

**Aboriginal Participation in Canada:  
Overcoming Alienation and Mistrust in a Situation of Complex Interdependence**

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## **LAC Abstract**

**Thesis Title: Aboriginal Participation in Canada: Overcoming Alienation and Mistrust in a Situation of Complex Interdependence**

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This thesis examines the importance of Aboriginal participation in Canadian institutions, why Aboriginal peoples are mistrustful of Canadian institutions, and how reforms might encourage effective Aboriginal participation within Canadian institutions. The first chapter studies the extent of Aboriginal/non-Aboriginal interdependence and its political ramifications. Because interdependence is so great, Aboriginal peoples must participate within shared institutions to influence important decisions affecting them. The second chapter suggests that encouraging Aboriginal participation requires that we overcome strong feelings of alienation and mistrust. In considering other theories of shared citizenship, I conclude that this requires solutions that address Aboriginal symbolic concerns, promote Aboriginal interests, and avoid calls for a shared identity. This leads me to discuss the potential of several reforms in Chapter Three: Aboriginal electoral districts, co-management boards, and indigenizing shared institutions. These reforms seek to make participation in shared institutions more attractive for those who strongly identify as Aboriginal.

## **Table of Contents**

Abstract	ii
Table of Contents	iii
Acknowledgements	iv
Introduction	1
Chapter One: Understanding the Limits of Aboriginal Autonomy	11
Kymlicka and the Importance of Autonomy	12
Aboriginal National Diversity: Aboriginal Peoples, Plural	17
Complex Interdependence: The Demographic Reality	21
Jurisdictional Overlap: An Unavoidable Political Relationship	26
Conclusion	36
Chapter Two: In Search of Effective Shared Citizenship	38
“Citizens Plus”: A Solution to Our Complex Interdependence	39
Citizenship as Shared Identity and the Challenge of Overcoming Alienation	49
Generating Solidarity and Trust: The Psychological Dimension of Citizenship	58
Conclusion	71
Chapter Three: From Alienation to Participation? Institutional Reform Considered	74
Interests, Symbolism, and Aboriginal Participation	75
Reform #1: Aboriginal Electoral Districts	81
Reform #2: Co-management	97
Reform #3: Indigenizing Shared Institutions	107
Conclusion	111
Conclusion	114
Bibliography	120

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*In memory of Anthony J. Preston (1925-2008),*

*who touched so many, left the world better than he entered it, and inspired me to  
endeavour to do the same.*

## Introduction

Aboriginal peoples tend not to prioritize participation in Canadian institutions as a way to express themselves or further their interests. This lack of enthusiasm has not always been the case. Enfranchisement throughout the 1960s appeared to improve relations between many Aboriginal peoples and the wider community.<sup>1</sup> Studies suggest initial Aboriginal participation rates in elections compared favourably with the wider community. However, enthusiasm quickly waned.<sup>2</sup> Aboriginal electoral experiences have proven to be overwhelmingly negative as their participation rarely led to the election of Aboriginal representatives or saw legislatures promote their interests. The first-past-the-post system clearly favours the non-Aboriginal majority as even when Aboriginal representatives are elected they form a weak legislative minority. For instance, in 1996, Canada's ten Provincial Legislatures combined had only twelve Aboriginal representatives and only three Members of Parliament self-identified as

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<sup>1</sup> Federally, the 1960 *Canada Elections Act* extended the franchise to all Aboriginal peoples. Three provinces extended the franchise prior to 1960: British Columbia in 1949, Manitoba in 1952, and Ontario in 1954. The last province was Québec in 1969. At earlier points in Canadian history, Aboriginal peoples could obtain the right to vote, but only by surrendering some or all of their Aboriginal rights. It should also be noted that the Inuit received the vote in 1950, while the Métis have always been treated the same as non-Aboriginal Canadians when it comes to voting rights.

<sup>2</sup> David Bedford and Sidney Pobihushchy, "On-Reserve Status Indian Voter Participation in the Maritimes," *The Canadian Journal of Native Studies* 15, no. 2 (1995): 255-278; and, Michael Kinnear, "The Effect of the Expansion of the Franchise on Turnout," *Electoral Insight* 5, no. 3 (2003): 46-50. Bedford and Pobihushchy found that Aboriginal participation rates dropped significantly since Aboriginal enfranchisement. In New Brunswick, federal participation went from 70% in 1962 to 17.8% in 1988. In Nova Scotia, it dropped from 89.3% to 54% during the same time period. Kinnear's study shows a similar trend existed in Manitoba. From 1962 to 1988 Aboriginal participation dropped from 65.4% to 26.7%. This contrasts sharply with participation in band elections, which is consistently above 80% in those communities where data exists.



Aboriginal.<sup>3</sup> These numbers are shocking considering that 3.8% of Canadians self-identify as Aboriginal.<sup>4</sup>

While the *electoral system* helps explain why Aboriginal peoples have difficulty achieving electoral success, the sense of *mistrust and alienation* with which many Aboriginal communities and individuals regard participation is perhaps more troubling. Comparison with the Green Party of Canada highlights this added dimension of mistrust, given that they face similar electoral challenges. Canadians have yet to elect Green Party members to any legislature despite noticeable public support, and even should they win some seats their impact would be, in most cases, quite marginal. Despite these challenges, the Green Party runs more candidates than ever before. Unlike Green Party supporters, Aboriginal peoples typically do not feel Canadian legislatures represent them or their most general principles of governance. According to some analysts, Aboriginal peoples feel our “shared” institutions symbolize their marginalization and oppression.<sup>5</sup> They rightly feel that current representatives inadequately voice Aboriginal concerns and fail to secure Aboriginal interests. Instead, representatives tend to cater to the interests of non-Aboriginal majorities upon which their success depends.<sup>6</sup> It should not be surprising that many Aboriginal peoples have

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<sup>3</sup> Jonathan Malloy and Graham White, “Aboriginal Participation in Canadian Legislatures,” in *Fleming’s Canadian Legislatures 1997, Eleventh Edition*, eds. Robert J. Fleming and J. E. Green (Toronto: Toronto University Press, 1997), 61-62. British Columbia, Québec, New Brunswick, Prince Edward Island, and Nova Scotia had no Aboriginal legislators. Ontario had only one.

<sup>4</sup> Canada, Statistics Canada, *2006 Census of Canada*, Ottawa: Industry Canada, 2008.

<sup>5</sup> Kiera Ladner, “The Alienation of Nation: Understanding Aboriginal Electoral Participation,” *Electoral Insight* 5, no. 3 (2003): 23.

<sup>6</sup> Only three of 308 federal ridings have Aboriginal majorities: Western Arctic (Northwest Territories), Nunavut, and Churchill (Manitoba). Found in David Small, “Enhancing Aboriginal Representation Within the Existing system of Redistricting,” in *Drawing the Map: Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform*, ed. David Small (Toronto: Dundurn Press, 1991), 307.

become sceptical of participation in Canadian elections and shared institutions. As a result, Aboriginal peoples tend to seek jurisdictional and institutional distance from non-Aboriginal-dominated institutions by demanding full self-government.

Increasingly, however, scholars question whether autonomous self-government on its own is enough to secure Aboriginal self-determination.<sup>7</sup> Alan Cairns suggests that small community sizes, intermarriage with non-Aboriginal Canadians, urbanization, and difficulties delivering services undermine normative arguments supporting autonomy. These factors seriously limit the capacity of self-government to deliver the territorial or jurisdictional control needed to realize self-determination understood as full autonomy. Some go even further to conclude that they reduce the notion of Aboriginal self-determination to near or total irrelevance.<sup>8</sup> More optimistically, others believe self-government's empirical limitations are surmountable. They emphasize the necessity of greater Aboriginal participation and influence in shared Canadian institutions *because* the empirical reality makes it difficult to imagine such institutions not having a significant impact on Aboriginal peoples.<sup>9</sup> Although

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<sup>7</sup> For examples, see Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver, British Columbia: UBC Press, 2000); Michael Murphy, "Understanding Indigenous Nationalism," in *The Fate of the Nation-state*, ed. Michel Seymour (Montréal & Kingston: McGill-Queen's University Press, 2004), 276-279; and, John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), ch. 6. For an example involving the Sami peoples of Northern Scandinavia see Lars-Anders Baer, "The Right of Self-Determination and The Sami," in *Operationalizing the Right of Indigenous Peoples to Self-Determination*, eds. Pekka Aikio and Martin Scheinin (Turku, Finland: Institute for Human Rights, Åbo Akademi University, 2000), 223-232.

<sup>8</sup> Thomas Flanagan, *First Nations? Second Thoughts* (Montréal & Kingston: McGill-Queen's University Press); and, Cairns, *Citizens Plus*. Cairns makes this point more clearly in Alan C. Cairns, "First Nations and the Canadian Nation: Colonization and Constitutional Alienation," in *Canadian Politics*, 4th ed., eds. James Bickerton and Alain-G. Gagnon (Peterborough, Ontario: Broadview Press, 2004), 355-358.

<sup>9</sup> For examples, see Murphy, "Understanding Indigenous Nationalism," 278-279; Ross Poole, "The Nation-state and Aboriginal Self-determination," in *The Fate of the Nation-state*, ed. Michel

many may feel self-government should be the primary focus, *self-government cannot be the only focus*.

Many scholars suggest guaranteed Aboriginal seats as a remedy.<sup>10</sup> The idea of introducing guaranteed Aboriginal seats has emerged and failed in several Canadian provinces and at the national level.<sup>11</sup> New Brunswick provides the most recent example. In 1999, New Brunswick's Aboriginal Chiefs rejected the Premier's offer of two guaranteed seats in the Provincial Legislature. Where strong feelings of alienation and mistrust exist, Aboriginal peoples seem to see such initiatives as another form of co-optation. They fear Canadians will misconstrue Aboriginal support for such measures as legitimizing past and present decisions made by Canadian governments – decisions that generally go against their interests and restrict Aboriginal self-determination.<sup>12</sup> In other words, they seem to feel that the cost would be greater than

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Seymour (Montréal & Kingston: McGill-Queen's University Press, 2004), 98-101; and, James [sákéj] Youngblood Henderson, "Empowering Treaty Federalism," *Saskatchewan Law Review* 58 (1994): 311-325.

<sup>10</sup> For examples, see Trevor Knight, "Electoral Justice for Aboriginal People in Canada," *McGill Law Journal* 46, 4 (2001): 1036-1116; Melissa S. Williams, "Sharing the River: Aboriginal Representation in Canadian Political Institutions," in *Representation and Democratic Theory*, ed. David Laycock (Vancouver, British Columbia: UBC Press, 2004), 93-118; Augie Fleras, "Aboriginal Electoral Districts for Canada: Lessons from New Zealand," in *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert A. Milen (Toronto: Dundurn Press, 1991), 67-103; John Weinstein, *Aboriginal Self-Determination Off a Land Base* (Kingston, ON: Institute of Intergovernmental Relations, 1986), 41-49; Roger Gibbins, "Electoral Reform and Canada's Aboriginal Population: An Assessment of Aboriginal Electoral Districts," in *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert A. Milen (Toronto: Dundurn Press, 1991), 153-183; Henderson, "Empowering Treaty Federalism," 326-327; and, Mary Ellen Turpel, "Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition," *Cornell International Law Journal* 25, no. 3 (1992): 579-600. Compare with Tim Schouls, "Aboriginal Peoples and Electoral Reform in Canada: Differentiated Representation versus Voter Equality," *Canadian Journal of Political Science* 29, no. 4 (1996): 729-749.

<sup>11</sup> Peter Niemczak, *Aboriginal Political Representation: A Review of Several Jurisdictions* (Ottawa: Library of Parliament, 1994).

<sup>12</sup> Darrell Paul, executive director of the Union of New Brunswick Indians, stated, "What it boils down to is we are saying, we are a nation and, by becoming part of someone else's system, we are going to

the promised influence in Canadian politics (in New Brunswick just two of the more than fifty seats). While the type of electoral reform proposed has changed from enfranchisement to guaranteed seats, Aboriginal perceptions have stayed the same. Little Bear, Boldt, and Long capture similar perceptions of enfranchisement: “While some view the right to vote in federal and provincial elections as a means to effect desired change, many consider the Canadian government’s offer of citizenship and the right to vote as a stratagem for undermining Indian claims to separate nationhood.”<sup>13</sup> Like enfranchisement, two guaranteed votes in a provincial legislature struggle to give Aboriginal peoples influence proportionate to the impact such legislatures have in their lives. Yet, rejecting positive electoral reform because of mistrust, combined with self-government’s limited reach, leaves Aboriginal peoples with few options.

This thesis endeavours to show that options do exist to make participation attractive and worthwhile from an Aboriginal nationalist perspective. Institutional reforms must take into account the psychological barriers of alienation and mistrust that keep many Aboriginal peoples from participating in Canadian elections and shared institutions. Aboriginal enfranchisement, for instance, appears to have deepened feelings of mistrust because the promised influence never came. In a similar way, other reforms will struggle to improve Aboriginal/non-Aboriginal relations if they fail to consider these psychological barriers to inclusion. I argue that encouraging Aboriginal participation requires reforms that do not demand that Aboriginal peoples share an

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give that up.” Quoted in Knight, “Electoral Justice for Aboriginal People in Canada,” 1093. Also, see Henderson, “Empowering Treaty Federalism,” 321.

<sup>13</sup> Leroy Little Bear, Menno Boldt, and J. Anthony Long, eds., *Pathways to Self-Determination: Canadian Indians and the Canadian State* (Toronto: University of Toronto Press, 1984), xvii.

identity with non-Aboriginal Canadians, which for some conflicts with their strongly held Aboriginal identity. Instead, reforms must encourage a sense of mutual identification with Canada by considering the reasons why Aboriginal peoples feel excluded and marginalized. I believe we can, and must, walk a fine line between avoiding a shared identity (that pushes Aboriginal peoples away) and addressing the psychological barriers many Aboriginal peoples feel towards participating in Canadian institutions. To this end, I propose reforms that I feel can bring us closer to striking a balance between respecting Aboriginal identities and promoting positive Aboriginal participation in shared decision-making.

I break the discussion into three chapters. The first two respectively consider the works of Will Kymlicka and Alan Cairns, two of Canada's leading commentators on Aboriginal-state relations. Both focus extensively on the relationship between Aboriginal self-determination and Aboriginal participation in shared institutions. Chapter One argues that self-government's empirical limitations are more significant than many theorists have so far acknowledged. In particular, I express concern that Kymlicka overemphasizes self-government at the expense of Aboriginal participation in shared institutions. He generally concludes that because Aboriginal self-government provides exemptions from decisions made by shared institutions, it logically entails reduced Aboriginal representation in those institutions. This logic is sound. We should nevertheless find this conclusion troubling because in practice autonomous self-government faces serious limits due to the large degree of interdependence and jurisdictional overlap between Aboriginal and non-Aboriginal communities. These limitations challenge his justification for reducing Aboriginal participation in shared

institutions. Stressing self-government's limits and the inevitable role shared institutions will continue to play in Aboriginal lives, I conclude that Aboriginal peoples must participate in shared institutions to have a say in all decisions affecting them and their communities.

The second chapter discusses Cairns' theory of "Citizens Plus." With a greater emphasis on interdependence and jurisdictional overlap, his theory attempts to find a workable middle ground between unjust assimilation policies and what he interprets as unrealistic Aboriginal demands for a nation-to-nation relationship. While he claims that a nation-to-nation relationship was plausible during the early stages of contact, the Aboriginal nationalist idea of parallel Aboriginal and non-Aboriginal societies is no longer practical. Therefore, unlike Kymlicka, he places a great deal of emphasis on the current relationship's complexity, recognizing that it drastically limits the degree of autonomy Aboriginal peoples can achieve. Cairns believes Aboriginal nationalists are chasing a red herring that, in the process, further alienates them from the non-Aboriginal majority. Greater alienation reduces the potential for shared moral bonds of empathy. Without such bonds, Aboriginal peoples may find non-Aboriginal peoples less willing to help them achieve changes necessary for their cultural survival. Therefore, Aboriginal peoples must embrace a common "citizenship" that promotes our moral ties to one another. The "plus" secures – *when possible given the complexity of Aboriginal circumstances* – added rights that affirm Aboriginal cultural difference and historical priority.

Cairns' assessment of the current relationship and its limits on Aboriginal autonomy is fitting. However, he fails to explain why Aboriginal peoples should

identify as Canadians and forgo their nationalist aspirations. Cairns ultimately underestimates the implications of Aboriginal mistrust towards non-Aboriginal Canadians, shared institutions and common citizenship. I therefore consider the psychological dimension of shared citizenship. While I support Cairns' call for a sense of solidarity and trust, the psychological dimension of shared citizenship suggests that achieving this goal requires that we find ways of creating a mutual sense of positive identification with the state *without* demanding a shared identity. I suggest that we instead require initiatives that walk a fine line between avoiding a shared identity, which pushes many Aboriginal peoples away, and generating the solidarity and trust needed for Aboriginal peoples to achieve their aims in Canadian institutions. The need for such changes sets the stage for the next chapter, which studies three potential reforms in depth.

Chapter Three explores reforms aimed at encouraging Aboriginal participation in shared institutions given many Aboriginal peoples' feelings of alienation and mistrust. The three reforms I discuss are: 1) guaranteed Aboriginal electoral districts, 2) co-management boards, and 3) the indigenization of shared institutions. I discuss how each reform brings us closer to finding a delicate balance between building the trust needed to encourage Aboriginal participation and avoiding the need for Aboriginal peoples to share an identity with non-Aboriginal Canadians. Guaranteed representation in Canadian legislatures through Aboriginal electoral districts, for starters, gives Aboriginal peoples a voice in key institutions that influence their lives without demanding that they vote in traditional electoral districts. At the practical level, this ensures that Aboriginal peoples are represented because their numbers are

too few to elect Aboriginal representatives in the vast majority of traditional electoral districts. At the symbolic level, it allows Aboriginal peoples to vote as Aboriginal peoples, reducing the risk that they may feel their participation shows support for non-Aboriginal representatives or values.

Similarly, co-management encourages Aboriginal participation in shared-decision making, particularly in communities that flatly refuse to participate in central legislatures even with guaranteed representation or where central legislatures struggle to deal with more specific and local issues. Scholars generally define Co-management as the sharing of authority between Aboriginal peoples and the state through joint decision-making boards, typically over a specific area or resource. I suggest that seriously implementing co-management encourages Aboriginal participation in ways that recognize jurisdictional overlap if it allows Aboriginal and non-Aboriginal interests to mutually influence shared decisions. Lastly, I briefly discuss how indigenization has the potential to enhance Aboriginal perceptions of participating in central legislatures, on co-management boards, and within shared institutions more generally. Indigenization is largely about helping Aboriginal peoples positively identify with, and feel included within, shared institutions by representing their traditions, values, and cultures alongside those of the majority. It can take many forms, ranging from encouraging Aboriginal peoples to speak in their own languages or using traditional methods of political communication such as storytelling or song. Such reforms aim to help those with strong Aboriginal identities feel more comfortable participating in shared institutions. Taken together these reforms help lessen the mistrust that keeps Aboriginal and non-Aboriginal peoples politically alienated from



one another. I conclude that, although deep-rooted differences between world-views continue, reasons exist to be cautiously optimistic that institutional reform can produce a more consensual relationship that shows greater respect for Aboriginal perspectives, rights, and interests.

## Chapter One: Understanding the Limits of Aboriginal Autonomy

Will Kymlicka is well known for his liberal justification of the state's responsibility to sustain and promote Aboriginal communities and cultures. He is one of several prominent 'liberal nationalists' who strongly support minority rights in democratic states. I also focus on Kymlicka's work because he specifically considers Canada's situation.<sup>14</sup> He believes that the state's lack of respect for the inherent rights of Aboriginal peoples represents the most grievous injustice facing Canada today.<sup>15</sup> This chapter studies Kymlicka's support for Aboriginal self-government as a response to this injustice. I argue that because of the varied circumstances and limited governing capacity of many Aboriginal communities, his more exclusive emphasis on self-government fails to promote justice and secure inherent Aboriginal rights. In so doing, he neglects the role that shared institutions have in promoting Aboriginal nations and cultures. I divide my analysis into four sections.

The first section provides an overview of Kymlicka's justification for self-government and its relationship to participation in shared institutions. The second, third, and fourth sections outline, respectively, the diversity of Aboriginal national communities, the extent of Aboriginal/non-Aboriginal interdependence, and the degree of jurisdictional overlap between Aboriginal and Canadian orders of government. These last three sections suggest Kymlicka's focus on self-government fails to consider the complexity of Aboriginal circumstances in Canada. The conclusion explains why

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<sup>14</sup> Other prominent liberal nationalists include Yael Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1993); and, David Miller, *On Nationality* (Oxford: Oxford University Press, 1995).

<sup>15</sup> Will Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998), 145.

we need a more balanced approach that recognizes self-government's limits and promotes greater Aboriginal participation and influence in shared institutions.

### Kymlicka and the Importance of Autonomy

Liberal nationalists challenge the 'orthodox liberal' view that states can promote individual autonomy while relegating national and cultural diversity to the private sphere.<sup>16</sup> Liberal nationalists insist the state has an obligation to protect and promote national and cultural diversity. Alan Patten summarizes the liberal nationalist's arguments in terms of three crucial steps.<sup>17</sup> First, liberal nationalists assert the orthodox liberal view that liberalism must primarily promote individual freedom and autonomy. Kymlicka states that liberalism "grants people a very wide freedom of choice in terms of how they lead their lives. It allows people to choose a conception of the good life, and then allows them to reconsider that decision, and adopt a new and hopefully better plan of life."<sup>18</sup> The second step shows that for individuals to be free they must have meaningful options available to them and values upon which to judge such options. Here, Kymlicka describes the ideal liberal state as one that

not only allows people to pursue their current way of life, but also gives them access to information about other ways of life...and makes it possible for people to engage in radical revision of their ends without legal penalty. These aspects of a liberal society only make sense on the assumption that revising one's ends is possible, and sometimes desirable, because one's current ends are not always worthy

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<sup>16</sup> Will Kymlicka and Magda Opalski, "Introduction," in *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe*, eds. Will Kymlicka and Magda Opalski (Oxford: Oxford University Press, 2001), 1.

<sup>17</sup> Alan Patten, "The autonomy argument for liberal nationalism," *Nations and Nationalism* 5, no. 1 (1999): 1-17.

<sup>18</sup> Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), 80. Also, see Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1991), 12-17.

of allegiance. A liberal society does not compel such questioning and revision, but it does make it genuinely possible.<sup>19</sup>

The departure from liberal orthodoxy occurs in the third step, where liberal nationalists link the ability of individuals to exercise freedom and choice to cultural access. Kymlicka describes this connection as follows: “freedom involves making choices amongst various options, and our societal culture [our nation] not only provides these options, but also makes them meaningful to us.”<sup>20</sup> Secure access to our culture provides us with a context within which we can make meaningful choices. It is therefore important that liberal states take a serious interest in publicly preserving and promoting the cultures of its inhabitants. Yet, more often than not only majority groups have the cultural security needed to make meaningful choices autonomously because they generally control decision-making within state institutions. Without suggesting that such control is illegitimate on the part of dominant groups, and in fact realizing that the majority requires the ability to make decisions autonomously regarding their societal culture, Kymlicka argues that counteracting this state of affairs requires ‘group-differentiated measures’ aimed at giving otherwise-threatened minorities an equal ability to protect and secure their national cultures. In his own words,

government decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups. Nor is there any reason to regret this fact.... In so far as existing policies support the language, culture, and identity of dominant nations and ethnic groups, there is an argument of equality for ensuring that some attempts are made to provide similar support for minority groups.<sup>21</sup>

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<sup>19</sup> Kymlicka, *Multicultural Citizenship*, 82.

<sup>20</sup> *Ibid.*, 83.

<sup>21</sup> *Ibid.*, 115.

Discussing Canada's Aboriginal peoples, Kymlicka asserts that they require group-differentiated self-government rights.<sup>22</sup> He provides three arguments for self-government rights based on principles of equality, historical compact, and cultural diversity.<sup>23</sup> Historical compacts include treaties that outline self-government rights. Kymlicka also feels maintaining cultural diversity can justify self-government rights. While valuable on their own, the latter two depend on the equality argument for their normative force. Therefore, for present purposes, I only consider the equality argument. Kymlicka argues that "[minority] self-government rights compensate for unequal circumstances which put the members of minority cultures at a systemic disadvantage in the cultural market-place, regardless of their personal choices in life."<sup>24</sup> Because states cannot remain neutral on issues involving national cultures, self-government helps protect minorities from decisions made in favour of the non-Aboriginal majority. Whether the issue is which language to use in public institutions or where to draw jurisdictional boundaries, the state often favours the largest national group over minority groups where two or more coexist. Therefore, if the majority makes decisions that promote its language(s), they cannot legitimately refuse national minorities group-differentiated measures to protect their languages. This need exists whether the state incorporated a national minority justly (like the Québécois through confederation in 1867) or unjustly (like conquered Aboriginal peoples).<sup>25</sup>

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<sup>22</sup> Ibid., ch. 6; and, Kymlicka, *Finding Our Way*, 144-145.

<sup>23</sup> Found at Kymlicka, *Multicultural Citizenship*, 108-122.

<sup>24</sup> Ibid., 113.

<sup>25</sup> Kymlicka discusses historically just versus historically unjust ways in which multinational states have formed at *ibid.*, 116-120. He concludes that the equality argument overrides historical agreements when the two suggest different rights for national groups.

