

**VALIDITY AND POTENTIAL:
DUAL-CITIZENSHIP AND THE INDIGENOUS VOTE IN
CANADA'S FEDERAL ELECTORAL PROCESS**

by

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ABSTRACT

This thesis seeks to explore the idea of Indigenous participation in Canada's federal electoral system and whether such involvement can wield positive change to the Canadian/Indigenous relationship. The analysis presented throughout this thesis highlights the development of a tarnished Canadian/Indigenous relationship as well as the debate surrounding the belonging of Indigenous peoples in relation to the Canadian state and their own Indigenous nations. Additionally, this thesis demonstrates that Indigenous peoples voting in Canada's electoral system do not hinder Indigenous sovereignty, but may heighten its recognition instead, as well as how participation in Canada's political system may wield influence by Indigenous peoples over Canada's elected officials. Although potential for Indigenous influence within Canada's electoral process exists, further research is needed to delve into the subject matter at a deeper level.

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DEDICATION

This thesis is dedicated to my nephews, Tyson and Trent Weekes, and my niece, Amilee Weekes, who inspire me continuously to push for better understanding between Indigenous peoples and Canadians. I inspire to teach in academia and add another voice and viewpoint to the discussion of Canadian politics and Indigenous/Canadian relations in order to bring forth a better future for them, their children, and all young people who share this territory. Only with true understanding of the Canadian/Indigenous relationship can the future generations live together in a respectful and partnering manner.

TABLE OF CONTENTS

Abstract	ii
Acknowledgments.....	iii
Dedication.....	iv
Table of Contents.....	v
Introduction.....	1
Chapter One: Indigenous Nations and the Settler Population: The Development of a Troubled Relationship	
1.0 Introduction.....	12
1.1 Anishinaabeg Nation: Mino Bimaadziwin (Importance of a Good Life).....	13
1.2 Two Different Continents and Two Different Ways of Life.....	17
1.3 The Birth of the Dominion and the ‘Indian’ Question.....	21
1.4 Canada’s Identity Crisis and the Insistence of Indigenous Recognition.....	28
1.5 The Reality of the Situation.....	33
1.6 Conclusion.....	34
Chapter Two: Resurgence and Division: The Question of Indigenous Belonging and the Canadian State	
2.0 Introduction.....	36
2.1 Indigeneity: A Piece of the Canadian Mosaic?.....	37
2.2 Indigenous Self-Determination and Nationhood: The Way Forward?.....	45
2.3 One Foot In and One Foot Out: Belonging in Both Societies.....	54
2.4 Conclusion.....	62
Chapter Three: Casting a Ballot for Indigenous Recognition	
3.0 Introduction.....	65
3.1 Blended Recognition: The Importance of a New Concept of Sovereignty....	67
3.2 Treaty Federalism: Working Together to Rebuild the Relationship.....	77
3.3 Dual Citizenship: The Myth of Participation Equaling Assimilation.....	84
3.4 Conclusion.....	94
Chapter Four: Increasing Indigenous Participation and Electoral Potential	
4.0 Introduction.....	97
4.1 Little Credit Given: The Indigenous Vote in Canada’s Federal Politics.....	98
4.2 Aboriginal Electoral Districts: A Solution or Threat to Influence.....	106
4.3 First-Past-The-Post: A Valid Option for Indigenous Peoples.....	115

4.3.1 Nunavut.....	118
4.3.2 Desenethe-Mississippi-Churchill River.....	119
4.3.3 Kenora.....	122
4.3.4 Why First-Past-The-Post Can Work.....	124
4.4 Conclusion.....	128
Conclusion.....	131
Appendix 1: Indigenous Populations by Federal Riding in the Maritime Provinces.....	140
Appendix 2.1: Decisive Influence in Federal Ridings from Indigenous Peoples.....	140
Appendix 2.2: ‘Influential’ Ridings and Indigenous Peoples as a Voting Block.....	141
Bibliography.....	142

Introduction

Participation in a system of elected governance is a topic that is consistently reviewed and analyzed by politicians, scholars, and grassroots organizers around the world. The Canadian state is but one example that has witnessed debate and discussion over how best to increase participation and representation of the diversity of its citizens in the electoral process. Since Canada's formation in 1867, the federal political process has faced changes to its structure for enhanced forms of participation from its citizenry. Changes to the Canadian federal electoral process include granting the vote to Metis men who owned property (1871), Caucasian women (1918), Japanese Canadians (1948), Inuit peoples (1950), status Indian (First Nations) peoples (1960), and Inmates (2002).¹ Furthermore, debates on how to increase voter participation, such as changes to the electoral system, have been written about, advocated for, and advocated against by Canadian politicians, academics and grassroots organizers. One such example of discussion surrounding electoral change is the 1991 *Royal Commission on Electoral Reform and Party Financing* (RCERPF). The RCERPF was released in hopes of assessing the status of participation in Canada's electoral process and how best to enhance the participation of Canadian citizens.² For instance, volume nine of the RCERPF focused on *Indigenous*³ participation in Canada's electoral system, with focus on whether or

¹ Government of Canada. "A History of the Vote in Canada." *Elections Canada*.

<http://www.elections.ca/content.aspx?section=res&dir=his&document=chap3&lang=e#a321>

² Milen, Robert. *Aboriginal Constitutional and Electoral Reform*. Vol. 9, in *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert Milen, 3-65 (Toronto: Dundurn Press, 1991).

³ According to the United Nations' Permanent Forum on Indigenous Peoples, the term Indigenous relates to those "having a historical continuity with pre-invasion and pre-colonial societies that

not electoral districts for Indigenous voters would enhance Indigenous representation and participation. Academics such as Robert Milen, Augie Fleras, and Roger Gibbins highlight the potential and problems that could be attributed to Aboriginal Electoral Districts (AEDs). While Robert Milen and Augie Fleras consider AEDs as a plausible solution, Gibbins believes AEDs will not solve the issue of Indigenous participation in the Canadian electoral process.

Although Milen and Gibbins briefly touch on an Indigenous perspective of considering themselves as non-Canadian, neither individual have given greater analysis for why such a mindset exists. Therefore, an important component for this thesis is to include Indigenous perspectives that exist on participation in the Canadian state, such as citizenship, and the electoral process. To consider Indigenous perspectives, literature by individuals such as Taiaiake Alfred, Patricia Monture-Angus, Leanne Simpson, Kiera Ladner, and John Borrows will be specifically highlighted throughout this thesis. While Alfred and Monture-Angus believe there is little potential to bring change by utilizing the Canadian processes to enhance Indigenous representation, others such as Leanne Simpson discuss the importance of remembering ones *Indigeneity*⁴ in a modern and global society.

developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions, and legal systems." (Permanent Forum on Indigenous Issues 2004, 2). Note: For the purpose of these thesis, the term Indigenous is used to refer to the three main groups of peoples who are considered to fit this definition along side Canada: 1) First Nations, which comprises more than fifty distinct entities, 2) Inuit, which comprises more than three different entities, and 3) Metis.

⁴ The term *Indigeneity* refers to connections between a group of people and a locality. It connotes belonging and deeply felt processes of attachment and identification, as well as a great moral claims on nation-states and international society (Merlan 2009, 303-304).

Borrows also points out the ability for Indigenous people to still be 'Indigenous' in today's globalized world. However, in order to realign and re-entrench the Indigenous understanding of the Canadian/Indigenous relationship there must be consideration in utilizing the Canadian political process. Furthermore, Borrows, as well as Ladner, look at the specific root causes for why Indigenous people have considered involvement in the Canadian political process to be problematic for Indigenous nationhood and sovereignty. Some of the root causes highlighted by both Borrows and Ladner are the nation-to-nation relationship, colonial tactics used to undermine the stability and recognition of the Indigenous nations, as well as socio-economical issues.

The colonial tactics used by the Canadian state to undermine Indigenous nations may be the most noticeable reasoning for many Indigenous peoples not participating in Canada's electoral process. For instance, until 1960 if First Nations peoples obtained Canadian citizenship they had to renounce their Indigeneity and assimilate into the general Canadian population. Additionally, many First Nations people were simply enfranchised if they sought to obtain an education, entered into military service, or, in the case of First Nation women until 1985, had married non-First Nation spouses. Therefore, the power the Canadian state utilized to control Indigenous peoples was extensive and when citizenship and voting rights were granted to all First Nations people in 1960, without having to renounce their Indigeneity, it was met with skepticism.

The skepticism from Indigenous peoples continued to increase as the Canadian government persisted with assimilationist policy and proposals like the

1969 *White Paper*, the 2003 *First Nations Governance Act* (FNGA), and, most recently, Bill C45 (*An Act To Implement Provisions of the Budget Tabled March 29, 2012 and Other Measures*) – leading to the current ‘Idle No More’⁵ movement.

Government officials have not been the only individuals to advocate for assimilationist policies towards Indigenous peoples, but also by a number of scholars. One of the most notable individuals to speak against recognition of Indigenous peoples as distinct and separate nations has been Tom Flanagan. Literature written by Flanagan, such as *First Nations? Second Thoughts*, has been used to argue against Indigenous recognition that would consider them anything other than Canadian citizens. However, a growing number of politicians and academics, Indigenous and non-Indigenous alike, have begun to counter the view of people like Flanagan.

The majority of Indigenous points of view on the Canadian/Indigenous relationship, involvement in the Canadian state, and the historical implications of the relationship have been studied in the fields of Indigenous Studies and Law.⁶ Some notable individuals have begun to bring the discussion to other fields, such as Sakej Youngblood Henderson, Kiera Ladner, and John Borrows. Henderson, Ladner, and Borrows have discussed items from Indigenous nationhood and constitutionalism to questions surrounding citizenship, inclusion, and participation

⁵ IdleNoMore is the name of the Indigenous movement that began in Canada. It began in early November 2012 in response to the Canadian government’s imposition of legislation, such as Omnibus Bill C-45, that lacked consultation. In early December, with the introduction of the legislation, the Indigenous peoples began holding protests, round dance flash mobs, education sessions, as well as blockades to bring attention to the issues facing Indigenous people and their relationship to the Canadian state. (www.idlenomore.ca)

⁶ Indigenous Studies can also refer to First Nations Studies and Native Studies (It depends on the Institution).

in the Canadian state. However, when it comes to participation in Canada's electoral process, little has been written. What has been written about Indigenous participation in the Canadian state is, for the most part, more than a decade old. Additionally, writings on electoral participation, such as Ladner's "Peace and Good Order" (1996) and "The Alienation of the Nation (2003)," tend to rely on statistical numbers done by academics that argue that Indigenous peoples have little chance to influence electoral outcomes. For instance, Russel Lawrence Barsh focused on Blackfoot participation in one specific riding in Alberta, while David Bedford and Sidney Pobihushchy focused on the Mi'kmaq population in the Maritime Provinces.

Although there is credibility to the findings of Barsh, Bedford and Pobihushchy when specifically considering the regions or electoral districts they analyzed, this cannot be considered a fact for all Indigenous populations across the Canadian state. Although the riding of Nunavut is consistently highlighted as an area where Indigenous peoples, specifically the Inuit, have the majority power to influence who is elected, little has been done to gauge other Canadian electoral districts on whether there is potential for Indigenous peoples to influence electoral outcomes in other districts. The potential to influence more than a couple of ridings could lead to not only an increased Indigenous presence in the House of Commons but also a voice that could be abided by non-Indigenous members (MP) who realize that their ability to stay elected requires the support of the Indigenous voting bloc in their riding. Research done to consider the potential of Indigenous influence is important in the political science realm, as well as Indigenous studies, as it seeks to not only counter the original argument that Indigenous people have little influence

but also to show what can possibly be achieved by acknowledging dual citizenship and utilizing the ballot box to bring forth change and realignment to the Canadian/Indigenous relationship.

Some individuals, such as Taiaiake Alfred and Patricia Monture-Angus, believe there is little chance to bring forth change from within the Canada state because the political, judicial, and economic systems needed for such change were primarily used to undermined Indigenous recognition throughout Canada's development. However, consideration of a more contemporary understanding of sovereignty and the Canadian/Indigenous relationship must be considered alongside Indigenous nationhood. After all, the treaties were expected to allow both the Indigenous nations and settler populations to co-exist together. Unfortunately, this understanding has been forgotten and the various avenues used have brought for slight changes at a snails pace. Thus, arguments from Alfred and Monture-Angus regarding the inability to use Canada's political or judicial systems to bring forth fast pace change may be correct. However, the influence of Indigenous peoples can bring forth change from inside the Canadian state and allow for another option to impact the current dynamic that exists in the Canadian/Indigenous relationship.

Although only small amount of information has been gathered, processed, or concluded, the need to delve further into the question of Indigenous influence in the Canadian state is important. The question of Indigenous influence in Canada's electoral process is important because the ability of voting being another viable option to realign the Canadian/Indigenous relationship needs further study. In fact, this thesis will look at the Indigenous influence in the Canadian state, such as

through citizenship and the electoral system, in order to gauge the potential and positive outcomes that could be achieved with increased participation.

In considering the potential influence of a form of dual citizenship, the Indigenous vote, as well as the theoretical and historical implications that impact Indigenous/Canadian relations, various research methods have been used. The use of various research methods is because the research employed is multifaceted. The history and understanding of the Indigenous/Canadian relationship, and in turn the theoretical debates that also surrounds the relationship, is a contested one with various points of view regarding the interaction and agreements formulated. Additionally, in considering the influence of the Indigenous, literature from various government and academic sources, such as *RCERPF*, will assist in highlighting the theoretical, statistical, and historical discussions in order to grasp an understanding on the potential of the Indigenous vote. In considering the Indigenous people in relation to electoral districts across Canada, there is a chance for a better assessment of the Indigenous impact as it can consider areas where the Indigenous population is not only high enough to bring forth electoral change but also areas where it is not.

In short, this thesis will argue that the ability of Indigenous peoples to influence the Canadian state, through dual citizenry and voting, is such that Indigenous voters could influence not only those who are elected but also enhance Indigenous recognition in the Canadian/Indigenous relationship. In order to consider the potential of the Indigenous vote, this thesis will first review the historical interaction between the Indigenous nations and the Canadian state. Once

an understanding of the historical interaction between the Indigenous nations and the Canadian state is understood, consideration of the debate over Indigenous recognition alongside and within the Canadian state must be gauged to understand the theoretical literature that currently exists on the relationship. Additionally, by using a more dual approach for recognition in the theoretical debate of the Indigenous/Canadian relationship, the issue of Westphalian sovereignty must be addressed and replaced with a more inclusive understanding in order to ease Indigenous concerns about voting. Lastly, with a more contemporary form of sovereignty and an understanding of Indigenous peoples as dual-citizens, the potential of using the First Past The Post electoral system to bring effective change to the Canadian/Indigenous relationship is possible due to the location of the Indigenous populations in relation to Canada's federal electoral districts.

To achieve what this thesis argues, it will be developed in the following manner. The first chapter will assess the academic material that highlights the historical relationship that has existed, and currently exists, between the Canadian state and the Indigenous nations. Assessment of the material relating to the Canadian/Indigenous relationship will be done in order to understand the hesitance and resistance of Indigenous involvement, for the most part, in the Canadian state as citizens and voters. This historical analysis of the relationship between the Indigenous nations and Canada will also consider the policies implemented by the British colonies and, eventually, the Dominion of Canada itself. The review of some of these policies will be important to understand the use of legislation to assimilate and remove all original forms of each Indigenous nations' political and cultural

structures in order to give validity to the development of Canada. Additionally, review will be done on the enfranchisement policies used, through the Indian Act, to assimilate Indigenous people into the Canadian state and why Indigenous people look at this negatively. Due to Canada's use of policy to forcibly assimilate Indigenous peoples, the idea of utilizing Canadian citizenship and the vote is looked at skeptically as there is concern it may degrade their Indigenous nation. With a discussion of what has affected the Canadian/Indigenous relationship, the reader will better understand why Indigenous peoples, for the most part, refrain from participation in Canada's political process.

The second chapter examines the ongoing theoretical debate regarding the re-emergence of Indigenous nationhood as well as the place of Indigenous peoples in relation to the Canadian state. The debate, and arguments, over Indigenous recognition vary from Indigenous peoples being Canadian citizens to those who argue Indigenous peoples have no reason to use the Canadian system because doing so validates Canada's imposition on the Indigenous nations. A final view to consider in the debate over Indigenous recognition is that Indigenous peoples could, and should, utilize both Canadian and Indigenous tools that are available, like voting, to realign the current Canadian/Indigenous relationship. In considering the different theories and views that exist in relation to the place of Indigenous peoples and the Canadian state, flaws that exist in the arguments espoused by those who take a one sided view, such as Tom Flanagan or Taiaiake Alfred, will be highlighted to show problems with their logic. Additionally, chapter two will take the stance that Indigenous peoples utilizing both Canadian and Indigenous tools would be a more

sufficient option in bringing progressive change for the betterment of the Canadian/Indigenous relationship and their citizens.

The third chapter will examine and analyze the theoretical debates on sovereignty, treaty federalism, as well as citizenship in order to highlight the need for a more contemporary understanding that embraces the original understandings of the Canadian/Indigenous relationship. The concept of Westphalian sovereignty is a contributing factor to the tarnished relationship that exists between Canada and the Indigenous nations and a contemporary understanding is needed. However, for Canada to recognize a more contemporary version of sovereignty and treaty federalism, the need for Indigenous peoples to influence decision makers from inside the Canadian state must occur first so mindsets and policy can be changed. The potential option for assisting Indigenous peoples to participate in Canada's electoral process, as argued in chapter four, is the concept of dual-citizenship. By recognizing a more contemporary and inclusive form of sovereignty, alongside dual-citizenship, the ability for Indigenous peoples to participate in Canada's electoral system can be achieved without threatening to Indigenous recognition.

The fourth chapter will examine the suggestions put forth for ways to increase Indigenous participation in Canada's electoral system, specifically the concept of Aboriginal Electoral Districts (AEDs). However, many issues arise with the suggestion of AEDs due to the differences amongst Indigenous peoples, both as nations and as individuals, and other options must be considered. For instance, First Past The Post (FPTP) has been given little consideration due to previous assumptions that the Indigenous population is too small to impact electoral results in

more than a couple of Canada's federal electoral districts. In order to address the issues of previous assumptions relating to Indigenous FPTP system, three case studies (Nunavut, Deserethe-Misinippi-Churchill River, and Kenora) will be used to highlight Indigenous potential. In using the case studies, this chapter will conclude that FPTP needs to be better utilized to obtain effective change in the Canadian/Indigenous relationship. Additionally, this thesis will highlight where further research is warranted in order to enhance understanding of the influence Indigenous peoples could yield in Canada's federal electoral process.

Finally, in concluding this thesis I will recount the findings in each chapter and discuss additional steps that should be taken in order to further delve into the topic of Indigenous participation in Canada's electoral system. The historical, and in some cases ongoing, actions of the Canadian state continue to mar that relationship and lead to actions like the current Idle No More movement. In understanding the development of the Canadian/Indigenous relationship, the reasoning for skepticism in using the Canadian political process is more easily and fully understood but should not be ruled out as a possible solution.

Chapter One: Indigenous Nations and the Settler Population: The Development of a Troubled Relationship

1.0 Introduction:

In March 2012, the Canadian Press reported that negotiations had brought a modern treaty in British Columbia another step closer to fruition. In the negotiations with the Canadian government, the K'omoks nation would gain control over its policies, achieve self-government, and effect the eventual removal of the *Indian Act*.⁷ However, the article points out that K'omok self-government must follow Canadian law and the basis for K'omok citizenship will continue to be defined by section 27 of the *Indian Act*.⁸ These forms of negotiations are a consistent example of not only the modern day treaty process in Canada but also the political and historical relationship that exists between the Canadian state and the various Indigenous nations, like that of the Anishinaabeg.

In the case of the Anishinaabeg peoples, Canada has continuously imposed itself on the Anishinaabeg peoples in order to expand its control over Anishinaabeg territories and day-to-day life. The other Indigenous nations have faced similar impositions from Canada and therefore Canada's imposition of its policies and laws upon Indigenous peoples must be addressed in order to repair the relationship. The historical relationship that developed between the Canadian state and Anishinaabeg nation demonstrates how Canada's imposition and enforcement of its governance, laws, and sovereignty went

⁷ Canadian Press, The. "B.C First Nation One Step Closer to \$17.5-million Treaty." *The Globe and Mail*. March 24, 2012. <http://www.theglobeandmail.com/news/national/british-columbia/bc-first-nation-one-step-closer-to-175-million-treaty/article2380502/> (accessed March 24, 2012).

⁸ Canadian Press. NOTE: Section 27 is defined within the *Indian Act* as what entails a First Nations person, such as an Anishinaabeg person, to be considered legally 'Indian.' This definition includes whether the father was First Nation or not, their generational/blood quantum level, and whether their band/nation is recognized.

unchecked. As Canada's power grew, it forgot its place in the relationship, which led to cultural and political degradation of many Indigenous nations. How the Canadian/Indigenous relationships evolved through Canadian imposition resulted in the development of distrust towards the Canadian state by many Indigenous peoples. This chapter will explore the Canadian/Indigenous relationship using the Anishinaabeg nation as an illustrative case study to show that many Indigenous nations had a complex societal structure prior to contact. Further, this chapter will review the relationship formation post-contact between the British Empire and the various Indigenous nations of present-day Canada, Canada's Indigenous policy since 1867, and the push for an entrenched Canadian identity after 1980. In reviewing the development of the Canadian/Indigenous relationship, the reasoning for Indigenous skepticism towards the Canadian state can be justified. By understanding Indigenous skepticism towards Canada, the theoretical discussions over items relating to Indigenous recognition, sovereignty, and citizenship become clearer when debating electoral participation.

