Indigenous Land, Indigenous Sovereignty, Indigenous Rights

The truth of the origins of Canadian nation state and society is a difficult one for many to reconcile with the image of a safe, inclusive, multicultural haven. We believe that, only in confronting the stark realities of the violence, dispossession and racism that characterize relationships between the Canadian nation state and Indigenous peoples and nations can we find transformative pathways towards a just and regenerative future.

The reality is that reconciliation will continue to fail because it sits on a foundation of greed, false narratives and systemic racism, denying Indigenous peoples their inherent rights to govern their own lives and benefit from their deep and abiding relationships to land. When what Indigenous peoples have lost and continue to lose through the legacies of colonization, capitalism, patriarchy and racism, is absent from the national conversation, non-Indigenous peoples remain trapped in misunderstandings about the profound culture, histories, governance structures, knowledge systems, and conceptions of the natural world that are integral in finding pathways forward through the climate emergency.

The 'Doctrine of Discovery' lies at the heart of our troubled relationship, and without addressing the harms that have been perpetrated by this destructive fiction and narrative, we cannot truly achieve truth and reconciliation. This doctrine was a framework used by European explorers to lay claim to territories that were deemed 'uninhabited.' It ultimately provided the political, legal and ideological justification for European nations to colonize and seize lands in other parts of the world. It has been a core basis for the entrenchment of the toxic structures of white supremacy we experience in the world today.

The core reality that must be understood is that the capitalist, racist, colonial and extractive paradigm that drives our economic system and perpetuates violence against Indigenous peoples is leading to the extinction of diversity in its myriad forms – cultural, political, biological and social. The causes of injustice towards Indigenous peoples are at the root of the current climate crisis.

We believe that a transformative decolonial paradigm shift is the only sound way forward.

Canada is a settler society. Only the earliest relations between settlers and the Indigenous peoples could be described as a partnership. During that period, Indigenous labour and knowledge were the basis of the fur trade that dominated the Canadian economy for at least 300 years. Soon, however, the Canadian state took shape and the settler stance became ever more repressive.

Articulated by the Canadian state in the language of protection, civilization, enfranchisement (meaning assimilation and the related extinguishment of Indigenous cultures, effectively genocide) and management, the relationship it forged with Indigenous peoples, beginning with the First Nations, culminated in the 1876 Indian Act. It was followed by a series of draconian, repressive measures – bans on traditional ways and ceremonies, pass laws and residential schools. With the 1951 revision, the Indian Act turned to ideology rather than repression as the instrument of choice in imposing control without giving up repression entirely, as is clear from the history of repression of Indigenous struggles to this day.

This settler colonial dynamic also applied to the Inuit and Métis, but with a different legal basis. Métis land rights were acknowledged by issuing individual title or scrip (which many soon lost, often through fraud). Inuit were not part of Canada until the British turned over their claim over northern lands to Canada in 1880. Even thereafter, they remained largely ignored until the 1920s, while their land rights were only recognized in the 1970s, in modern treaties beginning with the James Bay and Northern Quebec Agreement of 1976.

The Indian Act was designed to facilitate federal control over many aspects of Indigenous life including Indigenous economic, political and social systems. However, aspects of the Indian Act, such as the so-called

'status' provisions, were successfully subverted by First Nations. For the Canadian state, they were instruments for separating 'primitive' 'Indians' as second-class citizens from non-Indigenous Canadians.

While resisting such treatment, however, First Nations used these provisions as the legal ground of their identities, cultures and what would come to be called 'Citizens plus' in the 1960s. The expression constituted recognition of First Nations as bearers of more than just ordinary human rights. As the original occupants of the land, they were also bearers of special rights arising from original occupancy, including collective rights such as the right to self-determination or sovereignty and rights to traditional land. This was first recognized in the Royal Proclamation of 1763 and, when that document was integrated into the Canadian Constitution, the recognition was also securely lodged there.

That is why Pierre Trudeau's apparently very noble idea of giving Indigenous people full civil rights was resisted by so many Indigenous activists and peoples. It involved extinguishing the Indian Act and, indeed, extinguishing Indigenous identity and tradition.

