

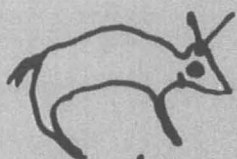
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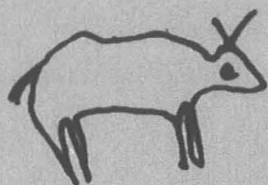


Conflicting Visions of Self-Determination in Québec

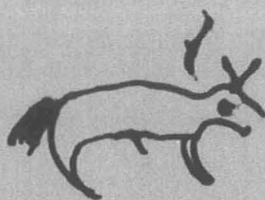
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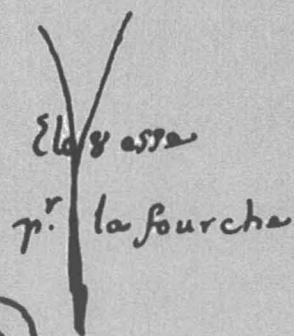
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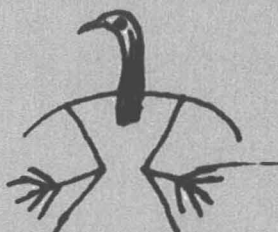
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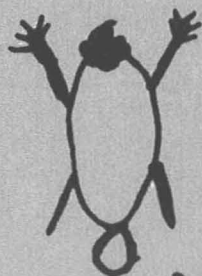
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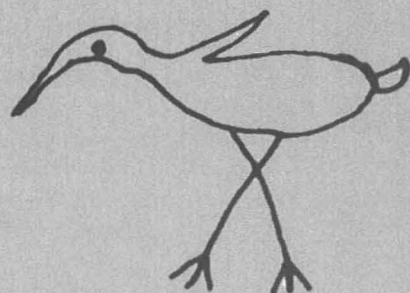
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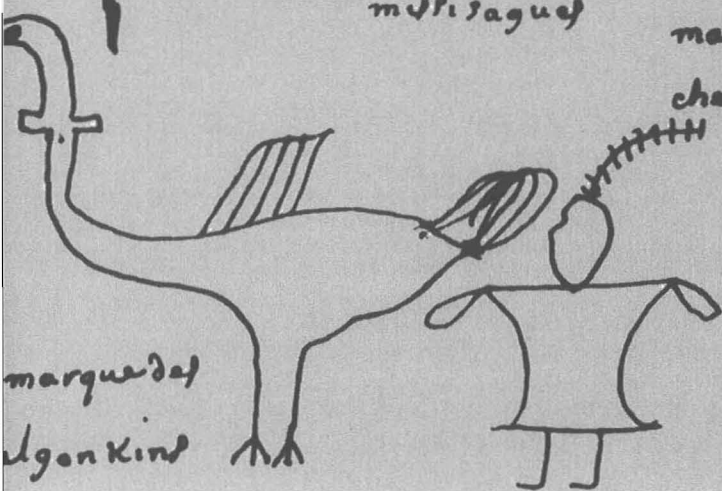
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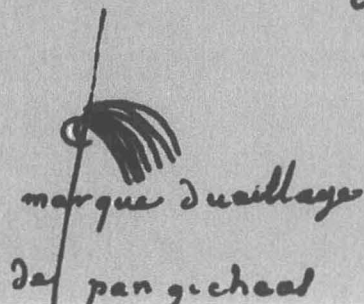
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If Quebecers choose to separate, will Aboriginal peoples in Québec choose to separate too?

Wouldn't First Nations and Inuit be better off in an independent Québec, where they could bargain for special status in a new nation?

Replying to these questions is difficult enough when the history of Canada is colonial and a full dialogue on Aboriginal sovereignty has never taken place. Moreover, until recently the legal literature has been largely void of serious consideration of Aboriginal peoples' status and rights, or Aboriginal peoples' perspectives on these matters. As a matter of political posturing, Aboriginal reactions to the Québec secession plan have been threefold: first, they have emphasized the absence of political participation or agreement with the secessionist agenda; second, they posit a countervailing vision of self-determination of Aboriginal peoples which usually tracks the French Quebecers claims to sovereignty in order to demonstrate the double standard; and third, they call upon the federal government for assurances that they will act to protect Aboriginal peoples' status and rights should a unilateral declaration be made.¹ Because these reactions are formulated in an intense political climate of secession, it is not surprising that they do not fully reflect the fact that Aboriginal peoples do not want to be forced to choose between colonial masters: either joining French Quebecers in secession or somehow staying with Canada in the federation which has not proven respectful of Aboriginal peoples' sovereignty. The history and vision of Aboriginal peoples is more complex than the immediate reactions to the secessionist strategy would permit us to explore.