1.1 Anishinaabeg Nation: Mino Bimaadziwin (Importance of a 'Good Life')

The existing pre-contact societal structure set the stage for how the relationship first started to develop. Pre-contact, the Anishinaabeg peoples were separate entities with their own culture, laws, governance, and societal structures.⁹ Although some have argued that Anishinaabeg social structures were underdeveloped and 'uncivilized,' the fact is many aspects of its citizenship code were far more advanced than thought. For instance, Anishinaabeg citizenship traditionally had a process of adoption. In other words, as

⁹ Note: The use of the Anishinaabeg nation is not meant to generalize or lump all Indigenous nations together as one entity with the same complex structure but to highlight, in detail, how at least one Indigenous nation operated prior to contact with Europeans

scholar Leanne Simpson points out, a form of immigration was practiced and therefore allowed non-Anishinaabeg individuals to move into and become citizens within the nation.¹⁰ Simpson also points out that this immigration process was a lengthy process because of what needed to be achieved to prove one's ability to live up to the standards of Anishinaabeg citizenship.¹¹

An individual lived their citizenship by commitment to the values and philosophies of living a good life, also referred to in Anishinaabeg as "*mino bimaadiziwin*."¹² John Borrows furthers this understanding of the good life by referring to them as "principles that respect and facilitate stewardship, such as loyalty, patience, and bravery."¹³ Borrows also mentioned that this citizenship process was a way not only for people to prove themselves, but also to show they truly meant no harm to the Anishinaabeg people.¹⁴ Simpson expresses that for Individuals who did not want to be Anishinaabeg that there was an exit strategy from Anishinaabeg citizenship as it was an individual's choice.¹⁵ If one did not agree to the required standards, they had the opportunity to leave and remove themselves from the system and could therefore opt out of citizenship, which is a practice similar to those used today by many states in the modern world.

Another concept of Anishinaabeg citizenship related to adoption. An orphaned child or a child not being raised with proper standards could be adopted by Anishinaabeg

¹⁰ Simpson, Leanne. *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence* (Winnipeg: Arbeiter Ring Publishing, 2011), 90.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Borrows, John (Kegedonco). *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010), 81.

¹⁴ Borrows, John (Kegedonco). *Seven Generations, Seven Teachings: Ending the Indian Act*. Research Paper, National Centre for First Nations Governance, 2008, 1.

¹⁵ Simpson 2011, 90.

relatives or fellow community members within the nation. In other words, Anishinaabeg citizenship did not rely on bloodline as a moral or theoretical reasoning for inheriting Anishinaabeg rights as citizens.¹⁶ Scholar Patricia Monture-Angus discussed this concept about Anishinaabeg citizenship when she highlighted that:

It is not the biological facts of childbirth and parentage that matter so much in defining family ... it is the actual relationship that is real and recognized. This is why there is no such word as adoption in the [Anishinaabeg] language.¹⁷

Monture-Angus' point establishes how this idea of bloodline was unnecessary as Anishinaabeg citizenship went further and, like those who immigrated into the Anishinaabeg nation, that it required you to live by the standards of *mino bimaadiziwin*.¹⁸ This may lead some to question how such unification could be achieved over the ideas of *mino bimaadiziwin*.

Both Borrows and Simpson delve further into the importance of unification and point out how the concept of "*aabawaadiziwin*," a component of *mino bimaadiziwin* that refers to the art of being together, highlights the importance of unification and teaching of Anishinaabeg citizenship.¹⁹ Borrows agrees with Simpson on this point and furthers it by discussion of how this can only begin in the family unit.²⁰ It would be within the family unit that a child would learn the concepts of *aabawaadiziwin*, *mino bimaadiziwin*, and the clan system.

¹⁶ Monture-Angus, Patricia. *Journeying Forward: Dream First Nations' Independence* (Halifax: Fernwood Publishing, 1999), 159.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Simpson 2011, 122.

²⁰ Borrows, John (Kegeedonce). *Drawing Out Law: A Spirit's Guide* (Toronto: University of Toronto Press, 2010), 9.

The clan system was important to the formation of communities and the duties one performed within the Anishinaabeg nation.²¹ Clans were also key to keeping its citizen along the path of *mino bimaadiziwin*. The clan one belonged to became your family and therefore it becomes noticeable again that the idea of bloodline was not what necessarily formed family units. For instance, Anishinaabeg elders Liza Mosher and Alex Skead both discussed this during an interview and explain that Anishinaabeg peoples never to marry into their own clan because it was their family.²² Though debated, Anishinaabeg children would traditionally inherit his or hers clan from the father.²³ In instances where the father was not an Anishinaabeg citizen, the clan a child would be adopted into was that of their mother's.²⁴

This form of unification as a family unit outside of bloodline allowed for Anishinaabeg people to look past differences and birth as a means for their citizenship. In other words, whether someone was born or adopted into a family, the Anishinaabeg saw no difference. *Mino bimaadiziwin* was the basis for their societal structure and a key unit to formulating governance, relationships, and philosophy. It is clear that the Anishinaabeg societal structures, like many Indigenous nations, were not one of an under-civilized group of people, but rather one far more advanced than assumed. It is important to understand that Indigenous nations like the Anishinaabeg were complex and separate entities when reviewing the European/Indigenous relationship that would formulate after Christopher Columbus' infamous voyage of 1492.

²¹ Borrows *Canada's Indigenous Constitution* 2010, 77.

²² Kulchyski, Peter, Don McCaskill, and David Newhouse. *In the Words of Elders: Aboriginal Cultures in Transition* (Toronto: University of Toronto Press, 1999), 155 and 186.

²³ Borrows *Canada's Indigenous Constitution* 2010, 77.

²⁴ *Ibid.*

1.2 Two Different Continents and Two Different Ways of Life:

With Columbus' 'discovery of the new world' in 1492, the ability of the European empires to infringe upon the Indigenous nations became an important topic of discussion in Europe. Questions from European elites and government officials related to whether they had the ability to claim land that was inhabited by other groups of people. Additionally, discussion in Europe centered on how 'civilized' Indigenous nations were compared to that of Europe. Explorers from Europe had expressed that Indigenous nations and peoples, such as the Anishinaabeg, were unfamiliar to them and what existed in 'civilized' Europe. The questions of societal structure and the status of Indigenous people as civilized would be a major contributor to the Papal Bull of 1537 and the 'conquest' of the 'new world.'

The Papal Bull of 1537 stipulated that the Indigenous nations of the Americas were indeed human but not as 'civilized' as that of the Christian nations in Europe. Thus, the order was that in order to obtain land, the European nations had a couple of choices, the most important ones being: 1) outright war and conquering or 2) treaties.²⁵ In present day Canada, the English opted for treaties when they began to colonize and settle. Treaties that were formulated were done so with the basis of international law practiced at the time.²⁶ These treaties were considered 'peace and friendship' treaties as they were designed to allow both signatories to coexist in the territory under question.²⁷ Both sides were to learn from one another while not interfering with the governing structures, laws, citizenry, and jurisdictions of each other. In other words, the British Empire originally

²⁵ Russell, Peter. *Recognizing Aboriginal Title* (Toronto: University of Toronto Press, 2005), 30-50, 34-42.

²⁶ *Ibid*, 35.

²⁷ *Ibid*, 44; Epp, Roger. "We Are All Treaty People: History, Reconciliation, and the "Settler Problem." In *We Are All Treaty People: Prairie Essays*, by Roger Epp, 121-141 (2008), 135-137.

acknowledged and respected the differences of Indigenous nations with whom they entered treaties.²⁸ Many Indigenous nations agreed to alliances with the British and French during wars that were waged between both empires in North America. For example, many of the Anishinaabeg peoples supported the French during the British/French wars, with the most notable being the Seven Years War.

The Seven Years War occurred due to Great Britain and its colonies wanting an end to French presence in North America. Although the British and its Indigenous allies would be victorious there was a need for British influence to be recognized through a proclamation. The document that would be the basis for English dominance in North America is commonly known as *The Royal Proclamation of 1763*.²⁹ The Royal Proclamation did more than acknowledge the English victory. Additionally, the Proclamation outlined that its subjects were not to infiltrate any of the Indigenous nations' territories that were not already treated. In other words, the Proclamation acknowledged the existence of the Indigenous nations and their right to exist without being tarnished by Great Britain and its subjects.³⁰ The only way around this would be through treaty.

As treaties continued to be implemented between Great Britain and the Indigenous nations the theme surrounding the agreements began to emphasize the surrendering of land. However, treaties were not the only tactic that affected the Indigenous nations. With the American Revolution, and eventual Independence of the thirteen colonies, fractures within some Indigenous nations and confederations became

²⁸ Russell 2005, 35.

²⁹ *Ibid*, 47.

³⁰ Russell 2005, 47; Turner, Dale. *This is Not a Peace Pipe* (Toronto: University of Toronto Press, 2006), 17-18.

noticeable. Most noticeable was the Haudenosaunee Confederacy whose alliance divided its support between the British Empire and the thirteen colonies. By the end of the revolution the Haudenosaunee who supported British interests were forced to leave their home territory in New York State for 'British' land in present day Southern Ontario.³¹ The confederacy went from over thirty permanent settlements to less than half a dozen.³² However, this does not mean the Haudenosaunee Confederacy ceased to exist. Their governance and societal structures prevailed and were used in their new homeland while they continued to be separate from the British North American colonies.³³ The fracturing of many Indigenous nations would continue into the 1800s.

Tensions between the United States and Britain would again occur in the early 1800s, leading to the War of 1812. Documentation from this war again addressed the reliance of both states using their Indigenous allies to fend off their attackers. This is most noticeable in the British Colonies as the support of their allies in the continent was key to preventing American usurpation of its colonies.³⁴ The idea of Manifest Destiny had taken hold in the United States and was a clear threat to the Indigenous nations ability to sustain themselves independently and exist in their traditional territory.³⁵

Many Indigenous nations opted to enter into more treaties with the British Crown in hopes of obtaining additional protection as the United States and British colonies expanded westward. By the 1860s, peace and friendship treaties extended from present day Nova Scotia to Manitoba's Red River basin. By this time, Indigenous peoples had

³¹ Graymont, Barbara. *The Iroquois in the American Revolution* (Syracuse, NY: Syracuse University Press, 1972).

³² *Ibid.*

³³ *Ibid.*

³⁴ Ralston Saul, John. *A Fair Country: Telling Truths About Canada* (Toronto: Penguin Canada, 2008), 90-91.

³⁵ *Ibid.*

decreased exponentially compared to their Settler counterparts due to new diseases, famine, and war. Additionally, British subjects in the colonies continuously broke treaty agreements and were not held responsible for doing so.³⁶ The actions of settler societies, coupled with the new diseases, famine, and other forms of social unrest, added to the strain on the Indigenous/European relationship. Many of these Indigenous nations pressed their British counterparts on respecting the treaties that their representatives had signed. This would go unheeded as the British permanently entrenched themselves in North America and the reliance on Indigenous alliances were no longer required for protecting British interests.

Instead of mutual respect and living alongside each other, the colonial representatives, British subjects, and government began to ponder what to do about the Indigenous population, commonly known today as the ‘Indian problem.’³⁷ The shift in British mentality regarding the Indigenous nations is reflective of British dominance and steady increases in its population throughout British North America. Additionally, there began to be a push from the British North American colonies for forms of responsible government and, in some cases, even a federation of the colonies.

³⁶ *Report of the Royal Commission on Aboriginal Peoples*, Vol 1. Ottawa: Canada Communications Group; One of the darkest spots on Canadian history that shows this occurring is the documentation of the Beothuk people who called present day Newfoundland their home territory. By the mid 1830s, due to disease, Settler expansionism into their territory, and murder – the Beothuk people became extinct. Nothing was done by the colonial governments to prevent these occurrences, despite the Royal Proclamation’s orders.

³⁷ Schouls, Tim. “The Basic Dilemma: Sovereignty or Assimilation.” In *Nation to Nation: Aboriginal Sovereignty and the Future of Canada*, ed. John Bird, Lorraine Land and Murray MacAdam (Toronto: Irwin Publishing, 2002), 15.

1.3 The Birth of the Dominion and the ‘Indian’ Question:

With the continued westward expansion of the United States, and then the outbreak of its Civil War, the British colonies began to consider ways to bolster themselves against possible threats from the south. This turned to the idea of a federation of the colonies as well as a form of responsible government. However, Indigenous nations that the colonies shared the territory with were never approached about such an idea. Instead, representatives from the British colonies were the only ones invited to be a part of the discussion on federation.³⁸ When the decision was eventually made and enacted by Westminster, through the *British North America Act (BNA Act)*, in 1867, the issue of Indigenous recognition and sharing the land were of little to no importance.³⁹ At the time of British North America federating the Indigenous nations were considered to be in the way of modernization and expansion of the Canadian state, their assimilation was believed to be inevitable.⁴⁰ In fact, decisions were made on behalf of the Indigenous nations between the colonies and the British Crown when formulating the new state’s first Constitution.

The *BNA Act* formally brought into existence the Dominion of Canada and enacted the laws of the new state. For instance, section 91(24) of the *Act* stipulated that the newly formed federal government of Canada had jurisdiction over Indigenous peoples that the British Crown had, formulated treaties and relationships with.⁴¹ This was done without consultation of the Indigenous nations. According to British and Canadian mentality, all items relating to the Indigenous peoples were to be dealt with and decided

³⁸ *Ibid*, 21.

³⁹ Sherwin, Allan. *Bridging Two Peoples* (Waterloo: Wilfred Laurier University Press, 2012), 64

⁴⁰ Schouls 2002, 16-17.

⁴¹ Palmater, Pamela. *Beyond Blood: Rethinking Indigenous Identity* (Saskatoon: Purich Publishing Limited, 2011), 21.

upon by the federal government of Canada.⁴² The Indigenous nations had not agreed to this, but by this time many of those who were co-existing with the British colonies were re-located to reservations, having their rights to their traditional territory restricted, and their children forced into the residential school system. In other words, the decision to include a section on Indigenous peoples under the *BNA Act*, without consultation and approval of the Indigenous nations, hints that the mindset that the Indigenous populations were no longer separate entities - despite no agreements from the various Indigenous nations agreeing to federation.

After Canada's formation, the federal government began contemplating effective options to 'civilize' and assimilate Indigenous peoples that they considered being within Canadian boundaries. Tactics used for assimilation by Canada included their interpretation of the treaty relationship. This included forced enfranchisement of any Indigenous people that were considered civilized enough to be a part of western society.⁴³ To be civilized by the Canadian governments standards required permanent settlement, a form of education, and agricultural use of the land. However, this proved difficult with the continued persistence of the Indigenous governance and societal structures that Indigenous nations used. Canada's answer to dealing with Indigenous governance and social structures was to eliminate their presence and influence. The continued persistence of Indigenous peoples and their societal structures led Canada and its government to refer to it as the 'Indian Problem' and a solution was needed.

The answer came in the form of policies such as the *Gradual Civilization Act* and, in 1876, the *Indian Act*. With the introduction of the *Indian Act* it was believed by the

⁴² Ibid.

⁴³ *Ibid*, 21-23; Tobias, John. "Protection, Civilization, and Assimilation." In *Sweet Promises: A Reader on Indian-White Relations*, ed. J.R. Miller, 127-144 (Toronto: University of Toronto Press, 1991), 132

federal government of Canada that the Canadian state was strengthening its power over a population that needed assistance in being civilized.⁴⁴ For Indigenous nations that would fall under this Act, specifically First Nations, it became a facet of colonial rule that would be imposed on them. With the implementation of the *Indian Act*, Canadian officials began to impose more blatant and strict rules on the various Indigenous nations, whether they had signed treaties or not. The Act would be used as a key component to making Indigenous populations who were defined within it as wards of the Canadian state.⁴⁵ Additionally, the Act effectively lumped those nations defined within it as one entity rather than separate and unique peoples. This began to wash away from the settler psyche the understanding that Indigenous peoples actually comprised many different nations. Additionally, the Act was used as a means to ban traditional systems of Indigenous governance and impose a western system of band governance in order to further integrate them into the developing Canadian state. These band council governments were only accountable to the Canadian state and could easily be revoked if they did not follow the rules of the Act.⁴⁶ Additionally, as Canada grew, the Act was used to remove children from their communities and families in order to be placed in the residential school system – which was expected to “kill the Indian in the child.”⁴⁷ The removal of Indigenous children was done to help in facilitating assimilation by preventing their parents and community from teaching them their traditional language, laws, and societal structures.

⁴⁴ Steckley and Cummins 2001, 120-121; Royal Commission on Aboriginal Peoples, volume 1.

⁴⁵ Steckley and Cummins 2001, 121; Sherwin 2012, 132; Palmater 2011, 126, Royal Commission on Aboriginal Peoples, volume 1.

⁴⁶ Canada. *Indian Act*. Ottawa: Public Works and Government Services Canada, 1985, s. 81; Palmater 2011, 33, Royal Commission on Aboriginal Peoples, volume 1.

⁴⁷ Palmater 2011, 33.

As Canada imposed these restrictions on the Indigenous nations, many of its traditional leaders and people tried to appeal these actions. One such example was the Nisga'a Nation, who had been petitioning Canada to end its encroachment on their territory and people.⁴⁸ Another example was Chief Big Bear, a Cree leader, who refused to sign Treaty Six and expressed that because his people never agreed to the treaty that Canada could not impose its will upon them.⁴⁹ Despite the appeals, Canada's expansion did not stop and more Indigenous land was forcibly signed over to the Canadian state. New treaties imposed by Canada began to add restrictions on hunting and fishing, and, in some cases, entire communities were moved in order to allow more resource development and settler expansion.⁵⁰ This was only assisted with the Canadian state's decision to outlaw Indigenous cultures and to remove all possible legal representation for Indigenous peoples.⁵¹ Thus, without legal representation and the continued imposition of the Canadian state and western beliefs, Indigenous nations were legislatively attacked and their citizens heavily subjected to assimilation and colonial practices. Canada, through its actions, refused to acknowledge the Indigenous nations as partners or the existence of Indigenous peoples being citizens to their own nations.

The most relevant form of assimilation that accompanied Canada's actions was Section 27 of the Indian Act, which gave the Canadian government the idea it could legislate its view on who amongst the Indigenous population could qualify for their treaty

⁴⁸ Isaac, Thomas. *Aboriginal Law: Commentary, Cases, and Materials* (Saskatoon: Purich Publishing Ltd, 2004), 7.

⁴⁹ Dempsey, Hugh. *Big Bear: The End of Freedom* (Vancouver: Douglas and McIntyre, 1984), p.74; Ladner, Kiera. *Peace and Good Order: A Treaty Right to Parliamentary Representation?* (Ottawa: Carleton University, 1996), 60-64.

⁵⁰ *Ibid*, 134 & 138-139.

⁵¹ Steckley and Cummins 2001, 171, Milen, Robert. *Aboriginal Constitutional and Electoral Reform*. Vol. 9, in *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert Milen, 3-65 (Toronto: Dundurn Press, 1991), 4.

rights.⁵² The view Canada legislated, through Section 27 of the Indian Act, for who could qualify as ‘Indian’ was, and still is, restrictive. Additionally, as outlined in Section 12, if an Anishinaabeg female married a non-Indigenous male she would no longer qualify as Indigenous.⁵³ Additionally, her children would be barred from their Indigenous background.⁵⁴ With legislation like section 27 of the *Indian Act*, Indigenous peoples had Canada, its rules, and viewpoints imposed on them in hopes of effectively assimilating them; bringing an end to the ‘Indian problem.’ In removing the ‘Indians’ from the land they shared with the Canadian state the issues of Indigenous claims would be prevented. Although Canada was persistent in legislating the assimilation of Indigenous peoples, it continued to be unsuccessful.

Despite Canada’s actions, many Indigenous people supported Canada and Great Britain in both World Wars. The courage that Indigenous people especially showed during World War II led Canadian citizens, who fought and worked along side them for the war effort, to wonder why Indigenous people were facing segregation and non-citizen status in Canada.⁵⁵ Canadians who questioned the lack of Indigenous inclusion in Canada began to lobby the federal government to end Indigenous segregation. This push by Canadians was not for recognition of distinct Indigenous nations who served as allies in the war effort but one of citizenship to the Canadian state.⁵⁶ By the 1950s the understanding of the Indigenous people comprising distinct and separate nations that had not properly been consulted in joining Canada had been, for the most part, forgotten by Canadian society as lobbying of the Canadian government sought citizenship rather than

⁵² Steckley and Cummins 2001, 122; *Indian Act* 1985, s. 27; Palmater 2011.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Tobias 1991, 139-140.

⁵⁶ *Ibid.*

nation-to-nation recognition. In other words, the understanding of the Indigenous/Canadian relationship went from one on distinct nations to that of forced Canadian citizenship, unbeknownst to those who thought they were assisting Indigenous peoples. Indigenous people were again granted the right to legal representation in Canada and certain rules implemented by the *Indian Act* became less restrictive, such as being able to leave the reservation without approval from an Indian Agent.⁵⁷ The loosening of Canadian reigns over Indigenous cultural practices and Indigenous legal representation could be credited with the global mindset learning from the atrocities that were committed, and witnessed, during World War II and would effectively contribute to the Indigenous resurgence to come in a couple of decades.

Additionally, by this time Canada had become less controlled by Great Britain due to the 1931 *Treaty of Westminster*. The approval and implementation of the *Treaty of Westminster* allowed Canada to not only control their own foreign affairs but to also make their own decisions when related to what they deemed domestic concerns, such as Indigenous peoples. Within Canada, the fact Indigenous peoples had not become assimilated still caused headaches for the state. Some believed, such as the John Diefenbaker government of 1957-1963, the way to rectify this situation was to grant all Indigenous peoples, whether on or off reserve, Canadian citizenship. In 1960, without consulting Indigenous peoples, the Canadian government granted them citizenship.⁵⁸

⁵⁷ *Ibid*, 140; Melin 1991, 4.

⁵⁸ Steckley and Cummins 2001, 125; Melin 1991, 5; It is important to note that this was specific to those considered Indian, or Status 'Indian', under the Indian Act. The Metis people had been granted voting rights since the 1870s and the Inuit since 1951. The first use of the right to vote from on-reserve was in a by-election in the riding of Peterborough, in 1960, with the Hiawatha and Curve Lake First Nations.

This would allow Indigenous peoples to have the right to partake in Canadian society without having to relinquish their treaty rights or place within their Indigenous societies.

