

The British Columbia Treaty Referendum: A Coyote Story

“I like Coyote stories . . . and one of my favourites is the one about Coyote and the ducks . . . the one about the feathers. It goes like this.”

Thomas King, The Truth About Stories (5/2:28)

In 2002 the government of British Columbia held a referendum in which they asked the electorate to vote on eight proposed principles for the guidance of future treaty negotiations between the provincial government and First Nations people. It was a highly controversial exercise, drawing much criticism for a variety of reasons¹. It would be easy to see the B.C. Referendum on Treaty Negotiations as an extreme example of the inherent risks and potential for failure of the questionnaire as a formal exercise, except that its context reveals the reasons for its apparent flaws, and also the degree to which they are neither accidental nor necessarily damaging to its effectiveness for its intended purpose. These in turn are related to its origins and intent as a governmental exercise in public policy creation and public opinion manipulation. It is not in fact a poorly designed instrument, as has been said, but one very carefully constructed to serve a firmly established purpose: its greatest weakness is that it lacks any sort of subtlety, and is therefore too transparent. Had its authors held a more flattering view of their audience they might have done better – perhaps we should be thankful they did not.

The Treaty Referendum was presented by the British Columbia government as an exercise that would

. . . give British Columbians a direct say on the principles that we believe should guide the province's approach to treaty negotiations . . . provide certainty for the province's negotiating position . . . reinvigorate the treaty process . . . [a]nd . . . build a foundation

¹ Indeed, the only group apparently entirely pleased with the project is a White supremacist outfit that normally busies itself with theories of Jewish conspiracy, and suggestions for how to improve the state of the nation through selective immigration and the judicious use of euthanasia. To the government's credit, they expressed no pleasure at receiving the enthusiastic endorsement of B.C. White Pride.

for a new relationship with First Nations that ensures aboriginal British Columbians share fully in a prosperous future. (Campbell, 2002)

It was, the premier assured voters,

. . . an opportunity for all of us to understand our constitutional obligations to aboriginal people, and discuss how we can move forward with settlements in a way that has public trust and confidence -- to help fast-track treaty negotiations, and forge a new relationship with First Nations. (Campbell, 2002)

The referendum would, it was claimed, bring the people of B.C. into the treaty process.

Thus was it promoted to a sceptical electorate. In fact, the entire exercise was designed to foster an oppositional relationship between “the public” (which by implication excludes Native Canadians) and Aboriginal people, especially and specifically those engaging in the treaty negotiation process. The term *British Columbians* is explicitly used to mean non-Native British Columbians, unless specified otherwise. The language used to promote the referendum is assertive to the point of being pushy – *reinvigorate, move forward, fast-track* – and highly suggestive of an agenda already in place, awaiting only a formal initiation. The process of devising and marketing the referendum is in itself a revealing study in governmental use of language: by the time voters opened their ballot packages they had heard much rhetoric of this sort, as well as such interesting insights into the democratic process as are provided by the Attorney General’s explanation that “While a majority yes vote for any of the eight questions being asked of voters will be binding, a no vote will not” (Waters, 2002).

Indeed, viewed from this perspective, the large number of people who either protested by destroying their ballots or boycotted the vote altogether actually played into the government’s hands, in that a simple majority of ‘yes’ votes was all that was required to support their

principles and give them a mandate to proceed with treaty negotiations based upon them. Not that they had much to worry about, because (the Attorney General's ham-handed and antagonistic interpretation notwithstanding) a majority 'no' vote would not have hobbled them, or even committed them, in any way. As explained by CBC News, "[a] Yes vote means the government will be bound to adopt the principle in treaty negotiations [whereas a] No vote means the government will not be bound to adopt the principle to guide its participation in treaty negotiations" (B.C. treaty referendum, 2004). A one hundred percent 'no' vote would simply mean that the government *could*, rather than *must*, adopt the principles laid out in the referendum (or for that matter, any other principles it chose): a no-lose proposition, which helps to explain the anger and frustration of those opposed to the entire exercise, who had no effective way to register an opposing point of view, but only – at best, and weakly – an absence of support for that presented by the ballot. A No vote is not a vote for *different* principles, but rather for no principles at all.

