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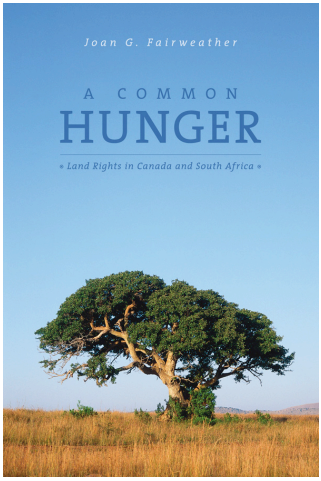

A COMMON HUNGER:
LAND RIGHTS IN CANADA AND SOUTH AFRICA
by Joan G. Fairweather
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Chapter Three

Sovereignty and Segregation

> The position we strongly hold is that Indians are citizens plus: that in addition to the normal rights and duties of citizenship they also possess certain rights as charter members of the Canadian community.
>
> *Report of the Hawthorn Commission, 1967*[1]

INTRODUCTION

When European settlers arrived on the shores of North America and southern Africa, they adopted the view that people who appeared to have no recognizable system of government or legal codes could legitimately be ruled by their colonizers. It was a case of supplying sovereignty (or supreme authority) where none existed. As competition for colonies intensified, the rights of Europeans to carve out spheres of influence for themselves were strongly asserted by international lawyers in the late nineteenth and early twentieth centuries. In 1904, J. Westlake argued in his book *International Law* that because indigenous societies were "unable to supply a government suited to white men" they could not be "credited" with sovereignty.[2]

One of the ways the European powers maintained sovereignty over indigenous peoples was to segregate them physically and socially from mainstream (non-aboriginal) society. Canada and South Africa used segregation to achieve different objectives; but in both countries, the policy had a largely negative impact on indigenous communities.

SOVEREIGNTY AND CONSTITUTIONAL RIGHTS IN CANADA

The sporadic recognition of treaty rights in Canada during the first century after Confederation can best be understood in the context of Canada's constitutional history. The principle of separate and "protected" Indian lands as articulated in the Royal Proclamation of 1763 and in the British North America Act (BNA) of 1867 continued alongside the contradictory policy of assimilation which became the official policy of the

new Canadian government in 1867. The provisions of the BNA Act of 1867 that "lands reserved for Indians" could only be alienated by the Crown is a double-edged sword. On one side, by adopting the Westminster style of parliamentary government, Canada continued British conventions and practices, which included recognition of colonial-era treaties. However, under the BNA Act, the state had fiduciary responsibility for the welfare of aboriginal peoples. The new government created special legislation and a special government department to administer this responsibility. The Indian Act (1876) consolidated pre-Confederation legislation on Indian affairs into a nationwide framework that is still fundamentally in place today. Although the Act has been amended several times, it has never been abolished.

The Indian reserve lands are at the centre of the Indian Act. However, they were not given any consideration in the acts of Confederation. Treaty boundaries were ignored in the territorial arrangement of provinces of the new country. Many Indian territories spanned more than one province – and even international boundaries with the United States, as in the case of the Akwasasne Reserve in Quebec. Thus, from the outset, aboriginal reserves were excluded from the new country's framework and remain an awkward anomaly in the system. The Indian Act purported only to protect reserve lands from immigrant acquisition. Through most of its history, the Indian Act defined reserves as:

> any tract of land set apart by treaty or otherwise for the use and benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is unsurrendered and includes all trees, wood, timber, soil, stone, minerals, metals or other valuables thereon or therein.[3]

Moreover, the extent of Indian reserves in Canada has never been firmly established by law. Richard Bartlett points out that the reserves were all created at different times under different legislation: some by Crown grants of land to religious communities and missionaries (mainly in Quebec in the eighteenth century); some by treaties and modern agreements (mainly in the Prairie Provinces and Ontario); and some by federal purchase of land or executive action (mainly in British Columbia and the Maritime Provinces). Thus, each reserve has its own history, with distinct legal consequences for provincial jurisdiction and Indian interest in the land. Since each reserve is unique, there is no single way of dealing with them effectively, either for the government or for the Indians seeking sovereignty.

Under the Indian Act, Status Indians (members of registered bands) became "wards" of the federal government. Thus the government assumed control over all aspects of the lives of Indians living on reserves through a federally appointed resident Indian Agent. As a further indication of their loss of autonomy, Indian tribal systems were replaced with an elective band structure (the band council) under the direct authority of the Superintendent General. Traditional chiefs and leaders were no longer recognized as representatives of their people: the Indian Superintendent designated elected officials (always male at that time) as band spokesmen. Men were even selected for this role in Iroquois country and other territories where clan mothers had always held the most influential positions of power.

Shortly after Confederation, the Ottawa bureaucracy began to impose assimilation measures on the reserves. In 1884, the elaborate gift-giving feasts of the west coast nations, known under the general label of "potlatch," were banned along with other traditional rituals. Dickason explains that the "give-away" aspect of potlatches was held to be "incompatible with Western economic practices and inimical to the concept of private property." The prairie thirst dances (Sun Dance) were also banned for supposedly "interfer[ing] with the planting season." In addition, revisions to the Indian Act in 1914 imposed the penalty of a fine or imprisonment on any Indian who "participated in any Indian dance outside the bounds of his own reserve."[4] So although the Indians retained portions of land, they did not have sovereignty over it.

As surprising as it may seem with hindsight, nineteenth-century Canadian governments did not regard the establishment of reserves and Canada's subsequent policy of assimilation as incompatible. After Confederation, the government's stated objective was to make Indians over in its own (European) image. As Canada's first prime minister, Sir John A. Macdonald, announced to Parliament in 1880, the policy was "to wean [the indigenous people] by slow degrees, from their nomadic habits, which have become an instinct, and by slow degrees absorb them or settle them on the land. Meantime they must be fairly protected."[5] Thus, the reserves, allocated through treaties or by orders-in-council to registered bands, were seen merely as a staging area before total assimilation could take place: the government had never considered them to be permanent lands.

Official practice echoed these priorities. Edgar Dewdney, Lieutenant Governor of the North-West Territories (the western prairies) from 1881 to 1888, endorsed the reserve scheme on the grounds that it would "strike at the heart of tribalism" and foster self-reliance among the Indians and

emulation of white society. Dewdney's successor, Hayter Reed, had a different set of objectives. He arranged to have the reserves surveyed in order to promote private ownership of reserve lands. Frank Oliver, in charge of Indian Affairs in the early 1900s, also favoured the sale of reserve land. In 1906, the Indian Act was amended to permit the sale of reserve land, but with the Indian residents retaining only 50 per cent of the purchase price. By selling their land, Indians were assured of sizable annuities (mostly in lump sum payments), and many bands were pressured to give up hundreds of thousands of acres. In 1911, the Oliver Act allowed the removal of Indians from any reserve situated next to a town of eight thousand or more residents.[6] Thus, the government's policy of assimilating Indians into the general population started to take effect.

