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Relational Self-Determination and Federal Reform

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Cet essai examine l'adaptation de la géométrie fédérale canadienne aux revendications d'autodétermination des Autochtones, dont la population se diversifie sur le plan sociodémographique et dont les relations avec les non-Autochtones et les gouvernements sont de plus en plus complexes. Il plaide une compréhension relationnelle de l'autodétermination qui intègre les dimensions autonomes, partagées et intergouvernementales du fédéralisme canadien. Ce modèle de réforme convient à la fois à l'autonomie des Autochtones et à leur interdépendance avec les sociétés et gouvernements non-autochtones; il correspond ainsi à l'expérience réelle des populations campagnardes, urbaines et dispersées. Cet essai en vient à la conclusion que ce processus continu de réforme fédérale a peu de chances d'atteindre son but sans un effort sérieux et soutenu pour cultiver un environnement politique où les peuples autochtones ne sont plus traités comme des acteurs passifs de l'établissement des politiques et de la création d'institution mais bien comme des partenaires égaux.

INTRODUCTION

In 1881 a delegation of Nisga'a journeyed from British Columbia to Ottawa to inform Prime Minister John A. Macdonald of their increasing dissatisfaction with government encroachment on their reserve lands and on their internal affairs. This journey would prove to be an important turning point for the Nisga'a, though not because of the success of this initial venture, for indeed they were not successful. Macdonald, like so many who succeeded him as prime minister, was convinced that Aboriginal peoples such as the Nisga'a would eventually disappear, assimilating into Canadian society, and that it was the duty of government to hasten rather than unduly prolong this process. But the Nisga'a did not disappear. On the contrary, their foray to Ottawa signalled the beginning of a more aggressive Nisga'a campaign in favour of treaties, a secure and expanded land base, and the restoration of their powers of self-government (McKee 2000, 23–6). In 1998, after more than a century of struggle, these efforts finally bore fruit when representatives of the Nisga'a Nation, Canada, and British Columbia placed their signatures on the *Nisga'a Final Agreement*, a constitutionally protected land and self-government agreement and British Columbia's first modern treaty (Canada 1998a). In 2000 the agreement became law, signalling a turn in the federation that would have been inconceivable in Sir John's time. Along the way, the Nisga'a campaign helped inspire a new era of Aboriginal activism, not only in British Columbia but across Canada. Their persistence also led to broader changes in the federation, including a fundamental reorientation of the Supreme Court of Canada's jurisprudence on Aboriginal rights and a corresponding reorientation of federal Indian policy that helped usher in a new era of negotiating Aboriginal claims to land and self-government (Asch 1999). Closer to home, the Government of British Columbia was encouraged to join with representatives of the province's First Nations and the federal government to create, in 1993, the British Columbia Treaty Process, thereby abandoning its traditional stance of denying the existence of Aboriginal or treaty rights in the province.

These achievements bear testament to the vision and determination of the Nisga'a and to the courage of those in government and the judiciary who were willing to follow them along a new and more promising direction in Aboriginal-state relations. Yet it is important not to exaggerate either the significance of these transformations or the ease with which they were achieved. We should first of all remember that federal and provincial governments were not enthusiastic arrivals at the negotiating table. They were moved less by principled conviction than by a grudging recognition of the uncertain legal and economic climate created by the judicial shift on questions of Aboriginal title and unextinguished Aboriginal rights. Moreover, once they arrived at the negotiating table, they were reluctant to concede the lands, powers, resources, and jurisdictions claimed by the Nisga'a as both a right and a necessity of self-determination (Ratner et al. 2003). The *Final Agreement* itself proved to be simultaneously too much for many non-Aboriginal politicians and members of the general public, and too little from the point of view of many Nisga'a. In the ratification debates in the federal House of Commons, the agreement faced sustained and bitter opposition from Preston Manning's Reform Party, and on becoming law it was challenged in the British Columbia Supreme Court by Gordon Campbell leader of the provincial Liberal Party, which at the time was in opposition (*Campbell* 2000).[1] The Nisga'a Nation itself was divided in its support of the *Final Agreement*, and the deal was also criticized by other B.C. First Nations and by academic commentators on Aboriginal rights (T. Alfred 1999; Tully 2000a). Even Joseph Gosnell, the chief negotiator for the Nisga'a and one of the treaty's most committed champions, conceded that the agreement fell short of what the Nisga'a consider is theirs by right (Gosnell 2002).[2] For many, it is difficult and disconcerting to imagine that more than a century of struggle was required to achieve such a modest level of progress.

In many ways, the Nisga'a Nation's struggle for self-determination is a microcosm of the broader universe of Aboriginal-state relations in Canada. Across the country, Aboriginal and non-Aboriginal parties often manifest profoundly different and seemingly irreconcilable views of the meaning of self-determination, the status of Aboriginal governments in the federation, and the desirability and character of state-Aboriginal intergovernmental relationships. Deep divisions also reign over the appropriate distribution of land, resources, and jurisdictions, and the choice between Aboriginal political traditions and Western liberal-democratic models of representation, accountability and governance. These divisions are also reflected in public opinion. Federal and provincial representatives face a public that is not unsympathetic to the plight of Aboriginal peoples, but whose understanding of the fundamental issues is frequently minimal and whose support can be fickle, particularly with regard to initiatives that require the commitment of substantial resources and public funds.[3] On the other side of the table, Aboriginal leaders whose pragmatic intuition may be to cut an imperfect agreement in order to avoid further delays in the process of rebuilding their societies and economies, face significant opposition from members of their communities who believe they should hold out for a deal that is more consonant with what ideal justice requires. Aboriginal leaders must also contend with the fact that their communities continue to harbour significant levels of mistrust of Canadian governments, and the motivations underlying federal Aboriginal policy. Fuelled by the history of colonization and its lingering presence in Aboriginal Canada, the absence of trust continues to be one of the most significant barriers in the path of a more just and mutually beneficial relationship between Aboriginal and non-Aboriginal Canadians.

Nevertheless, as in the Nisga'a example, there is room here for both optimism and pessimism. Change is slow; the question of Aboriginal-settler relations precedes Confederation by more than two centuries, yet many of the same challenges, including treaties, land claims, and self-government, remain largely unresolved. Change is also difficult and is frequently attended by conflict, some of it violent.[4] Consequently, a substantial investment of energy, resources, and commitment on both sides is necessary to attain even modest progress and imperfect compromises. Yet change has occurred, particularly in the four decades following the retraction of the white paper of 1969. Much of this change has been achieved in what might be called a post-constitutionalist phase of Aboriginal-state relations, wherein the goal of securing a more explicitly entrenched Aboriginal third order of government in the Canadian constitution has given way to a more piecemeal and pragmatic strategy of negotiating new institutional and policy arrangements within existing constitutional parameters.[5] It would be an exaggeration to call this change revolutionary, but it is difficult not to agree with Abele and Prince that "Aboriginal communities and governments constitute a significant network of institutional arrangements that are increasingly shaping our living Constitution and evolving federation" (Abele and Prince 2002, 233).

A CHANGING LANDSCAPE

In 1995 an important psychological barrier in Aboriginal-state relations was crossed when, after a long period during which no Canadian government could bring itself to contemplate an "inherent right of Aboriginal self-government" without invoking a fear of Aboriginal separatism, the incoming federal Liberal government simply adopted this proposition as the foundation for future negotiations and policy development (Canada 1995). Yet changes on the ground were already well underway prior to this policy's announcement or even its conception. For example, in 1994 the Manitoba Dismantling Initiative was launched with the objective of dismantling Indian Affairs in Manitoba and, in its place, re-establishing First Nations governments in sixty-two communities in the province (Doerr 1997, 285).[6] A more gradual process of change at the federal level brought approximately 85 percent of Indian and Northern Affairs Canada's (INAC's) program dollars under the administration of First Nations governments by 1997.[7] Preceding both these initiatives, in the mid-1970s Inuit in the Northwest Territories began a process that would give them greater control of the land and governance regimes in the Eastern Arctic. This process culminated in 1999 with the creation of Canada's newest territory, Nunavut, encompassing the largest land claim in Canadian history and a form of public government controlled by the territory's Inuit majority.