For many Indigenous peoples, like Taiaiake Alfred, this move was considered another attack on Indigenous nations and recognition of the treaties because Canadian citizenship did not recognize Indigenous citizenship to their own respective nations as well. Furthermore, the extension of Canadian citizenship did nothing to counteract the sub-standard living conditions, isolation, and discrimination that many Indigenous people faced. As the 1960s progressed, the idea of multiculturalism had spread through Canada. The idea of multiculturalism was championed by Prime Minister Pierre Elliott Trudeau after forming government in 1968. Trudeau's view of multiculturalism, which simply recognizes the difference of a diverse population while all carry the same state citizenship, would influence his policies and view on how to address the poor standing of Indigenous peoples.⁵⁹ Trudeau believed that it was important for Canada to recognize differences amongst people but that they all share Canadian citizenship. In regards to Indigenous peoples, Trudeau believed the reason they faced sub-standard conditions and discrimination was not because of the loss of recognition of their nations but because of the policies that kept them separate from Canada.

To rectify the separation of Indigenous peoples from Canada, the Trudeau government introduced a *White Paper* (1969). Instead of forming a policy based on recognizing and reaffirming the existence of the Indigenous nations and the a form of dual citizenship, the Trudeau government opted to abolish the Indian Act, treaties, Indigenous rights, and territory. The Trudeau government's plan was to assimilate all

⁵⁹ Esses, Victoria M and R.C Gardner. "Multiculturalism in Canada: Context and Current Status." *Canadian Journal of Behavioural Science* 28, no 3, (1996): 145-152; 148-149.

Indigenous people into the Canadian state and allow Indigenous peoples the same options that were available to all Canadian citizens.⁶⁰

Indigenous peoples turned against the policy and heavily vocalized their complete disagreement with the decision that the Trudeau government had made.⁶¹ Indigenous peoples had had enough and various organizations were erected to bring their voice to the federal scene. Organizations such as the Union of Ontario Indians, the National Brotherhood of Indians, known today as the Assembly of First Nations, and the Assembly of Manitoba Chiefs sprung up and began to champion the rights of the Indigenous communities they represented. Indigenous people also started taking their claims to the courts. The *Calder Decision* of 1973 could be considered a major breakthrough as it ruled that an Aboriginal right to land had existed and that Indigenous nations were not entirely surrendered to the British Crown.⁶² Although the court was divided on whether it had been completely extinguished due to colonization, the fact native title was recognized, as well as a high level of opposition by the Indigenous peoples, the *White Paper* was shelved and an overhaul on Indigenous relations began to be contemplated throughout the 1970s.⁶³

1.4 Canada's Identity Crisis and the Insistence of Indigenous Recognition:

As the 1970s came to a close, the Trudeau Government was also considering the need to add to the *BNA ACT, 1867*, making it a more modern Constitution. Discussions

⁶⁰ *The White Paper, 1969*; Milen 1991, 6; Ladner *Rethinking Aboriginal Governance* 2003, 50; Tobias 1991, 141.

⁶¹ Tobias 1991, 141

⁶² Palmetter 2011, 68; Supreme Court of Canada. 1973. *Calder et al. V. Attorney General of British Columbia*. Last modified January 31, 1973. <http://scc.lexum.org/en/1973/1973scr0-313/1973scr0-313.html>

⁶³ *Ibid*; *Calder et al. V. Attorney General of British Columbia, 1973*.

between the provincial Premiers and the federal government on a revamped Constitution gained momentum in 1980.⁶⁴ It was believed that Indigenous leaders were not needed at the table because Indigenous peoples were partaking in Canadian elections through their status as Canadian citizens. Therefore, the Canadian government believed that the provinces and federal government could represent them adequately during constitutional discussions. Unfortunately, for many Indigenous peoples the ability to partake in provincial and federal politics was a new phenomena. Additionally, whether Indigenous peoples were voting at high numbers and had access to polling stations were not questions of concern by the viewpoint that the provincial and federal officials could represent them.

The inability of the provincial and federal governments to represent Indigenous peoples was noticeable when the original 1982 draft of the *Constitution Act* did not give recognition of the Indigenous nations, their jurisdiction, governance, or rights.⁶⁵ This led to some Indigenous leaders going above the Canadian government and lobbying directly to the British House of Commons and House of Lords. Indigenous leaders who travelled to Great Britain made it clear that Canada should not be allowed to patriate a constitution without proper recognition and protection of Indigenous nations that it shared the lands with.⁶⁶ The actions of Indigenous dignitaries who had gone to Great Britain is representative of the level of distrust that had developed from Indigenous peoples towards Canada since the original formation of the relationship. Furthermore, Canada's unilateral action and refusal to allow Indigenous representatives at the table symbolized

⁶⁴ Russell, Peter. *The Constitutional Odyssey: Can Canadians Become a Sovereign People* (Toronto: University of Toronto Press, 1990), 107.

⁶⁵ Russell *Constitutional Odyssey* 1990, 117.

⁶⁶ *Ibid.*

the loss in the Canadian psyche of where their place was in the Canadian/Indigenous relationship. Although Great Britain sided with Indigenous leaders and ordered Canada to include sections to protect Indigenous rights, the final wording of Section 35 of *The Constitution Act, 1982*, expressed commitment to ‘existing’ rights.⁶⁷ The Indigenous representatives opposed the final wording of section 35.⁶⁸ Despite opposition from Indigenous leaders, the *Constitution Act, 1982*, was patriated. The inability of the key players in the constitutional discussions listening to Indigenous representatives show an inherent problem of representatives of the Canadian state ignoring what Indigenous peoples express, and to their distrust of Canada’s intentions.

Indigenous opposition did not subside as it was clearly done without proper consultation and inclusion of Indigenous nations. Thus, when a change in government occurred in 1984, and talks of reopening the constitutional debate were considered, Indigenous peoples made it clear they wanted to be properly and fairly included.⁶⁹ Unfortunately, it was deemed that this discussion would not include Indigenous peoples and their concerns but that a future discussion would occur for that purpose.⁷⁰ Thus, as the *Meech Lake Accord* was drafted ‘behind closed doors,’ the Indigenous nations rallied fiercely against it. To the joys of many Indigenous people, the Accord failed when Newfoundland did not vote on it by the deadline. Additionally, and most importantly, the actions of Manitoba’s NDP M.L.A, Elijah Harper prevented the Accord from being

⁶⁷ Ladner, Kiera, and Michael McCrossan. "The Road not Taken." In *Contested Constitutionalism: Reflection on the Canadian Charter of Rights and Freedoms*, ed. James Kelly and Christopher Manfredi. (Vancouver: University of British Columbia Press, 2009), 268; Venne, Sharon Helen. "Treaties and the Constitution in Canada." In *Critical Issues in Native North America*, ed. Ward Churchill (Copenhagen: International Working Group for Indigenous Affairs, 1989), 107.

⁶⁸ *Ibid*; Only one organization would support Section 35 as it stood: The Alberta Metis Association.

⁶⁹ Russell *Constitutional Odyssey* 1990, 132, Milen 1991, 29.

⁷⁰ *Ibid*.

passed within the Manitoba Legislature.⁷¹ Harper's actions would become a modern example of an Indigenous person using Canadian citizenship alongside their citizenship to their Indigenous nations, to effectively prevent changes occurring through Canada's political process that had not included the Indigenous nations.

With the destruction of the *Meech Lake Accord*, and the development of the Oka Crisis in the summer of 1990, the Mulroney government decided to try another round of consultations, this time including several national Indigenous organizations. This would become known as the *Charlottetown Accord* and although it had Indigenous contributions, it too failed by the fall of 1992.⁷² The failure of the accord occurred at the hands of the Canadian electorate, through a referendum that a majority of Indigenous people also voted no towards.⁷³ Concerns had arisen about wording of the sections that related to Indigenous people and whether it would hinder their rights, sovereignty and jurisdiction as Indigenous peoples became more skeptical of Canada's intentions.⁷⁴ In other words, decades of legislative control and mistrust had led Indigenous peoples to be wary of amendments from the Canadian government.

The failure of the *Charlottetown Accord* brought an end to Canadian constitutional discussions. The Canadian government, for the most part, continued to look at Indigenous people as being nothing more than Canadians with additional rights due to their Indigenous background.⁷⁵ Furthermore, Canada continued to flex its muscles over

⁷¹ Milen 1991, 33-34; Bruyere, Louis. "Aboriginal Peoples and the Meech Lake Accord." *Canadian Human Rights*, 49: 1988.

⁷² Brock, Kathy L. "Learning from Failure: Lessons from Charlottetown." *Constitutional Forum, Vol 4*, 1992-1993: 29.

⁷³ *Ibid*; Venne, Sharon. "Treaty Indigenous Peoples and the Charlottetown Accord: The Message in the Breeze." *Forum Constitutionnel* (University of Alberta) 4 (1992): 43-46, 43.

⁷⁴ *Ibid*.

⁷⁵ This will be outlined further in the next chapter. Writings done for the *Royal Commission on Electoral Reform and Party Financing* as well as proposed government legislation highlight this.

Indigenous people as it continued to implement policy that neglected to represent the Indigenous nations – even during and after the striking of a Royal Commission on Aboriginal Peoples (RCAP).⁷⁶ RCAP had taken five years to develop and be presented the House of Commons in 1996.⁷⁷ The findings in RCAP recommended an overhaul of Canadian/Indigenous relations, revamped education on Indigenous peoples, as well as items such as recognizing Indigenous peoples as dual-citizens.⁷⁸ These are just a few of the many recommendations made from RCAP to the Canadian government, which in turn enacted very few to none of the suggestions despite what has been claimed.

By the early 2000s, Canada had awoken to some of its historic realities. Discussion and review of its contribution to the residential school system had begun and some forms of consultation were seriously considered when making decisions. The most noticeable of this being the Kelowna Accord that was formulated, after 18 months of federal, provincial, territorial, and Indigenous negotiations, in 2005.⁷⁹ This *Accord* became known as the first example of an agreement between federal, provincial, and Indigenous governments as a way to begin moving the relationship forward and the need for proper and meaningful consultation with the Indigenous nations.⁸⁰ However, the movement forward through the Kelowna Accord would be short lived due to the federal election of 2005/2006.

⁷⁶ *The Royal Commission on Aboriginal Peoples* was one of the most thorough reviews of Canadian/Indigenous relations. Although it presented many opportunities and options for rectifying the relationship in 1996, the document was ignored and shelved.

⁷⁷ Royal Commission on Aboriginal Peoples (RCAP). 1996. *Report of the Royal Commission on Aboriginal Peoples*, Vol 1-5. Ottawa: Canada Communications Group

⁷⁸ *Ibid.*

⁷⁹ Mitchell, Terry, and Lori Curtis. "Canada, First Nations Have a Road Map. It Was the Kelowna Accord." *Globe and Mail*. 01 11, 2013. www.globeandmail.com/commentary/canada-first-nations-have-a-road-map-it-was-the-kelowna-accord/article7210814/ (accessed 02 28, 2013).

⁸⁰ *Ibid.*

1.5 The Reality of the Situation:

In 2006 the Canadian government, after a change in governing parties, effectively scrapped the Kelowna Accord and the 18 months of negotiations that had gone into it. The Harper government expressed no interest in a document ‘written on the back of a napkin’ and expressed that they would forge a better Indigenous/Canadian relationship.⁸¹ Unfortunately there have been various examples that could show Canada shifting back to the 1969 *White Paper* ideals of Indigenous peoples only being Canadian citizens. Additionally, the summer of 2008 saw the Canadian government issue a formal apology for its role in the residential school process that tried to effectively destroy the various Indigenous cultures, languages, and ways of life that pre-date the Canadian state. The advance forward through a national apology would be overshadowed as Canada returned to a more colonial practice.

Prior to, and especially after, the apology in 2008, various pieces of legislation have been imposed on to the Indigenous nations without proper consultation.⁸² Indigenous frustration began to boil over again as Canada reverted to pushing for control over them, their rights, and their right to exist as the treaties had specified. From Prime Minister Stephen Harper proclaiming that Canada has no history of colonialism at a G20 summit in 2009 to the most recent imposition of legislation, such as Matrimonial Real Property and Private Property legislation, that impact treaty rights, Indigenous peoples are becoming increasingly vocal. The end result of this consistent push to garner control

⁸¹ *Ibid.*

⁸² Legislation that has been labeled as straining the Indigenous/Canadian relationship include: Bill C-27 (First Nations Financial Transparency Act), Bill C-428 (Indian Act Amendment & Replacement Act), Bill S-2 (Family Homes and On-Reserve Matrimonial Interests or Rights Act), Bill S-6 (First Nations Elections Act), Bill S-8 (First Nations Safe Drinking Water Act), First Nations Property Ownership Act, and First Nations Education Act. Majority of Indigenous people look at these pieces of legislation as being imposed and not formulated with proper consultation.

over Indigenous peoples has led to the current ‘Idle No More’ movement that continues to showcase itself in Canada and the world. The messages espoused in the ‘Idle No More’ movement have one major request in common: it is time for Canada to remember its place alongside the Indigenous nations, to respect the treaties, and for a resurgence in recognizing Indigenous nations, their jurisdictions, governing structures, and laws. In other words, the ‘Idle No More’ movement is reminding Canada of its true place in the relationship with the Indigenous nations – one with equal respect and partnership.

1.6: Conclusion:

As has been expressed in this chapter, the Indigenous nations that Canada shares the land with have never been conquered nor have they ever fully agreed to be a part of the Canadian state. Indigenous nations like the Anishinaabeg had, for centuries, lived under their own forms of laws, governance and societal structures. As Europeans began to build relationships with the various Indigenous nations the question of how to properly build such a relationship was debated and discussed in Europe. A treaty relationship was the root that the British Empire opted to use when establishing itself in North America.

As Indigenous peoples declined in numbers and the settler populations increased, the relationship began to change to one of dominance. By the 1800s, parts of British North America would federate into the Canadian state and an enhanced push for dominance of Indigenous peoples and their territories were heightened. The implementation of legislation like the *Indian Act* is the primary example that sought Canadian control over the day-to-day life of Indigenous peoples, their assimilation into western society, and the destruction of Indigenous societal structures. By the 1950s, the

Canadian state's place in the Canadian/Indigenous relationship had been forgotten. Rather than acknowledge the Indigenous nations, the Canadian state would continue implementing assimilationist tactics, such as the *White Paper* of 1969. By the 1970s, however, the Indigenous nations began bringing their grievances to the Canadian courts and the discussion of where Indigenous people belonged in the Canadian state began to reemerge. Although this reemergence was occurring the Canadian government continued to ignore the reality of the Canadian/Indigenous relationship when Canada entered the Constitutional debates of the 1970s and 1980s. The patriation of the *Constitution Act*, 1982, and the discussion on the *Meech Lake Accord* was done without Indigenous representatives, highlighting Canada's mentality of Indigenous peoples as only Canadian citizens. In turn, Canada's actions only heightened Indigenous distrust towards the Canadian state and the prospects of being considered Canadian citizens.

Although there may have been some promising movement forward on the Indigenous/Canadian relationship between 2003-2006, the unilateral mindset towards Indigenous peoples has again become noticeable in federal Canadian policy. The level of Indigenous frustration had reached its boiling point in November 2012 and the 'Idle No More' movement came into existence to challenge Canada's continued dominance over the Indigenous nations. The historical and current status of the Canadian/Indigenous relationship has led to discussions and theories of how best to rectify the relationship. The various views about the Canadian/Indigenous relationship have become an important piece of the puzzle when discussing Indigenous resurgence, sovereignty, as well as citizenship and electoral participation in the Canadian state.

**Chapter Two:
Resurgence and Division:
The Question of Indigenous Belonging and the Canadian State**

2.0 Introduction:

The current relationship between the Indigenous nations and the Canadian state are a product of a narrow and one-sided view that has developed over centuries. Within this narrow and one-sided view, the previous relationship of mutual respect and cooperation has been replaced with colonial attitudes and paternalistic legislation. After the 1969 *White Paper* debacle, Indigenous peoples began to reassert their understanding of the Indigenous/Canadian relationship. Since then, academics, activists, and politicians began to voice arguments for and against the recognition of the Indigenous nations as was originally established. Today, individuals such as Tom Flanagan, Alan Cairns, Taiaiake Alfred, Patricia-Monture Angus, and John Borrows, have added their voices to the ongoing discussion on where Indigenous peoples belong in relation to Canada.

Chapter two considers the ongoing discussion regarding the re-emergence of Indigenous identities and the place of Indigenous peoples in relation to the Canadian state and concepts of citizenship. In particular, this chapter will consider arguments from those who believe Indigenous peoples are solely citizens of the Canadian state, those who believe Indigenous nations are distinct, separate and autonomous, and those who believe there is potential for Indigenous peoples to be involved with both the Canadian state and their Indigenous nations. By considering the different views that exist on where Indigenous peoples fit in relation to Canadian citizenship, concepts relating to sovereignty, dual-citizenship and electoral participation can be more thoroughly assessed.

2.1 Indigeneity: A Piece of the Canadian Mosaic?

In response to calls for recognition of Indigenous peoples, some academics, activists, and politicians have presented arguments to counter the need for recognition of Indigenous peoples other than as Canadian citizens. These arguments, which will be highlighted further in this chapter, are reflective of past and present day views, such as globalization, sovereignty, doctrine of discovery, and evolutionary patterns. One of the most vocal opponents of the idea that Indigenous peoples and their nations are unique and separate from the Canadian state is Tom Flanagan.

Flanagan, through books such as *First Nations? Second Thoughts*, has tried to promote why Indigenous people should not be considered distinct from their Canadian counterparts. A key component of the argument presented by Flanagan emphasizes that the Indigenous populations that lay claim to North America were simply the first wave of immigrants to arrive to the American continents.⁸³ It is argued that at the time of the Indigenous peoples' arrival to North and South America, only a small section of the Yukon valley and the British Columbian coast were inhabitable. At the time of Indigenous arrival, much of present-day Canada was covered under an ice sheet and thus was only habitable a few thousand years prior to European immigration.⁸⁴ In other words, Flanagan believes that Indigenous peoples have no legitimate claim to the Americas because they were only the first wave of immigration, which will be further discussed in this chapter.⁸⁵

⁸³ Flanagan, Tom. *First Nations? Second Thoughts* (Montreal: McGill-Queen's University Press, 2000), 13.

⁸⁴ *Ibid.*

⁸⁵ *Ibid*, 112.

Meanwhile, William Kymlicka and Wayne Norman do not go as far as Flanagan on the Indigenous peoples' arrival to the Americas, but do highlight a similar view of Indigenous identity as being another facet of Canadian society and multiculturalism. Despite this similarity to Flanagan, Kymlicka and Norman propose that it would be important to recognize some form of Indigenous status as a 'national minority,'⁸⁶ because preventing such recognition would hinder the Canadian identity and state.⁸⁷ Thus, in recognizing some form of unique understanding of Indigenous identity, they may be more likely to integrate into the state more effectively and electively.⁸⁸ Kymlicka and Norman argue that because of state structures, and multicultural societies, it would be problematic to go further than the national minority status as it could lead to degradation of the state and its entire population.⁸⁹ This could be likened to Flanagan's argument that Indigenous peoples are simply another wave of population that decided to call present-day Canada home.

Another well-known academic, Alan Cairns, agrees with Kymlicka and Norman that some form of acknowledgement of the Indigenous identity is needed, which he refers to as citizens 'plus.' Cairns points out that "difference becomes the justification for distinctive constitutional recognition and perhaps jurisdictions [and become the] vehicles

⁸⁶ According to Kymlicka and Norman, National Minorities refers to a contemporary form of nationalism that is used to refer to a specific type of community or society that may or may not have its own state. For example, nations typically have a common language that distinguishes them from their neighbours. In effect, communities qualify as nations when they think of themselves as nations. And as it turns out, these groups tend to be historical communities, more or less institutionally complete, occupying a given territory or homeland sharing a distinct language and mass culture. This is acknowledged but only with belonging to a modern state. (Kymlicka and Norman 2010, 19).

⁸⁷ Kymlicka, Will, and Wayne Norman. "Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts." In *Citizenship in Diverse Societies*, ed. Will Kymlicka and Wayne Norman, 1-44 (Oxford: Oxford University Press, 2010), 40.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

for reinforcing difference.”⁹⁰ Therefore, in Cairns’ view, reinforcing differences will lead to the degradation of Canada as a unified multicultural state and highlights the reasoning for treading lightly on Indigenous identity being further entrenched in Canadian laws.⁹¹ Additionally, Cairns points to a report written in 1971, known as *Wahbung*, where the Assembly of Manitoba Chiefs (AMC) expressed that Indigenous identity is complimentary to the Canadian mosaic.⁹² In Cairns’ view this highlights that Indigenous leaders recognize themselves as belonging in the cultural mosaic of the Canadian state rather than as separate nations.

The cultural mosaic that Kymlicka, Norman, and Cairns seem to speak in favour of is argued to be important for the survival of Canada. For instance, Kymlicka and Norman suggest that if the cultural identity of a minority group becomes stronger than their citizenship to the larger state, than it will come to feel natural for a push for independence and the formation of their own state.⁹³ Recognition of their cultures in the national minority sense would go a long way in preserving the federated state that they now find themselves involved within. This is important because doing so will prevent minority nationalists from continuing their push for further strength in the sense of a separate nationhood as the population will most likely become content with the recognition outlined as a national minority.

However, Cairns highlights the importance of not confusing the idea of national minorities with Canada being, or becoming a multinational state. Cairns’ concern of national minority status being lumped with the idea of multinational polities is that it

⁹⁰ Cairns, Alan. *Citizens Plus* (Vancouver: UBC Press, 2000), 95.

⁹¹ *Ibid.*

⁹² *Ibid.*, 164.

⁹³ Kymlicka and Norman 2010, 39; This is linked to the idea of Westphalian sovereignty which is further described in Chapter Four.

leads individuals to relate to each other through the separate nations one belongs to rather than by having sole citizenship to the Canadian state.⁹⁴ Cairns, thus, believes lumping the status of a group as a national minority with something like a multinational polity, which would recognize Indigenous citizenships to their respective nations, leads to a degradation of all citizens feeling a shared belonging and responsibility to the Canadian state.

