

## Institutionalizing Inherent Aboriginal Rights: A First Nations Province

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The central theme of this paper is that the exercise of the full range of provincial powers under the Canadian constitution, including the provincial exercise of Crown power, could meet the need for Aboriginal self-government. The paper argues that the recognition of provincial status for Aboriginal peoples would employ recognizable federal and provincial institutions in an appropriately Canadian solution to the question of how Indigenous people can achieve self-government within the context of Canadian parliamentary federalism. To this end, the paper first reviews the somewhat scanty consideration of a First Nations Province (FNP) to date. It then compares the federal position on Aboriginal self-government with that advocated or inspired by Aboriginal authors and organizations. Finally the paper advocates the usefulness of provincial status in mediating between the two positions.

Constitutional discourse has provided only limited recognition of province-like activity by Aboriginal organizations. Kathy Brock has presumptuously suggested that participation in the constitutional process has created "a demonstration effect" that has led Aboriginal organizations to "model their demands and behaviour on those of the provincial governments."<sup>1</sup> Tony Hall, on the other hand, has effectively contrasted proposed Aboriginal powers with current provincial powers:

Tell the people of Newfoundland they have some rights to make decisions for their own future, but you don't know the extent of these rights. Tell them they can meet with other people's governments for ten years to see if they will give Newfoundlanders any rights. Tell them that if this process fails they have the option of going to court to find out what their rights are from non-Newfoundland judges who are chosen by non-Newfoundland politicians and who are schooled in non-Newfoundland law. Present this package as a breakthrough of generosity.<sup>2</sup>

Hall argues that the comparison shows that the federal government has put forward its recent proposals for Aboriginal self-government "in the nastiest, narrowest, most problem-prone fashion possible."<sup>3</sup>

Frank Cassidy has been more explicit than Hall in calling for provincial powers for Aboriginal governments. Cassidy first points out that provincial governments have "nearly independent powers in areas over which they have constitutional jurisdiction."<sup>4</sup> Arguing that First Nations have inherent jurisdiction, Cassidy concludes that "the Government of Canada might adopt a policy which assumes the jurisdictional powers of First Nations to be somewhat similar to provincial powers."<sup>5</sup>

The suggestion of provincial powers for First Nations has recently moved from the more academic pages of specialized journals to the mass media. Peter C. Newman, in an apparent effort to "fly the flag and see who shoots at it," has used his "Business Watch" column in *Maclean's* to preview a "strategy paper sponsored by Ottawa."<sup>6</sup> The paper, written by Thomas Courchene from the School of Policy Studies at Queen's University, proposes the creation of a First Nations Province (FNP).<sup>7</sup> In an interview with Newman, Courchene pointed out that reserves already run like provinces in that Indian Affairs acts like a provincial government bureaucracy, especially in fields like health and education. "What I'm suggesting," said Courchene, "is that we turn those powers over to the Indians to exercise on their own lands, and that those lands in aggregate form Canada's 11th province."<sup>8</sup> Newman assumes that the leaders of the First Nations must know of the proposal. He suggests that, given their recent successes, they may well ask for more in the form of "parallel government privileges" with the federal government. Newman offers no evidence for this assumption, and this paper will argue that such a position could well be less than suitable for First Nations' own purposes.

Newman, in interviewing Courchene, outlines the proposal as follows. The territory of the proposed FNP would be twice that of Prince Edward Island, while its population would be half that of Nova Scotia. Like other provincial governments, a FNP would have "exclusive jurisdiction under Sections 92 and 93 of the Constitution . . . as well as under Section 109 (control over lands and resources)—just like any other province."<sup>9</sup> The right of the FNP to tax residents would be similar to that of other provinces, and Newman uses about half of the article to describe financial arrangements flowing from the creation of a FNP. Newman describes in two sentences what he sees as implications for federal institutions from the existence of a FNP: "the Grand Chief of the First Nations Province would become a regular member of federal-provincial conferences, and the FNP would be represented in the new Senate the same way as, say, Alberta. MPs would be elected in proportion to population, representing multi-

reserve constituencies."<sup>10</sup> Newman concludes with the assumption that Quebec would oppose the proposal.