By the summer of 2004, dozens of First Nations from Atlantic Canada, Ontario, Quebec, Alberta, British Columbia, and the Northwest Territories were involved in treaty and self-government negotiations with federal and provincial governments. More specifically, land and self-government agreements for the Nisga'a of British Columbia and nine of the fourteen Yukon First Nations joined agreements negotiated decades earlier for the Sechelt of British Columbia and the Cree and Inuit of James Bay.[8] An innovative treaty process to negotiate a provincewide system of Aboriginal self-government in Saskatchewan is another prominent initiative that could lead to significant change in the near future (Hawkes, this volume). Even the troubled British Columbia Treaty Process was showing some new signs of life, with fifty-five First Nations participating, forty-one of whom were negotiating agreements in principle and five of whom were negotiating final treaties (BCTC 2004). Institutions for land and resource co-management, particularly in the Far North, are a less well known but increasingly prominent feature of the changing landscape of Canadian Aboriginal-state relations (White 2002; Scott, this volume), as are the growing number of public-private economic development partnerships between Aboriginal governments and private corporations (Anderson 1997; Mandel-Campbell 2004).

Reforms to the machinery of intergovernmentalism and executive federalism have been slower, but here too there have been developments of some significance, with Aboriginal leaders of the territorial governments and representatives of the national Aboriginal organizations gaining increasing representation in federal, federal-provincial, and federal-provincial-territorial intergovernmental forums (Abele and Prince 2003a, 144–5; Timpson, this volume). Changes in response to the distinctive challenges and circumstances faced by Métis and urban Aboriginal populations have been the least forthcoming of all, but even here there is some room for optimism. The federal government's Urban Aboriginal Strategy (UAS) was introduced in 1998 to address the socio-economic needs of urban Aboriginal people through partnerships with stakeholder groups. Partly as a result of this process, cities across Canada have seen the introduction of a modest array of policies and programs directed specifically at the needs of Aboriginal urban dwellers (Hanselmann 2001, 2002a, 2002b). Through the Privy Council, the federal government also established the Métis and Off-Reserve Tripartite Self-Government Negotiations process to enable provincial, regional, and urban Métis and off-reserve Aboriginal organizations to partner with provincial and federal governments in support of increased governance capacity and service delivery, and improved access to federal and provincial programs and services (Canada, Privy Council 2004). Canada's Supreme Court also has recently moved to accord recognition to the rights and interests of Métis and off-reserve Aboriginal people, although, as Chris Andersen argues in his essay in this volume, the precise form of this recognition constitutes a mixed blessing from the point of view of contemporary Métis communities.

AN IMPROVING LANDSCAPE?

While it is difficult to dispute the fact that much has changed on the surface of Aboriginal-state relations, whether such change represents genuine progress in terms of justice, reconciliation, and effective self-government is an issue that continues to be strenuously debated. Indeed, when commenting on the same set of developments in Aboriginal-state relations over the last three and a half decades, some observers see a paradigm shift (Russell 1996; Abele and Prince 2002; Newhouse 2002), while others see paradigm paralysis (T. Alfred 1999; Ladner 2003; Ladner and Orsini, this volume). This curious analytical dissonance may be explained by a number of factors, including contrasting perceptions of the real motivations underlying Canadian Aboriginal policy and disputes over when a policy of pragmatic compromise begins to shade into a policy of Aboriginal co-optation by the state. There are also conflicting visions of the desired endpoint of change, for example, whether this should comprise some form of shared citizenship and political participation in both Aboriginal and state-centred institutions or whether it should be an exclusively Aboriginal form of citizenship and self-rule.

More fundamentally, my feeling is that this debate continues to be clouded by the wide gap that exists between the theory and practice of Aboriginal self-determination. While there are many excellent discussions of Aboriginal rights and self-determination from the perspective of normative legal and political theory (Tully 2000a; Macklem 2001; Kymlicka 2001; Borrows 2002), there are far too few examples in the literature that link normative questions with detailed analyses of case studies, and the practical question of translating abstract ideals into concrete institutional forms and public policies.[9] Moreover, too often these approaches are silent when it comes to proposing concrete alternatives to existing governance arrangements (T. Alfred 1999, but compare G. Alfred 1995; Ladner 2001; Holder and Corntassel 2002; Cairns 2000). One consequence of this disjuncture between norms and practice is that it becomes extremely difficult to assess either the critical purchase of normative theories on specific policies or governance agreements or to determine what sort of alternative policies and institutions may be preferred. As Newhouse and Belanger (2001) conclude, what is sorely missing from the literature are "nimble critiques of modern self-government agreements ... and how academics and community leaders see current Aboriginal self-governance evolving" (6).[10] A second consequence of this theory-practice disjuncture is that it continues to hamper the capacity of normative theory to speak to an Aboriginal population characterized by increasing socio-economic and demographic diversity, and whose relations with federal, provincial, and municipal governments have become correspondingly more complex.

It is therefore imperative that existing research into what Abele and Prince (2002, 228) call the "high politics" of Aboriginal-state relations – for example, constitutional interpretation, high court jurisprudence, treaty principles, and the normative foundations of Aboriginal rights – be supplemented by research into the actors, institutions, and policy developments that are closer to the level of implementation and the day-to-day functioning of Aboriginal-state relations in Canada (228). Particularly vital are fresh ideas and governance models that speak both to the autonomy of Aboriginal populations and to their relationships of interdependence with non-Aboriginal societies and governments, and which are relevant to the living experience of land-based, urban, and geographically dispersed Aboriginal populations (Cairns 2000; Borrows 2000; Murphy 2004a). As I explain below, these new ideas and governance models will embody what might be called a relational understanding of Aboriginal self-determination.

RELATIONAL SELF-DETERMINATION

The twin ideas of Aboriginal self-determination and Aboriginal nationalism began to resonate within the ranks of the Canadian Aboriginal leadership in the latter half of the twentieth century. In strategic terms, the language of nationalism became a powerful rhetorical tool that tapped into the international momentum in favour of decolonization and the burgeoning discourse of universal human rights (Cairns 1999 and 2005). In Canada, this strategic shift towards a discourse of Aboriginal nationalism was cemented by the Trudeau government's white paper of 1969, whose assimilatory overtones helped inspire a new era of activism in support of Aboriginal rights. More than just a strategic tool, Aboriginal nationalism is deeply principled. It is an expression of the democratic right of Aboriginal peoples to determine their own political destiny free from external domination, as far as possible, and to negotiate relationships with other communities and governments predicated on principles of co-equality and mutual consent.[11]

Nationhood, according to some critics, is an inaccurate label for Aboriginal communities that often have no more than a few hundred members. Such communities lack the size and capacity to operate a "national" government, never mind the fact that they would continue to be heavily dependent on the federal government for their financial viability (Cairns 2000; Flanagan 2000). Critics also feel that the notion of parallel and independent societies invoked by Aboriginal nationalism is ill-equipped to speak to the circumstances of the growing urban Aboriginal population, which is not only culturally heterogeneous but is also highly intermixed with non-Aboriginal populations. In essence, then, Aboriginal nationalism is taken to be empirically falsified on the ground and liable to raise the expectations of Aboriginal communities unnecessarily regarding their potential for political and financial independence. It follows that the metaphor of Aboriginal nationalism should be replaced – perhaps by benign assimilation (Flanagan 2000) or by the metaphor of "citizens plus" (Cairns 2000).

Important as they are, many of these objections are partially based on a tendency to conflate the normative and the empirical dimensions of Aboriginal nationalism. As Keating (2001, 104–5) helpfully puts it, self-determination is the normative core of nationalism. In this specific context it tells us that Aboriginal peoples claim a legitimate democratic right to guide their own fate – the very same right that is assumed and already exercised by Canada's non-Aboriginal people. The normative dimension of Aboriginal nationalism also challenges the state to justify its claim to jurisdiction and authority over Aboriginal societies. As Gordon Christie explains in his essay, the Crown's right to supersede the authority of Aboriginal societies by unilaterally asserting its sovereignty over them has consistently been assumed but never justified by Canadian courts and governments (see also Green, this volume). In place of this unilateralism, Aboriginal nationalism challenges the state to recognize the co-equal rights to self-determination of Canada's Aboriginal and non-Aboriginal peoples. Neither of these groups has the right to dictate political terms to the other, and thus both must engage in free and open negotiations to determine the legitimate bounds of their autonomy and their interdependence.