Missionaries and teachers in Canada helped hasten the assimilation process. Describing the work of the Presbyterian Church in North America in the nineteenth century – which he dubs the "Great Century of Protestant Missions" – Michael C. Coleman writes that missionaries were regarded by their contemporaries as "cultural revolutionaries" whose objective was the transformation of Indian life. Although missionaries had not consciously set out to weaken Indian resistance to the encroachment on lands, they had no qualms about harmonizing their religious fervour with the "civilizing" goals of their governments. They offered Indians what they saw as superior ways of life, a way of compensating for the wrongs that had been perpetrated against them.[7]

In his biography of Kahkewaquonaby (Peter Jones), a Mississauga-Welsh Métis who became an influential Methodist missionary, Donald Smith observes that powerful linkages were made between Christian conversion and the material values of European society.[8] Britain's Select Committee on Aborigines frequently heard evidence of the "transformation" that took place as a result of missionary endeavours among the Mohawk and Chippeway Indians of Upper Canada, in particular the Credit Reserve on Grand River. Quoting a letter written by the Canadian educator and Methodist minister, the Reverend Egerton Ryerson of Upper Canada, one witness told the Committee:

> [The Indians] were proverbially savage and revengeful, as well as shrewd; so as often to be the terror of their white neighbors.… But a few years ago (1825) when the Gospel was preached to these Mohawk Indians, as well as to several tribes of Chippeway Indians, a large portion of them embraced it.[9]

Chippeway Chief Kahkewaquonaby himself, in a written submission to the Committee, describes the changes wrought by Christian conversion in the lives of women in his community. Many women wore cloaks instead of blankets and have a shawl around their necks "exactly like the English ladies:"

> In their heathen state, [women] were looked upon by the men as inferior beings, and were treated as such. The women were doomed to do all the drudgeries of life, such as making of the wigwam; the carrying of materials for the wigwams in their wanderings; the bringing in of the deer and bear, killed by the men; dressing the skin, cooking, and taking care of the children; planting the Indian corn … I rejoice to say, since the introduction of Christianity among us, nearly all these heavy burthens have been removed from the backs of our afflicted women. The men now make the houses, plant the fields, provide fuel and provisions for the house.[10]

In the process of inculcating European values, Indian languages were seen as obstructions to advancement in the "white man's world." Like many of his contemporaries, the Methodist missionary John MacLean recognized the richness and sophistication of Indian languages; yet he actively supported the government policy to prohibit the use of native languages in schools. Writing in 1896, MacLean declared:

> Our Canadian Indians have beautiful languages, accurate and full in their grammatical structure, euphonious and expressive.… There can be no legitimate method of stamping out the native language except by the wise policy of teaching English in the schools and allowing the Indian languages to die out.[11]

The collusion of church and state, so powerfully exemplified in the residential school system, continued well into the twentieth century. The 1920 Annual Report of the Department of Indian Affairs applauded the successful incorporation of Indians into the fabric of Canadian society:

> This informal union between church and state still exists, and all Canadian Indian schools are conducted upon a joint agreement between the Government and the denominations as to finance and system. The method has proved successful, and the Indians of Ontario and Quebec, in the older regions of the provinces,

> are every day entering more and more into the general life of the country. They are farmers, clerks, artisans, teachers, and lumbermen. Some few have qualified as doctors, and surveyors; an increasing number are accepting enfranchisement and taking up the responsibilities of citizenship. Although there are reactionary elements among the best-educated tribes, and stubborn paganism on the most progressive reserves, the irresistible movement is towards the goal of complete citizenship.[12]

Thus, until the 1970s, the government objective was to gradually dismantle the reserve system and to assimilate the Indian population into the non-aboriginal society.

ASSIMILATION IN TWENTIETH-CENTURY CANADA

After World War I, pragmatic national concerns further encroached on Indian land claims. The Greater Production Program to increase food production on the Prairies had an adverse effect on the Plains Cree. Contrary to treaty promises, Superintendents of Indian Affairs were given the power to lease Indian lands without their consent and to charge the costs of stock, machinery material and labour against any fund held by the government on the Indians' behalf. Indian reserves were declared to be "much too large," and "idle lands" were seized and handed over to immigrant farmers to be worked more profitably. The Cree were given alternative land, which they themselves called *iskonikum*, meaning "scraps" or "leftovers." Much of this land was ill-suited for agriculture and had long since become unsuitable for trapping and hunting as well.[13] Thus, formerly self-supporting Cree bands were forced to work on their own lands for wages and abandon their traditional way of life.

After World War II, the spiralling costs of maintaining separate structures and special programs spurred governments to draw indigenous people into the mainstream society, both economically and socially. Moreover, new organizations, such as the United Nations and the International Labour Organization (ILO), considered the well-being of dependent aboriginal communities to be a matter of concern in promoting economic, social and political stability throughout the world. In 1952, the ILO invited Canada to become a member of the Committee on Indigenous Labour and to demonstrate that Canadian Indian policy was above reproach. Membership in the ILO acted as an important impetus to maintaining more constructive relations with indigenous Canadians.

Concerns about national security during the Cold War era were another factor in determining Indian policy. One British Columbian petitioner, C. Wilmott Maddison, Vice President of the Army, Navy and Air Force Veterans' Association in Canada, Vancouver Unit, asked for revisions to the Indian Act because of the vulnerability of Canada's Pacific Rim:

> If war came Indians would be very useful on account of their knowledge of the Northern hinterland. Unless we give them a "square deal" … we may find them disgruntled on such account.[14]

Maddison emphasized his point by adding that "certain interests, actual and positive enemies of our Great British Empire and Commonwealth, have already intruded tentacles among Canadian Indians." Thus, a combination of fear and international scrutiny forced Canada to re-examine its relationship with aboriginal people.

The fact that other governments were also reviewing their policies regarding aboriginal populations influenced the direction Canada was to take over the next decades. The United States, like Canada, had adopted assimilation as the stated cornerstone of its Indian policy, while isolating its Indian population on reserves. The American experiment, however, also managed to accommodate some Indian aspirations by restoring many aspects of Indian self-government and removing restrictions which had seriously hampered Indian economic development.[15] According to David Fulton, a Progressive Conservative Member of Parliament in 1951, it was important to at least appear to match the American sense of fair play and justice:

> In the United States, which has an Indian problem at least similar to ours … they have accepted the principle that Indians should vote without giving up these privileges which we gave in perpetuity in compensation [for Indian land] … I hope that we are not behind the United States in our ideals of citizenship. We have not the Fifteenth Amendment or anything like it … [but these rights] are inherent in our constitution and in our way of life.[16]

Fulton also recognized that the conditional franchise under the Indian Act was contrary to the Canadian constitution, an unusual observation for someone of his time period. Indians did not have the right to vote un-

less they left the reservation system and became part of the "white" culture. Although there was some interest in reforms to this law, Canadian policy makers were not in favour of creating a second tier of citizenship for aboriginal Canadians. For example, New Zealand's system of having four aboriginal members of parliament represent the interests of the aboriginal population was not regarded as an acceptable solution. As Member of Parliament D.F. Brown declared in the House of Commons: "We certainly do not want to have any one section of our country stand as a festering sore; we want the people to be assimilated so that they will join us as one."[17]

The 1951 revisions to the Indian Act changed very little in the lives of most Indian people. The only perceptible change in the wording of the Act was one of semantics. Indians were now to be "integrated" rather than "assimilated" into mainstream society. The term "integration," implied economic and political integration and the recognition of cultural identity, rather than wholesale absorption of aboriginal peoples into the dominant society. Even the amendments to lift the prohibition on the potlatch and to make fund-raising for political organizations legal were regarded as largely cosmetic. As the Leader of the Opposition and future prime minister John Diefenbaker declared in Parliament, far from being an improvement the 1951 revisions to the Indian Act were "a perpetuation of bureaucracy and a denial of the rights of Indians."[18]

During the 1960s, the contradictions between segregation and integration continued. On the one hand, Diefenbaker's Conservative Party government changed Canada's Elections Act to allow Indians the right to vote without the penalty of losing their Indian status. Thus Indians were encouraged to stay on the reserves. Yet in the mid-1960s, the government was also offering subsidies to Indian families to relocate into cities. In 1963, the Hawthorn Commission on Indian affairs stressed the special status of Indian citizens. "Differentiation on ethnic grounds has become synonymous with discrimination, apartheid, second-class citizenship, and generally a host of emotive words," the Commission's report declared, showing its awareness of international scrutiny. The key premise of the report recognized that indigenous peoples should be treated not only as citizens of Canada, but also as "citizens plus."

