

# Indigenizing Parliament: Time to Re-Start a Conversation

While acknowledging the deep ambivalence on the part of the Indigenous political class about the desirability of greater representation in Parliament, based on a long history of settler colonialism and formal political exclusion, the author posits that it would be a mistake to leave parliamentary reform out of the broader exploration of reconciliation that is currently underway. Without prejudicing outcomes by advocating for particular reforms, the author outlines some historic models from Canada and abroad and some of the challenges that participants will face when restarting this conversation.

**Michael Morden**

Indigenous peoples play an ever more central role in political life in Canada. Episodes like the Idle No More movement, or ongoing contention over resource extraction attract a new kind of attention and intellectual investment on the part of non-Indigenous peoples. The challenge of building a more consensual political community in the aftermath of settler colonialism is an entirely mainstream preoccupation, more now than ever before. But curiously, the question of reforming political institutions has rather receded from view. In particular, parliamentary reform and “decolonization” have existed in separate intellectual universes.

In previous decades, when confronted with earlier waves of Indigenous mobilization, Canadian elites had begun to explore the potential for reform of the political system to improve the representation of Indigenous peoples. “Self-government” entered common settler parlance in the 1980s, and echoed through later phases of constitutional upheaval – in the Aboriginal rights constitutional conferences of the mid-80s, and later in the Charlottetown Accord. This was largely a conversation about strengthening band governments, but reform of political institutions at the centre was also contemplated. Most notable, from a parliamentary perspective, was the *Report of the Royal*

*Commission on Aboriginal Peoples*. Published in 1996, its call for the creation of an Indigenous third house of parliament – the House of First Peoples – reads as no less dramatic and startling a prescription to emerge from a quasi-state voice 20 years later. This is certainly an indication of how little movement in this direction, or any direction, there has been since.

There are several possible explanations for why this is the case. In the first place, Indigenous peoples in Canada have not made reform of central political institutions a priority. They have overwhelmingly focussed on their own nation-building and it is not difficult to understand why. Actually, it goes much further than that. There is broad skepticism and, in many instances, specific opposition to any project which seeks to envelop Indigenous peoples more fully in Canadian institutions. This types of projects are often seen as diminishing the nationhood of Indigenous peoples and advancing the assimilationist project which has pursued the “objective... to continue until there is not a single Indian in Canada that has not been absorbed into the body politic” (in the words of Duncan Campbell Scott, premier Indian Affairs bureaucrat of the early 20<sup>th</sup> century). Second, we have become deeply accustomed to Indigenous political expression happening – in large part – outside of formal political institutions. Setting band governance aside, the strongest articulations of Indigenous political representation at the national level come through direct action, such as Idle No More, and lobbying from peak advocacy organizations such as the Assembly of First Nations. Indigenous representation outside of Canadian institutions is the convention.

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But it is not clear that any of this alone absolves the Canadian political community from examining seriously how to make our institutions more inclusive, representative, and reflective of the Indigenous presence. It remains the case that the policy decisions which have the largest impact on Indigenous communities are made by Canadian politicians in legislatures across the country. In very simple terms, this makes the relative absence of Indigenous peoples from federal Parliament and the provincial legislatures a live issue, and one which cannot be ignored in the broader conversation about reconciliation.

What – if anything – does “we are all treaty people” mean for parliamentary democracy? This paper addresses the question by first, providing some historical context and examining older reform proposals, focussing particularly on that which was advanced in the *Report of the Royal Commission on Aboriginal Peoples* 20 years ago; second, placing Canada in its comparative context by exploring other models for parliamentary institutional innovation in settler states with Indigenous populations; and third, offering some preliminary considerations on a possible reform agenda. I will argue that building Indigenous representation at the centre need not diminish the treaty relationship, or interfere with the project of seeking true autonomy for Indigenous governments. But there remain several critical intellectual and design challenges, which need to be accounted for to ensure that reform does not become an act of misrecognition.