To say that Aboriginal and non-Aboriginal peoples enjoy an equal right to self-determination does not wed us to the conclusion that the institutional terms by which this right is capable of being implemented in practice must be identical in both cases. This would be to ignore the very real limitations of size, capacity, and interdependence which must be accounted for in making Aboriginal self-determination both a just and a workable reality in the federation (Abele and Prince 2002, 221; White 2002, 90).[12] Some of this confusion surrounding the theory and practice of Aboriginal nationalism can be reduced by adopting a "relational" understanding of self-determination. Relational self-determination encompasses a sphere of autonomy for self-determining groups, but also recognizes that relations of complex interdependence place both practical and ethical limitations on autonomy, creating the need for shared or co-operative forms of governance to manage this interdependence in a manner which is both effective and democratic (Young 2000, 258–60).[13] Many analysts of Aboriginal-state relations, including a number of contributors to this volume, have already begun exploring this relational understanding of self-determination.[14] Moreover, as scholars such as Cairns (2000) and Hawkes (2001) remind us, federalism itself holds the potential for flexibly combining possibilities for both self-rule and shared rule for Aboriginal peoples, dimensions which together seem well equipped to embody the broader principle of relational self-determination (see also Henderson 1994; Borrows 2000). What follows is a critical sketch of relational self-determination as I see it emerging in the context of Aboriginal-state relations in Canada. The discussion proceeds by disaggregating and briefly exploring the three component dimensions of relational self-determination in a federal context: autonomy or self-rule, shared rule, and intergovernmentalism.

AUTONOMY (SELF-RULE)

Autonomy refers to an Aboriginal collective's right to govern itself without external interference or domination, as far as is possible. Autonomy is not an absolute quality; rather, it is something that is enjoyed in degrees, for even federal and provincial governments in Canada are constrained in their capacity to govern themselves autonomously, both by one another and by the international sphere of power relations, and in more limited cases by Aboriginal governments. In general terms, autonomous self-rule should provide Aboriginal peoples with the capacity to engage in collective decision making to determine their own laws, priorities, and policies. As such, it generally involves more than the right to be consulted on matters of law and public policy where the agenda is set and the final decision made by another order of government; it means that Aboriginal leaders are in the position of being policy makers rather than simply policy takers. Self-rule should also provide Aboriginal communities with the capacity to choose their own political leadership and to shape the institutions through which these representatives are to govern and be held accountable to – institutions that reflect the political cultures and priorities of the Aboriginal groups in question. Another key dimension of self-rule is the freedom to decide what will be governed by the community in question, whether this refers to particular populations, territories, resources, policy jurisdictions, or specific programs and services. Indigenous governments may decide to delegate or share jurisdictions with other governments, but this will generally be with the stipulation that it be based on free and open negotiations and consent, and that the distribution of jurisdictions should not be unilaterally determined by the state at the outset.

The most complete form of self-rule is secession and formal independence, but this is neither a viable nor a desired objective for most Aboriginal peoples in Canada. Short of secession, there are several institutional variations on self-rule, a number of which have already been implemented in the federation. Recent examples include public government for the Inuit of Nunavut, who are guaranteed control of the territorial legislature by virtue of their demographic dominance. This governance arrangement provides the Inuit with command over a range of legislative jurisdictions similar to those exercised by Canadian provinces (Hicks and White 2000). Yukon First Nations exercise a slightly different form of territorial-specific self-government, which is open only to their regularly resident citizens but which provides them with their own legislative councils and access to a similar range of legislative jurisdictions (Catt and Murphy 2002, 75–7). More limited sectoral arrangements are another possibility, as in the example of the 1997 agreement to transfer legislative and administrative jurisdiction for Mi'kmaq primary, elementary, secondary and postsecondary education over to nine First Nations in Nova Scotia (McCarthy 2001).

Increases in autonomous self-rule may also be facilitated via economic levers, as in the recent agreement between the Government of Quebec and the James Bay Cree, which provides the Cree with massive increases in resources and benefits from forestry and hydroelectric power development in their territory and which correspondingly enhances jurisdiction and responsibility over their own community and economic development (Awashish, this volume). Another key initiative – spearheaded by Stephen Kakfwi, the Dene premier of the Northwest Territories – is the devolution of control over land and natural resources from the federal to the territorial government. The idea is to acquire decision-making authority over the nature and pace of development, but also to ensure that the benefits of this development, including royalties, tax revenues, and jobs, remain in the Northwest Territories. At the time of writing, a memorandum of understanding had already been signed, and representatives of the Government of the Northwest Territories, the Aboriginal Summit, and the Government of Canada were negotiating a framework agreement that would set out the general approach for the eventual negotiation of a devolution transfer agreement.

Hybrid models capable of serving both landed and urban populations are another emerging option, the best example being the "made in Saskatchewan" approach to First Nations governance described in David Hawkes's essay. The Saskatchewan initiative is innovative both in its approach to the treaty negotiations process and in terms of the governance provisions under discussion. The proposed governance model seeks to create an integrated and layered system of provincewide, regional, and local governments with jurisdiction over First Nations citizens both on-reserve and in urban centres. The current negotiations cover education and child and family services, but future negotiations are anticipated in areas such as justice, lands and resources, health, and housing (Hawkes, this volume; Saskatchewan, OTC 1998). Autonomy initiatives have been much slower to emerge for Aboriginal people in urban centres, and many of those that do exist are either highly informal or at a relatively low level of institutionalization. As Evelyn Peters reminds us in her essay, a variety of urban governance models have been suggested but never implemented. In their absence, she concludes, the most immediate access to self-government for many urban Aboriginal people is given by non-profit Aboriginal-run service providers and umbrella organizations such as the Aboriginal Council of Winnipeg, an organization generally dedicated to improving the lives of all Aboriginal people in the city.[15]

In mentioning these recent initiatives it is important to acknowledge their many critics. For some of these critics, existing self-government arrangements amount to little more than self-administration and are not really self-government. They are compared to municipalities or, at best, "municipalities plus," enjoying little real depth or security of jurisdiction (Ladner 2003, 184–7). As such, they reproduce rather than replace the colonial nature of the Aboriginal-state relationship by preserving the dominance of federal and provincial over Aboriginal governments (T. Alfred 1999, 99–107; Tully 2000b, 42, 52; Ladner and Orsini, this volume). Other critics observe that the federal government still manifests a strong tendency to insist on the extinguishment rather than recognition of Aboriginal rights (Canada 1995) and to stipulate rather than negotiate the type of powers and jurisdictions to be made available to Aboriginal governments.[16] Moreover, despite the promise of the new inherent right policy, many observers still perceive a federal reluctance to place final decision-making authority in Aboriginal hands except in a relatively restricted number of jurisdictions (Russell 1996, 66–7; Barnsley 2001, 11; Cornell, Jorgensen, and Kalt 2002, 11–12, 15). As Prince and Abele conclude with regard to Aboriginal-federal fiscal relations, for years the rhetoric has been one of partnership while

the reality has been federal domination and Aboriginal marginalization. Critics see further evidence of federal dominance in the fact that the models of governance currently on offer are more a reflection of the political traditions of non-Aboriginal Canadians than those of the Aboriginal societies whose interests these governance arrangements are supposed to serve (Boldt 1993; T. Alfred 1999; McDonnel and Depew 1999; Ladner 2003).