In the late 1960s, the Liberal administration of Prime Minister Pierre Trudeau rejected the Hawthorn Commission's notion of "citizens plus." Instead, his government pursued its objective of integration. The 1969 White Paper proposed the abolition of the Indian Act and the current system of Indian administration, including the fiduciary responsibilities of the federal government in both the Royal Proclamation and the

BNA Act. Like public services to all Canadians, services to Indian people would now be provided by the provinces. In his statement proposing the White Paper in Parliament in 1969, Jean Chrétien, Minister of Indian Affairs and future prime minister, stressed the equality of all Canadians as the basic principle of the policy:

> The government does not wish to perpetuate policies which carry with them the seeds of disharmony and disunity, policies which prevent Canadians from fulfilling themselves and contributing to their society.… It is no longer acceptable that the Indian people should be outside and apart.… Services should not flow from separate agencies established to serve particular groups, especially not to groups identified ethnically.[19]

Among the White Paper's proposals was the dissolution of treaties and the eventual removal of all references to Indians in the BNA Act: any vestige of special rights, including aboriginal title was to be removed from the statute books, and an Indian Claims Commissioner was to be appointed to take care of residual treaty obligations. The White Paper did not become law because of Indian protests, but it showed the government's plan for full integration.

In 1982, Canada adopted a Constitution, which changed the sovereignty-segregation argument considerably. The new Constitution tilted power away from governments (both federal and provincial) and towards individual citizens. By strengthening individual rights, it weakened the acceptability of collective rights, including those of aboriginal bands and nations. Any tendency to privilege one group over another was seen as contrary to the spirit of the Constitution and the Charter of Rights and Freedoms. As a further contradiction, aboriginal rights were included in the new Constitution, but without details on how they should be upheld.

More recently, the Canadian liberal democratic ethos has spawned both an integration ethic and a self-determination ethic. These ethics may prove impossible to reconcile. Reconciliation entails accepting an un-level playing field that promotes the flawed notion that "separate and equal" can co-exist. As Bruce Clark puts it, "We have in Canada *de facto* separateness of Indian communities and to deny them *de jure* rights to manipulate their own destinies may be little short of tyranny."[20] The ambiguities of the legal status of Canada's aboriginal population have made the issue of aboriginal justice and the restoration of land rights extremely difficult to resolve.

From the Indian perspective, the issue of overlapping sovereign rights does not exist, since most aboriginal nations have never accepted the assertion that their sovereignty has been extinguished by the mere presence of Europeans on their territory. The Gitxsan and Wet'suwet'en proclaimed this strongly in the Delgamuukw case. For them, the case was not about regaining sovereignty – they already had that. Gitxsan and Wet'suwet'en sovereignty was never in question: they would continue to live as they had always done with or without the recognition of European courts. This is true for every aboriginal group claiming the right to ancestral lands and the right to manage and conserve it as their people had done for thousands of years.

The Iroquois nation has been making this claim to uninterrupted sovereignty since the time of Tecumseh in 1812 and long before that. For the Iroquois, the relationship between European colonizers and themselves is most clearly symbolized in the two-row treaty belt, which embodies the right to aboriginal self-determination and self-government. The belt, made of wampum, depicts the aboriginal and non-aboriginal peoples of Canada traveling the river of life together, side by side, but each in their own boat, neither steering the other's vessel. Tribal visions of law like those symbolized by the two-row treaty belt (Gus-Wen-Tah) have sought to establish paradigms for behaviour in the relations between indigenous peoples and the settler societies of North America.

SOVEREIGNTY IN SOUTH AFRICA

Sovereignty issues in South Africa are much less ambiguous than they are in Canada. Despite the different histories of the four colonies that made up South Africa (two Boer and two British), their policies on the status of the indigenous population merged into one very clear policy when the Union of South Africa was formed in 1910.

The Cape Colony, influenced by British "liberalism," was the only former colony with a colour-blind franchise and rule of law for all. The other British colony, Natal, was openly protective of white interests. It had only a very limited franchise (based on land ownership) for its non-white population.[21] In the two former Boer republics, the Orange Free State and the Zuid Afrikaansche Republiek (ZAR), racial equality and the inclusive rule of law had never been practised. The Orange Free State's Constitution of 1854 was blatantly pro-white. The sovereignty of "the people" was recognized and certain rights guaranteed (such as the right to peaceful assembly, equality before the law, and right to property), but the term "equality" had to be read within the mores of the white Afrikaners (as the Boers were beginning to call themselves).[22]

The franchise was granted to "citizens only," and white pigmentation was required for citizenship. The ZAR (later named the Transvaal) was even less welcoming to non-Afrikaners, especially Africans. The initial ZAR's Grondwet (Constitution) of 1858 was frankly racist. It expressly stated that "the People desire to permit no equality between coloured people and white inhabitants, either in church or state." The legislature (Volksraad) was both sovereign and non-representative: neither Uitlanders (non-Afrikaner Europeans) nor Africans had the vote. Thus the lawmakers could (and did) manipulate the law to ensure Afrikaner hegemony.

But Cape liberalism did not survive the 1910 union of the four colonies. In its eagerness to placate and win the support of Afrikanerdom after the Anglo-Boer War, Britain granted responsible government to both ex-republics in 1906–7 on their own terms, including the absence of a black franchise. The Treaty of Vereeniging, which brought an end to the war in 1902, was deeply resented by the African people. In his study on early political protest, André Odendaal describes their outrage at the fact that Boers who had shown themselves to be "the enemies of the king" should be favoured, while Africans who had shown their loyalty to the British "in heart and deeds" were ignored.[23]

However, racial inclusiveness was not a high priority for either the Boers or the British. Lord Alfred Milner, High Commissioner for South Africa after the war, stated the prevailing British imperial mindset in his usual forthright style: "The ultimate end is a self-governing white community supported by well-treated and justly governed black labour from Cape Town to the Zambezi."[24] Speaking in 1908, Jan Christiaan Smuts, a Boer general in the Anglo-Boer War and later prime minister of South Africa (1919–24, 1939–48), was distinctly hostile to the idea of an African franchise:

> Every white man, however poor and ignorant is born into a community with a long civilized past behind it with training and tradition which constitute a strong presumption in favour of his being able to exercise his franchise properly. But in favour of the Native there is no such historical and cultural presumption. The *onus probandi* is distinctly on him; he has to prove his fitness before he is admitted into the charmed circle.[25]

Predictably, a compromise was reached over the thorny issue of an African franchise. The final decision was to allow the Cape to retain its qualified franchise while the northern provinces retained their whites-only

policy. The terms of Union were seen as a way of compensating the Boers for British excesses during the war and ensuring access to the lucrative gold and diamond mines. Ignoring the petitions of Africans and their white supporters, the British Parliament gave approval to the draft Constitution. The Union of South Africa came into being on May 31, 1910.

Over the following decades, the Cape franchise was gradually whittled away. In 1930 white women were enfranchised, which bolstered the white vote, and in 1936, Africans were removed from the common voters' role. After World War II, Africans in the Cape requested increased representation (by white Members of Parliament) from three to ten members but were refused by the Smuts government. The irony here was that had Smuts granted the increase, he would probably have won the 1948 election.[26] However, the Afrikaner National Party, under the leadership of D.F. Malan, won the 1948 election by a majority of five seats on the platform of "apartheid." A decade after the apartheid government came into power, Smuts' "charmed circle" was sealed off completely. The last tiny wedge of African representation (the right to elect four white representatives to the Senate through a system of electoral colleges) was removed in 1959, under the misnamed Promotion of Bantu Self-Government Act.