Flanagan is more blunt than Cairns on this subject when he calls into question the need for such recognition at all. In Flanagan's view, colonization is just a form of competing cultures and that with Indigenous cultures still existing today that there is no reason to recognize Indigenous peoples as any different from other Canadians. He further elaborates that in the Canadian state, all three levels of the government have policies and legislation in place to preserve and support the cultures of Canada.⁹⁵ This is an important point because in order to counter any push for Indigenous recognition above or beyond other groups of people who are also citizens of the Canadian state.⁹⁶ The importance of Indigenous cultures to Flanagan leads him to also call into question their structure prior to and during contact with Europeans. For example, he calls into question the validity of Indigenous nations as civilizations. Using arguments developed by seventeenth century theorists, such as Locke, Flanagan outlines what has been considered a threshold needed for a group of people to be recognized as a civilization. These items include intensive agriculture; urbanization; division of labour among cultivators, craftsmen, merchants, soldiers, rulers, and priests; intellectual advances such as record-keeping, writing, and

⁹⁴ Cairns 2000, 7.

⁹⁵ Flanagan 2000, 11.

⁹⁶ *Ibid*, 100.

astronomy; and formalized, hierarchal government.⁹⁷ Although Flanagan does state a select few of the Indigenous nations possessed some of these traits, it did not amount to recognition as a civilization at the time.

According to Flanagan, Indigenous peoples were consistently on the move throughout the North American continent, especially with the introduction of new technology from Europeans upon contact. Flanagan cites various diaries from the beginning of European settlement to the early 1900s that describe the complete relocation, or abandonment, of settlements of one Indigenous group and, in some cases, replaced with another.⁹⁸ Flanagan highlights this as being an example of the practice of conquest and displacement amongst the Indigenous people themselves and thus no different than the next wave of Immigrants who arrived, with better weaponry and technology, in the 16th century and on.⁹⁹ Additionally, Flanagan argues that Indigenous peoples practiced colonization because they also integrated other Indigenous groups into their societies.¹⁰⁰ Thus, for Flanagan, the formation of the Canadian state and its push to assimilate Indigenous peoples was valid because the Indigenous nations also practiced similar tactics prior to European contact.

To further his argument, Flanagan also highlights his interpretation of a people as a political state and that to qualify as a state a group of people must permanently settle a territory, which he believed that Indigenous peoples did not. Thus, the Indigenous people as well as their governance structures did not reflect the proper definition of what a state

⁹⁷ *Ibid*, 33.

⁹⁸ *Ibid*.

⁹⁹ *Ibid*.

¹⁰⁰ *Ibid*.

was and therefore did not have sovereign power.¹⁰¹ Due to Indigenous nations not having sovereignty, Flanagan argues, the treaties signed between Indigenous groups and the British Crown cannot be considered international agreements.¹⁰² In other words, because Indigenous peoples were not at the same level of civilization and development, Indigenous nations could not be considered sovereign entities. If the Indigenous nations were not sovereign entities then the agreements they signed with Great Britain, according to Flanagan, should not be seen as international treaties.

The lack of civilization, as Flanagan terms it, of Indigenous peoples leads him to question the calls for ‘self-governance’ for Indigenous peoples. Although “aboriginals were here, and they, like all human communities, engaged in ... politics ... Aboriginal governments [did] not achieve the level of organization [outlined above].”¹⁰³ Flanagan concludes that the argument for self-governance, as recognized through liberal democracy, would mean stepping backwards from civilized government. Meanwhile, Kymlicka and Norman disagree with Flanagan on the recognition of self-government and consider it another form of properly recognizing Indigenous people as a national minority and thus solidifying the Canadian state. As Kymlicka and Norman outline, the idea of allowing Indigenous communities to have certain jurisdictions controlled by their governments would allow them to move forward. Such recognition allows the Indigenous peoples to maintain certain beliefs and traditional ways of life while participating in the state and the modern world as Canadian citizens.¹⁰⁴ Recognition of self-government will also allow for the historical wrongs to be addressed and trust to be rebuilt between the

¹⁰¹ *Ibid*, 134.

¹⁰² *Ibid*, 134-135.

¹⁰³ Flanagan 2000, 23.

¹⁰⁴ Kymlicka and Norman 2010, 20.

Canadian state and the Indigenous peoples without having to acknowledge Indigenous peoples as distinct nations with their own citizenship codes.¹⁰⁵ By Canada granting self-government to Indigenous communities it would, in Kymlicka and Norman's view, settle the issue of Canada infringing on Indigenous jurisdiction that had been protected in the treaties. In recognizing Indigenous jurisdiction that had been protected in the treaties the stress on the Canadian/Indigenous relationship would be alleviated. It is important to stress though that Kymlicka and Norman do not see self-government as a reason to claim separate status or independence but a way to prevent the furthering of such claims. Both point out that because there are 5000 to 8000 ethno-cultural groups in the world, and only about 200 recognized states, that it is impossible for various groups to co-exist without living, communicating, and working together inside the state borders recognized internationally.¹⁰⁶ Kymlicka and Norman believe this is a more viable option than self-governing and independent Indigenous nations.

Cairns also agrees that the concept of self-government is not a reason to claim independence. However, Cairns seems to share Flanagan's view on the issue of self-government, albeit for a different reason. To put it simply, Cairns does not see self-government as being justifiable for half of the Indigenous population will not have such structures available to them since they no longer live within their communities.¹⁰⁷

Flanagan makes a similar argument about population and the size of the communities for why self-government and recognition cannot work. Flanagan points to statistics that show "seventy percent of bands held less than 1000 people and only ten per cent were bigger

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, 13.

¹⁰⁷ Cairns 2000, 27 & 32.

than 2000.¹⁰⁸ Additionally, these statistics are skewed as it may include people who actually do not reside in the community but are recognized as off-reserve members.¹⁰⁹

The size of the Indigenous communities, their small populations, and the number of their members living in Canadian cities means that there would be a strain on financial resources and skilled personnel for self-governance to function properly.¹¹⁰ This becomes a greater problem, as Flanagan argues, because the proponents of Indigenous self-government tend to also push for their communities to become more insular and protectionist, leading to further economic strife and tension with Canada's adherence to liberal democracy.¹¹¹ Thus, if one follows the logic of Flanagan's argument, assimilation into the broader Canadian state would be a far more acceptable solution.

Cairns, on the other hand, would disagree with using the word assimilation to further integrate the Indigenous peoples into the Canadian state. Cairns points out that although assimilation is no longer official or proper policy, the fact is that the goals may have already been achieved. For instance, Cairns points out that there is an:

impressively large number of Canadians with some Aboriginal ancestry who lack an Aboriginal identity [which] suggests that considerable disappearance into the majority society has occurred.¹¹²

Cairns adds to his point on integration by the fact there is large and growing urban Indigenous populations, with only half of them identifying themselves as being connected with their Indigenous backgrounds.¹¹³

¹⁰⁸ Flanagan 2000, 78.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid*, 95-99.

¹¹¹ *Ibid*, 194.

¹¹² Cairns 2000, 78.

¹¹³ *Ibid*, 73 & 123.

Thus, according to individuals such as Flanagan, Cairns, and, to a lesser extent, Kymlicka and Norman, the future of Indigenous peoples can only be secured alongside as citizens of the Canadian state. For them, Indigenous segregation is not realistic and would go against liberal democracy and degrade the validity of the Canadian state. Unlike Flanagan, Cairns, Kymlicka and Norman do not find some forms of additional recognition as being problematic but believe that such recognition is best protected as citizens ‘plus’ within Canada rather than as citizens of various Indigenous nations. In other words, Indigenous peoples should assimilate and recognize themselves as Canadian citizens who are apart of Canada’s cultural mosaic. The problem with such a concept for the Indigenous peoples is that it runs counter to their nationhood and rightful claim to self-determination and their own forms of citizenship and participation in their own political processes.

2.2 Indigenous Self-Determination & Nationhood: The Way Forward?

Although ideas from individuals such as Flanagan and Cairns are used by many when arguing for a ‘one Canada’ vision, other scholars have posed alternatives. Taiaiake Alfred, a well known Haudenosaunee scholar and proponent for Indigenous nationhood and decolonization, has consistently disagreed with the assertions made by Flanagan, Cairns, and others. Alfred highlights that the identity of his fellow Haudenosaunee and all other Indigenous nations cannot be pushed aside in arguments used to bolster the existence of colonialism and assimilationist policies. Alfred elaborates on this when he explains how “many people of the most respected elders in our communities tell us that there are essential values and characteristics to being [Haudenosaunee] that cannot be

compromised, ignored, or altered.”¹¹⁴ An example Alfred uses about the Indigenous nations that cannot be compromised is the act of being collective societies. Alfred, as well as scholars such as Patricia Monture-Angus, and Leanne Simpson, point out that western philosophy places a heavy emphasis on individuality above the betterment of the community or society of which they are a part.¹¹⁵ Monture-Angus elaborates on this point in her book *Journeying Forward*. For her, Indigenous notions of community and ‘ownership’ of land is at complete odds with that of the western world as it combines the spiritual with any notion of individual ownership.¹¹⁶ Monture-Angus further clarifies this position because “constructing dichotomies of individual versus collective ownership diminishes the relationship that Aboriginal people understood as existing between the two.”¹¹⁷

In reminding the various Indigenous nations and peoples of their collective relationship, Simpson, Alfred, and Monture-Angus all discuss the need for a ‘re-awakening’ of the minds of many Indigenous peoples. Alfred believes the greatest challenges for Indigenous peoples is their ‘mental awakening,’ which he describes as occurring when they no longer accept Canadian imposition on Indigenous sovereignty, society and self-determination.¹¹⁸ Without Indigenous people doing so, the ability to restore their nations and identity will be lost.¹¹⁹ Additionally, Simpson asserts that this awakening can only begin with an end to the shame, established from the decades of

¹¹⁴ Alfred, Taiaiake. *Wasase: Indigenous Pathways of Action and Freedom* (Toronto: University of Toronto Press, 2009), 222.

¹¹⁵ *Ibid*,11.

¹¹⁶ Montour-Angus 1999, 36.

¹¹⁷ *Ibid*.

¹¹⁸ Alfred *Wasase* 2009, 282.

¹¹⁹ *Ibid*.

colonization and societal disregard, that Indigenous peoples have developed towards themselves and their societies. Simpson continues that this can only be corrected once Indigenous people are reconnected to the stories of resistance within their own nations.¹²⁰ Reconnecting to Indigenous stories of their individual nations resisting Canadian imposition becomes difficult, Simpson, Alfred, and Monture-Angus would argue, if Indigenous peoples partake in the Canadian political system. Alfred clarifies this in *Wasase* when discussing that there is no ability to move to a peaceful relationship of coexistence between the Indigenous nations and Canada until Indigenous people have mentally and spiritually decolonized themselves first.¹²¹

To add to his argument, Alfred goes as far as labeling Indigenous peoples who work alongside Canada, or within it, as being a part of the problem for decolonization succeeding. In other words, Alfred considers those who have become involved in the Canadian political process as preventing the Indigenous nations from reemerging in their rightful places as partners in a treaty relationship with their own nations and citizenship codes.¹²² For Alfred, this is because of a loss of traditional values and political identity within their own nations and to counteract it would mean to remove oneself from Canadian political institutions.¹²³ Although Monture-Angus does not suggest that those Indigenous people who work with Canada as being a part of the problem, she elaborates, with her own understanding, on the issue of sovereignty, recognition and citizenship. When describing what sovereignty means to her, as a Haudenosaunee woman, she asserts that “the responsibility to carry ourselves: collectively as nations, as clans, as families, as

¹²⁰ Simpson 2011, 14.

¹²¹ Alfred *Wasase* 2009, 180.

¹²² Alfred, Taiaiake. *Peace, Power, Righteousness: An Indigenous Manifesto*. 2nd. (Oxford: Oxford University Press, 2009), 57.

¹²³ *Ibid.*

well as individually... in a good way.”¹²⁴ Alfred adds more to this point, when he discusses that self-determining people and existence as separate entities requires Indigenous peoples, communities, and governments to reject funds from the Canadian government and accept the burden of self-sufficiency.¹²⁵ Simpson also points this out when she is describing a way for Anishinaabeg peoples to return to a life that follows *mino bimaadiziwin*. Although she does not necessarily express that Indigenous people must rid themselves of all things attached to Western society, she does believe in a need for the Indigenous nations to have people within it who are intellectually understanding of the colonial ways but who also know their nations’ language and structures in order to bring forth the resurgence of their nations.¹²⁶

Alfred does not agree with a connection to Western mentality in the slightest as he believes it means adopting the capitalist mentality and thus corrupting the Indigenous peoples from their Indigenous nations and recognition as citizens to those nations.¹²⁷ Alfred continues this train of thought when discussing those Indigenous people who work alongside Canada and try to intermingle ideology, laws, politics, and culture of both societies. Alfred believes this view and methodology prevents proper justice and recognition for Indigenous peoples and allows Canada to continue its colonization of the Indigenous nations.¹²⁸ The above discussion highlights Alfred’s stance of needing to throw off the chains, which represents western culture, of colonization, but to do so requires a proactive agenda for change. For him, one must objectively view all

¹²⁴ Monture-Angus 1999, 36.

¹²⁵ Alfred *Wasase* 2009, 180.

¹²⁶ Simpson 2011, 32.

¹²⁷ Alfred *Wasase* 2009, 42.

¹²⁸ *Ibid*, 265.

preconceived notions by the established state or its proponents, such as Flanagan and Cairns. This objectivity is important to challenging imposed control and to help push back on the colonial forces as a whole, including the western view of the world.¹²⁹ After all, it was westernized theory that assisted with the tainting of the Canadian/Indigenous relationship as well as the colonization of Indigenous nations themselves. In short, vanquishing Western hierarchal views and laws, according to Alfred, are a part of the decolonization and resurgence process that needs to occur for proper enhancement of Indigenous nationhood and recognition.

Monture-Angus highlights the importance of vanquishing Canadian legal mentality throughout *Journeying Forward*. Whilst working in the Canadian legal system, Monture-Angus came to the conclusion that it formed party of the colonial crux within the Canadian state and the contemporary form of the Canadian/Indigenous relationship.¹³⁰ Monture-Angus suggests that “a decade or so ago, [she] believed that was a solution to the Aboriginal struggle for political freedom. Since then [she had] learned that there are many examples of Canadian [legal] complicity in the oppression of Aboriginal Peoples.”¹³¹ Through her experiences in trying to bring acknowledgement from inside Canada, Monture-Angus had become skeptical of such potential for change by using Canada’s institutions. She reinforces her assertion by reminding people that it was Canadian policy and laws that established and enhanced colonization through

¹²⁹ *Ibid*, 201.

¹³⁰ Monture-Angus 1999, 30.

¹³¹ *Ibid*.

residential schools, disbanding Indigenous governances, outlawing ceremonies, and enforcing a different societal structure upon the Indigenous nations.¹³²

The use of Canada's political and legal systems to further entrench the perceived notion of Canadian sovereignty and control of Indigenous peoples through citizenship is further enhanced by the lack of political will, whether federally, provincially, or even municipally, to bring an end to Canada's unilateral imposition on the relationship.¹³³

Instead, some Indigenous people are themselves turning to the Canadian legal system to protect their laws, and in turn are reaffirming and acknowledging Canada's laws as being the final word in the boundaries of present-day Canada.¹³⁴ Indigenous use of the Canadian legal system is problematic according to Monture-Angus because, as outlined earlier, the Canadian legal system has been used to establish control over the Indigenous nations. Furthermore, Monture-Angus points out, the entire Canadian legal system owes its existence, and continued existence, to the recognition of Canadian sovereignty and would highly unlikely relinquish Canadian control over the territory it shares with Indigenous nations.¹³⁵

To further highlight how the Canadian legal system justifies Canadian control over shared territory, Monture-Angus considers various legal decisions and constitutional reforms that show an unwillingness to recognize the full understanding of Indigenous sovereignty, the nation-to-nation relationship, as well as their citizenship codes. One such example is Section 35(1) of the *Constitution Act, 1982*,¹³⁶ which chapter one explained as

¹³² *Ibid.*

¹³³ *Ibid.*, 65.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

‘existing’ Indigenous rights. Unfortunately for Indigenous peoples, this mentions nothing about sovereignty, the nation-to-nation relationship, and their citizenship codes. This is problematic according to Monture-Angus, because the Canadian courts continually try to link Aboriginal title with Aboriginal rights and should thus be considered a warning for the direction Canadian courts have taken, and continue to take as they construct rights and title for Indigenous people as *sui generis* right.¹³⁷ The move towards *sui generis* recognition of Indigenous rights in turn impacts the proper recognition of the Indigenous nations and continues to limit items such as jurisdiction, citizenship, and land. The concern of *sui generis*¹³⁸ rights is highlighted by John Borrows and Leonard Rotman, whom Monture-Angus agrees with in presenting her argument:

The *sui generis* concept is employed to discard those notions of the common law that have not been “sensitive” to the Aboriginal perspective itself on the meaning of the rights at stake.” As such. The doctrine can be characterized as part of the common law – that attempts to leave behind much of the common law. Such a selective invocation of the common law is a risk-laden speculation for Aboriginal peoples. If they submit to even a part of the common law, it is inevitable that the other parts of this structure will continue to operate. A contextual shift in one doctrine does not mean that the accompanying legal blueprint will be redrafted to conform to the new principle. There is still an intricate system in place that supports the old design and architecture of the law. Since the past application of common law principles has restricted Aboriginal peoples in the exercise of their original entitlements, its further use could represent the continuation of colonialism’s design.¹³⁹

By Borrows and Monture-Angus assessing concerns relating to *sui generis* and Indigenous recognition, it would seem that many Indigenous peoples are cautious

¹³⁷ *Ibid*, 124-125.

¹³⁸ The term *sui generis* is a legal term, based from Latin and literally means “of its own kind.” For Canadian legal understanding, it is used to describe ‘existing’ Indigenous rights as unique rather than from Indigenous nations being separate entities. The *sui generis* rights heavily favours the idea of Indigenous people being ‘national minorities,’ according to the arguments outlined by Kymlicka, Norman, and Cairns.

¹³⁹ Borrows and Rotman 1997, 26-27; Monture-Angus 1999, 124-125.

towards Canadian citizenship because Canada seems to recognize only certain forms of British legal tradition.

Another example that John Borrows presents as an example of Canadian legal imposition is that of *R. v. van der Peet*.¹⁴⁰ Borrows mentions that the “court held that traditional laws or customs are those things passed down, and arising from the pre-existing culture and customs of Aboriginal peoples.”¹⁴¹ However, by Canada trying to control Indigenous peoples and policies that impact them, the only solution Canada is willing to accept is the Aboriginal ability to self-administer themselves as municipalities in the Canadian state.¹⁴²

The Canadian state’s mentality must change, but the lack of Indigenous influences within the Canadian system adds to the difficulty of assisting the Canadian state in properly acknowledging Indigenous jurisdiction, legal systems, and citizenship codes. Alfred would agree that the Canadian legal system is a problem but disagrees that Indigenous participation, through elections and citizenship, in Canada will help. Alfred also believes that Indigenous peoples’ who willingly become involved with the Canadian system contribute to the colonization of the Indigenous nations. An example Alfred uses to highlight his concern with involvement in Canada is that of Indigenous leaders elected by *Indian Act* standards. Alfred disagrees with *Indian Act* Chiefs because they lack the will and strength to stand up for their rights and nationhood because they are in their positions through colonization. For instance, Alfred expresses in *Peace, Power, Righteousness* that Indigenous “leaders who promote non-Indigenous goals and embody

¹⁴⁰ *R. v. Van der Peet*, (1996) 2 S.C.R. 507

¹⁴¹ Borrows *Canada’s Indigenous Constitution* 2010, 11.

¹⁴² Monture-Angus 1999, 117.

non-Indigenous values are simply tools used by the state [of Canada] to maintain its control.”¹⁴³ Without true Indigenous leadership through Indigenous philosophies, such as their own citizenship codes and jurisdictions, it does not matter if it is an Indigenous looking person or a non-Indigenous person, who is governing the *Indian Act* communities and negotiating on behalf of the Indigenous nations.

With the continued need to negotiate with Canada for inherent rights and the use Canada’s legal systems, the request for complete Indigenous separation from the Canadian state is advocated by Indigenous scholars such as, Alfred, Monture-Angus, and Simpson. Alfred, specifically, expresses a need to remove the shackles of Canadian imposition in order for the Indigenous nations to persevere and survive the continued colonization and assimilation of their people, nations, and rights. In Alfred’s mind, “the only hope is in the power of movements outside of the established political structure and paths provided by Canada.”¹⁴⁴

The question that arises from Alfred’s viewpoint is how such ideas can be realized, especially when many Indigenous people now share connections, whether personal, historical, and societal, with Canadians. The intertwining of European and Indigenous lives began from contact. No matter which side one observes in the Canadian/Indigenous relationship the adoption of values and theories, marriage between Indigenous peoples and Europeans, as well as centuries of coexistence can not easily be removed from their upbringing, patterns of thinking, and views on the world. The intertwining of the Indigenous peoples and Canadians is something that Alfred assumes is the route of the problem when expressing that western theory and ways of life corrupted

¹⁴³ Alfred Peace, *Power, Righteousness* 2009, 11.

¹⁴⁴ Alfred Wasase 2009, 268.

Indigenous peoples. Although Alfred is correct to assume that not everything Indigenous peoples have learned from the westernized world is good, he regrets to acknowledge at the same time, that not everything from the westernized world is bad. Perhaps then, Indigenous peoples can make use of traditional and western concepts in order to bring forth change and recognition of their respective nations.

The potential of using western and Indigenous concepts to protect and assist in recognition the Indigenous nations may very well be a stronger possibility than simply assimilating into the Canadian state or rejecting all things that are born from western society. The next section of this chapter will consider this question and the idea that both sides of the debate on Indigenous belonging may in fact be too narrow and not one that considers the intermixing of both sides of the Canadian/Indigenous relationship.

2.3 One Foot In and One Foot Out: Belonging in Both Societies

Throughout the first two sections of this chapter, the arguments for Indigenous assimilation into the Canadian state as well as the enhancement of separate Indigenous nations have been outlined. On the solely Canadian view of this chapter, where Flanagan and Cairns find solace, is that Indigenous peoples are nothing more than Canadian citizens. Although they can be Indigenous, this recognition is done through Canadian law stating that all citizens having a right to their individuality in a multicultural society. On the solely Indigenous view of the Canadian/Indigenous relationship are Alfred and Monture-Angus, who argue for removal of Canadian influence on the Indigenous nations in order to recognize the sovereignty and jurisdictions of the Indigenous nations. However, there are many problems with the points expressed by both the solely Canadian

and Indigenous views of how to move forward in the relationship as well as concepts of citizenship and representation. Therefore a third option must be considered – an option that allows for the adoption and use of the positive features of both the Canadian and Indigenous views to move forward and embrace an encompassing view of citizenship.