Unfortunately, as the debate and process has been premised on sharp choices — either approve full Québec sovereignty or not — there is little space for Aboriginal leaders to articulate their vision of their peoples' self-determination. The confusion is evident to outsiders, although once the colonial context is clear, it is more understandable. As Mohawk leader Chief Joe Norton of Kanawake (near Montréal) offers: "I believe in separatism. I believe in Mohawk separatism if there is such a thing as separatism."² Mohawk traditionalist, Tom Porter, adds to this comment by Chief Norton, questioning whether there is such a thing as separation: "We are talking about the nationhood that God gave us, nothing else, because we are the indigenous natural people. We in the East, the Iroquois, we have nothing to do with Canada's constitution or the American constitution, because the Creator gave us our constitution over one thousand years ago."³ The Mohawk view is that there is nothing to separate from because Mohawk sovereignty never owed its existence to any Canadian constitution, statute, resolution or territorial boundary on a colonial map. Putting the issue before Aboriginal peoples in terms never accepted in the first instance hardly invites real choices. The Inuit have clearly stated that: "Québec cannot decide the future of the Inuit."⁴

The more interesting inquiry, in my view, would be one into how these contending visions of sovereignty can co-exist, rather than how the Québec sovereignists jockey for ultimate control over the Aboriginal peoples. In the intense politics of secession, absolute sovereignty is being sought and Aboriginal sovereignty is presumed to yield. However, this is regressive, not progressive politics of sovereignty. As Professors M. Asch and P. Macklem argue in another context:

... the assertion of ... sovereignty over Aboriginal peoples ... ultimately rest[s] on unacceptable notions about the superiority of European nations. If this is true, unquestioned acceptance of Canadian sovereignty and a contingent theory of Aboriginal rights does violence to the fundamental principles of justice and human rights in the modern world, such as the assumed equality of peoples, especially of their ability to govern themselves, and the basic rule of a people to self-determination. We believe it abhorrent that ... such a belief continues to inform political and legal practice in 1991.⁵



The Parti Québécois' more detailed sovereignty platform, *Québec in a New World: The PQ's Plan for Sovereignty*, does not include a specific heading on their policy for relations with Aboriginal peoples. Instead, Aboriginal peoples are subsumed under the heading "A Pluralist Society." The plan suggests: "Aboriginal people will have a special place in sovereign Québec since they were the first inhabitants. They will have the tools they need to preserve their traditions and affirm their cultures."⁶ The special place Aboriginal peoples are presumed to inhabit in the post-secession world is one within the overarching sovereignty and "territorial integrity" of the New Republic of Québec.⁷ As the draft bill provides, under the heading of "territorial integrity":

Québec shall retain the boundaries it has within the Canadian confederation at the time section 1 comes into force. It shall exercise its jurisdiction over the maritime areas and the territories adjoining its coastline in accordance with the terms and conditions provided by the rules of international law."⁸

The present pluralist province of Québec and the proposed Republic are two seemingly different worlds. As Grand Chief Coon Come has repeatedly suggested:

My people are extremely wary about exchanging their place in a federal system, with all of the inherent checks and balances that we have been able to use to advance our status, for a precarious relationship with a unitary state. If Québec unilaterally and illegally separates from Canada, this fact of separation will, in and of itself, constitute a violation of our treaty rights.⁹

The concern Chief Coon Come expresses about the federalist context versus a unitary state is at least partially rooted in the shifting appeals by Parti Québécois members to ethnic and civic roots of their nationalist movement. While supposedly jettisoning ethnic nationalism for a civic brand, ethnic distinctions and characterizations seem front and centre in the debate. Premier Jacques Parizeau suggests that Québec society is "quite close to being blind to ethnicity" but not "deaf to language." However, in the continual subjection of minorities (to the numerical majority of French Canadians in Québec), it would seem ethnicity is critical in the construction of identity in the longed-for republic. Premier Parizeau states: "[As for] our most important minority, the English community... We could talk endlessly about sign laws and school provisions... The bottom line is the ability [of] the minority culture to sustain its existence over a long period. Its ability of [sic] not being assimilated by the majority culture."¹⁰