### **The unhappy history of inclusion**

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Long before institutional reform was contemplated, the question of Indigenous participation rested on citizenship – inclusion of the individual Indigenous person through enfranchisement. In the 19<sup>th</sup> century, this was exclusively and explicitly an instrument of assimilation. When enfranchisement provisions were created in the *Gradual Civilization Act, 1857*, they were the product of a shift in policy aims, from creating “civilized” and self-sustaining Indigenous communities, to erasing the Indigenous presence through absorption, one individual at a time.<sup>1</sup> Enfranchisement permitted an educated and debt-free Indigenous man to apply to surrender his Indian status and become a full British subject. Exactly one person took advantage of this opportunity in the following two decades, which convinced Indian Affairs policy-makers to develop a more forceful tool. Various other schemes were contemplated, including Macdonald’s *Franchise Act* of 1885, which extended the franchise to property-owning Indigenous males living east

of Manitoba. The *Act* was fiercely opposed and later revoked by a Liberal government. Later, the *Indian Act* was amended to permit involuntary enfranchisement of individuals deemed suitable by Indian Affairs bureaucrats. This extraordinary power was wielded as a weapon. For example, Indian Affairs officials conspired to enfranchise Frank Loft, the founder of the League of Indians, after he proved himself a powerful critic and effective organizer in opposition to the Department. He fiercely denounced the measure, which would have stripped him of his Indian status – describing it as “denationalization.” It is no wonder, then, that when Status Indians were granted the unconditional right to vote in Canadian elections in 1960, many viewed the move with supreme skepticism, and demanded to know whether this was intended to diminish their treaty relationship with the Canadian state.

Rates of Indigenous electoral participation in central institutions are routinely low and turnout amongst Indigenous voters is generally lower on average than that of non-Indigenous voters.<sup>2</sup> This is likely attributable in some part to principled opposition to participation in Canadian institutions, though there is also evidence to suggest that Indigenous participation is suppressed by same structural factors (education levels, political resources, age distribution, etc.) which reduce participation amongst some segments of the non-Indigenous population.<sup>3</sup> Anecdotally, the “to vote or not vote” question provokes a powerful and complex debate in the Indigenous public sphere. This was on display during the 2015 federal election when, for example, National Chief Perry Bellegarde of the Assembly of First Nations publicly equivocated about whether or not he would vote, while encouraging other First Nations to do so.<sup>4</sup> Indigenous peoples are also reliably underrepresented amongst parliamentarians. According to the Library of Parliament, prior to 2015 there had been just 34 Indigenous MPs since Confederation, along with 15 senators.<sup>5</sup> Indigenous representation in the current Parliament is at an historic high-water mark, with ten MPs – about 3 per cent of the House of Commons, when Indigenous peoples represent closer to 5 per cent of the population.

The history of Canada’s central representative institutions vis-à-vis indigenous peoples, in sum, blends deliberate exclusion, and (sometimes forceful) inclusion in the interest of assimilation. Consequently, the history of Indigenous peoples’ participation in those institutions reflects a mixture of ambivalence, distrust, and specific antipathy. These are hardly novel conclusions. Rather, they were at the genesis of several

far-reaching reform proposals formulated in response to Indigenous mobilization of the 1970s, 1980s, and 1990s, which sought to create new space for Indigenous representation in Parliament. In a short period of time, there was a relatively substantial outpouring of new thinking on this question.

### Canadian Reform Models

The first proposal that commanded a significant stage came in 1989, when the Royal Commission on Electoral Reform and Party Financing (RCERPF) recommended the creation of Aboriginal constituencies to elect federal MPs, in recognition that redrawing electoral boundaries would be insufficient to create Aboriginal-majority constituencies, due to the wide geographic distribution of Indigenous peoples<sup>6</sup>. The report proposed a formula from which a proportion of each province's seats in the House of Commons would be reserved as Aboriginal constituencies, and Indigenous voters would have the choice to register on Aboriginal-specific or general voting rolls. The formula would be designed to ensure a slight overrepresentation of Indigenous MPs in the House of Commons.

Three years later, Canadians went to the polls to vote on the Charlottetown Accord. Charlottetown is better remembered for seeking to entrench the "inherent right of self-government" owing to Aboriginal people. But it also sought change to the model for Indigenous representation at the centre. The Accord would amend the constitution to guarantee Aboriginal representation in the Senate. Aboriginal senators would exercise the same law-making authority of non-Aboriginal senators, "plus a possible double majority power in relation to certain matters materially affecting Aboriginal people" (the details were to be worked out in subsequent consultations with the Indigenous leadership). The Accord also promised further examination of Indigenous representation in the House of Commons, to follow on the recommendations of the Royal Commission on Electoral Reform and Party Financing. Of course, it was rejected in a referendum, and the constitutional project was put to bed.