The closing years of the Chrétien government did much to confirm the sentiments expressed by these critics. One of the best examples is the ill-fated *First Nations Governance Act* (FNGA), whose parallels to the white paper of 1969 were lost on few observers outside government (see Ladner and Orsini, this volume). The FNGA served as a prime illustration of the federal government's unfortunate propensity towards unilateralism in the development of Aboriginal policy, treating Aboriginal peoples as policy recipients rather than equal partners in policy development. For instance, in the process leading up to the FNGA, the federal government sought to bypass First Nations leadership structures such as the Assembly of First Nations. Moreover, federal policy makers chose a model of limited community consultation that left no room for Aboriginal participation in either the initial development of the policy agenda or the drafting and approval of the resulting legislation (Murphy 2004b).[17] Federal unilateralism was also in evidence in Robert Nault's announcement in November of 2002 that the government was walking away from thirty different sets of stalled land claim and self-government negotiations because it was no longer interested in feeding an Aboriginal industry of lawyers and consultants who had a vested interest in perpetually inconclusive negotiations.[18] Whereas a sense of frustration with the sometimes glacial pace of treaty negotiations is not unreasonable, the federal government chose not to engage with the manner in which their own actions might be the source of those delays.[19] More importantly, the government's chosen means of addressing this frustration looked more like political brinkmanship than a genuine effort to engage constructively with Aboriginal representatives in a process of alternative dispute resolution that would be capable of providing equal expression to the interests and grievances of both parties.

These types of criticism need to be faced with honesty and openness if progressive reform in this area of the federation is to be possible. Yet the same honest and open approach dictates that we do not simply accept all these charges uncritically. Indeed, a number of them seem to downplay or obscure important features of the landscape of Aboriginal-state relations that is emerging in twenty-first-century Canada. To begin with, it is by no means clear that all existing self-government arrangements can accurately be described as no more than self-administration, municipal governance, or even municipalities plus. For example, the Government of Nunavut exercises a range of powers that are more akin to those of a province rather than a municipality (and in fact it enjoys jurisdiction over its own municipal governments). Similarly, Yukon First Nations councils and the Nisga'a Lisims government possess a wider and more secure range of jurisdictions than do *Indian Act* band councils, which are far more accurately described by the municipal model of governance.[20] Even the Sechelt model, which is most frequently dismissed as a form of municipal self-administration, is substantially different in that, unlike *Indian Act* governments and non-Aboriginal municipal governments that are restricted to the passing of bylaws, the Sechelt have a primary legislative capacity, and their laws enjoy paramountcy over provincial (though not federal) laws (Catt and Murphy 2002, 73–5). Similarly, the governance model currently under negotiation in Saskatchewan contemplates a level of legislative authority that substantially exceeds the label of self-administration and the municipal paradigm. Moreover, First Nations were included as full partners at all stages of the treaty discussions, including the process of defining the terms of the negotiations themselves, another apparent departure from previous federal policy (Saskatchewan, OTC 1998; Hawkes, this volume).

To achieve a broader perspective in this debate, there must also be a more sustained engagement with Aboriginal attitudes towards existing self-government agreements. For while it is important not to underestimate either the level of Aboriginal opposition to existing agreements or the number of difficult compromises necessary to get a deal done, it is equally important to understand precisely which aspects of these agreements meet with the approval of Aboriginal communities and why. The James Bay Cree, for example, have voiced their satisfaction with many aspects of the land and governance arrangements negotiated with Canada and Quebec, and continue to support these arrangements as a means of progressing towards their goals of self-determination and socio-economic renewal (Awashish, this volume; Moses 2004; Diamond 1985, 281–5). Similar sentiments have been expressed by the Inuit of Nunavut and Nunavik (Ittinuar 1985; Nunavut 2000 and 2002; Aatami, quoted in Panetta 2002) and the Sechelt (BCTC 1999; Gregory 1999) and Nisga'a of British Columbia (Gosnell 1998). Both sides of this story must be heard and weighed.

A crucial weakness of much of the critical literature on Aboriginal governance is that it is pitched at such a high level of generality that it misses much of the variety and complexity of the contemporary landscape of Aboriginal-state relations. While critics are essential, there is a pressing need for more empirically informed critiques that engage in concrete and detailed assessments of existing governance agreements and policy frameworks. Equally important, if alternative governance models are to be preferred, we need to know what they would look like and how they would constitute an improvement on existing arrangements. What governance structures and decision-making powers would they comprehend? Would there be jurisdictions which particular Aboriginal governments would be unable or unwilling to assume, and, if so, which other level of government – Aboriginal or otherwise – would assume these jurisdictions on their behalf? What sorts of institutional arrangements can deliver a measure of self-determination to small and/or geographically dispersed Aboriginal groups? And to what extent does the structural (institutional) implementation of self-determination lead to real increases in governing capacity, access to resources, and the ability to secure improves in the community's quality of life? Most important of all perhaps is that critics must help us understand how specifically *Aboriginal* views of governance and the legitimate exercise of political authority can be translated into concrete political decision-making processes and institutionalized models of self-government (Timpson 2002; Newhouse and Belanger 2001, 3).

My sense is that the time is ripe for a new chapter in this debate and for a new generation of Aboriginal and non-Aboriginal researchers to engage the enormously important middle ground between the meta-theory and the practical implementation of Aboriginal self-government. To the wealth of existing research contributed by philosophers and legal and political theorists must be added the expertise of economists, business minds, and experts trained in empirically informed political science, public policy, and public administration.

SHARED RULE

While it is essential to come to terms with the autonomy dimension of Aboriginal self-determination, the living experience of an increasing number of Aboriginal peoples is characterized by relations of complex geographical, sociocultural, and economic interdependence with surrounding non-Aboriginal communities. This new reality means that a viable strategy of reconfiguring Aboriginal self-determination must come to terms with the presence and participation of Aboriginal peoples in shared rule institutions that are capable of governing this interdependence in an effective and democratic manner. A combination of self-rule and shared rule institutions is one of the defining features of federal systems of government, yet the concept has not figured prominently in discussions of Aboriginal self-determination and the reconfiguration of the Canadian federation. This should come as no surprise to anyone who knows the history of Aboriginal experience with shared rule institutions in Canada. This history has been marked both by the deliberate exclusion of Aboriginal people from the franchise (a practice continued well into the twentieth century) and by the proposed use of the franchise as a tool for gradually dissolving and assimilating self-governing Aboriginal communities (Johnston 1996; Cairns 2000). Aboriginal participation in shared rule institutions in the federation has therefore come to represent, for many, the very antithesis of self-determination.

In spite of these reservations, the idea of participation in shared rule institutions is attracting more attention of late among both Aboriginal and non-Aboriginal leaders and academics (Henderson 1994; Schouls 1996;

Borrows 2000; Knight 2001). Indeed, in 2004 the Assembly of First Nations (AFN) and the Native Women's Association of Canada combined efforts to encourage Aboriginal electoral participation to help influence a very closely contested federal election (AFN 2004).[21] The message from both of these organizations seems to be that Aboriginal electoral participation should no longer be seen as a means of undermining the struggle for self-government; instead, it should be viewed as a strategy for pursuing Aboriginal ends by accessing alternative and complementary routes to political power. Observing recent Aboriginal electoral mobilization in the United States, Grand Chief Phil Fontaine commented at a meeting of the Assembly of First Nations in Charlottetown, "It brings to mind the issue of whether or not it is time for us to consider our strategies about federal elections ... We know that there is going to be a national debate on the merits of electoral reform and proportional representation. We need to look at this and see how our interests can best be served."[22] Aboriginal participation in shared rule institutions can be viewed as simply one additional means of facilitating Aboriginal control over Aboriginal affairs – and this seems to be the view of the AFN – but a more radical vision of shared rule sees it as a means of introducing a much needed and valuable Aboriginal presence and influence over countrywide or Canadian affairs (Borrows 2000). This is one of the central themes of Joyce Green's essay, in which she asks us to imagine a genuinely postcolonial reconfiguration of the Canadian federation involving both self-government and the effective indigenization of the state in such a way that its institutions may also be a reflection of the aspirations, symbols, and traditions of Canada's Aboriginal inhabitants.