Newman's review of the proposal follows a previous draft version of the paper so closely that one suspects his having had access to the "Do Not Quote" earlier version—authored, incidentally, by Courchene and Lisa M. Powell. The review accurately reflects the paper's predominant concern with financing and internal structural elements of a FNP and the corresponding scarcity of examination of implications for federal institutions. Newman's closing line bemoaning "having Canada's map peppered with 2,231 Monaco's" does, however, depart significantly from the tone of the earlier paper, and is less than helpful in exploring such considerations.<sup>11</sup>

The exercise of provincial powers by Aboriginal peoples lies outside current federal proposals. Keeping up with "current proposals" is difficult during a time of rapid changes in circumstances and active negotiations. This paper will assume for the sake of argument that a late-1991 speech by the Minister of Justice and Attorney General of Canada, Kim Campbell, expresses the "current" federal position.<sup>12</sup> Tony Hall's caricaturization of the federal proposals, as quoted earlier in this paper, is unfortunately close to the truth. Claiming that an "historic breakthrough is possible,"<sup>13</sup> Campbell first reiterates Mulroney's tabling of the "contingent right proposal" at the 1985 First Ministers' Conference.<sup>14</sup> According to Campbell, the contingent right proposal would have constitutionally recognized "a general right of Aboriginal peoples to self government" on condition "that the detailed enforceable content of the right would be worked out in negotiated agreements." Campbell points out that this proposal received the approval of seven provinces representing more than fifty percent of the Canadian population. However, says Campbell, the federal and provincial governments have argued the need for further definition of the right of self-government, while Aboriginal leaders insist "that the 'inherent' nature of this right made this process unnecessary and unacceptable."<sup>15</sup> To bridge this gap, according to Campbell, the federal government in 1987 offered "explicit recognition" of the right to self-government, "but provided that the specific powers and jurisdictions of Aboriginal governments should be worked out through negotiated agreements."<sup>16</sup>

The above background, says Campbell, "brings us to 1991, and our September proposals." Under these latest proposals, a "Canada clause" would provide to the courts an "interpretive backdrop" to underscore Aboriginal rights, including those in Sections 25 and 35 of the Constitution. The Aboriginal right to self-government would be entrenched immediately and, over a ten-year period, negotiated

agreements "would be constitutionally protected as they are developed." The right to self-government, after ten years, would be a "justiciable right." In the end, says Campbell, "the courts would ultimately have the responsibility of defining what this right entails."<sup>17</sup> The ten-year period thus becomes "simply a guarantee that, if agreements with some Aboriginal groups are not negotiated during that period, then time is up and those groups can turn to the courts to enforce their rights."<sup>18</sup>

Campbell professes not to understand why Aboriginal people think the federal government is insisting "on delegating rights as though we were the Great White Father. We're talking about *recognizing* and *protecting* a right, not *granting* it. . . . [I]f somebody can figure out a way to include the word *inherent* without putting the essence of our federation at risk[,] . . . well, we're open to all responsible suggestions."<sup>19</sup> Even if the federal package were to include the word "inherent," Campbell was quite clear about the prominent role of the courts in eventually defining "responsible" arrangements within the federation. "The Supreme Court is the ultimate authority on the interpretation of our Constitution, and all Canadians, including Aboriginal Canadians, are subject to its rulings." Aboriginal people, however, should not worry about Charter of Rights judgements impinging on their Aboriginal right to self-government, because "the courts will weigh [Section 25 protection of Aboriginal rights] against the importance of other protections in the charter that Aboriginals need as much as non-aboriginals." After recognizing the diversity of First Nations and mentioning potential difficulties in determining jurisdiction, Campbell closes with a conciliatory affirmation that the federal government's proposal "recognizes the unique and distinct nature of Aboriginal Peoples."

To begin to understand the insistence of Aboriginal leaders on an inherent Aboriginal right to self-government, one first needs to reflect on the administrative yoke of the Department of Indian Affairs and its role in administering the Indian Act. The history of that colonial model of administration, with its lack of democratic control or responsible government, has alerted Aboriginal people to the difference between an inherent right to self-government and a right born of a delegated, contingent or justiciable process. Conveying the effect of that experience to the larger population of Canada that has enjoyed, to a greater degree, the right to self-determination has not been easy, despite persistent attempts. Just as "Indian resistance to the *Indian Act* is as old as the act itself,"<sup>20</sup> Indian insistence on recognition of an inherent right to self-government will continue.