Finally, a package of reforms was proposed in the *Report of the Royal Commission on Aboriginal Peoples* (RCAP). RCAP expressed considerably more skepticism about the prospects for reforming central institutions in a way that would be amenable to or would meaningfully benefit Indigenous people. Moreover, RCAP brought attention to the possible normative and practical tensions between boosting



Library and Archives Canada, David Neel collection, 1991-344, C-138082

Artist David Neel's poster "Just Say No," depicts Manitoba MLA, Chief Elijah Harper holding an eagle feather from which he drew strength as he withheld his consent and prevented the Manitoba legislature from ratifying the Meech Lake Accord by its deadline. Harper's action is still perhaps the most notable instance of Indigenous parliamentary activism and helped pave the way for the Charlottetown Accord.

Indigenous representation at the centre and creating more institutional autonomy for First Nations outside of Canadian institutions.<sup>7</sup> The commissioners wondered if "...efforts to reform the Senate and House of Commons [are] compatible with the foundations for a renewed relationship built upon the inherent right of Aboriginal self-government and nation-to-nation governmental relations."<sup>8</sup> These competing objectives were woven together, in a way, in the final prescription: a House of First Peoples that would participate in the legislative process outside of and in parallel to the Senate and House of Commons.

The Report notes that, just as the Senate was created, ostensibly, to represent provincial and regional interests in Parliament, so too would a House of First Peoples build Indigenous representation at

the centre<sup>9</sup>. The House of First Peoples would provide “an institutional link whereby Aboriginal peoples’ concerns could be voiced in a formal and organized way,” and “should have real power... the power to initiate legislation and to require a majority vote on matters crucial to the lives of Aboriginal peoples. This legislation would be referred to the House of Commons for mandatory debate and voting”<sup>10</sup>. The House would be first created by statute, with the immediate passage of an *Aboriginal Parliament Act*, and would later be entrenched via a constitutional amendment. This proposal was not necessarily stronger than those of the RCERPF or Charlottetown Accord, particularly because it is left unclear how precisely the House of First Peoples would interact with the other houses of the legislature (whereas, for example, the Charlottetown Accord’s requirement of a double majority on some issues would ensure that in those instances, Indigenous representatives could not be simply out-voted). But it was bold, provocative, and would have transformed (at least) the very visage of parliamentary democracy in Canada.

This idea has resurfaced on occasion since 1996. In 2007, for example, Senator Aurélien Gill sponsored the introduction of *Assembly of the Aboriginal Peoples of Canada Act*, which would have established a tricameral assembly, consisting of separate chambers for First Nations, Inuit, and Métis. The assembly would play an apparent advisory role, and its creation would be accompanied by a statutory requirement to wind up the (then) Department of Indian Affairs and Northern Development. But apart from a Private Member’s Bill and some debate in intellectual circles – and even this has largely dried up – the proposal has languished on a bookshelf, alongside the bulk of RCAP’s prescriptions.

### **Models from Abroad**

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Structuring representation of Indigenous peoples into central political institutions is not a unique proposition. A number of other settler states have institutions in place to do exactly this. In some cases, these institutions are a product of relatively recent innovation, in response to contemporary political mobilization of Indigenous peoples. This is the case in Scandinavia, where Sami parliaments were established in Finland in 1973, Norway in 1987, and Sweden in 1992. In each case, representatives are elected to the parliaments by electors who voluntarily register to the Sami electoral roll. In Sweden and Norway, Sami representatives are elected from one constituency or constituencies that encompass the entire country, whereas in Finland representatives are

only elected from a region in the far north where there is a concentration of Sami people. The parliaments exist to promote “cultural autonomy,” to engage with national parliaments on issues strongly effecting Sami interests, and to exercise some administrative powers over programs directed towards Sami people.<sup>11</sup>

How much real power is operated by the Indigenous parliaments differs somewhat from case to case and is a matter of debate. For example, a 2011 report of the UN Special Rapporteur on the rights of Indigenous peoples suggested that the Sami parliaments “represent an important model for indigenous self-governance and participation in decision-making that could inspire the development of similar institutions elsewhere in the world.”<sup>12</sup> But the report goes on to acknowledge that the bodies mostly serve to permit structured consultation with national parliaments and hold limited mandates themselves. The Swedish Sami Parliament, for example, was originally designed to act simply as an administrative instrument of the Swedish state; Sami representatives have recently called on Sweden to provide substantially more decision-making authority to the body.<sup>13</sup>

