

Aboriginal Representation in Canada: Reforming Parliament or Creating a Third Order of Government

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Abstract: In Canada, aboriginals are constantly searching for proper representation, voice and place within in society at large and more specifically, in the parliamentary system. This paper critically examines the creation and maintenance of a place for aboriginals within contemporary Canadian governance, specifically two venues for aboriginal represent in Canada: representation through parliamentary reform or self-government by Aboriginal groups.

Given their history of being colonized, their treatment by the Canadian government, the often misunderstood signing of treaties, the assimilation of culture and the large-scale movement to reserves, aboriginals in Canada have been incredibly disadvantaged by the practices of colonialism and today continue to be chronically underrepresented in Canadian Parliament. I have determined that there are two separate routes addressing the under-representation of aboriginal groups that have generally been taken so far in the Canadian context: either reforming the current parliamentary system or creating a 'third order' of government through local attempts at self-governance. Through examining the similar case of the Maori in New Zealand and the arguments for self-government made by aboriginal groups in Canada, I have determined that despite maintaining functionality in theory, both attempts at aboriginal representation are inherently flawed. This is primarily because of the federal government's general unwillingness to cooperate with aboriginal groups, both historically and contemporarily, the geographical spread of the diverse aboriginal populations in Canada, and the constitutional difficulties associated

with amending the Canadian parliamentary system. However, so far the best success for aboriginal representation has been provided through self-government negotiations, and this will likely continue to be the appropriate avenue for aboriginal representation in the foreseeable future of Canada.

Aboriginal underrepresentation is a legitimate concern in Canada. Despite representing approximately 4.4 per cent of the general population of Canada¹, aboriginals do not represent that number in the Senate and the House of Commons. As of April 2010, 5 of the 308 Members of Parliament were aboriginal: 3 Metis, 1 First Nations and 1 Inuit, which comes to about 1.6 per cent of Parliament.² Equally as intriguing, if not more so because it is an appointed body, is the Senate: comprised of 105 members, it holds 6 aboriginal people –

¹ Statistics Canada, "Aboriginal Peoples of Canada," under 'Aboriginal share of total population on the rise.'

² Fontaine, Tim, "An Aboriginal Who's Who of Canadian Politics," under 'The House of Commons.'

4 First Nations, 1 Metis and 1 Inuit,³ coming to 5.7 per cent of the body.

The applicability of special representation in Canada can be understood through an analysis of New Zealand's guaranteed representation in government for their aboriginal population, the Maori. Kiera Ladner, a prominent Canadian political scientist has written specifically that all the treaties in fact have components suggesting that aboriginals in Canada are guaranteed representation of one form or another: "The peace and good order clause really makes two major promises to the Blackfoot Confederacy. The first implies they will keep their sovereignty ... [which] has often been construed as the recognition of an inherent right to self-government, [though] the promise entails more than that." says Ladner.⁴ The peace and good order clause suggests that there is a treaty right for aboriginals to be guaranteed parliamentary representation, and Ladner further emphasizes that despite the difficulties in having the separate aboriginal groups cooperate, "parliamentary representation is a plausible mechanism for the respective communities to share responsibility."⁵ The guaranteed Maori representation in New Zealand offers an example of such parliamentary special representation.

The system in New Zealand is unique in several important ways, the major reasons being that it has no written constitution, and that it is

unicameral, having no upper house in parliament, only a House of Representatives. According to Statistics New Zealand, the Maori represent approximately 14.6 percent of the overall population.⁶ Given the number of Maori in New Zealand and their distinct history, the channel of communication between government and aboriginals is entirely different than has been seen in Canada with our native or indigenous population. Augie Fleras, a New Zealand social scientist at the University of Waterloo has affirmed that "[t]he system of Maori Councils established in 1900, and the creation of the New Zealand Maori Council as a consultative body in 1962, is indicative of this mutual commitment for a co-ordinated Maori input."⁷ It is obvious that New Zealand's relationship with its aboriginal groups is inherently different than that of Canada to its aboriginal population, and this is the first major difference between the two systems that would prevent the Maori example from functioning in Canada. Historically, the Maori population was subject to similar assimilation and colonization as the aboriginal population in Canada; however, the proportionally much larger number of Maori in New Zealand meant that they had a much better chance at defending themselves against colonizing forces, and this proved useful as demonstrated by the government's eventual willingness to cooperate with the Maori in creating an agreeable system of representation.

³ Ibid., under 'The Senate.'

⁴ Ladner, "Treaty Seven and Guaranteed Representation," 97.

⁵ Ibid., 98.

⁶ Statistics New Zealand, "QuickStats About Maori," under 'Maori Ethnic Population.'

⁷ Fleras, "From Social Control towards Political Self-Determination," 554.