Flanagan's argument about immigration is also one sided when considering the clash of Indigenous and European societies because it benefits the settler population and refuses to recognize what the Canadian courts have, at times, recognized: that the Indigenous nations had occupied the territory they now share with Canada and must be recognized. Additionally, the arguments by Flanagan that Indigenous peoples were not civilized and thus do not satisfy the western world's narrow definition of what constituted a civilization is also problematic. Permanent settlements of Indigenous peoples did exist, along with farming capabilities and advancement in some areas that could be argued as having exceeded European theory, including forms of representative government. Archeological and anthropological evidence has shown that Indigenous permanent settlements, farming, and complex societal structures existed and therefore assists in refuting Flanagan's argument

As outlined in chapter one of this thesis, Indigenous nations did not have simple societal and governing systems but distinct and unique forms. Flanagan's assumption and lumping all Indigenous nations into a lower graded level of political structure is ethnocentric. Had Flanagan done proper and broad research on various Indigenous nations, the difference and complex structures would have been noticeable. Points made by both Flanagan and Cairns about becoming influenced by the dominant Canadian culture and western way of thinking must be scrutinized. At the same time, the claims

made by Alfred and Monture-Angus about Canadian and western culture being nothing more than problematic and destructive to the Indigenous nations and people is also in need of questioning. John Borrows has discussed the problem with both sides of this argument in many of his writings over the last decade.

In Borrows' book *Canada's Indigenous Constitution*, he explores this idea of Indigenous culture being inferior to European thought as well as the view from some Indigenous people that western ways of thinking are the cause of all their current problems. Borrows points out the problem that both sides seem to paint of Indigenous cultures is that of being frozen in some pre-contact standing:

Traditions should not be frozen in some past-tense state because of misplaced notions of reverence and respect. In fact, it could be exceedingly disrespectful if such an attitude leads one to believe that one's legal tradition cannot intermingle with other ideas to provide guidance in circumstances.¹⁴⁵

James Tully also addresses concerns over the concept of Indigenous cultures being frozen in a pre-contact understanding. Agreeing with Borrows, Tully suggests that the importance of acknowledging Canada as a multinational state will recognize Indigenous nations on equal footing to Canada rather than as societies stuck in a pre-contact mindset. He points out that cultures are not homogeneous. He further elaborates that cultures are continuously contested, imagined, reimagined, transformed, negotiated, both by their citizens and through their interaction with others.¹⁴⁶ In other words, Tully points out that Indigenous peoples and their societies can evolve like any other nation and should not be restricted to a view that equates their identity as less important than their settler counterparts.

¹⁴⁵ Borrows *Canada's Indigenous Constitution* 2010, 105.

¹⁴⁶ Tully, James. *Strange Multiplicity: Constitutionalism in an Age of Diversity* (New York: Cambridge University Press, 1995), 11.

Pam Palmater, a Mi'kmaq Lawyer, also highlights this in her own writings; most recently in her 2011 book *Beyond Blood*. As Palmater explores the problems of Indigenous identity, the issue of cultural progression is of concern. In discussing the transformation of Indigenous cultures prior to, and during, Canadian encroachment, Palmater quotes Patrick Macklem's point that:

Aboriginal cultures undergo dramatic transformations in response to internal and external circumstances and developments. A frozen rights approach ignores the dynamic nature of cultural identity and the fact that cultures undergo deep transformations over time. It risks stereotypic Aboriginal people in terms of historical differences with non-Aboriginal people that may or may not have existed in the distant past and profoundly under-describes important aspects of contemporary Aboriginal cultures.¹⁴⁷

Despite the arguments of Borrows, Tully, and Palmater, those who argue for Indigenous assimilation would assert that they are not restricting the ability for Indigenous ways to survive so long as it is done individually and within the Canadian context. Additionally, opponents of working within and alongside the Canadian state would believe such arguments are only adding to the destruction of the Indigenous nations.

Palmater elaborates this idea goes beyond culture and also includes identity. The problem with both sides of the arguments over Indigenous recognition as either separate entities or another minority within Canadian society, is their unwillingness to recognize that there is never one clear-cut form of a culture or what defines a person to a culture or identity. Palmater, like Borrows and Tully, stresses that Indigenous identity is not one frozen in the pre-contact era. She highlights this point by quoting Tim Schouls' view that one must not "lose sight of the fact that Aboriginal identity can incorporate more than

¹⁴⁷ Mecklem 2001, 169-170; Palmater 2011, 63.

one kind of identity.”¹⁴⁸ Therefore, the ability and importance of the Indigenous right to be self-defining is not something that narrowly viewed points on culture and identity can eclipse. This is quite important to Palmater’s point as she elaborates that no strict cultural, political, or racial code about what a community member should or should not be is not something that can be imposed, but rather something that must be collectively agreed upon.¹⁴⁹

This strict vision of Indigeneity is a part of the problem facing the Indigenous nations, no matter who imposes it. To further this idea, both Palmater and Borrows take aim at the arguments made by Flanagan and Cairns on the dwindling Indigenous population, lack of human resources, as well as the rate of moving into Canadian citizens and marrying non-Indigenous people. For instance, Palmater points out the fallacy of the ‘real Indian’ view that both sides use when arguing for or against the place of Indigenous peoples inside or outside of the Canadian state. Palmater bluntly points out that:

Do “real” Indians only include those who: (1) Live on reserve, (2) Are considered “traditional,” (3) Have 50 to 100 per cent Indian blood quantum, (4) Have never had status taken away, (5) Do not question band politics, and (6) Do not want an education? If so, this represents far less than a third of the Indigenous population.¹⁵⁰

Clearly if this is the understanding of what defines a “real” Indigenous person than it is enormously restrictive and contradicts the importance of a key section of western liberal thought – being free from arbitrary interference from the state. Palmater highlights this point because it would mean such a rule was both illiberal and undemocratic, yet the

¹⁴⁸ Palmater 2011, 59; as cited in Schouls 2003, 120.

¹⁴⁹ Palmater 2011, 59.

¹⁵⁰ *Ibid*, 57.

Indian Act and some Band elected Chiefs and Councils do just that.¹⁵¹ Furthermore, Borrows outlines how restrictive membership and recognition is also not a part of true forms of ‘citizenship’ in the Indigenous nations.

Throughout Borrows’ *Canada’s Indigenous Constitution*, he consistently sheds light on the problems of restrictive membership from the various Indigenous perspectives that exist. Additionally, this helps add to the argument against the Canadian imposition on the Indigenous peoples as their nations never abandoned their right to their citizenship codes. Borrows points out that First Nations knew it was important to create a supportive social context in order to generate peace.¹⁵² For various Indigenous nations, these supportive social contexts were accomplished through intermarriages with other societies, adoptions to smooth tension, games, contests, and other forms of recreation in order to bring whole groups and communities together.¹⁵³

Unlike Cairns and Flanagan, Borrows believes this is not a reason for Indigenous peoples to assimilate but another reason to work together to move forward. Making use of such relationships in the globalized context of today could help to bring forth a re-emergence of a Canadian/Indigenous relationship as well as proper recognition of nation-to-nation relationships that do not infringe on one another in a negative way. Specifically, Borrows brings forth concepts of Indigenous peoples making use of, and working from inside, Canadian institutions in order to bring effective change through political participation. Such participation is easily established by embracing Canadian citizenship as well as their own Indigenous citizenships. In other words, a form of dual citizenship

¹⁵¹ *Ibid*, 56.

¹⁵² Borrows *Canada’s Indigenous Constitution* 2010, 130.

¹⁵³ *Ibid*.

could be utilized to significantly impact the legal and political formations of both sides of said relationship.

Borrows discusses how many states, including Canada, have blended legal forms in order to coexist. This is important to Borrows' idea of Indigenous nations and Canada working together because the ability to incorporate diverse legal traditions that respect different ethnic, cultural, and national groupings assists with equal understanding of both sides of the relationship.¹⁵⁴ Additionally, Borrows points out the Indigenous peoples, for millennia, have often drawn upon the best legal ideas from their own principles and combined them with other forms in order to strengthen and evolve their societies, governance structures, and laws.¹⁵⁵ This also allows for Indigenous people to reject archaic and improper legal traditions that no longer fit with their evolving societies, thus causing issue with the consistent use of the Canadian courts to outline Indigenous legal tradition, like Indigenous cultural practices, being static and 'set in stone.'

Borrows also contends that such actions undermined Canada's own legal system because of British legal tradition establishing forms of interpretive law as well the use of *lex loci*:

When equality becomes an important part of Canada's legal framework in this way, Indigenous legal traditions will more thoroughly interact with the common law and civil law in autonomous and interdependent ways. This would prevent the erosion of Indigenous legal traditions.¹⁵⁶

This lack of recognition leads to a degradation of wisdom that could provide other ideas on how to enhance relationships, organize relations, acknowledge Indigenous citizenship codes and settle disputes with and alongside the various Indigenous nations that Canada

¹⁵⁴ *Ibid*, 22.

¹⁵⁵ *Ibid*, 59-60.

¹⁵⁶ *Ibid*, 122.

has treaties with.¹⁵⁷ Borrows believes this will help in moving forward to end the underlying injustices that continue to exist when looking at Canada's creation and the colonization of the Indigenous nations.¹⁵⁸ Alfred may disagree with this argument but Borrows elaborates that such actions would positively benefit Canadians because they too could then adopt sections of any of the Indigenous nations societal and legal structures.

In discussing how Canadians would benefit from dual recognition of Indigenous laws and citizenship alongside Canada, which already recognizes forms of common and civil law, Borrows believes that awareness would lead to embracement. Borrows points out that Canadians "would see that these laws can be learned and applied ... would develop greater appreciation for the nature and scope of these laws ... be less fearful of Indigenous legal traditions and consider Canada as a multi-juridical society."¹⁵⁹ In recognizing Canada as a multi-juridical society, Borrows believes the legal framework between both societies can be accessed, practiced, and benefit one another – making Canada's formation, history and legal tradition properly recognized and complete.

Both Flanagan and Cairns would contest Borrows' point as Indigenous laws, at times, go against the ideals of Canadian liberal democracy. Indigenous structures relied on communal views that would put the benefit of the collective before the individual. However, Borrows' points out that this is never, and would never be, the case just for the Indigenous nations and their laws – all states and their legal systems can have this argument used against them, including liberal democracies like Canada.¹⁶⁰ Palmater highlights the hypocrisy of Canadian law not following the idea of being free from

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*, 142.

¹⁶⁰ *Ibid.*, 35.

arbitrary interference. She points out that by not following the idea of non-arbitrary interference it contradicts liberalism itself, which is western theory and views on individuality is based from. Such contradiction by western systems like that of Canada is a problem in truly embracing and acknowledging both sides of this relationship. Contradictions also cause problems for Indigenous peoples in being able to choose between being Canadian, Indigenous, or dual-citizens since Canada is imposing itself upon them. The only option for rectifying these contradictions, as Borrows, and the *Royal Commission on Aboriginal Peoples*, express:

Only when Aboriginal peoples are viewed, not as races within the boundaries of a legitimate state, but as distinct political communities with recognizable claims for collective rights, will there be a first and meaningful step [forward].¹⁶¹

2.4 Conclusion:

Throughout this chapter, the topic of Indigenous resurgence and where the Indigenous nations stand in relation to Canada has been explored. Although this topic is one that has been formed and argued for years, it became most noticeable in the last couple of decades as scholars emerged to challenge long held assumptions. On the solely Canadian side presented on Indigenous belonging are the views and arguments presented by Tom Flanagan, Alan Cairns, and, to an extent, Will Kymlicka. While Flanagan argues for total assimilation based in a very Eurocentric mindset, both Cairns and Kymlicka express that Indigenous nations can never be considered sovereign due to the existence of the Canadian state. However, Cairns and Kymlicka recognize their uniqueness as Indigenous peoples who occupied the territory first and thus must have certain rights

¹⁶¹ *Ibid*, 158.

guaranteed, allowing for a for a citizens 'plus' outlook. In other words, Indigenous peoples have the same rights as Canadians and thus are nothing more than a strand in the cultural mosaic of the Canadian state and its citizenship.

The opposing views presented in this chapter of Indigenous people being nothing more than Canadian citizens is that Indigenous nations never surrendered and agreed to amalgamation into the Canadian state. Thus, Indigenous peoples must remove themselves from Canadian control and return to their rightful status as sovereign Indigenous nations. Taiaiake Alfred, Patricia Monture-Angus, and Leanne Simpson are proponents of the argument for Indigenous peoples re-establishing their nations without any form of interference from Canada. This is most noticeable with Alfred, who argues for Indigenous people to completely remove themselves from all influences of western ideology and politics. Alfred's point seems to be specifically against how capitalism is incorporated into these traits of western theory. Monture-Angus would agree with this when focusing on the judicial branch of Canada. Monture-Angus links the impact of Canadian political and legal systems as being the leading form of colonialism on the Indigenous nations. By rejecting the western systems that have been imposed on Indigenous people, Indigenous nations would be able to resurrect themselves without Canada's influence or rules infringing on their jurisdiction, identity, and citizenship codes.

Unfortunately, the opposing sides on the Indigenous peoples place in relation to Canada do not consider the evolution that Indigenous and Canadian societies continue to go through. John Borrows as well as Pam Palmater elaborate on this concern, especially with the fact that both sides seem to view Indigenous culture as being stagnant. Both

Borrows and Palmater express that one cannot assume or state that culture, or a legal system, is static because both are always changing as societies evolve and intermingle. Borrows sees this intermingling as not a threat to either side of the Canadian/Indigenous relationship but a way to help enhance and realign it – possibly with a form of joint sovereignty and dual citizenship being implemented. This recognition and acceptance of both societies, allows for both to preserve and grow together while acknowledging the relationship.

However, the current status between both societies and their tattered relationship may make movement forward difficult. The continued prevalence of stereotypical mentalities hinders progress and change. Therefore, other options for dismantling the barriers formed by unilateral imposition of the Canadian state must be considered for how to instigate change for the betterment of the relationship. One such method to reinstate the Indigenous/Canadian relationship that is not given enough consideration is that of voter participation in the Canadian federal electoral process. In order to consider and evaluate this potential of casting a ballot to influence change, whether or not such actions may hinder Indigenous sovereignty must first be considered. This must be considered because for many, voting in the colonial system equates to Canadian justification of its control and claims to sovereignty of the land. This is not the case and could in fact help in emphasizing a relationship of mutual respect between Canada and the Indigenous nations, through the use of shared sovereignty and dual citizenship, rather than one of Indigenous assimilation or isolationism.

Chapter Three: Casting a Ballot for Indigenous Recognition

3.0 Introduction:

The previous two chapters have attempted to highlight the historical implications of the Canadian/Indigenous relationship and Indigenous existence alongside the Canadian state. In regards to citizenship, there is an opportunity for Indigenous peoples to utilize the Canadian political system to readjust Canada's mentality towards the relationship. Although the previous chapter came to the conclusion that there is potential to utilize both societies to create change, the issue of sovereignty, as well as its impact on citizenship and participation in the Canadian state, had not been thoroughly explored. The importance of sovereignty has been a source of ongoing discussion when considering the issues that impact Canada's relationship with Indigenous nations that it shares territory with. In addressing the issue of sovereignty, treaties, as well as Indigenous citizenship, the potential for Indigenous participation in the Canadian electoral process could further entrench the recognition of Indigenous sovereignty and nationhood alongside that of the Canadian state.

This chapter will argue that the Westphalian idea of sovereignty should be replaced with a more contemporary version that acknowledges the ability of multiple nations¹⁶² existing together within a shared territory. With the

¹⁶² The term 'nation' relates to the concept that specifies nations as groups of people who have a shared culture, ethnicity, history, and land base for centuries, if not millennia., like that of Indigenous peoples. This understanding of 'nation' is different from a 'state' such as Canada, as a state traditionally relates to borders and governance structures that govern over various territories that

understanding of this new interpretation of sovereignty, Canada and the Indigenous nations could move forward and embrace treaty federalism. The potential of treaty federalism to enhance Indigenous recognition in the Canadian state could also be achieved if Indigenous peoples embraced the concept of dual-citizenship. By embracing dual-citizenship, Indigenous peoples could participate in the Canadian state while seeking changes internally for proper recognition of Indigenous nations and respect from the Canadian state. With dual-citizenship in practice the issue of infringement on Indigenous nations becomes non-assimilationist, a concern for opponents to Indigenous participation in the Canadian state..

By arguing for a new understanding of sovereignty, Canada as a treaty federal state, and the idea of Indigenous peoples as dual-citizens, their participation in Canadian politics could become less threatening to Indigenous nations and their recognition. In fact, as this chapter will argue, Indigenous participation, as dual-citizens, in Canada's federal electoral process could be positive for Indigenous peoples because it allows them to directly, and internally, influence who are being sent to the Canadian House of Commons. Traditionally, voter turnout for Indigenous peoples is low, and, although debated, may be linked to numerous causations, such as a lack of concern and understanding from many Canadian politicians on the true Canadian/Indigenous relationship. Currently, change to the current standing of the relationship is slow, if not stalemated at times. Therefore, whether or not Indigenous peoples could influence the Canadian political process should be an

do not represent ethnic lines specifically but rather a citizenship to a larger political structure in a larger land mass. (See pages 19-22 of Kymlicka & Norman's "Citizenship in Culturally Diverse Societies" in *Citizenship in Diverse Societies*)

option to investigate. In order to consider the option of political participation, concerns over sovereignty must be assessed first.

3.1 Blended Recognition: The Importance of a New Concept of Sovereignty

The issue of sovereignty is problematic for the relationship between Canada and Indigenous nations because of how it had been conceptualized since the *Peace of Westphalia* in 1648.¹⁶³ The *Peace of Westphalia* developed at the end of the Thirty Years War (1618-1648). According to Frederico Lenzerini (2007), the formation of Westphalian sovereignty “resulted in a concept of sovereignty that may be defined as supreme authority within a territory ... [with] authority, which has been defined as the right to command and correlatively the right to be obeyed.”¹⁶⁴ Additionally, as Lenzerini points out, the ability to have the right to control territory is central to the definition of Westphalian sovereignty because it forms legitimacy for internal matters to be controlled by the sovereign.¹⁶⁵ In other words, the treaty outlined a new concept of sovereignty that defined how nation-states had control in their own territory to the exclusion of all outside forces.¹⁶⁶ The only ways for Westphalian sovereignty to be challenged or usurped by outside forces is if a territory claimed independence, a war occurred, or treaties that ceded territory to another sovereign state. It is this concept of sovereignty that has been consistently used by academics

¹⁶³ Lenzerini, Federico. "Sovereignty Revisted: International Law and Parallel Sovereignty of Indigenous Peoples." *Texas International Law Journal* 42 (2006-2007): 155-189, 157.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

like Flanagan and Cairns to bolster their arguments against Indigenous claims of sovereignty.

Lenzerini asserts that, due to Western dominance around the world for centuries, the idea of Westphalian sovereignty became adopted in situations of colonization for international law.¹⁶⁷ Therefore, when individuals in various oppressed or colonial populations, like the American colonies, began pressing for their independence, their first step was to assert their sovereignty within the territory they claimed. The control of a territory was key for international recognition and Westphalian sovereignty. If a group of people were able to obtain control of a territory, such as the American colonists, their legitimacy under Westphalian sovereignty became harder to ignore.¹⁶⁸

For instance, important requirements that coincide with the idea of Westphalian sovereignty are a permanent population, a defined territory, a government, and a capacity to enter into relations with other states and polities.¹⁶⁹ If these items are key to sovereignty then, as shown in chapter two with the Anishinaabeg peoples, Indigenous nations should have had sovereignty recognized in the Westphalian context as well, albeit with a view of protecting land rather than owning it. Additionally, the fact that the European states, especially Great Britain, entered into treaties with the Indigenous nations would mean that Indigenous nations were indeed recognized sovereign entities. To add more credit to Indigenous nations falling into the category of Westphalian sovereignty, the ruling

¹⁶⁷ *Ibid*, 163.

¹⁶⁸ *Ibid*, 158.

¹⁶⁹ *Ibid*, 163.

made by the United States Chief Justice of the Supreme Court, Marshall, in the case *Johnson v. M'Intosh*, highlights recognition of Indigenous sovereignty. The ruling stated that:

North America ... was held, occupied, and possessed, in full sovereignty, by various independent tribes or nations of Indians, who were sovereigns of their respective portions of the territory ... and who neither acknowledged nor owed allegiance or obedience to any European sovereign or state.¹⁷⁰

Furthermore, Chief Justice Marshall did identify cases where jurisdiction was shared and/or where Indigenous nations had surrendered some forms of sovereignty, but as domestic and dependent nations to that of the United States through treaties.

Treaties were also a key part of non-Indigenous settlement in parts of present day Canada. However, many Canadian court cases have asserted the possibility of rights for Indigenous people to pursue self-determination.¹⁷¹ Additionally, the Canadian courts have ruled that Indigenous title had not necessarily been extinguished through the treaty process. By the courts acknowledging that title may not have been extinguished, the need to consult, negotiate and meet with Indigenous peoples when relating to said land should be required.¹⁷² However, these rulings have been used in a very narrow view that often favours Canadian dominance instead of recognizing both as sharing sovereignty

¹⁷⁰ *Ibid*, 165, Additionally, to further emphasize Chief Justice Marshall's point, he also stated that those nations had been admitted by the U.S Constitution "among those powers who are capable of making treaties --- we have applied [the words treaty and nations] to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense. From this sentence it appears the Indian nations had sovereign rights comparable to those owned by foreign states. (Lanzerini 2006, 168).

¹⁷¹ Monture-Angus 1999, 36; Ladner and McCrossan 'The Road Not Taken' 2009, 266.