The founding declaration of the Assembly of First Nations (AFN), the national body representing the 573 chiefs in Canada, stressed that the

Nations still retained the right to govern themselves, "an inalienable right given them by the Creator."<sup>21</sup> In his excellent survey of recent writings in what he calls the "emerging field of studies" of Aboriginal government, Frank Cassidy recognizes "that the emerging political will among aboriginal peoples in Canada will not be satisfied with anything less than a recognition of the inherent right to aboriginal government."<sup>22</sup> The recent work of Michael Asch clearly spells out the content and potential implementation of inherent Aboriginal rights to self-government.

Asch and co-author Patrick Macklem postulate two theories of Aboriginal Right.<sup>23</sup> The first is the contingent rights approach, which "imagines rights as emanating from state recognition of a valid aboriginal claim to freedom from state interference."<sup>24</sup> Asch and Macklem provide several examples of contingent rights. The most striking of these examples is the Royal Proclamation of 1763, which the authors characterize as "an illustration of prerogative Crown action that confers certain rights on the aboriginal population."<sup>25</sup> According to Asch and Macklem, acceptance of the contingent theory of Aboriginal right "implicitly denies any assertion of First Nations sovereignty by viewing the existence or non-existence of aboriginal rights, including rights to self-government, as dependent upon the exercise of Canadian sovereign authority."

Asch and Macklem develop inherency theory by tracing the reasoning of recent court decisions. For example, they cite Justice Hall in *Calder*: "aboriginal Indian title does not depend on treaty, executive order or legislative enactment." According to Asch and Macklem, Justice Hall had "articulated an inherent theory of aboriginal right."<sup>26</sup> An inherent theory of Aboriginal right, say the authors, claims "Aboriginal rights inhere in the very meaning of aboriginality. The production and reproduction of native forms of community require a system of rights and obligations that reflect and protect unique relations that native people have with nature, themselves and other communities."<sup>27</sup>

Asch and Macklem find a growing body of Canadian law that recognizes a theory of inherent Aboriginal right. They argue that the theory of inherent Aboriginal rights generates a particular approach to First Nations' sovereignty and self-government. This approach stands in direct contrast to the contingent right approach. Their description is worth quoting at some length:

According to an inherent rights approach, First Nations sovereignty is a term used to describe the totality of powers and responsibilities necessary or integral to the maintenance and reproduction of aboriginal identity and social organization. Under an inherent rights theory, First Nations sovereignty and aboriginal forms of

government, as the means by which the aboriginal identity and social organization are reproduced, pre-existed the settlement of Canada and continue to exist notwithstanding the interposition of the Canadian state. The Canadian state may choose to recognize aspects of First Nations sovereignty and aboriginal forms of self-government through executive, legislative or judicial action. Unlike a contingent theory of aboriginal right, however, such action is not necessary for the existence of First Nations sovereignty and native forms of self-government, only their recognition in Canadian law.<sup>28</sup>

The description stands as a relatively strict standard by which to judge the fulfilment of Aboriginal claims to self-government.

More recently, Asch has outlined what he considers the Canadian state's minimum position ought to be in respecting Aboriginal political rights. Asch suggest the following clauses:

1. Canada recognizes and affirms that Aboriginal Nations were sovereign at the time of first European contact.
2. Canada recognizes and affirms that, notwithstanding the existence of Canada, Aboriginal Nations retain, at the minimum, an inherent right to self-government.<sup>29</sup>

This minimum position raises the question whether there is any possible accommodation between the federal view on the one hand and the theory of inherent Aboriginal rights on the other. It is time to return to the central theme of this paper, and begin to examine how a FNP might provide a satisfactory resolution of the current constitutional deadlock about Aboriginal people in Canada.

Kim Campbell has cited the need for further definition of the right to self-government as a counterpoint to the Aboriginal position that the inherent right to self-government obviates such a need-to-know. The need-to-know syndrome was clearly instrumental in defeating Aboriginal aspirations at the time of the three First Minister's Conferences (FMCs) during the 1980s.<sup>30</sup> Premier Lougheed of Alberta, during the 1987 FMC, put the matter this way:

Entrenchment of the principle of aboriginal self-government without prior adequate definition could be a reversal of our traditional democratic process, and would also be inconsistent with Canada's historical development and our democratic practices.<sup>31</sup>

In reply to these concerns, the idea of a FNP not only is consistent with historical development and democratic practices, but also in some ways defines both processes in Canadian political development. The adoption of the provincial model as a mechanism for Aboriginal self-government could go a long way in providing an understandable framework for future development. That framework should, of course, be especially clear to current First Ministers, among whom the call for greater detail has been the loudest.