PRAGMATIC SEGREGATION IN SOUTH AFRICA

The reality of being outnumbered in population has always determined a great deal of European policy in southern Africa. Even after their lands had been taken and the power of their chiefdoms had been reduced, the overwhelming number of Africans presented a particular challenge to the early colonial authorities. But the colonies also needed a supply of cheap labour. Thus the policy of segregation became a useful tool for simultaneously controlling and exploiting the large African population.

In 1847, a Locations Commission was set up in Natal to devise a scheme for settling the land and administering the colony's reserve system. In wording reminiscent of Canadian Indian policy, the Commission was mandated to look into the "gradual improvement" of Africans.[27] One of the commissioners was Theophilus Shepstone, who had been appointed diplomatic agent of Natal in 1845. Shepstone was to play a critical role in developing the colony's native policy; but it was in the locations of Natal that his policy of paternal government, one of the earliest variants of "indirect rule," came to be applied. In a very short space of time, Shepstone created a structure of Zulu leadership under the framework of European control, with himself as "paramount chief." Like the Canadian band council system, Shepstone's system replaced indigenous authority

structures with European-designated authorities. He was unpopular with Natal's white farmers for setting aside such large locations that African workers were disinclined to work on the farms; and yet labour was at the root of Shepstonian policy. While traditional Zulu laws were maintained under Shepstone's policy, restrictions were placed on celebrations such as the "dance of the first fruits," a ritual which involved the parade of armed warriors and emphasized both the solidarity and strength of Zulu chiefs. In the words of African historian Mzala, Shepstone "set out to dismantle the Zulu military structure and transform its thirty thousand warriors into labourers working for wages."[28]

Although early South African policy was also geared towards "civilizing" Africans, the underlying objective was to turn them into "useful servants and consumers" to serve the interests of the white economy. As the Governor of the Cape in the 1850s, Sir George Grey, expressed it, Africans should be "made part of ourselves, useful servants, consumers of our goods, contributors to our revenue."[29] Furthermore, by insisting that European dress be worn, legislators and missionaries helped to create a dependency on European goods which would boost the economy. The economic motive for requiring Africans to "go decently dressed" was clearly articulated by Natal's Kafir Commission, which published its report in 1853:

> All kafirs should be ordered to go decently clothed. This measure would at once tend to increase the number of labourers, because many would be obliged to work to procure the means of buying clothing; it would also add to the general revenue of the colony through customs dues.[30]

The Report added that "it is cheaper and infinitely preferable to train the young kafir in industry than to exterminate him; and one or other must be done." Arguing from the premise that Natal was a "white settlement" whose black inhabitants were foreigners "living under British protection," the Commission recommended that the colony drastically reduce the number and size of its African reserves.[31]

As in Canada, Christian missionaries to South Africa contributed to the "civilizing" process by blending spiritual and materialist values. Turning Africans into good Christians meshed well with government policy to create good consumers. The goal of Methodist missionaries, writes church historian Daryl Balia, was to "domesticate" the indigenous population: "In converting the Africans and casting them adrift from their cultural and moral codes, the missionaries were indirectly respond-

ing to the needs of capital to create labourers and consumers of British manufactured products."[32]

Their efforts were only partially successful. In 1893, Fitz E.C. Bell, Chief Magistrate of the Kentani District, reported on the painfully slow "advancement" of Africans under his jurisdiction:

> There has been no visible sign of advancement by the natives towards a higher civilization. The Gaicas and Gcalekas alike are not as progressive as the Fingo are. They are indifferent whether their children are educated or not and dislike European clothing. The men will only wear it when at service or traveling on the more main roads or attending courts. The women, on returning from service in the colony, resume their red garments and revel in the freedom and licence allowed by their customs and style of living.[33]

The strength of African culture and traditions seemed surprising to their colonizers, who regarded them as vastly inferior to their own. However, another important factor in the pace of "civilizing" Africans was the size of the white population in relation to Africans in the region – Kentani had a population of twenty-nine thousand Africans and two hundred Europeans at the time the report was written.

While Christian missionaries had little regard for indigenous religions and did their best to stamp out traditional customs like ancestor worship, they recognized the potential for conversion in their work among Africans. Frequent interference in traditional structures (*e.g.*, the customs of lobolo and circumcision as part of initiation rites) undermined the traditional foundations of African life as it had been lived for centuries. Polygamy was another tradition that came under persistent attack. However, the motive behind the cultural attacks was not the eventual assimilation of Africans into white society (as it was in Canada), but rather to weaken their traditional economies and entice them to enter the labour market.

Cheap labour was also the motivation behind policies in British Kaffraria (later named Ciskei), which was incorporated into the Cape Colony in 1880. In 1894, Cecil John Rhodes (Prime Minister of the Cape and mining magnate with a vested interest in creating a cheap black labour force) introduced his "Bill for Africa" – the Glen Grey Act. The Act set a pattern for African land tenure throughout the continent, replaced traditional tenure (wherein chiefs held land on behalf of their people) with perpetual rents for individuals, and limited the size of plots to four

morgen (a Dutch land measurement equal to about two acres). It also imposed a labour tax on non-titleholders to discourage squatting. As Monica Wilson points out, the land tenure provisions were designed with the specific intention of ensuring that only a limited number of African men would remain on the reserve as farmers. No provision was made for the natural increase of the population; so once the land became impossibly overcrowded, the surplus (the other nine-tenths) would be forced to leave and find work elsewhere.[34] This is clearly what Rhodes had in mind when he explained his policy to Parliament:

> Every black man cannot have three acres and a cow, or four morgen and a commonage right … It must be brought home to them that in the future nine tenths of them will have to spend their lives in daily labour, in physical work, in manual labour.[35]

European governments provided moral justification for this policy of exploitation by depicting Africans as inherently lazy and lacking in intelligence. Rhodes himself complained at great length about the way rural Africans existed on the "great preserves" living in sloth and idleness: "The average Kaffir is a highly odorous and dirty savage with less intelligence than it is possible to conceive and whose only ambition is to make enough money with as little exertion as possible, to buy one or more wives to work for him for the rest of his useless life."[36]

In 1905, leading up to the 1910 union, the South African Native Affairs Commission (SANAC) devised a reserve policy to satisfy both British and Boer demands. The Commission formalized the idea of racial segregation by envisaging reserves as a mandatory and permanent principle of land allocation. Under the terms of the South Africa Act (1909), lands set aside for the occupation of the natives could not be alienated except by an Act of Parliament.[37] The labour reserve rationale behind the establishment of reserves was clearly stated by Sir Godfrey Lagden, the Commissioner of SANAC (also known as the Lagden Commission), in 1909:

> A man cannot go with his wife and children and his goods and chattels on to the labour market. He must have a dumping ground. Every rabbit must have a warren where he can live and burrow and breed, and every native must have a warren too.[38]

The reserve system developed as a method of both keeping Africans separate from white communities and making them available as labour. The size of reserves was among the first contentious issue addressed

by the Boers and the British after the Anglo-Boer War (1899–1902). Industrialists (mainly English-speaking) wanted reserves to be maintained as reservoirs of cheap black labour for the mines and industries. The idea was that the reserves would support subsistence agriculture, operated by "surplus labour" (mainly women), to supplement the low "single man's" wages in the mines and factories. Boer farmers, on the other hand, wanted the size of reserves restricted in order to increase their own holdings and force landless Africans to work as farm labourers. Furthermore, the white farmers wanted to protect themselves from competition from black farmers.