Trudeau was, on the one hand, motivated by his federalist commitments to resist Quebec separatism and stress only individual rights and the rights of the Canadian state, not collective rights of groups. On the other hand, he was inspired by the civil rights movement in the U.S. and sought to erase all distinctions between Indigenous people and other Canadians. Trudeau's 1969 White Paper, therefore, while ostensibly aimed at liberating Indigenous peoples, would have dealt a fatal blow to Indigenous rights by erasing their distinct, pre-existing rights.

Because of this experience, when Aboriginal Rights were brought into the Canadian Constitution in 1982, it not only affirmed Aboriginal Rights in Section 35, it also included Section 25. According to it, nothing in the Charter of Rights and Freedoms could be interpreted in a manner that diminished aboriginal and Treaty rights, including the right to self-government.

We must build on this lesson as we incorporate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into our laws. That laudable document contains minimum human rights standards for Indigenous Peoples and commits signatory governments to right many wrongs, including taking free, prior and informed consent from Indigenous people for development of land and strengthening Indigenous culture and language.

It also recognizes individual, collective and land rights of Indigenous peoples around the world. However, it does not recognize that, when equality rights operate within a human rights discourse, they can be used, as in Canada in 1969, to trample Aboriginal and Treaty rights.

This conception of Indigenous rights, which Canadian courts call 'Aboriginal and Treaty Rights,' are defined in Canadian law as collective rights to customs, practices and traditions that are integral to the distinctive culture of the people claiming the right.

In our view, they include the rights to traditional lands, self-governance, language and the preservation of traditions and lifeways.

These distinct, pre-existing rights lie at the core of Canada's relation to Indigenous peoples. Had it succeeded, Trudeau's White paper, by extinguishing the special rights of Indigenous peoples, would have carried forward the real agenda of Canadian Indigenous policy more forcefully than ever before.

That real agenda, underlying all the Canadian state's pronouncements and actions regarding Indigenous matters, was dispossessing the Indigenous peoples of their lands; if necessary, by terminating Aboriginal and Treaty rights. This dispossession and termination agenda continue to this day.

Dispossession was achieved chiefly through a one-sided interpretation of the mosaic of treaties that cover most of the land in Canada and which Indigenous peoples traditionally held and stewarded. First Nations rightly view the original historic Treaties as nation-to-nation treaties of peace and friendship that would protect their lifeways, their access to their traditional lands and ensure a decent standard of living.

The written historic treaties, signed with Great Britain (not Canada) typically included agreements that the First Nations would continue to access their traditional lands as they historically had, including to use them for their traditional livelihoods and lifeways, including hunting, fishing, trapping.

However, Federal and Provincial governments alike have interpreted the treaties to mean absolute surrender of all rights, excepting rights to reserves. These reserves have played a profoundly ambiguous role in Indigenous history.

On the one hand, the reserves are too small and economically unviable. As such, the setting aside of reserve lands and opening up traditional lands for white settlement was a process of dispossession. On the other hand, reserves have ensured intergenerational continuity of the peoples concerned.

This dispossession project of denying Indigenous Title and insisting on surrender to Crown Title lies at the heart of the fraught relation between the Canadian state and Indigenous peoples and is the key to why the Indian Act remains in place.

As long as it does, successive Canadian governments oversee grossly dysfunctional forms of governance, inadequate housing and social services on reserves along with the violation of traditional Indigenous lands by promoting various Crown and Corporate forms of their exploitation from which the Indigenous peoples benefit little, if at all. In response to Indigenous peoples' demand for restoration of their traditional lands, Federal Conservatives have simply opposed them. The Federal Liberals have made better noises about Indigenous reconciliation but have pursued what leading Indigenous policy analyst, Russell Diabo, has long called a 'termination' policy approach. In the context of modern treaty and self-government negotiations, the policy seeks to 'give' Indigenous nations some more land, still far short of their traditional lands, while binding them to a termination of any further land rights and the distinct and pre-existing Aboriginal rights. The Canadian state must do this because these Aboriginal rights are recognized in Canadian law and constitute the chief obstacle to the unbridled corporate or crown exploitation of Canada's lands and water bodies it supports.

In the current conjuncture, Indigenous peoples are caught between a new treaty-making process based on termination or remaining under the immiserating Indian Act system that ignores Indigenous peoples' historic treaties with the Crown and rights in Canadian law. It has also meant that land defenders and elders are sidelined in development agreements concluded between the Federal Government, Band Councils and Corporations. The result is to leave more and more Indigenous territories prey to rapacious and destructive resource extraction developments that do not benefit Indigenous people.