However, chances are that a FNP would diverge from the current forms and structures of provincial government practice. To some extent this divergence must be available to First Nations; otherwise the provincial format becomes more an imposition of foreign forms of government and less an opportunity for genuine expression of self-government. The diversity of First Nations themselves will necessarily promote a variety of structural responses to accommodate such diversity at the community/nation level. Over time, the current forms of, for example, the Assembly of First Nations or the Metis National Council, could well evolve into quite different governmental structures than, say, the province of Saskatchewan. Thus, while initially providing some sense of familiarity to sceptics, a FNP could still conflict with the need-to-know as expressed by Lougheed.

The crux of the matter, to put it bluntly, is that Lougheed is wrong in his assessment of "Canada's historical development and our democratic practices." In fact, the general lack of specific definition of institutional characteristics was true of the creation of new provinces in Canada and is completely in keeping with Canadian historical development. As David E. Smith has explained in his examination of the historical documents of the province of Saskatchewan, the *Saskatchewan Act*, despite its twenty-five sections, provides little information about the province's operation or the form of its institutions.<sup>32</sup> Smith contends that it is precisely this paucity of definition, combined with Crown powers and favourable judicial decisions, that gave the province considerable "capacity for individual development."<sup>33</sup> Smith asserts that Saskatchewan chose to use this power to create itself, a notion that stands in direct opposition to Lougheed's call for pre-definition of the same process by Aboriginal people.

Canadian parliamentary federalism assigns the power of the Crown to two levels of government, the federal and the provincial. The separation is neither complete nor constant. Provincial status for First Nations would provide access to Crown power at both the provincial and federal level. However, a few words are necessary about the essence of Crown power.

Aboriginal government could arguably exercise Crown power in

fulfilment of the inherent Aboriginal right to exercise the power necessary to produce and reproduce Aboriginal society. It is of some interest in this respect to note the common origins assumed for both Crown power as the continuation of the divine right of kings, and for inherent Aboriginal right to self-government (as expressed by the AFN above), as "an inalienable right given them by the Creator." Regardless of the spiritual justification for such rights, the similarity of intent in each case is worth note. Asch's description of such power as "the totality of powers and responsibilities necessary or integral to the maintenance and reproduction of . . . identity and social organization" would at least seem a good basis for understanding such a common intent. At the risk of offending both formalist adherents of monarchy and any rigid Aboriginal separatists, an inherent Aboriginal right to self-government can be equated to Crown power as exercised within the Canadian institutional framework.

The exercise of Crown power by the provinces has received some attention. In addition to the work of David E. Smith, the comments of J.M.S. Careless about Ramsay Cook's notion of "limited identities" are relevant.<sup>34</sup> After typifying Canada as a coming-together of regions, Careless argues the importance of the Crown in the provinces. As the roles of the provincial governments grew in response to societal change, they could legitimately "aspire to the rank of co-ordinate kingdoms." Not only did the activity of the provinces increase, but so, too, did their identification with the dominant interests within their jurisdiction. Hence, Careless says, "They grew in status as well as function" as their members, under the influence of "geography, economics and history," focused more on community interests rather than "some generalized, idealized, national way of life."<sup>35</sup> Canada denied such growth in status and function to members of the First Nations, who have been and continue to be denied, even as individuals let alone as a collective, the right to participate in provincial jurisdiction as an expression of Crown power. This exclusion, added to the historical effect of colonial administration under federal power, makes even more understandable First Nations' insistence on the recognition of an inherent right to Aboriginal self-government.

