

## Review Essay: Aboriginal Peoples and Democracy in Canada

Alan C. Cairns. *Citizens Plus: Aboriginal Peoples and the Canadian State*. Vancouver: UBC Press, 2000.

Tom Flanagan. *First Nations? Second Thoughts*. Montreal and Kingston: McGill-Queen's University Press, 2000.

Joseph Fletcher (editor). *Ideas in Action: Essays on Politics and Law in Honour of Peter Russell*. Toronto: University of Toronto Press, 1999.

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Much political discourse in Canada concerns how liberal and/or democratic the Canadian state ought to be. The thought of Alan Cairns, Tom Flanagan and Peter Russell concerns liberal democracy in Canada. All three thinkers have addressed Aboriginal political issues, which Flanagan describes as "vital matters of contemporary public policy." Cairns identifies with the likes of Will Kymlicka and Jeremy Webber; Flanagan describes himself as a "classical liberal"; and the Russell anthology concerns itself with Canada's basic institutional arrangements and how they can be made to made more democratic. It should be noted that the books by Flanagan and Cairns explicitly address Aboriginal political issues, whereas the Russell anthology devotes one part to Aboriginal political issues. However, the other parts (Constitutional Politics; Security Intelligence; Law and the Courts; and Rights and the Charter) are important for Aboriginal politics in Canada.

For most of Canada's history, the assimilation of the Aboriginal peoples has been the preferred method of dealing with Aboriginal identity. This culminated in the 1969 White Paper. The White Paper argued that the inequalities between status Indians and other Canadian citizens derived from the special status of registered Indians.

The White Paper proposed to bring status Indians into a situation of equality through the ascription of a common Canadian citizenship; that is, all citizens ought to belong to the Canadian state in the same way. Status Indians resisted this proposal and were able to pressure the government into withdrawing the White Paper.

In *Citizens Plus*, Alan Cairns argues that it was the concept of "citizens plus" that was used to undermine the assimilationist recommendations of the White Paper. Status Indians, it was argued in the Hawthorn Report, possessed a *right* to all the benefits of Canadian citizenship *plus* a bundle of rights based on treaties and agreements between status Indians and the Canadian state. Cairns argues that the "plus" aspect can be pruned and adjusted so as to encapsulate ideas such as an inherent right to Aboriginal self-government and Aboriginal nationalism. The concept of "citizens plus" would allow for a distinct identity and for the participation in the collective project that is Canada.

Cairns notes how the conceptual sway of the concept of "citizens plus" was eclipsed by Aboriginal nationalism. Cairns argues that an emerging consensus is emerging around the "nation-to-nation" approach that is endorsed by, among others, the Royal Commission on Aboriginal Peoples (RCAP). This approach advocates a nation-to-nation relationship between Aboriginal peoples and the Canadian state.

Cairns argues that this approach will lead to a distance between Aboriginal people and other Canadian citizens. Furthermore, the conclusion of agreements, such as the Nisgaa Agreement and the Nunavut Agreement, does not eliminate Canadian citizenship. Thus, the concept of "citizens plus" ought to be preferred to concepts such as assimilation and "nation-to-nation."

Cairns recognizes that the time for "citizens plus" may have come and gone. He notes that this may be due to the language of citizenship used in the White Paper. Aboriginal people may be skeptical of policies and laws that use the language of citizenship. Cairns argues that the "plus" aspect is capable of reconciling Aboriginal nationalism with Canadian citizenship. This will be for only those Aboriginal nations that do not aspire to possessing their own state. The con-

cept of "citizens plus" is likely to reconcile only "thin" or civic nationalisms, such as the nationalisms that exist in Saskatchewan. The "nation-to-nation" concept is better able to deal with "thick" nationalisms, such as that of the Mohawk nation. *Citizens Plus* is an extremely useful text in that the concept of "citizens plus" can be understood as an early version of the recent differentiated citizenship theorizing, such as that of Will Kymlicka or Charles Taylor.

Flanagan's book is a response to RCAP. He describes the ideas and principles that underlie RCAP as the "Aboriginal orthodoxy." Flanagan proposes to analyze these fundamental ideas and principles. *First Nations? Second Thoughts* argues that if RCAP's vision is achieved, the Canadian state will be understood to be a multinational state that contains an archipelago of Aboriginal nations.