In others settler states, structured representation of Indigenous people dates from the colonial period. New Zealand famously has dedicated seats set aside for Indigenous representatives in the legislature. The *Maori Representation Act* of 1867 created four seats for Maori representatives, with the country divided geographically into four large alternative constituencies. These were originally imagined to be temporary in nature, serving both to mollify Maori resistance to colonialism and to hasten assimilation,<sup>14</sup> but the system has persisted in an adapted form to present day. In 1993, when wide-ranging reforms were introduced to the electoral system, provision was made for the number of Maori seats to reflect the number of registrants to the Maori election roll. Consequently, in recent elections the number of Maori seats has increased to seven – which is still significantly less than proportionate to the population of Maori, because many Maori register for the general electoral roll. Predictably, views are mixed about the efficacy of this system for effectively representing Maori interests. One view, summarized by Fleras, is that “[f]ar from drawing the Maori into the policy-making channels of society, separate representation has contributed to their withdrawal from the political arena”<sup>15</sup> because Maori representatives have found themselves often outside of government and because Parliament has remained structurally resistant to permitting more fulsome exercise of Maori self-

determination. While their impact on parliamentary decision-making is deeply ambiguous, the dedicated seats retain immense symbolic significance, both for their opponents and supporters.<sup>16</sup>

A final international model also merits mention. Rather surprisingly, the legislature of the State of Maine provides for Indigenous representation, and has done so since the first half of the 19<sup>th</sup> century. There is a recorded presence of Indigenous delegations at the legislature effectively since the creation of Maine, with the exception of a 34-year span in the mid-20<sup>th</sup> century, but the model has evolved over time. In 1866, Passamaquoddy and Penobscot nations agreed to hold formal elections in accordance with state electoral practices, to select their two non-voting delegates to the Maine legislature. In 1941, Maine revoked those seats; they were restored in 1975. The tribal delegates – now one representative each for the Passamaquoddy, Penobscot, and Maliseet – remain non-voting members, but are paid as legislators, and can introduce and speak to bills and chair commissions. It bears noting that in May 2015, the Passamaquoddy and Penobscot members withdrew from the legislature over ongoing disputes with the Governor of Maine over a number of issues, including the management of fisheries. This was apparently the first time in two centuries that those nations voluntarily ceased to participate in Maine legislative affairs.<sup>17</sup> At present, they have expressed an unwillingness to return under the current system.

### **Thoughts on a Canadian approach: four challenges (to start with)**

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In short, there are plenty of models for us to study. But the question remains: is it necessary, desirable, or appropriate that we adapt our parliamentary institutions to create structured representation for Indigenous peoples? This seems like an auspicious moment to revisit the question. The Truth and Reconciliation Commission, in its conclusion, has been at least partly successful in initiating a broader conversation about “reconciliation.” Does reconciliation reach Parliament Hill? Recall that the formal conversation began there, when, in 2008, Prime Minister Stephen Harper offered an official apology for residential schools. On that occasion, parliamentary institutions almost got in the way of a kind of representation for Indigenous leaders. For a time, the Government was unwilling to permit Indigenous leaders to speak from the floor of the House of Commons to respond to the apology. A partisan conflict over the question was averted only when a New

Democrat staffer suggested that the House resolve itself into a Committee of the Whole for the apology, thereby creating the necessary procedural flexibility<sup>18</sup>. Since then, the conversation has migrated elsewhere.

Let us – again – set aside the frankly more pressing question of building Indigenous governments, and consider Indigenous representation in Parliament (as in New Zealand, and the proposals of RCERPF and Charlottetown), or in parallel to Parliament (as in Scandinavia, and the proposals of RCAP). There are a number of critical puzzles that need to be addressed, and I will address only four below. The first two deal more squarely with the question of whether we ought to amend institutions – whether we can build Indigenous representation in the Canadian state without violating the treaty relationship, or interfering with the project of building Indigenous autonomy. The second two deal more with how to do it – can it be done while recognizing the diversity of Indigenous peoples, and how (at a very high level) it should look.

The first issue to consider, in reflecting on the appropriateness of institutional innovation, is how formal representation in Canadian institutions aligns to the treaty relationship. It has always been the view of most First Nations in Canada that treaties are foundational constitutional documents, which provide the basis for a more just and consensual political community. In this, they are increasingly joined by non-Indigenous judges and legal scholars. A major thrust of reconciliation has therefore focused, appropriately, on re-energizing the treaty relationship – and any new institutions for Indigenous political representation should be consonant with very old ones that exist for the same purpose.