In practice, institutions of shared rule that combine Aboriginal and non-Aboriginal representatives are still very much in a developmental stage in the federation. Guaranteed forms of Aboriginal representation in federal and/or provincial legislatures have been proposed in the form of general Aboriginal electoral districts (Canada, RCER 1991a, 1991b), as districts representing different treaty First Nations (Henderson 1994), and even a parallel Aboriginal House of Representatives (Canada, RCAP 1996b, vol. 2, pt.1, s. 4.4), but none have reached the stage of implementation.[23] As Phil Fontaine suggests, it may be that such measures will become more likely if anticipated experimentation with forms of proportional representation come to fruition in such provinces as British Columbia and perhaps eventually at the national level. On the other hand, as Hanselmann and Gibbins illustrate in their essay, shared rule in the urban context is showing some initial signs of promise, with examples such as the Calgary Urban Aboriginal Initiative, a partnership among municipal, federal, and provincial governments, service providers and Aboriginal organizations, that was conceived to help meet the needs and challenges of urban Aboriginal populations. One of the reasons for the initial success of this initiative has been the acceptance by federal and provincial governments of a shared rule or partnership model of governance and of the need to cede the leading role to the local Aboriginal community.[24]

Probably the most institutionalized form of self-rule currently in existence is the land and resource co-management boards that have been negotiated as a facet of comprehensive land and self-government agreements, particularly in the more remote northern reaches of the country. These institutions generally provide for an equal number of Aboriginal and non-Aboriginal government-nominated representatives, who generally must be regular inhabitants of the jurisdictions in question.[25] Graham White describes co-management bodies as something of a new species of governing institution in Canada – one that exists at the intersection of the federal, provincial, and Aboriginal orders of government. They are not strictly a form of Aboriginal autonomy or *self*-government, but neither are they exclusively federal or provincial institutions. Instead, they are conceived as a means of achieving the sort of consensual and cooperative sharing of jurisdiction and resources that are characteristic of the historic treaty relationship and its corresponding principles of treaty federalism (White 2002, 92–4). Colin Scott echoes this sentiment in his essay, describing the potential of co-management institutions in the James Bay and other regions of Canada to realize the principle of relational self-determination that animates treaty federalism, wherein self-government coincides with a sphere in which power is shared and distributed with the mutual consent of the treating parties. These principles are already functioning in practice. For example, boards in Nunavut and the Yukon are mandated to protect the interests of the local Aboriginal communities, but they are also mandated to protect the interests of all residents of the territory in question, which includes both Aboriginal and non-Aboriginal peoples. This principle is reflected in the expectation that board members will remain independent of the governments that nominated them. They are expected to serve the public interest (that of Aboriginal and non-Aboriginal citizens) rather than being the delegates or representative of a particular government – a pattern that is also revealed in Scott's discussion of co-management practices on the west coast of Vancouver Island (White 2002, 103–4; ALSEK 2000; Scott, this volume).[26]

Assessments of the capacity of co-management boards to facilitate greater Aboriginal self-determination vary. In cases such as Nunavut, where co-management boards are exercising considerable decision-making authority and are having a real impact on the policy areas over which they have been assigned jurisdiction, the conclusions are relatively optimistic (White 2002, 98–100, 108–9; Scott, this volume). In contrast, evidence from co-management institutions involving the James Bay Cree leaves considerable room for skepticism. The Cree experience has too often been that in any conflict with the agenda of either the federal or provincial government, the interests of the Crees were forced to take a back seat, to the extent that in many cases the institutions became dysfunctional and the Crees were forced once again to resort to litigation in order to pursue the recognition of their rights and interests (Feit 1989, 82–3; Rynard 1999, 223; Awashish, this volume; Scott, this volume). Philip Awashish and Colin Scott both hold out some hope that revisions to these institutions included in the most recent agreement between the Cree and Quebec will herald the end of this more confrontational and dysfunctional approach to co-management, but both are cautiously waiting to see whether these revisions will yield a new approach in practice.

One final area of shared rule to consider, which may not even belong in the discussion in a strict sense but whose significance is simply too great to ignore, relates to shared economic development ventures and business partnerships between Aboriginal communities and Crown corporations or private economic actors. This is significant both because it speaks to the chronically under researched question of the economic levers of Aboriginal self-determination and also because of the quasi-governmental status of corporate actors doing business on Aboriginal land. This position is perhaps more obvious in the case of Crown corporations such as Hydro-Québec, but as Devlin and Murphy demonstrate in their essay, Canadian courts have recently blurred the line between the state and private economic actors (such as large natural resource harvesters) when it comes to the duty to consult the Aboriginal communities whose interests stand to be affected by any planned economic development on or near their traditional territories.[27] Economic partnerships between Aboriginal people and corporate developers must of course be approached with caution. Large-scale resource developments such as forest clear-cutting and hydroelectric schemes have often wreaked havoc on the environment and the traditional activities of local Aboriginal communities, while at the same time the benefits from these developments and the decision-making authority over them have not been delivered as promised (Awashish, this volume; Ratner et al. 2003, 230–1).[28]

It is also important to bear in mind that some Aboriginal communities may simply reject capitalist forms of development and resource extraction as being too far removed from their traditional values and practices and too destructive of the environment that has sustained their communities for so many centuries. Yet many Aboriginal leaders across Canada have declared that they are not opposed to economic development per se, or even to forms of capitalist development that may involve some alteration or compromise of traditional practices and forms of life. Commenting on the recent conclusion of an oil-drilling partnership with Alberta's Western Lakota Energy Services, for example, Chief Stephen Didzena of the Dene Tha' Nation stated that this venture represented his community's desire to be a part of the competitive business world, and that such partnerships are the only way for Aboriginal communities to move forward both economically and politically (Finlayson 2002, H1).[29] Indeed, recent research by Robert Anderson and Aboriginal Business Canada indicates that many of the current Aboriginal-corporate

partnerships have achieved encouraging levels of success (Anderson 1997; Canada 1998b). A common message emerging from Aboriginal leaders across these cases, however, is that the key to these economic ventures is that they involve Aboriginal people as key decision makers, that Aboriginal communities are beneficiaries of the direct and indirect benefits of development, and that development be compatible with the long-term survival and well-being of their communities (Anderson 1997, 1485; Awashish, this volume; Mandel-Campbell 2004).

In spite of progress along these many fronts, the implementation of shared rule in the context of Aboriginal-state relations will continue to be a difficult sell in Aboriginal communities across Canada. According to its detractors, shared rule is simply a means of co-opting Aboriginal people, bringing them inside state institutions, where their concerns will remain marginalized, while deflecting vital energy, attention, and resources away from the imperative of autonomous self-government. Such fears have deep roots in the history of Aboriginal-state relations in this country and will only be overcome through the investment of substantial time, effort, and confidence-building measures. To begin with, greater effort must be made to elucidate the variety of functions that shared rule institutions may serve, and to emphasize that these modes of governance need not be corrosive of institutions of autonomous self-government but can play an invaluable complementary function. In particular, it is important to emphasize that since national institutions have the capacity to influence the nature and exercise of Aboriginal rights and interests, an Aboriginal presence and effective voice in these institutions may help ensure that this cannot be accomplished without Aboriginal consent (Schouls 1996; Knight 2001). Moreover, Aboriginal participation in shared rule institutions demonstrates that Aboriginal people also have the right, if they so choose, to play a meaningful role on the national stage and to help shape the political future of the country as a whole. In either case, much greater effort must be made to ensure that shared rule institutions are capable of placing Aboriginal representatives in roles where they have a real and substantive capacity to influence and direct the process of decision making and are not simply accorded a token presence only to be marginalized or subordinated vis-à-vis non-Aboriginal decision makers.