First, to describe a community as "minority" and to give it the label "our most important [ethnic] minority" projects something other than blindness to ethnicity. For Aboriginal peoples, constructed therein as a minority of "lesser importance," the allegiance with French Canadian nationalism is weak, if present at all. The allegiance does not seem to matter because in the views of the Parti Québécois, the Aboriginal peoples are a minority whose status and rights yield to the majority French Québécois. Aboriginal leaders vigorously reject being cast as minorities.¹¹

In 1978, the United Nations Commission on Human Rights began work on a "Declaration on the Rights of Minorities." At that time, it was already pointed out that indigenous peoples should be considered separately from minorities:

...it would seem appropriate to widen the scope of the declaration to include indigenous peoples as a separate category and pay attention to their specific needs and rights. Indigenous people do not necessarily constitute minorities and their situation is in many respects different from that of national, ethnic, religious and linguistic minorities.¹²

Moreover, the Honourable Jules Deschênes, in his testimony before the Québec National Assembly Committee on Sovereignty, has cautioned against treating First Nations or Inuit as "minorities." He encouraged the committee to recognize the difference between the legal and political situation of indigenous peoples in Québec and newcomers: "... but not the aboriginal populations because, in a sense, it is we who, for them, were the immigrants and it is we who have come to install ourselves in their territories in that colonial period. Elsewhere, this is the opinion which is retained..."¹³ Moreover, Mr. Justice Deschênes has indicated that Aboriginal peoples are accorded a treatment distinctly separate from minorities both under the Canadian constitution and international law.¹⁴ Sovereignist lawyers, like Professor Turp, express the same view as Mr. Justice Deschênes. Professor Turp told the sovereignty committee: "And in my opinion, the fact that [Aboriginal peoples] constitute peoples who are self-identified as peoples... this would confer on them a right to self-determination at the same level as Québec." In regard to the right to secession, he added: "As to the right to secession, Québec cannot claim... that Aboriginal peoples do not have the right to secession. The same rules apply to Aboriginal peoples as to the Québécois."¹⁵ If Aboriginal peoples are treated as minorities, they are outnumbered (therefore, outvoted) and dominated. They are not now nor have they ever been directly represented in the Québec National Assembly. Indeed, there is not a single elected representative of any First Nations or Inuit sitting in the National Assembly. How can it be presumed that there can be an accession to sovereign status for Québec without considering a *priori* the pivotal matter of the status and rights of Aboriginal peoples?

The explosive political atmosphere encircling the debate over full sovereignty and aboriginal peoples was revealed when the National Chief of the Assembly of First Nations, Ovide Mercredi, appeared in 1991 before the Québec National Assembly's Committee to Examine Matters Relating to the Accession of Québec to Sovereignty.¹⁶ The National Chief, appearing with chiefs and elders from a number of the First Nations in Québec, told the committee that:

Many French Quebecers appear to base their political dreams and aspirations in the right to self-determination. Indeed, it seems to be the foundation for the presumption of an independent State that can be formed. I would like some clarification of the basis of Québec's claim of full sovereignty. Is it self-determination? If so, it has interchangeably been said that Québec, Québécois, Quebecers, Québec men and women or the people of Québec have the right to self-determination. On more rare occasions, it has also been declared that French-Canadians have the right to self-determination. It is worth noting that Québec jurists such as Professor Jacques Brossard insist that it is clearly the French-Canadian nation that has the right to self-determination. It would appear that the French-Canadian nation, centred in Québec, may be the people with the right to self-determination. It is up to the French-Canadians to make their own case. However, if such a right exists, it cannot be exercised in a manner that denies or infringes upon the right to self-determination of the First Nations peoples. Further, as the jurists from Québec and elsewhere have suggested, it is uncertain under international law whether this right of the French-Canadian nation can automatically include the right to unilaterally secede from the Canadian Federation. It certainly does not include a right to trample upon the rights of the First Nations' peoples to self-determination.¹⁷

The response to this both by the Québec media and some members of the committee was one of outrage. It was as if the sovereignists were willfully blind to the principles articulated by the Aboriginal peoples in support of their rights. They never replied to the details of these concerns; they were just brushed aside. This is particularly frustrating given that, at many levels, the principles which Aboriginal peoples advance for the basis of a continued political relationship with Canada or even a sovereign Québec are not too different than Québec's position (self-determination, territory, identity).





Nevertheless, there seems to be a powerful drive toward castigating Aboriginal leaders for advocating Aboriginal and treaty rights. For example, the National Chief was chastised after his appearance in the National Assembly by a prominent jurist who accused him of “exaggerated, insulting and outrageous words” and told him that the Aboriginal leadership “must behave like reasonable and responsible human beings and not like warriors or criminals with a right of life and death over everybody else.”¹⁸ The rhetoric of the sovereigntist in Québec is bombastic and does not suggest dialogue or mediation with Aboriginal peoples. The political situation is almost outright hostile.