This, then, is the context in which the referendum was carried out: a highly charged atmosphere in which a great deal of official rhetoric and angry and often very articulate criticism had been aired by the time votes were cast. Debate around the referendum focussed on its legality and validity as a democratic exercise, its effects on Native/non-Native relations, the morality of minority rights being dictated by majority vote, and the nature and/or sheer absurdity of the questions. In none of these areas was there any subtlety to the exercise, and criticism was broad and direct.

I suggest that there is one respect in which the B.C. Treaty Referendum was more subtle than it appears, and that this bears examination and thought, not so much in relation to the Treaty Referendum itself but for the insight it provides into the genre of government communication -

how those in elected (or otherwise conditional) positions of power use language in dealing with those they govern. It is my intent to examine the Treaty Referendum ballot, with this in mind, as an example of – or an exercise in – the governmental use of another genre, the research instrument, in which elements of the two combine to serve a specific end. I do not intend to comment on the validity of that end (though my personal bias will no doubt be evident) as my main interest is in the use of the language and the form, and *why* and *how* each succeeds and/or fails in having the desired effect on the audience.

Examining the instrument

I will not explore the various ways in which the questions or principles of the referendum may be in conflict with existing law; federal, provincial or international. These have been thoroughly examined by lawyers, and although such conflicts add to the complexity of the issues of the referendum they are separate from this discussion, except in so far as they testify to the character of a question or of the exercise as a whole¹.

This, then, is the document in question, as laid out in the *Treaty Negotiations Referendum Regulation*:

Preamble: “Whereas the Government of British Columbia is committed to negotiating workable, affordable treaty settlements that will provide certainty, finality and equality;
Do you agree that the Provincial Government should adopt the following principles to guide its participation in treaty negotiations?”

¹ For legal opinions on the document and the referendum, see Louise Mandell (2002), and Hamar Foster (interviewed on CBC Radio’s *Afternoon Show*, March 12, 2002). Judith Sayers (2002) also mentions legal issues in her analysis of the referendum questions: Ms. Sayers writes from a unique position as she is both a lawyer and leader of the Hupacasath First Nation.

The proposed principles:

1. Private property should not be expropriated for treaty settlements.
2. The terms and conditions of leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured.
3. Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians.
4. Parks and protected areas should be maintained for the use and benefit of all British Columbians.
5. Province-wide standards of resource management and environmental protection should continue to apply.
6. Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.
7. Treaties should include mechanisms for harmonizing land use planning between Aboriginal governments and neighbouring local governments.
8. The existing tax exemptions for Aboriginal people should be phased out.

The first part of the preamble takes the form of an assertion, legal in tone and reassuringly positive in content: *whereas* implies that it is an established fact; then *committed, negotiating, workable, affordable, certainty, finality, equality...* all create a sense of the benevolent gravity with which the government approaches the issue at hand. All questions as to whether such commitment exists, and if so, what is meant by each of the following terms, are dismissed by the

preamble. The voter is then asked *Do you agree . . .* thereby inviting him or her to *be agreeable, join in, be included*. The “principles” with which s/he is asked to agree follow.

About the document as a whole some observations may be made. Rather than a series of questions it is a series of assertions, with which the voter is asked to agree or disagree. Although it is customary for referenda to be worded in such a way as to require a ‘yes’ or ‘no’ answer, the form carries significant implications beyond mere governmental conventionality. Such questions impose a stark simplification and dichotomization of the issue, which is problematic in itself. As well, if the questioner is intent upon creating an appearance of consensus, and thus desires a positive answer (as is the case here), the question itself is often structured negatively, making choice of an appropriate response difficult. For example, to a question or statement that begins, “Such a thing ought not...” does Yes mean *Yes, it should*; or *Yes; it **should not***? Whichever may seem instinctively correct, either is a semantically valid interpretation, and some percentage of voters will interpret it each way.