Flanagan's argument is composed of eight arguments against eight dubious propositions that are part of the "Aboriginal orthodoxy." One chapter of analysis is devoted to each proposition. These propositions are:

- 1 Aboriginal people possess differentiated rights, since they were here first.
- 2 The colonization of North America was justified, since Aboriginal people were uncivilized.
- 3 Aboriginal peoples possess sovereignty (inherent right to self-government).
- 4 Aboriginal peoples are nations.
- 5 The inherent right of self-government can be exercised on reserves.
- 6 Aboriginal title is communal and inalienable except to the Crown.
- 7 The treaties need to be modernized (reinterpreted or renegotiated) to recognize an ongoing relationship between nations.
- 8 On-reserve Aboriginal people can aspire to self-sufficiency through the combination of transfer payments, resource revenues and local employment.

Flanagan dissents to these aspects of the Aboriginal orthodoxy, but his dissent is based on his understanding of classical liberalism. Associations are acceptable in Flanagan's view, but not nations. For

Flanagan, Canada is a nation-state. Citizens will belong to the state as individuals and they will belong in a similar manner. Representative government is to be preferred, since it is the only form of government that promotes individual freedom. Canada, based on the civilization of Western European peoples, is progressing to some higher state of being, although Flanagan does admit that history is not marching towards Utopia.

*First Nations? Second Thoughts* is a melancholy read. Flanagan yearns for some sort of golden age where individuals belong to homogeneous nation-states. Against the backdrop of civilization (brought to North America through colonization), the free market and representative government would contribute to individual freedom. Unfortunately, the homogeneous nation-state has been akin to the unicorn. There have been few, if any, nation-states. Flanagan would prefer a political community in which the individual possesses a primary allegiance to the state. However, individuals are much more complex than Flanagan's classical liberal self. They belong to various clans, gender, unions, and/or this or that nation. Flanagan's classical liberalism does not differ much from the liberalism of the 1969 White Paper. Although Flanagan advocates progress, it seems curious that *First Nations? Second Thoughts* would advocate ideas that were found to be unacceptable thirty years ago.

*Ideas in Action*, edited by Joseph Fletcher, is composed of essays that focus on broad problems at the intersection of law and politics. The volume is intended to illuminate some of the ways Peter Russell's scholarship has affected key issues of public policy, shaping dimensions of political life in Canada. One common theme that can be identified in almost all of the essays is Russell's commitment to democratic deliberation.

Fletcher has organized this anthology into five sections: Constitutional Politics; Aboriginal Peoples; Security Intelligence; Law and the Courts; and Rights and the Charter. Each section reflects some practical aspect of Russell's engagement with Canadian law, politics and society. *Ideas in Action* offers a close analysis of Canada's basic institutional arrangements and explains how to strengthen their democratic core. The central ideas that inform these essays are notions of

deliberation and diversity, and identity and inclusion.

For those persons who have an interest in Aboriginal politics, the entire volume ought to prove interesting. The section concerning security intelligence should alert the reader to the possibility of the Canadian Security and Intelligence Service monitoring Aboriginal constitutional activity. The sections concerning constitutional politics, law and the courts, and rights and the Charter have a more direct connection with Aboriginal political concerns. The section on constitutional politics addresses federalism and how the Canadian state can better reflect the diversity it contains. This section is especially interesting when the reader keeps in mind that self-government for the residents of Nunavut is based on Canadian federalism. The section concerning law and the courts touches upon issues such as how the composition of the courts can affect the actualization of the rule of law. Those with an interest in Aboriginal rights ought to find the section on rights and the Charter to be provocative in that it includes an alternative *legislative* approach to protecting rights in Canada.

The section on Aboriginal peoples is comprised of essays by Paul Chartrand, Georges Erasmus and Christine Fletcher. Paul Chartrand argues that Canadian federalism can be invigorated through shared rule in Canadian institutions and self-rule for Aboriginal peoples. Georges Erasmus' essay summarizes the overarching philosophy and vision of RCAP. He argues for a process of treaty extension and adjudication. Christine Fletcher's essay is a comparative study of Aboriginal rights in Australia and Canada. Fletcher argues that Canada and Australia cannot become fully sovereign until Aboriginal traditions and culture inform these states' basic social and political arrangements.

*Ideas in Action* is an excellent reader on law and politics in Canada. The volume reflects Peter Russell's own work in that it posits piecemeal reform of Canada's institutions in order to increase the democracy within them. Furthermore, the authors advance recent ideas, such as that found in RCAP, to older notions, such as reforming Canadian democracy to better suit the times. This anthology should enhance the reader's appreciation of the complexity of reconciling democracy and diversity within Canada.