A second major problem in implementing a system similar to that of New Zealand's emerges as a result of the geographic spread of aboriginals in Canada. Though the Maori are spread unequally across the island and opponents of the system have argued that the electoral boundaries for Maori seats are incredibly uneven, many still argue that "the Maori seats are an important symbol of Maori determination to maintain a separate identity and an important means of bringing pressure to bear on the government to heed Maori wishes and concerns."⁸ In immediate contrast to this is the aboriginal population in Canada: not only are First Nations groups divided along many separate band ties, but there are also Metis and Inuit groups to consider, giving Canada's aboriginal population a diverse population that can be difficult to unite. If we extrapolate the Maori's guaranteed seats to a Canadian context, we have not only multiple groups attempting to be represented equally, creating disputes among the aboriginals themselves, but more simply, a country 30 times the size⁹. Joe Sawchuk addresses the uneven spread of aboriginals throughout Canada, stating that "The Native population is scattered over the ten provinces and two territories. Nowhere, except for the Northwest Territories, do they hold a majority."¹⁰ The geographical spread of aboriginal populations in Canada has proven to be a common difficulty with any attempt by aboriginal groups to influence the Canadian government, and

likely will continue to be a difficult point because of the division among aboriginal groups and the simple geographical spread of the population.

A third, unrelated challenge facing parliamentary reform enthusiasts is the difficulty of attempting real Constitutional change as opposed to amendments. Given New Zealand's Parliamentary system and its lack of a written constitution, it is much simpler to revise and amend legislation affecting any part of the election process or parliamentary body. Because of the nature of the Canadian constitution, any change to either the Senate or the House of Commons would involve all provinces and territories, thus requiring that a change be made through the general amending procedure, requiring "resolutions of the Senate, the House of Commons, and the legislative assemblies of at least two thirds of the provinces (7) that have at least 50 per cent of the population of Canada as a whole."¹¹ This is both a lengthy process and one that is difficult to orchestrate through all the different provinces and territories, as the failures of the Meech Lake and Charlottetown Accords show. At this time, it would appear that there are far too many complications to even begin considering amendments to the Canadian parliamentary system in order to pursue guaranteed representation as seen in New Zealand.

The difficulties of a united force of aboriginals in terms of both geography and culture are a strong opposing force to real parliamentary change, for as Joe

⁸ Ibid., 564.

⁹ *Encyclopedia of the Nations*, s.v. "Canada."

¹⁰ Sawchuk, *The Dynamics of Native Politics*, 28.

¹¹ Intergovernmental Affairs, *Procedure for Amending the Constitution of Canada*, under "General Amending Procedure."

Sawchuk says, “it is impossible for Native people to speak with one voice. Of the constitutionally recognized categories of Aboriginal people (Indians, Metis, and Inuit), only the Inuit have a common language and culture.”¹² The geographical displacement of aboriginals (often stemming from the treaty-enforced movement to reserves) creates a problem when self-government is discussed: if aboriginal communities are given governance capacities within their own boundaries, would urban aboriginals wishing to participate in this system be forced to move onto, or back onto reserves? This creates a logistical problem as well, concerning the boundaries of reserves as defined by treaties and the growth they would experience if this system was in fact implemented. It is difficult to ascertain for certain whether this would have a positive or negative effect on aboriginal populations, but it would certainly change many aspects of reserve life and urban life for aboriginals. One prominent example of the difficulty inherent with bringing the many aboriginal groups (specifically First Nations) together is the defeat of the Charlottetown Accord: as Joe Sawchuk describes, “The deal was rejected by a majority of on-reserve Indians and by many regional and provincial leaders, while the accord and the entrenchment of the right to self-government was strongly endorsed by the national chief, Ovide Mercredi.”¹³ The many varied opinions within the national community of First Nations peoples created discord and animosity, eventually leading to others

“characterizing the leadership of the AFN [Assembly of First Nations] as ‘out of touch’ and initiating various self-government negotiations on provincial and regional areas.”¹⁴ If one of the more prominent aboriginal organizations cannot inspire confidence and unity among aboriginal peoples in Canada, it is difficult to imagine how self-government could come about as a large-scale systemic change.

Another important opposing force to representation through self-government for aboriginal groups has been the federal (and other) government’s unwillingness to cooperate in any meaningful way in order to bring about the desired changes for these groups. Many aboriginal groups feel that working within the current system is contradictory to their traditional ways, and that they would rather work alongside or with the Canadian government in providing self-governing institutions for aboriginal communities across Canada. Perhaps partly because many issues, particularly those such as creating a meaningful route for self-governance, take a number of years and no Canadian government can structurally last more than five unless re-elected, there has been little to no progress made in terms of self-government for aboriginal groups. For instance, “Bill C-52 (*An Act Relating to Self-Government for Indian Nations*) was tabled in 1984, but died when Parliament was dissolved the same year.”¹⁵ As well, the proposal of self-government often is interpreted to “mean the re-emergence of a traditional

¹² Sawchuk, *The Dynamics of Native Politics*, 28.