A greater problem with yes/no questions is the implication that a No response signifies direct opposition to the principle couched in the question – the George W. Bush approach to political relations: “if you’re not with us, you’re against us”. This serves to deny, invalidate or ignore alternate approaches to the issue, and polarize those who tend (with whatever degree of conviction) toward either a positive or a negative response, into two diametrically opposed camps. For many, answering the question ceases to be about what they believe, and becomes simply a matter of which extremity they find it more palatable to be associated with. It is in this respect that the authors of the BC Treaty Referendum most obviously out-smarted themselves: in making one extreme unconscionable and the other absurd they provoked many usually passive voters to boycott or otherwise protest the entire exercise.

Principle 1: “Private property should not be expropriated for treaty settlements.”

What is the significance of the order in which research questions are asked? Criminology professor and researcher Ted Palys, in his book *Research Methods: Quantitative and Qualitative Perspectives*, specifically addresses this issue: “the questions in the set would normally be ordered from least to most threatening; if there are several *sets* of questions, then the *sets* would also be ordered from least to most threatening” (2003: 191). He places this in the context of modelling a questionnaire after a typical conversation with a new acquaintance, in which social conventions and personal boundaries are respected in the interest of gaining the participant’s trust. Yet this ballot begins with the question that, of all the ones on it, is most likely to cause feelings of anxiety and possibly anger in the largest number of voters. Individual property rights are a ‘motherhood’ issue, most likely of all issues on the ballot to have a direct personal impact on the voter. Placing this as the first question is effectively going ‘straight for the jugular’, creating an oppositional and potentially threatening relationship between the voter and those with whom the government will be negotiating these treaties that might – in the absence of a forceful mandate to the contrary – place the individual’s own property on the table, without representation or recourse. (It is also misleading in that the very mention of private property implies that Aboriginal groups *have* made it a target of claims, which in fact they have not.)

As mentioned previously, I will not attempt to analyse the document from a legal standpoint, but it is important to note that terms such as *private property* have several potential uses in law, and other implications in casual use, and thus can - and will - be interpreted in different ways by different people. This ambiguity renders a question such as this one not only misleading but, in any practical sense, meaningless.

Principle 2: “The terms and conditions of leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured.”

Masters at what has come to be called ‘spin’, government writers choose words such as *respect, fair, unavoidable, ensured*. As with the preamble, this question carries the torch of reason and fairness, yet without actually providing much light. Do *respected* and *ensured* mean treated as a guiding principle, or considered inviolate? What is *fair* compensation, and who decides this, and who pays for it? What constitutes *unavoidable*, and who is to be the final arbiter of this? These are practical concerns, but their obvious effect on the ability to create unambiguous and workable principles for negotiation illustrate the extent to which the language is meant to be rhetorical, is meant to serve a purpose other than the creation of such principles. Whenever it is easy to dismiss an argument as fatuous because it obviously doesn’t serve its declared purpose, it is wise to ask, “if it doesn’t do what it is presented as being *meant* to do, what *does* it do?” If someone is willing to spend nine million dollars on it, and fight several court battles in its defence, chances are they expect it to justify the expense somehow.

Another weakness often found in questionnaires appears here, and reappears in other of the principles as well. This is the double-barrelled question, a very basic and amateur mistake in research instrument design in which two or more concepts are contained in one question, thus clouding the issue of what exactly the respondent means by his or her response. Perhaps this is the sort of thing pollster Angus Reid was referring to when he called the Treaty Referendum “one of the most amateurish, one-sided attempts to gauge the public will that I have seen in my professional career” (Reid, 2002). Yet what Reid and others have overlooked is the extent to which such questions can serve to piggy-back one issue on the appeal or emotional impact of

another. In this case no less than six different possibilities¹ are couched in one question: if there is one concept contained in the question upon which a voter has strong feelings, it will determine the vote, and all the rest will be delivered as a ‘package deal’. This approach is used in several of the questions, and as in this one usually combines several loosely related issues of varying complexity and public appeal, presenting first the one that seems simplest and most obviously ‘right’, and tacking the others on or weaving them in as if they were incidental.