Self-government rights often entail creating political sub-units wherein each national minority forms a majority. Canadian federalism accommodates the Québécois in Québec and the Inuit in Nunavut, which in both cases grant a national minority a degree of autonomy that allows them to protect their national culture and exercise self-determination.<sup>26</sup> However, the Aboriginal case of Nunavut is unique. Kymlicka recognizes that in most cases Aboriginal peoples' ability to self-govern is tied to limited reserve lands and possible future territories acquired through negotiations. Further, Aboriginal peoples need to come to some practical conclusions about how they wish to exercise self-government. They also need to determine the types of political sub-units that they wish the Canadian federation to recognize.<sup>27</sup> Despite these challenges, Kymlicka clearly views self-government as vitally important to rectifying "the one real human-rights issue that we face in Canada."<sup>28</sup>

In response to this need, Kymlicka presents a unique approach to how self-government could look for Aboriginal communities, and its implications for Aboriginal representation in shared institutions. Since self-government limits the federal government's authority within Aboriginal communities, it should logically follow that Aboriginal peoples should not influence countrywide decisions they are exempt from following. On the other hand, Aboriginal representation is necessary on bodies that determine powers associated with self-government, or on bodies that resolve issues of concurrent or conflicting jurisdictions such as the Supreme Court.<sup>29</sup> Kymlicka

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<sup>26</sup> Ibid., 27-29.

<sup>27</sup> Kymlicka, *Finding Our Way*, 144-145.

<sup>28</sup> Ibid., 145.

<sup>29</sup> Kymlicka, *Multicultural Citizenship*, 142-143.

concludes that “self-government for a national minority seems to entail *guaranteed representation on intergovernmental bodies*, which negotiate, interpret, and modify the division of powers, but *reduced representation on federal bodies* which legislate in areas of purely federal jurisdiction from which they are exempted.”<sup>30</sup> He argues that Aboriginal MPs from Aboriginal districts should not be able to vote on legislation that has little to no impact on their constituents.<sup>31</sup> It might mean that Aboriginal representative from the prairies would need to refrain from voting on international fishery issues. Similarly, if an Aboriginal community builds its own public school system its members should not expect to influence decisions made by provincial school districts. It is important to note that Kymlicka does concede the possibility of central Aboriginal representation on an issue-specific basis,<sup>32</sup> though he ultimately seems to underestimate the number of issues and jurisdictions that require such representation. This is partly evidenced by the limited attention he pays to this question, only briefly mentioning it in a footnote. In more recent works, Kymlicka further espouses a zero-sum relationship between powers associated with Aboriginal self-government and representation in shared institutions.<sup>33</sup>

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<sup>30</sup> Ibid., 143. See also, Philip Resnick, *Thinking English Canada* (Toronto: Stoddart Publishing, 1994), 67. Resnick calls this the dilemma of Aboriginal participation because of the difficulty associated with determining what decisions they should and should not participate in.

<sup>31</sup> Kymlicka, *Multicultural Citizenship*, 143.

<sup>32</sup> Ibid., 227-228 n. 17.

<sup>33</sup> Kymlicka makes this point more explicit in later works. In particular, see Kymlicka and Opalski, “Introduction,” 47-53. In what they call the ‘dialectic of nation-building and minority rights’, they argue that “it [is] clear that demands for minority rights must be seen in the context of, and as a response to, state nation-building. While minorities do make claims against the state, these must be understood as a response to the claims that the state makes against minorities. Moreover, many of these minority rights claims are, I believe, legitimate.” They go on to say that we must see both majority nation-building claims and minority rights claims as equal and complementary.

While Kymlicka's logic appears sound, he fails to suggest how Aboriginal participation in central institutions looks when autonomous self-government is limited or impossible. Because of significant Aboriginal national diversity and the complex relationship of interdependence between Aboriginal and non-Aboriginal peoples, substantial jurisdictional overlap appears unavoidable. As a result, shared institutions will continue to play a significant role in Aboriginal lives. Thus, Aboriginal peoples need to participate in shared institutions to have a voice in decisions that affect them and their communities. The next two sections look at the factors limiting Aboriginal self-government, followed with a section that analyses the extent and nature of jurisdictional overlap among Aboriginal and non-Aboriginal communities. These factors suggest that, in the Canadian context, Kymlicka overemphasizes self-government and underemphasizes the degree of interdependence and jurisdictional overlap between Aboriginal and non-Aboriginal peoples and thus the need for Aboriginal participation in central state institutions.

#### Aboriginal National Diversity: Aboriginal Peoples, Plural

Over one million Canadians self-identify as Aboriginal. This is a considerable when one considers that nearly a quarter of modern nation-states have smaller populations. Some comparable examples include Estonia (1.3 million) and Cyprus (0.8 million). Other Western democracies have dramatically smaller populations, such as Luxembourg (0.5 million) and Iceland (0.3 million).<sup>34</sup> These small nation-states exercise self-government and make decisions about their collective and individual

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<sup>34</sup> United Nations Statistics Division, "Population, official mid-year estimates (thousands) [code 15070]," *Demographic Yearbook Database* (2005).



futures largely free from external dominance. However, such comparisons quickly become problematic. The discussion so far has hinted at plural Aboriginal peoples, not a singular people. This section seeks to understand the many Aboriginal *peoples* of Canada.

The *Constitution Act, 1982*, section 35(2) states, “‘aboriginal peoples of Canada’ includes the Indian, Inuit and Métis peoples of Canada.” This threefold categorization marks only the beginning of Aboriginal diversity within Canada. ‘Indians’ are the most numerous of Aboriginal peoples and are often mistakenly discussed as if they were the only Aboriginal peoples. ‘Indians’ comprise 60%, or just under 700,000 of the self-identified Aboriginal population.<sup>35</sup> The *Indian Act* further divides ‘Indians’ into status and non-status categories. “Status is inherited. Aboriginal people may have status because they are descendents of treaty signatories or because status was granted to an ancestor at some time by administrative fiat.”<sup>36</sup>

Status Indians account for the majority of on-reserve Aboriginal peoples. Under the *Indian Act*, 2,000 separate communities fall under the jurisdiction of 627 bands. Created in colonialism’s wake, most bands and reserves represent only portions of nations. Together they comprise 40 to 100 nations based on typical international standards of cultural similarity and historical continuity.<sup>37</sup> Examples include the Dene,

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<sup>35</sup> Canada, Statistics Canada, *2006 Census of Canada*.

<sup>36</sup> Frances Abele and Michael J. Prince, “Aboriginal Governance and Canadian Federalism: A To-Do List for Canada,” in *New Trends in Canadian Federalism*, Second Edition, eds. François Rocher and Miriam Smith (Peterborough, Ontario: Broadview Press, 2003), 136.

<sup>37</sup> See, Alan. C. Cairns, *First Nations and the Canadian State: In Search of Coexistence*, (Kingston, Ontario: Institute for Intergovernmental Relations [School of Policy Studies, Queen’s University], 2005), 16, 63 n.34; and, R. F. McDonnell and R. C. Depew., “Aboriginal Self-Government and Self-Determination in Canada: A Critical Commentary,” in *Aboriginal Self-Government in Canada*, ed. John H. Hylton (Saskatoon, Saskatchewan: Purich Publishing, 1999), 357.

Nuu-chal-nulth, Cree, Anishinaabe, Mi'kmaq, and Innu. The populations of bands and nations vary substantially. With Indian bands, less than six per cent have on-reserve populations over 2,000 people, about two-third have populations under 500, and almost twenty per cent have populations under 100.<sup>38</sup> Aboriginal nations have average populations of 5,000 to 7,000 people, with some as low as 2,000 people.<sup>39</sup> These statistics alone suggest significant Aboriginal diversity, yet they do not consider Inuit and Métis peoples.

With 50,000 people, the Inuit represent 4.3% of Canada's Aboriginal population. Most Inuit live north of the 60<sup>th</sup> parallel in dozens of communities. Up until the latter half of the 20<sup>th</sup> century, the Inuit had minimal contact with non-Aboriginal peoples. A 1939 Supreme Court decision ruled that matters concerning the Inuit were the federal government's responsibility and that they ought to be treated like status Indians.<sup>40</sup> The relationship has intensified as non-Aboriginal peoples have increasingly taken an interest in arctic and sub-arctic affairs. The largest community, Iqaluit, has 3,000 Inuit.<sup>41</sup> Half of the Inuit population live in the recently created territory of Nunavut, where they form a majority and, *de facto*, exercise self-government.<sup>42</sup> Most others live in three other regions: Nunavik (northern Québec), Nunatsiavut (Labrador), and the Inuvialuit Settlement Region (Northwest Territories).

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<sup>38</sup> Canada, Department of Indian Affairs and Northern Development, *Registered Indian Population by Sex and Residence 2001*, (Ottawa: First Nations and Northern Statistics Section, 2002), xv. Indian bands are defined and controlled by the *Indian Act*, and often go against Aboriginal identities.

<sup>39</sup> Cairns, *Citizens Plus*, 138.

<sup>40</sup> Abele and Prince, "Aboriginal Governance and Canadian Federalism," 136.

<sup>41</sup> Canada, Statistics Canada, "Aboriginal peoples of Canada: A demographic profile," *2001 Census: analysis series* (Ottawa: Minister of Industry, 2003), 16.

<sup>42</sup> Frances Abele and Michael J. Prince, "Alternative Futures: Aboriginal Peoples and Canadian Federalism," in *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, eds. Herman Bakvis and Grace Skogstad (Oxford: Oxford University Press, 2002), 222.

Non-Aboriginal settlement has been relatively sparse in Inuit communities. This history has led to a unique relationship with the Canadian government as evidenced by the establishment of Nunavut and Nunavik.

Finally, the most recent census shows nearly 400,000 Métis people live in Canada.<sup>43</sup> Métis peoples do not receive the same entitlements as status Indians or the Inuit.<sup>44</sup> The Métis are so-called mixed-heritage peoples who generally trace their heritage back to marriages between Western Aboriginal peoples and early non-Aboriginal traders. Their mixed heritage failed to give them a foot in either world and, instead, created a national identity unto itself.<sup>45</sup> Approximately three-quarters live in British Columbia, Alberta, Saskatchewan, and Manitoba. The rest live primarily, though not exclusively, in Ontario, the Northwest Territories, and the Northwest United States. Small numbers exist all across Canada. Although most live without a land-base of their own, some Métis peoples in Alberta and Manitoba enjoy a land-base where they exercise limited self-government rights.<sup>46</sup> The preceding description clearly shows that when we talk about Aboriginal self-government in Canada we must consider that potentially hundreds of nations exist. Within Canada, then, are many Aboriginal “micro-nations.”<sup>47</sup> Kymlicka recognizes that the sheer number of Aboriginal communities makes self-government difficult, but does not give this the

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<sup>43</sup> Canada, Statistics Canada, *2006 Census of Canada*.

<sup>44</sup> According to Abele and Prince, future Supreme Court rulings could grant them status. See, Abele and Prince, “Aboriginal Governance and Canadian Federalism,” 136.

<sup>45</sup> *Ibid.*, 112-115.

<sup>46</sup> Abele and Prince, “Alternative Futures,” 222. For a discussion of a Métis land-base in Alberta, see Catherine Bell, “Métis Self-Government: The Alberta Settlement Model,” in *Aboriginal Self-Government in Canada*, ed. John H. Hylton (Saskatoon, Saskatchewan: Purich Publishing, 1999), 329-350.

<sup>47</sup> Cairns, *First Nations and the Canadian State*, 16.

attention it deserves. He sympathizes with the idea that the 40 to 100 First Nations would be ideal sub-units for self-government, although he believes Aboriginal peoples must ultimately decide themselves the number and composition of self-governing Aboriginal communities. As the rest of the chapter shows, Kymlicka seriously underestimates the practical limitations Aboriginal nations face in pursuing self-government.

### Complex Interdependence: The Demographic Reality

Aboriginal nations are no longer isolated from the outside world. In fact, contact helped create new Aboriginal nations such as the Métis who formed from relationships between Aboriginal peoples and early European colonialists. Since contact, Aboriginal/non-Aboriginal intermingling has increased with few signs of retreat. To highlight the complexity of the interdependence among Aboriginal and non-Aboriginal peoples I look at two significant factors that challenge the ways we recognize Aboriginal nations: Aboriginal urbanization (geographic interdependence) and intermarriage (an indicator of social interdependence).

Aboriginal urbanization is a Canadian reality. Half of Aboriginal peoples live in urban centres. Twenty-five per cent live in just 10 metropolitan areas.<sup>48</sup> Even though many live in urban centres, Aboriginal peoples do not form anything approaching a majority in any of Canada's medium-to-large cities.<sup>49</sup> Urban Aboriginal

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<sup>48</sup> Canada, Statistics Canada, "Aboriginal peoples of Canada," 10. The ten areas are Winnipeg, Edmonton, Vancouver, Calgary, Toronto, Saskatoon, Regina, Ottawa-Gatineau, Montréal, and Victoria.

<sup>49</sup> Ibid. The closest they come is 29% in Prince Albert, Saskatchewan and 9% in both Prince George, British Columbia and Saskatoon, Saskatchewan.

populations grew significantly when the Canadian Government passed Bill C-31 in 1985, which outlined amendments to the *Indian Act* that restored status to over a hundred thousand Aboriginal peoples to whom it was previously denied because of discriminatory regulations. Urban Aboriginal populations are also heterogeneous. They comprise many different 'Indian' communities, Métis (particularly in Western Canada), and an increasing number of non-status populations resulting from intermarriage.<sup>50</sup> Emerging urban communities divide Aboriginal loyalties between 'old' reserve-based identities and 'new' urban identities. Generally, urban Aboriginal peoples enjoy significantly better socio-economic conditions than on-reserve populations.<sup>51</sup> However, most urban Aboriginal peoples live in relative poverty and in many cases live in ghetto-like neighbourhoods.<sup>52</sup> Depending on which reserve one has ties with, living in urban areas is better or worse than living on-reserve. For some only reserve-life offers a sense of place while culturally foreign cities provide greater socio-economic security.<sup>53</sup> On the other hand, some scholars suggest that Aboriginal peoples in urban centres face extreme poverty compared to fellow community members living

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<sup>50</sup> Evelyn J. Peters, "Geographies of Aboriginal Self-Government," in *Aboriginal Self-Government in Canada*, ed. John H. Hylton (Saskatoon, Saskatchewan: Purich Publishing, 1999), 6-10; and, Cairns, *First Nations and the Canadian State*, 11-12.

<sup>51</sup> Cairns, *First Nations and the Canadian State*, 12-13.

<sup>52</sup> Peters, "Geographies of Aboriginal Self-Government," 14-23; Andrew J. Siggner, "The Challenge of Measuring the Demographic and Socio-Economic Conditions of the Urban Aboriginal Population," in *Not Strangers in These Parts: Urban Aboriginal Peoples*, eds. David Newhouse and Evelyn Peters (Ottawa: Policy Research Initiative, 2003), 119-130; and, Michael Mendelson and Ken Battle, *Aboriginal People in Canada's Labour Market* (Ottawa: Caledon Institute of Social Policy, 1999), 25.

<sup>53</sup> Menno Boldt, *Surviving as Indians: The Challenge of Self-Government* (Toronto: University of Toronto Press, 1993), 190-192; and, Chartier, "Aboriginal Self-Government and the Métis Nation." Boldt feels that urban 'Indians' need to maintain a link to their reserve to survive as 'Indians.' Similarly, Chartrand suggests that if Métis peoples fail to secure a land base they too face assimilation and domination.

on some reserves.<sup>54</sup> Because of varied experiences on- and off-reserve it should come as no surprise that half of urban Aboriginal peoples would ideally prefer to live on a reserve.<sup>55</sup> It is imaginable that others prefer an urban existence, perhaps even achieving socio-economic *and* cultural happiness comparable to the wider population. In sharp contrast to this, however, ambivalence leads some to maintain dual residence, or to live transient lives where neither location provides a full life.<sup>56</sup> Although sometimes net-migration numbers show more Aboriginal peoples moving back to reserves than moving from reserves to cities, population growth in the overwhelming majority of Aboriginal communities ensures that geographic interdependence continues to increase in urban areas.

Our interdependence is not only geographic, but social as well. Intermarriage is common between Aboriginal and non-Aboriginal people. Based on an understanding of intermarriage as marriage or cohabitation between a status Indian and a non-status

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<sup>54</sup> Augie Fleras and Jean Leonard Elliot, *The Nations Within: Aboriginal-State Relations in Canada, the United States, and New Zealand* (Toronto: Oxford University Press, 1992), 18. This is also the general view of the Royal Commission on Aboriginal Peoples. See, Canada, *Report of the Royal Commission on Aboriginal Peoples*, vol. 2(2) (Ottawa: Canada Communication Group Publishing, 1996), 1023.

<sup>55</sup> Peters, "Geographies of Aboriginal Self-Government," 10. Caillou discusses some of the reasons why they wish to return to the reserve. Some examples include: stronger ties with the land, proximity to family and friends, and the greater ability to learn from Elders who share important knowledge and provide a strong sense of community. See, George D. Caillou, "Urban Indians: Reflections on Participation of First Nation Individuals in the Institutions of the Larger Society," in *First Nations in Canada: Perspectives on Opportunity, Empowerment, and Self-Determination*, ed. J. Rick Ponting (Toronto: McGraw-Hill Ryerson, 1997), 225.

<sup>56</sup> Fleras and Elliot, *The Nations Within*, 18-19. This can also be deduced from migration statistics that suggest greater urbanization masks another trend whereby many Aboriginal peoples are migrating back and forth between urban centres and reserves. Among status Indians, from 1986-1996, reserves had a net gain of 23,315 due to migration from rural and urban areas. This data can be found in Mary Jane Norris, Daniel Beavon, Eric Guimond, and Martin Cooke, *Registered Indian Mobility and Migration: An Analysis of 1996 Census Data* (Ottawa: Ministry of Indian Affairs and Northern Development, 2004), 16-18. Also, see J. Rick Ponting, "The Socio-Demographic Picture," in *First Nations in Canada: Perspectives on Opportunity, Empowerment, and Self-Determination*, ed. J. Rick Ponting (Toronto: McGraw-Hill Ryerson, 1997), 92.

Aboriginal or non-Aboriginal, 58% of off-reserve and 23% of on-reserve Aboriginal peoples are intermarried.<sup>57</sup> Since Bill C-31 stipulates that two consecutive generations of intermarriage leads to the third's loss of status, status Indian populations face decline.<sup>58</sup> In a speech given to the Native Women's Association of Canada, Métis leader Harry Daniels argues that Bill C-31 takes away the ability of Aboriginal communities to maintain status overall.

The Federal Government could theoretically have given women the same powers that Indian men enjoyed under the old [*Indian Act*]. All Status Indians, whether male or female, would thereby have acquired the ability to pass on status to their children [and partners], irrespective of the ethnic background of their partners. This would have been a reasonable solution and in keeping with our traditions. However, this is not what Bill C-31 does. Rather, the Bill places men in a position akin to that of women under the old Act. Now men as well as women can lose their ability to confer status on their children.<sup>59</sup>

Studies of Australia's Aboriginal peoples indicate intermarried parents overwhelmingly pass Aboriginal identity on to their children.<sup>60</sup> Aboriginal peoples in Canada likely share such a view. Taken to its extreme, Daniels' view would produce the opposite result whereby an ever-increasing number of Canadians would have status entitlements. Intermarriage forces us to ask serious questions about how we define Indian status and, more generally, the impact social interaction between Aboriginal peoples and non-Aboriginal peoples will have on once separate nations. Like modern nation-states,

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<sup>57</sup> Cairns, *First Nations and the Canadian State*, 13.

<sup>58</sup> Ibid., 13-14; and, Stewart J. Clatworthy, "Impacts of the 1985 Amendments to the Indian Act on First Nations Populations," in *Aboriginal Conditions: Research as a Foundation for Public Policy* (Vancouver, British Columbia: UBC Press, 2003), 88.

<sup>59</sup> Harry W. Daniels, Speech given at *Unity for Our Grandchildren Conference*, The Native Women's Association of Canada (March 23, 1998).

<sup>60</sup> Bob Birrell and John Hirst, "Aboriginal Couples at the 2001 Census," *People and Place* 10, no. 3 (2002): 26; and, Nicholas Peterson and John Taylor, "Aboriginal Intermarriage and Economic Status in Western New South Wales," *People and Place* 10, no. 4 (2002): 15.

Aboriginal peoples desire a say on who belongs and who does not – something currently determined by Canadian legislation. The fact that this question remains prominent in the minds of non-Aboriginal and Aboriginal leaders alike shows the importance of intermarriage and how we define who has Aboriginal rights and who does not.

A final trend is worth considering. From 1996 to 2001, Canada's self-identifying Aboriginal population increased at a rate nearly seven times higher than the non-Aboriginal population (22.2% compared to 3.4%). Higher birth rates, better enumeration techniques, and increased self-awareness contribute to this sharp increase.<sup>61</sup> Of the three factors, the last might be more prominent than one might suspect. The Métis population grew the most (an amazing 43%). Rapid growth within the Métis community should not come entirely as a surprise because the Métis community represents an Aboriginal community that is very inclusive of those with mixed-ancestry. For instance, many children who do not gain status despite Aboriginal ancestry may exercise, at least to some extent, their Aboriginal identity in this fashion. This trend both reflects and reinforces social and geographic interpenetration between those who identify as Aboriginal and those who identify as non-Aboriginal. Social and geographic interdependence between Aboriginal and non-Aboriginal peoples is an increasing and irreversible reality.

For the most part, Kymlicka overlooks the complexity of Aboriginal and non-Aboriginal interdependence. He does not discuss increasing Aboriginal urbanization and social interdependence, which strain against territorial self-government. For urban

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<sup>61</sup> Canada, Statistics Canada, "Aboriginal peoples of Canada," 6.



(or intermarried) Aboriginal peoples, autonomy (or divorce) is not always a feasible or fair option. Self-government as autonomy seems inapplicable to situations defined by geographic and social interdependence and, thus, fails to secure rights necessary to protect Aboriginal peoples from the majority's decisions. The political consequence of this interdependence and overlap, as I discuss next, is an unavoidable relationship that requires Aboriginal and non-Aboriginal peoples to participate jointly in shared institutions such as the courts, local governments, provincial legislatures and the House of Commons.

#### Jurisdictional Overlap: An Unavoidable Political Relationship

Kymlicka's strong support for Aboriginal jurisdiction over matters that protect and promote their national cultures resonates with many Aboriginal peoples. Allen Paul, former Chief of the Alexander First Nation in Alberta, equates Aboriginal governments awakening after decades of marginalization with a hibernating bear. Like the bear hibernating to survive the cold winter, Aboriginal government only appeared dead. "When this bear wakes up, it has to do a lot of things. It has to start rebuilding its energy, some of its thinking, how it is going to survive [sic]...we have to start rebuilding [our] institutions, to start rebuilding our strength."<sup>62</sup> This section contends that factors related to Aboriginal diversity and interdependence make jurisdictional overlap unavoidable, and oftentimes desirable. Though Aboriginal people wish to re-establish jurisdiction over culture, education, elder care, child welfare, and over many other issues, significant jurisdictional overlap exists in most areas because of factors

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<sup>62</sup> Frank Cassidy, ed., *Aboriginal Self-Determination: Proceedings of a conference held September 30 – October 3, 1990* (Lantzville, BC: Oolichan Books, 1991), 80-81.

related to Aboriginal diversity, limited capacity, and interdependence. Such overlap ensures that the state and Aboriginal nations concurrently exercise authority over these matters on behalf of Aboriginal peoples. This leads me to conclude that Aboriginal peoples must have a permanent place in shared decision-making bodies that govern shared jurisdictions.

Sizeable overlap exists even where self-government promises the most – in reserve-based communities. The jurisdictions of Aboriginal reserve-based communities unavoidably overlap with non-Aboriginal jurisdictions because of limited community capacity and off-reserve populations. Aboriginal nations average only 5,000 to 7,000 people with many having significantly smaller populations. These micro-nations face serious capacity-related challenges. While, *de jure*, Aboriginal governments may have full jurisdictional authority in all areas, *de facto*, they will continue to rely on other levels of governments to deliver key services. For example, the human resource needs of Aboriginal governments exceed demands related to internal affairs and external relations with other levels of government.<sup>63</sup> Shortages of professionals in many areas force Aboriginal governments to choose between seeking external support to deliver services themselves and allowing other levels of government to provide key services. For the foreseeable future Aboriginal jurisdiction over health seems unlikely to lead to Aboriginal peoples training their own specialists in their own

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<sup>63</sup> Cairns, *Citizens Plus*, 139-142; and McDonnell and Depew, "Aboriginal Self-Government and Self-Determination in Canada," 356.

hospitals.<sup>64</sup> When Aboriginal governments deny these limitations and attempt to take on jurisdictions and fail it often compels community members to seek services elsewhere.<sup>65</sup> From simply a perspective of rights, Aboriginal peoples as Canadian citizens can easily circumvent Aboriginal orders of government and choose to visit off-reserve hospitals if they feel Aboriginal governments provide inadequate care. Such limits bring attention to the significant limits of self-government and the need for cooperation between Aboriginal and non-Aboriginal peoples.

In other areas, self-government cannot give Aboriginal peoples absolute autonomy from external influence. In areas that do not respect political boundaries, such as environmental and fisheries policy, it seems impossible for self-government alone to promote Aboriginal interests.<sup>66</sup> If the wider community places a large mine operation near an Aboriginal community the impacts could be significant. Kiera Ladner discusses concurrent jurisdictions around the east coast salmon fishery.<sup>67</sup> Both the state and the Mi'kmaq view the fishery as fully their responsibility. She concludes that peacefully resolving the dispute requires each side to recognize that jurisdictional overlap exists and that both sides must approach issues together despite their contrary justifications for exclusive control.