Of particular interest here are the early treaties, which sketched for the first time the broad contours of the political relationship. Perhaps the most oft-cited and fundamental treaty is the *Kaswentha*, or Two-Row Wampum. It was initially negotiated between the Haudenosaunee and Dutch settlers, later adapted to include the British crown, and then extended to other First Nations. Early treaties followed Indigenous diplomatic customs, and consequently were typically enshrined as wampum – beaded belts which depicted and symbolized the content of the agreements. The Two-Row depicts two rows of purple beads on a bed of three rows of white beads. The purple rows portrayed two vessels – a ship and a canoe – travelling on the same river. The belt represented a simple promise that neither party would attempt to steer the other party’s vessel.<sup>19</sup> This belt is cited often



A group of Cree youth that walked 1600 kilometers to bring attention aboriginal issues as a part of Idle No More on March 25, 2013 at Parliament Hill in Ottawa, Ontario

in Indigenous scholarship and activism and ought to be reckoned with. One could argue that building Indigenous representation into Parliament appears to violate the Two-Row Wampum and associated treaties, at least according to a very strict, literal, and limited reading. But a strict reading moves us towards other positions that are plainly normatively untenable – drawing into question even the franchise for Indigenous people in Canadian elections. Moreover, some legal scholars, such as Anishinabek scholar John Borrows, warn against reading which observes only the promise of mutual autonomy but ignores the “building in”<sup>20</sup> elements of the treaty relationship – the interdependency it creates, and the commitment to peace, friendship, and respect.<sup>21</sup> A now popular interpretation of the treaties views them as having created a system of “treaty federalism,” with joined political communities and some degree of shared sovereignty. This vision does not suggest an inherent conflict between honouring the treaty relationship and adapting Parliament for Indigenous peoples, as

federalism permits the coexistence of “shared rule” and “self-rule.”<sup>22</sup> According to this understanding of the treaties, representation at the centre could be regarded simply as a form of intrastate treaty federalism.

A second challenge, which flows directly from the previous one, is normative rather than institutional. It asks a fundamental question: can we square Indigenous self-governance – the project of building Indigenous autonomy from the Canadian state – with bolstering the presence of Indigenous peoples inside the Canadian state. Will Kymlicka has argued, for example, that “the logical consequence of self-government is reduced representation, not increased representation. The right to self-government is a right against the authority of the federal government, not a right to share in the exercise of that authority.... On this view, guaranteed representation in the Commons might give the central government the sense that they can rightfully govern Indian communities.”<sup>23</sup>

Melissa Williams examines this question extensively through the lens of political theory, arguing that it hinges on competing notions of citizenship.<sup>24</sup> If we anchor our understanding of citizenship in shared loyalty and identity, then acting one's Canadian citizenship (through greater participation in shared institutions) can very well be seen as conflicting with acting one's citizenship in an Indigenous nation (through nation-building and self-government). But Williams proposes an alternative conceptualization, of citizenship as "shared fate." This is a normatively minimalist vision, which emphasizes the simple fact of our interdependency as sharers of the continent. Shared citizenship is manifest in the "webs of relationship with other human beings that profoundly shape our lives, whether or not we consciously choose or voluntarily assent to be enmeshed in these webs."<sup>25</sup> According to this more flexible vision of citizenship, the twin goals of representation in Parliament and self-government are not inherently contradictory, but just reflect our belonging to multiple political communities at a single instance. This is, in my view, both practical and persuasive.

Moreover, increased representation in central institutions can help to resolve – at least in some small measure – a prevailing political obstacle to the realization of meaningful autonomy for Indigenous governments. This has been described as the "legitimacy trap," which holds institutions like the *Indian Act* in place despite general, long-standing repudiation in all political corners.<sup>26</sup> Because the federal government retains extraordinary powers over Indigenous communities – particularly those communities governed under the *Indian Act* – it must inevitably be a central player in the wind-down of the *Indian Act* regime and its replacement with some more palatable form of Indigenous self-governance. The participation of the federal government in that process is an ineluctable fact. But the federal government profoundly lacks legitimacy in Indigenous communities. Consequently, when the federal government does act – even to relinquish some of its power under the *Indian Act*, as in a 2014 bill which removed the power of the Minister to disallow band council by-laws – it encounters opposition, which is predicated on the very simple insistence that it has no right to take unilateral action to determine the governance of Indigenous communities. The legitimacy trap holds institutions in stasis, because the only actors empowered to make change lack the requisite legitimacy to exercise that power. Of course, this is only one reason why progress towards true autonomy for Indigenous governments has been so

slow – but it is an important one. At the level of politics alone, then, boosting Indigenous representation at the centre can strengthen the federal government's legitimacy, and this may be necessary interim step to the building of Indigenous self-governance.

