

# Indigenous Natives and Canadian Settler-Occupiers

by Howard Rotberg



*Oxford Languages* defines “native” as a person born in a specified place or associated with a place by birth, whether subsequently resident there or not.

I am a retired lawyer and historian. Words are my stock in trade; and therefore I do not like statements or terms that are inherently contradictory. To call an indigenous Jewish Israeli person a “Settler” or “Occupier” is an oxymoron and of course it is standard practice for the anti-Israel crowd. To call a Native person an occupier is also an oxymoron, and it is used if Natives block entrance to a property with unresolved land claims by the Natives.

I am no fan of Lewis Carroll’s character Humpty Dumpty who

scornfully said, "When I use a word, it means just what I choose it to mean – neither more nor less." To me that is a sentence more suited to the moral relativists and the power-hungry among them who want to control thought by controlling words.

The enthusiasts of Cancel Culture find it easier to cancel History by cancelling the exact meaning of words and adopting ideas that are contradictory – by the use of oxymorons- or whatever else it takes.

I have also come to realize that most people have a difficult time handling the complexity of politics, economics, history, ideologies, and law. Schools in America and Canada teach much less history than they used to, and what is taught is often in the service of some ideology, whether it is Critical Race Theory, cultural Marxism or the relativism of multiculturalism. Accordingly, calling people settlers or occupiers makes the issues seem to be more clear-cut than a full understanding of History and Ideologies would require. It puts the conclusion before the understanding.

I am a Jew and a Zionist, born and raised in Canada, whose maternal ancestors left the pogroms and hatred in the Ukraine in 1910 and whose father survived Auschwitz in the Holocaust. They "settled" in the province of Ontario in Canada without any knowledge that natives were there before them. The fact that some natives were nomadic as hunters and fishermen, complicates the issue.

As a Zionist and a retired real estate lawyer, I know that the San Remo commission of 1920 gave legal title and sovereignty to the Jews who had lived there for thousands of years. Many of the Jews lived in Judea and Samaria, referred to by those who want to reject historical fact, as the West Bank, or in Jerusalem. Somehow the Arabs want to eject the Jews from East Jerusalem to make it the capital of a state for those Arabs who now self-identify as Palestinian, although there was never

a Palestinian state until Yassr Arafat made it up after 1967. Arabs, after their failed war to drive the Jews into the sea, in 1967, found that the areas which they ethnically cleansed of Jews in 1948 were once again filling up with Jews, in some cases returning to the exact locations that they or their parents had resided. Rather than negotiating for some land to be used as a state, as desired by Israeli Prime Ministers like Barak and Olmert, they chose the path of terrorism and other violence. When the Israelis gave them Gaza, they chose as leaders the violent totalitarian Hamas terrorists and by using the territory to fire rockets against Israeli civilians, proved that giving terrorists more land from which to kill you is not a good idea, despite what the Left and its Islamist allies want us to believe.

The anti-Israel folks refer to the Israelis who are re-settling Judea and Samaria and Jerusalem as “settlers” or “occupiers” but you cannot settle something that was yours to begin with; you can only “re-settle” it. Once the Jews are natives of land, they remain so, said the San Remo declaration and the League of Nations, despite being pushed out of it between 1948 and 1967. And the indigenous Natives of Canada and the United States are always Natives, regardless whether they have been pushed off the land by war or by trickery or by legitimate transaction. The facts are often different with every tribe, but before reviewing the historical and legal facts, we start with the proposition that the Natives had some kind of sovereignty before the settler-occupiers arrived.

I was born and raised in a medium sized city called Brantford, some 100 kilometres from Toronto, along Ontario’s Grand River. Other mid-sized cities like Kitchener-Waterloo and Cambridge were also built along the river.

While in the late 18<sup>th</sup> century, some British immigrants moved to southern Ontario, it was sparsely populated. Then the British gave six miles along each side of the River from its

source to its entry into Lake Erie to Mohawk Chief Joseph Brant and his people as a reward for backing the British in the American Revolutionary War. It was almost a million acres of what is now prime real estate.

Brant and his people, known as the Six Nations (composed of various tribes) began selling off various parcels of their land grant for small amounts, and eventually were left with a modest size reservation. Infamously, the British settlers decided that the Natives should give up their culture and be forcibly taught European Christian culture and in so doing they sent the native children to Residential Schools, run by various Christian denominations, where they were deprived of their historical culture and sadly mistreated and abused. In the last month or two, some of the residential schools were found to have mass grave sites where hundreds of the children were buried without grave markers and with no record of their parents ever having been notified. This horrible discovery is prompting digging up land around all residential schools and the general population is appropriately horrified about what happened there.