¹³ *Ibid.*, 35.

¹⁴ *Ibid.*

¹⁵ Sawchuk, *The Dynamics of Native Politics*, 35.

system or 'Indigenous ways of knowing and governance.' Many Canadians find this perspective unacceptable."¹⁶ It is difficult to attempt to bring forth legislation aiding the self-government cause when the very nature of it is perplexing to average Canadians. This is evidenced strongly by the Charlottetown Accord which, as James Frideres describes in his critical analysis of the Royal Commission on Aboriginal Peoples, "in 1992 ... moved forward and would have given constitutional recognition of Aboriginal governments as a 'third order.' However, this initiative was short lived as the Accord was rejected by Canadians."¹⁷ This was certainly also the case when, "in the mid-1980s, the Federal government, in an attempt to reduce financial liabilities for First Nations people, attempted to implement a 'Community-Based Self-Government' policy. There was some initial interest in this new form of self-government, but as the details of how this new policy would be implemented became understood by Aboriginal people, there was a near-unanimous rejection of such a policy."¹⁸ It seems that at many stages the government makes attempts to create policy or put forth a new direction for aboriginal rights, but it is misguided and misses the reasons why the issue was even initially brought up. Frideres states that "At each step, when the government pursues Aboriginal self-government action, they do so without a clear understanding of the original features of an Aboriginal

community that contribute to its well-being."¹⁹

Following this train of thought, there has been an emphasis by opponents of self-government that self-government is meant only to separate aboriginal groups from the rest of Canada, deepening the divide and making aboriginals less 'Canadian'. Coates and Morrison argue in their chapter 'From Panacea to Reality' that "Self-government is not ... about isolation and separation from the Canadian political system. Instead, the establishment of self-governing Aboriginal communities provides a more equitable distribution of power and allows for Aboriginal collaboration and co-operation with other levels of government."²⁰ Proponents of self-government for aboriginal communities have been adamant that this is not an attempt to separate from Canada, to rob governments of their power or to remove aboriginal peoples from Canada's population. They are simply making an attempt to regain some of the power that has been taken from them in the past, and create sustainable and working relationships with all levels of government in order to provide for their communities. Coates and Morrison also stress that "while self-government is no panacea, it is a promising and important stage in the revitalization and cultural renaissance of Aboriginal peoples and communities in Canada."²¹

¹⁶ Frideres, "Critical Analysis of the Royal Commission on Aboriginal Peoples Self-Government Model," 124.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Coates and Morrison, "From Panacea to Reality," 118.

²¹ Coates and Morrison, "From Panacea to Reality," 121.

Despite opposition and difficulties associated with amending the Constitution and finding ways in which to share the governing burdens of local, provincial, federal and aboriginal levels of government, there have been very successful attempts at creating functioning communities of self-governing aboriginals in Canada. These successes have generally come in communities where there is open and deliberate cooperation between the many levels of government, and this often isn't an issue because aboriginal groups tend to be concerned with problems at a more local level. Coates and Morrison state that "Where there have been tensions, for example between the Kamloops First Nation and the city government in the 1980s, progress on economic and community development came to a halt."²² The issues seem, then, to arise when the different levels of government, particularly local and aboriginal, essentially step on each other's toes. Though this is a valid concern, it can most often be circumvented by creating an open and sharing line of communication and commitment between the separate groups involved: "Where levels of co-operation are high, Kamloops again providing a good example, as do Westbank, the Squamish Nation, Saskatoon, and many northern communities, major changes and advances have been possible."²³ The system can work, then, and is proving to function quite well in areas where the separate levels of government are willing to cooperate and share responsibility.

Overall, there is significant support for change and improved representation within the Canadian context. Coming back to where I began in a sense, Kiera Ladner argues that

One can justifiably state that a treaty right to parliamentary representation is constitutionally permissible, as it is a constitutionally entrenched right. This conclusion is not revolutionary or unsubstantiable (sic), as several scholars and all of the national Aboriginal political organizations have asserted that guaranteed representation is a treaty and Aboriginal right.²⁴

In conclusion, though there are indeed significant challenges to the systems of aboriginal representation that I have discussed here, there is overall a sense that proper aboriginal representation is possible, and perhaps it is through self-government as research seems to indicate. It would appear that the best success for aboriginal representation has been provided through self-government negotiations, and this will likely continue to be the appropriate and most-used avenue for aboriginal representation in the foreseeable future of Canada.

²² Ibid., 118.

²³ Ibid.

²⁴ Ladner, "Treaty Seven," 99.

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