

IN BRIEF: Idle No More



Idle No More is a grassroots political movement focused on Indigenous rights and environmental protection. It began as a relatively small group in Canada, but quickly became international in scale largely due to rapid proliferation through the use of social media such as Facebook and Twitter. Since December 2012, the movement has attracted a great deal of attention in the Canadian mainstream media, through rallies, protests, teach-ins and direct political action such as flash mobs and round dances around the country.

While its quick spread to other parts of the world has meant that the specific political goals of all those who identify themselves as part of the Idle No More movement are highly diverse, its beginnings in Canada are quite straightforward. In October 2012, the Conservative government led by Prime Minister Stephen Harper introduced Bill C-45, the '*Jobs and Growth Act, 2012*'. This legislation has raised the concerns of many Canadian environmental and Aboriginal rights activists, but Idle No More owes its identity to the efforts of four women from Saskatchewan: Jessica Gordon, Sheelah McLean, Sylvia McAdam and Nina Wilson. These four organized a small event in Saskatoon held on November 10, 2012, and used Facebook to publicize it. The slogan they used to promote the event was "Idle No More". Similar political actions followed in other parts of the country as the movement grew exponentially, supported by the use of the "#idlenomore" hash tag on Twitter and other social media and the widely-publicized hunger strike by Chief Theresa Spence of the Attiwapiskat First Nation. December 10, 2012, marked a national Day of Action with related political activities around the country. The specific goals of all of these activities were as diverse as the groups staging them, and while Chief Spence's hunger strike concluded on January 24, 2013, the momentum gathered and issues central to the movement remain at the forefront of current events in Canada.

Bill C-45 is an **omnibus** bill, which means that it changes legislation in a large number of areas at one time.

The idea that Indigenous people have an inherent legal right to ancestral lands is expressed in the common-law doctrine, **Aboriginal Title**

Background – Aboriginal People and Canadian Law

Both British and Canadian law have long recognized the inherent rights of Indigenous people to the land they occupied for generations prior to contact with Europeans. In fact, the 1763 Royal Proclamation by King George III of England explicitly confirms the existence of these rights through the notion of Aboriginal Title, and decrees that only the Crown can negotiate land purchases with First Nations. This was the beginning of

a unique legal relationship between the Canadian government and First Nations. Canadian courts, including the Supreme Court of Canada (in, for example, *R v Guerin* [1984] and *R v Sparrow* [1990]), have held this to mean both that this relationship and the welfare of First Nations must be a foremost concern when determining whether legislation that infringes upon their rights is justified. The rights that are guaranteed in these agreements have been recognized and affirmed under Section 35 of the *Canadian Constitution* as binding commitments that must be upheld, with the understanding that they were made on the honour of the Crown.

Treaty Rights. Treaties are legal agreements between nations that govern activities and attempt to settle disputes by setting out rights and responsibilities between parties. Treaties are in force throughout the world today, just as they were between many European nations and among the many Indigenous groups living in North America prior to European colonization. In Canada, treaties between the Crown and Indigenous peoples usually refer to agreements between these parties in which the latter shared some of their interest in their ancestral territory with the former, in return for payments, promises or other forms of remuneration from the Crown. When settlers colonized Canada, they did so by entering into legal agreements with the various societies that had lived here for millennia. If these treaties did not exist, non-Indigenous settlements and people would be illegal occupants of Canada. In that sense, many have argued that in Canada, we are all treaty people.

Most of the land that comprises Canada has been negotiated in this way, and in some areas where there are no treaties, treaties are under development. Historically however, the government has tended to view treaties as closed-ended transactions in which rights to land were given up completely and traditional rights (such as hunting and fishing) were strictly limited outside of reservations. Conversely, the Indigenous interpretation has emphasized that treaties are foundations for sacred agreements and relationships in which respect for one another, and the land shared, is paramount.

While the Crown's view has dominated popular ideas about treaty rights, it is important to remember that most treaties were negotiated orally but were recorded in writing by representatives of the Crown from the Crown's perspective. These are the records that remain today – not the oral records of what was actually said, or what actually came to pass from the perspectives of the various First Nations who were parties to the decisions. In recognition of this historical bias, the Supreme Court of Canada has held that when disputes are ambiguous, they should be resolved in favour of First Nations' interests (see *R v Sioui* [1990]), and that lawmakers should interpret treaty agreements not strictly in the highly legalistic language in which they were recorded, but also according to the way they would have been understood by Indigenous people at the time. This is a binding legal principle.

