

One nation, deux nations, 633 First Nations

NF April 4, 2001

TOM FLANAGAN

British Columbia's Nisga'a Treaty is being challenged in court by Gordon Campbell, leader of the official Opposition in British Columbia and everyone's best bet to become the next premier of the province.

Although Mr. Campbell lost the first round in July, 2000, when the B.C. Supreme Court rejected his challenge to the treaty's constitutionality, he has taken his case further to the B.C. Court of Appeal. That court recently allowed an intervention on Mr. Campbell's side by a dissident group of Nisga'a (Chief Mountain *et al.*) belonging to the Kincolith Band.

Chief Mountain's case is summarized in a factum prepared by lawyers from Pan Pacific Law Corporation in Vancouver. The key argument is that the Nisga'a people are not a nation, but a linguistic-cultural subgroup of the even wider Tsimshian group. The Nisga'a were never a political community, says Chief Mountain, but a segmentary society. The true Nisga'a political communities were the approximately 60 Wilps, or Houses, each with its own traditional lands and governance structures.

The treaty created the so-called Nisga'a Lisims government and gave it control over traditional lands not surrendered to the Crown. Thus, argues Chief Mountain, the treaty deprived his and other Wilps of their aboriginal rights to land and self-government, rights the British Crown has been obliged to protect ever since it asserted sovereignty in British Columbia in 1846. Hence the Nisga'a Treaty is unconstitutional.

Regardless of whether this argument succeeds in court, it is extraordinarily important because it pierces to the root of contemporary aboriginal ideology, whose central proposition is that aboriginal peoples are nations, indeed First Nations. As such, they possess the sovereignty that goes along with national status, and that sovereignty is the basis of an "inherent right of aboriginal self-government" not derived from the Canadian Constitution.

Chief Mountain, however, says his people are not a nation, do not claim sovereignty, and (like other Canadians) derive their rights from the Constitution of Canada. This refreshing candour is good news for Canada, but subversive for the aboriginal political movement, whose most charismatic leader, Matthew Coon Come, likes to say, "I am not a Canadian."

As the philosopher Thomas Hobbes wrote, "Words are wise men's counters but the money of fools." The names we give to things have practical consequences. The question here is whether the term "nation" used to describe the contemporary political communities of Western civilization, ought also to be applied to aboriginal political communities.

In normal political vocabulary, a "nation" is a large group of people, living a civilized life on a fixed territory, having or aspiring to have their own sovereign state. Members of the nation think of themselves as citizens, not as relatives in an extended kin group. There is a world of difference between a national identity based on citizenship and a tribal identity based on myths of kinship and common descent.

Aboriginal political communities in North America -- bands, tribes and chiefdoms -- were all based on kinship. The numbers of their members were several orders of magnitude smaller than those of European nations, and their way of life was based on hunting, foraging, and (in some cases) horticulture. Their political experience prior to European contact included neither statehood nor sovereignty. Overall, their political con-

dition was so different from that of European nations that to use the European vocabulary of nationhood to describe it obscures vital nuances of meaning.

The adoption of that national vocabulary in Canada dates from 1975, when the Dene Declaration insisted on the right of the Dene "to be regarded by ourselves and the world as a nation." The nation label quickly morphed into First Nations, with the formation of the Assembly of First Nations in 1982. The following year, Pierre Trudeau's Liberal government rushed to adopt the new terminology, even though Mr. Trudeau had always refused to call Quebec a nation. Apparently *deux nations* were a threat to Canadian sovereignty, whereas 633 First Nations were only an inconvenience.

There are only 191 members of the United Nations, but our political class pretends Canada consists of 633 First Nations, plus the Métis Nation, plus (for many) the Québécois Nation, plus the Inuit (who haven't settled on a term yet). But Canada will not survive unless it remains what George-Étienne Cartier called one "political nationality." Minor-

THE NISGA'A WERE NEVER A POLITICAL COMMUNITY, SAYS CHIEF MOUNTAIN, BUT A SEGMENTARY SOCIETY

ity rights, yes; but unless there is one overarching political community acknowledged by all as the locus of citizenship, the long-term future is bleak.

Chief Mountain's tiny, underfunded group is facing the almost limitless resources of the federal government and the newly wealthy Nisga'a Lisims government. But if they can get some help from other like-minded Canadians, they just might prevail.

National Post

Tom Flanagan is professor of political science at the University of Calgary. His book *First Nations? Second Thoughts* was recently short-listed for the Donner Prize.