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<sup>64</sup> According to White, this challenge exists in the Yukon. See, Graham White, "And Now For Something Completely Northern: Institutions of Governance in the Territorial North," *Journal of Canadian Studies* 35, no. 4 (2001): 87.

<sup>65</sup> J. Rick Ponting, "The Impact of Self-Government on Indian Communities," in *Arduous Journey: Canadian Indians and Decolonization*, ed. J. Rick Ponting (Toronto: McClelland and Stewart, 1986), 359-368.

<sup>66</sup> See, Williams, "Sharing the River," 110.

<sup>67</sup> Kiera Ladner, "Up the Creek: Fishing for a New Constitutional Order," *Canadian Journal of Political Science* 38, no. 4 (2005): 923-953.

A final example suggests it would be hard to think of any jurisdiction that Aboriginal governments could exercise alone. Kymlicka repeatedly places significant emphasis on self-government over language as necessary to protect national cultures.<sup>68</sup> Nearly all Aboriginal languages require positive measures to survive.<sup>69</sup> Most endangered languages require external financial, academic, and technical assistance. Assistance becomes even more necessary where complex interdependence exists and where English or French dominates public life. In an attempt to protect Northern British Columbia's Aboriginal languages, the University of Northern British Columbia has developed curricula focused on threatened languages in the area. The University teaches the Nisga'a, Tsimshian and Haisla languages that, respectively, have only 795, 465, and 240 speakers.<sup>70</sup> Local speakers and university professors co-teach with the intent of eventually phasing out the professor's role. For capacity-related reasons, most courses continue to require the professor's expertise.<sup>71</sup> While the goal is autonomy, external assistance can bring positive benefits to Aboriginal peoples. The University's continued assistance assuredly helps Aboriginal communities sustain languages Aboriginal peoples consider valuable and that might otherwise become extinct.

The second point is perhaps more straightforward. Complex interdependence makes it difficult for Aboriginal communities to govern exclusively the lives of migratory and permanently off-reserve populations. Numbers show most 'Indians' opt

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<sup>68</sup> In particular, see Kymlicka, *Multicultural Citizenship*, 112-113.

<sup>69</sup> Mary Jane Norris and Lorna Jantzen, *From Generation to Generation: Survival and Maintenance of Canada's Aboriginal Languages Within Families, Communities and Cities* (Ottawa: Ministry of Indian Affairs and Northern Development, 2002), 19-23.

<sup>70</sup> *Ibid.*, 23

<sup>71</sup> Mike Evans, James McDonald, and Neanna Nyce, "Acting Across Boundaries in Aboriginal Curriculum Development: Examples from Northern British Columbia," *Canadian Journal of Native Education* 23, no. 2 (1999): 190-205.

to live in either urban centres or rural off-reserve locations instead of self-governing communities.<sup>72</sup> Melissa Williams observes that while increased Aboriginal jurisdictional powers have “implications for Aboriginal people [mainly status Indians] living off-reserve, it is difficult if not impossible to imagine a regime in which such individuals’ lives could be wholly covered by Aboriginal jurisdictions.”<sup>73</sup> Whether members permanently live off-reserve or migrate back and forth, non-Aboriginal governments influence significant portions of their lives. The same logic applies to Aboriginal peoples without access to a land-base. Most non-status Indians and Métis peoples receive minimal, if any, direct benefits from self-government agreements made with status Indians. Solutions other than territorial self-government must be considered to secure and promote Aboriginal aspirations.

Some believe that expanding self-government’s scope or the size of the governing units can overcome jurisdictional overlap. One response suggests Aboriginal nations should *amalgamate* to achieve economies of scale.<sup>74</sup> Amalgamation would allow them to combine expertise and resources to establish coordinated Aboriginal institutions such as the All Nations Institute in British Columbia, which offers various post-secondary programs with an Aboriginal focus. Saskatchewan provides a more comprehensive example. Over seventy communities representing more than 115,000 members are considering taking part in a province-wide system of Aboriginal governance. It would see services delivered both on- and

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<sup>72</sup> Canada, Statistics Canada, “Aboriginal peoples of Canada,” 12. Fifty-three per cent of ‘Indians’ live off-reserve.

<sup>73</sup> Williams, “Sharing the River,” 110.

<sup>74</sup> Cairns, *First Nations and the Canadian State*; Canada. *Report of the Royal Commission on Aboriginal Peoples*, vol. 2; and Jackie Wolfe, “Approaches to Planning in Native Canadian Communities,” *Plan Canada* 29, no. 2 (1989): 63-78.

off-reserve by various levels of Aboriginal government that descend from a single province-wide government, through five regional (treaty-based) governments, all the way down to local governments. The hope is that aggregating Aboriginal jurisdictions will “drastically increase the possibilities for meaningful, effective and efficient governance.”<sup>75</sup>

The idea of “*satellite*” reserves provides a second solution to the limits urbanization places on self-governing communities. Saskatchewan supports “satellite” reserves linked to “parent” reserves.<sup>76</sup> Urban satellite reserves “are properties in urban areas that are controlled and administered by Indian governments.... Under the *Indian Act*, they have exactly the same legal status as Indian reserves found in rural areas.”<sup>77</sup> They allow parent reserves to establish housing, schools, hospitals, and so forth. Satellite reserves provide only those Aboriginal individuals fortunate enough to have access to parent reserves with consistency as they access services under the same jurisdiction despite migrating to difference centres. Amalgamation and satellite reserves offer some Aboriginal governments greater choice in offering services to their members.

Critics suggest that attempts to enlarge self-governing units face serious limits related to geography and identity. Some solutions underestimate self-government’s spatial limits. Peters argues that fragmented administrative areas have less

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<sup>75</sup> David C. Hawkes, “Rebuilding the Relationship – The ‘Made in Saskatchewan’ Approach to First Nations Governance”, in *Canada: The State of the Federation, 2003*, ed. Michael Murphy (Montréal & Kingston: McGill-Queen’s University Press, 2005).

<sup>76</sup> F. Laurie Barron and Joseph Garcea, “Aboriginal Self-Government and the Creation of New Indian Reserves: A Saskatchewan Case Study,” in *Aboriginal Self-Government in Canada*, ed. John H. Hylton (Saskatoon, Saskatchewan: Purich Publishing, 1999), 289-309.

<sup>77</sup> *Ibid.*, 293.

accountability and risk greater socio-economic disparity between community members.<sup>78</sup> Parent reserves and amalgamated governments may focus less on, respectively, satellite reserves and smaller communities. It could leave those they mean to serve with little option but to seek services elsewhere. I would add that it also risks creating confusion among non-Aboriginal communities. For example, some may feel that Aboriginal people abuse the system when sending their children to 'non-Aboriginal' schools because a separate school system exists on-reserve. Non-Aboriginal Canadians may be less willing to assist, expecting Aboriginal peoples to seek help with parent reserves or the larger Aboriginal government. Worse, non-Aboriginal communities may undertake initiatives assuming Aboriginal peoples have permanently opted out of using services under non-Aboriginal jurisdiction. Aboriginal governments need to keep these risks in mind as they take on greater responsibility with varying degrees of success.

Some suggest amalgamation and satellite reserves will clash with Aboriginal identities.<sup>79</sup> Ladner believes amalgamation perpetuates colonialism's goal of marginalizing national communities possibly to the point of extinction. It forces smaller communities to share jurisdictions with other communities because the Canadian state effectively reduced their ability to govern independently, leading some communities to resist amalgamation. Aboriginal peoples might also resist amalgamation at an individual level if they feel new Aboriginal governance structures

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<sup>78</sup> Peters, "Geographies of Aboriginal Self-Government," 423.

<sup>79</sup> Kiera L. Ladner, "Negotiated Inferiority: The Royal Commission on Aboriginal People's Vision of a Renewed Relationship," *The American Review of Canadian Studies* 31, no. 1 (2001): 241-264; McDonnell and Depew, "Aboriginal Self-Government and Self-Determination in Canada," 352-376; and Peters, "Geographies of Aboriginal Self-Government," 425.

threaten their self-identity. One can imagine cases where amalgamation fractures or weakens communities instead of strengthening them. A hypothetical consequence of amalgamation in Saskatchewan helps highlight this possibility. Because the Cree may dominate an amalgamated government, smaller language groups may feel they can better protect their communities by isolating themselves or by directly seeking assistance from the provincial or federal government, effectively circumventing amalgamated governance structures.

Efforts to expand self-government's scope might help combine the resources of two or more nations or prevent a reserve-based community from losing significant portions of their populations to other jurisdictions. On the one hand, Canadians should support Aboriginal desires to pursue such initiatives. On the other hand, amalgamation merely changes the contours that define the degree and nature of jurisdictional overlap. Overlap will still exist in areas that do not respect political boundaries, such as the environment and fisheries. It is also hard to imagine Aboriginal people not using provincially and federally regulated roads, airlines, universities, hospitals, sewer, water systems, and so on. Urban Aboriginal peoples will find themselves migrating daily between Aboriginal and non-Aboriginal jurisdictions depending on where they live, see doctors, or go to school. They might wake up in an "Aboriginal" house, travel down a "non-Aboriginal" road, and enter an "Aboriginal" school. Overlapping jurisdictions are an every-day reality for Aboriginal peoples in Canada. Although efforts to expand self-government work in some areas and serve some purposes, I remain unconvinced that they could dramatically reduce jurisdictional overlap.



So far, I have intentionally avoided discussing jurisdictional overlap's benefits. Focus on the unavoidable aspects of overlap risks overlooking its benefits – benefits too great to ignore. Some examples appeal to one's common sense. It would not make sense for the Coast Salish people to establish an international airport when two already exist within their traditional territories. The same logic applies to other jurisdictions such as roads, telecommunications, and foreign affairs. George Watts, of the Nuuchahnulth people says, "you guys can keep the post office, we don't want it [and]... we are really not interested in starting up an army or an airforce [sic] or a navy."<sup>80</sup> Using Watts' post office example, I doubt he feels the Nuuchahnulth people should stop using Canada Post and deliver their mail themselves. However, his statement does not mean that a Nuuchahnulth mail system is impossible or undesirable. Although possible, it would require a significant percentage of their population to administer and would thus divert significant attention away from other projects. It may one day become desirable should Canada Post's delivery standards no longer meet their needs. For now, the status quo helps by not burdening the Nuuchahnulth people with extra costs as they pursue ends more urgent at present than mail delivery or international security.

Comparison with some of Europe's microstates suggests similar benefits. Liechtenstein, a country of 33,000 people situated between Switzerland and Austria, shares many jurisdictions with its neighbours. Its links with Switzerland run deep. In 1924, Liechtenstein and Switzerland formed a single economic area. Liechtenstein uses Switzerland's currency and staffs its border with Swiss customs officers. The two

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<sup>80</sup> Cassidy, ed., *Aboriginal Self-Determination*, 161-162.

countries also share embassies, not to mention television stations and telecommunication networks. Close links also exist with Austria. The Österreichische Bundesbahnen (Austrian Federal Railway) maintains Liechtenstein's rail network.<sup>81</sup> Cooperation provides Liechtenstein services in areas difficult or impossible for small states to deliver alone.<sup>82</sup> Choosing to end its relationships would force the people of Liechtenstein to face tough decisions on how to use their limited resources. Will they open embassies in all countries or only a few? Will it mean less fire or police protection to secure the borders? Cooperation with Switzerland and Austria helps the people of Liechtenstein deliver achieve objects that they would otherwise struggle with given their limited capacity and population. Similar relationships exist between small states such as Monaco, San Marino, and Andorra and their respective larger neighbours of France, Italy, and Spain.

Complex interdependence and national diversity pose significant challenges for Aboriginal governments who wish to deliver an array of services independent of Canadian governments. Because these challenges are often insurmountable, and because jurisdictional overlap is the norm even under generous self-government agreements, it appears inevitable that Aboriginal self-determination cannot easily occur unless Aboriginal peoples participate alongside the wider community in shared institutions that govern areas of shared jurisdiction. Moreover, Aboriginal peoples should not see participation in shared institutions as minor or temporary because

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<sup>81</sup> Central Intelligence Agency, *The World Factbook* (Washington, DC: CIA Office of Public Affairs, 2006).

<sup>82</sup> A full complement of foreign affairs staff alone would comprise at least 1% of Liechtenstein's working-age population if it employed one person per world state. Also, one in one-thousand people sit in their Parliament. These percentages make it extremely difficult, if not impossible, to cover all the typical roles of a modern nation-state without external support.

jurisdictional overlap exists in so many areas and to such a large degree. Promoting total independence risks pushing members towards non-Aboriginal jurisdictions. Solutions such as amalgamation and the creation of satellite reserves suggest that Aboriginal peoples have choices between which jurisdictions to promote and with whom to promote them. However, expanding self-government's scope quickly exacerbates jurisdictional problems related to Aboriginal diversity, capacity, and interdependence. Aboriginal and non-Aboriginal peoples are in an unavoidable political relationship. Fortunately, the relationship can be mutually beneficial if it acknowledges that Aboriginal peoples have a part to play in managing overlapping jurisdictions through greater participation in shared institutions.

### Conclusion

In Canada, self-government only partially protects and promotes Aboriginal national communities. Significant Aboriginal diversity, interdependence, and jurisdictional overlap ensure that self-government promises more in theory than it delivers in practice. Kymlicka recognizes that Aboriginal diversity causes problems and that jurisdictional overlap creates the need for Aboriginal participation in shared institutions on an issue-specific basis. However, he underestimates the extent of jurisdictional overlap and, thus, fails to recognize that it pervades nearly all aspects of the relationship between Aboriginal and non-Aboriginal governments. The number of "issue-specific" areas requiring Aboriginal participation arguably approaches the jurisdictional authority of Canada's shared institutions. Further, the scope of Aboriginal self-government for each nation would vary, creating chaos in our

legislatures as voting entitlements vary from one Aboriginal nation to the next and from one issue to the next. Determining varied voting entitlements would be a further source of division leading to hostility and gridlock because jurisdictional control will never be total but a matter of degree. A single vote cannot represent shades of grey. Proposing a standard of voting equality that does not exist in any representative institution seems unrealistic. After all, Members of Parliament from Nova Scotia and Manitoba have the same voting entitlements whether the issue more directly affects the constituents of the former (such as Atlantic salmon stocks) or the latter (such as agriculture).

If Aboriginal peoples focus solely on autonomous self-government they may find their communities' continued existence threatened. While autonomy helps preserve and promote some national cultures that do not have issues arising from limited capacity and complex interdependence, the situation facing Aboriginal nations in Canada makes absolute autonomy impossible in most cases. As the examples of amalgamation and satellite reserves show, expanding self-government's scope can sometimes divide communities. Canada's provincial and federal jurisdictions will continue to impact Aboriginal communities whether Aboriginal peoples can achieve significant autonomy or not. Aboriginal participation in Canadian institutions represents a positive step because it gives Aboriginal peoples greater control over decision affecting them and their communities. The next section begins our search for political solutions to this highly complex relationship.

## **Chapter Two: In Search of Effective Shared Citizenship**

The first chapter suggested that (re)establishing and maintaining entirely separate Aboriginal and non-Aboriginal jurisdictions is extremely difficult, if not impossible. We must therefore consider how best to live together. In recent years, Alan Cairns has received considerable attention for his discussion of the subject of shared citizenship in Canada. He attaches greater significance to Aboriginal diversity and interdependence than Kymlicka. Although Cairns recognizes that the possibility of complete separation may once have existed, geographic and social interpenetration have since ensured our continued coexistence. The inability to separate leads him to conclude that promoting Aboriginal rights and interests depends largely on Aboriginal participation in shared institutions; to shun participation in Canadian elections and institutions, in his view, limits the capacity of Aboriginal peoples to control their individual and collective futures.<sup>83</sup> Therefore, we require a political theory of citizenship that allows Aboriginal and non-Aboriginal peoples to participate in a “pan-Canadian community engaged in common tasks...as a single political people.”<sup>84</sup> Cairns offers “citizens plus” as such a theory.

This chapter begins by analyzing “citizens plus” as a middle ground between assimilationism and Aboriginal nationalism. Given our interdependence, Cairns suggests that building trust requires abandoning our colonial past and recognizing Aboriginal difference, i.e., their unique rights, identities, and traditions. Recognizing

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<sup>83</sup> Cairns, *First Nations and the Canadian State*, 50-52; and Alan C. Cairns, “Aboriginal People’s Electoral Participation in the Canadian Community,” *Electoral Insight* 5, no. 3 (2003): 2-9. See, also, Cairns, *Citizens Plus*, 146-151.

<sup>84</sup> Cairns, *Citizens Plus*, 188.

such difference helps overcome *assimilation's* normative and practical challenges. It is also a practical necessity for improving Aboriginal/non-Aboriginal relations. Cairns is equally critical of *Aboriginal nationalism* for ignoring the need for solidarity and trust in its quest for separate Aboriginal and non-Aboriginal societies. I agree with Cairns on these counts. Abandoning colonialism and recognizing Aboriginal difference are imperative for promoting positive Aboriginal/non-Aboriginal relations and encouraging Aboriginal participation in shared institutions. Yet, I propose that Cairns' theory, and its insistence on a shared identity, cannot get us to such a point. To flesh out this criticism, I look at reasons why Aboriginal peoples might reject "citizens plus." The final section considers alternative means for generating the solidarity and trust required for shared citizenship to lead to meaningful change.

#### "Citizens Plus": A Solution to Our Complex Interdependence

The fundamental question in Cairns' *Citizens Plus* is one that he believes has been central to Aboriginal/non-Aboriginal relations since Europeans settled in Canada centuries ago. "Is the goal a single society with one basic model of belonging, or is the goal a kind of parallelism – a side by side coexistence – or some intermediate position?"<sup>85</sup> As I read it, Cairns' "intermediate position" called "citizens plus" has four crucial aspects: 1) Aboriginal and non-Aboriginal futures cannot be separated, 2) we must address our colonial past, 3) we must recognize Aboriginal difference, and 4) Aboriginal nationalist legal and political scholars must come to realize that their goal of parallel societies is unattainable. The section concludes by considering why Cairns

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<sup>85</sup> Ibid., 47.

believes his theory better addresses the relationship between Aboriginal and non-Aboriginal peoples.

*Aboriginal and non-Aboriginal futures are inseparable.*

Much more so than Kymlicka, Cairns emphasizes the Canadian state's unavoidable impact on Aboriginal peoples. He focuses on many of the factors discussed in the first chapter of this thesis such as the fact that, geographically, over half of all Aboriginal peoples live off-reserve alongside non-Aboriginal Canadians.<sup>86</sup> He highlights how such geographic interpenetration coincides with socio-cultural interpenetration:

Aboriginal societies, like all other societies, are penetrated societies. Their members live in many worlds at once, and relate to more than one community.... They should not, therefore, be viewed as if they were whole societies with only minimal relations with the Canadian society.<sup>87</sup>

As evidence of significant interpenetration, Cairns examines changing Aboriginal identities and patterns of interaction, such as the fact that over one-third of those with Aboriginal ancestry do not self-identify as Aboriginal.<sup>88</sup> Cairns emphasizes the empirical limitations that are not fully considered in Kymlicka's work – factors that make the idea of anything even close to absolute autonomy for Aboriginal peoples difficult to fathom.

Empirical factors ensure that our political futures are strongly linked because Aboriginal governments cannot disengage from federal and provincial levels of government without significant socio-economic consequences. Even large Aboriginal

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<sup>86</sup> Ibid., 73-74, 123.

<sup>87</sup> Ibid., 101.

<sup>88</sup> Cairns, *Citizens Plus*, 126-128; and, Cairns, *First Nations and the Canadian State*, 14-15.

communities struggle to provide the full complement of services expected from an effective government, as they use most of their resources to manage intergovernmental relations and maintain an effective bureaucracy.<sup>89</sup> The problem compounds greatly for smaller communities. Cairns rightly suggests that there will be “continuing relation[s] between members of Aboriginal nations and the federal and provincial governments.”<sup>90</sup> In line with discussion in the previous chapter, the idea that we are increasingly and irreversibly part of one another’s lives provides a strong empirical thread that runs through Cairns’ work.

*We must address our assimilationist-colonialist legacy for both normative & practical reasons.*

Cairns applauds the global collapse of colonialism, which initially saw European powers pull out of their overseas colonies in places such as Africa and Asia. However, decolonization *within* nation-states is much more difficult than between European powers and overseas colonies. Unlike the initial stage, where European powers left distant colonies, Aboriginal peoples in Canada cannot simply demand that non-Aboriginal Canadians leave.

An overseas imperial power can pack up its flags and depart. Settler majorities, however, cannot scuttle and run as the Belgians did in the Congo. They remain behind as majorities. They have no distant home across the oceans to return to as had the imperial administrative class displaced by indigenization in tropical colonies.<sup>91</sup>

Cairns also strongly rejects assimilation as a solution for situations where colonizers and indigenous peoples coexist. He criticizes traditional “Canadian policy [that]

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<sup>89</sup> Cairns, *Citizens Plus*, 138-139; and, Cairns, *First Nations and the Canadian State*, 16-18.

<sup>90</sup> Cairns, *Citizens Plus*, 8.

<sup>91</sup> Cairns, *First Nations and the Canadian State*, 9. Also, see Cairns, *Citizens Plus*, 26-27.



assumed the erosion of Aboriginal difference on the road to homogeneity.”<sup>92</sup> He calls such policies “arrogant and illegitimate” because they unjustly suppose a cultural hierarchy between superior whites and inferior non-whites.

Cairns also argues that assimilation failed because of three practical factors: global pressure, Aboriginal resistance, and non-Aboriginal discrimination. First, global forces provided the “trigger” or “catalyst” for domestic change. Cairns says, “it is easier to underestimate than to overestimate the impact of external developments on domestic politics.”<sup>93</sup> The 20<sup>th</sup> century saw the international community overwhelmingly support decolonization, putting considerable pressure on Canadian governments to adapt or abandon their assimilationist Aboriginal policies or risk being shamed.<sup>94</sup> Second, continual Aboriginal resistance allowed their communities, cultures, and identities to survive generations of assimilationist policies. Resistance manifested itself in many ways: children avoided residential schools, communities practiced traditional ceremonies in secret, and successive generations continued to pass on political traditions and beliefs.<sup>95</sup> Aboriginal peoples saw assimilation as “a white, majority, government policy [whose] hegemony was always more apparent than real.”<sup>96</sup> In other words, despite the fact that Canadian governments argued that Aboriginal peoples were on their way to becoming assimilated, Aboriginal resistance better described the reality within Aboriginal communities. Third, for non-Aboriginal Canadians the official government policy was also more of an ideal than a reality.

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<sup>92</sup> Cairns, *Citizens Plus*, 45.

<sup>93</sup> *Ibid.*, 41. See rest of Ch. 1 for a lengthier discussion.

<sup>94</sup> *Ibid.*, 25-26.

<sup>95</sup> *Ibid.*, 66-67.

<sup>96</sup> *Ibid.*, 67.

Though government leaders sought difference-blind assimilation, the reality was that non-Aboriginal discrimination defined everyday Aboriginal/non-Aboriginal interaction. “Insulted, humiliated, and rebuffed in their encounters with white society, Indians were unlikely to see assimilation as an escape from what they were told was a backward culture.”<sup>97</sup> Even those who rejected their Aboriginal heritage to embrace assimilation often struggled for acceptance within mainstream society.

In the end, global trends, Aboriginal resistance, and non-Aboriginal discrimination led to the near-total defeat of assimilationist policy during the 1960s and 1970s. Cairns summarizes assimilation’s false promise as follows: “we were to be held together by citizenship after Aboriginal cultures had confirmed the premise of social Darwinism, and disappeared. That is not where we are today.”<sup>98</sup> Instead, assimilationist policies have played a considerable role in entrenching Aboriginal identities and promoting feelings of alienation and mistrust toward the wider community.

*We must recognize Aboriginal difference*

Cairns subscribes to the increasingly common view that recognizing similarities *and differences* does not depart from the norm of equality. In fact, *in practice* it reinforces equality.<sup>99</sup> He suggests that we require a theory that “simultaneously recognizes both

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<sup>97</sup> Ibid., 65.

<sup>98</sup> Ibid., 45. Kymlicka and Opalski similarly argue that assimilation has failed in democratic countries and, therefore, represents an inadequate solution to situations where national cultures exist within the same state. See Kymlicka and Opalski, “Introduction,” 31.

<sup>99</sup> Libesman also offers this interpretation of Cairns. See, Heidi Libesman, “In Search of a Postcolonial Theory of Normative Integration: Reflections on A.C. Cairns’ Theory of Citizens Plus,” *Canadian Journal of Political Science* 38, no. 4: 963. See also, Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001).

Aboriginal difference *and* the need for connection to, involvement with, and participation in the Canadian community.”<sup>100</sup> In many ways, recognizing difference is the obvious alternative to assimilation’s aim of suppressing Aboriginal difference. As Cairns suggests, it avoids many of assimilation’s moral and practical challenges. He rejects the idea that “[Aboriginal peoples] can only become full members of Canadian society by ceasing to be [themselves].”<sup>101</sup> They should be equally able to express themselves by sharing their diverse understandings of history, society, and how we should live together. We should therefore support self-government as the “most significant” way for Aboriginal peoples to exercise self-determination, allowing them to “transform the cultural assumptions and practices that supported Aboriginal marginalization and subordination.”<sup>102</sup> Self-government also helps Aboriginal peoples sustain their communities and make decisions regarding their individual and collective futures.<sup>103</sup> Moreover, recognizing difference means giving Aboriginal peoples an equal say in Canada’s future, because their lives interconnect with the Canadian state and its non-Aboriginal population.<sup>104</sup> Assimilationist policies made it difficult, if not impossible, for Aboriginal peoples to exercise self-determination, to participate in decisions affecting them, and to sustain their communities. Recognizing difference promotes equality by, at minimum, giving Aboriginal peoples a voice that allows them to ignite discussions that will hopefully lead to Aboriginal peoples having opportunities to influence important decisions and promote their futures.