In short, I am not convinced that there is an institutional, normative, or political reason why parliamentary reform is impossible or undesirable. But the issue becomes considerably cloudier when we begin to take early steps towards imagining a model. In the first place, how would we account for the profound diversity that characterizes the Indigenous peoples of Canada? In this demographic fact we immediately encounter a reason why some of the international examples cited above do not readily apply to the Canadian case. In both New Zealand and Scandinavia, a people – the Maori in the former case, the Sami in the latter – seeks representation. In Canada, the label 'Indigenous' is a big tent, covering multiples of nations which in some cases share little beyond the experience of colonialism. What as often read as factionalism in national-level Indigenous politics – for example, in the politics of the Assembly of First Nations – is simply the articulation of some deep and organic cleavages, which should not be expected to disappear despite keenly felt solidarity.<sup>27</sup> Taiaiake Alfred's argument that "organizations like the AFN consistently fail because they are predicated on the notion that a single body can represent the diversity of Indigenous nations"<sup>28</sup> can be applied here, if in imagining institutional representation we treat Indigenous peoples as a single constituency. Indigenous politics in Canada has always maintained a distinctly nationalist orientation and attempts at articulating a "pan-Indigenous" political vision are often viewed by Indigenous activists with skepticism.<sup>29</sup> There is, in short, a very real danger of *misrecognition*, if a model was adopted that simply set aside space for Indigenous peoples broadly. This would likely be viewed as the next step in a centuries-old project of superimposing a single, state-crafted identity over the real demographic complexity, in the interest of creating order and legibility. To this challenge, there is no simple answer.

And finally, we cannot overlook the structure and style of representation, and the limitations it might impose on fulsome recognition of – or respect for – the Indigenous presence. This question can be asked simply: must Indigenous representation end with the simple setting of extra seats at the table of the Canadian state? Is the Two-Row Wampum, or our "shared fate" honoured appropriately if we exclude Indigenous modes of political decision-making almost



Three teepees across the river from the Parliament buildings in Ottawa. Author Michael Morden maintains that as long as the federal government remains the primary governance presence in Indigenous communities, the under- and misrepresentation of Indigenous peoples in central institutions is an objective problem. He suggests it would be a mistake to leave discussions about parliamentary reform out of the broader exploration of reconciliation currently underway.

entirely? To take only the most famous example, the Haudenosaunee Confederacy operates according to principles set out in the Great Law of Peace, that permit the complex functioning of a multinational federation. While there is some ambiguity,<sup>30</sup> the Great Law of Peace likely predates the Magna Carta, and the Confederacy was certainly in operation long before any meaningful exercise of the Westminster systems. Of course, it also has priority in time in North America by many hundreds of years. It remains in continuous operation, with a meaningful governance presence at Haudenosaunee communities throughout Ontario and Quebec.

Yet, when we imagine Indigenous representation, we reach the limits of our imagination in contemplating changes along the edges of the institutions that were imported to Canada in the act of colonization. The Westminster system is prized for its dynamism and flexibility, it's true. And researchers have examined whether its basic outline can accommodate the importation of Indigenous political culture and customs, with mixed conclusions.<sup>31</sup> Moreover, we should resist defaulting to primordialist assumptions about fundamental "cultural match"<sup>32</sup> between institutions and peoples. Nonetheless, it is essential to acknowledge the basic hierarchy represented in each model named above. In

all cases, in the cooperative political space where we are to govern our “shared fate,” Indigenous peoples are invited to accommodate themselves to modestly amended institutions of “western” democracy. Here we find troubling historic parallels to the creation of the band council system under the *Indian Act* in the 19<sup>th</sup> century, when Ottawa conferred upon itself the power to supplant traditional Indigenous governance with elective councils modeled on non-Native municipalities. This was seen as an important step in hastening assimilation and creating a more receptive (or acquiescing) Indigenous political class. The result: lingering legitimacy challenges for band councils which persist to this day, and in some cases, parallel traditional and elective governments which deeply complicated Indigenous political representation. We should, at minimum, maintain a recognition of this basic limitation in any reform agenda previously advanced.