One final element of the Indian Act reserve system merits strong condemnation: the decades of chronic underfunding for housing, infrastructure, education, etc. contributes to emigration into the most derelict districts of Canadian cities where they experience a toxic amalgam of poverty, economic marginalization and racial discrimination. Rather than enjoying decent social services, they face a hostile social state that not only knowingly underservices them but also incarcerates them and kidnaps their children, denying Indigenous people's right to family and culture.

The resulting socioeconomic conditions of the overwhelming majority of Indigenous peoples constitute a moral and political indictment of a rich country like Canada. First Nations, Inuit and Métis suffer lower rates of employment, far lower incomes, lower education levels, inadequate housing and overcrowding, lack of potable water, lower life expectancy, high suicide rates, higher morbidity rates, low access to healthcare,

and food insecurity. The appalling structural racism Indigenous people suffer in Canada means that they are incarcerated at rates five times their share of the population. Indigenous children make up nearly half of children under government care in Canada, and the scandal of Missing and Murdered Indigenous Women and Girls continues.

It is our view that the net result of this history and the continuing termination policy framework is genocidal towards all Indigenous communities in Canada. At the present time, the ongoing dismissal of land rights, the kidnapping of Indigenous children from their communities, the over-incarceration of Indigenous people in the justice system and the tragedy of Missing and Murdered Indigenous Women and Girls are only the most visible features of this genocide.

What We Propose

We recognize the strong affinity between Green Left and Indigenous environmental stewardship in our proposals for responding to the Ecological Emergency. We also recognize that it will take a serious long-term commitment to understanding across the settler colonial chasm to turn that affinity into politically effective action. Political and environmental organizations have often made similar commitments and broken them when they were no longer politically convenient.

This requires a new approach.

Approach

We propose an approach that:

- recognizes that Canadians and their governments cannot simply bring 'solutions' to Indigenous peoples, but must learn from them in ways that will assist everyone with the enormous social and environmental challenges we face;
- initiates a national conversation with grassroots and elected leaders whose form and content will lean heavily upon Indigenous knowledge to gather insight and build co-operation on plans of action on the many fronts of Canadian-Indigenous relations, including discussion of the measures proposed here;
- establishes an ongoing consultation process involving Indigenous leaders, traditional and elected, including land defenders and elders with the Federal and Provincial Governments;
- recognizes that the restoration of Indigenous sovereignty, rights and land are integral to confronting the ecological emergency;
- ensures that the consultation process is based on an approach that recognizes the strengths and contributions of Indigenous peoples rather than their limitations or victimhood.
    - These strengths include the sustainable, land-based practices that Indigenous peoples used historically to keep the land in a beautiful state.
    - As well, Indigenous peoples still have knowledge around intergenerational family community and egalitarian social relations that would be the basis of a better world.
- makes ending the ongoing genocide of Indigenous Peoples a national
- priority;
- recognizes that at the root of the genocide lies the matter of land.
    - We must end the Canadian State's drive towards dispossession and recognize that the radical and underlying title of the land in Canada is Indigenous Title and jointly develop a process with Indigenous Peoples of a land titling registry system that returns agreed upon Crown lands to Indigenous Title, in accordance with Articles 26, 27, 28 of UNDRIP, while formally rejecting the colonial Doctrines of Discovery and Terra Nullius as recommended by RCAP.

- We must restore to the Indigenous Peoples – Métis, First Nations or Inuit – the land bases that are the historic and continuing source of their existence, health and hope, or provide appropriate restitution for the same.

Process

Restoring Indigenous land, providing restitution for it, self-determination and rights must be achieved through an appropriate process as outlined in UNDRIP. Canada's unjust Indigenous policies have too long been directed towards establishing patron- client relations with sections of Indigenous peoples. Such divisive governance should be replaced with a new approach.