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<sup>100</sup> Cairns, *Citizens Plus*, 86. The need for Aboriginal participation in Canadian institutions is also a consistent theme in Chapters Three and Five. In particular, see pp. 114-115.

<sup>101</sup> *Ibid.*, 96

<sup>102</sup> *Ibid.*, 31.

<sup>103</sup> *Ibid.*, 114.

<sup>104</sup> *Ibid.*, 40-41.

*Aboriginal nationalist discourses overemphasize independence and underemphasize the need for solidarity with non-Aboriginal Canadians.*

According to Cairns, Aboriginal nationalists idealistically dream of returning to a time when separate Aboriginal societies flourished without interference from – and the need to work with – outsiders. To highlight his point, Cairns pays particular attention to the Royal Commission on Aboriginal Peoples, which conducted hearings with Aboriginal peoples all across Canada and was released in November 1996. He expresses concern that, in their submissions, Aboriginal peoples focused primarily, and almost exclusively, on how they could live apart from Canadian orders of government.<sup>105</sup> He feels they do so because they misinterpret contemporary circumstances in their desire to separate Aboriginal and non-Aboriginal paths. “The most frequent image of self-chosen Aboriginal futures is of parallelism—Aboriginal and non-Aboriginal communities travelling side by side, coexisting but not getting in each other’s way.”<sup>106</sup> Cairns believes that contemporary Aboriginal visions – based on the Royal Commission of Aboriginal Peoples, the Two Row Wampum, treaty federalism, third order of government, nation-to-nation relationships, and current theories of legal pluralism – are overwhelmingly parallelist theories that underemphasize, or entirely ignore, the interdependence of Aboriginal and non-Aboriginal societies.<sup>107</sup> Such

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<sup>105</sup> Ibid., ch. 4.

<sup>106</sup> Ibid., 6. Emphasis added.

<sup>107</sup> For information on these various theories, and why Cairns dismisses them, see *ibid.*, 70-1, 84, 114-115, 117, 132. On practical grounds, Cairns rejects views that suggest there be a side-by-side coexistence where Aboriginal communities exercise “virtually the entire range of law-making, policy, program delivery, law enforcement, and adjudication powers.” Cairns is also critical of the Royal Commission on Aboriginal Peoples report because within all 5 volumes approximately only 10 pages focus on overlap such as the significant number of Aboriginal peoples living in urban centres.

approaches deny that “even where the maximum of self-government is possible, it will fall far short of total independence.”<sup>108</sup>

Cairns believes that, at best, Aboriginal communities can only effectively govern within select jurisdictions. Examples include education, membership regulations, local economic activities, cultural promotion, and family services.<sup>109</sup> Even with external support, Aboriginal peoples may find exercising such core jurisdictions challenging. Cairns thus feels that for most Aboriginal people living off-reserve parallelism’s insistence on autonomous Aboriginal and non-Aboriginal societies has little or no meaning since non-Aboriginal governments will continue to deliver most services.<sup>110</sup> Parallelism therefore largely ignores many Aboriginal people, particularly those living in urban areas, with non-Aboriginal partners, and in smaller Aboriginal communities.

Overall, Cairns feels parallelist discourses “[do] not address the reality of our interdependence, and of our intermingling. It speaks, therefore, to only part of who we are.”<sup>111</sup> The fundamental question that parallelist theories overlook is: “what will sustain our feelings of responsibility for each other?”<sup>112</sup> If Aboriginal peoples continually stress that they have nothing in common with non-Aboriginal Canadians, Aboriginal peoples may, in Cairns’ view, find little support for their interests and goals and should not be surprised if non-Aboriginal Canadians express an unwillingness to seek the reconciliation and healing necessary for greater solidarity and sharing to

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<sup>108</sup> Ibid., 113.

<sup>109</sup> Ibid., 139.

<sup>110</sup> Ibid., 75.

<sup>111</sup> Ibid., 92.

<sup>112</sup> Ibid., 155.

arise.<sup>113</sup> He finds this highly problematic since Aboriginal peoples can benefit greatly from cooperation with non-Aboriginal Canadians, particularly given the tremendous political and economic influence they wield. This leads Cairns to conclude that parallelist discourses jeopardize the Aboriginal futures they aim to secure. Instead, he proposes that Aboriginal peoples should highlight the positive effects that solidarity with the wider community can have on their individual and collective futures.<sup>114</sup> According to Cairns, we require a theory that adequately emphasizes the role that stronger moral bonds and greater solidarity can have in securing Aboriginal futures. In other words, we require a theory of common citizenship.

Cairns believes that “citizens plus” addresses the shortcomings of assimilation and Aboriginal nationalism. First used in the 1966 Hawthorn Report,<sup>115</sup> the concept of “citizens plus” recognizes Aboriginal difference and the complex interdependence among Aboriginal and non-Aboriginal societies. It suggests that Aboriginal peoples should place greater emphasis on their identity as Canadian “*citizens*” to ensure the wider community supports the “*plus*” dimension of Aboriginal citizenship, which preserves Aboriginal difference by recognizing Aboriginal rights based on cultural difference and historical priority.<sup>116</sup> To help ensure that non-Aboriginal Canadians express empathy for Aboriginal rights and identities, Cairns urges Aboriginal peoples to embrace a shared identity and refrain from “insisting that every interaction with the

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<sup>113</sup> Ibid., 160.

<sup>114</sup> Ibid., 113.

<sup>115</sup> Canada, *A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies*, 2 vols, ed. H. B. Hawthorn (Ottawa: Indian Affairs Branch, 1966). Cairns was one of the report’s principle researchers.

<sup>116</sup> Cairns, *Citizens Plus*, 12.

state be suffused with Aboriginality.”<sup>117</sup> In this way, Canadian citizenship can morally bind Aboriginal and non-Aboriginal peoples together while giving each space to express their differences.

Cairns is open to many forms of Aboriginal rights because he feels such rights must respond to the diverse needs of Canada’s many Aboriginal communities. Nevertheless, in practical terms, he believes that limits exist as to how far Aboriginal peoples should push their rights. For example, his only mention of prior Aboriginal sovereignty suggests that “a workable compromise should recognize [Aboriginal and non-Aboriginal sovereignty’s] contradictory reality, *but not be dominated by it*.”<sup>118</sup> Likewise, we should support treaty rights, but their continual promotion “provide[s] little of the sustenance and fellow-feeling that the carrying out of the task of healing and rapprochement requires.”<sup>119</sup> Cairns similarly believes treaty negotiations and litigation falsely create the perception that we do not have common interests or values.<sup>120</sup>

To his credit, Cairns acknowledges the difficulty many Aboriginal peoples have with the idea of a shared identity, and the resulting challenges of promoting solidarity and Aboriginal participation in the wider society. However, he feels there is no better

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<sup>117</sup> Cairns raises this point throughout his book. In particular, see *ibid.*, 164, 203-213. Several other scholars suggest that such a conception of citizenship is the foundation of Cairns’ work in particular, and liberal scholars more broadly. See, Hanvelt and Martin Papillon, “Parallel or Embedded? Aboriginal Self-Government and the Changing Nature of Citizenship,” in *Insides and Outsides: Alan Cairns and the Reshaping of Citizenship*, eds. Gerald Kernerman and Philip Resnick (Vancouver, British Columbia: UBC Press, 2005): 245-246; Peter H. Russell, “Citizenship in a Multinational Democracy,” in *Insides and Outsides: Alan Cairns and the Reshaping of Citizenship*, eds. Gerald Kernerman and Philip Resnick (Vancouver, British Columbia: UBC Press, 2005): 282-283; and, Melissa Williams, *Citizenship and Identity: Citizenship as Shared Fate and the Functions of Multicultural Education* (Toronto: University of Toronto Press, 2001).

<sup>118</sup> Cairns, *Citizens Plus*, 211-213. Emphasis added.

<sup>119</sup> *Ibid.*, 160.

<sup>120</sup> *Ibid.*, 188-200.

alternative even if Aboriginal peoples must, at least to some extent, compromise their unique rights and status as Aboriginal peoples.<sup>121</sup> Cairns urges us to keep several factors in mind whenever “images of separate societies threaten to take hold of our imagination.” First, Aboriginal peoples will continue to be members of both Aboriginal and non-Aboriginal communities. Second, Aboriginal peoples cannot ignore “the massive interdependence of Aboriginal and non-Aboriginal peoples in terms of culture, economy, and intermarriage.”<sup>122</sup> Finally, the non-Aboriginal-dominated state has significant control over the resources needed for Aboriginal self-determination and Cairns believes only a shared identity ensures Aboriginal peoples will be able to access the resources they need to address the terrible socio-economic conditions they face.

#### Citizenship as Shared Identity and the Challenge of Overcoming Alienation

“Citizens plus” should appeal to those who seek a theory that stresses the complexity of Aboriginal/non-Aboriginal interdependence and the resultant need for, and benefits of, solidarity. Yet, I propose that it is limited in its ability to address one of the most serious barriers to achieving solidarity: the deep sense of alienation and mistrust many Aboriginal peoples feel toward Canadian society. Although Cairns understands why many Aboriginal peoples feel alienated and have little trust in the Canadian state,<sup>123</sup> his response to these concerns is in many ways inadequate. A serious gap exists between

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<sup>121</sup> Ibid., 114-115, 153-154, 158-159. See, also, Alan C. Cairns, “The Fragmentation of Canadian Citizenship,” in *Belonging: The Meaning and Future of Canadian Citizenship*, ed. Williams Kaplan (Montréal & Kingston: McGill-Queen’s University Press, 1993), 192-193, 198-201.

<sup>122</sup> Cairns, *Citizens Plus*, 199.

<sup>123</sup> Ibid., 168.



Cairns' goal of establishing greater solidarity and his explanation of how a shared identity will get us there. I link his inability to overcome Aboriginal alienation to this reliance on a shared identity. In my view Cairns appears overly optimistic that Aboriginal peoples will voluntarily forget the past and overlook rights based upon treaties, their historical priority, and their sovereign status as self-determining peoples only to embrace a broader Canadian identity.

To begin with, Cairns overestimates the degree to which the concept of "citizens plus" represents a break from Canada's troubling colonial history. In common with past assimilationist policies, "citizens plus" proposes that Aboriginal peoples should recognize the benefits of sacrificing their special rights and pursuing a shared identity with non-Aboriginal Canadians. Several historical examples highlight my concern.<sup>124</sup> As early as 1857, Upper Canada unilaterally passed an act aiming to strip Aboriginal peoples of their distinctly Aboriginal rights. The preamble of *An Act to Encourage the Gradual Civilization of the Indian Tribes in this Province* effectively called for the removal of all legal distinctions between Aboriginal peoples and non-Aboriginal peoples. It endeavoured to make Aboriginal peoples British subjects with identical rights and entitlements as settlers.<sup>125</sup> It also occurred without consulting Aboriginal peoples who placed tremendous value on their distinctive rights, and who

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<sup>124</sup> Others offer a more detailed and thoughtful discussion of our colonial history. For a more nuanced discussion see Darlene Johnston, "First Nations and Canadian Citizenship," in *Belonging: The Meaning and Future of Canadian Citizenship*, ed. Williams Kaplan. (Montréal & Kingston: McGill-Queen's University Press, 1993); Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Oxford: Oxford University Press, 1999); Joseph H. Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness* (Oxford: Oxford University Press, 2000); Patricia Monture-Angus, *Journeying Forward: Dreaming First Nations' Independence* (Halifax, Nova Scotia: Fernwood Publishing, 1998); Williams, "Sharing the River"; and, Cairns, "Citizens Plus."

<sup>125</sup> Johnson, "First Nations and Canadian Citizenship," 353-354.

understandably did not want non-Aboriginal peoples determining their rights and entitlements for them. It also falsely promised to assist Aboriginal peoples who were often separated from their lands and traditions. Over a century later, the federal government's 1969 White Paper on Indian policy<sup>126</sup> also sought to eliminate Aboriginal rights without consulting Aboriginal peoples, again in the name of establishing common citizenship.<sup>127</sup> It called for the abolition of the *Indian Act*, the dismantling of the Indian Affairs Branch, and the general eradication of institutions that sustained the separate treatment of Aboriginal peoples. The Aboriginal backlash was pronounced and led the Canadian government to retreat on the issue.

Taiaiake Alfred discusses another more subtle example. Writing about the federal government granting Aboriginal peoples the identical voting rights as non-Aboriginal Canadians in 1960, Alfred asks,

has the citizenship legally forced on our people a generation ago helped get our land back, gain compassion for past injustices, or made our communities healthier? Of course it hasn't.... Forty years of citizenship and we're more assimilated now than ever before, and we're losing our languages and traditions at a heartbreaking rate. What citizenship has done over the years is undermine in people's minds the idea that we have a separate existence and distinct collective rights.<sup>128</sup>

Alfred correctly observes that granting Aboriginal peoples identical voting rights creates the false impression that Aboriginal peoples (can) actively participate in, and influence, shared decisions. When the non-Aboriginal majority consistently votes

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<sup>126</sup> Officially, Canada, *Statement of the Government of Canada on Indian Policy*, presented to the First Session of the Twenty-eighth Parliament by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development (Ottawa: Department of Indian Affairs and Northern Development, 1969).

<sup>127</sup> Williams, "Sharing the River," 94.

<sup>128</sup> Taiaiake Alfred quote taken from *ibid.*, 94. Also, see Alfred, *Peace, Power, Righteousness*, 19-20.

against Aboriginal interests even their right to participate can create the appearance that they agree with decisions that in fact run counter to their rights and interests. As I pointed out in the introduction to this thesis, Aboriginal peoples currently have little impact on electoral results and party platforms. Yet, successful (and overwhelmingly non-Aboriginal) candidates can misconstrue Aboriginal participation in elections as expressed support for their status as Canadian citizens, mandating them to act on behalf of Aboriginal constituents despite the fact that policies often do not resonate with Aboriginal peoples or support Aboriginal rights.<sup>129</sup> It is therefore understandable that Aboriginal nationalists like Alfred distance themselves from non-Aboriginal politicians who feel they legitimately represent Aboriginal peoples and their interests.

These historical examples illustrate the strong relationship between efforts to establish a shared citizenship and the elimination of Aboriginal rights – rights that sustain Aboriginal identities and difference. In all three cases, the cost of establishing a common citizenship and shared identity was one-sided; the state expected only Aboriginal peoples to abandon their special rights. Cairns acknowledges the injustices of our colonial past and would similarly condemn the historical examples in the preceding paragraph. He nevertheless suggests, though not as forcefully or in every instance, that it should again be Aboriginal peoples who consider foregoing some of their rights to cultivate a shared identity – including rights they consider vital for securing their status as self-determining peoples. Cairns believes that Aboriginal

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<sup>129</sup> Daiva Stasiulus and Yasmeen Abu-Laban, “Unequal Relations and the Struggle for Equality: Race and Ethnicity in Canadian Politics,” in *Canadian Politics in the 21<sup>st</sup> Century*, eds. Michael Wittington and Glen Williams (Scarborough, Ontario: Nelson, 2000); and, Ladner, “The Alienation of Nation.”

peoples must often accept the inapplicability of their rights because provincial and federal governments have an unavoidable influence over their lives.<sup>130</sup> Missing from Cairns' analysis is an explanation of why Aboriginal peoples should accept that the present situation leads to the erosion of their Aboriginal rights. For many, asking that they surrender their special rights seems like Canada's assimilationist history repeating itself.<sup>131</sup> The risk of repeating this history and perpetuating colonial mentalities makes "citizens plus" an unlikely starting point for generating solidarity.

It is also highly questionable whether non-Aboriginal support for the cultural and socio-economic needs of Aboriginal peoples will necessarily follow from a shared identity. The evidence is inconclusive as to whether a substantial link exists between a shared identity and support for marginalized citizens. Even strong advocates of a shared civic identity acknowledge that it does not guarantee a community where citizens support one another. For instance, Parekh states that "by and large a shared sense of common belonging leads to redistribution only when it is energized by a strong social conscience, and then much of the credit for the redistribution should given to the latter, the national identity playing only a limited motivational role."<sup>132</sup> History has seen the full range of ideologies associated with a shared identity. For example, Britain's radical social cutbacks of the 1980s occurred when a shared British national

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<sup>130</sup> Cairns, *Citizens Plus*, 188-200

<sup>131</sup> For examples, see Dale Turner, *This Is Not a Peace Pipe: Toward a Critical Indigenous Philosophy* (Toronto: University of Toronto Press, 2006), 38-45; Kiera Ladner, "Rethinking Aboriginal Governance," in *Reinventing Canada: Politics of the 21st Century*, eds. Janine Brodie and Linda Trimble (Toronto: Prentice Hall, 2003), 53-54; and, Hanvelt and Papillon, "Parallel or Embedded?"

<sup>132</sup> Eamonn Callan, *Creating Citizens: Political Education and Liberal Democracy* (Oxford: Oxford University Press, 1997); Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Cambridge: Harvard University Press, 2000); and, David Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000).

identity was its strongest in decades.<sup>133</sup> Similarly, Americans tend to be highly patriotic but have some of the weakest redistributive programs in the industrialized world. In other words, no particular social, cultural, or economic assistance programs necessarily follow from a strongly shared identity.<sup>134</sup>

Cairns might counter that adopting a shared identity gives Aboriginal peoples greater influence on the prevailing views of non-Aboriginal Canadians, though he offers little security that this will in fact happen. On the contrary, adopting a shared identity may even legitimize the erosion of their identities and rights. This risk exists, as Ken McRoberts and others point out, because at present the majority community (the locus of the shared identity) does not consider Canada to be a multinational society.<sup>135</sup> Some suggest that English-speaking Canadians and recent immigrants resent those who publically and strongly identify with minority nations.<sup>136</sup> In such a climate, Aboriginal peoples have little assurance that non-Aboriginal Canadians will support special or differentiated rights once a shared identity comes into existence. Overall, the link between Aboriginal identification with Canada and non-Aboriginal support for Aboriginal rights and interests is dubious. If Aboriginal peoples put their faith in “citizens plus” and it leads to little or no change it is likely that their feelings of alienation and mistrust will only deepen.

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<sup>133</sup> Bhikhu Parekh, “The Incoherence of Nationalism,” in *Theorizing Nationalism*, ed. Ronald Beiner (Albany, New York: State University of New York Press, 1999), 315.

<sup>134</sup> Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000), 32-33.

<sup>135</sup> Kenneth McRoberts, “Canada and the Multinational State,” *Canadian Journal of Political Science* 34 (2001): 710. See also, Jeremy Webber, *Reimagining Canada: Language, Culture, Community, and the Canadian Conversation* (Montréal & Kingston: McGill-Queen’s University Press, 1994); and, Resnick, *Thinking English Canada*.

<sup>136</sup> Russell, “Citizenship in a Multinational Democracy,” 282.

Insisting on the need for a shared identity is also troubling because of the detrimental psychological effect it may have on Aboriginal views of Canada. Suggesting that unless Aboriginal peoples identify as Canadian they will receive less support reminds Aboriginal peoples of “who holds the leash and how long it is” instead of promoting any positive sense of commitment to Canada.<sup>137</sup> Cairns seems to suggest that we cannot wait for normative arguments to convince the non-Aboriginal majority that Aboriginal peoples justly deserve a measure of power over their own affairs in various institutions including Canada’s legislatures. Yet, the idea that Aboriginal peoples must cater to the majority to receive support reinforces the notion that they are, as Devlin and Dobrowolsky put it, “citizens supplicant” who are powerless and dependent on non-Aboriginal charity and good will.<sup>138</sup> While I agree that they require state support, Aboriginal peoples frequently see support as an entitlement demanded by principles of justice. Construing support as charity helps non-Aboriginal Canadians deal with feelings of guilt stemming from our colonial past, but alienates Aboriginal peoples who insist that support represents fair compensation for past injustices such as lost access to land and other resources.<sup>139</sup> As Cairns seems to suggest, support understood as charity helps address the situation from a non-Aboriginal perspective. I doubt many Aboriginal people would feel the same.

One final point: Cairns largely avoids critical normative issues that many Aboriginal peoples feel Canadians must address for solidarity and trust to emerge –

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<sup>137</sup> Joseph H. Carens, “Dimensions of Citizenship and National Identity in Canada,” *The Philosophical Forum* 28, no. 1-2 (1996-1997): 119-120.

<sup>138</sup> Richard Devlin and Alexandra Dobrowolsky, “Citizens Supplicant? Alan Cairns’ Citizens Plus and the Politics of Aboriginal Constitutional Scholarship,” *Review of Constitutional Studies* 7 (2002): 79-119.

<sup>139</sup> Boldt, *Surviving as Indians*, 18-20.

issues such as the implications of Aboriginal nationhood, self-determination, and prior sovereignty. He suggests that Aboriginal nationalists and legal scholars naively raise these issues in an attempt to return to a time when Aboriginal peoples did not rely on non-Aboriginal support, interpenetration was uncommon, and cultural differences were more evident.<sup>140</sup> Now that the non-Aboriginal majority has effectively asserted control over Canada, Cairns feels Aboriginal peoples must accept and work towards their goals accepting that Canadian institutions govern over most of their affairs. However, rather than seeking a normative justification for the imposition of Canadian sovereignty over Aboriginal peoples, Cairns instead accuses Aboriginal nationalists of being unrealistic in their wish to preserve their sovereign status as self-determining peoples with distinctive rights and identities. For many Aboriginal nationalists, Cairns' explanation is not only insufficient, but also misunderstands what they are trying to bring to light. As Murphy suggests,

the normative dimension of Aboriginal nationalism tells us *why* we should do something, not *what* we should do.... It speaks just as easily to Métis, urban or landless populations as it does to land-based communities whose varied needs, circumstances, and characteristics will require vastly different *institutional solutions*, but whose claims all proceed from the common *normative foundation* provided by historic and unceded Aboriginal sovereignty.<sup>141</sup>

If Murphy is right, and I suspect he is, Cairns fundamentally misunderstands Aboriginal nationalist theories and perspectives. Aboriginal nationalists generally recognize the impossibility of returning to parallel societies that do not overlap or experience interdependence. Moreover, they themselves suggest practical ways of

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<sup>140</sup> Cairns, *Citizens Plus*, 201.

<sup>141</sup> Michael Murphy, Review of *Citizens Plus: Aboriginal Peoples and the Canadian State* by Alan C. Cairns, *Canadian Journal of Sociology* 24, no. 4 (2000): 519. Emphasis in the original.

addressing their normative concerns that consider non-Aboriginal sovereignty, Aboriginal dependency, and complex interdependence. Contrary to Cairns, however, they resist the one-sided idea that Aboriginal peoples must put their rights on hold.<sup>142</sup> “Citizens plus” clearly attempts to bypass the normative concerns of Aboriginal peoples by suggesting that a shared identity offers more in the way of practical benefits. If this is true, we should consider supporting Cairns. However, given the possibility that alternative solutions exist that show greater consideration for the normative concerns of Aboriginal peoples<sup>143</sup> it is understandable that many are not prepared to accept the cost associated with embracing a shared identity.

“Citizens plus” struggles to promote Aboriginal participation in shared institutions because it struggles to overcome Aboriginal feelings of alienation and mistrust. It caters to the powerful non-Aboriginal majority by suggesting Aboriginal peoples must sometimes subordinate their national identities and adopt a shared civic identity. However, generating solidarity and trust is more fundamentally about Aboriginal peoples sincerely feeling a sense of common commitment to Canada. Many will not see their membership in Canada as legitimate unless it breaks with the past, addresses their needs, treats them as equals, and respects their distinct rights and identities as members of Aboriginal nations. Suggesting a shared identity should exist where alienation and mistrust currently exist misplaces the priority because it misunderstands the sentiments of many Aboriginal peoples towards our past, their

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<sup>142</sup> Ladner, “Up the Creek.” Ladner suggests that neither constitutional order (Canadian or Aboriginal) can easily provide normative arguments that displace the other. See, also, Siobhán Harty and Michael Murphy, *In Defence of Multinational Citizenship* (Cardiff: University of Wales Press, 2005); Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 2000); and Macklem, *Indigenous Difference and the Constitution of Canada*, ch. 4.

<sup>143</sup> I have in mind examples such as those discussed in Chapter Three.



rights, and possible solutions to help us move forward. The next section suggests an alternative basis for establishing common citizenship and solidarity that avoids calling for a shared identity.