Legal Objectives

In the broadest sense, many people who support Idle No More do so because they feel that governments have largely ignored the legal promises to Aboriginal Canadians that are outlined above. One major objection of Idle No More activists is that Bill C-45 forces changes to treaty agreements without consulting First Nations. The doctrine of a "duty to consult" is another binding legal principle that governs the way legislation affecting treaty rights can be made (see for example *R v Adams* [1996] and *Delgamuukw v British Columbia* [1997]). The terms of the agreements cannot legally be changed without seeking input and consultation of those who will be affected by it. In this view, it harms the honour of the Crown to change the terms of the agreement unilaterally, and is

illegal to do so without adequate prior consultation. Three specific changes that have drawn the criticism of the Idle No More movement are the Bill's revisions to the *Indian Act*, the *Navigable Waters Protection Act* and the *Environmental Assessment Act*.

The Indian Act. This is the fundamental legislation that governs relationships between the federal government and First Nations. This includes rules for how a First Nation will decide whether to allow the government to lease its land. Idle No More argues that Bill C-45 allows this decision to be made at meetings in which a majority of those in attendance vote to do so, rather than a majority of eligible voters in the whole community. Furthermore, under the new legislation, the Minister of Aboriginal Affairs can choose to ignore a negative vote by a band council. This raises a serious question as to whether the "duty to consult" will be sufficiently met under the new process, and the change itself was made without consultation.

The Navigation Protection Act. Formerly known as the *Navigable Waters Protection Act*, this legislation sets out rules about when major industrial projects have to prove that their construction and operation will not damage navigable waterways. Bill C-45 removes this protection for over 99% of Canada's lakes and rivers. This change was made without consultation.

The Environmental Assessment Act. This legislation sets out the level of research into possible environmental damage that must be done before a project can be approved. Idle No More argues that under Bill C-45, much less assessment is required and fewer projects require assessment before approval. This change was also made without consultation.

Discussion Questions

1. Have you participated in or seen any coverage of Idle No More events? What were your impressions of them?
2. What sorts of social and environmental issues do you think are raised by the Idle No More movement? Whom will they affect, and why?
3. What do you think is of greater monetary value: the amount of federal money transferred in to First Nations communities to support social infrastructure, or the value of the economic resources extracted from their land through treaty agreements?
4. Is there a difference between public reaction to events like round dances in shopping malls that are engaging and less disruptive and actions that shut down roadways and rail transit? Do people react differently to these than to marathons or parades, which also disrupt traffic?
5. Indigenous people in Canada are a tremendously diverse group, and do not uniformly agree that the Assembly of First Nations should represent them in dealings with the federal government. How might a grassroots, social media-driven movement address this? What challenges or opportunities does it raise?

Further Reading

Map of Treaties in Canada: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/htoc_1100100032308_eng.pdf

“So, which terms do I use?” - The Indigenous Foundations Program at the University of British Columbia’s page on the correct meaning and histories behind the various terms, like “Aboriginal”, “First Nations” and “Indian”, that refer to diverse Indigenous people in Canada and their descendants:

<http://indigenousfoundations.arts.ubc.ca/?id=7400>

The Canadian Encyclopedia’s page on Treaties in Canadian History:

<http://www.thecanadianencyclopedia.com/articles/indian-treaties>

Aboriginal Canada’s Section on Claims and Treaties:

<http://www.aboriginalcanada.gc.ca/acp/site.nsf/eng/ao20009.html>

Idle No More’s Own Lesson Plan: <http://idlenomore.ca/index.php/articles/resources/item/103-inm-teach-in-tool-kit-lesson-plan-template>

Listen: CBC Radio’s *Ontario Today* guest Hayden King, Professor of Politics and Public Administration at Ryerson University, responds to listeners’ comments and questions concerning the Idle No More Movement

<http://www.cbc.ca/ontariotoday/2013/01/11/friday-idle-no-more/>

www.apihtawikosisan.com: A law blog focused on Aboriginal legal and social issues with strong links, articles and resources: <http://apihtawikosisan.com/>

Media Co-op asks, “Who is subsidizing who?” in Government-First Nations relationships:

<http://www.mediacoop.ca/blog/dru/15493>

OKT Law, a firm specializing in Aboriginal issues, summarizes some current examples of treaty violations:

<http://www.oktlaw.com/blog/the-treaties-a-primer-on-recent-violations/>

Related OJEN Resources

[Understanding International Law \(pp. 36-42 on Indigenous Rights\): http://ojen.ca/resource/2836](http://ojen.ca/resource/2836)

[Introduction to Land Claims in Ontario \(2007\): http://ojen.ca/resource/799](http://ojen.ca/resource/799)

[Landmark Case – Aboriginal Treaty Rights in *R v Marshall*: http://ojen.ca/resource/573](http://ojen.ca/resource/573)

[Landmark Case – The Ipperwash Inquiry: http://ojen.ca/resource/587](http://ojen.ca/resource/587)

[Cases That Have Changed Society](http://ojen.ca/resource/968) (see *Delgamuukw v British Columbia* on pg. 3 for brief commentary on Aboriginal Title in the Canadian courts): <http://ojen.ca/resource/968>