Principle 3: “Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians.”

This is another example of the effective use of the double-barrelled question. In this case the combination of three separate issues – hunting, fishing and recreation – deprives the respondent of the freedom to express an opinion on each of these subjects, which have separate implications, but it also serves to distract from several other things that are at work in the question. What is meant by *opportunities*? What is meant by Crown land – federal, or provincial? The apparent simplicity and fairness of the statement disguises the fact that these questions are actually extremely complex: for example, in legal terms Native reserve land *is* federal Crown land.

This raises another point which has been made by many critics of the referendum process, and yet not fully followed through. Several of the ‘principles’ on the referendum ballot involve areas of jurisdiction, or points of law, that are in fact totally outside the provincial government’s power to negotiate or legislate. As with other aspects of the referendum, these have been held up as examples of the general ineptitude of the authors of the exercise. In fact, assuming that the government is not motivated to negotiate in good faith with First Nations, this process of eliciting a worthless mandate directing them to do things which they have no power to do and which would effectively dismantle the treaty process, enlists the electorate of the province as

¹ I am indebted to Judith Sayers for counting and explaining them all in legal terms – see Sayers, 2002.

accessories to their campaign of disengagement. The voters become the ‘witnesses’ by whom the process is legitimized. In this respect it matters not how corrupt the ballot may be, it matters only that it exists, and that a majority were returned with ‘yes’ votes indicated.

Principle 4: “Parks and protected areas should be maintained for the use and benefit of all British Columbians.”

Yet another question that hides multiple complex issues behind apparently simple, single ones. Judith Sayers explains the importance of parks and protected areas in practical terms in her excellent analysis, specifically regarding their significance as both available land and culturally sensitive sites, and the extent to which rigid restrictions here could hamstring the treaty process. This item also begs many questions about jurisdiction and definition, most importantly of the words *maintained*, *protected areas* and *benefit*. While “all British Columbians” are envisioning the preservation for public use of areas such as Pacific Spirit Park, Native people have a very different definition of protected areas, including traditional burial grounds and spiritual places. Maintaining these for the ‘use and benefit of all’ can, depending on whose ideas of benefit - and maintenance - carries the most weight on the day, preclude nothing from legislated public access to issuing mining and timber cutting licenses. This interpretation is not – as might be suggested – a doomsday reading of the principle. It is rather a recognition of the vastly different ways in which Native and non-Native people have historically viewed the land, the extent to which their respective views are reflected in their differing use of language, and most of all the fact that in this document, it is the non-Native way that prevails, both philosophically and linguistically¹.

¹ Lest this be seen as wholesale acceptance of stereotypes regarding both Native and non-Native values, I will add that - as proven nearby in Washington state by palatial tribal casinos squatting amid deserts of perpetually floodlit parking - no one group has a monopoly on greed and environmental myopia. However, the language of law is the language of that particular value system, to the exclusion of others.

Principle 5: “Province-wide standards of resource management and environmental protection should continue to apply.”

Once again multiple concepts crowd the question, lumping together *resource management* and *environmental protection* as if they were essentially the same thing. Ironically, the perceived difference between them probably is much less in the eyes of the government than in those of Native people – another instance of language inadvertently reflecting values.

Province-wide is taken to mean “mandated by the provincial government” (as the authority which has jurisdiction to make law that will prevail throughout the province) and again, this is understood to mean that these areas will be under non-Native control. Every such use of *province, British Columbians, etc.*, reinforces the oppositional relation that the referendum is predicated upon and intended to promote. There is no way for respondents to indicate that they want a non-adversarial approach to treaty negotiations; in this specific case, no way to say that co-operation should be used to produce sustainable resource management, or that standards *higher* than those which may be mandated by the provincial government will prevail where implemented by Native (or other) governments. The effect of the wording here, in combination with the implied reference to the legitimacy and paternal concern of the government, is to make tolerance of what may in fact be a minimum standard appear in the character of protection of the public good.