#### Generating Solidarity and Trust: The Psychological Dimension of Citizenship

Given that “citizens plus” pushes many Aboriginal peoples away from the idea of shared citizenship, encouraging greater Aboriginal participation in shared institutions requires another approach. This section begins by looking at an alternative basis for shared citizenship proposed by Melissa Williams called “citizenship as shared fate.” Williams agrees with Cairns’ view that Aboriginal and non-Aboriginal peoples have little choice but to participate together in shared state institutions. She nevertheless rejects “citizens plus” and other forms of shared citizenship that rely on a sense of shared identity instead of promoting the full recognition of Aboriginal nationhood. Like Cairns and Williams, I cannot overemphasize the importance of Aboriginal participation in Canadian institutions. I also share Williams’ criticism of Cairns’ “citizens plus” and the strong possibility that it pushes many Aboriginal peoples even further away. However, I suggest that “citizenship as shared fate” similarly struggles to tell us how Aboriginal interests will receive fair treatment within shared institutions should Aboriginal peoples participate for primarily instrumental reasons. In answering this challenge, I reaffirm and reinforce Cairns’ argument that finding mutually acceptable solutions is problematic without some sense of inter-communal solidarity and trust. Yet, since Cairns’ shared identity is often out of the question, I conclude that we must find alternative ways of generating solidarity so that Aboriginal peoples feel

that participating in shared institutions is consistent with their rights, values, and identities.

Williams generally agrees with Cairns' conclusion as to why Aboriginal peoples should participate in shared institutions. Williams and Cairns believe that practical imperatives facing Aboriginal peoples compel us to make significant changes to Canadian institutions that encourage Aboriginal participation.<sup>144</sup> Like Cairns, Williams also believes there is "no plausible alternative to living together."<sup>145</sup> While Aboriginal peoples have a right to self-government, this sort of autonomy will not give them full control over all decisions that affect their goals and interests.<sup>146</sup> Williams also clearly believes that the state needs to find ways of encouraging Aboriginal participation in shared institutions because fundamental principles of democratic legitimacy demand it. Such principles demand that Aboriginal peoples affected by Canadian democratic institutions require a voice within those institutions. As Williams writes, "the concept of citizenship expresses the idea that human freedom requires some agency over the political structures that shape our lives and that we can exercise agency only as participants in a collective project."<sup>147</sup> This explains why Williams and Cairns disagree with prominent Aboriginal theorists, such as Alfred and Monture-Angus, who reject the idea of shared citizenship altogether and, in the process, seem to

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<sup>144</sup> Williams, "Sharing the River," 93-95, 111-112; and, Cairns, *Citizens Plus*, 43-46.

<sup>145</sup> Williams, "Sharing the River," 104. Compare this with Cairns, *First Nations and the Canadian State*, 13-18; and, Cairns, *Citizens Plus*, 8, 73-74, 101, 203-205.

<sup>146</sup> Williams, "Sharing the River," 95; and, Cairns, *Citizens Plus*, 31.

<sup>147</sup> Williams, "Sharing the River," 104.

accept the risk of cutting Aboriginal peoples off from important institutions affecting their lives.<sup>148</sup> Monture-Angus, for instance, states that

the descendents of the settler nations [non-Aboriginal Canadians] have their laws and beliefs, *their institutions*. These things will be kept on the Canadian path. Canadian people have their own way of doing things and they have the right to be that way.... It is parallel to the right to be a Mohawk woman, which is in fact the only right I have. Those paths *do not* become one. Nowhere have my people ever agreed to live governed by Canadian laws or Canadian ways of thinking or being. Nor have my people tried to change the way Canadians govern themselves. That is our respect for Canadian rights. This is the place where my people wish to remain.<sup>149</sup>

Williams and Cairns clearly differ from Monture-Angus, feeling that Aboriginal peoples cannot avoid sharing institutions with non-Aboriginal Canadians without great cost to Aboriginal interests and aims.

Yet Williams also differs from Cairns, and agrees with Alfred and Monture-Angus, in her view that Aboriginal peoples should not accept a form of citizenship that presupposes a shared identity with non-Aboriginal Canadians. Her position is innovative because she *supports* shared citizenship and *rejects* the need for shared identity. Aboriginal peoples are entitled to participate in shared institutions that politically recognize their distinct identities. However, for Williams, recognition does not demand that Aboriginal peoples work to promote solidarity and trust with the wider community.<sup>150</sup> On the contrary, it means simply getting on with business, despite our

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<sup>148</sup> Ibid., 104; and, Cairns, "Aboriginal People's Electoral Participation in the Canadian Community." For the works in question, see Alfred, *Peace, Power, Righteousness*, 44; and, Patricia Monture-Angus, *Thunder in My Soul: A Mohawk Woman Speaks* (Halifax, Nova Scotia: Fernwood Publishing, 1995), 245n.13. Another example is Johnston, "First Nations and Canadian Citizenship."

<sup>149</sup> Monture-Angus, *Journeying Forward*, 38. Emphasis added.

<sup>150</sup> Williams, "Sharing the River," 117 n. 36. Williams states that, "In some ways, then, my aspirations for shared citizenship are more minimalist than those of [Joseph] Carens, for whom ties of 'regrettable necessity' are something that we should wish to move beyond."

differences, in a manner that respects the legitimate interests of Aboriginal peoples. Even if Aboriginal peoples do not value coexistence we should endeavour to treat one another justly, in the sense that the legitimacy of our actions should depend on whether we can justify them to those affected in terms they can understand. It therefore follows that the legitimacy of the Canadian state and its actions depends on its cultivation of just relations with Aboriginal peoples as much as the legitimacy of Aboriginal actions depends on how they treat the larger society.<sup>151</sup> Williams' "citizenship as shared fate" essentially creates a foundation upon which Aboriginal peoples can use various political channels, including shared institutions, to hold the state accountable *without compromising their status as distinctive nations or peoples*. This runs counter to Cairns' belief that Aboriginal peoples at times need to put their Aboriginal identities and values aside to cultivate positive ties with the wider community.

Though Williams suggests that *normative principles and practical imperatives* on their own can sufficiently lead to such recognition, I sense that without solidarity and trust such measures are unlikely to transform Canadian society in positive ways. Starting with norms, we are more likely to interpret the normative claims of others favourably where a sense of trust and obligation already exists.<sup>152</sup> As Callan argues, "if

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<sup>151</sup> Ibid., 105. For an interesting, lengthier discussion see Kymlicka and Opalski, "Introduction."

<sup>152</sup> Callan, *Creating Citizens*, 95-97; Ronald Dworkin, "Liberal Community," *California Law Review* 77 (1989): 500-502; Iris M. Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), 18-26; and, Iris M. Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), ch. 6. Miller makes a similar statement that is worth quoting at length: "[Without solidarity] no group has any particular reason to accede to the demands of any other, unless it can gain some advantage from doing so. Appeals to the common good or to obligations of justice would fall on deaf ears in these circumstances, since in the absence of a common identity or sense of belonging, each group would interpret such appeals as mere masks for the interests and perspectives of the group making them. In short this would, at best, be interest group politics with the gloves off." (emphasis added). See, Miller, *Citizenship and National Identity*, 77.

trust is weak, then we will be inclined to interpret the judgments of those who disagree with us, rightly or wrongly, as instances of unreasonable pluralism, and the compromise and moderation appropriate to justice will likely be blocked.”<sup>153</sup> For example, on Canada’s east coast the Mi’kmaq and Canadian governments dispute jurisdiction over the salmon fishery. Both sides appeal to their unique normative arguments for exercising sole jurisdiction and choose to ignore the other’s claims. Normative appeals alone fail to bring the two sides together to resolve this important issue.<sup>154</sup> Canadian governments are reluctant to deal with the Mi’kmaq people as a nation even though clear links exist and appeals for justice have been made. Many of Canada’s leading scholars believe that this type of situation pervades Aboriginal/non-Aboriginal relations more generally.<sup>155</sup> It seems that it would not be an understatement to suggest that, given the deep sense of mistrust that exists between many Aboriginal peoples and the state, normative arguments have done little to effect change in the name of justice.

Williams seems to believe that the practical imperatives arising from our shared fate may also lead non-Aboriginal Canadians to support change.<sup>156</sup> The idea that practical imperatives promote a desire for change has considerable merit and is therefore worth exploring. Consider the case of Northern Ireland where bloodshed

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<sup>153</sup> Callan, *Creating Citizens*, 95.

<sup>154</sup> Ladner, “Up the Creek,” 948.

<sup>155</sup> I have in mind Borrows, *Recovering Canada* and Macklem, *Indigenous Difference and the Constitution of Canada*.

<sup>156</sup> Williams, “Sharing the River,” 106, 109. For example, she states that, “citizenship as shared fate means seeing our own lived experiences of social practices and institutions – and therefore our narratives about those experiences – as entwined with the experiences and narratives of others.” She also says, “in order to avoid relations of domination, the terms of living together must be agreed to by both parties [within shared institutions].”

forced its Catholic-republican and Protestant-unionist communities to recognize that they coexist within a community of shared fate. Because little trust exists between the two sides, the 1998 Belfast Agreement created the shared-rule Northern Ireland Assembly – a quasi-constitutional institution – where ironclad guarantees ensure that neither side can silence or subordinate the other.<sup>157</sup> Appeals for justice alone did not lead to the Agreement. Instead, the mutual desire to halt the violence in both communities served as a strong motivating factor. The practical imperatives facing Canada are similar, although the suffering gets less attention because it is generally not as violent and is much more one-sided. Aboriginal communities experience much higher suicide rates, infant mortality rates, and other factors leading to a life expectancy that is on average approximately seven years shorter than that of the general population.<sup>158</sup> In just the last twenty years violent conflicts in Oka, Ipperwash, and Gustafsen Lake have led to injuries and deaths in Aboriginal and non-Aboriginal communities. In other cases conflict avoided bloodshed but caused serious socio-economic hardship. The Burnt Church Crisis between Mi'kmaq and non-Aboriginal peoples over the local lobster fishery led to the destruction of fishing equipment in both communities, leaving the Mi'kmaq with an insufficient number of traps to allow the entire community to fish for lobster. Many Aboriginal peoples feel powerless to address these terrible, and often shocking, living conditions. Clearly, reasons exist for Aboriginal and non-Aboriginal peoples to support institutions that can help resolve

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<sup>157</sup> Harty and Murphy, *Multinational Citizenship*, 100.

<sup>158</sup> Ponting, "The Socio-Demographic Picture," 79-87.

these issues. Unfortunately, it appears these problems will continue to linger without feelings of solidarity acting as a catalyst for the necessary change to occur.

As evidence, I believe it is useful to return to the case of Northern Ireland. The effectiveness of the Northern Ireland Assembly frequently waxes and wanes. In fact, it has been suspended more than it has been sitting since its latest inception approximately ten years ago. Experts on the topic attribute this inability to function adequately on a regular basis to a lack of inter-communal trust.<sup>159</sup> One scholar suggests that agreements such as the Belfast Agreement “are essential to protect sustainable social relationships but *without adequate relationships beyond formal agreements all proposed political structures are threatened by the legacy of violent conflict...social stability needs political structures and political structures need social stability.*”<sup>160</sup> Another worries that the prospects for serious change are low. The weapons remain (albeit hidden from view) and signs of cooperation and trust are difficult to find.<sup>161</sup> To some extent, the institutional recognition of the minority Catholic-republican community itself has improved trust as members of this community feel their voices are heard and the Protestant-unionist majority feels lasting peace is within reach. I interpret Williams as holding hope for such an outcome in

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<sup>159</sup> Arthur Aughey, *The Politics of Northern Ireland: Beyond the Belfast Agreement* (New York: Routledge, 2005); Duncan Morrow, “The Elusiveness of Trust,” *Peace Review* 13, no. 1 (2001); and, Kris Brown and Roger MacGinty, “Public Attitudes toward Partisan and Neutral Symbols in Post-Agreement Northern Ireland,” *Identities: Global Studies in Culture and Power* 10 (2003): 105.

<sup>160</sup> Morrow, “The Elusiveness of Trust,” 13. It is sometimes difficult in practice to separate the effects of institutional changes from those that promote trust. In fact, major institutional concessions by the majority group often lead to a greater sense of trust.

<sup>161</sup> Aughey, *The Politics of Northern Ireland*. Aughey’s book, and much of the literature on Northern Ireland cited herein, was written before recent developments that offer new reasons for optimism. Weapons have been destroyed, and new elections have recently been held. Time will tell whether the relationship has improved sufficiently to provide lasting peace.

Canada.<sup>162</sup> Unfortunately, the vast power imbalance seems to limit this possibility.<sup>163</sup> Given this particular strong imbalance, normative arguments and practical imperatives only help to identify and explain the problems instead of leading to positive changes that promote effective Aboriginal representation in shared decision-making.<sup>164</sup> Recognizing interdependence and the strength of these arguments cannot on its own lead to necessary changes in Canadian political institutions. Again, solidarity and trust a key component missing from Williams' approach.

Increasingly, many theorists reinforce the need for solidarity and trust, suggesting that establishing solidarity and trust requires looking at the *psychological dimension* of shared citizenship. Joseph Carens argues that “[one] way to belong to a political community is to *feel* that one belongs, *to be connected to it through one’s sense of emotional attachment, identification, and loyalty.*”<sup>165</sup> Catering to this dimension does not require a shared identity as such, but some form of positive *mutual identification* with the state and its institutions. Unlike a shared identity, mutual identification means that everyone can see themselves as represented by shared institutions even if we have different identities or values. Much like the existence of multiple political parties might give different classes of society a sense that their

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<sup>162</sup> Williams, “Sharing the River,” 117 n. 37.

<sup>163</sup> For a good summary of some of the exceptions, see Harty and Murphy, *In Defence of Multinational Citizenship*, 113-116. Most exceptions involve some degree of self-government. As I show later in this section, self-government can play a vital role in generating solidarity. However, I also talk about how it can work against shared citizenship if Aboriginal peoples see it purely as a means to isolate themselves.

<sup>164</sup> Taiaiake Alfred, Brock Pitawanakwat and Jackie Price, *The Meaning of Political Participation for Indigenous Youth: Charting the Course for Youth Democratic and Political Participation* (Ottawa: Canadian Policy Research Networks, 2007), 14. They conclude that “the identification of [practical imperatives] is continually supported in lieu of any concentrated effort for other strategies.” In other words, it is much easier to get all sides to identify the problem than to get all sides to begin addressing the problem.

<sup>165</sup> Carens, “Dimensions of Citizenship,” 113. Emphasis added.



perspectives and class identities are affirmed by legislatures, so too do our institutions need to do the same for national differences. As Borrows maintains,

citizenship must also take into account the varied self-perceptions people hold within communities, and these views must sometimes mingle to create common understandings and a larger vision of who we are as fellow citizens.... Citizenship in the state must begin to develop an interactive reciprocity on certain matters of vital concern and *address the more subjective elements of who people 'feel they are' in relation to others in society.*<sup>166</sup>

Borrows appears to suggest that Aboriginal and non-Aboriginal identities are important because those who hold them feel they are important. We must therefore not only promote mutual recognition, but *mutual respect* for the *sentiments* of our fellow citizens.

In practice, such respect means sincerely attempting to avoid coercing, subordinating or excluding Aboriginal peoples. Since mistrust tempts us to revert to one-sided arguments and intransigence, leading to deadlock or even violence, we should place value in each other's interests because they matter to those who hold them.<sup>167</sup> In Canada, this means governments should not reject Aboriginal nationhood outright on normative or practical grounds for the reason that it means something to Aboriginal peoples. Similarly, Aboriginal peoples should recognize the legitimacy of non-Aboriginal interests that have emerged since contact because they matter to non-Aboriginal Canadians.

It is also important to recognize that we cannot avoid making tough decisions when Aboriginal and non-Aboriginal interests conflict. Some Aboriginal nationalists

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<sup>166</sup> Borrows, *Recovering Canada*, 143. Emphasis added.

<sup>167</sup> Ladner, "Up the Creek," 948.

very cautiously agree that Aboriginal peoples should sometimes forego their rights in order to build solidarity and trust with non-Aboriginal Canadians.<sup>168</sup> On the surface, this may appear to agree with Cairns' position. However, Cairns tends to believe that Aboriginal peoples must primarily, or even solely, make the sacrifice when Aboriginal and non-Aboriginal rights come into conflict because it is Aboriginal peoples who need to establish favour with the non-Aboriginal majority. I believe this position risks pushing many Aboriginal peoples away. It also makes it easier to understand Aboriginal caution on the matter, which arises from the feeling that non-Aboriginal Canadians may not make any meaningful sacrifices at all. Cairns' mistaken position is further evident in his analysis of Borrows' work. Cairns believes, as I do, that Borrows' work represents a refreshing middle ground that promotes Aboriginal participation in existing Canadian institutions.<sup>169</sup> However, he misses a crucial element in Borrows' message: Aboriginal peoples should genuinely embrace shared citizenship as long as it does not require subordinating their rights and identities as members of Aboriginal communities.<sup>170</sup> When only Aboriginal peoples are expected to forego their rights, we should not be surprised when they resist shared citizenship. However, if a more delicate balance were struck whereby non-Aboriginal Canadians also forewent their rights we might see greater Aboriginal willingness to consider what Cairns feels is necessary in the way of Aboriginal peoples surrendering their rights. It might involve non-Aboriginal Canadians surrendering any say on the content of Aboriginal curricula

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<sup>168</sup> Canada, Royal Commission on Aboriginal Peoples, *Treaty Making in the Spirit of Co-existence: An Alternative to Extinguishment* (Ottawa: Canada Communication Group, 1995); and Frank Cassidy, ed., *Aboriginal Self-Determination*, 150-155.

<sup>169</sup> Cairns, *Citizens Plus*, 200-205.

<sup>170</sup> Borrows, *Recovering Canada*. Many of the chapters in Borrows' book were published previously, which are cited by Cairns.

in public schools or accepting a ban on hunting or fishing certain species in decline that are of extreme importance to Aboriginal peoples. Unless the rights limitation is mutual, we cannot expect the relationship to move forward and we certainly cannot expect trust to develop.

On the other hand, if we initiate changes that respect everyone involved we may generate the mutual feelings needed for relationships based on solidarity and trust to emerge and for effective shared citizenship to take hold. To begin with, the state might consider sincerely supporting Aboriginal self-government as an initial step towards generating trust. Harty and Murphy highlight this possibility, believing support for self-government has particular relevance to situations where low levels of trust persist.

In many cases, it may be that the only viable option is first to establish autonomous institutions of self-government.... The idea here is that the self-governing institutions will provide the community in question with a sense of security which might provide a platform upon which sufficient inter-communal trust can be established that might in turn support cooperation in a second layer of shared-rule institutions.<sup>171</sup>

Unfortunately, Canadian governments generally underemphasize the role support for self-government can play in building trust, instead choosing to look at it more as a cost than an opportunity.<sup>172</sup> Support for self-government shows Aboriginal peoples that the state respects their interests by giving them an opportunity to reclaim control over their lives and participate alongside non-Aboriginal people as equals. It helps many Aboriginal peoples feel empowered to enter equal and “genuine relations of reciprocity

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<sup>171</sup> Harty and Murphy, *In Defence of Multinational Citizenship*, 100.

<sup>172</sup> For example, see Abele and Prince, “Aboriginal Governance and Canadian Federalism,” 158; and, Boldt, *Surviving as Indians*, 93.

and sharing” alongside the wider community.<sup>173</sup> When seen as an initial step towards inclusion into the broader society, self-government helps overcome the inherent risks Aboriginal peoples feel that they take when participating in shared institutions. We nevertheless must not stop here. As mentioned in previous chapters, many Aboriginal peoples do not see self-government as a step towards inclusion, but towards isolation. Some believe that self-government promises to give Aboriginal peoples full control over their lives so that they no longer rely on non-Aboriginal Canadians and communities. In other words, they strive for a future where they send their children to Aboriginal schools, see Aboriginal doctors, and govern the environment and resources of a discrete Aboriginal territory. Cairns raises this concern, citing the final *Report of the Royal Commission on Aboriginal Peoples* as a case where minimal attention was paid to shared institutions.<sup>174</sup> His point is valid, even if he overstates the degree to which Aboriginal peoples as a whole dismiss shared institutions.<sup>175</sup> I take this concern as a sign that we must do more than simply promote self-government.

Finally, indigenizing shared institutions can help build trust and may make participation in shared institutions more palatable for many Aboriginal peoples. Indigenization involves introducing Aboriginal symbols and traditions alongside state

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<sup>173</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples*, vol. 1(3).

<sup>174</sup> Cairns, *Citizens Plus*, 148-149, 244n177.

<sup>175</sup> Cairns does not seem to acknowledge the force of statements such as those made by the now dissolved Central Interior Tribal Council, which was comprised of representatives from Shuswap, Nlaka'pamux, Ktunaxa Kinbasket, and Okanagan nations located in central and south-eastern British Columbia. They stated, “the best way to promote Indian rights is through self-government and not by special representation for First Nations in Parliament. *Nevertheless, the situation of Indian peoples will change with self-government, and special representation in Parliament might in the future offer benefits that cannot now be anticipated.*” (emphasis added). Quote found in, Augie Fleras, “From Social Control towards Political Self-Determination? Maori Seats and the Politics of Separate Maori Representation in New Zealand,” *Canadian Journal of Political Science* 18, no. 3 (1985): 574.

symbols such as our flags, anthems, head of state, and national holidays. As theorists increasingly argue, multinational states cannot remain neutral on these fronts and should find ways of publicly promoting all of their constituent national communities.<sup>176</sup> Since the state cannot remain entirely neutral among its national communities, respect for Aboriginal identities requires that we incorporate indigenous symbols, practices, and voices in our shared civic life and shared institutions.

One prominent solution, currently practiced in New Zealand, is guaranteed Aboriginal representation. In legislatures all across Canada a lack of Aboriginal voices persists, reinforcing Aboriginal alienation and mistrust towards what they feel are exclusionary and ineffective institutions.<sup>177</sup> Guaranteed representation helps address this problem. Guaranteed Aboriginal representation can help even the most alienated Aboriginal communities feel comfortable with the idea of participating in shared institutions. As Ladner concludes,

[guaranteed representation] would enable Aboriginal people to participate in Canadian electoral politics as nations and to vote as, and for, citizens of their nations. [It] could liberate Aboriginal people from the forces of assimilation, as individuals would not be forced to participate in the alien system as “Canadians.” Instead, they could participate as members of their nations and in a manner that could be designed to incorporate Aboriginal peoples as “nations within.”<sup>178</sup>

Ladner implies that even in the most alienated Aboriginal communities, Aboriginal participation in shared institutions can arise if reforms consider Aboriginal feelings. One recent empirical study of Aboriginal youth on the subject suggests that they wish

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<sup>176</sup> For example, see Kymlicka, *Multicultural Citizenship*; and, Young, *Inclusion and Democracy*.

<sup>177</sup> Alfred et al., “The Meaning of Political Participation for Youth”; and, Ladner, “The Alienation of Nation.”

<sup>178</sup> Ladner, “The Alienation of Nation.”

to reconcile Aboriginal nationhood with Canadian citizenship, but feel excluded and have little trust in the political parties and politicians that presently ‘represent’ them.<sup>179</sup> Most Aboriginal youth ultimately desire ways of being included – of participating in elections and shared institutions – that support their values, traditions, and identities.

### Conclusion

Given our complex and irreversible interdependence, we clearly require a theory of shared citizenship that empowers Aboriginal peoples within shared Canadian institutions that affect their lives. Cairns’ theory of “citizens plus” provides a strong foundation upon which Aboriginal peoples can participate because it tackles our colonialist legacy, recognizes Aboriginal difference, and emphasizes that this must be done with our interdependence in mind. Cairns rightfully feels these aspects of “citizens plus” can encourage greater solidarity between Aboriginal and non-Aboriginal peoples. In particular, his theory gains much of its strength over Kymlicka’s because of its recognition of how Aboriginal and non-Aboriginal peoples are complexly interdependent in socio-economic, geographic, and certainly political terms. Yet, I have argued that his reliance on a shared identity to achieve solidarity is highly problematic from the point of view of many Aboriginal peoples. Instead of promoting Aboriginal participation, it pushes many Aboriginal peoples further away from shared citizenship and shared institutions.

Like Cairns, Williams adequately acknowledges the political importance of our interdependence and the need for Aboriginal participation in shared institutions.

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<sup>179</sup> Alfred et al., “The Meaning of Political Participation for Indigenous Youth,” 13-14.

Unlike Cairns, she does not propose that Aboriginal peoples adopt a shared identity. This is crucial because, without demanding a shared identity, Aboriginal peoples can participate on their own terms, seeing themselves solely as members of Aboriginal nations if they wish. Participating in this way avoids the significant risk of pushing Aboriginal peoples away from participating in shared institutions – a serious consequence that exists within Cairns’ theory. As I interpret Williams, she believes that the normative and practical imperatives of the relationship between Aboriginal and non-Aboriginal peoples will promote mutually agreeable arrangements. For example, the need to right historical wrongs will lead to positive change, or the desire to end the terrible socio-economic conditions faced by Aboriginal peoples will prompt all Canadians to act in proper proportion to the problem. Ultimately, Williams’ “citizenship as shared fate” lacks a convincing explanation of how Aboriginal interests will sufficiently influence shared-decisions should Aboriginal peoples participate for primarily instrumental reasons, without any feelings of solidarity and trust. In response to this problem, I have suggested that finding mutually acceptable solutions requires that we find concrete ways of generating inter-communal feelings of solidarity and trust. Yet, we cannot rely, as does Cairns, on a shared identity to generate these feelings as it pushes many Aboriginal peoples further away from non-Aboriginal Canadians and the Canadian state. Therefore, I conclude that we must rely other ways of promoting solidarity and trust *without* demanding that Aboriginal peoples adopt a shared identity.