Colin Bundy refers to this conflict as the competing needs of "gold" and "maize." In his study of African peasantry, he points out that black farmers flourished in the period after the Anglo-Boer War as hundreds of Afrikaners abandoned their farms for military service. The conventional wisdom that Africans were failed farmers (like Indians in the Canadian prairies at the turn of the twentieth century) was a convenient justification for taking their lands away from them.[39] Unlike the Canadian prairies, where Indian farmers were forbidden to sell their produce or purchase goods without a permit issued by the Indian Agent, African farmers were simply evicted from their flourishing farms and forced to either become sharecroppers on white-owned farms or find wage labour in the cities.[40] As Bundy and others have argued, the emergence and decline of the African peasant was a crucial element in the transformation of farmer-pastoralists into a reservoir of cheap, right-less and largely migrant labourers.[41] Monica Wilson has also drawn attention to the fact that the reserve areas of South Africa (and in the territories that are today Botswana, Lesotho and Swaziland) were initially very prosperous.[42]

Sharecropping became a common practice after the war. Many white farmers without capital or access to labour turned to sharecropping with black tenants as a way to keep their land productive. Through these verbal agreements, African farmers (and often their entire family) contributed their skills, labour and equipment in order to keep a share of the harvest. In many sharecropping relationships, Africans retained a certain amount of power. But these arrangements were outlawed by the Native Land Act of 1913.[43] The perception arose that African farmers were growing richer and more independent while an increasing number of whites (mainly Afrikaners) were becoming poor. The so-called "poor white" problem was the basis of a populist mobilization against African competition leading up to the Native Land Act.[44]

Based on the recommendations of the Lagden Commission, the Native Land Act formally reserved the lands which had been set apart for Africans and barred them from purchasing lands outside these "Scheduled Native areas." Under this Act, all previous land agreements (including sharecropping agreements) with Africans were terminated, and Africans were summarily evicted unless their labour was required. The Boer republican law prohibiting Africans from living on farms except as servants was thus extended to the whole Union. The more successful the black sharecropper, the more likely conflicts were to occur when Africans refused to pay increased rents, to deliver the labour of wives and children, or to hand over their ploughs or wagons to their white landlord.

In essence, the Native Land Act was a precursor of apartheid because it made Africans homeless in their own country. Under the Native Trust and Land Act (1936), additional land was added to the "scheduled" areas, and a Native Trust was established to administer all reserve lands. The additional "released" land (which extended the "Native reserves" from 7 percent to a little under 13 percent of the country) was presented as a major "gift" to the African population. When the Report of the South African Lands Commission was published in 1916, recommending that additional land be allocated for African settlement, Sol Plaatje, Secretary of the South African Native National Congress, described the offer and its misleading presentation of the facts with some bitterness:

> There are pages upon pages of columns of figures running into four, five or six noughts. They will dazzle the eye until the reader imagines himself witnessing the redistribution of the whole subcontinent and its transfer to the native tribes.… They talk of having "doubled" the native areas. They found us in occupation of 143 million morgen [of land] and propose to squeeze us into 18 million. If this means doubling it, then our teachers must have taught us the wrong arithmetic.[45]

For all their destructive impact, the land acts were more a statement of ideals than a practical legal code. As a policy of social engineering, they were not practicable at the time because thousands of white farmers depended on the work of black tenants on their lands. White farmers had neither the skill nor the capital to replace the role played by black labourers. State subsidization of white farmers through such agencies as the Union Land Bank was still in its infancy in 1913, and the coercive

power of the state was very limited. Although there was displacement of hundreds of people from farms immediately after the passage of the Act, it was only in the 1960s and 1970s that the principles of the Land Act were implemented with the forced removal of people from black-owned areas (officially termed "black spots") and from urban areas to the bantustans. These delayed effects of the land acts were explained by Laurine Platzky and Cherryl Walker in their 1985 publication about the Surplus People Project:

> Large numbers of isolated, African-owned farms as well as extensive tracts of state-owned land long settled by Africans were not approved for release [under the Native Trust and Land Act of 1936]. The freehold areas were thus isolated as "black spots," whose continued existence ran counter to the reserve policy, while those Africans living on state land became classified as illegal squatters. The Act thus pointed to the eventual relocation of these people at some stage in the future.[46]

The predominant feature of South African reserves was the migrant labour system; the lynchpins that held the system in place were the Pass Laws. Often brutally enforced, these laws and regulations monitored and controlled every movement of the black population. Not only did the hated "pass book" record and confine movements from one area of the country to another, the pass laws also determined and restricted the kinds of work for which any given worker was eligible. The options facing pass offenders were stark: a fine which most were unable to pay; eviction from the urban area where they were currently working; or a prison sentence which usually included hard manual labour, usually on a farm. As Allen Cook observes, "the words 'farm labourer' stamped on a pass was the stamp of doom. Isolated on remote farms, prisoners were habitually subjected to maltreatment by their employers."[47] The pass laws and apartheid were inextricably intertwined. Philip Frankel observed in 1979, "[t]oday, both locally and nationally, the notions of apartheid and pass laws are considered as virtually inseparable."[48]

IDEOLOGICAL SEGREGATION AND SOVEREIGNTY: APARTHEID SOUTH AFRICA

In the 1930s, Afrikaner intellectuals returning home with doctoral degrees from German universities produced pamphlets, tracts and articles glorifying Nazi ideals. Notions of "racial purity" became a central theme of Afrikaner discourse. In the words of one pamphleteer, "The preserva-

tion of the pure race tradition of the Boerevolk (Afrikaner nation) must be protected at all costs in all possible ways as a holy pledge to us by our ancestors, as part of God's plan for our people."[49] African integration was anathema to the goals of white supremacy. The policy of racial segregation was clearly articulated by the Afrikaner National Party, which gained power in 1948. Their election manifesto stated, "The Bantu in the urban areas should be regarded as migratory citizens not entitled to political or social rights equal to those of whites."[50] The Transvaal leader of the National Party, J.G. Strydom (later to succeed D.F. Malan as Prime Minister), appealed to genuine fears about the survival of the Afrikaner people as a separate and distinct entity in white South African society:

> Our policy is that the European must stand their ground and must remain baas (master) in South Africa. If we reject the herrenvolk (master race) idea … if the franchise is to be extended to non-Europeans, and if the non-Europeans are given representation and the vote and the non-Europeans are developed on the same basis as the Europeans, how can the European remain baas? … Our view is that in every sphere the European must retain the right to rule the country and to keep it a white man's country.[51]

With apartheid, a new level of white supremacy was reached in South Africa. The word apartheid (Afrikaans for "separateness") represents much more than the mere segregation of the races: it was both an ideology and a political system that permeated every aspect of the political, social and economic life of South African society. Under apartheid laws, which numbered in the hundreds, racial segregation was institutionalized. The key laws (the so-called pillars of apartheid) were the Population Registration Act of 1950, which classified the South African population into four main groups (white, Coloured, Asian and African); the Group Areas Act of 1950, which regulated how and where they were allowed to live and work; and the Prohibition of Mixed Marriages Act of 1949 and the Immorality Amendment Act of 1957, both of which prohibited interracial sex and marriage.

The goal of the newly elected National Party government was to stem the tide of Africans streaming into the cities and towns and to keep unwanted "surplus" workers out of the white areas. With this end in view, the Minister of Native Affairs, Hendrik Verwoerd (who later became prime minister), began to conceptualize the reserves as separate "national" entities. The key aspects to his policy were, first of all, to

"retribalize" and resettle urban Africans, and secondly, to remove communities living on African-owned land surrounded by so-called white areas (officially labelled "black spots") and relocate them in the so-called Bantu Homelands. The term "bantustan," by which these areas later became known, originated as a satirical term but grew in usage because of the resistance of Africans to the notion of designated "homelands" – places most of them had never seen.