To this end, we propose to:

1) engage all Indigenous parties, including the proper Indigenous Title and Rights Holders, the Peoples, including land users, land defenders, elders, traditional leaders, and elected leaders, in developing ongoing discussion:
   a) of nation-to-nation relations;
   b) led by Indigenous protocols;
   c) recognizing the strengths of Indigenous peoples; and
   d) working towards developing new institutional decision-making structures to maintain the discussions on an ongoing basis.
2) conduct a root and branch overhaul of the relations of Canada and Indigenous peoples by

   a) formally denouncing the racist doctrine of discovery and terra nullius as justification for settler presence on Indigenous People's lands, as well as any other doctrines, laws or policies that would allow Canada to address Indigenous Peoples on any other basis than nation to nation;
   b) jointly, with Indigenous Peoples, communities and nations, restricting federal policies for Indigenous peoples to orient them towards a just and fair treaty and aboriginal rights paradigm;
   c) eliminating termination policies in the fields of self-government and land claims, and repudiating any agreements that involve surrender or termination of rights;
   d) developing a new framework based on the recognition and deployment of rights in all areas of Federal Indigenous policy by:
      I. building on the work of the Supreme Court of Canada over the past thirty years to apply section 35 of Canada's constitution, which recognizes and affirms Aboriginal rights, without being limited by these decisions;
      II. committing to an interim approach until a political agreement is reached on the identification of the Aboriginal and Treaty rights in section 35 as contemplated by section 37 of the Constitution Act 1982, and the amendment of the Constitution to reflect such agreement;
      III. interpreting treaties in a liberal and generous manner while denouncing the Natural Resources Transfer Agreement as unjust and unfair because Indigenous litigants were not allowed to hire lawyers at the time it was passed;
      IV. supporting Indigenous Peoples challenging exclusive provincial jurisdiction; and
      V. making Indigenous resource use the first priority following the need for conservation, and having a duty to consult, with Indigenous local communities having veto power around what will happen to traditional territories.
3) Preventing Indigenous rights from falling between federal and provincial jurisdictions. The Federal government has not been fulfilling its responsibility to assist First Nations in their struggle against provincially generated extraction projects. With the purchase of the Trans Mountain pipeline, the Federal government is now outright reneging on that responsibility.

4) Developing a proactive federal policy to provide funding assistance for Indigenous peoples where their lands are subjects of development proposals. Funding must provide legal assistance to ensure robust protection of land rights on traditional territories.
5) Supporting First Nations controlled research with both traditional and scientific knowledge about potential impacts of development projects, and the co- ordination of multiple communities or Nations to allow where possible for concerted action.
6) Negotiating directly with actual, rights-bearing Indigenous governments to let them decide, according to the needs of their own communities, whether to opt out of some or all aspects of the Indian Act by developing their own self- determination plans based on their own research. Since the Indian Act, flawed as it is, has served historically as a critical basis of the survival of Indigenous identity and culture, it cannot simply be done away with.
7) Jointly reviewing with Indigenous communities and Nations the Indigenous structural, policy and legislative framework the federal government has put in place since 2015 to jointly design a negotiation process to ensure a distinct order of constitutionally protected governments in Canada coequal with Provinces, provide funding for communities to develop governance models which would then be constitutionally protected and recognized as a distinct order of government;
8) Creating a Council of Canadian Governments as a forum of ongoing discussions with input into law and its implementation.
9) Jointly establishing with Indigenous Peoples Treasury Board parameters for a portion of all royalties from natural resource projects to be set aside and targeted to programs, including those mentioned above, for Indigenous peoples and communities.
10) Negotiating the allocation of a portion of the annual GDP to be directly granted to Indigenous governing bodies to implement a number of the proposals and recommendations that Indigenous communities have put forward (including many to follow below).

Proposals

The long history of Indigenous struggles waged by both elected and traditional leaders, the aims and goals they have sought to achieve and the long textual record documenting the wrongs of Canadian policies and proposals to right them produced by Indigenous organizations (such as the Assembly of First Nations and various provincial and local organizations of the First Nations, Métis and Inuit) provide a rich source of proposals.

Additionally:

Indigenous concerns have been reflected in UNDRIP and recommendations from UN's Global Assessment Report on Biodiversity and Ecosystem Services. Of these, we consider the following the most important.