It is not easy to find solutions that strike a delicate balance between avoiding a shared identify and promoting trust and mutual identification with shared institutions. I

have suggested that recent attention to the psychological dimension of citizenship helps in this regard. It involves promoting a sense of mutual respect for the rights, identities and values of others. It also entails respect for how Aboriginal peoples feel they relate to other members of society and its shared institutions. I have briefly outlined some solutions in this chapter, such as promoting Aboriginal self-government and the idea of indigenizing Canadian institutions. In each case, Aboriginal values, identities, and interests would have a stronger footing in Canadian society, positively affirming Aboriginal self-perceptions and hopefully building solidarity and trust as a result. The next chapter takes a deeper look at reforms that seek a delicate balance between including Aboriginal peoples in shared decision-making while recognizing their equal place in Canadian society and avoiding the need for a shared identity.



### **Chapter Three: From Alienation to Participation? Institutional Reform Considered**

I have so far suggested that although many Aboriginal peoples express ambivalence or even outright hostility towards Canadian institutions, for the foreseeable future Aboriginal self-determination requires participation alongside non-Aboriginal Canadians in shared institutions. As argued throughout this thesis, complex interdependence and the limited capacity of Aboriginal communities ensure that decisions made in Canadian institutions will continue to affect the lives of Aboriginal peoples on-reserve, off-reserve, in urban centres, and even in more remote areas. Moreover, as one Inuit organization aptly stated, “representation of the Aboriginal peoples in central institutions of Canada is an extension of our right to self-determination within the federation.”<sup>180</sup> I have also suggested that the legitimacy of Canadian institutions depends on cultivating Aboriginal participation so that shared decisions genuinely consider their interests and values. Yet Aboriginal peoples are, with good reason, suspicious of sharing institutions with those who have historically undermined their rights and interests in favour of assimilation and subordination. Canadians should therefore feel obligated to seek reforms that address the deep sense of alienation and mistrust many Aboriginal peoples feel. To do this we need to consider changes that help Aboriginal peoples feel that common Canadian institutions are both effective and legitimate.

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<sup>180</sup> Robert Milen, “Aboriginal Constitutional and Electoral Reform,” in *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert A. Milen (Toronto: Dundurn Press, 1991), 19. This sentiment was echoed by many other Aboriginal groups cited in Milen’s research.

This chapter offers suggestions aimed at overcoming Aboriginal feelings of alienation and mistrust, as discussed at length in Chapter Two, in ways that speak to the unavoidable interdependence and tremendous Aboriginal diversity raised in Chapter One. I begin by studying two important dimensions that can potentially improve Aboriginal participation in shared institutions: interests and symbolism. With these dimensions in mind, I then critically assess the theoretical and practical challenges and merits of 1) guaranteed Aboriginal representation in Canadian legislatures, 2) co-management boards, and 3) indigenizing shared institutions. Whenever possible I use empirical examples to highlight the strengths and weaknesses of each option, including New Zealand's experience with guaranteed Māori seats and Canada's experience with co-management boards. The conclusion contends that such initiatives can improve on the status quo, in the process building inter-communal solidarity and establishing a sense of shared Canadian citizenship that gives Aboriginal peoples a place respectful of their status as nations.

#### Interests, Symbolism, and Aboriginal Participation

The limited role shared institutions presently play in promoting *Aboriginal interests* represents a significant barrier to Aboriginal participation. Like non-Aboriginal Canadians, Aboriginal peoples expect representatives to understand them, promote their values, and give them a voice. In the 1960s, when Canada first extended the franchise to Aboriginal peoples, many tried to elect representatives they felt could fill these important roles. When Aboriginal participation failed to lead to the election of Aboriginal representatives or sufficient concern for Aboriginal issues, Aboriginal

participation rates fell dramatically.<sup>181</sup> Many Aboriginal peoples do not vote because they feel they have little impact on who wins elections and whether representatives speak on their behalf.<sup>182</sup> The results are proof enough. Today, nearly half a century later, provincial legislatures average less than one Aboriginal representative each with many having none. Similar numbers exist federally where the maximum number of self-identifying Aboriginal Members of Parliament has never exceeded four with no more than two coming from south of the 60<sup>th</sup> parallel.<sup>183</sup> Moreover, non-Aboriginal representatives on the whole, and despite even the best of intentions, have not done a satisfactory job of promoting Aboriginal values and speaking for Aboriginal constituents. Whether non-Aboriginal representatives struggle to understand and represent Aboriginal perspectives or feel bound to the non-Aboriginal majority that elected them, the results have led many Aboriginal peoples to conclude that, overall, the electoral status quo does not work for them.<sup>184</sup> One Aboriginal organization made the need for Aboriginal representatives clear when speaking to a Royal Commission on the subject:

We need members of Parliament who do not have to be taught who we are, what we want, and why we are important to this country. We need our people in Parliament in greater numbers than is possible under the power or influence that our votes are reduced to.... In other

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<sup>181</sup> Bedford and Pobihushchy, "On-Reserve Status Indian Voter Participation in the Maritimes," 255-278; and, Kinnear, "The Effect of the Expansion of the Franchise on Turnout."

<sup>182</sup> Alfred et al., "The Meaning of Participation for Indigenous Youth," 10; and, Caillou, "Urban Indians," 235.

<sup>183</sup> Malloy and White, "Aboriginal Participation in Canadian Legislatures," 61-62; and, Hunter, "Exploring the Issues," 29.

<sup>184</sup> One non-Aboriginal Member of Parliament wrote to the Royal Commission on Electoral Reform and Party Financing stating his sincere difficulties in effectively representing his Aboriginal constituents. In support of Aboriginal representatives, he says, "I find it difficult to represent and defend the interests of the native populations for a score of reasons ranging from cultural differences, languages and distances." Quote found at Milen, "Aboriginal Constitutional and Electoral Reform," 39. Also, see Henderson, "Empowering Treaty Federalism," 322.

words to perpetuate the current electoral system is in effect to make a mockery of our right to vote and to condemn our people to the politics of the majority.<sup>185</sup>

Scholars typically point to other factors when explaining the progression of Aboriginal rights over the past half century. For instance, to explain the successful opposition to the federal government's assimilationist 1969 White Paper, the recognition of their inherent self-government rights, and the establishment of the British Columbia Treaty Commission, some suggest Canadian courts have prodded reluctant Canadian governments to support Aboriginal rights and interests.<sup>186</sup> Others feel global forces pressured Canadian governments to support domestic change.<sup>187</sup> Few point to Aboriginal influence in shared institutions.<sup>188</sup> Until we reform shared institutions so that Aboriginal peoples can participate effectively, we should not be surprised when Aboriginal peoples instead choose to pressure Canadian legislators through alternative avenues.

Encouraging Aboriginal participation also depends in large part on the state's willingness to address *symbolic concerns* raised by numerous and diverse Aboriginal communities. One need not dig deep into the literature to see the many reasons why Aboriginal peoples feel symbolically alienated from Canadian institutions. Many feel that non-Aboriginal Canadians, and legislators, could easily interpret Aboriginal participation as approval for past (and possible future) assimilationist policies that have

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<sup>185</sup> Quoted in Milen, "Aboriginal Constitutional and Electoral Reform," 40.

<sup>186</sup> Michael Murphy, "Culture and the Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights?," *Canadian Journal of Political Science* 34, no.1 (2001): 109-129; Macklem, "Normative Dimensions"; and, Borrows, "Uncertain Citizens," 15-41.

<sup>187</sup> For a discussion of this issue, see Chapter Two.

<sup>188</sup> Some examples do exist, and are discussed later in this chapter.

marginalized and oppressed them and their communities.<sup>189</sup> They contend that participation legitimizes fundamentally colonial institutions and detracts from other important goals, such as greater Aboriginal autonomy.<sup>190</sup> In a recent study one Aboriginal youth states, “I haven’t voted, mostly because I don’t believe in the colonial style of government.”<sup>191</sup> If we address these symbolic concerns we might find that not all Aboriginal peoples who refuse to participate necessarily reject Canadian citizenship. They may wish to identify as Canadian, but feel our shared institutions presently struggle to affirm in a positive way – and even go against – their identity as members of Aboriginal nations.<sup>192</sup> In other words, deciding whether to participate is not always an easy choice. Other Aboriginal peoples simply feel participation in Canadian institutions is inappropriate, or view it as meddling in the affairs of another independent nation – an independence they themselves lost in the wake of colonization.<sup>193</sup>

Why is it helpful to explore these concerns from a symbolic perspective? How should we approach symbolic change? Theorists tend to spend most of their efforts studying how Aboriginal peoples can gain a measure of political and economic – not

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<sup>189</sup> Ladner, “The Alienation of Nation,” 23.

<sup>190</sup> Anna Hunter, “Exploring the Issues of Aboriginal Representation in Federal Elections,” *Electoral Insight* 5, no. 3 (2003): 30; Caillou, “Urban Indians,” 235; and, Lander, “The Alienation of Nation,” 24. Caillou speaks about the perception within many Aboriginal communities of those who participate in central institutions as being “sell-outs.”

<sup>191</sup> Alfred et al., “The Meaning of Participation for Indigenous Youth,” 4.

<sup>192</sup> Hunter, “Exploring the Issues of Aboriginal Representation in Federal Elections,” 28, 30. I also take this to be Borrows’ message in *Recovering Canada*, though Borrows appears more optimistic that participation will change the system as opposed to the idea that changing the system must occur before meaningful participation can flourish. Of course, changing the system will not work if Aboriginal peoples do not agree with Borrows that they need to make participation in Canadian institutions a priority at some point.

<sup>193</sup> Knight, “Electoral Justice,” 1092; Alfred et al., “The Meaning of Participation for Indigenous Youth”; Turpel, “Indigenous Peoples’ Rights of Political Participation and Self-Determination,” 599; and, Ladner, “The Alienation of Nation,” 24-25. Ladner quotes one Aboriginal leader as saying, “I don’t vote in elections in France. I don’t vote in elections in Ethiopia. Why would I vote in Canada? They are all foreign nations.”

symbolic – control over their lives. Some might even suggest that a focus on symbolism echoes of tokenism and detracts from these more pressing concerns. Yet state symbols play an important role in forming and maintaining public identification with shared institutions, often serving as “traffic lights” signalling boundaries between those who belong and those who do not.<sup>194</sup> Public symbols are not fixed, and attitudes towards them vary both across and within national groups. For Aboriginal individuals and communities to have positive feelings towards shared institutions they must feel that they can define and recognize themselves within them. Like non-Aboriginal Canadians, “they expect some consistency between their private identities and the symbolic contents upheld by public authorities, embedded in the societal institutions, and celebrated in public events. Otherwise, Aboriginal individuals feel like social strangers; they feel that the society is not *their* society.”<sup>195</sup> Leaders in Northern Ireland understood the need for identification with societal institutions, and the 1998 Belfast agreement explicitly discusses symbolism’s importance. It reads: “All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division.”<sup>196</sup> It would be a mistake to underestimate the ability of public symbols –

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<sup>194</sup> John Armstrong, *Nations before Nationalism* (Chapel Hill: University of North Carolina Press, 1982), 7.

<sup>195</sup> Raymond Breton, “The Production and allocation of symbolic resources: an analysis of the linguistic and ethnocultural fields in Canada,” *Canadian Review of Sociology and Anthropology* 21, no. 2 (1984): 125-126. Emphasis in original. See, also, Alfred et al., “The Meaning of Participation for Indigenous Youth,” 15.

<sup>196</sup> Northern Ireland Office, *The Agreement: Agreement Reached in the Multi-Party Negotiations* (Belfast: Northern Ireland Office, 1998), 20.

such as flags, anthems, and statutory holidays – to confer status and signal respect for some and not others.

Canada has undertaken significant symbolic reforms in the past, which provide valuable examples that help us understand how we should approach the subject. The 1960s saw Québec nationalists express their lack of identification with central political institutions. The response by Canadian politicians led to various institutional reforms aimed at making public institutions more sensitive to French-Canada: a Royal Commission on Bilingualism and Biculturalism (1963), the Official Languages Act (1969), and a new Canadian flag to replace the British Red Ensign design (1965).<sup>197</sup> On the other hand, these changes made many Canadians feel a sense of institutional unfamiliarity, anxiety, and even loss. Some even claimed that such reforms set the stage for French domination within Canadian society.<sup>198</sup> While such views are extreme, many Canadians sympathized with the questions symbolic change raised for Canada's future. As Breton correctly suggests,

restructuring the symbolic order to make it easier for certain social segments to identify with its institutions could alienate and antagonize those accustomed to a sense of cultural dominance, and thus could put in motion an opposing set of forces that could destroy the new symbolic edifice.<sup>199</sup>

Perhaps worse, he also expresses concern that it can jeopardize the material interests of minority groups.<sup>200</sup>

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<sup>197</sup> Breton, "The production and allocation of symbolic resources," 129. He cites several more examples.

<sup>198</sup> Jock Andrew, *Bilingual Today, French Tomorrow: Trudeau's Master Plan and How it Can be Stopped* (Richmond Hill, Ontario: BMG Publishing, 1977).

<sup>199</sup> *Ibid.*, 131.

<sup>200</sup> *Ibid.*, 137.

We must therefore approach symbolic change with a great deal of caution if we are to reap its benefits. As we look at changes meant to improve Aboriginal/non-Aboriginal relations, we must consider whether any given change jeopardizes the entire project or harmfully spills over into other areas. History shows us that when Aboriginal peoples fight for their rights, the non-Aboriginal majority responds. For instance, introducing co-jurisdiction over fisheries could anger non-Aboriginal fishing communities, potentially leading either side to take action against the other – or to jeopardize fish stocks. In other words, we therefore should consider not only Aboriginal interests, rights, and sentiments, but also those of non-Aboriginal Canadians given our complex interdependence. Furthermore, in the case of Aboriginal peoples, symbolic reforms need to consider their diversity and various symbolic concerns. With these observations on the importance of impact and symbolism in mind, the next section looks at the first of three institutional reforms: Aboriginal electoral districts.

#### Reform #1: Aboriginal Electoral Districts

According to at least one researcher, support for guaranteed Aboriginal electoral districts (AEDs) dates back over a century to Louis Riel.<sup>201</sup> Over the past thirty-odd years various Canadian governments and many different Aboriginal organizations have shown interest in the idea.<sup>202</sup> Most advocates of AEDs support guaranteed seats proportional to the percentage of self-identifying Aboriginal peoples within Canada.<sup>203</sup>

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<sup>201</sup> Niemczak, *Aboriginal Political Representation*, 9.

<sup>202</sup> For an overview see, Milen, “Aboriginal Constitutional and Electoral Reform”; Niemczak, *Aboriginal Political Representation*, 9-16; and, Knight, “Electoral Justice,” 1075-1077.

<sup>203</sup> See, for examples, Niemczak, *Aboriginal Political Representation*, 16; Canada, Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, Vol. 4



Proportionality means that 3.8% (or about twelve) of the seats in the House of Commons would become AEDs given that the most recent census shows 3.8% of Canadians self-identify as Aboriginal. Similarly in Saskatchewan, where 14.9% of residents identify as Aboriginal, nine of the provincial legislature's fifty-eight seats would become AEDs. Such logic easily extends to other provinces.<sup>204</sup> Scholars also typically support the idea that Aboriginal peoples could vote in standard electoral districts, but not in both types of districts for any given election.<sup>205</sup>

This section promotes AEDs for two fundamental reasons. First, AEDs send Aboriginal peoples a powerful *symbolic* message that they can participate in shared decision-making without compromising their strongly held Aboriginal identities, rights, and values. They help overcome psychological barriers to participation such as Aboriginal feelings that participating in shared Canadian institutions comes with many risks, including assimilation. Second, AEDs help Aboriginal peoples gain much needed *influence* over shared decisions that invariably affect them and their communities. Recall that complex interdependence ensures that Canadian jurisdictions affect Aboriginal peoples on most issues such as the environment, health care, education, transportation, and social services.<sup>206</sup> By introducing AEDs in Canadian legislatures, Aboriginal peoples can counteract non-Aboriginal dominance, albeit with

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(Ottawa, ON: Minister of Supply and Services, 1991), 257-259; Gibbins, "Electoral Reform," 162-166; and, Schouls, "Aboriginal Peoples and Electoral Reform," 730.

<sup>204</sup> Canada, Statistics Canada, *2006 Census of Canada*. The sole exception is Prince Edward Island where only 1.3% of people identify as Aboriginal and there are only 27 seats in the provincial legislature. Proportionality in this case leads to only 0.35 AEDs. In such cases it seems reasonable to round the number up to 1 AED, perhaps adding non-AED seats in some cases to achieve greater balance.

<sup>205</sup> For example, see Gibbins, "Electoral Reform," 167.

<sup>206</sup> I discuss this at length in Chapter One.

some limits and challenges. Although AEDs on their own cannot ensure that shared institutions always fairly promote Aboriginal interests in every instance, they do promise a greater balance in shared decision-making – something necessary given our complex interdependence. The overall idea is that AEDs make it easier for Aboriginal peoples to participate in shared institutions, promote their interests, and even, over time, build feelings of inter-communal solidarity and trust.

At the symbolic level, AEDs help Aboriginal peoples overcome psychological hurdles toward participating in electoral politics and shared institutions. Many Aboriginal individuals reject participating in Canadian elections because they feel there is a risk that non-Aboriginal Canadians might interpret it as support for the very Canadian institutions (and policies) that have historically marginalized their rights and interests. AEDs, on the other hand, can make participation more palatable for those who reject Canadian citizenship by allowing them to participate as members of Aboriginal communities separate from non-Aboriginal Canadians and the mainstream identity.<sup>207</sup> Turpel, for example, believes AEDs “help dispel the impression that indigenous peoples are seeking assimilation into dominant institutions.”<sup>208</sup> Even for Aboriginal peoples who fully reject a Canadian identity, AEDs might make participation tolerable given such a serious psychological barrier.

AEDs also encourage Aboriginal participation by minimizing the risk that Aboriginal and non-Aboriginal peoples alike see participation as compromising their

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<sup>207</sup> Ladner, “The Alienation of Nation,” 24-25; and, Michael Murphy, “Representing Indigenous Self-Determination,” *University of Toronto Law Journal* 58 (2008): 212.

<sup>208</sup> Turpel, “Indigenous Peoples’ Rights of Political Participation and Self-Determination,” 600.

greater nationalist aims.<sup>209</sup> Even at present, non-Aboriginal representatives may feel that they can speak for Aboriginal peoples even though many of their decisions ignore or go directly against Aboriginal interests. AEDs, instead, recognize the right of Aboriginal peoples to speak on their own behalf, giving them the opportunity to demonstrate to their constituents and the wider community their abilities, perspectives, and approaches when addressing key issues. Participation through AEDs should thus feel more secure from an Aboriginal perspective, allowing them, when necessary, to distance themselves from the decisions and views of non-Aboriginal representatives.

It is also important to keep in mind that Aboriginal representation does not only promise to simply eliminate (or circumvent) barriers and risks associated with participation, but also to strengthen the symbolic aims of Aboriginal peoples. Many prominent Aboriginal scholars feel that guaranteed Aboriginal representation helps recognize and reinforce Aboriginal nationhood within Canadian institutions.<sup>210</sup> AEDs can come to symbolize the permanent place of Aboriginal peoples alongside non-Aboriginal Canadians in important legislative bodies. As Murphy suggests, they can “demonstrate to the public at large the legitimacy of a cooperative and bicultural approach to governance.”<sup>211</sup> AEDs run counter to the assimilationist trait of silencing and excluding Aboriginal peoples from participating in decisions affecting them. Aboriginal peoples deserve the same sense of belonging and respect that non-

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<sup>209</sup> For an Aboriginal account of this perception within certain Aboriginal communities, see Caillou, “Urban Indians,” 235.

<sup>210</sup> Henderson, “Empowering Treaty Federalism,” 326-328; Turpel, “Indigenous Peoples’ Rights of Political Participation and Self-Determination,” 598-601; and, Ladner, “The Alienation of Nation,” 24-25.

<sup>211</sup> Murphy, “Representing Indigenous Self-determination,” 212. See, also, Elizabeth McLeay, “Political Arguments About Representation: The Case of the Mori Seats,” *Political Studies* 28, 1 (1980): 62.

Aboriginal Canadians feel when participating in shared decision-making.<sup>212</sup> AEDs should symbolically make it easier for Aboriginal peoples who do not (yet) feel a sense of solidarity or trust with the wider community to participate in shared institutions.

The limited empirical evidence supports the idea that AEDs reduce psychological barriers to Aboriginal participation. Symbolic factors partly explain Māori support in New Zealand and indigenous support in Australia for guaranteed representation. The colonial history between European settlers and indigenous peoples in these two countries has led to similar situations of mistrust.<sup>213</sup> Although most non-Māori a century ago supported the seats because they were thought to marginalize the Māori and short-circuit their autonomist ambitions, some leaders felt AEDs play an important role in recognizing the Māori identity and of allowing them to participate as Māori in Parliament. James Fitzgerland, an MP in New Zealand's first parliament, wrote a colleague in 1865 that AEDs were a vital way of encouraging Māori, with their strong identities, to participate in parliament. Several chiefs agreed with him and pushed Parliament to introduce Māori seats.<sup>214</sup> Today, many Māori still feel strongly that AEDs allow them to participate in Parliament without jeopardizing their unique identity.<sup>215</sup>

Guaranteed Māori seats also symbolize the state's positive recognition of their distinct constitutional status. Despite their original intent, for many Māori AEDs now

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<sup>212</sup> Murphy, "Representing Indigenous Self-Determination," 212.

<sup>213</sup> For information on how New Zealand and Australian colonial histories compare to Canada, see Andrew Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand* (Vancouver, British Columbia: UBC Press, 1995).

<sup>214</sup> New Zealand, Parliament, *The Origins of the Maori Seats* (Wellington, New Zealand: Parliamentary Library, 2003), 8.

<sup>215</sup> Fleras, "From Social Control towards Political Self-Determination?," 568; and, Fleras, "Aboriginal Electoral Districts for Canada," 76

highlight the permanent place of their unique rights and identities alongside the non-Māori majority. In this regard, AEDs help keep Māori concerns at the forefront of public debate and remind New Zealanders of the importance of co-operation, mutual respect, and an inter-communal approach to governance.<sup>216</sup> Scholars feel that the Māori value guaranteed representation because it allows them to speak for themselves.<sup>217</sup> Māori representatives show the wider community that they can capably participate in, and determine, sound policies for themselves, their communities, and their country. As McLeay states, “through the provision of reserved seats in New Zealand, Maori have demonstrated their ability as legislators.”<sup>218</sup> It appears likely that even though Māori representatives have not always successfully defended Māori interests,<sup>219</sup> their symbolic role has led to significant Māori attachment to the continued existence of AEDs.

Considering the significant degree of Aboriginal diversity discussed in Chapter One<sup>220</sup> and the vastness of Canada’s geography, critics suggest that some Aboriginal peoples would resist the homogenizing effect a limited number of AEDs would have on them. As Schouls argues, “Aboriginal claims to differentiated citizenship and the commitment of AEDs to the principle of electoral equality are in the end largely

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<sup>216</sup> Fleras, “From Social Control towards Political Self-Determination?,” 568; Fleras, “Aboriginal Electoral Districts for Canada,” 89-90; McLeay, “Political Arguments About Representation,” 61; and, Catherine J. Iorns, “Dedicated Parliamentary Seats for Indigenous Peoples: Political Representation as an Element of Indigenous Self-Determination,” *E Law: Murdoch University Electronic Journal of Law* 10, no. 4 (2003): n11, n 27.

<sup>217</sup> Murphy, “Representing Indigenous Self-Determination,” 212; and, Iorns, “Dedicated Parliamentary Seats,” n27.

<sup>218</sup> McLeay, “Political Arguments About Representation,” 61.

<sup>219</sup> For an article on this subject, see Ann Sullivan, “Effecting Change Through Electoral Politics: Cultural Identity and the Māori Franchise,” *The Journal of the Polynesian Society* 112, no. 3 (2003): 222-224.

<sup>220</sup> This includes the three main groups (“Indian”, Inuit, and Métis), status and non-status, treaty and non-treaty, urban and rural, and over 600 bands constituting at least 40-100 different nations.

incompatible objectives.”<sup>221</sup> Similarly, Ladner feels it is unjust to expect two or more Aboriginal (national or treaty) groups to participate within a single AED as it goes against Aboriginal traditions, identities, and wishes.<sup>222</sup> Both correctly highlight the tension that exists between representative democracy and constituent diversity. Henderson, like Ladner, tries to overcome this challenge by proposing seats along treaty lines.<sup>223</sup> However, this only shifts, and does not lessen, the tension.<sup>224</sup> Many treaty groups themselves have significant internal diversity and divergent communities of interest. The populations falling under numbered treaties also greatly vary, some with small populations that struggle to justify an AED all for themselves.<sup>225</sup> Their proposal also excludes many Aboriginal peoples, such as non-treaty and off-reserve populations.

In my view, those who argue that we should reject AEDs unless they mirror Aboriginal diversity simply expect too much from Aboriginal representation and electoral politics in general. It is naïve to suggest that Aboriginal and non-Aboriginal peoples alike should always expect their representatives to mirror their perspectives. Even non-Aboriginal representatives find themselves struggling to represent the many social, cultural, religious, gender, class, regional, and other identities and interests

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<sup>221</sup> Schouls, “Aboriginal Peoples and Electoral Reform,” 742.

<sup>222</sup> Ladner, “Negotiated Inferiority”; and, Ladner, “Treaty Federalism: An Indigenous Vision of Canadian Federalisms,” in *New Trends in Canadian Federalism, Second Edition*, eds. François Rocher and Miriam Smith (Peterborough, Ontario: Broadview Press, 2003).

<sup>223</sup> Henderson, “Empowering Treaty Federalism,” 241-329; Ladner, “Treaty Federalism,” 179-191; Kiera L. Ladner, “Treaty Seven and Guaranteed Representation: How Treaty Rights Can Evolve Into Parliamentary Seats,” *Great Plains Quarterly* 17 (1997): 85-101.