Principle 6: “Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.”

This question requires discussion primarily in legal terms, which others better qualified have already very capably done. A brief summary of their analyses is that with this question the referendum leaps far beyond the bounds of provincial government jurisdiction – that it is utterly

absurd to even talk about powers delegated from Canada, as the province has no say whatever in this, and that it is likewise totally misleading to compare Native to local governments because of fundamental differences in their structure and powers as dictated by the Constitution Act and the courts. In light of the fact that these arguments are generally agreed upon and well supported, what makes this question worth including on the ballot? Again, it is what the question implies, the potential opposite principle – the ‘evil twin’ – that it conjures up. If we were to say, “No, Aboriginal self-government should *not* have the characteristics of local government, with powers delegated from Canada and British Columbia”, what would that mean? In essence, that Aboriginal self-government should have characteristics of some *other* form of government – and such is the imagination that very few of us envision something as yet undefined, therefore we then imagine Aboriginal self-government in terms of something we already know – as having the characteristics of a provincial or even a federal government. This process is rapid and barely conscious: a process of “if not this, then what?” Likewise, *with powers delegated*: if we say ‘no’, the implication is with powers *not* delegated – that is, with powers outside the jurisdiction of federal or provincial power *to* delegate. The payload this apparently embarrassingly inappropriate question carries is the subtle suggestion of Aboriginal self-government unrestrained, independent of and out of the control of provincial and federal powers.

Principle 7: “Treaties should include mechanisms for harmonizing land use planning between Aboriginal governments and neighbouring local governments.”

Harmonize, the dictionary tells us, means:

To bring into agreement or harmony; set in order or proportion; reconcile; as, to

harmonize hostile parties, conflicting interests or contradictory reports . . . to agree on

character or activity; accord in meaning or impression . . . to be in peace, as a household (Funk & Wagnalls, 1927).

So who votes against harmony? Probably the same sort of person who wants to know what is meant by *mechanisms* (and how mechanisms – tuning forks notwithstanding - can create harmony), and why the principle only applies to *neighbouring local governments*. Another ‘motherhood’ type question, difficult to find anything wrong with at first glance, and worded so as to suggest that simply by the strokes of voters’ and legislators’ pens we can all get along happily together.

Unfortunately it isn’t quite that simple. Even assuming an atmosphere of general goodwill¹, reconciling Native and non-Native land use priorities is a daunting task. Nor is it true that land use planning is always and only done at the local government level: this principle as written completely ignores the added variables of regional districts, water districts, irrigation districts, special purpose improvement districts (such as the Islands Trust), and the provincial government. As examples, the Burns Bog preservation project involves four levels of government (federal, provincial, regional and municipal), while the Islands Trust involves trust and advisory committees and citizens’ groups at the local level, Fisheries and Oceans Canada, provincial and regional governments, non-governmental organizations, and First Nations.

The purpose of this principle, and of the words used to express it, is to begin to ease off the tension created by the preceding questions, so as to leave the voter feeling that ‘all’s well as ends well’ – that harmony and good will can be legislated into existence, and that treaties will be all

¹ Eighteen months after the Treaty Referendum the B.C. government passed the *Significant Projects Streamlining Act* (Bill 75-2003), which states that any project designated ‘provincially significant’ must be dealt with expeditiously by the legislative bodies under whose control it falls, and allows for “any enactments or processes that might impede the prompt completion of the project to be overcome through negotiation or minister's order and replaced with alternative measures that are more in keeping with the expeditious completion of the project” (Hansard, Bill 75-2003, 1st reading). While we can only speculate on the gestational stage of this bill at the time of the referendum, it does raise questions about the general spirit in which this principle was drafted, and show the degree to which it has in fact become irrelevant.

about balance. The strength of its wording is that once the reader accepts the validity of the idea of *harmonization*, s/he then goes on to swiftly envision a personal interpretation of it, and it is this image, not the government's actual intention, that colours the individual's response to the rest of the question. Once again, however, the document's authors failed primarily in underestimating the cynicism of voters.