Progress on the self-rule dimension of Aboriginal self-determination also means confronting the thorny question of citizenship. For whereas self-rule seems to invoke a form of separate or group-differentiated citizenship in autonomous Aboriginal communities, shared rule invokes a sense of citizenship that is common to all the participants involved (Cairns 2000, 143–9). For many Aboriginal communities and individuals, the idea of common citizenship, like the idea of shared rule more generally, has come to represent the subordination or even elimination of their status as citizens of autonomous Aboriginal communities. As a result, many Aboriginal people reject any suggestion that

Aboriginal people are or should be citizens of Canada, insisting instead that they are exclusively citizens of Aboriginal nations (G. Alfred 1995, 104; T. Alfred 1999, 112–13; Ladner 2003, 186). Yet this sentiment is not shared by all Aboriginal people, many of whom seek a form of dual Aboriginal-Canadian citizenship that embodies respect for (rather than requiring the subordination of) Aboriginal rights, interests, and identities (Borrows 2000; Green, this volume; Newhouse and Belanger 2001, 13–14).[30] Citizenship, then, can mean different things to different Aboriginal people. These differences frequently depend on which of the different dimensions of citizenship are being invoked in the context of Aboriginal self-determination. For example, citizenship as a right or a duty means something quite different and has very different implications from citizenship as a form of identity and as a bond of trust among members of a political community (or among members of different political communities in a federal and multinational state). Given this dimensional understanding of citizenship, one could plausibly argue that Aboriginal people are citizens of Canada in the sense that they have access to the same basic rights and freedoms as non-Aboriginal Canadians (in addition to their Aboriginal rights) but that they need not necessarily be citizens of Canada in the sense of having a strong sense of identity as Canadians.[31] It is vital, then, that we have access to more research that disaggregates the different dimensions of citizenship, describes their different functions and significance, and explores the different relationships and interdependencies by which they are characterized. Only in this way will we achieve meaningful progress in understanding the compatibilities and incompatibilities of Aboriginal and Canadian conceptions of citizenship.

INTERGOVERNMENTALISM

Self-determination, for the overwhelming majority of Aboriginal leaders, intellectuals, and spokespersons, has never meant separation from Canada. Instead, it has been conceived in the context of a renewed relationship with the other governments and societies in the Canadian federation. Even for land-based governments that enjoy a substantial degree of political autonomy and geographical distance from major non-Aboriginal population centres, there is a need to coordinate jurisdictions with federal, provincial, and municipal governments and possibly with other Aboriginal governments.[32] For urban populations, which are characterized by a much higher degree of interdependence and intermixing, the need for intergovernmental coordination and cooperative forms of governance is that much greater. In addition to its more pragmatic function of coordinating interdependence, resolving conflicts, and generally ensuring the smooth and uninterrupted functioning of the federation, intergovernmentalism may also serve a more principled end by helping to cultivate a sense of shared enterprise among the various constituent governments of the federation, thereby laying the foundations of a relationship grounded not just in mutual benefit but in mutual respect.

It is fair to say that Aboriginal involvement in the key intergovernmental forums in the Canadian federation is still far from where it needs to be. As evidence, more than six hundred *Indian Act* band governments across Canada remain, in effect, outside the orbit of Canadian intergovernmentalism. Aboriginal leaders were left out of the process leading up to the Social Union Framework Agreement and the more recently created Council of the Federation (Abele and Prince 2003b). Moreover, as Prince and Abele argue in their contribution to this collection, the ongoing marginalization of Aboriginal representatives in key processes of fiscal intergovernmentalism constitutes an immense obstacle along the pathway to increased Aboriginal self-determination. With the exception of the territorial leaders, Aboriginal representatives continue to be excluded from the Annual Premiers' Conferences and First Ministers' Conferences, although a very significant departure from this practice emerged at the September 2004 First Ministers' Meeting on Health, which opened with a special meeting with Aboriginal leaders, including Phil Fontaine, and with a federal offer of $700 million in funding for Aboriginal health. Equally encouraging was a proposal for a future first ministers' meeting focused exclusively on Aboriginal health issues (Dunfield 2004).

Indeed, it would be untrue to say that Aboriginal representatives have been entirely absent from the realm of intergovernmental relations in Canada. On the constitutional front, representatives of the national Aboriginal organizations were included as participants in a series of key First Ministers' Conferences which sought (unsuccessfully) to clarify the meaning of the recently entrenched section 35 Aboriginal rights. While Aboriginal people were sidelined in the subsequent Meech Lake process – a move that helped seal the fate of the resulting accord – representatives of the four major national Aboriginal organizations as well the leaders of the Yukon and the Northwest Territories were included as full partners in the negotiations that produced the 1992 Charlottetown Accord. More recently, as Annis May Timpson emphasizes in her essay, the Aboriginal-led public governments of the Northwest Territories and Nunavut are now routinely involved in most intergovernmental forums in the federation. In the urban context as well, an extensive network of relations is emerging in cities across Canada involving Aboriginal representatives and their counterparts in municipal, provincial, and federal governments (Abele and Prince 2002, 227–8).[33] Also, British Columbia and Quebec have recently implemented measures that seek regular consultation with First Nations in areas of overlapping interest (British Columbia 2002; Quebec 2003). In the case of Quebec, this involved the creation of a joint council comprising an equal number of elected officials from the Quebec government and the Assembly of First Nations of Quebec. The council is intended to promote an exchange of ideas on various subjects, including territory and resources, taxation and economic development, and services for Aboriginal people off-reserve.

There are a number of distinctive challenges associated with the reconfiguration of intergovernmentalism in the context of Aboriginal self-determination. As Timpson argues in her essay on Nunavut, it is a challenge simply to cope with the sheer volume of intergovernmental interactions associated with the operation of a territorial public government, especially given the shortage of trained and experienced personnel. Moreover, it is proving difficult for the Inuit to bring distinctly Aboriginal priorities and styles of governance into a system whose institutions and rules of engagement are defined by non-Aboriginal governments – a problem also flagged by Prince and Abele in relation to Aboriginal inclusion in federal-dominated processes of fiscal intergovernmentalism. Another challenge is to find ways of adequately representing the diversity of Aboriginal peoples in national intergovernmental forums such as First Ministers' Conferences or constitutional debates, a function which, at least in certain circumstances, seems to be at best imperfectly performed by such organizations as the Assembly of First Nations.[34] Finally, intergovernmentalism is a key component of the broader goal of reconciliation between Aboriginal and non-Aboriginal peoples in Canada, yet the intergovernmental processes intended to achieve this reconciliation – namely, the processes of treaty making – are still only dimly understood. Existing processes of treaty making are continually flagged as a barrier to just and sustainable relations among Aboriginal and non-Aboriginal societies in Canada (Canada, RCAP 1995; Venne 1997), yet there is precious little empirical research that keys on the institutional or procedural specifics of past or existing treaty negotiations and on concrete proposals for how they might usefully be reformed.[35] Be that as it may, if intergovernmentalism is to succeed in the context of Aboriginal-state relations, it is essential that it serve the interests of both the Aboriginal and non-Aboriginal partners, which means, most importantly, moving away from a model wherein the federal government is able to dictate terms to Aboriginal governments. This means a rejection of intergovernmental relationships based on unilateralism and domination in favour of those based on mutual recognition and consent, and the co-equality of Aboriginal and non-Aboriginal governments (Henderson 1994; G. Alfred 1995; Borrows 2002).

CONCLUSION

Aboriginal people bear a significance to the Canadian federation that far outweighs their relatively small numbers. Their claims to self-determination challenge us to confront some of the most fundamental questions of social justice, democratic legitimacy, and effective governance in our large and diverse

country. We should also remind ourselves that Aboriginal peoples are parties to historic treaties and that their rights are a fundamental feature of the Canadian constitution – facts that impose powerful obligations on Canadian governments. All the same, Aboriginal issues have rarely captured the same intensity and duration of attention among governments and the public as those garnered by perennial hot-button issues such as health care, education, employment, and wealth creation. Undoubtedly, the sparse and often fleeting nature of the attention devoted to Aboriginal issues stems partly from the fact that the costs of inaction will be most directly borne by Aboriginal peoples themselves, in the form of continuing socio-economic pathologies, political powerlessness, apathy, and lost opportunities for future generations. Yet there is some room for hope in the growing realization that the continuing socio-economic and political marginalization of Aboriginal peoples also entails costs for non-Aboriginal Canadians. These costs include profound strains on urban infrastructure and economies; loss of productivity and expertise because of an untapped Aboriginal workforce, not to mention the tremendous untapped potential of doing business and development in partnership with Aboriginal peoples; and a climate of conflict and uncertainty that could have a decidedly negative impact on political stability, on the climate for capital investment, and on Canada's international reputation as a defender of human rights.

