

THERE are hardly any socialists left in the Western world. Political battles still rage over how much government should regulate the market economy, but almost everyone acknowledges the importance of individual ownership and property rights. Sadly, however, Indian reserves, owned by the Crown for the use and benefit of the residents, make up an important exception in Canada.

Actually, there are several forms of individual ownership on Indian reserves. The most common, particularly in the Prairie provinces, is the so-called "customary right," based on tradition and usage. Such rights are better than nothing, but they are subject to disputes with neighbours and possible confiscation by the band council. Because customary rights have no legislative basis, Canadian courts will not enforce them, so their security is fragile.

Offering greater security are Certificates of Possession (CPs), issued with joint approval of the band council and the Department of Indian Affairs. They are rare in the Prairie provinces but more common in British Columbia and Ontario. Because they are provided for in the Indian Act, courts will enforce them. They are similar to fee-simple or regular ownership of land, with one major exception -- they can be given or sold only to other members of the band. This restriction has an understandable purpose (to keep Indian reserves from being broken up), but it also has the unintended consequence of lowering the value of CPs by restricting the market for their sale.

It would be worth considering an amendment to the Indian Act to allow the sale of CPs beyond the band membership -- perhaps to other First Nations people, perhaps eventually to any purchaser. Such a change would have to be accompanied by other amendments to make it clear that land ownership did not confer political rights within the reserve community. To draw a comparison, I, as a resident of Alberta, can buy land in Manitoba, but that does not give me the right to vote in a Manitoba provincial election.

Canadian law generally divides property rights from political rights, and in the long run it would be useful to extend this conception onto Indian reserves. The valid notion of aboriginal self-government need not mean that outsiders should not be able to own land on Indian reserves, any more than Canadian sovereignty implies that non-Canadians should be forbidden from buying land in Canada. Movement in this direction, however, is unlikely at the present time because aboriginal leaders portray sales to outsiders as breaking up the reserves. Constructive change, therefore, is more likely to happen using a third form of property right, the lease.

A lease is a right to use a defined piece of land for a particular period of time, after which it reverts to the owner. Leases are provided for in the Indian Act and are widely used on Indian reserves today for commercial developments such as shopping malls, business parks, and housing estates. They are traded in the market and often sold to outsiders who wish to live on housing or recreational developments situated on reserves.

Leases are often granted to large developers but seldom to ordinary band members for homes, businesses, or farming operations. Ironies thus abound. The Tsuu T'ina Nation near Calgary (one of the most progressive, business-oriented reserves in Canada) has a chronic housing shortage, yet it is home to Redwood Meadows, an upper-middle-class housing development next to a golf course on the edge of the Rocky Mountain foothills. The population of Redwood Meadows is actually larger than the number of band members living on the reserve, yet it takes up only a tiny fraction of reserve land. The magic of the market, operating through leaseholds as a form of private property, has created an abundance of attractive, comfortable housing on the reserve -- but for outsiders, not for the members of the band.

It doesn't need to be that way. A suitable property rights framework can make private ownership of housing by Indian people viable. Leaseholds that could be used as security for a mortgage would be one option. Of course, that would require some changes to Sec. 89 of the Indian Act, which currently prevents seizure of on-reserve property for failure to pay a debt.

The current trend in First Nation economies is for public enterprise, in which the band council or its delegates act as entrepreneurs, mobilizing the land and natural resources that they control in the name of the band. Public enterprise is a step forward, but there is no country in the world in which public enterprise, i.e., socialism, has brought lasting prosperity to more than a narrow elite. Only private property rights and the free market have the power to create a decent standard of living for large numbers of ordinary people.

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