band leaders were responsible to the Department of Indian and Northern Affairs (DIAND). In 1876 the federal government further undermined Aboriginal authority when it gave the Indian Affairs agent the authority to remove any chief for “dishonesty, intemperance, or immorality”, subordinating the band council to the DIAND.⁷⁹ But the federal government also empowered band councils. For example, in 1884 the government enacted Act for Conferring Certain Privileges on the More Advanced Bands of Indians of Canada with the View of Training Them for the Exercise of Municipal Affairs for the purpose of transforming tribal regulations into municipal laws.⁸⁰ This policy – proffering the assimilation of Indian bands-- gave tribal councils limited powers of taxation, responsibility for public health and the power to enforce bylaws. Most bands resisted

⁷⁸ Olive Dickason and Moira Calder, *A Concise History of Canada's First Nations* (Toronto: Oxford University Press, 2006) p. 183

⁷⁹ Ibid

⁸⁰ Ibid, p.184

elective systems and the federal government were even forced to allow some bands to continue traditional leadership selection processes. However the chief still had to comply with the authority of DIAND in exchange for much needed resources.⁸¹

Although the imposition of band council structure undermined traditional forms of government, at the same, the state empowered band council officials to represent the interests of their community to the state, to secure welfare grants from the state, and redistribute resources to their community. Similar to the caciques in Mexico, band council officials occupied the position of middlemen between the state and the band members. In other words, the imposed institution of “band council” disempowered aboriginal leaders and at the same time was a site for indigenous leaders to exercise local autonomy.

Similar to the Protestant delegates at the *Audiencia Publica* who came to speak against the caciques, many aboriginal witnesses also came to the RCAP hearings to contest the leadership of Indian Band council and reserve leaders. Grace Meconse, a member of the Ojibway nation and Vice-President of the Native Mediation Representative, one of many people who denounced aboriginal reserve leadership:

We are an organization that opposes and challenges Indian Self-Government, and please note, "Indian" not Inuit, not Métis, we're opposing the Indian Self-Government leadership which concerns the Treaty and registered Status Indians. Our actions are based as a result of the oppressive and differential treatment directed at us by the Indian Leadership. With regards to the Constitution, the majority of these bands to which we refer, do not recognize the Canadian Charter of Rights and Freedoms.... Indian Self-Government is a singular term denoting a singular component. When you look at the dictatorship type leadership at the band level, you can only assume this is what it means. 99.9 percent of the band members do not know what "Indian Self-Government" means..... In speaking to these people in meetings and in groups and as individuals, they have not been consulted with at the band level on self-government. They have never been

⁸¹ Menno Boldt, *Surviving as Indians: the Challenge of Self-government*, (Toronto: University of Toronto Press, 1993) p. 121

*presented with any documents we included. We have not had any workshops. There have been no seminars to tell any of us what "self-government" is all about.*⁸²

Grace Meconse, along with other aboriginal witnesses criticized First Nations band councils for abusing their positions of power and being unaccountable to band members. Although Meconse asserted that she was against self-government, many strong advocates of self-government were also concerned that the current band leaders would exclude women and off-reserve natives from the structures of aboriginal self-government. Marilyn Fontaine, the President of the Aboriginal Women's Unity Coalition, complained that the current reserve leaders excluded women, youth, and off-reserve natives from reserve politics. She asserted that the transition into self-government must look different from the political structures that currently characterized reserve politics.⁸³

Eric Robinson, the President of Aboriginal Council of Winnipeg, also revealed his anxiety that off-reserve natives would be left out of the institutions of aboriginal self-government:

*In the past, our own leadership has not actively included the off-reserve First Nations people as an integral part of their political structures. Notably, there is an absence of off-reserve leadership in discussions towards self-government. When it comes down to constitutional reform, our provincial and national leadership must include off-reserve constituents as equal and full participants because they too, are affected by the impending changes. The off-reserve people must be recognized fully as a distinct and autonomous political counterpart of the existing political structures.*⁸⁴

Although he blamed the Indian Act for promoting the migration of native people to urban areas, he also indicated that reserve leaders blocked off-reserve natives from meaningful participation in reserve politics. Robinson recommended that the current political structures be changed in order to ensure the participation of urban aboriginal people.