In 1949, the government commissioned Professor Frederik R. Tomlinson, an agricultural economist, to investigate conditions on South Africa's 264 scattered reserves. The facts were already well known. Numerous studies bore witness to the serious soil erosion of vast tracts of land and to the impoverishment of the people to the point at which malnutrition and disease caused a high rate of debilitation and death. After five years examining every aspect of African life on the reserves, the Tomlinson Commission submitted its report in October 1954. The report recommended two interrelated steps: 1) the current evolutionary process of integration of white and black communities should be stopped immediately through a policy of separate development; and 2) massive infusions of state funding should be pumped into the economy of the "Bantu Areas" in order to create economically viable tribal homelands.

While the establishment of "separate communities in their own separate territories" was presented as something that would ultimately benefit the African people, the Report makes no effort to hide its main objective – the protection of white interests:

> The policy of separate development is the only means by which the Europeans can ensure their future unfettered existence, by which increasing race tensions and clashes can be avoided, and by means of which the Europeans will be able to meet their responsibilities as guardians of the Bantu population.[52]

Citing the example of the former British India (which had gained its independence in 1947), Tomlinson expressed fear that failure to stop the evolutionary process towards integration might result in "the European being swamped by the superior numbers of the Bantu" and "intensify racial friction and animosity." As the Report stated,

> The dilemma with which this policy of integration confronts the South African people may be described in the following terms. On the part of the European population, there is an unshakeable

> resolve to maintain their right of self-determination as a national and racial entity; while on the part of the Bantu there is a growing conviction that they are entitled to … the fruits of integration, including an even greater share in the control of the country.[53]

The government rejected Tomlinson's recommendations concerning the economic development of the reserves but accepted the principle of transforming them into national "homelands." The concept of making the reserves "the true home or fatherland of the Natives" had been the declared objective of the apartheid government before it gained power; Tomlinson's prescription for securing white supremacy thus became the blueprint for the apartheid government's "homeland" policy.

Under the Promotion of Bantu Self-Government Act (1959), eight African national reserves were recognized. The number was later increased to ten; these were: Transkei, Ciskei, Venda, Bophuthatswana, KwaZulu, KaNgwane, Lebowa, QwaQwa, Ndebele and Gazankulu. By partitioning the reserves along tribal lines, the apartheid government attempted to undo the intermingling of African peoples which had been taking place for many decades. The artificial classifications ignored the reality that Africans had lived peacefully together for generations and that many Africans were intertribal in language and descent. The model of the ethnic "homeland" was thus a government-sponsored version of nationalism imposed on the African population without their will or consent. To add to the impracticality of the scheme, only the Transkei was one contiguous landmass: the other nine consisted of 260 small and separate plots scattered throughout the country. (Map 1, *xvi*.) In his book on the 1960 uprising in Pondoland (Transkei), Govan Mbeki described the "homelands" in these words:

> They are South Africa's backwaters, primitive rural slums, soil eroded and under-developed, lacking power resources and without developed communication systems. They have no cities, no factories, and few sources of employment … they are areas drained of their menfolk, for their chief export is labour and while the men work in the white-owned farms and in mines and industry, their women-folk and old people pursue a primitive agriculture incapable of providing even subsistence. The "homelands" are mere reserves of labour, with a population not even self-sustaining, supplying no more than a supplement to the low wages paid on the mines and farms.[54]

A total of 13.9 million people were removed from urban South Africa under the 1959 Act as "surplus people." Between 1960 and 1983, another 3.5 million Africans were forcibly removed to the already overcrowded and impoverished bantustans. The rudimentary towns and rural areas were in fact nothing but dumping grounds for old people, women and children whose labour was not required by the white economy. As Nelson Mandela put it,

> The main object [of forced removals] is to create a huge army of migrant labourers, domiciled in rural locations in the reserves far away from the cities. Through the implementation of the scheme it is hoped that in the course of time the inhabitants of the reserves will be uprooted and completely severed from their land, cattle and sheep, and to depend for their livelihood entirely on wage earnings.[55]

Africans now had a type of citizenship, but only of these designated "homelands" that comprised some of South Africa's least favoured areas in terms of natural resources. Reserve-dwellers were eligible only for what their impoverished local governments could afford (or chose) to pay them. The Deputy Minister of Justice, Mr. S. Froneman, shrugged off any further responsibility for the bantustan people: "The White State has no duty to prepare the homelands for the superfluous Africans because they are actually aliens in the White homelands who only have to be repatriated."[56] Migrant workers were therefore excluded by law from the welfare services available to white South Africans because they were regarded as "foreigners" or "temporary sojourners" in white South Africa. Dr. Connie Mulder, speaking as Minister of Bantu Administration, introduced the 1978 Bantu Homelands Citizenship Amendment Bill by baldly stating: "If our policy is taken to its logical conclusion as far as the Black people are concerned, there will not be one Black man with South African citizenship."[57] Thus, Africans became "aliens" in South Africa: they ceased to qualify for South African passports and could be deported at any time to their assigned "homeland."

The evolution of segregation in South Africa is portrayed by some historians as a natural progression from the bitter almond hedge planted by Jan Van Riebeeck in the 1600s through the slave era to colonial conquests. In their view, apartheid was an inevitable culmination of South Africa's adoption of Nazi ideology on top of a history of racial exploitation and conflict. John Cell argues that the policy of segregation was extended "layer upon layer, dimension on dimension, building on the

legacy of racial prejudice that survived from its isolated frontier past."[58] Others believe that segregation was not at all inevitable, that it was a twentieth-century phenomenon deliberately imposed to protect white supremacy.[59] Ray and Jack Simons argue that a multiracial, democratic society could easily have been born in South Africa after the Second World War. Although colour prejudice was deeply ingrained among whites, South Africa's policy of racial discrimination differed in degree rather than in kind from that of other colonized countries.[60]

THE STRUGGLE FOR SOVEREIGNTY IN SOUTH AFRICA

The political awareness of black South Africans began in the late 1800s as missionary-educated Africans took the lead in publishing their dissent in their own languages. Vernacular newspapers, initially produced on mission printing presses, proliferated in this period as a mouthpiece for political activism. Although the circulation of African newspapers was never high, their impact was extensive. Even in the rural areas, illiterate villagers would gather around a teacher, minister or other educated person who would read them the latest news. In this way, interest in politics among Africans was stimulated and the horizons of audiences broadened by discussions and comments in the newspapers on matters affecting their lives.[61] The futility of continuing to oppose white expansion through war and the need to find other avenues of political expression is clearly articulated in a poem by Xhosa poet I.W.W. Citashe. The poem appeared in the newspaper *Isigidimi Sama Xhosa*, published at the London Missionary Society school, Lovedale College in 1887.

> Your cattle are gone, my countrymen!
> Go rescue them! Go rescue them!
> Leave the breechloader alone
> And turn to the pen.
> Take paper and ink,
> For that is your shield,
> Your rights are going!
> So pick up your pen.[62]

In the years following the Anglo-Boer War (1899–1902), the emergence of African protest movements across the country increased. Unlike Canada, where the indigenous peoples formed separate groups to demand political, social and economic rights, South Africans from every racial group were drawn together to confront a common problem. The need for African unity was forcefully brought home by the South

Africa Act of 1909 which provided legal status exclusively to white South Africans. The African National Congress (ANC) was launched in 1912 at a mass rally in Bloemfontein, in the heart of Afrikaner country. Pixley ka Isaka Seme, the first president of the organization, stated the aims of the Congress in these words:

> Chiefs of royal blood and gentlemen of our race, we have gathered here to consider and discuss a theme which my colleagues and I have decided to place before you. We have discovered that in the land of our birth, Africans are treated as hewers of wood and drawers of water. The white people of this country have formed what is known as the Union of South Africa a union in which we have no voice in the making of the laws and no part in their administration. We have called you therefore to this conference so that we can together devise ways and means of forming our national union for the purpose of creating national unity and defending our rights and privileges.[63]