¹⁷² *Ibid*.

through the original relationship. For example, in *Delgamuukw vs. the Queen*, the court was cautious in its decision and elaborated that proof must be presented rather than claiming in favour of Indigenous sovereignties.¹⁷³ Additionally, in *R v. van der Peet*, the courts outlined a more constrictive 'cultural' test to assess how, and when, Indigenous rights can be limited in order to protect the economic benefits of all those now residing in the Canadian state.¹⁷⁴ *Delgamuukw vs. the Queen* and *R v. van der Peet* are only two examples where the Canadian state has chosen to ignore Indigenous sovereignties as well as an opportunity to comprehend the Indigenous viewpoints on what sovereignty means to them. The importance of including Indigenous understandings of sovereignty is important as it highlights the differences in understanding between western and Indigenous philosophies regarding the subject.

Both Patricia Monture-Angus and David Wilkins assist in highlighting the differences between Westphalian sovereignty and Indigenous concepts of sovereignty at the time Europe formulated, and agreed to, the *Peace of Westphalia*. Wilkins, points out that for many Indigenous nations their structures and understanding of land pre-dates Westphalian sovereignty and European contact. Therefore, the Indigenous views on land hold far more credibility to the Indigenous nations and must be given due credit by Canada if Indigenous peoples are to embrace working with the state.¹⁷⁵ Furthermore, the concept of having control over territory goes against Indigenous philosophies that exist about the Earth being a

¹⁷³ Supreme Court of Canada. 1997. *Delgamuukw v. British Columbia*. Last modified December 11, 1997. <http://scc.lexum.org/en/1997/1997scr3-1010/1997scr3-1010.html>.

¹⁷⁴ *R. v. Van der Peet*, (1996) 2 S.C.R. 507

¹⁷⁵ Monture-Angus 1999, 36

fellow citizen and thus something one cannot own.¹⁷⁶ Instead, the idea of 'sovereignty,' or self-determination as Monture-Angus calls it, is "not about ownership of territory in the way that [Western] politicians and lawyers would define those words... [but as referring to] *tewatatha:wi*, [which translates to] we carry ourselves."¹⁷⁷ Monture-Angus continues that *tewatatha:wi* means that "sovereignty to [her] is a responsibility. It is a responsibility to carry ourselves: collectively as nations, as clans, as families, as well as individually in a good way ... in order to take care of the Earth."¹⁷⁸ In Monture-Angus' context of 'sovereignty,' it becomes clear that for Indigenous peoples it is more than just a land base but one about autonomy and control over their own sustainability.

Therefore, the western and Indigenous understanding of sovereignty is quite different and has added to the misunderstanding that exists between both Canada and the Indigenous nations. The differences between Westphalian sovereignty and the idea of 'sovereignty' outlined by Monture-Angus, therefore, highlights the need for a more contemporary view that recognizes the Indigenous nations and the Canadian state for a better partnership and coexistence for all those involved. Fortunately, as the world shifted to a more globalized perspective, so have the theories on sovereignty.

With the establishment of the United Nations in the 1940s and the horrors witnessed and learned from World War II, the idea of sovereignty and European domination in the world faced questions of validity. With the decline of European

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

control and dominance over colonies around the world, Western thought continued to influence international relations and rules. However, a noticeable trend occurring through international structures such as the United Nations and the International Criminal Court, according to Lenzerini and Wilkins, is beginning to challenge western theory of sovereignty.

For instance, Lenzerini highlights how concessions made by states vis-à-vis other governments with the purpose of satisfying shared individual interests, such as the North American Free Trade Agreement or the European Union, have blurred the lines of state jurisdiction and parts of Westphalian sovereignty.¹⁷⁹ With international law and agreements bringing various sovereign states together in times of mutually shared needs, a question of whether or not treaties, between the Indigenous nations, British Crown, and Canada, could also be viewed this way needs to be considered.

Lenzerini points to the International Court of Justice (I.C.J.)'s 1975 Advisory Opinion, in relation to the Spanish colonization of the Western Sahara, as an example of the international community rejecting key practices used for colonizing. To bolster the ICJ example, he explains that the Advisory Opinion on Spanish colonization of the Western Sahara was the first time the International community recognized that *terra nullius* was invalid and not a sufficient reason for the forceful

¹⁷⁹ Lenzerini 2007, 159 Note: In fact, Federico Lenzerini highlights on page 159 that this understanding began to emerge prior to World War II due to some scholars theories of how sovereign entities could be under authority (de jure or de facto) of another greater sovereign without losing their own sovereignty. This can be seen with the recognition of Hungary in the Austria-Hungary Empire as well as, as Lenzerini points out, with many Indigenous nations.

colonization of territories that had been inhabited by others.¹⁸⁰ The opinion further expressed that whether the population was nomadic or not, they were socially and politically organized in tribes and under chiefs that had been competent to represent them at the time of contact.¹⁸¹ The I.C.C ruling and the fact the majority of the International community agreed with it had an impact on many modern states when working with the Indigenous populations they shared territory with. Furthermore, the recognition that colonization did not remove Indigenous jurisdictions and nationhood bolsters the idea that Canada must recognize Indigenous nations it shares territory with as equal partners with their own jurisdictions and citizenship codes

Despite this ruling and the opportunities presented with it, many states, such as Canada, fear revisiting the issue of Indigenous sovereignty because of the reliance on a Westphalian mentality. In other words, for many states the dominant interpretation of self-determination is linked to independence and complete control over their own territory.¹⁸² However, Canada should be less fearful to revisit the idea of a contemporary form of sovereignty as the treaties allow for the existence of both treaty partners in the territory they share. In fact, the recognition of both sides of the relationship would give more credibility to Canada's existence as the treaty process will then be followed rather than ignored, the relationship of mutual respect and working together re-established, and Indigenous citizenship to their respective nations recognized. A concern that may arise, despite treaty recognition solidifying

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid*, 167.

¹⁸² Pitty, Roderic, and Shannara Smith. "The Indigenous Challenge to Westphalian Sovereignty." *Australian Journal of Political Science* 46, no. 1 (2011): 121-139, 127.

Canada's existence, is whether Indigenous nations would then seek status as autonomous states.

Roderic Pitty and Shannara Smith address this concern when discussing Indigenous recognition. As Pitty and Smith point out, many Indigenous people “do not wish to be states ... and while they claim autonomy they do not claim a blanket principle of non-interference.”¹⁸³ In other words, for Indigenous people who are in a relationship with the Canadian state, a modern understanding of sovereignty, where both sides can exist together and maintain separate forms of sovereignty, could be achieved without fear of dismantling Canada. The ability for joint recognition and sovereignty is even more probable because of Canada's *Constitution Act, 1982*, which protects existing treaty rights.¹⁸⁴ A problem, however, with the reliance on the *Constitution Act, 1982*, is that it has been used to bolster Canadian sovereignty, authority, and control over territory and Indigenous peoples rather than recognize an equal and shared existence.

Another example that could help with the development of a new understanding of sovereignty between the Indigenous nations and Canada is through the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). The UNDRIP, as Pitty and Smith express, is one of the most important documents that not only represent Indigenous rights but also an opportunity to challenge and replace the notion of Westphalian sovereignty and its use to limit Indigenous claims of recognition and rights.¹⁸⁵ With the use of UNDRIP, the

¹⁸³ *Ibid.*

¹⁸⁴ Lenzerini 2007, 170.

¹⁸⁵ Pitty and Smith 2011, 125.

potential to move forward with a form of joint recognition of sovereignty because of the rights it seeks to protect, such as self-determination, jurisdiction, as well as citizenship.

If UNDRIP is about rights then past international examples showing “support for rights treaties [as having] unanticipated consequences in civil society and within the government, so that what were thought to be empty pledges might actually change domestic authority structures.”¹⁸⁶ The example Pitty and Smith use to highlight how a rights treaty, that was originally thought to be empty pledges, has actually influenced various states is that of the United Nations Declaration of Human Rights (UNDHR). Although not every state follows the UNDHR, the majority that have agreed to it have been forced or shamed into implementing better human rights standards. In Canada, the UNDHR had helped in advancing Indigenous claims of inequality, such as the treatment of Indigenous women.¹⁸⁷ However, it is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) that could be the most promising for Indigenous/Canadian relations and cooperation.

Although UNDRIP was adopted by the United Nations General Assembly in 2007, Australia, New Zealand, the United States, and Canada voted against it due to concerns such as the integrity of their own sovereignty.¹⁸⁸ The specific article that was of concern for Canada and other states was Article 3, which outlined the right of

¹⁸⁶ *Ibid*, 126.

¹⁸⁷ Although the United Nations had ruled that Canada must end its discrimination against Indigenous women, specifically First Nation women who lost their recognition as members of their communities and Indigenous nations for marrying non-Indigenous men, it took almost another decade for the Canadian government to act. Thus, outside influence still may take more time than needed. Therefore, by Indigenous people utilizing its ability to influence external and internal forces the chance for change within Canada is more probable.

¹⁸⁸ *Ibid*, 121; United Nations. "United Nations Declaration on the Rights of Indigenous Peoples." 2007. <http://www.un.org/esa/socdev/unpfii/en/drip.html> (accessed October 24, 2012).

Indigenous people to self-determination.¹⁸⁹ As stated earlier in this chapter, the right to self-determination in a Westphalian sense is one of independence. However, many of those involved in the United Nations Indigenous committee had continuously tried to express that UNDRIP was a declaration that could allow Indigenous nations and modern states to co-exist. To this end, Cree representative Ted Moses expressed that “the Cree have no interest in secession from Canada. We want self-determination to be recognized so that we can finally become part of Canada.”¹⁹⁰

With the development of the United Nations, Human Rights Agreements that complement treaty relationships, and a more globalized world and view of sovereignty, the potential for Canada to re-recognize a mutual relationship and an understanding of shared territory could be a recovered. The development of international organizations and the signing of international agreements have helped demonstrate the possibility for Canada and the Indigenous nations. A similar understanding could come into existence, which would see the Indigenous nations working alongside and within Canada rather than as separate entities in the Westphalian sense – this will be elaborated on in more detail when considering dual-citizenship. The recognition of Indigenous sovereignty does not infringe on Canadian existence, especially when looked at from a more contemporary view of sovereignty. Rather, Indigenous sovereignty should be viewed as being parallel to

¹⁸⁹ *Ibid*, NOTE: The Indigenous caucus in the United Nations succeeded based on the fact they recognized the concern between self-determination and sovereignty. They had outlined that the Indigenous understanding of self-determination was not the one outlined within the Westphalian context. Rather, it was an understanding of sovereignty that required sharing of the territory and co-existing together.

¹⁹⁰ Pitty and Smith 2011, 126; This quote can also be found in Niezen 2003, 156

the Canadian state. Doing so could alleviate the Canadian concern of sovereignty and witness the birth of Canada into a contemporary federalist state that recognizes the Indigenous nations as partners.

3.2 Treaty Federalism: Working Together to Rebuild the Relationship

The concept of treaty federalism¹⁹¹ is something that has been given little consideration at the present time. Treaty federalism, although primarily a view that is brought forth by Indigenous academics, is one that recognizes Indigenous nations as being partners to the state of Canada. The entrenchment of Section 35 in the *Constitution Act, 1982*, enhances the idea of treaty federalism, according to Sakej Youngblood Henderson, as it highlights the importance of treaty rights that were outlined in the treaties formulated between the British Crown and the Indigenous nations.¹⁹² By doing so, the place of Indigenous nations, and the treaties they signed, are important to the existence of Canada. As Henderson has argued, the treaties signed allow the Canadian federation to exist as they grant the ability for non-Indigenous people to settle on the land peacefully, alongside Indigenous nations.

A consideration of similar examples to such an understanding of equal recognition in Canada is needed to see if Henderson's idea on treaty federalism may work. The province of Quebec, and its unique recognition in the Canadian state could highlight the potential for dual recognition and treaty federalism because of

¹⁹¹ According to Kiera Ladner treaty federalism is an agreed framework for mutual co-existence and delegation of authority between two sovereign entities within the same territory. (Ladner *Treaty Federalism* 2003, 178).

¹⁹² Henderson, James Youngblood. "Empowering Treaty Federalism," *Saskatchewan Law Review* 58, (1994): 241-300.

the agreements brokered for its agreement to federate. Borrows, in his book *Canada's Indigenous Constitution*, highlights the example of Quebec because of its recognition as a nation within the Canadian state. Borrows furthers Quebec as an example, specifically to bolster the potential of recognition for Indigenous nations, because:

Canada's founders rejected the idea of forced cultural coercion, at least as it related to the most critical challenge they encountered: French and English, juridical, cultural, religious, and linguistic differences. Although this framework was not [originally] extended to Indigenous peoples, it is not too late to do so.¹⁹³

Since Canada recognized the place of Quebec, and the social differences that Quebec brought to federation, according to Borrows, Canada can properly include and recognize Indigenous territory, jurisdiction, and social differences of Indigenous nations. Canada's actions in recognizing Indigenous nations as such would bring forth treaty federalism and could then allow a stronger and entrenched recognition of the duality of the relationship between Canada and the Indigenous nations. Quebec is not the only example that could bolster the concept of treaty federalism for the Indigenous nations.

Kiera Ladner highlights how similar agreements recognized Indigenous nations as equal partners in the territory and thus gives credibility to the potential of treaty federalism to exist. Ladner expresses that although it is mainly an Indigenous concept today, it was one that the original settler governments recognized and validated. One such example was in 1705 when a Royal Commission concluded and recognized the Mohegan nation to be a sovereign entity and was not

¹⁹³ Borrows *Canada's Indigenous Constitution* 2010, 124.

subservient to the British colonies that it was now sharing territory with.¹⁹⁴ In other words, the Mohegan nation was not controlled by the British Colonies but instead was an equal, and possibly, a partner in the territory on which both were residing.¹⁹⁵ With consideration of the Indigenous nations as equal partners in the relationship, the potential for a renewed understanding and Indigenous peoples to embrace recognition as dual entities inside both Canada and their respective nations is possible. Since Indigenous nations had not relinquished key components of their sovereignty, the constitutional orders that encompass their political and legal ways must be recognized and allowed to flourish for distrust towards Canadian citizenship and the state to dwindle.¹⁹⁶

The concept of recognizing Indigenous legal and political orders also has credit in the British common-law system due to the practice of *lex loci*. As Russell Lawrence Barsh has concluded, the idea of *lex loci* is to “hold that local laws and governing institutions of a territory are respected and become incorporated under the common law.”¹⁹⁷ Barsh further points out that there were many examples in the British Empire where, regardless of how a territory became part of the Crown’s area

¹⁹⁴Ladner, Kiera. “Treaty Federalism: An Indigenous Vision of Canadian Federalisms.” In *New Trends in Canadian Federalism, 2nd Edition*, ed. F. Rocher and M. Smith, 167-194 (Peterborough: Broadview Press, 2003), 187-188.

¹⁹⁵ It is important to note that this example is not from within the land mass that Canada considers to be its territory the fact that it relates to the British relationship with the Indigenous nations is important. Due to the fact that Canada is expected to acknowledge previous agreements made between Britain and the Indigenous nations means that such acknowledgement like that of the Mohegan nation exemplifies that it has existed and is compatible.

¹⁹⁶ Ladner, Kiera, and Michael McCrossan. “The Road not Taken.” In *Contested Constitutionalism: Reflection on the Canadian Charter of Rights and Freedoms*, by James Kelly and Christopher Manfredi. Vancouver: University of British Columbia Press, (2009): 263-283, 265.

¹⁹⁷ Barsh, Russell Lawrence. “Indigenous Rights and the *Lex Loci* in British Imperial Law,” in *Advancing Aboriginal Claims: Visions, Strategies, Directions*, ed. Kerry Wilkins, 91-126 (Saskatoon: Purich Publishing, 2012), 97-98.

of influence, the local laws remained. However, even if the local laws were inconsistent with British law they remained in place unless expressly changed or modified by both sides.¹⁹⁸ Kiera Ladner and Michael McCrossan add to Barsh's *lex loci* argument by highlighting how it was forgotten as a more colonial mindset replaced the idea of peace and friendship. Despite the change in mindset, the Indigenous nations never forgot their laws or British tradition of *lex loci*. Therefore, the potential for treaty federalism to exist has further opportunity due to past agreements that Britain, and to some extent, Canada had signed and supposedly agreed to honour. Further credit and potential for treaty federalism may also exist with the constitutional amendments of 1982, specifically Section 35.

According to Ladner, McCrossan, and Henderson, section 35 of the *Constitution Act* established a post-colonial roadmap for Canada by complementing the idea of *lex loci* and bringing Indigenous legal orders, laws, and jurisdictions into constitutionally recognized and guaranteed rights.¹⁹⁹ By recognizing and practicing *lex loci*, alongside section 35, the possibilities of the Canadian/Indigenous relationship gaining momentum for proper re-establishment, becomes a greater possibility for coexistence and inter-development. A Royal Commission that was established by the Mulroney Government would come to a similar conclusion.

The *Royal Commission on Aboriginal Peoples* (RCAP) (1996) also highlighted the importance of a *lex loci* concept being law in British North America, even after Canada's federation. For instance, the report expressed that:

Over time and by a variety of methods, Aboriginal people

¹⁹⁸ *Ibid*; Ladner and McCrossan *The Road Not Taken* 2009, 276.

¹⁹⁹ Ladner and McCrossan *The Road Not Taken* 2009, 276.

became part of the emerging federation of Canada while retaining their rights to their laws, lands, political structures and internal autonomy as a matter of Canadian common law ... the treaties form a fundamental part of the constitution and for many Aboriginal peoples, plays a role similar to that played By the *Constitution Act*, 1867 in relation to the Provinces.²⁰⁰

The significance of the above excerpt from the RCAP is important as it offers additional validity to the concept of not only *lex loci* and nation-to-nation relationships, but also what the idea of treaty federalism could stand for if implemented. Additionally, RCAP is an example of the Canadian state being notified of where it belongs in the Indigenous/Canadian relationship – as an equal partner in living on the land and the federation of the Canadian state.²⁰¹ Unfortunately, the Chretien government and the opposition parties did little to address what RCAP had framed as suggestions that Canada could implement in order to foster a better and more proper relationship with the Indigenous nations. Additionally, it would be interesting to delve further into whether or not a lack of Indigenous influence on Canadian politicians inside and outside of the House of Commons may have contributed to Canada's laissez faire attitude towards RCAP's findings and the potential of treaty federalism.

If Canada began to implement and recognize the option of treaty federalism, the issue of oppression and domination can be ended and the process of decolonizing the Canadian/Indigenous relationship begun. In doing so, according to Ladner, the institutional conditions that are needed for a colonial state to move

²⁰⁰ RCAP Vol 2 1996.

²⁰¹ It should be noted that although RCAP discusses how the Indigenous nations merged into the Canadian state, the concept is still debatable as very few Indigenous nations have ever been approached, or agreed, to federate.

forward can be achieved and recognition that Indigenous peoples have particular rights and differences would be met.²⁰² Ladner highlights this point by assessing the clause of Peace, Order, and Good Governance (POGG) that have been included in some of the numbered treaties that Canada has signed, such as Treaty Six and Treaty Seven.

In Ladner's interpretation of Treaty Six and Treaty Seven, the potential for the POGG clause to, in some ways, highlight treaty federalism is considerable. Additionally, the POGG clause may also be a guarantee for the Treaty Six and Treaty Seven signatories to have a right to delegated representation in the Canadian political system. Ladner elaborates on POGG when she highlights that

constructing a system [such as with a peace, order and good governance clause] which recognizes the existence of nations and whereby the leaders of the Cree, Blackfoot, Blood, and Peigan [the Indigenous Nations that signed treaties six and seven] could share, in the responsibility of maintaining peace and order, particularistic representation would be a reflection of, and thus not a detraction from Treaties Six and Seven.²⁰³

In other words, the potential wording of the clause for POGG could allow for Indigenous nations who signed Treaties Six and Seven to send delegates to the Canadian Parliament.²⁰⁴ Additionally, the statements that coincide with POGG could be viewed as suggesting that Canada expected the Indigenous nations to also keep peace and order in their territories, with the other Indigenous nations, as well as

²⁰² Ladner *Peace and Good Order* 1996, 97.

²⁰³ *Ibid*, 90.

²⁰⁴ Ladner elaborates that such recognition is done along the idea of co-sovereignty and thus by establishing such a relationship and accepting assistance to enable them to survive in and adapt themselves to the changing reality, the Indigenous nations, such as the Cree nation, were not giving up their sovereignty (Ladner *Peace and Good Order* 1996, 58).

with non-Indigenous peoples.²⁰⁵ Meanwhile, the Canadian government would also be responsible for keeping peace and order throughout the entire territory, and in doing so would mean that POGG would allow them political representation through delegates in the Canadian House of Commons.²⁰⁶ According to Ladner, this interpretation recognizes the change in the relationship that has occurred while also continuing to recognize the Indigenous nations as having their own jurisdiction and sovereignty alongside Canada.²⁰⁷

Unfortunately, the concept of POGG and treaty federalism being thought of as a way to recognize and affirm sovereignty of the Indigenous nations alongside that of the Canadian state has gained little acknowledgment or attention from the courts and/or the Canadian government. Henderson believes that a shift to treaty federalism has yet to occur because of the lack of will from Canadian politicians to embrace it. For instance, Henderson believes that “Canadian politics lacks creative capacity to construct political relations with others.”²⁰⁸ If Ladner and Henderson are correct in their views that there is little interest and political will from inside the Canadian political system, the Indigenous nations must consider other options to convince them otherwise – such as influence through the ballot box.

²⁰⁵ *Ibid*, 56.

²⁰⁶ *Ibid*.

²⁰⁷ Ladner also highlights this point on page 89 of *Peace and Good Order* as she described that when POGG was implemented it was shared with the North West Mounted Policy, in place of Canada. However, today this must extend to parliamentary representation due to the inability of the North West Mounted Policy to assist in its duty but rather assisted in trying to hinder the Indigenous nations. Thus, the way to fix this and construct a new relationship to maintain peace and order, that respects and enhances the voice and ways of the Indigenous nations, is through parliamentary representation and influence. However, the issue of how to bring about this change has not been explored and I will argue can be linked through the use of voting.

²⁰⁸ Henderson 1994, 316-317.