⁸² Grace Meconse, Vice-President, Native Mediation Inc., RCAP *Public Hearings*, Winnipeg, Manitoba 22 April 1992

⁸³ Marilyn Fontaine, President, Aboriginal Women's Unity Coalition, RCAP *Public Hearings*, Winnipeg, Manitoba, 23 April 1992

⁸⁴ Eric Robinson, President, Aboriginal Council of Winnipeg, RCAP *Public Hearings*, Winnipeg, Manitoba, 22 April 1992

While he recognized the authority of reserve officials – or at least that the reserves should be the locus of aboriginal self-government -- Robinson tried to negotiate with the Canadian government for the inclusion of off-reserve natives in aboriginal self-government. He appealed to the Canadian government to recognize urban aboriginals as distinct and autonomous political counterpart of existing reserve political structures. Notably, women, youth, and urbanites who launched attacks against band council leaders did not contest notions of aboriginal culture or aboriginal self-government. What dissenters were concerned about was whether they would be represented within the structures of self-government.⁸⁵

After considerable research and evaluation of witness testimony, in its final report the RCAP concluded that a renewed relationship between aboriginal and non-aboriginal societies had to be built on restitution. That is to say, Aboriginal communities must be allowed to revive and develop their culture and exercise autonomy as they had prior to and at the time of European contact, which colonial and federal government later eroded through assimilationist policies.⁸⁶ Fundamental to the restoration of aboriginal culture and autonomy was aboriginal nationhood. In making a case for aboriginal nationhood the RCAP observed that aboriginal nationhood arises from the sovereign status of aboriginal people at the time of European contact; and from the fact that aboriginal peoples were in possession of their own territories, political systems and customary laws. The RCAP also stated that Aboriginal nations are vested with the right of self-determination is

⁸⁵ Timothy A. Schouls, *Shifting Boundaries: Aboriginal Identity, Pluralist Theory, and the Politics of Self-Government* (Vancouver: UBC Press, 2003) p. 99

⁸⁶ Timothy A. Schouls, *Shifting Boundaries: Aboriginal Identity, Pluralist Theory, and the Politics of Self-Government* (Vancouver: UBC Press, 2003) p. 45-48

“recognized and affirmed in section 35(1) of the Constitution Act, 1982.”⁸⁷ On a practical level, RCAP claimed that according to witness testimony, aboriginal persons already saw themselves as members of nations, and “nation” was a morally acceptable organizing concept for many of their members.⁸⁸ The political problem that RCAP wanted to solve is control over sufficient land as well as political power and economic resources to make aboriginal nations self-reliant.⁸⁹ The RCAP report recommends that only bands with a resident population of 5-7000 people and a land base possess the institutional capacity to preserve and transmit the core of language, beliefs, traditions and knowledge that is uniquely aboriginal.⁹⁰ In this sense, the RCAP empowered band council and reserve leaders and neglected the concerns of women, youth, and urban aboriginals expressed regarding band council leaders.

⁸⁷ Timothy A. Schouls, *Shifting Boundaries: Aboriginal Identity, Pluralist Theory, and the Politics of Self-Government* (Vancouver: UBC Press, 2003), p.72(RCAP quoted in Schoul)

⁸⁸ Ibid, p.74

⁸⁹ Ibid, p.74, 75

⁹⁰ Ibid, p.72

CONCLUSION: WHAT IS AT STAKE?

At the *Audiencia Publica* and the RCAP hearings, indigenous leaders and the state deliberated over the legal boundaries of indigenous rights in Mexico and Canada, respectively. While indigenous rights are a function of the law, within the Memoria and the RCAP transcripts we see that participants at both of these public inquiries did not proffer exclusively legal sources for indigenous rights. In both contexts, numerous indigenous participants used notions of indigenous culture and identity to negotiate for or reinforce indigenous rights to self-determination. At the hearing in San Cristóbal de las Casas, caciques wanted the state to recognize them as indigenous leaders who possessed the legal right or authority to expel cultural dissidents from their localities for the purpose of protecting “ancient” patrimony and cultural practices. They insisted that a commitment to pre-colonial customs and traditions -- namely festivals -- was what separated indigenous people from “foreigners.” Hence, if a member of the community refused to partake in the festivals this would amount to cultural dissidence or treason. For the caciques, control over local practices meant that individuals they branded as “cultural” dissidents became non-Indians and had to leave their hometowns, regardless of kinship and blood ties. It is important to note that in the Mexican context, caciques knew that being recognized as indigenous leaders of highland towns gave them the authority to maintain cultural practices as well as a privileged relationship with the state and access to federal monies and resources.