Of equal consequence are the costs of failing to access the potential contributions of Aboriginal peoples to the future shape and direction of the federation as a whole. There are strong historical precedents for this broader Aboriginal contribution to the federation, including the key role played by Aboriginal people in early exploration, economic development, and military defence. Aboriginal peoples have also played a pivotal role in Canada's constitutional development, the movement for greater environmental awareness and protection, and now increasingly as leading members in our artistic and literary communities and in our courts of law, legislatures, and academies. Awareness of the broader costs of Aboriginal marginalization is perhaps growing much more quickly in areas with higher concentrations of Aboriginal peoples – for instance, the northern territories, such provinces as Saskatchewan, and an increasing number of large urban centres on the prairies and in western Canada generally. Yet governments across the country and at all levels are beginning to seek direction in this particularly complex and highly politicized domain of Canadian federalism.

If past experience is an accurate measure, any future reconfiguration of Aboriginal-state relations in the Canadian federation will be slow and incremental rather than rapid and revolutionary. To continue moving this relationship onto a more just, democratic, and mutually beneficial track will require significant modifications to existing policies, institutions, and processes of intergovernmentalism. More than this, however, what is required is a continuing evolution of political will among all the governments involved: municipal, provincial, federal, and Aboriginal. Representatives from each must continue to demonstrate a sense of vision, patience, and a willingness to compromise and seek common ground. As the primary bearer of this country's colonial legacy, and as the dominant power broker in the Aboriginal-state relationship, the federal government bears the greatest responsibility in this regard. In fulfilling this responsibility, it must move away from an approach that too often has treated Aboriginal peoples as policy recipients rather than policy makers and as subordinates rather than equal partners in a cooperative and mutually beneficial relationship. It must continue to move away from a relationship with Aboriginal peoples that has been grounded in principles of paternalism and domination towards a relationship grounded in principles of democracy and self-determination.

No less important in the process of reconfiguring Aboriginal-state relations in Canada is the need to increase our basic understanding of the key issues and, perhaps most important, the living communities involved. One crucial step in this process of understanding is to work towards a more visible and integrated network of knowledge accumulation and dissemination among those with an interest and expertise in this still emergent domain of governance. Frank Cassidy's plea is as relevant today as it was almost fifteen years ago: "Researchers – academic and non-academic, governmental and independent, [A]boriginal and non-[A[boriginal – should communicate more actively. Developing ideas must be shared. New information technologies should be used to create an awareness of what has been done and what is being done" (Cassidy 1990, 98).[36] It is not enough, however, to increase the level of understanding and communication among experts and practitioners; this process must be expanded to include the wider public across Canada. This will require a much more rigorous and sustained effort at public education in relation to the historical and contemporary contours of Aboriginal-state relations, the nature of and justification for addressing these issues in negotiated forums and public policies, and the costs of inaction to Aboriginal and non-Aboriginal Canadians. Public education will not guarantee a spirit of reconciliation and compromise, but it may contribute to a more reasoned and informed debate on the future course of Aboriginal-state relations in this diverse federation. It is my hope that the essays in this volume will play a modest but constructive role in this debate.

NOTES

1 Although Campbell was unsuccessful in his court challenge, when he became premier of British Columbia he pursued his opposition to the British Columbia Treaty Process by using a provincial referendum to seek a harder line in future treaty negotiations.

2 Philip Awashish (this volume) expresses similar sentiments towards the agreements negotiated with Canada and Quebec by the James Bay Cree.

3 As Doerr (1997) concludes; "Even at its high-water mark, public opinion on the subject of aboriginal self-government was often found to be shallow and, sometimes, simply confused" (287). Moreover, according to Hylton (1999, 445), the Canadian public ranks spending on Aboriginal peoples among governments' lowest budget priorities. Hylton's observations are confirmed by a 2003 Strategic Council poll, which found that while a majority of Canadian's say that improving the living conditions of Aboriginal people is important, only 3 percent say it should be the country's top spending priority: "Given the choice, Canadians would rather the government put more money into the health care system, child poverty, the military or the infrastructure of the country's big cities" (Mofina 2003).

4 As in the conflicts at Oka, Gustafson Lake, Ipperwash, and Burnt Church.

5 It is nevertheless essential not to underestimate the role played by the constitutionalization of Aboriginal rights in 1982, the subsequent articulation of these rights by the Supreme Court of Canada, and the influence of both these developments on the climate of negotiations and the Liberal government's eventual recognition of the inherent right of self-government as the basis for future negotiations with Aboriginal governments (Canada 1995). The downside of this more pragmatic policy, according to Tully, is that it may cause us to lose sight of the distinctive principles of justice invoked by Aboriginal claims to self-determination, the consequence of which is self-government agreements that are incapable of satisfying these principles in practice (Tully 2000b, 52).

6 It should be noted that a review of the initiative published in 1999 indicated that it had not been a huge success and that the complexity of the task originally conceived had been underestimated. See McCaskill et al. 1999.

7 However, the more fundamental overhaul of INAC recommended in the *Final Report* of the Royal Commission on Aboriginal Peoples (RCAP) has not emerged. RCAP, for one, suggested the creation of two new departments to replace INAC: the Department of Aboriginal Relations (to assist in the implementation of self-government) and the Department of Indian and Inuit Services (to provide services and support to communities that had not made the transition away from the *Indian Act*) (Canada 1996b).

8 For background and discussion of these cases, see Catt and Murphy 2002, 53–107.

9 This does not mean that such research is entirely absent. See, for example, Cassidy and Bish 1989, G. Alfred 1995, Rynard 1999, Catt and Murphy 2002, White 2003, and many of the contributions in this volume. As I indicate in the conclusion to this essay, part of the problem here relates to a lack of dissemination. For example, the Royal Commission on Aboriginal Peoples commissioned twenty-five case studies of Aboriginal self-government, but these have yet to be published in print form. For the electronic version, see Canada, RCAP 1996a.

10 This section echoes a plea made in a seminal 1990 article by Frank Cassidy that Aboriginal self-government not be studied in isolation from its subject, which is

the development of Aboriginal forms of government on the ground and in living communities (Cassidy 1990, 74).

11 The discussion in the remainder of this section draws on some of my previous work (Murphy 2004a; Harty and Murphy 2005).

12 This is the conclusion drawn, in different ways, by many of the contributors to this volume. See the essays by Peters, Andersen, Hanselmann and Gibbins, Hawkes, Scott, and Christie on questions of the size, capacity, and cultural diversity of Aboriginal communities and their demographic, spatial, and economic interdependence with non-Aboriginal communities.

13 For a broader application of this principle to the experience of substate nations in multinational states, see Harty and Murphy 2005, chap. 4.

14 See in particular Colin Scott's essay on co-management and Joyce Green's discussion of the need to reimagine and indigenize the federation as a whole in the context of increasing Aboriginal self-determination.

15 To a more limited extent, provisions have been made for urban Aboriginal dwellers to participate in the direction of self-government back in their home territory. Examples include the Nisga'a "urban locals" (Canada 1998, 162) and the Supreme Court of Canada's decision in *Corbiere* that urban-based band members retain the right to participate in band governance back on the reserve (*Corbiere* v. *Canada* 1999). I thank Peter Russell for bringing these two examples to my attention.

16 In a particularly pessimistic assessment of federal policy, McDonnel and Depew (1999, 359) conclude that self-government negotiations have little to do with Aboriginal aims and priorities: "By and large, what such negotiations are about is teaching Aboriginal people ... what legislative, territorial, and administrative space is available for self-government."