The federal government would have obligations in the secessionist context to recognize Aboriginal peoples’ rights to self-determination. If there are to be negotiations with Québec on secession, the Aboriginal peoples cannot be simply dealt with like monetary issues and other items. Aboriginal peoples cannot be handed from one sovereign (the federal Crown) to another (an independent Québec state) as if they were property. The federal responsibility for the Cree and Inuit is spelled out in the implementing statute for the JBNQA. The preamble of this act makes clear that the federal fiduciary responsibility for the James Bay Cree and Inuit continues: “. . . Parliament and the Government of Canada recognize and affirm a special responsibility for the said Cree and Inuit.”¹⁹ By including this specific recognition and declaring that both Parliament or the government of Canada would be able to recognize a new republic when Cree or Inuit rights are disregarded by Québec breaching the agreement.

The persistence of this mind-set of viewing Aboriginal peoples as minorities or of an inferior status to French or English newcomers is an important problem. There is a narrowness of vision here which sees the arrival and spread of immigrants (whether they be French, English or otherwise) as the very purpose of history, including Canadian history. It is this vision which selects immigrant political objectives as superior and more compelling than those of Aboriginal peoples. Aboriginal perspectives and political aspirations are treated as secondary within the immigrant vision. Yet the immigrant vision has been vigorously challenged. Even some in Québec, like Professor Turp, have challenged it, although these voices seem to fall on deaf ears. This aspect of his opinion has been largely ignored by sovereigntists who instead emphasize the right of the French in Québec to self-determination.

We know that the Canadian constitution is premised on a privileged reading of history, or the immigrant vision of (only) two founding nations, and that it has marginalized or excluded Aboriginal visions. Aboriginal peoples, Quebecers and other Canadians should strive to establish a more honourable and collaborative process. This entails fundamental changes to existing political processes and constitutional structures. Moreover, in the context of secession, it requires a full airing of opinions on Aboriginal peoples’ status and rights.

Democratic Claims and Legitimacy

At one point, I considered whether there was a natural alliance which could be struck between Aboriginal peoples and the secessionists whereby Aboriginal self-determination could be respected as a priority and a shared sovereignty arrangement might have been possible, whether a truly creative sovereign experiment (between Aboriginal governments and the Québec government) was possible. This opportunity is now long past, in my view. It would have required an immediate dialogue with Aboriginal governments within a framework of respect for the equally if not more compelling right of Aboriginal peoples to self-determination and their relations with their territories. This dialogue has been scuttled by the “trust us, we’ll give you a good deal later” attitude which is adopted in the Parti Québécois’ draft bill.



Should Quebecers fail to deal with the First Nations and Inuit self-determination in a respectful fashion and through an appropriate process, their movement is stripped of any legitimacy as a progressive, democratic self-determination movement. I would predict it will enjoy little domestic or colonial international support. A deeply repressive and intolerant political agenda has been charted in Québec. As National Chief, Ovide Mercredi warns:

For the First Nations in Québec and Canada, our languages, cultures and societies are endangered. This attack on our identities, our culture, our traditions, our nationhood is a devastating result of oppressive federal and provincial policies. We have been and continue to be subject to colonization. However, we will not have our cultural and linguistic identities subject to French control or English control. Oppression, whether it is inflicted by French or English, is oppression. Domination whether it is imposed in French or English, is domination. In certain quarters, including Québec, our inherent right to self-determination is still being opposed. This is an appalling reflection of harmful, insensitive and assimilated policies. It thinly conceals a stubborn unwillingness to relinquish assumed federal and provincial powers that are unjustifiably exerted over our peoples and territories. Our colonial situation is an international disgrace for Canada and Québec. Under international law, the right to self-determination is a right of peoples. As the Charter of United Nations and the International Bill of Rights recognizes and I quote "all people have the right of self-determination." By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. Self-determination is not a right of a province, it is a right of all peoples. All the people of Québec, a people in the international legal sense, the population of Québec is made up of a wide range of racial and ethnic groups. It cannot be considered to be a single people within the meaning of the right of self-determination. Otherwise, the people of Canada would also be a people for the purposes of international law. To such interpretations, the essential purposes of self-determination would be defeated.²⁰



The Coyote's Turn

Much of the separatist platform restates colonial presumptions about sovereignty over Aboriginal peoples and Aboriginal territories. The position of the separatists is neo-colonial, not post-colonial. It imagines continued dominance and control. Aboriginal peoples are not consenting partners in the secessionist scenario: they are minorities, authority over whom is assumed by the province and proposed republic of Québec, purportedly acting only in the best interest of First Nations and Inuit.