Evangelicals felt that cultural rights placed too much discretion in the hands of caciques who used custom and tradition as an excuse for expelling anyone who challenged their authority.⁹¹ At the *Audiencia Publica* the critics of caciques appealed to individual rights in order to defend the right of expulsados to live in their hometowns unmolested. However, critics also strived to gain control over defining indigenous culture in order to negotiate for the individual rights of expulsados. At the *Audiencia Publica* Evangelicals asserted that festivals were a manifestation of *caciquismo* injustice – rather than culture -- perpetrated in Indian towns. They argued that festivals and alcohol-centered rituals fostered alcoholism and diminished household incomes of the participants while caciques profited off the sales of alcohol and other festival related paraphernalia. They rejected the idea that indigenous identity must be tied to ancient patrimony as defined by caciques. They also argued that evangelism does not weaken indigenous identity. Instead, Evangelicals claimed that they promoted the commitment to indigenous language, music, costumes, herbal medicine, and romantic notions of indigenous values such as kindness, hospitality and love of freedom. They also suggested that the love of indigenous region and birthplace was a source of indigenous identity. Although the stakes for caciques and expulsados varied, both the caciques and the representatives of the expulsados used notions of culture to secure cultural or individual rights. Moreover, for both parties, culture constituted observable and extrinsic practices, behaviours and rituals.

The notion of culture that prevailed at the hearing in Chiapas is incompatible with the notion of culture promoted at the RCAP. In Chiapas, indigenous identity stemmed

⁹¹ George Allen Collier, *Basta!: Land and the Zapatista Rebellion in Chiapas* (Oakland, CA: Food First, The Institute for Food and Development Policy, 1994) p.57

from a commitment to cultural practices. Delegates at the hearing in San Cristóbal de las Casas referred to culture as observable local practices. The aboriginal witnesses at the RCAP made a very different set of claims about aboriginal culture. Witnesses at the RCAP suggested that aboriginal culture was something that was lost – or nearly lost -- and needed to be recovered. Many individuals at the RCAP hearings in 1992 – from chiefs to urban aboriginals -- lamented that because of colonialism and assimilationist policies, they were alienated from aboriginal culture, language, spirituality and reserves or traditional lands. At the RCAP then, cultural self-determination and aboriginal self-government was constructed as a restorative project for the purpose of recovering and protecting aboriginal culture. Despite the fact that colonialism diminished aboriginal culture, aboriginal witnesses suggested that they were still attached to a distinct aboriginal culture. When defending the legal right of First Nations bands to self-government, we can see that some witnesses, including, Harvard trained lawyer, Georges Erasmus, suggested that people of aboriginal descent were inherently and/or primordially connected to aboriginal institutions and culture. As well, when some participants reasoned that urban aboriginal individuals should have access to treaty and/or indigenous rights, they reinforced the importance of blood as a marker of aboriginal identity in Canada. Urban aboriginal individuals usually did not speak an indigenous language, did not have access to cultural life on the reserves, did not have legal status as Indians and by extension did not have access to treaty rights or receive material benefits from the state. In the absence of an indigenous language, extrinsic cultural markers and legal recognition from the state, many urban aboriginal individuals made claims to rights, culture and inclusion in aboriginal self-government based on their blood. While in academic theories

of culture, culture is conceived as material or extrinsic symbols, images, institutions and behaviours, many aboriginal individuals at the RCAP suggested that aboriginal people were intrinsically connected to their culture through blood. Importantly, many participants thought they could make claims based on notions of a primordial aboriginal identity and/or genealogy, suggesting that colonial characterizations of what is aboriginal still pervaded public discourse on aboriginal rights in Canada in 1992.

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