So, we might say, I was vaguely aware that the land where I lived was at one time the indigenous lands of the Six Nations, also called the *Haudenosaunee* and before that there might have been small bands of natives hunting and fishing without permanent settlements. The land grant to the Ontario Natives (called the Haldimand proclamation) was for some one million acres being six miles on each side of the river. Then, after some years, part was sold back to the Crown (for inadequate proceeds) and so had been sold and not stolen, which was different in other areas of Canada. However, as we shall see, there arose disputes over the title to the lands purported to be sold by the Six Nations. In the western province of British Columbia, there were no treaties and to this day, Natives there have land claims against those who used their power to take control of the lands.

In British Columbia it is common for politicians, school principals and others to open a gathering by acknowledging that they are on the "unceded traditional territory" of the Wet'suwet'en, Algonquin, Musqueam or other First Nation. I think that, despite the facts of land sales sometime being questionable, recognition of the indigenous folks who lived there is a respectful thing to do.

The fact that the Natives were hunters and fisherman living a nomadic lifestyle over vast territories makes more complex the issue of whether or not the land was "settled" and by whom. Again, history and law are complex matters. This is entirely different when it comes to the indigenous Jews of Israel whose territory was defined and legitimized by international law, and who documented their history in religious writings going back thousands of years.

I was not aware of this growing up, but historians now agree that the right of the Six Nations to sell their land was limited by the Government and there are certain ownership issues that still arise today. Brant had begun selling some of the land he owned along the Grand river to British settlers with the intention of investing the profits into a trust that would make the Six Nations economically and politically independent of the British. The Government sabotaged Brant's plans by announcing that the Six Nations were only allowed to sell land to the Crown, which would then resell it to white settlers.

On 14 January 1793, General John Simcoe, the governor of what was then called Upper Canada (and is now called the province of Ontario) issued a "patent" or clarification to the Haldimand proclamation, which stated that the Brant's lands did not extend to the beginning or source of the Grand river as the Haldimand proclamation had stated, and that the Six Nations did not have the legal right to sell or lease their land to private individuals, and instead were to deal only with the Crown. Brant rejected the Simcoe patent, saying that

Simcoe did not have the right to alter the Haldimand proclamation; the question of whether the Iroquois owned all the land to the beginning of the Grand river to its mouth or not is still, as of the 21st century, more than 200 years later, part of an ongoing land dispute. Brant disregarded the Simcoe "patent" and in 1795–96 sold blocks of land along the Grand river, receiving some £85,000 sterling together with interest of £5,119 annually. Simcoe disallowed these land sales as illegal and refused to give the buyers land deeds, but he made no effort to evict the buyers, who continued to consider that they owned the land.

Indigenous folks in Canada, the United States and Australia and New Zealand, especially those who led a nomadic existence, have differences in their legal positions but in general are considered to have indigenous rights. This becomes important when the lands have valuable natural resources.

Everyone seems to agree that the natives are the Indigenous people of Canada and that the government has a duty to deal fairly with them now, despite unfair dealings in the past. However, people, no matter how compassionate and fair they might seem, generally do not want to give up any interest in their homes and lands to Natives over what might have happened. People like to virtue signal with somebody else's money.

In Canada much of the attention of the Government and Native leaders has been by way of a Truth and Reconciliation Commission addressing issues of compensation for abused natives who were forced to attend residential schools and addressing issues of poverty, poor housing and drinking water and health care in native communities in the far north. It seems that in the face of issues pertaining to health the issues of land ownership have faded somewhat. However, the rights of Canada's indigenous people and the unfair manner in which they have been treated have attracted new attention as authorities have uncovered mass unmarked graves of children

buried outside the residential school buildings. Canadians are confronting a past of cultural genocide and perhaps a physical genocide where an unknown number of dead native children were not given the recognition of graves marked with stones or crosses.

The indigenous Natives struggle on, with little chance that Canadians or Americans will after 200 years change course. In Ontario, with the open question of who ceded land to who, there have been some disputes between the Six Nations and real estate developers who are trying to develop land in the city of Caledonia, on the Grand River south of Hamilton. The Six Nations do not believe that they have relinquished legal title, especially in the northernmost lands adjacent to the Grand River. There is the added problem of who has authority to bind the Six Nations as there are both hereditary councillors and elected councillors who don't necessarily agree.

And so, the Six Nations and other indigenous nations/tribes are plagued with poverty, cultural genocide and reservations that are without proper drinking water (which in some cases was poisoned by neighbouring companies,

However, the Six Nations is now doing well, and it is home to a major independent cigarette manufacturing plant, and some cultural facilities aiming to preserve and enhance the culture and language that was almost destroyed because of the residential schools. Those schools were almost successful in trying to destroy that culture.

I don't mind if my taxes go up to pay for reparations and native cultural facilities. They were here first.

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