Voting as Canadian citizens, through the use of dual-citizenship, may be needed since Section 35 of the *Constitution Act, 1982*, and the suggestions from RCAP, have been of little use to bringing Canada to accept the concept of treaty federalism. Although there is a debate amongst Indigenous peoples in relation to electoral participation, with fears of it undermining their sovereignties and accepting Canadian imposition,²⁰⁹ whether or not voting is a possible solution needs to be assessed. In fact, the potential of a contemporary version of sovereignty, and the view of treaty federalism, could give greater support to the idea of Indigenous peoples as dual-citizens. The concept of dual-citizenship may offer additional support in moving Canada forward to a more open and revitalized view of the Canadian/Indigenous relationship. Before investigating the potential of Indigenous peoples at the ballot box, the theory of Indigenous peoples as dual-citizens must be asserted first and foremost.

3.3 Dual Citizenship: The Myth of Participation Equaling Assimilation

The Canadian government in the past had used citizenship rights as a way to assimilate Indigenous peoples and degrade the status of the Indigenous nations as sovereign and separate entities. As chapter one demonstrated, these tactics assisted in tarnishing the relationship and trust that Indigenous peoples had towards the Canadian state, government, and citizenship. However, in the cases of all three

²⁰⁹ As shown in chapter two of this thesis, prior to 1960 any form of enfranchisement of Indigenous peoples was done to assimilate and integrate those individuals into the Canadian citizenry. This process would remove an Indigenous person's claim to their Indigeneity. This process was not one of consultation and was not necessarily always agreed to (such as if you joined the military, became educated, etc).

major Indigenous groups, First Nations, Metis, and Inuit, the ability to participate in Canadian citizenship, and therefore also with the electoral process, did not hinder the status of their Indigenous nations as had been thought.

In some cases, as Ladner has argued, parts of the Numbered Treaties could be used to claim that Indigenous peoples involved may have a right to delegated representation. John Borrows expands this idea for all treated areas because “treaties between Indigenous peoples and the Crown promote peace and order across cultures and are the basis of the country’s formation and continued reformation.”²¹⁰ In other words, Borrows believes that because of the treaties signed, respect and inclusion of treated Indigenous peoples were recognized. Respect and inclusion of Indigenous peoples also extends into the Canadian political process because of the fact that both societies were to share the territory that was treated. Borrows highlights that this is even more probable because of the fact that Indigenous peoples do not only reside within their own communities or territory.

Borrows elaborates further on Indigenous peoples stating that even though some may live in their traditional territories or in designated communities, many also live in Canadian towns and cities. Additionally, influences from national and international forces, such as education, culture, and spirituality, will continue to impact Indigenous peoples, their way of life, and view points no matter how remote or traditional²¹¹ they may be.²¹² Thus, even if Indigenous nations became completely autonomous, they would encounter a geography, history, economic system, and

²¹⁰ Borrows *Canada’s Indigenous Constitution* 2010, 124.

²¹¹ Traditional refers to an individual who practices the original ways of any of the Indigenous nations and who may try to limit the impact of outside social and cultural influences.

²¹² Borrows *‘Landed’ Citizenship* 2000, 332.

political landscape that would require a working relationship alongside Canada to reach any objectives they may seek in the globalized world of today.²¹³ With treaty federalism and dual citizenship, the Indigenous nations could still have their autonomy while also working within and alongside Canada. By working with Canada through an interdependent nation-to-nation view, Indigenous nations would have more opportunity to garner what is needed in a globalizing world rather than trying to do so on their own.

The idea of jointly working with Canada from within the Canadian system may lead some Indigenous peoples to believe Borrows is promoting the same ideas that Cairns and Kymlicka have suggested when looking at the place that Indigenous peoples have in Canada. Borrows rebuts such accusations, stating that:

Assimilation implies a loss of political control, culture and difference. Aboriginal control of Canadian affairs has the potential to facilitate the acquisition of political control, culture, and difference. Aboriginal control of Canadian affairs has the potential to facilitate the acquisition of political control, continued development of culture and respect for difference because it could change contemporary notions of Canadian citizenship.²¹⁴

With Borrows explaining that his view is not promoting assimilation but another method to expand and re-establish Indigenous authority, the possibility for influencing the Canadian political system, by voting as dual-citizens, could also be considered another option.

To further his own point of using the Canadian system, Borrows reviewed the *Gus Wen Tah*, two-row wampum treaty. The two-row wampum treaty is a part of

²¹³ *Ibid.*

²¹⁴ Borrows *'Landed' Citizenship* 2000, 333.

the 'peace and friendship' treaties that spoke to two boats going down the river side-by-side without interfering with one another. Although this has been the common reflection of the Gus Wen Tah, Borrows points out that there is another interpretation to consider. Borrows details how there are more than two purple rows and that the three rows of white beads represent a counter-balancing message.²¹⁵ Borrows highlights that the white rows of the Gus Wen Tah are the bed of the agreement, and stand for peace, friendship and respect.²¹⁶ When the principles of peace, friendship and respect are combined, according to Borrows, it can be thought to include "that ideas of cooperation have also been rooted in notions of mutuality and interconnectedness."²¹⁷ Through mutuality and interconnectedness, Borrows argues, Indigenous peoples should feel they have the right and ability to be involved in the Canadian state and not fear degrading their citizenship to their respective Indigenous nations as they seek to practice the use of shared territory and recognition.²¹⁸

Additionally, another belt that came after the Gus Wen Tah was exchanged at Niagara in 1764 and may add more credit to Borrows' point. This other belt emphasized the interdependence between Indigenous nations and British subjects in North America. Borrows describes it as

a ship woven into one end of the belt with its bow facing towards Quebec. At the other end of the belt is an image of Michilimackinac, a place in the centre of the Great Lakes regarded as the heart of the Chippewa-Anishinaabe homelands. Between the two objects were woven twenty-four Indians

²¹⁵ *Ibid*, 335.

²¹⁶ *Ibid*; Haudenosaunee Confederacy 1983.

²¹⁷ Borrows *'Landed' Citizenship* 2000, 335.

²¹⁸ *Ibid*.

holding one another's hands, with the person furthest to the right holding the cable of the ship, while the one on the extreme left has his foot resting on the land at Quebec. Representatives of the twenty-two First Nations assembled at Niagara in 1764 touched this 'Belt of Peace' as a symbol of friendship and as a pledge to become 'united.'²¹⁹

In other words, by considering Borrows' view of the Gus Wen Tah and the additional belt from 1764, the idea of cooperation and interdependence is a plausible option that not only responds to the Royal Proclamation of 1763 but also highlights the idea of treaty federalism and the potential of dual-citizenship. However, Borrows' point only highlights for those who were involved with the 1764 treaty process and does not take into consideration any future treaties that the Crown and the Canadian state may have made with Indigenous nations later on. Thus, it is important to find broader proof that highlights how Indigenous nations may not be vulnerable to further degradation by Indigenous peoples practicing dual-citizenship and participation in the Canadian state.

One such example comes from David Wilkins, who believes that such recognition could help influence Canada in recognizing the Indigenous nations once again. Wilkins believes Indigenous peoples, by participating in the state they share territory with, are not infringing on the sovereignty of Indigenous nations because:

Tribal nations continued to exist as separate sovereign entities since citizenship only applied to individual Indians, not Indian nations. Second, established voting eligibility criteria, and being well aware of the ongoing vitality of tribal sovereignty as evidenced by a) treaty rights which exempt Indian lands and their members from most regulations and taxation; and b) clauses that detail that state governments cannot extend their jurisdiction or taxing authority over Indian lands held in trust status.²²⁰

²¹⁹Ibid, 335-336

Although Wilkins' argument on Indigenous sovereignty is more focused to the United States/Indigenous nations relationship there is potential for a similar understanding to be developed in Canada. By reviewing Canada's own laws that granted voting to First Nations (1960), Inuit (1954) and Metis (1870), there is no hint that the legislation removed their jurisdiction in their territories and that Canadian citizenship erased their rights as citizens to their Indigenous nations. Although previous policies relating to citizenship did force Indigenous peoples to surrender their Indigeneity, the legislation used to grant citizenship in 1870, 1954, and 1960 had not.²²¹

Wilkins would point out that this is similar to how in the United States citizenship was transferred to each Indigenous person as an individual rather than imposed on the actual Indigenous nation itself. In other words, the sovereignty of each Indigenous nation was not impacted as it was granted to the individual and did not restrict their Indigeneity.²²² Instead, Indigenous people have been granted a form of dual-citizenship.

The idea of dual-citizenship, in the Canadian context, was also suggested in RCAP's conclusions in 1996.²²³ Yet, the potential of Indigenous people recognizing themselves as dual-citizens has not yet been achieved because it is yet to be a

²²⁰Wilkin 2000, 738; Wilkins' article on the subject matter of citizenship and Indigenous sovereignty is a good theoretical argument to look at when looking at both.

²²¹ One exception to this rule was Status First Nation Women who married non-Indigenous men until 1985. Additionally, the *White Paper*, 1969, is an example post-1960 but it failed to be implemented due to the extreme opposition that was brought forth by the Indigenous peoples, specifically First Nations. Thus, although it was assimilationist it never came to fruition.

²²² Wilkins 2000, 738.

²²³ RCAP Vol. 2 1996; The point of dual-citizenship that was suggested from RCAP was considered an option to rectifying the issues facing the Indigenous/Canadian relationship and finally acknowledging the reality of the place of both sides in North America.

concept discussed, debated, or considered in the Canadian context. In other words, although the discussion and concept has been considered and partially recognized in the United States, a similar understanding has yet to be fully broached in relation to the Canadian/Indigenous relationships. If the idea of dual-citizenship was to be considered, the potential for further Indigenous recognition by influencing the Canadian political process is a viable option that does not threaten Indigenous sovereignties.

Despite this potential it has been avoided, other than in RCAP's findings, in the Canadian context. The possible reasons could range from not knowing that such possibility exists to the fact many may not realize the potential political power such recognition could have. However, if Indigenous peoples viewed themselves as dual-citizens of their Indigenous nations and the Canadian state, as Borrows argues, the use of Canada's legal and political institutions would be less threatening.²²⁴ Influence on the legal and political institutions of Canada could allow for Indigenous peoples to protect, maintain, and affirm their political, economic, and sociological systems.²²⁵

Taiiaki Alfred would disagree, as previously outlined in chapter two. Alfred maintains that the only way to rebuild and recognize the sovereignty of the Indigenous nations is to remove western influences from Indigenous peoples life and return to their traditional ways. Alfred, in *Wasase*, gives examples of other nations who he believes have been able to achieve recognition through their own ways. To bolster his view he examines the Philippines, India, and Myanmar. In

²²⁴ Borrows *Canada's Indigenous Constitution* 2010, 157.

²²⁵ Wilkins 2000, 741.

regards to the Philippines, Alfred address the Filipino concept of identity that is based on *kapwa*, a Tagalog word meaning 'shared being.' The shared being highlights that there is no concept of a separate existence from others and everything shared.²²⁶ Alfred points out that Filipinos, no matter where they may live now have held on to this concept. Additionally, Alfred cites India as being another example, for decolonizing itself after removing the British control over their territories some six decades ago through the Gandhian movement,²²⁷ and Myanmar due to Aung San Suu Kyi's resistance to the totalitarian military rule that continues to control her home territory.²²⁸

Although Alfred's points are poignant, there are problems with his conclusion regarding the examples above. In fact, the three examples could be used more appropriately for why dual-citizenship and mutual recognition can exist. For instance, in the case of Filipinos, it is an example of a key concept of an Indigenous culture surviving the colonization and establishment of the Philippines over territory held by dozens of Indigenous peoples, while still utilizing western forms of government and economics. Regarding India, there are also problems with Alfred's points as modern India is also the end result of British influences and comprises more than a dozen different Indigenous states that were forcibly unified. India also still reflects the differences of the groups who reside there yet makes use of a western form of government, economic structures, as well as British-like boarding schools. Lastly, Myanmar's Aung San Suu Kyi has used the political process, which

²²⁶ Alfred *Wasase* 2009, 188.

²²⁷ Alfred describes the Gandhian movement as the path too freedom or peoples beginning with personal strengthening and then the development capacity for collective action.

²²⁸ Alfred *Wasase* 2009, 202 & 205.

was established by its colonial British past, to push for democracy and changes to the state. Therefore, the examples Alfred uses are not ones that bolster his point exclusively, but rather show what can be achieved, albeit not yet perfected, when people make use of the tools that they have around them. The use of Canada's political systems and dual-citizenship to entrench and push for recognition of the original Canadian/Indigenous relations may have just as much potential to do so because of Alfred's own examples that actually contradict his argument.

Borrows furthers this argument with highlighting the need for Indigenous peoples to work not only as individuals and groups within their Indigenous nations, but also in the Canadian state. By participation in the Canadian state at large, the potential to increase Indigenous influence over matters of importance will gain more traction within Canada.²²⁹ The point of increasing their influence would also mean welcoming people into their Indigenous nations who may not be related by blood.²³⁰ The idea of welcoming individuals who are not blood related into an Indigenous nation follows many traditional forms of societal structures amongst Indigenous peoples, which was outlined in chapter one. Therefore recognition of non-Indigenous peoples as possible citizens of an Indigenous nation would increase better understanding, respect of Indigenous ways of life but also cohesion between Canada and the Indigenous nations. Palmater adds to this concept of extending citizenship to non-Indigenous people in order think beyond blood as being how one becomes a citizen of an Indigenous nation. In fact, welcoming those who come from around the world and who follow the key principles that the Indigenous nations

²²⁹ Borrows *'Landed' Citizenship* 2000, 329.

²³⁰ *Ibid.*

outline in their citizenship codes, matches the natural system that many Indigenous nations used prior to colonization. The difference is that including Canadians and those who immigrate to Canada would allow many individuals to not only participate but also see what Indigenous legal, political, social, and citizenship standards truly are.²³¹ Therefore, granting dual-citizenship to non-Indigenous peoples could allow for Indigenous philosophies to be adopted and also pushed by non-Indigenous peoples on to the Canadian state.

One such view that is an important cornerstone to many Indigenous nations is the recognition of the earth as an equal and fellow citizen within their nation. Various Indigenous nations have long recognized the importance of the earth, and all it offers, because without its sustenance they would cease to exist. Borrows describes the importance of the earth being a fellow citizen and that Indigenous people need to look past just control over their own affairs since the land is now shared with other societies and peoples.²³² According to Borrows:

Our births, lives, and deaths on [the land] have brought us into citizenship with the land. We participate in its renewal, have the responsibility for its continuation, and grieve for its losses. As citizens of this land, we also feel the presence of our ancestors, and strive with them to have the relationship of our polity respected.²³³

In other words, the view of the land as a fellow citizen is a key component to many Indigenous societies. Furthermore, many continue to push for recognition of the land as a fellow citizen due to the historical and sustainable connections that are

²³¹ *Ibid.*

²³² *Ibid*, 329.

²³³ *Ibid*, 326.

important to their nationhood and citizenship codes, as outlined by Monture-Angus and Borrows.

Through the use of voting as dual-citizens, Borrows further explains, the potential for Indigenous input on how the earth is regarded would be more likely listened to. In turn, the activity of Indigenous peoples having their views regarded could lead to the earth being recognized as an entity in the Canadian state that all citizens must be mindful towards.²³⁴ However, both Borrows and Wilkins acknowledge that if Indigenous people are to participate in the Canadian state in order to make these type of changes occur, a great deal of influence within Canada's political institutions must be made to see such items implemented in party policy and legislation. By Indigenous people directly impacting who may sit in Canada's House of Commons, there may be a greater likelihood that what Indigenous peoples seek in recognition for the Canadian/Indigenous relations could be implemented. Therefore, the option for Indigenous peoples to view themselves as dual-citizens could ease fear of further degradation towards their Indigenous nations as they seek recognition of the original relationship and their sovereignty by casting a ballot in Canada's electoral process.

3.4 Conclusion:

Without consideration of contemporary forms of sovereignty and recognition of potential change through the use of the Canadian political process, within, both the Canadian and Indigenous psyches, the idea of dual-citizenship will continue to

²³⁴ *Ibid*, 332.

be unused. Furthermore, the potential of treaty federalism and jointly recognized sovereignty will be even less achievable as long as dual citizenship is unpracticed. Furthermore, how dual-citizenship can be practice and recognized may further rely on individual studies of the treaties that the various Indigenous nations have entered. Despite the need for additional research on individual treaties in relation to dual-citizenship, this chapter has pointed to important concepts of sovereignty, treaty federalism and dual-citizenship in order to answer questions that chapter three had left unanswered. These questions relate directly to Indigenous sovereignty and how many Indigenous peoples opt for non-involvement in the Canadian political process due to fears that doing so will degrade their Indigenous nation.

In assessing Westphalian sovereignty, it becomes clear that the definition of sovereignty has been one to benefit the European states that existed, and dominated the world at the time of its inception. However, new viewpoints arose due to a more interconnected population around the world and the recognition of some states to need to work alongside each other through treaties and organizations that tie them together. Although it was a non-binding document, the best and most recent example of this is UNDRIP.

The potential for treaty federalism coming into play, with the adoption of a more contemporary view of sovereignty, allows for both the Indigenous nations and the Canadian state to move forward together in a retrenched and mutually respectful relationship, as highlighted by RCAP. In fact, recognition of treaty-federalism in Canada could allow for mutual respect, with many Indigenous nations

opting to take a similar level of recognition as the Canadian provinces and therefore not impacting the ability of the Canadian state to govern in the territory shared. Lastly, citizenship rights that were enacted in 1870, 1954, and 1960 were not like previous experiences of enfranchisement that the Canadian government had imposed. Instead, by using Wilkins' argument in the Canadian context, it could have brought forth a form of dual-citizenship. In other words, since citizenship can only be granted to an individual it must stipulate whether or not they must rescind other forms of recognition of citizenship to other nations. By Indigenous people no longer having Canadian citizenship imposed and replacing their Indigeneity, using their dual-citizenship can bring forth change to the Canadian state mentality. Indigenous jurisdictions, treaty federalism, as well as joint sovereignty could be recognized by Indigenous peoples having their philosophies integrated into the state as well as the mindsets of Canada's citizens and politicians.

The ability for such recognition may not rest with just the concept of dual-citizenship, but also from the potential Indigenous peoples may wield in Canada's electoral process. Indigenous sway on Canada's electoral process is also important to consider when discussing the utilization of the Canadian state to cause change from within because without direct impact on elected officials, the potential for such change is drastically minimized.

Chapter Four: Increasing Indigenous Participation and Electoral Potential

4.0 Introduction:

In 1960, a by-election in the federal riding of Peterborough marked a turning point regarding political representation in Canada. The by-election in Peterborough represented the first time, since extending Canadian citizenship to indigenous peoples, that the Canadian state did not require First Nations peoples to give up their treaty rights in order to vote.²³⁵ Although Canadian citizenship has been viewed critically by Indigenous peoples, due in part to Canada's previous enfranchisement policies, the 1960 legislation may have recognized the concept of dual citizenships in relation to Indigenous peoples.²³⁶ In turn, if Indigenous peoples recognized themselves as dual citizens, the potential to utilize Canada's electoral process to impact its elected officials could be ascertained. If Indigenous peoples can influence the political process in Canada, the ability to realign the Canadian/Indigenous relationship becomes greatly enhanced because they will not only impact policy decisions but also election results in various electoral districts.

In considering the potential of Indigenous peoples as a possible voting bloc, questions surrounding why it has been given little credit must first be comprehended. Chapter four will argue that Indigenous peoples can bring change to the Canadian/Indigenous relationship through the federal ballot box. Scholars, like Russel Barsh, assert that Indigenous peoples lack the ability to influence federal

²³⁵ Government of Canada. "Aboriginal People and the Federal Electoral Process: Participation, Trends, and Elections Canada's Initiatives." 2004.

²³⁶ See Chapter Three of this thesis, specifically the section on dual-citizenship.

electoral outcomes because of population and socio-economic factors preventing them from participating and seeing validity in the electoral process. The use of Aboriginal Electoral Districts (AEDs) will also be reviewed and shown to be ineffective for accurately representing the diverse and varied population of Indigenous peoples. Finally this chapter will conclude with a discussion of whether or not there is stronger potential for Indigenous influence on the ballot box under the current electoral system of First Past The Post. The need to consider First Past The Post arises from the need for a better understanding of where Indigenous peoples live relative to Canadian federal electoral districts.

4.1 Little Credit Given: The Indigenous vote in Canada's Federal Politics:

By considering themselves to be dual-citizens, Indigenous peoples have the potential to participate in the Canadian political process without infringing on their own Indigenous nations. As chapter three asserted, the potential for recognition and respect of the Canadian/Indigenous relationship could be reached if Indigenous people utilize the Canadian system. What was left unanswered, however, was the question of whether or not Indigenous peoples had the numbers and capacity to actually influence the outcomes in federal elections. That is, do Indigenous peoples have the numbers to effectively make candidates and political parties consider their concerns and voices during and after elections?

It has long been assumed that Indigenous people have little chance to influence the Canadian electoral system as it currently stands because Indigenous populations are small and spread out across the Canadian state in comparison to

large non-Indigenous populations.²³⁷ The view that Indigenous people have little influence in the First-Past-The-Post (FPTP) system that Canada currently uses is noticeable in the 1991 release of the *Royal Commission on Electoral Reform and Party Financing* (RCERPF). The majority of authors in Volume Nine, *Electoral Reform and Canada's Aboriginal Population*, of RCERPF cited conclusions made from studies conducted by scholars, such as Russel Lawrence Barsh. Other scholars, such as David Bedford and Sidney Pobihushchy, presented their own statistics on voter participation in the Maritimes and brought to attention the lack of influence that the Mi'kmaq population had on federal and provincial elections. In concluding their findings, Bedford and Pobihushchy specifically state that:

the personal consequences to most individual voters of a victory by the Liberals, the Progressive Conservatives or the New Democratic Party are not that great. Election outcomes are more critical on reserve communities because politics controls so much economic activity.²³⁸

Instead, the influence of the Mi'kmaq vote is in Chief and Council elections because of the direct impact their involvement could have on their financial security and stability.

Although Bedford and Pobihushchy come to the above conclusions, there are concerns over their generalization that Indigenous people, specifically the Mi'kmaq in the Maritimes, have little influence in federal or provincial elections. For instance, Bedford and Pobihushchy do not discuss, or consider, how economic and financial

²³⁷ Gibbins, Roger. "Electoral Reform and Canada's Aboriginal Population: An Assessment of Aboriginal Electoral Districts." Vol. 9, in *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert Milen, 153-184 (Toronto: Dundurn Press), 156.