If the exercise of Crown power serves as an equivalent to Aboriginal exercise of self-government, then the recognition of provincial status for Aboriginal people would go a long way towards meeting Aboriginal demands. The provincial model may help the public and politicians alike understand Aboriginal self-government. One suspects, however, there will be a lingering sense of unease among those unaccustomed to the idea that Aboriginal people, like the rest of Canadians, have a right to self-government. Kim Campbell would seem to be speaking to those fears when she says: "we *have* to start from the point that Aboriginal



governments will not function as *separate, sovereign, nation states*" (original emphasis).<sup>36</sup> Michael Asch would seem to be speaking to those same fears when he notes that "Aboriginal Nations . . . have repeatedly asserted that their goal is to achieve recognition of their rightful place as co-founders of Canada and not to overturn Canadian Sovereignty."<sup>37</sup> That Aboriginal people have directed their efforts toward inclusion rather than exclusion is clear from the demand to participate in constitutional talks. Provincial status would guarantee Aboriginal inclusion not only in specifically constitutional discussions, but also in the wider forum of all federal-provincial negotiations. Both First Ministers' conferences and the now-regular meeting and consultation between all levels of federal and provincial officials would include Aboriginal participation. Such participation has formerly been absent, not because of Aboriginal insistence on sovereignty, but because Aboriginal people lacked access to provincial powers. The creation of a FNP would at least put fears of Aboriginal desire for sovereignty in a more realistic (and more typically Canadian) context.

Canadian parliamentary federalism separates Crown power into two separate jurisdictions, the provincial and the federal. The creation of a FNP could provide both a flexible and negotiable exercise of an inherent Aboriginal right to self-government through provincial exercise of Crown power. In a sense, however, the proposal at this stage looks like other commentary on the issue of Aboriginal self-government in that it turns on the internal mechanisms of such government. The issue of self-government in this context limits debate to discussion of the ability (more than the right) of Aboriginal peoples to govern themselves. That focus then raises issues of competence that play to the worst instincts of a society constructed until recently along apartheid-like lines. A singular advantage of the FNP proposal is its further usefulness in turning the discussion away from how Aboriginal people will govern themselves. The FNP proposal opens up the discussion of how Aboriginal people might participate more fully in determining the future course of all Canadians. At the federal level, Aboriginal people in a FNP would significantly add to their powers of self-determination through access to increased political effectiveness brought about by provincial status. In addition, provincial status as a FNP implies significant Aboriginal participation in the exercise of the powers of federal institutions.

The obvious place to begin discussion of the exercise of federal Crown power is with the position of the Governor-General. In Canadian parliamentary federalism the position has come to symbolize participation in the exercise of Crown power. To this end, the position has come by accepted convention to alternate between a French- and an English-

speaking person. To represent the inherent Aboriginal right to self-government, two possibilities arise. Canada could set up a second office, equivalent to the Governor-General, to represent the Aboriginal right to self-government. A most respected Elder position might suffice. Alternatively, the rotation of personages in the position might become trilateral whereby every third term the Governor-General would be Aboriginal. This latter arrangement is probably more palatable to the Anglo-Canadian tradition, and better captures the concept of Aboriginal exercise of Crown power as an expression of the inherent Aboriginal right to self-government.

A less symbolic but more important convention of Canadian parliamentary federalism requires provincial representation in several important federal institutions. The most important of these conventions could well be the need for provincial representation at the cabinet level.<sup>38</sup> Even if a FNP exercised its provincial powers internally there would remain a significant need for a federal minister to administer treaty relations and other remnants of the Indian Affairs bureaucracy. Alternatively, a minister of intergovernmental relations might well be an Aboriginal person. In the same way that legislation affecting western Canada would be vetted, for example, through Bill McKnight as Saskatchewan's cabinet minister, federal legislation affecting Aboriginal people would be addressed by an Aboriginal minister of the cabinet. As J.R. Mallory puts it, "The sectional character of the Cabinet also imposes a peculiar limitation on ministerial authority in that policy proposals which affect one particular province or 'veto group' (French-Canadians are the obvious example) really require more than mere concurrence from the recognized Cabinet representative of that group."<sup>39</sup> While the strength of this particular minister may be somewhat difficult to gauge before being put into practice, one thing is certain: No such expression of Crown power has ever before been open to Aboriginal people. Its absence speaks volumes about the history of Indian/White relations, and is some indication of the role that lack of provincial status has played in that history.

A federal offer of guaranteed special representation in a reformed Senate has preceded consideration of FNP participation at the federal level. According to Kim Campbell, this "would ensure Aboriginals a say in the appointment of heads of national institutions, including those with a particular impact on their culture."<sup>40</sup> One issue such an offer raises for the FNP proposal is that under current arrangements the Senate has become the focus of much criticism as a vehicle for provincial representation.<sup>41</sup> That admission to such a suspect source of additional power can be seen as a major concession to Aboriginal demands

emphasizes again the comparison between FNP participation in federal institutions and the current absence of such participation. The contrast between Aboriginal people as a collective body and the population of a given province as a collective body is further emphasized by criticism that existing considerations such as the "regional roots of national public servants . . . [are] fundamentally flawed."<sup>42</sup> The possibility exists that Aboriginal participation in the process of provincial (and regional) representation within federal institutions will provide both an impetus and a bench-mark for other interests examining their own participation. The prospect introduces an interesting element of give and take not now always clear in federal-provincial negotiations.