## Conclusions

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It bears repeating that there appears to be deep ambivalence on the part of the Indigenous political class about the desirability of greater representation in Parliament. Some of the reasons for this have been sketched out above. Consequently, one may view any discussion of reform to be both tone-deaf and premature. I maintain that as long as the federal government remains the primary governance presence in Indigenous communities, the under- and misrepresentation of Indigenous peoples in central institutions is an objective problem. I also believe it would be a mistake to leave parliamentary reform out of the broader exploration of reconciliation that is currently underway. Without prejudicing outcomes, restarting this conversation now serves some value. But as the deeply equivocal and profoundly non-exhaustive discussion above suggests, there are some large and unresolved challenges to tackle.

Our efforts to contend with some of the trickier questions can be related to what is sometimes argued to be a central preoccupation of government. James Scott famously described this as the drive to establishing “legibility”: the effort by states to organize and simplify complex social dynamics.<sup>33</sup> The state and non-Native publics are often frustrated by the complexity and apparent chaos of Indigenous politics. But this complexity is a natural consequence: of the immense diversity internal to the broad category of “Indigenous”; of treaty and institutional relationships to the state which differ from nation to nation; of the necessity of pursuing the dual and sometimes

competing objectives of exercising influence within the Canadian state and building autonomy from it; and, of operating within Indigenous and Canadian political systems simultaneously. And of course, of the genuine chaos that colonialism sowed. The temptation is to resolve much of this through a single, orderly institutional innovation – but as Scott argues, pursuit of this temptation has produced immense policy failures. The never satisfying, but sometimes wiser path is to simply keep muddling through.

Or perhaps there is a palatable interim strategy – one which carries lower stakes and therefore, does not pose the same kinds of problems as have been discussed. Perhaps there is something to be emulated in the international model that is most easily overlooked – that of the State of Maine. Sending non-voting representatives to the legislature is hardly meaningful decision-making. But it is an intriguing half-measure, which in absolutely no way threatens the treaties, or the construction of Indigenous autonomy, and which we would not need to “get right” in quite the same way. Those representatives would also be less constrained, and would hold only a single mandate – to represent the interests of their peoples. At a higher level of abstraction, this would simply constitute a permanent Indigenous presence at the centre of democratic decision-making in Canada, and a consistent and immediate reminder of the treaty relationship that our parliamentarians must honour. It could be a helpful presence as we work towards the wholesale transformation of institutions governing the Indigenous-settler relationship which – at some point – will have to take place.

Any consideration of particular models is probably premature. Starting this conversation is not.

## Notes

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- 1 John Milloy, “The Early Indian Acts: Development Strategy and Constitutional Change,” in Getty, Ian A.L., and Lussier, Antoine S., *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies*, UBC Press, Vancouver, 1983, pp. 56-64.
- 2 Kiera Ladner and Michael McCrossan, *The Electoral Participation of Aboriginal People*, Working Paper Series on Electoral Participation and Outreach Practices, Ottawa: Chief Electoral Officer of Canada, 2007.
- 3 Patrick Fournier and Peter Loewen, *Aboriginal Electoral Participation in Canada*, Ottawa: Elections Canada, 2011.
- 4 CBC News, “Perry Bellegarde says he will vote in federal election after all,” CBC News Online, 9 September 2015.
- 5 Library of Parliament, “Inuit, Metis, or First Nations Origin,” *Parliament of Canada*, retrieved online from <http://>