Principle 8: "The existing tax exemptions for Aboriginal people should be phased out."

Aboriginal taxation is an area of federal, not provincial, jurisdiction, and has been addressed both in treaties and in court. The provincial government must know that it has not the power to impose its will in this area. So why is this principle included? This principle serves two purposes: it sets the tone for future legislation, should issues of Native tax status arise over which the province potentially could have some say, and it closes the referendum with an issue which places Native people firmly in the light in which the government wishes them to be perceived by non-Native British Columbians.

If Native self-government should in future take on any of the characteristics mentioned by the government, that is, if any of its powers should be exercised at the pleasure of the province, having a 'mandate' to restrict the ways in which Native governments use taxation may be very useful. More importantly, because it is more likely, the process of negotiating the terms of Native self-government is one that will involve the federal and provincial governments coming to terms with each other, as well as with First Nations, and the province wants principles to take to that table as well as to the treaty table. This is one of them.

This principle is also one of the most clearly and simply divisive, in the sense of fostering a belief in inequitable Aboriginal privilege. Although it doesn't play on insecurities, as Principle 1 does, it serves to reinforce the idea that Natives are somehow getting a free ride. This in turn

makes it easier to simplify the issues along ‘us/them’ lines, and to vote for what appears to be protection of one’s own interests. The implication is that if Aboriginal people don’t pay taxes, someone else has to pay more, and that in the meantime they are still taking advantage of programs paid for with taxpayers’ money. These are old arguments with many weaknesses, but again, it is the fleeting chain of connections in the mind of the voter, that develop between reading the question and putting pencil to paper, that influence the vote. The aim of the question – as is often the case - is to direct the reader’s thoughts into long-standing patterns that evoke powerful biases and fears, rather than to stimulate analytical thought.

Conclusion

In studying the British Columbia Referendum on Treaty Negotiations I am reminded of the tale Thomas King tells in *The Truth About Stories*, about Coyote and the Ducks – about how Coyote persuades the ducks to give him their beautiful feathers, which he covets. First he asks only for one, then another, and then he tells the ducks that he needs *all* their feathers, in order to protect them against the insatiable greed and hunger of human beings. The ducks aren’t convinced, and they refuse.

“Then,” said Coyote, puffing out his chest as best he could, “we’ll fight them together!”

“Fight! Fight whom?” said the ducks (who were well versed in the rules of grammar).

“Human beings, of course”, said Coyote. “For they can be very fierce when they don’t get what they want.” (King, 2003: 5/9:15)

The ducks imagine that they will lose all their feathers either way, and may – with Coyote’s help – at least preserve their skins, so they agree, and as he skips off through the forest flaunting his extorted finery they try to figure out just what it is about them that human beings don’t like.

King is of course telling a story about treaty making, and the way in which Native people were forced to give up their land, a little at a time, until they were left with only that which no one else wanted. But the question the ducks never thought to ask – and that needs to be asked about the persuasive use of language by those in positions of power – is, what is Coyote *really* doing? And *why* does he want us to believe these things? No matter how foolish his antics appear to be, it is dangerous to forget that he is, among his many personae, a trickster.

This then is what lies below the surface of the B.C. Treaty Referendum. What appears at first perusal to be embarrassingly simplistic and amateur, turns out to be in fact quite an effective exercise in the governmental use of language. That many people either accept such rhetoric at face value, or briefly consider the implications and are satisfied, we already know – after all, such governments are frequently re-elected. But we underestimate its depth and potential effects at our peril.

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