The thrust of African protest in the years following the formation of the African National Congress, was against the removal of thousands of Africans from their land following the Native Land Act of 1913 and the pass laws. Before the outbreak of World War I, the newly formed Congress submitted petitions to the government and sent a delegation to the British government in protest against the Native Land Act. In the 1920s and 1930s, the struggle for land and sovereignty continued. But the 1948 elections and the offensive laws of apartheid provoked renewed resistance from the black majority. In the black rural areas, protest centred around the enforcement of the government's Betterment Schemes, which involved the highly unpopular program of cattle culling. Local people were not necessarily against the reduction of their herds, since grazing land was extremely scarce in these arid and over-populated areas, but resented the high-handed and demeaning way this program was administered. Protests flared into violent confrontations with the police for a variety of reasons. One such incident, involving the suspension of a village teacher, took place on 27 November 1950 on the Orange Free State reserve of Witzieshoek. Two policemen and a number of residents were killed in a protest against the authoritarian behaviour of the Native Commissioner.[64]

In the urban areas, laws discriminating against African people were fiercely protested. In 1952, the African National Congress Youth League launched the "Defiance Campaign Against Unjust Laws." The object of

the Campaign was to deliberately violate the colour bar as an act of organized protest. All over the country, African protesters courted arrest by walking in groups through whites only railway entrances, broke the curfew laws, and burned their passes. Thousands of men, women and children went to prison before government legislation finally brought the Campaign to an end. Nelson Mandela was one of twenty leaders charged and convicted under the Suppression of Communism Act for organizing the campaign.

In 1955, a Congress of the People held in Kliptown, near Johannesburg, marked the culmination of the Defiance Campaign. Incorporating a wide spectrum of South Africans, including the ANC, South African Indian Congress, the South African Coloured People's Organization, the (white) Congress of Democrats, and the South African Congress of Trade Unions, the Congress established the blueprint for a new, non-racial society: the Freedom Charter. Drafted by a subcommittee of the National Action Council from contributions submitted by groups, individuals and meetings all over South Africa, the Charter declared that South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of the people.[65]

However, the concept of a single, non-racial state was diametrically opposed to the apartheid government's own vision of the country: the partitioning of the country into separate, ethnic states as outlined in the Tomlinson Report released the same year. Prime Minister Dr. Hendrik Verwoerd (a Dutch immigrant to South Africa) moved forward with his creation of African "homelands" as if the Freedom Charter had never existed. In an article entitled "Verwoerd's Tribalism," Nelson Mandela described the unequivocal African response to the homeland scheme. At a widely attended mass rally in Bloemfontein in 1956, organized by the United African clergy, representatives from a broad base of political affiliations (African, Coloured and Indian) unanimously and uncompromisingly rejected the Tomlinson principle on which Verwoerd's bantustan scheme was based, and voted in favour of a single society.[66]

On 21 March 1960, in the African township of Sharpeville, Transvaal an event occurred which had a profound impact on the course of South African history. Following a peaceful march in protest against pass laws, the police opened fire on a crowd that had gathered at the local police station, killing sixty-nine people and injuring one hundred and eighty. Most of the protesters were shot in the back as they tried to get away. Later the same day, a similar tragedy (but on a smaller scale) occurred in the township of Langa, outside Cape Town. The killings, which attracted worldwide attention, outraged the black community but the

government's response was to tighten the reins even further. It placed an embargo on all public meetings and banned a number of anti-apartheid organizations, including the African National Congress (ANC) and the Pan Africanist Congress (PAC). Having lost all hope of achieving their objectives through peaceful protests, a new spirit of militancy emerged in the resistance movements. In December 1961, the ANC's military wing, *Umkhonto we Sizwe* (Spear of the Nation), was launched with Mandela as chairman. Mandela was arrested and charged with conspiracy against the state in 1964. With the major liberation organizations banned and most of its leadership (including Nelson Mandela) serving life sentences in prison, the resistance continued with strikes, demonstrations and every form of civil disobedience.

In the 1970s, when the apartheid government pushed forward its plans to make the bantustans "independent states," opposition was quickly crushed. In the Transkei, the State of Emergency regulations in effect since the Pondoland uprising in 1960 prevented any effective opposition from taking place.[67] With the support of his followers, Chief Kaiser Matanzima accepted the government's offer of independence, arguing that Africans now had the opportunity to regain control of their land. But elsewhere the transition to self-government was less peaceful. In Bophuthatswana (comprising a scattering of eight pieces of territory spread over three provinces), the proposed Legislative Assembly in Mafeking was burnt to the ground in a mass demonstration. The response of the South African government was to pass a special security regulation that prohibited meetings of more than five people and allowed bantustan police to arrest and detain people without charge.[68]

Some African leaders (like Transkei Chief Matanzima) chose to accept the homelands scheme despite its limitations. But the majority of rural Africans perceived these leaders as puppets of the apartheid government.[69] Instead of providing a government which would benefit the local people, as the apartheid regime had promised, the homeland system was a mere extension of white supremacist legislation implemented by handpicked African leaders. As Govan Mbeki observed, the homeland policy was launched at a time when the South African government was under severe international pressure. The killing of protesters by state police in Sharpeville and Langa in March 1960 had incensed international audiences. By advertising its "gift of self-government" to Africans in certain areas, Mbeki notes, it hoped to silence world censure.[70]

In 1983, organized protests against the apartheid state gained momentum and unity when the government introduced a new Constitution providing for a segregated tricameral parliament. Under the new system,

separate chambers were created for the Coloured and Asian communities, both under the veto of the white parliament. But the black majority was not included in the new dispensation. Moreover, the revised constitution was shaped in such a way that the majority party of the white House of Assembly (in this case, the Afrikaner National Party) effectively remained in power. As citizens only of the bantustans (and therefore foreigners in South Africa), the African majority remained voteless and without parliamentary representation. The 1983 constitution unleashed a fresh wave of resistance, and thousands of people were detained without trial in violent confrontations with government forces that continued for the next decade.

By the 1990s, the apartheid state's totalitarian-style repression of African resistance had attracted worldwide condemnation, resulting in economic sanctions and boycotts. As a result, the South African government was forced to negotiate with the powerful liberation movement or face civil war. Nelson Mandela's release from prison on 11 February 1990 after twenty-seven years was the first step in the negotiation process, but the following four years were fraught with violence and insecurity. Thousands of people were killed in state-orchestrated violence that erupted between the Inkatha Freedom Party and the ANC.[71] But a compromise agreement was eventually negotiated. With South Africa's first democratic non-racial elections in April 1994, South Africans finally reversed the political exclusion of its indigenous majority and elected a black president to an interim Government of National Unity (GNU). The new government eliminated the enforced territorial segregation (both rural and urban) of the South African population and incorporated the bantustans into the nine newly created provinces of the new South Africa.

Between 1994 and 1996, Africans were active participants in drafting a new Constitution. The South African Constitution approved by the Constitutional Court in October 1996 is the very antithesis of the tricameral Constitution of 1983, which entrenched the National Party policy of separate development. The new Constitution with its Bill of Rights ensures that South Africa belongs to all who live in it. The words of Nelson Mandela left this in no doubt: "Our pledge is: Never, never again shall the laws of our land rend our people apart, or legalize their oppression or repression. Together we shall march, hand in hand to a brighter future."[72]

CHALLENGING THE CONCEPT OF SOVEREIGNTY IN CANADA

The struggle for justice and liberation from colonial and foreign rule has been fought very differently in Canada. The primary objective of

Canadian aboriginal communities has not been the overturning of an oppressive dominant culture, as it was in South Africa, but rather, to be recognized as sovereign independent nations within the Canadian state. Fundamental to this recognition is control over ancestral lands and resources and the honouring of treaty rights.