What is supremely ironic, given the appeals for self-determination and democracy by French Quebecers, is that political leverage is gained by restricting First Nations and Inuit to an inferior status. In a sense, they have learned only too well the lessons of Canadian constitutional law and the *Indian Act*. They are proposing to do something Canada has done for nearly one hundred and thirty years: impose their vision on Aboriginal peoples. Oddly enough, that vision would only be possible because of the peaceable hospitality and coexistence of Canadian governments with Aboriginal peoples and their governments. At a time when Aboriginal peoples are disentangling from the colonial relationships of the *Indian Act*, a secessionist involvement appeals to the same colonial tenets of the *Indian Act*. There are now definitive legal norms, domestic or international, to govern neatly this kind of situation, although the international legal doctrines are more amenable to eliminating the colonial position of Aboriginal peoples. Canadian law does not provide for secession. Self-determination norms are ambiguous, but Aboriginal peoples would have a competing, if not stronger, claim.

Aboriginal law, which no one appears to consider, is rooted in peaceful agreements — like the numerous treaties with the Crown (in Right of Canada) now in force in the province of Québec — premised on one mutuality and consent of treaty parties. Legal argument is important to prevent open conflict. It can channel potentially violent disputes into peaceful discussion and resolution. There has been no discussion of who resolves these conflicts because the Parti Québécois refuses to acknowledge there is any conflict on the Aboriginal question. Some regime for the peaceful settlement of disputes is essential to avoid the worst-case scenario, which the dissolution of other states, (e.g. Yugoslavia) has raised.

If the legitimacy of a new Québec republic is going to be founded on pure might and state power, then it is a republic which deserves to be challenged and opposed from the outset. If disputes will be solved internally by the new republic's courts, with law it makes up to suit its purposes, then we can expect intense political conflict over Aboriginal peoples' sovereignty. The scenario envisaged by the Parti Québécois reminds me of the persistent line of questions Coyote asks in Thomas King's *Green Grass, Running Water*:

"Wait, wait," says Coyote. "When's my turn?"

"Coyote doesn't get a turn," I says.

"In a democracy, everyone gets a turn," says Coyote.

"Nonsense," I says. "In a democracy, only people who can afford it get a turn."

"How about half a turn?" says Coyote.

"Sit down," I says. "We got to tell this story again."

"How about a quarter turn?" says Coyote.²³

Notes

The following essay is adapted from a longer work bearing the same title and included in *On the Land: Confronting the Challenges to Aboriginal Self-Determination in Northern Québec and Labrador*, ed. Bruce W. Hodgins and Kerry Cannon (Toronto: Belequese Books, 1995).

1 I should note that Cree Grand Chief Matthew Coon Come has gone on record publicly more than the other Chiefs and Aboriginal leaders in his national and international campaign. In part, he has doubled his lobbying efforts for environmental protection of Cree traditional territories with his people's concerns on secession.

2 *The Globe and Mail*, 14 December 1994, Section A: 6.

3 Tom Porter, "Traditions of the Constitution of the Six Nations," in L. Littlebear, M. Boldt, J.A. Long (eds.), *Pathway of Self-Determination: Canadian Indians and the Canadian State* (Toronto: University of Toronto Press, 1984), 14 and 21.

4 Resolution of the Nunavik Leaders Conference, Montréal, Québec.

5 M. Asch and P. Macklen, "Aboriginal Rights and Canadian Sovereignty: An Essay of R. v. Sparrow," *Alberta Law Review* 29 (1991), 510.

6 Parti Québécois, *Québec in a New World: The PQ's plan for Sovereignty*, 40.

7 Québec's resources are permanent; we do not owe them to a political system, or to specific circumstances. They are a gift of nature, which has favoured us more than others in this respect by allowing us to play a more important economic role, thanks to our resources.

8 Draft Bill — "An Act Respecting the Sovereignty of Québec." section 4.

9 Grand Chief Matthew Coon Come "Energy, the Environment, Politics and Native Rights," *Presentation to the Conference of the American Council of Québec Studies*, Washington D.C., 18 November 1994.