<sup>224</sup> Of course, they could argue that we need more than 12 AEDs at the national level. However, it seems like that such proposals would face stern opposition from the majority of Canadians and lead to potentially greater challenges.

<sup>225</sup> Canada, Department of Indian Affairs and Northern Development, *Basic Departmental Data 2003* (Ottawa, ON: Minister of Public Works and Government Services Canada, 2004), 87-103.

within their constituency. Knight summarizes the converging views of prominent theorists like Kymlicka and Phillips when he says that we can only balance the need to represent all groups “with the knowledge that at some point mirror representation is impossible to achieve.”<sup>226</sup> Lastly, we should not forget that despite their diversity, Aboriginal peoples share many of the symbolic goals that AEDs advance such as overcoming our colonial past and respect for minority rights. Because common experiences and feelings of oppression and misunderstanding run through most Aboriginal communities, it seems safe to presume that Aboriginal peoples will find it easier to deal with their Aboriginal representative even if they do not come from the same community or background.<sup>227</sup> Moreover, successful representatives generally champion issues affecting diverse cross-sections of their ridings, dealing with specific environmental concerns, an economic downturn affecting a certain sector or region, or assisting where an area’s infrastructure lags behind other areas. The electoral success of Aboriginal representatives similarly depends in large part on their willingness to represent localized issues such as specific land claims, environmental degradation from industry, and specific communities lacking adequate water treatment infrastructure.

The presence of Aboriginal representatives also helps to ensure that, through debate, legislation and policy consider Aboriginal interests. The ability of Aboriginal representatives to promote Aboriginal interests is vital because if AEDs fail to deliver results for Aboriginal peoples any initial enthusiasm will quickly wane as it did in the

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<sup>226</sup> Knight, “Electoral Justice,” 1087.

<sup>227</sup> Mansbridge cites data that suggests this is an important factor for the United States’ African American population. See, Jane Mansbridge, “What does a Representative Do? Descriptive Representation in Communicative Settings of Distrust, Uncrystallized Interests, and Historically Denigrated Status,” in *Citizenship in Diverse Societies*, eds. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), 112-113.

years following their enfranchisement.<sup>228</sup> I am not suggesting that support for guaranteed representation means that women must always represent women, workers must always represent workers, and so on (the principle of mirror representation).<sup>229</sup> However, in majoritarian democracies there is always a risk that elected officials will fail to represent certain minorities within their constituencies. Unfortunately for Aboriginal peoples, the vast majority of Canadian politicians cannot expect to win elections by focusing on Aboriginal concerns. For instance, representatives probably find it difficult to raise controversial land settlement or treaty issues that go against the beliefs and interests of the non-Aboriginal majority within their constituency. The net effect has been that many Aboriginal peoples place little trust in the ability of Canadian institutions and non-Aboriginal representatives to promote their interests. In such cases the principle of mirror representation may be the only way to give an otherwise marginalized group a democratic voice within shared institutions.<sup>230</sup>

Critics of guaranteed Aboriginal representation highlight important factors that threaten to undermine the ability of AEDs to promote Aboriginal interests. Two concerns related to interests are particularly worth discussing: first, that a small number of AEDs will have little or no impact on shared decisions; and second, that AEDs will allow non-Aboriginal representatives to ignore Aboriginal interests. Each of these criticisms raises important concerns. However, I am convinced that overall

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<sup>228</sup> A discussion of this can be found in this thesis' initial introduction.

<sup>229</sup> While some studies suggest that there is no appreciable difference for women in approaching male or female representatives, the communicative gap can be much larger when the division is between nations or races. See Mansbridge, "What does a Representative Do?," 112. For a more general discussion of the appropriateness of mirror representation see Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995).

<sup>230</sup> Jane Mansbridge, "What does a Representative Do?"



AEDs empower Aboriginal peoples to pursue their interests and exercise self-determination. This is particularly true when pursued in conjunction with other avenues such as self-government (discussed in earlier chapters) and co-management (discussed later in this chapter). We must tame our expectations, recognizing that increased Aboriginal participation in shared institutions will not give Aboriginal peoples veto powers when working with their non-Aboriginal neighbours, but bring greater balance to shared decision-making.<sup>231</sup>

Beginning with the first concern, Georges Erasmus, long-standing Aboriginal leader and co-chair of the Royal Commission on Aboriginal Peoples, expressed scepticism that even a dozen Aboriginal MPs would make an impact within the House of Commons.<sup>232</sup> Several features of our parliamentary system limit the ability of Aboriginal representatives to promote Aboriginal interests. Walker, for example, summarizes why majority rule and party discipline have significantly limited Māori influence: “The Māori under the two party system is forever relegated to the position of outvoted minority. Māori cultural aspirations and desires for self-determination through affiliation to one or other of the major parties cannot be realized because both parties are dominated by pakehas [non-Māori].”<sup>233</sup> Aboriginal representatives might promote Aboriginal interests within caucus or cabinet, but once a decision is made

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<sup>231</sup> Murphy states, “the constraints of majoritarianism, party discipline, and executive dominance are not peculiar to indigenous representation but are part of the limitations of mass representative government in general; specific interests are always going to face defeat at some point in the give-and-take of majoritarian politics. The message here is that we should lower our expectations of what indigenous representatives are capable of delivering to their constituents and that we need to assess the potential impact of indigenous representation in the context of the limits of electoral representation as a whole.” See, Murphy, “Representing Indigenous Self-determination,” 205-206.

<sup>232</sup> Malloy and White, “Aboriginal Participation in Canadian Legislatures,” 65.

<sup>233</sup> Ranginui Walker, “The Maori Minority and the Democratic Process,” in *Improving New Zealand's Democracy*, ed. J. Stephen Hoadley (Auckland, New Zealand: University of Auckland, 1979).

behind closed doors everyone is expected to support the collective decision publicly even if it goes against Aboriginal interests. One prominent Māori MP stated that he constantly felt torn between his constituents' needs and party politics.<sup>234</sup> Aboriginal representatives in Canada also face this challenge.<sup>235</sup> Yet those who expect Aboriginal representatives, or any representatives, always to succeed in promoting their constituents' interests not only expect too much, but risk inverting the sense of alienation and mistrust as other Canadians may begin to see shared institutions as illegitimate.<sup>236</sup> Instead, we should focus on the real possibility that the presence of even a few Aboriginal representatives might lead shared institutions to show greater respect and concern for Aboriginal interests.<sup>237</sup> This fact is not lost on those who fight to keep their representation even when only a few seats are at stake.<sup>238</sup>

The available empirical evidence supports the limited, yet important role Aboriginal representatives can play in shared institutions. Before the Second World War Māori representatives unsuccessfully fought to halt the government's efforts to

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<sup>234</sup> Fleras, "Aboriginal Electoral Districts for Canada," 80-81.

<sup>235</sup> Gibbins, "Electoral Reform," 172-173.

<sup>236</sup> I sympathize with the fact that many Aboriginal peoples likely feel non-Aboriginal peoples, with their superior number of representatives, have a veto. We must however keep in mind that the electoral option cannot be expected to fulfill roles better left for the constitution, courts, co-management boards, and self-government agreements. For a discussion of the limits of electoral politics, and how these other political avenues must serve to complement electoral participation, see Murphy, "Representing Indigenous Self-determination," 199-211; and Fleras, "Aboriginal Electors Districts for Canada," 96-99.

<sup>237</sup> Knight, "Electoral Justice for Aboriginal People," 1081. He comes to the conclusion that because Aboriginal representatives "may be outvoted on a given issue is not a reason to oppose guaranteed representation, because the likelihood remains that on many issues increased representation can make a positive difference."

<sup>238</sup> Recently at the provincial level in British Columbia rural residents expressed outrage that three rural seats were being lost due to the area's relative population decline. In the end, the pressure led the legislature to introduce legislation securing the three rural seats against the recommendations of the Electoral Boundary Commission. For examples of provinces fighting to keep their federal seats, see Katherine Swinton, "Federalism, Representation, and Rights," in *Drawing Boundaries: Legislatures, Courts, and Electoral Values*, eds. John C. Courtney, Peter MacKinnon and David E. Smith (Saskatoon, Saskatchewan: Fifth House Publishers, 1992), 23.

alienate their people from the land. While the presence of Māori representatives slowed the process for a short time, they eventually proved ineffectual as the state took the vast majority of Māori land out of Māori hands.<sup>239</sup> In contrast, Māori MPs played a decisive role in establishing important social benefits for their people in the 1930s and convincing the government to recognize inherent Māori rights in the *Treaty of Waitangi Act* of 1975.<sup>240</sup> More recently, New Zealand's Parliament has recognized Māori as an official language. Parliament has also recognized the need for increased Māori influence in decision-making, particularly on issues affecting the Māori people and their communities.<sup>241</sup> Even in Canada, where Aboriginal representatives have been few, they have prompted significant change. Perhaps the most powerful impact was felt in 1990 when Elijah Harper, an Aboriginal Member of the Legislative Assembly (MLA) from Manitoba, played a key role in blocking the passage of the Meech Lake Accord.<sup>242</sup> His actions reflected a general Aboriginal feeling that the Accord, which aimed to secure the Government of Québec's constitutional consent by recognizing Québec's status as a distinct society, did not recognize inherent Aboriginal rights and was negotiated without Aboriginal participation. Almost immediately after the Accord's failure, Aboriginal peoples became full participants in further constitutional discussions including the discussions leading up to the failed 1992 referendum on the Charlottetown Accord.<sup>243</sup> Harper's individual impact may have been an exception, yet

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<sup>239</sup> Sullivan, "Effecting Change Through Electoral Politics," 222-223.

<sup>240</sup> Murphy, "Representing Indigenous Self-determination," 206-208.

<sup>241</sup> These examples are found in Fleras, "Aboriginal Electoral Districts for Canada," 82-83; and, Sullivan, "Effecting Change Through Electoral Politics," 225.

<sup>242</sup> Milen, "Aboriginal Constitutional and Electoral Reform," 33.

<sup>243</sup> Turpel, "Indigenous People's Rights," 597-598.

it serves as a reminder of the importance of securing an Aboriginal voice in every legislature.

Certain Canadian political parties have also shown a willingness to include Aboriginal peoples within their organization and shared institutions more broadly. Both the Liberal Party and the New Democratic Party (NDP) have Aboriginal caucuses that promote Aboriginal inclusion at all party levels. In both cases, Aboriginal party members play an active role in developing party policy on issues of concern to Aboriginal peoples. The former played an important role in drafting the federal government's 1995 policy recognizing the inherent Aboriginal right to self-government.<sup>244</sup> In the latter case, Ujjal Dosanjh, as the NDP Premier of British Columbia, appointed Chief Ed John to cabinet in 2001 as Minister of Children and Families even though he was not a sitting MLA. Though he only served as Minister for a short six months, he had a lasting impact on his non-Aboriginal cabinet colleagues. Debating the merits of removing murals offensive to Aboriginal peoples in the Legislative Assembly of British Columbia over six years later (discussed at greater length in the next section), almost all NDP speakers who served in cabinet with John mentioned the decisive role he played in informing them of the issue's importance.<sup>245</sup>

Critics – and even some supporters – also worry that AEDs will instil the notion that non-Aboriginal representatives only represent non-Aboriginal people, allowing

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<sup>244</sup> Canada, *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Ottawa: Public Works and Government Services, 1995).

<sup>245</sup> British Columbia, Legislative Assembly, "Referral of report on Legislature artwork depicting first nations people," Motion 49, 38<sup>th</sup> Parliament, 3<sup>rd</sup> Session, vol. 18, no. 9 (2007), 7091-7120.

them to ignore Aboriginal interests without electoral consequences.<sup>246</sup> The argument usually goes something like this: because AEDs remove Aboriginal constituents from traditional ridings, the vast majority of representatives will no longer respond to Aboriginal pressure and can instead refer Aboriginal peoples to their Aboriginal representative. A Royal Commission in New Zealand went so far as to recommend the abolition of Māori seats largely because of this concern, though the commission also supported a more proportional electoral system that they felt ensured Māori representatives would continue to be elected.<sup>247</sup> On the surface, a reduced capacity to pressure an all-important majority of MPs should cause concern because Aboriginal issues might always be out-voted by non-Aboriginal MPs. I nevertheless support the view that AEDs can only improve Aboriginal influence.<sup>248</sup>

For starters, sometimes resolving Aboriginal issues serves the public good or reflects common interests like having a clean environment, stability, and secure access to renewable resources.<sup>249</sup> It is also possible that, if only out of self-interest, non-Aboriginal Canadians will compel their representatives to address issues like the

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<sup>246</sup> Cynthia V. Ward, "The Limits of 'Liberal Republicanism': Why Group-Based Remedies and Republican Citizenship Don't Mix," *Columbia Law Review* 91, no. 3 (1991): 581-607; Robert Mahuta, "Maori Political Representation: A Case for Change," in *Maori Representation in Parliament*, ed. Evelyn Stokes (Hamilton, New Zealand: University of Waikato, 1981); Gibbins, "Electoral Reform," 171; Knight, "Electoral Justice," 1080-1081; Schouls, "Aboriginal Peoples and Electoral Reform," 746-747; Fleras, "Aboriginal Electoral Districts for Canada," 71-72; Phillips, *The Politics of Presence*; and, Mansbridge, "What Does a Representative Do?," 101-103,

<sup>247</sup> Iorns, "Dedicated Parliamentary Seats," n28-n29.

<sup>248</sup> Gibbins states, "AEDs would likely increase the electoral impact and thus the parliamentary influence of Aboriginal communities, *in part because their impact and influence are so minimal at the present time.*" See, Gibbins, "Electoral Reform," 182. Emphasis added.

<sup>249</sup> For example, see Sage Birchwater, "Coleman Considers 20-year forest licence for Tsilhqot'in," *Williams Lake Tribune*, 27 November 2007. Rich Coleman, Minister of Forests and Range, and Mike de Jong, Minister of Aboriginal Relations and Reconciliation, promoted an agreement with the Tsilhqot'in National Government that saw them get greater access to timber resources to, in part, establish a bioenergy plant that would help deal with province-wide power concerns.

terrible socio-economic conditions in many Aboriginal communities, which place a significant financial burden on our social and criminal justice systems. In other cases, non-Aboriginal representatives may feel compelled to support Aboriginal interests. Some may even empathize enough with Aboriginal concerns to lobby for change. As Henderson states, non-Aboriginal representatives are a diverse group of people with very different beliefs.<sup>250</sup>

Critics also overstate the degree that representatives exclusively promote their constituents' interests. If Alberta's representatives always narrowly promoted Alberta's interests, and Ontario's representatives always narrowly promoted Ontario's interests, and so on, governments would find it extremely difficult, if not impossible, to command the support needed to govern.<sup>251</sup> Various features of representative democracy ensure representatives take a broader view of governance. For instance, the existence of political parties ensures that those who govern represent, in addition to their specific constituencies, a broad spectrum of different regional, ethno-cultural, national, and ideological interests. Prime Ministers normally appoint representatives from most Canadian regions into cabinet to reflect Canada's regional diversity. Opposition parties, too, promote the interests of constituencies where they lack representation because they realize that to form the government they need to win additional seats. Similarly, parties who run candidates in AEDs need to promote Aboriginal interests in their platforms to garner support in those ridings. Moreover, we should not underestimate the chance that one or more parties will sympathize with

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<sup>250</sup> Henderson, "Empowering Treaty Federalism," 322.

<sup>251</sup> It might even make the possibility of forming a government impossible. After all, even choosing a Prime Minister privileges one region over all the others.

Aboriginal aspirations, even sharing their frustration that most Canadians do not feel the same. Even Aboriginal representatives who sit as independents or form their own parties can vote *en bloc* to try to persuade governments to consider their interests.<sup>252</sup> Voting *en bloc* could prove particularly effective when the issue concerns many Aboriginal peoples or in a minority government situation – a situation made more likely with the introduction of AEDs. Modifying the electoral system can also encourage non-Aboriginal representatives to compete for Aboriginal support. Fleras, for instance, suggests that it might prove helpful to give Aboriginal voters the right to vote in both Aboriginal and traditional electoral districts, though he realizes that Canadians would probably reject such a proposal.<sup>253</sup> Even without overhauling the current electoral system, it is clear that traditional representatives take a wider view of governance than simply promoting the interests of those who directly vote for them. Yet, without introducing AEDs these benefits will not occur as the vast majority of traditional representatives can afford to ignore the interests of the relatively small Aboriginal population within each riding. By introducing AEDs, and concentrating Aboriginal peoples into a proportional number of guaranteed seats, Aboriginal peoples would collectively control seats within important legislative institutions, making Aboriginal interests more difficult to ignore for non-Aboriginal representatives and mainstream political parties.

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<sup>252</sup> Murphy, “Representing Indigenous Self-determination,” 210.

<sup>253</sup> New Zealand’s transition to the Mixed Member Proportional system (MMP) represents a more plausible example of the type of change that would likely encourage non-Aboriginal representatives to pursue Aboriginal votes. For discussions of the positive effect MMP has had on electing more Māori representatives and promoting Māori interests at all levels within Parliament see, Sullivan, “Effecting Change Through Electoral Politics,” 228-236; Iorns, “Dedicated Parliamentary Seats,” n30-n33; and, New Zealand Parliament, *The Origins of the Maori Seats*.

To conclude, while AEDs promise to increase Aboriginal participation, I believe that it is also important to tame our expectations of AEDs not only by looking at them through the lens of representative democracy's limits, but also by understanding the need for broader reforms. As Fleras states, "AEDs are but one component in a comprehensive overhaul of Aboriginal-government relations. Introducing AEDs without comparable initiatives along a wide political, economic and social front may be interpreted as little more than a public relations exercise devoid of relevance to [Aboriginal peoples]."<sup>254</sup> It is important to find other ways of helping Aboriginal peoples feel comfortable participating in Canadian institutions so that they can take back some measure of control over their futures. The next two reforms, co-management and indigenization, are suggested in this light.

#### Reform #2: Co-management

Co-management complements AEDs, particularly in Aboriginal communities that flatly refuse to participate in central legislatures or feel central legislatures cannot appropriately deal with their more specific and localized concerns. In 1975, the James Bay and Northern Québec Agreement (JBNQA) between the Cree, the Inuit, the Government of Canada, and the Government of Québec established the first of many co-management agreements across Canada that aimed to include Aboriginal peoples alongside the state in joint decision-making.<sup>255</sup> Co-management exists predominantly in remote and northern parts of Canada and typically deals with resource and land

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<sup>254</sup> Fleras, "Aboriginal Electoral Districts for Canada," 93-94.

<sup>255</sup> For an exceptional survey of the history, see Claudia Notzke, "A New Perspective in Aboriginal Natural Resource Management: Co-Management," *Geoforum* 26, no. 2 (1995): 187-209.



management issues. Beyond these two characteristics, it becomes more difficult to generalize. This section starts with an examination of the various types of co-management agreements that exist. In particular, I study how and why co-management arrangements have been utilized to facilitate Aboriginal participation alongside the state. By studying these factors and keeping in mind the importance of symbolism and Aboriginal interests in building solidarity and trust, I suggest co-management complements other Aboriginal avenues for self-determination such as AEDs and self-government. Examples are included whenever possible though every case's specific context goes beyond what this section can reasonably cover. Overall, I argue that co-management can encourage meaningful Aboriginal participation in ways that acknowledge jurisdictional overlap and which strike a balance between Aboriginal and non-Aboriginal interests.

Scholars use several typologies to describe and analyze co-management arrangements and the reasons for their implementation. Notzke identifies five reasons relating to comprehensive land claim settlements, crisis resolution, court decisions, national parks, and industrial development.<sup>256</sup> Each of these classifications highlight different aspects and issues needing attention, though in practice they often interrelate – e.g., issues involving national parks or land claims might lead to crises or involve court decisions. The last two describe how co-management applies to specific issues affecting Aboriginal peoples and their traditional areas. The first three categories, on the other hand, go beyond this in seeking to explain the positive effect co-management can have in addressing the overarching issue discussed in this thesis. That is, they

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<sup>256</sup> Ibid., 191-206.

speak to the broader relationship between Aboriginal and non-Aboriginal peoples, defining how we should interact at a much more general level. I do not mean to say that co-management of a certain development or park cannot offer positive and creative solutions. I do mean to say that it struggles to define governance of issues that quickly emerge beyond the scope of such agreements. Therefore, the former three categories become a much more meaningful focus herein.

As an example of a comprehensive land claim involving co-management, the 1998 Nisga'a Final Agreement between the Nisga'a, federal, and provincial governments established a Joint Fisheries Management Committee that ensures Nisga'a participation in managing the area's fish and wildlife.<sup>257</sup> Resolving crises typically involves land claims or concerns over wildlife populations. Co-management can reduce tension in such situations, often acting as an interim measure until self-government or other measures are in place.<sup>258</sup> A case involving the Algonquin and the Government of Ontario highlights this aspect. During the difficult process of resolving land claims both sides felt it necessary to establish hunting agreements that protect everyone's interests regarding moose and deer populations.<sup>259</sup> Court decisions stress a broader need for co-management to resolve jurisdictional overlap in areas "not [necessarily] contingent upon a particular resource or event, but ... prompted by a fundamental rethinking of rights and relationships."<sup>260</sup> Some feel the courts pressured

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<sup>257</sup> Canada, British Columbia, Nisga'a, *Nisga'a Final Agreement* (Victoria, British Columbia: Government of Canada, 1998), ch. 8, ch. 9.

<sup>258</sup> Notzke, "A New Perspective"; and, Tony Penikett, *Reconciliation: First Nations Treaty Making in British Columbia* (Vancouver, British Columbia: Douglas & McIntyre, 2006), ch. 9.

<sup>259</sup> Ontario and the Algonquin Nation Negotiation Interim Directorate, *Algonquin Hunting Agreement 2000-2001* (Toronto: Ontario Native Affairs Secretariat, 2000).

<sup>260</sup> Notzke, "A New Perspective," 207.

the Government of British Columbia to overturn its long-established policy against negotiating land claim agreements.<sup>261</sup> As a result, British Columbia's government uses co-management as both an interim measure until treaties are ratified and to deal with overlapping resource claims.

Co-management also varies in terms of Aboriginal participation and influence. Informed by Arnstein's 1969 article "A ladder of citizen participation," students of co-management typically discuss various levels of integrating Aboriginal participation and influence with the state.<sup>262</sup> Berkes, for instance, outlines seven levels of participation (from lowest to highest): informing, consultation, cooperation, communication, advisory committees, management boards, and partnership.<sup>263</sup> Starting at one end of the scale, government simply informs local Aboriginal communities of rules, regulations, and changes resulting from state-level decisions. Consultation occurs when the state approaches Aboriginal peoples for input on policy, though it can easily be ignored. Examples of cooperation include Aboriginal peoples and the state working together on local research projects or the development of conservation materials for public use. Communication represents the first step in which Aboriginal concerns and perspectives are seriously considered, though ultimate decision-making still rests with the state.<sup>264</sup>

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<sup>261</sup> Ibid.

<sup>262</sup> Sherry Arnstein, "A ladder of citizen participation," *American Institute of Planning Journal* 35 (1969): 216-224.

<sup>263</sup> Fikret Berkes, "Co-management: Bridging the Two Solitudes," *Northern Perspectives* 22, no. 2-3 (1994): 19. Berkes also uses the highest level to describe community control, which in essence means local (Aboriginal) self-government.

<sup>264</sup> Fikret Berkes, Peter George, and Richard Preston, "Co-management: The Evolution of the Theory and Practice of Joint Administration of Living Resources," *Alternatives* 18, no. 2 (1991): 12-18.

Several scholars correctly feel that these first four levels inadequately include Aboriginal peoples in decision-making processes to address fundamental issues plaguing Aboriginal/non-Aboriginal relations. Arnstein classifies them as “manipulative,” “non-participatory,” and “degrees of tokenism.”<sup>265</sup> Roberts makes similar comments, arguing that the first four levels perpetuate conventional approaches to Aboriginal-state relations, thus further reducing the ability of Aboriginal peoples to influence decisions affecting them. As a result, she feels that only the highest three levels can effectively include Aboriginal peoples in shared decision-making, and thus be considered co-management.<sup>266</sup> Tony Penikett, a former Yukon Premier and former deputy minister for negotiation in British Columbia, also dismisses these lower levels of co-management, supporting instead what he calls “co-jurisdiction,” where all sides create “nation-to-nation protocols and institutions founded on government recognition of Aboriginal title, rather than its extinguishment.”<sup>267</sup>

Arnstein, Roberts, and Penikett all support higher levels of Aboriginal participation in co-management. Advisory committees and co-management boards, the fifth and sixth levels, both see Aboriginal and state representatives developing policy together, though co-management board decisions are more likely to be binding. Finally, full partnership describes situations where both sides have equal influence in shared decision-making institutions. Supporting the higher levels, the Inuit Tapirisat of Canada defines co-management as “the blending of [Inuit and state-level] systems of

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<sup>265</sup> Arnstein, “A ladder of citizen participation,” 217.

<sup>266</sup> Karen Roberts, *Co-management: Learning from the Experience of the Wildlife Management Advisory Council for the Northwest Territories* (Calgary, Alberta: University of Calgary, 1994).