The 1969 White Paper of the Liberal government was a major catalyst for aboriginal protest. By threatening to terminate both their treaty rights and what protection still existed of their land and resources, the new policy helped to define and clarify native goals and objectives. The Indian Association of Alberta responded to the White Paper with substantive recommendations for a new policy based on this premise. Known as the "Red Paper," authored by Harold Cardinal, the document reasserted the constitutional basis of the federal government's responsibilities towards Canada's first peoples and stressed its legal obligations to fulfill the terms of treaties:

> We say that the federal government is bound by the British North American Act, Section 9k, Head 24, to accept legislative responsibility for "Indians and Indians' lands." Moreover, in exchange for the lands which the Indian people surrendered to the Crown, the treaties ensure the following benefits.[73]

Faced with united and well-organized protests, Trudeau withdrew the proposed White Paper on 17 March 1970. Although the Liberal government remained hostile to the recognition of aboriginal rights, they began initiatives towards a new constitution and bill of rights and freedoms, which indirectly opened the way for native organizations to assert their constitutional rights. By the 1970s, the French separatist cause had moved from the fringes of Quebec politics and terrorist actions into the Parti Québécois, a political party with substantial power in Quebec. Suddenly, the word sovereignty was exclusively associated with French separatism. But through the separatism crisis, Canadians became aware of the need to redefine confederation and rewrite the BNA Act. In 1972, the Molgat-MacGuigan Committee, a joint committee of the Canadian Senate and House of Commons, concluded that the time was right for constitutional change; but it wasn't until the Parti Québécois came into power in Quebec in November 1976 that constitutional reform was pushed ahead. The Committee recommended that no constitutional changes concerning native peoples be made until their own organizations had completed their research. This paternalism stoked the fire of aboriginal assertiveness.[74] Two events in the 1970s gave Canada's aboriginal

communities reason to hope that the tide had finally turned. In 1974, the federal government accepted the Berger Inquiry's recommendation to delay the proposed Mackenzie Valley pipeline until outstanding land claims had been settled. A few years later, the Cree of Northern Quebec negotiated an agreement with the federal government: the James Bay and Northern Quebec Agreement which awarded them both compensation for land and the promise of self-government on the remaining territory. (Map 3, *xviii*.)

But the critical event that pushed native rights onto the public agenda came from within the native community itself. Frank Calder, a hereditary chief of the Nisga'a nation in British Columbia, made Canadian legal history by challenging the validity of provincial land legislation which ignored Nisga'a land claims. The case of *Calder v. The Attorney General of British Columbia* (*1973*) was groundbreaking in that, for the first time in Canadian history, the notion of aboriginal rights was recognized in a court of law. As Justice Thomas Berger commented, the Nisga'a case not only opened up the whole question of aboriginal rights but it also catapulted the issue of aboriginal land title into the political arena.[75] One of the most significant consequences of the decision was the reversal of Prime Minister Trudeau's integration policy and the Liberal government's introduction of a comprehensive land claim policy. The government also made funding available for the research of native claims.

In contrast to the South African apartheid government's constitutional "reforms" in 1983, which sparked massive unrest throughout the country, the exclusion of Canada's indigenous minority from the 1982 Constitution talks went largely unnoticed by the non-aboriginal community. From the early 1970s, when talks about constitutional reform first began in earnest, it was Quebec's far more pressing sovereignty demands that captured the attention of both the media and the federal and provincial leaders. Numerically much weaker and with few viable land bases, the aboriginal peoples were almost completely overshadowed. Not only were aboriginal rights peripheral to the constitutional agenda, but aboriginal leaders were not consulted. It was only after native organizations had launched strong protests in Canada and abroad that the three major aboriginal organizations – the National Indian Brotherhood (NIB), the Native Council of Canada and the Inuit Tapirisat – were permitted observer status to the Constitutional Conferences.

Eventually, the provinces agreed to reinstate Section 35 of the BNA Act into the 1982 Constitution Act, providing for the "existing aboriginal rights and treaty rights" of Canada's aboriginal peoples. Also included in the Constitution Act was the recognition of Métis and Inuit

as "aboriginal peoples of Canada." This was a major victory for their organizations which had lobbied hard for constitutional recognition. However, the campaign had taken a severe toll on aboriginal solidarity. Instead of intensifying the cohesion that existed between the various groups, the wording of the Act produced complete disarray among the aboriginal community, and a number of people strongly opposed it. The new Constitution did not address the issue of treaty rights, which some groups asserted could not be transferred to Canada since these treaties had been made with the British Crown. Others claimed that the Constitution could not be patriated without the consent of aboriginal peoples. When the Queen came to Ottawa to give Royal assent to the legislation in April 1982, the National Indian Brotherhood (later renamed the Assembly of First Nations) declared a day of mourning

Despite this disunity within the aboriginal community, the Constitution Act was a landmark event in Canadian history and signalled a new chapter in the struggle for aboriginal rights. Under the terms of the Act, the Prime Minister was committed to hold a series of conferences to define the rights of aboriginal peoples. But after four such conferences, held between 1982 and 1988, aboriginal rights were still not clearly defined.

During the 1980s, a number of protest events kept the issue of native rights and self-government in the public eye and on the political agenda. The Haida, Wet'suwet'en and Gitksan nations of British Columbia constructed barricades in the path of logging company equipment to prevent clear-cutting on their ancestral lands. The Lubicon Cree of Alberta also built roadblocks and lobbied international bodies to prevent oil companies from destroying their lands and traditional economies. The Mi'kmaq and Maliseet of Nova Scotia defied restrictions preventing them from exercising their fishing and hunting rights, rights that had been confirmed by the Supreme Court of Canada but that provincial governments were ignoring. The Innu of Labrador camped out on the runway of the airbase at Goose Bay in protest against low-level test flights conducted by the North American Treaty Organization (NATO), which threatened the animal populations on which they depended for food. The most public protest of all was the 1990 Oka uprising: the Mohawk of Kanesatake built barricades to protect their ancestral lands from being taken over for the extension of a golf course by the municipality of Oka. When the Quebec police failed to storm the barricades successfully, the Canadian Armed Forces were brought in. The stand-off at Kanesatake lasted for seventy-eight days in full television view of the international community, and its impact is still being felt more than a decade later.

CONCLUSION

In both Canada and South Africa, state policy was driven by the dominant society's agenda to maintain sovereignty over the lives and lands of indigenous peoples. In both cases, the indigenous societies have challenged this assumption of sovereignty. The aboriginal peoples of Canada have asserted their own sovereign or aboriginal rights and have refused to become absorbed or assimilated into the dominant society. In South Africa, Africans have regained sovereignty over their country after four hundred years of political, social and economic exclusion.

While Canada's 1982 Constitution recognizes the existing aboriginal rights of its first peoples (Indians, Inuit and Métis), it does not offer protection of Indian lands or solve the problem of sovereign rights. Although the Métis are recognized in the Constitution as an aboriginal people, their aboriginal rights have not been recognized by governments. Unlike other aboriginal groups, they have been refused access to modern treaties or negotiated settlements. The key to change in Canada are: the inclusion of indigenous peoples in policy discussions; access to impartial courts; and an interpretation of aboriginal rights that pays attention to the needs of all aboriginal peoples.

South Africans, on the other hand, have only recently been released from the unjust laws of apartheid – and the fetters of parliamentary supremacy. For the first time in the country's history, South Africa has a democratically elected government and a Constitution and Bill of Rights to safeguard the rights of all its people. Although constitutional rights have yet to be fully tested with respect to land rights, the principle of equality and a just sharing of the country's wealth by all its inhabitants is woven into the fabric of the new democracy.