10 *Ibid.*

11 Memorandum from the Royal Ministry of Foreign Affairs of Norway to the Director of the Division of Human Rights, October 1978, I, as quoted in J. Deschênes, "Qu'est-ce qu'une minorité?" *Cahiers de Droit* 27 (1986) 255 and 261. See also Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights*, at 88 and 118. See also the conclusion in the Report on the United Nations Seminar on the effects of racism and racial discrimination on the social and economic relations between the indigenous peoples and States, Geneva, Switzerland, 16–20 January 1989, E/CN.4/1989/22, February 1989, paras. 40(k) & 40 (l), "(k) Indigenous peoples are not racial ethnic, religious and linguistic minorities"; and "(l) In certain States the indigenous peoples constitute the majority of the population; and in certain states the indigenous peoples constitute the majority in their own territories."

12 See Assemblée Nationale, *Journal des débats* Commission d'étude des questions afférentes à l'accession du Québec à la souveraineté, 2 Dec. 1991, No. II, CEAS-283 abd CEAS-284. The original French text reads: "Mais non pas les populations autochtones parce que, en un sens, c'est nous qui, pour elles, étions les immigrants et c'est nous qui sommes venus nous installer chez elles à l'époque. C'est d'ailleurs l'opinion qui est retenue..."





13 Under the *Canadian Charter of Rights and Freedoms*, minority rights are addressed in Sections 15, 16, 23, and 29.

14 Unofficial translation, emphasis added. See Assemblée Nationale, *Journal des débats*, Commission d'étude des questions afférentes à l'accèsion du Québec à la souveraineté, 9 Oct. 1991, No. 5, p. CEAS-137. The original French text provides: "Et à mon avis, le fait que [les autochtones] constituent des peuples qui se sont autoqualifiés comme peuples... leur donnerait un droit à l'autodétermination au même titre que le Québec... Et le droit à la sécession, le Québec ne peut pas prétendre... J'entendais M. Sirros hier laisser suggérer que les peuples autochtones n'avaient pas, eux le droit à la sécession. Les même règles sont applicables aux peuples autochtones qu'au peuple québécois."

15 The National Chief of the Assembly of First Nations, Ovide Mercredi, appeared on 11 February 1992. His presentation forms part of O. Mercredi and M.E. Turpel, *In the Rapids: Navigating the Future of the First Nations* (Toronto: Viking, 1993), 165.

16 Ovide Mercredi, testimony, Assemblée nationale, *Journal des débats*, Commission d'étude des questions afférentes à l'accèsion du Québec à la souveraineté, No. 27 (11 February 1992), 816.

17 From the unofficial translations of the remarks of Claude Masson, in *La Presse*, reprinted in *The Globe and Mail*, 18 February 1992, Section A:19.

18 *James Bay and Northern Native Claims Settlement Act*, S.C. 1976-77, c.32. Moreover, it has been held by the Supreme Court of Canada that the federal Crown has a continuing fiduciary responsibility toward Aboriginal peoples: see S. 91 (24) of the *Constitution Act*, 1867; *R.v. Sparrow*, [1990] 1 S.C.R. 1075; *Guerin v. The Queen*, [1984] 2 S.C.R. 335.

19 O. Mercredi and M.E. Turpel, *In the Rapids*, 815.

20 *Québec in a New World: the PQ Plan for Sovereignty*, 40.

21 *Ibid.*, 52-53.

22 Unofficial translation, T. Frank, R. Higgins, A. Pellet, M. Shaw, and C. Tomuschat, "L'intégrité du Québec dans l'hypothèse de l'accèsion à la souveraineté," in Commission d'étude des questions afférentes à l'accèsion du Québec à la souveraineté, *Les Attributs d'un Québec souverain* (Québec: Bibliothèque nationale de Québec 1992), Exposés et études, vol. I, 377, p. 443. The French text read: "Certes, si un ou plusieurs peuples autochtones en venaient à imposer l'existence effective d'un État dans un cadre territorial déterminé au détriment du Canada (ou du Québec, si celui-ci accède à l'indépendance), cet État pourrait acquérir une existence juridique. Mais il tiendrait son existence de son effectivité, renforce le cas échéant, par les reconnaissances dont il bénéficierait, mais non d'un droit préexistant appartenant au peuple(s). Le problème se poserait alors, au plan des principes, dans les mêmes termes que pour le Québec lui-même... mais pourrait être compliqué, concrètement, par la difficulté de déterminer précisément les limites des territoires autochtones."

23 Thomas King, *Green Grass, Running Water* (Toronto: Harper Collins, 1993), 273.