<sup>267</sup> Penikett, *Reconciliation*, 216.

management in such a way that the advantages of both are optimized, and the domination of one over the other is avoided.”<sup>268</sup>

Co-management can encourage meaningful Aboriginal participation in ways that acknowledge jurisdictional overlap only if Aboriginal peoples can successfully promote their values and interests. In such cases, co-management acts independently of Aboriginal and Canadian orders of government, though they remain constitutionally protected “institutions of public government.”<sup>269</sup> Aboriginal and non-Aboriginal governments independently appoint board members who work to resolve overlapping issues, managing shared jurisdictions as equal partners.<sup>270</sup> These factors allow co-management boards to focus on mutual interests while at the same time protecting Aboriginal interests from being marginalized or ignored. They also complement some of the weaknesses of guaranteed Aboriginal representation. For starters, co-management boards better reflect Aboriginal diversity. Unlike AEDs that typically combine Aboriginal communities of interest, co-management can better address the unique interests of individual Aboriginal communities. As previously discussed, Aboriginal electoral ridings will generally be quite large, covering dozens of different Aboriginal communities. Co-management, on the other hand, typically involves less than a few Aboriginal communities and often only one Aboriginal nation. Co-management agreements go into detail on specific issues affecting specific Aboriginal

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<sup>268</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples*, vol. 2.

<sup>269</sup> Graham White, “Treaty Federalism in Northern Canada: Aboriginal-Government Land Claims Boards,” *Publius: The Journal of Federalism* 32, no. 3 (2002): 97-98.

<sup>270</sup> Notzke, “A New Perspective,” 188; and, White, “And Now For Something Completely Northern,” 90-93.

communities, whereas Aboriginal representatives would have limited time or energy to pursue such a focus on a regular basis.

Second, unlike the experiences of Aboriginal representatives within many central institutions, co-management's emphasis on the importance of consensus is of great symbolic and practical value for many Aboriginal peoples. Consensus serves Aboriginal interests by giving them a real opportunity to voice their concerns on issues affecting them and their communities. Though some may feel that because ministers can technically override co-management decisions the entire aim of the project is undermined, in practice ministers only do so on very rare occasions.<sup>271</sup> More importantly, the idea of an override should not trouble us if it is used sparingly and Aboriginal peoples can challenge ministerial decisions through avenues such as the courts or other conflict resolution procedures.<sup>272</sup> These avenues become equally necessary when Canadian governments choose to circumvent or ignore co-management decisions. Promoting relationships where no side constantly dominates the other, as discussed in Chapter Two, requires checks and balances so all parties influence joint decisions. A significant check used in Canada's territories is the "negative option" ministers have in dealing with co-management decisions:

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<sup>271</sup> White, "Treaty Federalism in Northern Canada," 100; White, "And Now For Something Completely Northern," 92; and, David C. Natcher, Susan Davis, and Clifford G Hickey, "Co-Management: Managing Relationships, Not Resources," *Human Organization* 64, no. 3 (2005): 241-242;

<sup>272</sup> To avoid lengthy court battles, the Grand Council of the Crees and the Government of Canada are working on dispute resolution processes under the JBNQA. The final draft of the agreement promotes mediation and arbitration that commences with time lines that are much quicker than the courts. For more details on the rules and regulations see, Canada and the Grand Council of the Crees (Eeyou Istchee), *Agreement Concerning a New Relationship Between the Government of Canada and the Cree of Eeyou Istchee, Final Draft*, <<http://www.gcc.ca/pdf/LEG000000018.pdf>> (Accessed 7 March 2008), ch. 9.

Unless [ministers] formally overturn board decisions within a specified time period, the decision stands. This effectively reverses the political onus: rather than the boards expending political capital to convince government to accept their decisions, government faces political difficulty should it wish to veto a board recommendation. And indeed, fewer than a handful of important board decisions have been overturned.<sup>273</sup>

Overall, scholars who study a range of co-management agreements feel that they can significantly improve Aboriginal influence over shared jurisdictions.<sup>274</sup> Though an Aboriginal veto rarely exists, co-management still gives them considerable, if not equal, influence in local affairs that complements the function of AEDs.

Co-management also addresses many of self-government's deficiencies discussed in earlier chapters because it reflects interdependence and the complex relationship Aboriginal peoples have with non-Aboriginal Canadians. First, co-management better addresses the limited capacity of Aboriginal communities. Although self-government agreements also typically involve federal assistance, co-management agreements often require federal, provincial, and territorial governments to implement and enforce board decisions, thus alleviating Aboriginal peoples from expending considerable energy in these areas.<sup>275</sup> Co-management frees up limited Aboriginal resources to pursue other avenues that promote self-determination. Second, co-management may be of assistance in resolving disputes such as the one raised by Ladner around the traditional Mi'kmaq fishery and discussed at greater length in the first chapter. If the Mi'kmaq and non-Aboriginal communities both continue to seek

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<sup>273</sup> White, "And Now For Something Completely Northern," 92. See, also, White, "Treaty Federalism in Northern Canada," 108-110.

<sup>274</sup> For many good examples, see Notzke, "A New Perspective," 187-209; and, White, "Treaty Federalism in Northern Canada," 89-114.

<sup>275</sup> White, "Treaty Federalism in Northern Canada," 89-114.

exclusive jurisdiction over the salmon fishery boats will continue to burn and fish stocks may dwindle as each side assumes the worst of the other. Co-management of the fishery between the Haida Gwaii and non-Aboriginal communities on the Queen Charlotte Islands seems to have taken precisely this more constructive route. As Richardson and Green state:

Our relationship to the resources of Haida Gwaii cannot be managed by governments of another culture, with a different set of values. This is perhaps the most important reason for co-management—to provide a means for different cultures with conflicting values to share in a resource. Management of fisheries resources by one culture results in the almost complete loss of the ability of the resources to provide for the values of another culture.<sup>276</sup>

Richardson and Green acknowledge our interdependence and the need for, and strong benefits of, working together and respecting one another.

Finally, it seems more likely that non-Aboriginal Canadians would accept co-management than self-government, particularly in urban areas where Aboriginal self-government as autonomy is simply out of the question. Whereas Aboriginal self-government works to create a space that excludes non-Aboriginal Canadians, co-management aims to reconcile Aboriginal and non-Aboriginal interests where mutual exclusion cannot easily occur. These last two reasons in particular highlight how we can extend co-management to urban areas where interdependence is unavoidable. In urban areas, education and health care issues tend to be more salient than wildlife and land management issues. Urban co-management arrangements could secure Aboriginal

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<sup>276</sup> Miles Richardson and Bill Green, “The Fisheries Co-management Initiative in Haida Gwaii,” in *Co-Operative Management of Local Fisheries*, ed. Evelyn Pinkerton (Vancouver, British Columbia: UBC Press, 1989), 259. Penikett reinforces this view in a more recent book (*Reconciliation*, 272 recommendation no. 6 and 10), though he shows that when British Columbia’s governing party changed in 2001 the relationship soured somewhat (*Reconciliation*, 212-217).



involvement on local government boards, health boards, and education boards. To take it even further, it seems reasonable that Aboriginal peoples would also have a say on many local government committees that report to these governing bodies. Co-management encourages all levels of government to judge the success of their decisions by the extent to which both sides can effectively participate and see their interests integrated and respected.<sup>277</sup> Moreover, when Aboriginal and non-Aboriginal peoples make decisions collectively, it seems only logical that they would support them collectively.

Though co-management faces many of the same challenges as self-government in terms of obtaining non-Aboriginal political and financial support, and bridging the gap in understanding between Aboriginal and non-Aboriginal peoples, it seems more likely to receive serious support in situations of complex interdependence. Non-Aboriginal Canadians will generally find co-management more agreeable than self-government because co-management tends to place greater emphasis on common goals and shared authority. It provides another avenue (supplementing or substituting AEDs) to discuss significant concerns instead of rejecting cooperation and seeking unrealistic degrees of autonomy.

Yet, because it is local in scope, co-management seems incapable of resolving large-scale conflict. Co-management cannot replace the need for some form of Aboriginal representation in central institutions that determine policy on national issues including immigration, health care, the environment, and broader economic policy. This does not mean that the two levels do not interrelate. We should not underestimate

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<sup>277</sup> Notzke, "A New Perspective," 188

the possibility that positive developments at the local level might lead to greater participation at other levels as feelings of trust and solidarity slowly build. Overall, co-management can mitigate the state's influence in Aboriginal affairs and promote more positive, balanced relationships between Aboriginal and non-Aboriginal peoples. It therefore represents a positive step away from a past where progress by one group entailed resistance by another. Given its relatively short history only time and the imaginations of leaders on all sides will tell how far co-management can go to restore a measure of self-determination for Aboriginal peoples both on- and off-reserve, and in both rural and urban areas.

### Reform #3: Indigenizing Shared Institutions

Some argue that participating in shared institutions still legitimizes colonial styles of governance. Many Aboriginal people feel Aboriginal representatives are “sell-outs” who work against the wishes and interests of their people.<sup>278</sup> As the following examples show, indigenization beyond simply establishing AEDs or co-management boards may help such Aboriginal people positively identify with shared institutions. Indigenization is largely about making changes so that Aboriginal peoples see their traditions, values, and cultures represented and respected within publicly shared institutions. Indigenization helps many of those with strong Aboriginal identities feel more comfortable within shared institutions.<sup>279</sup> Indigenization can take many forms.

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<sup>278</sup> Caillou, “Urban Indians,” 235.

<sup>279</sup> Hunter, “Exploring the Issues,” 30; and, Alfred et al., “The Meaning of Participation for Indigenous Youth,” iii-iv, 19. They argue that unless we indigenize Canadian institutions Aboriginal peoples will continue to see participation in shared institutions as incompatible with their Aboriginal identities.

Instead of theorizing about the full range of possibilities, I draw on three particular examples – from Canada’s territories, New Zealand, and British Columbia – that highlight its potential for encouraging Aboriginal participation.

In studying Canada’s territories, Graham White suggests our parliamentary system is perhaps more flexible than many believe. He shows particular interest in how the Northwest Territories and Nunavut promote consensus government alongside the Westminster model in what he calls “a non-partisan Westminster cabinet-parliamentary regime.”<sup>280</sup> Although the lack of political parties represents a significant difference that many Canadians likely would resist, it promotes key aspects of Aboriginal governance while simultaneously preserving most characteristics of the Westminster model. White believes the ability to hybridize our shared institutions is an important factor in explaining the high levels of Aboriginal participation in shared territorial institutions. For instance, he suggests Inuit participation in Nunavut’s institutions does not stem solely from their numerical dominance, but also from “a government operating according to Inuit norms and culture.”<sup>281</sup> How we can replicate lessons from Canada’s Arctic elsewhere in the country remains an open question. Blattberg, for instance, suggests at the end of a largely theoretical work that improving inter-communal trust could be facilitated by something as simple as changing the layout of Canadian legislatures from two parallel sides to a circular arrangement.<sup>282</sup> Benefits might also come from modifying the decoration typically found in shared

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<sup>280</sup> White, “And Now For Something Completely Northern,” 83-86; and, Graham White, “Westminster in the Arctic: The Adaptation of British Parliamentarism in the Northwest Territories,” *Canadian Journal of Political Science* 24, no. 3 (1991): 499-523.

<sup>281</sup> White, “And Now For Something Completely Northern,” 93.

<sup>282</sup> Blattberg, *Shall We Dance?*, 130-134.

institutions, or creating a special question period dedicated to Aboriginal issues. At minimum, White's research shows that effective symbolic reform need not entail radical institutional transformation.

In New Zealand, the past decade has seen Members of Parliament regularly promote the use of Māori language, the incorporation of traditional cultural customs and protocols (*tikanga*) in legal and political forums, and the performance of traditional songs (*waiata*) during debates. As an example of the latter, on August 22, 2006, Māori MP Pita Paraone sang a traditional song to mourn the recent loss of the Māori Queen.<sup>283</sup> Members of Parliament also express themselves through *waiata* when celebrating Māori achievements. For instance, just before the *Ngāti Mutunga Claims Settlement Bill (2006)* passed final reading, Māori minister Mahara Okeroa sang a *waiata* that suggested the Bill helped overcome past injustices and illustrated the need for Māori and non-Māori peoples to work together.<sup>284</sup> Another interesting development is the ability of Māori members of the public to ask questions of Parliament from the public gallery. These reforms signal to the Māori that participation in shared institutions can coexist with, and even reinforce, their national identity.<sup>285</sup>

Similar efforts in Canada also go a long way in this regard. In 2000, Aboriginal leaders informed the government of the offensive nature of four murals found in the Legislative Assembly of British Columbia's prominent lower rotunda. The letter stated that "these paintings of bare-breasted Aboriginal women and of Aboriginal people in

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<sup>283</sup> New Zealand, Parliament, "Obituaries," 48<sup>th</sup> Parliament, 1<sup>st</sup> Session, vol. 633, week 23 (2006), 4740-4741.

<sup>284</sup> New Zealand, Parliament, "Ngāti Mutunga Claims Settlement Bill," 48<sup>th</sup> Parliament, 1<sup>st</sup> Session, vol. 635, week 31 (2006), 6534-6536.

<sup>285</sup> Sullivan, "Effecting Change Through Electoral Politics," 232.

subservient positions are... highly offensive, demeaning and degrading to First Nations people in the province.”<sup>286</sup> In response, the Speaker appointed a five-person independent panel to examine the issue. The panel recommended the removal and relocation of the murals.<sup>287</sup> In April 2007, the Legislature passed a motion supporting the report’s recommendation. Legislative debate and Aboriginal responses highlight the moment’s symbolic importance. Considering the psychological barrier posed by the murals, the Premier stated that

if literally tens of thousands of British Columbians feel insulted and hurt by the depictions [we must remove them].... We want this place to be inclusive. We want First Nations to be comfortable. We want young First Nations kids who walk into that rotunda to say to themselves: ‘Some day that could be my place. Some day I could sit in that chamber. I am not someone who is apart.’<sup>288</sup>

Representatives from both political parties echoed the premier’s view. One opposition member even linked the present lack of Aboriginal Members of the Legislative Assembly to the symbolic barriers present throughout the current system of governance.<sup>289</sup> He suggested that the presence of offensive symbols within the legislature represents a significant psychological barrier that likely plays a part in explaining the lack of Aboriginal representatives among its seventy-nine members.

Members of both parties clearly recognized the need for Aboriginal peoples to feel that the legislature reflects their values and interests in a way that conveys a sense of self-respect. Provincial Aboriginal leaders welcomed the decision, stating that it

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<sup>286</sup> Legislative Assembly of British Columbia, *A Review of the Depicting of Aboriginal Peoples in the Artworks of the Parliament Buildings: Report of the Speaker’s Advisory Panel* (Victoria, British Columbia: 2001), 7.

<sup>287</sup> Ibid.

<sup>288</sup> British Columbia, Legislative Assembly, “Referral of report on Legislature artwork depicting first nations people,” 7107-7108.

<sup>289</sup> Ibid., 7118-7119.

represented a positive step towards resolving their issues within shared institutions and with non-Aboriginal Canadians.<sup>290</sup> One can well imagine that until now many Aboriginal peoples considered Aboriginal representatives as “sell-outs” for walking past those murals to assume their seats. Indigenizing shared institutions by removing cultural barriers and positively promoting Aboriginal cultures gives Aboriginal peoples signs of goodwill that instill a sense of belonging within shared institutions and that make them feel that their direct participation in public institutions and public life is valued. Ultimately, indigenization can help build inter-communal trust and lessen Aboriginal feelings of alienation.

### Conclusion

Aboriginal electoral districts, indigenization, and co-management offer three avenues for improving Aboriginal/non-Aboriginal relations given complex interdependence and the resulting need for both sides to participate in decisions that affect them. AEDs secure a place for Aboriginal peoples in state institutions that can have a substantial impact on the lives of Aboriginal peoples from all nations living in all parts of Canada. Yet, they do not give Aboriginal peoples a veto. They will nevertheless sometimes be able to deliver important results. As shown by the example of Elijah Harper playing a key role in stopping the Meech Lake Accord, a single Aboriginal representative can have a significant impact. At other times, Aboriginal representatives may find

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<sup>290</sup> According to Steven Point, speaking as the newly appointed Aboriginal Lieutenant Governor, “reconciliation isn’t just something that’s just going to take place in courtrooms, I hope, and certainly not going to take place in negotiating rooms, but rather in the broader community, amongst all British Columbians.” Quote found at “BC Hides Murals of Topless Women.” *CNews* (01 October 2007), <<http://cnews.canoe.ca/CNEWS/Canada/2007/10/01/4541537-cp.html>> (Accessed 14 February 2008).

themselves outvoted and ignored. Indigenization also restores a measure of balance to public institutions by giving Aboriginal traditions and values a place alongside those currently promoted and practiced within shared institutions. Addressing symbolic concerns is important if we want more Aboriginal peoples to feel comfortable in institutions that once sought to extinguish their inherent rights. Indigenization tells Aboriginal peoples that, like non-Aboriginal Canadians, they do not have to check their national identity at the door when entering shared institutions or speaking to matters that affect their community or all Canadians. Instead, it promotes the inclusion of their languages, cultures, traditions and values alongside those of non-Aboriginal peoples when performing these important public functions.

Co-management also promotes a balance between Aboriginal and non-Aboriginal values and interests. In many instances, it helps to resolve situations where both sides simply ignore each other or, worse, actively destroy the other's ability to use shared resources to meet their cultural or economic needs. The ability to bring both sides together to move beyond simply self-interest is precisely why Richardson and Green support co-management of the west coast fishery. However, as in the case of AEDs, Aboriginal peoples, and non-Aboriginal Canadians, should not expect an ironclad guarantee that their interests will prevail in every case – something that makes achieving solidarity and trust more difficult for one side or the other. The idea of a minister being able to override co-management decisions can actually be healthy if mechanisms exist for Aboriginal peoples to challenge such decisions. Without checks and balances, co-management would struggle for legitimacy as both sides choose to use their energy in ways that are more confrontational.

All three reforms present us with complementary ways of encouraging Aboriginal participation in shared institutions alongside non-Aboriginal Canadians by addressing their symbolic concerns and acknowledging their interests. They are not likely to achieve a perfect balance between Aboriginal and non-Aboriginal interests, nor do they exhaust the possible avenues Aboriginal peoples can use to achieve self-determination and positively influence their individual and collective futures. These reforms nevertheless promote a more just balance of power and, if implemented sincerely, can show goodwill towards Aboriginal peoples that can build solidarity and trust. In this way, we might at last overcome feelings of alienation in many Aboriginal communities and might even see a sense of solidarity emerge.



## Conclusion

Our unavoidable interdependence and the profound sense of alienation and mistrust many Aboriginal peoples feel towards Canadian institutions represent significant factors that we must consider as we work towards establishing a post-colonial order. Our unavoidable interdependence ensures that for most, if not all, Aboriginal peoples self-determination simply understood as autonomy has serious limits. Though Kymlicka primarily discusses and recommends autonomy in situations where multiple nations coexist within a single state, Aboriginal nations face significant empirical challenges related to small community size, diverse backgrounds, and geographic dispersion that undermine their ability to govern autonomously of the Canadian state. Thus, to exercise self-determination on par with other nations, Aboriginal peoples *must* participate in shared institutions that fundamentally and invariably affect their lives and the future of their communities.

This reality challenges Aboriginal peoples' feelings on the subject. The profound sense of alienation and mistrust many Aboriginal peoples feel towards the state makes participation difficult from their perspective. I have cited many reasons for this resistance towards participation. Past behaviour within Canadian institutions has led many Aboriginal peoples to feel that our shared institutions symbolize their marginalization and oppression. Canadian history is full of examples where non-Aboriginal people made important decisions without consulting Aboriginal peoples, often promoting assimilationist policies aimed at destroying Aboriginal cultures and extinguishing Aboriginal rights. Even today with the right to vote and special status

under the constitution, Aboriginal peoples find it difficult to influence and inform debate within our shared institutions. Shared institutions thus cater to the non-Aboriginal majority and do little to promote Aboriginal interests. Other Aboriginal peoples simply do not feel that they belong in Canadian institutions, feeling that participation in those institutions conflicts with their strongly held Aboriginal identities. Yet, despite these views, decisions made in Canadian institutions affect all Aboriginal peoples to some degree.

These aspects of Canadian Aboriginal/non-Aboriginal relations help define the fundamental question I have tackled in this thesis: how do we empower Aboriginal peoples within shared institutions and encourage them to see participation in shared institutions as positive for their communities and expressive of their desire to self-determine given that our futures are intimately connected? My answer to this question suggests that increasing Aboriginal participation and effectiveness in shared institutions requires a theory of citizenship that does not demand that Aboriginal peoples adopt a shared identity or simply participate without sharing anything with non-Aboriginal Canadians. Instead, we must encourage all Canadians to share a sense of identification with shared institutions that makes participation feel more natural and expressive particularly for marginalized minorities such as Aboriginal peoples. This might be accomplished in a variety of ways. For example, I have suggested that incorporating Aboriginal cultures into the daily events of shared institutions helps in this regard. In addition, the introduction of AEDs allows Aboriginal peoples to see themselves as represented within shared institutions even if they do not agree with its decisions or the views of non-Aboriginal representatives. Through such initiatives, it might even be

possible to reverse the sense of alienation and mistrust many Aboriginal people feel towards shared institutions should we promote reforms that lead to increased Aboriginal participation rates *and* real results for Aboriginal peoples. In other words, we require changes that Aboriginal peoples can accept and that allow them to affect shared decision-making to the extent that shared institutions affect them and their communities. I believe the reforms discussed in Chapter Three – AEDs, co-management, and indigenizing shared institutions – represent possible change in this direction.

Reforms such as those discussed in Chapter Three seek to bridge the psychological divide between Aboriginal peoples, non-Aboriginal Canadians, and shared institutions in two fundamental ways. First, the reforms speak to the need to affirm and recognize Aboriginal difference within public life. Symbolic reforms in particular fall under this category. Indigenizing shared institutions, for instance, sends a strong message to Aboriginal peoples that they are accepted for who they are and that their cultures and perspectives rightfully coexist alongside those of the majority. Second, symbolic reforms allow Aboriginal peoples to participate effectively in shared institutions, avoiding changes that are merely tokenistic. Both Aboriginal Electoral Districts and co-management arrangements give Aboriginal peoples some measure of control over decisions that affect them, and thus offer the possibility of encouraging Aboriginal participation, lessening mistrust, and possibly even building solidarity. They can bring greater balance to decision-making if introduced with the right intent and with strong consideration for the sentiments of Aboriginal peoples.

Even with the aforementioned reforms, participation in shared Canadian institutions still has significant risks, limits, and challenges. Non-Aboriginal dominance in shared legislatures might still drown out Aboriginal voices, although introducing guaranteed Aboriginal representatives should make this more difficult. Ministers can still override the decisions made by even the most consensual of co-management boards. This might lead to lengthy legal battles that could undermine efforts to foster positive relationships – relationships that such boards must seek to establish. AEDs and indigenization also struggle to represent Aboriginal diversity in an effective way, with some arguing that such initiatives have a strong homogenizing effect on many national communities. This limit seems difficult to overcome, and in the case of AEDs I have suggested that we cannot expect representatives to mirror the full diversity of their constituents. Nevertheless, I have shown why I feel that AEDs can pressure Aboriginal representatives, political parties, and Canadian institutions to respond to diverse Aboriginal interests and identities. As regards indigenization in shared public institutions, we must eradicate those symbols of our colonial history that Aboriginal peoples find offensive or alienating. We must also work toward making our shared institutions places where Aboriginal languages and cultures are accepted and reflected. These types of reforms will not always be easy but we must pursue them if we wish to empower Aboriginal peoples so that they can tackle the many challenges they face.

Finally, the most significant challenge seems to be the significant time and energy needed to pursue Aboriginal self-determination through participating in shared institutions. Aboriginal peoples rightfully seek greater self-government and control

over their own local affairs and priorities. To pursue many political initiatives at once places a great deal of strain on the limited capacity that exists in most Aboriginal communities. Yet, despite these significant risks and limitations, I feel that the reforms proposed in this thesis can contribute to improved relations among Aboriginal and non-Aboriginal peoples in Canada. They can do so by making our political institutions more inclusive and by affording Aboriginal peoples the means to participate more effectively in all decisions that affect them and their communities. It is of course up to Aboriginal peoples themselves to judge whether the risk of such participation is too great, or the cost too high. However, I feel that my proposals promise to decrease the costs to Aboriginal peoples of participating in shared institutions, while increasing the impact of their involvement. For these reasons, my proposed reforms promise to move us closer to relationships founded upon balanced decision-making and equality.

Overall, we must be careful to ensure that we promote the symbolic and practical benefits as much as possible while avoiding anything that sustains or deepens Aboriginal feelings of alienation and mistrust. While Cairns speaks to the important benefits of recognizing Aboriginal difference and addressing our colonial past, his insistence on a shared identity risks pushing away the very people his theory aims to include. Aboriginal peoples rightly approach new ideas with a great deal of scepticism given the historical reality. There is thus no guarantee that the reforms I have recommended will work for all Aboriginal individuals or communities. Many may continue to seek only autonomy, knowing its serious limits and tacitly allowing Canadian governments to continue to make decisions affecting their peoples without their direct involvement. Yet, such a sacrifice should be unnecessary and appears to be

avoidable. From indigenizing shared institutions to guaranteeing Aboriginal peoples a voice in Canadian legislatures and at co-management tables, solutions exist that can address our interdependence and respect the strongly (and sometimes exclusively) held Aboriginal identities of many Aboriginal peoples. Finding a balance between, on the one hand, reforming Canadian institutions and, on the other hand, encouraging Aboriginal participation and feelings of solidarity is not easy. My hope is that I have shown that this is not impossible to achieve.

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