- [www.parl.gc.ca/parlinfo/compilations/parliament/Aboriginal.aspx?Menu=HOC-Bio&Role=MP](http://www.parl.gc.ca/parlinfo/compilations/parliament/Aboriginal.aspx?Menu=HOC-Bio&Role=MP).
- 6 Melissa Williams, "Sharing the River: Aboriginal Representation in Canadian Political Institutions," in David Laycock (ed.), *Representation and Democratic Theory*, UBC Press, Vancouver, 2004, p. 96.
  - 7 Ibid., p. 99.
  - 8 Royal Commission on Aboriginal Peoples v.2, 1996, p. 375.
  - 9 Ibid., p. 451.
  - 10 Ibid., p. 452.
  - 11 Luis Rodriguez-Pinero Royo, "Political Participation Systems Applicable to Indigenous Peoples," in Weller, Mark (ed.) *Political Participation of Minorities: A Commentary on International Standards and Practice*, Oxford: Oxford University Press, 2010, p. 339.
  - 12 James Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Addendum – The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*, United Nations Human Rights Council, Eighteenth Session, June 6, 2011, p. 11.
  - 13 India Reed Bowers, *Preparatory Report from the Sami Parliament in Sweden/Sámediggi/Sámedigge/Saemiedigkiel/Sametinget for the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Ms. Victoria Tauli-Corpuz, prior to her 2015 August visit to Sápmi and Sweden*, Kiruna: Sametinget, 2015.
  - 14 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 (03), 1985, p. 556.
  - 15 Ibid., p. 574.
  - 16 Andrew Geddis, "A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand's Electoral System," *Election Law Journal* 5 (4) 2006, pp. 347-371.
  - 17 Mario Moretto, "Tribes Withdraw from Maine Legislature," *Bangor Daily News*, retrieved online from <http://bangordailynews.com/2015/05/26/politics/passamaquoddy-penobscot-tribes-withdraw-from-maine-legislature/>, May 26, 2015.
  - 18 Joanna Smith, "NDP aide's Commons sense saved the day," *Toronto Star*, retrieved online from [http://www.thestar.com/news/canada/2008/06/13/ndp\\_aides\\_commons\\_sense\\_saved\\_the\\_day.html](http://www.thestar.com/news/canada/2008/06/13/ndp_aides_commons_sense_saved_the_day.html), June 13, 2008.
  - 19 John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian legal history, and self-government," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*, UBC Press, Vancouver, 1997, p.170.
  - 20 Richard Simeon and Daniel-Patrick Conway, "Federalism and the Management of Conflict in Multinational Societies," in Gagnon, Alain-G., and James Tully (eds.) *Multinational Democracies*, Cambridge: Cambridge University Press, 2001.
  - 21 Borrows, 1997.
  - 22 Daniel Elazar (ed.), *Federal systems of the world. A handbook of federal, confederal and autonomy arrangements*, London: Longman, 1991, 8.
  - 23 Will Kymlicka, *Multicultural Citizenship*, Oxford: Oxford University Press, 1996, p. 143.
  - 24 Williams, 2004.
  - 25 Ibid.
  - 26 Michael Morden, "Theorizing the Resilience of the Indian Act," *Canadian Public Administration*, Forthcoming 2016.
  - 27 Hayden King, "We Natives are Deeply Divided. There's Nothing Wrong with That," in Kino-nda-niimi Collective (eds.) *The Winter We Danced: Voices from the Past, the Future, and the Idle No More Movement*, Winnipeg: Arbeiter Ring Press, 2014, p. 150.
  - 28 Taiaiake Alfred, *Peace, Power, Righteousness: an indigenous manifesto*, Toronto: Oxford University Press, 1999, p. 88.
  - 29 See for example Colby Tootoosis, "IdleNoMore: Sleeping Giants Awaken," *Last Real Indians*, n.d., retrieved online from: <http://lastrealindians.com/idlenomore-sleeping-giants-awaken-by-colby-tootoosis/>; Pamela Palmater, "Aboriginal peoples must stay united against the First Nations Education Act," *Rabble.ca*, 3 May 2014, retrieved online from: <http://rabble.ca/blogs/bloggers/pamela-palmater/2014/05/aboriginal-peoples-must-stay-united-against-first-nations-edu>.
  - 30 Barbara Mann and Jerry Fields, "A Sign in the Sky: Dating the League of the Haudenosaunee," *American Indian Culture and Research Journal* 21 (2), 1997, pp. 105–163.
  - 31 Graham White, "Structure and culture in a non-partisan Westminster parliament: Canada's northwest territories," *Australian Journal of Political Science*, 28 (2), 1993, pp. 322-339; Graham White, "Traditional aboriginal values in a Westminster parliament: The legislative assembly of Nunavut," *The Journal of Legislative Studies* 12 (1), 2006, pp. 8-31.
  - 32 Christopher Alcantara, *Negotiating the Deal: Comprehensive Land Claims Agreements in Canada*, Toronto: University of Toronto Press, 2013.
  - 33 James Scott, *Seeing Like A State: How Certain Schemes to Improve the Human Condition Have Failed*, New Haven: Yale University Press, 1999.