17 The FNGA also highlighted the problem of cultural marginalization, in that the federal government attempted to develop norms of democratic and accountable Aboriginal governance while disregarding how well these norms fitted with the traditions or political cultures of the Aboriginal communities to be governed by their terms. This aspect of the legislation drew criticism from a number of directions, including the architects of the Harvard Indian Project (HIP). According to HIP, neglecting the dimension of cultural match between governing institutions and a community's understanding of how political authority should be organized and exercised can have potentially fatal effects on the legitimacy of those institutions and their corresponding efficacy (Cornell, Jorgensen, and Kalt 2002, 4–7).

18 Nault's comments leading up to this decision are reported in Lunman 2002.

19 Such as, for example, the federal government's insistence on the extinguishment of Aboriginal rights, its domination of the procedural aspects of the negotiations, and its reluctance to cede final decision-making authority to Aboriginal governments. For discussion of these various points, see Canada 1995; Abele, Graham, and Maslove 1999, 264; and McDonnel and Depew 1999, 359.

20 By "security of jurisdiction" I mean the degree to which a government's legislative power is structurally immune to external override by another order of government. For example, *Indian Act* band councils can pass only bylaws, the vast majority of which can be disallowed by the minister of Indian affairs. The Nisga'a and Yukon First Nations, in contrast, have the capacity to pass primary legislation in a variety of jurisdictions, some of which are held exclusively while others are held concurrently with federal and provincial/territorial governments. The Nisga'a enjoy paramountcy in some but not all of their concurrently held jurisdictions, while rules of paramountcy have yet to be decided in the case of the Yukon First Nations. For more details of these cases, see Catt and Murphy 2002, 53–107. See also Hogg and Turpel 1995 for an assessment of the Yukon model as a means of implementing the inherent right of Aboriginal self-government.

21 To this end, a list of sixty-three Elections Canada electoral districts with a significant Aboriginal voting population, where Aboriginal voters could have a particularly significant impact, were posted on the AFN's web site.

22 Quoted in Moore 2004.

23 As Trevor Knight reminds us, shared rule proposals, particularly the creation of Aboriginal electoral districts, have received substantial support from Aboriginal representatives and organizations over the years. For example, George Manuel, the leader of the National Indian Brotherhood (now the AFN) advocated their creation in the 1960s when the franchise was being granted to Aboriginal people. They were also suggested in the 1980s post-entrenchment constitutional conferences by the Métis National Council and the Native Council of Canada; and more recently by Aboriginal representatives at the hearings of the Lortie Commission on electoral reform and party financing (including Ovide Mercredi, who was then vice-chair of the Manitoba Region of the AFN) (Knight 2001, 1075–8).

24 I recognize that there is some conceptual ambiguity between the use of the terms "shared rule" and "intergovernmentalism." For example, Hanselmann and Gibbins include the Calgary Urban Aboriginal Initiative as a form of intergovernmentalism, whereas I am using it as an example of shared rule. A similar case could, I think, be made for the land and resource co-management bodies described below. While such ambiguity may not sit well with some defenders of the federal canon, it does not substantially affect the underlying argument that forms of governance involving both Aboriginal and non-Aboriginal decision makers working together cooperatively are essential to complement institutions of autonomous Aboriginal self-government.

25 In cases such as Yukon and Nunavut, the number of Aboriginal board representatives can in practice be much larger. For example, the boards covered by Graham White's research ended up with an average of 80 percent Aboriginal membership. This is possible because although the Aboriginal and non-Aboriginal parties are authorized to nominate half the members of each board, they are both free to nominate either an Aboriginal or a non-Aboriginal person. In an interview I conducted with one of the members of the ALSEK Renewable Resource Council in the Yukon Territory, it was pointed out that the membership varies from council to council, depending on the makeup of the community. In most cases, the boards ended up with half Aboriginal and half non-Aboriginal membership, but there were also

cases where the board consisted entirely of Aboriginal members and another case where the membership was predominantly non-Aboriginal (ALSEK 2000).

26 Moreover, in cases such as the Yukon Fish and Wildlife Management Board, Aboriginal and non-Aboriginal peoples are engaging in shared decision making over the entire Yukon Territory and over all its residents (Canada 1993), rather than over a particular land-claim settlement territory.

27 Devlin and Murphy conclude: "If these lower-court cases are eventually affirmed by the Supreme Court of Canada, the matrix of relationships they govern will need to be reconfigured. The conventional triangle of the federal government, provincial governments, and Aboriginal peoples will no longer be adequate to represent the actual participants in the complex social, economic, and political relationships that determine the conditions of Aboriginal lives and communities (269)." In fact, just before this volume went to print, the Supreme Court of Canada decided, in *Haida Nation v. British Columbia (Minister of Forests)*, that Weyerhauser, the relevant third party in the case, did not have a duty to consult (2004, sections 52–55). Nevertheless, the Court concluded that "The fact that third parties are under no duty to consult or accommodate Aboriginal concerns does not mean that they can never be liable to Aboriginal peoples. If they act negligently in circumstances where they owe Aboriginal peoples a duty of care, or if they breach contracts with Aboriginal peoples or deal with them dishonestly, they may be held legally liable" (section 56). For a discussion of this decision see the postscript to the essay by Devlin and Murphy.

28 The burgeoning diamond industry in the Canadian Arctic and parts of northern Ontario is a case study in the possible risks and rewards of corporate-Aboriginal partnerships. For although the promised economic benefits are huge, so is the risk that pristine environments will be irreparably damaged and that the interests of the more powerful corporate players will run roughshod over those of their Aboriginal partners. For a variety of perspectives on this new northern industry, see Bielawski 2003, Mandel-Campbell 2004, and Kooses 2004. I thank Peter Russell for adding some much-needed nuance to my discussion here.

29 See also Gosnell 2002 and the report prepared for the Conference Board of Canada on corporate-Aboriginal economic relationships (Loizides and Greenall 2001).

30 See also Bruyneel's (2002) discussion of the different positions on citizenship taken by the candidates at the AFN's 1997 leadership convention. Borrows (2000, 340) pushes the debate one step further by encouraging Aboriginal communities to consider extending citizenship to non-Aboriginal people who demonstrate sufficient knowledge of and commitment to community values, priorities, and forms of life.

31 For two contrasting positions on the need for a sense of citizenship as identity, see Cairns 2000 and Williams 2004.

32 Here I disagree with Kiera Ladner (2003, 85–7) who emphasizes the watertight compartments view of Canadian federalism as one means of defending the exclusivity of Aboriginal jurisdictions. In my view, Ladner overlooks the fact that, in practice, the Canadian federation is characterized by a substantial degree of overlap among federal and provincial jurisdictions that calls for a significant degree of shared or concurrent forms of authority and decision making. Given the significant degree of interdependence among Aboriginal and non-Aboriginal communities, ends, and interests, it is difficult to imagine that the same logic of shared and concurrent jurisdictions would not apply. The key from my point of view is to ensure that concurrent and shared jurisdictions are arranged through negotiation and consent rather than by imposition.

33 See also the essays by Hanselmann and Gibbins and by Peters in this volume.

34 For example, Turpel (1993) argues that the rejection of the Charlottetown Accord by Aboriginal voters signalled their unwillingness to trust the national Aboriginal organizations to negotiate an agreement that was sufficiently representative of local interests.

35 The type of work I have in mind is already well underway in Saskatchewan (Hawkes, this volume; Saskatchewan, OTC 1998). See also McKee's (2000) work on the British Columbia Treaty Process. An interesting research direction is also provided by Tully (2000b, 62) in his recommendation of the establishment of a decolonization commission – composed of Aboriginal and non-Aboriginal members and guided by the *Final Report* of the Royal Commission on Aboriginal Peoples – which would monitor the transition from a colonial to a non-colonial relationship between Aboriginal and non-Aboriginal peoples over the next decades. Also, Joyce Green speaks approvingly in her essay of Desmond Tutu's call for a truth and reconciliation commission for Canada.

36 Cassidy's call for the utilization of new information technologies to disseminate research on Aboriginal governance is of particular importance. A wealth of material that currently resides in relative obscurity in public and private libraries, archives, CD-ROM's (the entire corpus of material collected by RCAP, for example), microfiche, and in the files of various governmental and non-governmental organizations could be collected relatively easily and made available in a single searchable clearinghouse on the World Wide Web.

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