As with Senate representation, current discussions have given serious consideration to guaranteed representation of Aboriginal people in the House of Commons. Provincial apportionment of seats to a FNP would be an appropriate mechanism to achieve the same end. One specific advantage would be the reduced likelihood of public ire because of a perception of special status for Aboriginal people. The considerations of the Royal Commission on Electoral Reform and Party Financing are germane to the discussion of a FNP.<sup>43</sup> The Commission recommended special Aboriginal constituencies where numbers registered on an Aboriginal voters list warrant formation of such constituencies.<sup>44</sup> The number of registered Aboriginal people required would be dependant on any given province's electoral quotient, with no district to exceed that quotient by 15 percent. This restriction of Aboriginal districts to existing provincial boundaries would likely cause greater population differences between Aboriginal constituencies than would occur between constituencies within a FNP. Another factor would be the allocation of seats to the FNP for distribution in FNP electoral districts. The Royal Commission recommended that, under the current arrangement, Aboriginal electoral boundaries within a given province be subject to a requirement "to consult with the Aboriginal people concerned."<sup>45</sup> By comparison, it would be likely that the creation of electoral districts within a FNP would allow greater Aboriginal determination of boundaries based on factors such as language group or historical relationships.

The report of the Commission recognizes in several places that the confluence of special interests and geographic dispersal would likely mean a high degree of variance from the national population average. Thus, there is a general recognition by the commission that the strongest claims for variance from "rep by pop" standards would fall to Aboriginal districts. The work of the Commission could easily provide a set of beginning assumptions about the number of Commons seats to allocate to a FNP. It is likely, however, that the representation would significantly exceed the

twelve seats now required to provide "rep by pop" status for Aboriginal people.<sup>46</sup>

A relative absence of Aboriginal people from party politics leaves the effect of a FNP on federal institutions open to considerable speculation. Of particular interest in this respect is the emphasis given to party politics by David E. Smith, who argues "that party government . . . has determined Canada's political development."<sup>47</sup> Yet party politics may well not play any role within a FNP. One aspect of the speculation is the recognition that the FNP itself would parallel in many ways the party structure at the federal level. Its very geographic dispersal over the whole of Canada would make the FNP more truly national than some would-be national political parties. Thus the internal lack of normal party activity may well hide a partisan-like role for Aboriginal MPs. The obvious comparison would be with a federalist Bloc Québécois—the difference being the need for FNP MPs to speak to regional variations within their own ranks while representing overriding Aboriginal concerns within the federal structure. Smith has posited the decline of accommodative politics between regions and interest groups in the current age of pan-Canadianism.<sup>48</sup> However, the party-like influence of Bloc Québécois and Aboriginal MPs, aligned with traditional parties to form governments, could well augur a return to a more accommodative mode of behaviour in Canadian parliamentary federalism. The proposal requires more speculative consideration of the consequences for traditional forms of government. Yet the prospect of a FNP is replete with as many potential improvements as disastrous results.

Many of the federal institutional arrangements under discussion are constitutional conventions and not written legislation. This fact is a double-edged sword regarding their implementation in regard to the creation of a FNP. On the one hand, their conventional nature may mean some difficulty in assessing how old conventions apply to a new situation; on the other, such conventional constitution-making assures a relative flexibility and openness to political interpretation. Practice can establish new conventions suitably agreed upon between the parties to Confederation.

The creation of a First Nations Province is fraught with difficulty. Much of the above discussion has assumed a unanimity of Aboriginal perspectives. Such an assumption is clearly at odds with even the recognition of Metis, Indian and Inuit distinctions within the umbrella term "Aboriginal." As well, the above discussion has ignored distinctions within First Nations about Treaty versus non-Treaty Indians, urban and reserve dwellers, and Aboriginal women, who feel left out of the AFN structures and processes. In one sense, this is as it should be. Those

issues are within the primary jurisdiction of Aboriginal people themselves. Yet, it is only when internal autonomy is assumed that estimation of the consequences at the federal level can become the subject of speculation. The hope is that discussion of the possibility of a FNP will spur further debate about potential consequences, and that such debate will widen the chance for constitutional recognition and implementation of an Aboriginal right to self-government.

