

BALAYI: Culture, Law and Colonialism – Volume 3

Theme: Indigenous Peoples in the International Sphere

Published in 2001

(148 pages)

Articles:

Indigenous Self-Determination in the Age of Globalisation

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Ron Castan had always understood the oppression of his own people did not exclude reflection on the oppression of others. He never saw consideration of non-Indigenous complicity in the impacts of colonization of Aboriginal and Torres Strait Islander people as in any way lessening Jewish experience with anti-Semitism and genocide. He refused to rank people in order of hurt and suffering and appeared to have reached this point by realizing the interconnectedness of peoples and that the oppression of one group can have resonance for the experience with oppression of another. It is with this spirit of self-reflection and inter-relation, so much a part of the Castan legacy, that I would like to deliver this paper.

I have divided this paper into two parts. First, I want to look at self-determination as a concept as it has been expressed by Indigenous peoples. Then, I want to look at the trends of globalization and how this will affect those aspirations.

Participation Deficit: Globalization, Governance and Indigenous Peoples

Paul HAVEMANN – is Professor of Law at the University of Waikato.

The Statement Indigenous peoples had to make in 1999, at a meeting held concurrently with, but outside, the now infamous World Trade Organization (WTO) Ministerial Seattle conference, is a good place to begin this article:

Indigenous peoples, undoubtedly, are the ones most adversely affected by globalization and by the WTO Agreements. However, we believe that it is also us who can offer viable alternatives to the dominant economic growth, export-oriented development model. Our sustainable lifestyles and cultures, traditional knowledge, cosmologies, spirituality, values of collectivity, reciprocity, respect and reverence for Mother Earth, are crucial in the search for a transformed society where justice, equity and sustainability will prevail.

The likelihood that the Indigenous peoples' viable alternatives will be heard appears remote in the present framework of economic governance and the new globalization. A basic participation deficit in the emerging global order mirrors the gross participation deficit in the colonial so-called 'nation' State, and is likely to be exacerbated by the new globalization. "Anti-globalization" actions in Seattle, Genoa, London, and at the 2001 WTO Ministerial Conference at Doha reflect the growing frustration in global civil society with this participation deficit. ...

I introduce this article with a brief survey of the relevant contours of old-style and new-style globalization and debates about the nature and form of the new globalization and governance. Later in this article I examine aspects of the participatory and procedural deficits in the workings of the WTO, the international financial institution (IFI) at the heart of the new global economic governance. Selected UN initiatives are also critiqued, such as the Global

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Compact and the Permanent Forum on Indigenous issues, both of which are aimed at promoting more authentic participation in global political governance.

Deconstructing The British Columbia Treaty Process

Taiiiake ALFRED – University of Victoria – December 2001 (revised version).

The emergent consensus of Indigenous people involved with the British Columbia Treaty Commission (BCTC) is that the current process has failed. The shared rational and emotional foundation of this consensus is a realisation that the Treaty Commission process is at its core morally bankrupt and driven by the twin objectives of placating natural resource industry lobbies and the coercive imposition of the feral and provincial governments' shared assimilationist agenda. It is a general conclusion among Indigenous people that the failed attempt to negotiate a structural recognition of their constitutional rights to land and self-governments have neither the determination nor the sincere desire to resolve the fundamental sources of racial and political conflict that exist in British Columbia.

This is a severe and regrettable conclusion on a process that began with so much hope for the peaceful reconciliation of the co-existence of Indigenous peoples and contemporary Canadian society on the land we share. Yet the sombre death knell of peaceful reconciliation of the co-existence of Indigenous peoples and contemporary Canadian society on the land we share. Yet the sombre death knell of peaceful cooperation and political reconciliation is abundantly clear to those who pay attention to news headlines, read opinions expressed in the Indigenous media, listen to input from consultations at the community level, and take part in informal discussions in homes. One disappointed community negotiator from the northwest region who has been involved in the BCTC since the start of the process, recently admitted that she and her colleagues had decided that it was time to quit the negotiating table and to 'get back to asserting their rights on the ground'.

Negotiating Nationhood, Renegotiating Nationhood: Canada's Nunavut and Nunavut's Canada

Peter JULL – Adjunct Assoc. Professor, School of Political Science & International Studies, University of Queensland, Brisbane.

The purpose of this paper is to sketch how Inuit and the Canadian public, and the Inuit organisations and the Canadian government, revised Northern and national outlooks and political culture in the process of creating Nunavut. This includes simplified accounts of the evolution of two sets of opinion, Inuit/Northern and Canadian/Southern. There are already many accounts of the Inuit social and cultural background, and political campaign and negotiations to achieve Nunavut, together with its gradual recognition, formal establishment, and significance as a precedent for others. Rather than go over such ground in detail the present sketch has its own function. It may also suggest parallels to Indigenous peoples in Australia, Scandinavia, and elsewhere.

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Indigenous Peoples and International Order: The Aboriginal North-American World System

Russel Lawrence BARSH – New York University School of Law.

My paper has three aims: to demonstrate the extent to which there was an aboriginal world system in North America, to suggest how it was organized as an international regime, and to see what insights we can derive from aboriginal political philosophy for organizing the contemporary relationships between Indigenous peoples and their neighbours.

Understanding Non-Discrimination: Native Title Law and Policy in a Human Rights Context

Lisa STRELEIN – Visiting Research Fellow and Manager of the Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).

and **Michael DODSON** – Chair of AIATSIS, former Aboriginal and Torres Strait Islander Social Justice Commissioner and is a member of the United Nations Voluntary Fund.

and **Jessica WEIR** – Native Title Research Officer.

Sections of this paper are drawn from the AIATSIS submission to the Parliamentary Joint Committee on Native Title and the Land Fund Inquiry into the consistency of the NTAA with Australia's obligations under CERD, February 2000.

In recent years, Australia's compliance with its international human rights obligations has been criticised by United Nations Treaty bodies. Most recently the Commissioner for Human Rights, Mary Robinson, has raised questions about Australia's immigration and detention policies. However, the most serious engagement on Australia's compliance with its international human rights obligations was undoubtedly Australia's unprecedented appearances before the United Nations Committee for the elimination of Racial Discrimination to answer criticisms of the amendments to the Native title Act. This prompted the Australian government to review its participation and the competence of the system. In June 2000 the Australia Parliament released the report from the inquiry into Australia's role in the United Nations, following closely the United Nations own report. Against the backdrop of recent events, this paper draws out the fundamental disjunctions between Australia's treatment of the rights of Aboriginal and Torres Strait Islander peoples and the emerging norms of international law concerning the rights of Indigenous peoples. It is argued that the same criticisms will continue to be levelled against new developments in native title law and policy unless a change occurs in the public policy approach to Indigenous rights.