Land

Restoring Indigenous peoples' Title over, access to and control over their traditional territories must be the ultimate goal of any just policy. Towards this end, which will require a long process, we propose to:

1) recognize and affirm Indigenous Title to, that is, collective ownership of, interests in and sovereign rights over their traditional lands, rather than exclusively over reserves, selected lands, or other narrower land bases;
2) work with the Inuit through the Inuit Tapiriit Kanatami and respect their territory, covering one third of the land mass of Canada;
3) respect Inuit sovereignty over Inuit Nunangat;
4) extend federal oversight of land-based development projects by having national environmental and social/cultural review bodies mandated to review provincial projects currently only assessed through

provincial processes. Federal environmental approval must be a structural feature of any major extraction or energy projects on traditional Indigenous lands, whether designated Provincial or Federal 'crown' lands. Affected Indigenous communities and Nations must have veto power on all such projects;

5) develop programs that provide support to elders and traditional land users and ensure any land use plans involve agreement from those Indigenous Peoples; and
6) revise all treaty implementation policies to reflect doctrines promoted by the Supreme Court of Canada that treaties should be interpreted in a 'generous and liberal' manner with 'the honour of the crown' as a guiding principle. The spirit and intent of the treaties, and Indigenous knowledge of these, must be a foundation of treaty implementation.

Culture and Social Policies

1) develop national policies promoting land-based practices as a major heritage component;
2) fund cultural, educational, healing, justice camps where viable in the far and mid north and in southern Canada;
3) provide special support funding for holders of traditional intangible cultural heritage knowledge to develop and disseminate it;
4) develop a programme whereby Indigenous land-based education is made available both to urban Indigenous peoples and all Canadians, particularly young people;
5) federally recognize Indigenous languages as heritage languages and, as a first step towards redress and restitution for the assimilationist policies of the past, commit to serious and adequate funding for Indigenous language retention policies, including immersion schooling, curriculum development, documentation, and committed support for arts and media in Indigenous languages;
6) advance knowledge co-production that recognizes different types of knowledge, including Indigenous and local knowledge and education, that enhances the legitimacy and effectiveness of environmental policies;
7) conduct a review of Canada's justice system to end incarceration as a solution to social problems, extending the Gladue processes of alternative sentencing and building an infrastructure of on the land justice camps for non-serious crime offenders;
8) work with the Métis National Council and Congress of Aboriginal Peoples to implement the Supreme Court decision in Daniels affirming the Indigenous status of 'non-status' Indigenous people, with necessary funding and action;
9) develop robust health, education and housing/infrastructure programs in Indigenous communities that establish and reflect national standards while using local labour and developing appropriate local materials and skills to ensure their maintenance;
10) provide healthcare matching national standards on reserves and among Indigenous communities in cities;
11) end drinking water and boil water advisories within three years by investing and upgrading critical infrastructure to ensure safe water access in every Indigenous community;
12) orient national or provincial infrastructure programs tied to creating employment in economic downturns towards improving all infrastructural elements – roads, water, housing, public facilities – in Indigenous communities;
13) implement all the recommendations of the Inquiry on Missing and Murdered Indigenous Women and Girls;
14) prevent the alienation of Indigenous children from their families by developing, in collaboration with Indigenous organizations, appropriate policies;

15) in collaboration with Indigenous women's and Indigenous organizations, develop a comprehensive Canada-wide plan of action – with a timetable and dedicated funding – to eliminate violence against women, girls and gender-diverse people.

Law

1) bring Section 35 of the Canadian Constitution into compliance with Article 1 of the International Covenant on Civil & Political Rights/International Covenant on Educational, Social & Cultural Rights and Article 3 of UNDRIP and rescind all of the inconsistent colonial laws. This will provide for the implementation of the Indigenous right to freely determine their own political status and freely pursue their own economic, social and cultural development;
2) establish extra seats on the Supreme Court of Canada for Indigenous justices; and establish a legal advisory board consisting of elders and professionals nominated from Indigenous communities who are consulted on all cases involving Aboriginal rights, which must be presided over by one of these Indigenous justices;
3) endorse UNDRIP in the context of international customary law on Indigenous Peoples recognizing it does not go far enough in relation to gender.

We imagine a Canada in which:

1) the genocide of Indigenous Peoples is ended and intergenerational trauma is healed;
2) the full range of Indigenous grievances are addressed at the highest levels of governance with dispatch, using Indigenous processes;
3) Indigenous Peoples have effective control over their traditional lands;
4) a green economy works with Indigenous traditions of land stewardship;
5) the economy is cured of its addiction to extractive economic activities;
6) Indigenous nations are self-governing and self-determined.

Lastly, we imagine a pluri-national Canada of self-determining nations in which all Canadians have the opportunity and privilege to learn from Indigenous values, cultures and knowledge.