## Notes

- 1 Kathy Brock, "The politics of aboriginal self-government: a Canadian paradox," *Canadian Public Administration* 34 (summer 1991): 275.
- 2 Tony Hall, "Native self-government: Comments on the federal proposals," *The Network* 1 (Oct. 1991): 7.
- 3 Ibid.
- 4 Frank Cassidy, "First Nations can no longer be rebuffed," *Policy Options* 12 (May 1991): 4.
- 5 Ibid., p. 5.
- 6 Peter C. Newman, "A new province for First Nations?" *Maclean's* 105 (30 Mar. 1992): 36.
- 7 Ibid.
- 8 Ibid.
- 9 Ibid.
- 10 Ibid.
- 11 Ibid.
- 12 Honourable Kim Campbell, Minister of Justice and Attorney General of Canada, text of speech delivered at University of Ottawa Faculty of Law, Ottawa (1 Nov. 1991).
- 13 Ibid., p. 1.
- 14 Ibid., p. 2.
- 15 Ibid.
- 16 Ibid.
- 17 Ibid. p. 3.
- 18 Ibid., p. 4.
- 19 Ibid., p. 7.
- 20 Wendy Moss, *Indian Self-Government*, (Ottawa: Library of Parliament Research Branch, 15 Mar. 1989), p. 4.

- 21 Sally M. Weaver, *Self-Government Policy for Indians 1980-1990: Political Transformation or Symbolic Gestures*, a revised copy of a paper delivered to the 1989 UNESCO Conference on Migration and the Transformation of Cultures in Canada (25 July 1990), p. 5.
- 22 Frank Cassidy, "Aboriginal Governments in Canada: An Emerging Field of Study," *Canadian Journal of Political Science* 23 (Mar. 1990): 91.
- 23 Michael Asch and Patrick Macklem, "Aboriginal Rights and Canadian Sovereignty: An Essay on R. v. Sparrow," *Alberta Law Review* 29, no. 2 (1991): 501.
- 24 Ibid.
- 25 Ibid., p. 502.
- 26 Ibid.
- 27 Ibid.
- 28 Ibid., p. 503.
- 29 Michael Asch, "Thoughts on constitutional amendments recognizing an inherent right to self-government," *Constitutional Forum* 3, (winter 1992): 65-66.
- 30 Brock, pp. 276-78.
- 31 Ibid., p. 277.
- 32 David E. Smith, "Saskatchewan Speaks: Public Documents and the Study of Provincial Politics," *Government Publications Review* [forthcoming].
- 33 Ibid.
- 34 J.M.S. Careless, "'Limited Identities' in Canada," *CHR*, vol. 1, no. 1 (Mar. 1969): 1-10.
- 35 Ibid.
- 36 Campbell, p. 6.
- 37 Asch, "Thoughts on Constitutional Amendments," p. 66.
- 38 Norman McL. Rogers, "The Introduction of Cabinet Government in Canada," *Canadian Bar Review* 11, no. 1 (Jan. 1933); "Federal Influences on the Canadian Cabinet," *Canadian Bar Review* 11, no. 2 (Feb. 1933); "Evolution and Reform of the Canadian Cabinet," *Canadian Bar Review* 11, no. 4 (Apr. 1933).
- 39 J.R. Mallory, "Cabinets and Councils in Canada," *Public Law* (autumn 1957): 240.
- 40 Campbell, p. 4.
- 41 David Elton, "The Senate - In Need of Reform?" in *The Canadian Senate: What Is To Be Done?* (Edmonton: Centre for Constitutional Studies, 1988), pp. 44-49.
- 42 Ibid., p. 47.
- 43 Canada, Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy*, vols. 1-4 (Ottawa: Supply and Services, 1991).

44 Ibid., vol. 4, pp. 247-50.

45 Ibid., p. 252.

46 Ibid.

47 David E. Smith, "Party Government, Representation and National Integration in Canada," in Peter Aucoin, ed., *Party Government and Regional Representation in Canada* (Toronto: University of Toronto Press, 1985), p. 2.

48 Ibid., pp. 15-33.