

The Unchallenged Assumptions of Modern Treaty-Making

A synopsis of Taiaiake Alfred's chapter, "Modern Treaties: A Path to Assimilation?"

In this chapter, Taiaiake Alfred explains why modern-day Indigenous-settler treaties are not as progressive as both the Provincial and Federal Canadian governments want us to believe. Instead, modern treaties are a continuation of centuries of assimilation and exploitation.

Land Claims

Many people assume that Canada owns the land it exists on – however, Indigenous peoples never ceded their land, or did so under false pretenses. If Canada does not own the land it is situated on, the idea of "Crown land*" cannot exist, and is a fiction of colonial society.

Upholding the idea of "Crown land" assumes that the state of Canada has priority to the land, and not Indigenous peoples. This assumption is inherently racist, as it places European-centric interests and ownership as the norm, while Indigenous peoples lose their rights to traditional lands.

In order to gain some semblance of official control over their traditional lands, Indigenous peoples have to go along with the idea that Canada owns all land, and go through the state's official processes to prove they have title rights** before they can move forward.

* Crown land: Land "owned" by the Provincial or Federal Government

** Title rights: Inherent Indigenous right to land or territory

Title Rights

In order to secure title rights that are recognized by the Crown, Indigenous peoples bear the burden of proof. That is, it is up to a nation to prove that they have exclusive and consistent occupation of their land, at least since European assertions of sovereignty.

Where does this leave those whose lands have already been settled, developed, or otherwise stolen? The British Columbian government has made their position clear, which is that privately owned property is exempt from land claims. Any nation whose traditional lands are settled (like a town or city) or already owned (for residential, agricultural, or commercial purposes) have no recourse for justice in colonial courts.

If title rights *are* acknowledged by the government, the title rights only protect so-called "pre-European" activities. For example, hunting and fishing rights are considered protected activities, but a nation might not be allowed to start a mining or logging project, because it would interfere with the aforementioned protected activities. This limits Indigenous peoples' economic development on their own land. However, Indigenous title rights can legally be overridden by the government if they conflict with settlement or settler economic development. Even if an Indigenous nation achieves recognized title rights, it can be ignored, rendering legal title rights essentially meaningless.

Treaty Policy Language

The language used, either in policy or during treaty negotiations, reveal a difference between the government's claimed intentions and their actual actions. In their official policy on treaty negotiations, the federal government claims they aim to achieve "certainty" about land rights, and emphasizes "economic development possibilities for all Canadians."

Phrasing in policy often seems innocuous, but are problematic double-speak. For example, "Ensuring that processes are fair and democratic" is a backhanded comment, seemingly insisting that Indigenous peoples keep to "Canadian values," when Indigenous peoples have practiced democracy since before settler contact.

Another claim found in the treaty-making policy is "ensuring affordability of settlements." Often, regaining governance of traditional territory is an important goal for Indigenous nations during negotiations, and the government tries to compromise by offering a cash settlement. Basically, the state proposes paying cash for the land instead, and then limits the cash settlement by claiming it has to be affordable.

Additionally, the state claims to "promote self-reliant First Nations" during treaty negotiations. Native governments become tax agents, and tax-immunity status is surrendered, meaning Nations and their members are no longer exempt from PST on goods and services. The state wants Indigenous tax money.

The government loves to seem progressive when it comes to Indigenous relations, but in reality, their language is coded, and reveals their true intent. The entire process is a façade.

Why does this matter?

British Columbia's Treaty policies are designed to further limit and assimilate First Nations by overriding Indigenous governance to facilitate settler interests. The language used in their policies and during treaty negotiations are deceptively positive, but ultimately mean false self-determination for Indigenous peoples, because provincial and federal laws still override local Indigenous governments. The provincial and federal governments "allowing" Indigenous nations self-determination and self-governance is a empty placation when the settler governments have final say on treaty lands.