²³⁸ Bedford, David, and Sidney Pobihushchy. "On-Reserve Status Indian Voter Participation in the Maritimes." *Canadian Journal of Native Studies* 15, no. 2 (1995): 255-278, 274.

agreements are also influenced by federal and provincial agreements. Additionally, Indigenous peoples concerning themselves more with their local political outcomes, may relate more to issues surrounding their level of education, increased awareness of Indigenous nationhood, as well as differences in political ideology to that of Canada.²³⁹ In relation to education, Bedford and Pobihushchy note that Indigenous peoples with post-secondary education are more likely to participate in Canada's electoral process.²⁴⁰ In regards to a difference in political ideology between Indigenous peoples and Canadians, Bedford and Pobihushchy use the Iroquois Confederacy as their example to highlight how Indigenous leaders were not elected but chosen through Clan mothers.²⁴¹ They suggest the differences in the Canadian political system conflicts with traditional Indigenous political systems.

There are, however, other problems with Bedford and Pobihushchy's research. One specific concern over their conclusion relates to whether or not their data may be incomplete in assessing all of Canada in relation to the potential of Indigenous voters. Bedford and Pobihushchy admit that the data is incomplete and elaborate that it is because "in some cases the boundaries of polling stations are not wholly contained within the boundaries of reserves [and may not include only Indigenous voters]."²⁴² The issue over polling stations not being solely used by Indigenous peoples highlights problems surrounding their size and strength, in comparison to non-Indigenous peoples, and whether it is accurate to use it to generalize across Canada. As 'Appendix 1' (see page 139) of this thesis shows, the

²³⁹ Bedford and Pobihushchy 1995, 266.

²⁴⁰ *Ibid*, 268.

²⁴¹ *Ibid*.

²⁴² *Ibid*, 259.

Indigenous peoples represent a small population size compared to the non-Indigenous peoples. For instance, Indigenous peoples in Prince Edward Island (1.3%), New Brunswick (2.4%), and Nova Scotia (2.7%) are small in relation to their non-Indigenous counterparts.²⁴³ Although similar percentages may exist in other provinces, the potential for impact on individual ridings exists, unlike in the Maritime region. When considering the Indigenous population by federal riding in the Maritime region, the highest percentage of Indigenous voters is in the Nova Scotia riding of Sydney-Victoria (6.3%).²⁴⁴ Therefore, it can be suggested that the potential of the Indigenous peoples swaying the federal electoral outcomes in the Maritime provinces is not as likely compared to other areas of Canada, but further discussion is needed.²⁴⁵

As previously mentioned, Russel Lawrence Barsh also looked at Indigenous peoples and their participation, specifically in south-central Alberta. Barsh (1994) assessed the potential of Indigenous peoples in Alberta's Wetaskiwin federal riding. Barsh's conclusion was similar to that of Bedford and Pobihushchy in that he believed Indigenous peoples were too small in numbers to influence the election results.²⁴⁶ The data that Barsh used in regards to the Indigenous population of Wetaskiwin came from the 1986 census and 1988 electoral results. With Barsh's use

²⁴³ See Appendix One. Note: These population statistics are done by riding and are from 2006 Statistics Canada information due to the 2011 Statistics Canada information not having available the ethnic breakdown of a riding's population.

²⁴⁴ Also see Appendix One.

²⁴⁵ Note: Further research is needed to prove this as there is no statistical analyses that exists to show Indigenous voter turnout in the last four Canadian elections in relation to the margin of difference between candidates placing first, second, and third.

²⁴⁶ Barsh, Russel Lawrence. "Canada's Aboriginal Peoples: Social Integration or Disintegration?" *Canadian Journal of Native Studies* 14, no. 1 (1994): 1-46, 34.

of the Indigenous population in relation to 1986 figures, it clearly showed that those who claimed Indigenous background only totaled 2.9 per cent of the overall population in the riding.²⁴⁷ Although Indigenous peoples at the time, according to 1986 statistics, were fewer in numbers compared to the Non-Indigenous peoples also in the riding, it is still problematic to consider Barsh's findings as valid across Canada. Wetaskiwin is south of Edmonton and is heavily dominated by the non-Indigenous population. In other words, Barsh's findings are not as definitive as he would contend since Wetaskiwin is representative of a riding that Indigenous peoples, at the time, had little chance of influencing.

Ladner also concludes that Indigenous peoples are too small in numbers, fragmented, and dispersed to impact electoral results.²⁴⁸ The issue of Indigenous peoples' perception that casting a ballot weakens their potential even further must also be considered. Despite the dispersed population and low turn out, Ladner does point out that there are some ridings, such as Nunavut, where a high percentage of the population is Indigenous and does sway electoral results.²⁴⁹ Furthermore, Ladner highlights the research of Barsh to support her conclusion and must therefore be regarded critically as it has already been shown that there are problems with Barsh's findings. Therefore, in citing Wetaskiwin as a reason for needing specific seats, or delegated representatives may not be entirely correct.

Assumptions from other scholars, such as Benjamin Forester, add similar conclusions to Barsh, Bedford, and Pobihushchy's findings in the study of

²⁴⁷ Gibbins 1991, 170.

²⁴⁸ Ladner, Kiera. "The Alienation of Nation: Understanding Aboriginal Electoral Participation." *Electoral Insight*, Vol. 5, No. 3, 2003: 21-26, 22.

²⁴⁹ *Ibid.*

Indigenous peoples' participation in the electoral process. Forester believes that "Aboriginals and Francophones constitute a special case in Canada [because] both groups are heavily concentrated in a single territory (Nunavut) or province (Quebec) respectively."²⁵⁰ Forester's point is noticeably incorrect because the majority of Indigenous peoples do not reside in Nunavut. However, if many scholars are coming to false conclusions like Forester, Barsh, Bedford and Pobihushchy, then it becomes clear why the potential of the Indigenous vote has not been considered worthy of further research.

Forester also points out that when it comes to voter participation, based along ethnic lines, there is a common practice used to decide if it is worth a scholar's time to do further research on electoral participation. Forester highlights that when it comes to measuring political representation and involvement of minority populations, it is done:

in one or more of seven ways, including: 1) The ability to cast a ballot; 2) The ability to stand for office; 3) The ability of minority communities to elect candidates of their choice; 4) The number (or proportion) of minority office holders; 5) The relative weight of a minority citizens' vote; 6) The promotion of minority interests in a political system; and/or 7) The political strength of minority representatives in a Legislature.²⁵¹

In other words, with the options pointed out by Forester and the isolated research conducted by scholars such as Barsh, Bedford and Pobihushchy, there have been very few who opted to investigate in a more in-depth way to show whether or not Indigenous peoples can bring change through the ballot box. The reason for other

²⁵⁰ Forester, Benjamin. "Electoral Redistricting and Minority Political Representation in Canada and the United States." *The Canadian Geographer* 21, no 1, (2012): 1-21, 7-8.

²⁵¹ *Ibid*, 9.

scholars opting to not further delve into in-depth research on Indigenous participation may very well be linked to the fact that previous findings have found little influence from Indigenous peoples.

Although initial research shows select areas that Indigenous peoples can influence the result of an election, there are other regions and ridings that must be assessed. Additionally, consideration needs to be given to Indigenous peoples and their ability to not only elect an Indigenous person to the House of Commons (HOC) but also whether or not they can influence and change the mindset of non-Indigenous Member of Parliament (MP). It is important to consider the power Indigenous peoples can have over a non-Indigenous parliamentarian because, as Forester alluded, focus has traditionally been on whether or not Indigenous peoples are able to elect an Indigenous representative. Due to Canada's FPTP electoral system, and its political party structures, impacting who may represent them as a candidate in an election, the victor on Election Day may not be the same ethnicity, sexual orientation, or gender of everyone who resides within the riding. Despite the issue of a politician not being of the same ethnicity as some of their constituents, there is a concern that the elected official may not heed the voices of those who did not vote for them or vote in general. Whether or not a politician pays attention to a segment of those living in the riding they represent may be impacted by whether or not that population could help or hinder their mandate and electoral prospects in the future. If Canadian politicians realized the potential of the influence that Indigenous peoples may wield over their ability to be re-elected or defeated, the likelihood is that those politicians would heed Indigenous concerns. If those

politicians heed the voices of Indigenous peoples, the potential for nation-to-nation relations being strengthened, could be realized. Whether or not politicians have actually listened to constituents who are not of the same sexual orientation, sex, or ethnicity is another question needing to be further explored.

Roger Gibbins, for example, looks at the potential of a politician being a voice for various segments of the population that are in the district they represent.

Gibbins states:

a white male might accordingly well be able to represent the interests of Aboriginal and female constituents; whether he would be inclined to do so could well depend upon the power of such groups at the ballot box.²⁵²

In other words, Gibbins suggests that a non-indigenous politician could very well represent Indigenous peoples. However, in order for non-Indigenous politicians to properly represent them, Indigenous peoples must wield what voting power they may have in order to show that it is Indigenous people that could assist or prevent them from being re-elected. By the Indigenous people in a riding wielding their vote as influence over a local politician, opportunity for having their voice further entrenched in Canada's internal decision making could occur.²⁵³

Although potential for Indigenous influence on the federal Canadian electoral process may exist, there has been little research to promote such a possibility when

²⁵² Gibbins 1991, 155-156

²⁵³ Borrows *'Landed' Citizenship* 2000, 337; Cairns, Alan. "Aboriginal People's Electoral Participation in the Canadian Community." *Electoral Insight*, Vol. 5, No. 3, 2003: 2-9, 7. Williams, Melissa. "The Uneasy Alliance of Group Representation and Deliberative Democracy." In *Citizenship in Diverse Societies*, by Will Kymlicka and Wayne Norman, 124-154. Oxford: Oxford University Press, 2010, 124. Note: Cairns specifically points out that by utilizing influence over a local politician, whether Indigenous or not, that it therefore allows Indigenous voices to be represented on policy formation. By not participating in the electoral system it allows for policy decisions on issues of importance to Indigenous peoples to be based off of non-Indigenous views.

specifically related to Indigenous peoples. Most information that has been brought forth suggests that the Indigenous population has little opportunity to influence the Canadian electoral process. The assumption that Indigenous peoples have little chance to influence electoral outcomes or wield voting power over elected officials, became a concern that was brought up in the *Royal Commission on Electoral Reform and Party Financing* (RCERPF). Once such suggestion for increased Indigenous participation analyzed by the RCERPF related to the implementation of Aboriginal Electoral Districts (AEDs).

4.2 Aboriginal Electoral Districts (AEDs): A Solution or Threat to Influence?

During the 1960s and 1970s questions began to be raised by politicians, academics, and grassroots representatives on the need for effective representation for segments of the population that were considered marginalized.²⁵⁴ Significant numbers of Indigenous peoples, as well as women and visible minorities, began advocating for the Canadian electoral system to be re-evaluated and to consider designated seats for segments of the population.²⁵⁵ The calls for specific representation of Indigenous peoples were linked to the colonial practices that existed between their nations and the Canadian state. The relationship, as chapter two outlined, had been riddled with oppressive and colonial practices that had led to various forms of isolation and discrimination towards the Indigenous nations and

²⁵⁴ Schouls, Tim. "Aboriginal Peoples and Electoral Reform in Canada: Differentiated Representation versus Voter Equality." *Canadian Journal of Political Science* 29, no. 4 (1996): 729-749, 729.

²⁵⁵ *Ibid*, 732.

their peoples.²⁵⁶ The isolation and discrimination that has, and continues to impact Indigenous peoples can be considered a reason why many Indigenous peoples do not cast a ballot and that the only way to rectify this would be through AEDs. For instance, Chief Matthew Coon Come highlighted the issue of institutional discrimination within the electoral system when, in the late 1980s, expressed that:

although we have the right to vote, the social attitudes and political policies which stood in the way of our right to participate in the political process for more than one hundred years still dominate the electoral process in the country and still prevent our free participation in the government.²⁵⁷

In other words, Coon Come touches on the fact that institutionalized discrimination continued to keep Indigenous peoples from participation. Issues relating to accessibility to ballot boxes, discussion with candidates, and actual focus on Indigenous policies were apparent from the first election that Indigenous peoples, in full, could participate in. Since Indigenous peoples were not participating in the electoral process at the same levels as Canadians, possible solutions to deal with their low voter turnout were considered and debated amongst academics, politicians and grassroots organizers on both sides of the Canadian/Indigenous relationship.

One suggestion to increase Indigenous participation and representation was for Indigenous MPs to be elected specifically by Indigenous peoples in their own electoral districts. The Manitoba Keewatinowi Okimakanak Inc. pointed out that the Indigenous peoples needed:

members of Parliament who do not have to be taught who

²⁵⁶ *Ibid.*

²⁵⁷ Milen 1991, 40.

[Indigenous peoples] are, what [Indigenous peoples] want, and why [Indigenous peoples] are important to [Canada]. [Indigenous peoples] need [their] people in Parliament in greater number.”²⁵⁸

The Siksika Nation echoed the sentiment of Manitoba Keewatinowi Okimakanak Inc. in relation to their peoples having little voice in the House of Commons. The Siksika believed that involvement in the House of Commons was important to their progress and bluntly stated that the “need to get into the House of Commons instead of drumming on the steps of the House of Commons and being ignored.”²⁵⁹ The Siksika Nation went further and argued for Canada to implement AEDs for proper Indigenous representation, something similarly done in New Zealand for Maori peoples.²⁶⁰ The concept of AEDs also became a plausible solution among many non-Indigenous scholars, some who debated the idea in Volume Nine of the *RCERPF*.

According to Milen, the purpose of AEDs is linked to the principle of democratic equality in the Canadian system. Equality, Milen argues, is linked with that of differentiated representation because effective representation for Indigenous peoples requires representatives share an Indigenous identity.²⁶¹ In other words, the need for direct representation of Indigenous peoples by Indigenous representatives in the House of Commons equals equality. Milen bolsters his view

²⁵⁸ *Ibid*; Shouls 1996, 734; Note: Ovide Mecredi and Mary Ellen Turpel expressed this point in their book *Beyond the Rapids*. Mecredi and Turpel state on page 36 that “as peoples with distinct cultures, languages, governments, territories, and population in Canada we must be recognized as full and equal participants in the Canadian political system

²⁵⁹ *Ibid*.

²⁶⁰ *Ibid*. Note: The Maori refers to the Indigenous population that constitutes the original peoples of the land that currently forms the modern state of New Zealand. Since New Zealand’s establishment of ‘responsible government,’ the Maori peoples have been guaranteed specific seats in the New Zealand legislature.

²⁶¹ Shouls 1996, 730; Mecredi, Ovide and Mary Ellen Turpel. *In the Rapids: Navigating the Future of First Nations* (Toronto: Penguin Books. 1993), 36.

by assessing New Zealand's Maori Electoral Districts, and suggesting that AEDs in Canada would rely on a differentiated Indigenous voters' list based on representation by population.²⁶² At the time of the RCERPF being tabled to the House of Commons in 1991, the Indigenous populations as a whole equated eight seats, which under similar arguments mean fifteen seats today.²⁶³ The *RCERPF* suggested AEDs as a solution to the lack of Indigenous participation because the scholars in favour recognized the problem of a limited Indigenous voice in Canada's federal political arena.²⁶⁴ Tim Schouls points out that AEDs specifically influenced by Indigenous peoples "capture[s] a view of [Indigenous peoples] as distinct 'peoples' or 'nations' within Canada."²⁶⁵ The concept that AEDs present a view of Indigenous peoples as distinct nations within Canada is attributed with the fact that the seats are specific for Indigenous peoples, and thus could enhance the prospects of dual citizenship. However, Schouls' point does not include that AEDs based by population, specifically Canada's standards for seat allocation, would not reflect the various Indigenous nations that exist; many Indigenous nations would have to share seats rather than obtaining one for each Indigenous nation.

Other scholars, such as Milen and Roger Gibbins, look at the AEDs in a different way and believe that establishing AEDs brings potential for the recognition and support of Indigenous self-government.²⁶⁶ Milen also points out that such

²⁶² Schouls 1996, 735.

²⁶³ Note: This is if the concept of representation by populations, which in the Canadian electoral standards equals around 100,000 per electoral district, unless stated otherwise. Statistics Canada has equated the entire Indigenous populations as being around one and a half million.

²⁶⁴ *Ibid*; Gibbins 1991, 161.

²⁶⁵ Schouls 1996, 739.

²⁶⁶ Gibbins 1991, 161; Milen 1991, 42.

recognition of Indigenous peoples through AEDs, although not yet established in Canada, is compatible with the Westminster parliamentary system. This is because it has existed in New Zealand for over a century and that even Great Britain had specific seats to represent certain groups, such as minors and academic institutions like Oxford.²⁶⁷ Therefore, the potential for distinct representation of a specific segment of the population is acceptable in relation to Canada's electoral structure and warranted further research when looking at how to increase Indigenous participation and representation.

Augie Fleras assists with the discussion of AEDs by comparing Canada with New Zealand's 'progress' on Maori inclusion. For instance, Fleras states that:

on one hand, Maori seats have taken on a considerable aura over time and are widely regarded as integral to Maori status as the *tangata whenua o aotearoa* (Indigenous occupants of New Zealand).²⁶⁸

In other words, the existence of the Maori Electoral Districts have helped in making the Maori peoples feel connected to New Zealand as well as for New Zealanders to recognize the Maori people as the first peoples to inhabit New Zealand.²⁶⁹

Therefore, the potential of AEDs, according to Fleras, could assist Indigenous peoples in feeling more apart of the Canadian political process. However, the 'success' of AEDs in New Zealand may not be as compatible with Canada as Fleras or

²⁶⁷ Melin 1991, 48; Fleras, Augie. *Aboriginal Electoral Districts for Canada: Lessons from New Zealand*. Vol. 9, in *Aboriginal Peoples and Electoral Reform in Canada*, ed. Robert Milen, 67-103. Toronto: Dundurn Press, 67.

²⁶⁸ Ibid.

²⁶⁹ It is interesting to also note at this point that the State of Maine has done something similar. In the State legislature there are two seats, within non-voting rights, that have been established to represent two of the Indigenous communities that are also located within the state of Maine. However, there are two additional communities who have not been given any form of a status in the Maine legislature. Additionally, the state of Wisconsin considered this option for the Anishinaabeg population but it was voted down by the Wisconsin legislature. (Fleras 1991, 84)

Melin would like to believe. It should be noted that the establishment of the Maori electoral districts predates the formation of an autonomous New Zealand government and was brought to fruition through the *Maori Representation Act of 1867*.²⁷⁰ From the beginning of responsible government in New Zealand, it was considered important to give a voice to the Maori population until they were qualified to be included in the country's overall voting lists.²⁷¹ However, the removal of the seats never occurred and the Maori electoral districts continue to exist.

Another unique point about the Maori electoral districts is that they are not constitutionally entrenched. Unlike Canada, New Zealand relies on agreements with Great Britain in relation to their governing and representation structure. In Canada, however, implementation of AEDs requires constitutional amendments, which requires either approval from the provinces, territories and federal government or a majority 'yes' vote in a referendum.²⁷² Fleras, despite the hefty requirements needed, still believes it is important to consider because AEDs can serve in positively to bring forth Indigenous goals and recognition to the Canadian state.²⁷³ Research done on the Maori example, by Banducci, Donovan, and Karp, would give support to Fleras' view that AEDs could be positive for Indigenous goals. For instance, Banducci, Donovan, and Karp highlight that the 1996 and 1999 New Zealand elections saw the Maori seats as being key in forming government in both

²⁷⁰ Fleras 1991, 71; Banducci, Susan, Todd Donovan, and Jeffrey Karp. "Minority Representation, Empowerment, and Participation." *The Journal of Politics* 66, no. 2 (May 2004): 534-556, 536; Sullivan, Ann. "Effecting Change Through Electoral Policits: Cultural Identity and the Maori Franchise." *The Journal of the Polynesian Society* 112, no. 3 (09 2003): 219-237, 219.

²⁷¹ *Ibid.*

²⁷² Fleras 1991, 85.

²⁷³ *Ibid.*

elections.²⁷⁴ Additionally, the Maori MPs were able to use their position to influence policies that were important to the Maori peoples, such as in relation to coastal claims, fishing rights, and ocean seabed claims.²⁷⁵

Although Fleras, Banducci, Donovan, and Karp show a very optimistic side to the influence that the Maori electoral districts have had in New Zealand politics, there is cause for concern when using New Zealand to compare to Canada. For instance, the size of the Maori population in comparison to the Pahkehe population is higher compared to that between the Indigenous and Canadian populations, meaning additional influence from their numbers. Additionally, New Zealand's use of a Mixed-Member Proportional Representation (MMPR) system may have increased Maori influence in non-Maori districts because it allows for impact on electoral results outside of their specific districts as well.²⁷⁶ Another problem that faces the idea of AEDs in Canada is that political party discipline is far stronger in the Canadian electoral system than that in New Zealand, meaning Maori officials do not have to belong to the governing party to influence policy but negotiate with

²⁷⁴ Banducci, Donovan, and Karp, 2004, 536; Sullivan 2003, 230.

²⁷⁵ Flavell, Te Uroroa. "MMP: Perspectives from a Maori Member in a Maori Seat in the Maori Party." In *Maori and Parliament: Diverse Strategies and Compromises*, ed. Maria Bargh, 181-188 (Wellington: Huia Publishers, 2010), 181; Banducci, Donovan, and Karp 2004, 536; Bargh, Maria. "Lessons from the Maori Parliament." In *Maori and Parliament: Diverse Strategies and Compromises*, ed. Maria Bargh, 17-30 (Wellington: Huia Publishers, 2010), 17.

²⁷⁶ Mixed-Member-Proportional-Representation allows for citizens to vote as is done in FPTP. However, the national result is used to represent the outcome of how many seats a party will receive in the New Zealand legislature. Therefore, if a party receives a higher percentage of the national vote but it is not comparable to the amount of seats they win locally then there is a list the party uses to fill seats put aside. In other words, there are seats filled not be those elected at the local level but by the political party in order to represent the national vote percentages in the New Zealand Legislature. This has allowed for an increase in Maori representation in New Zealand politics. Additionally, changes to the electoral system increased the Maori electoral districts from four to seven (Sullivan 2003, 221 and 229).

them instead.²⁷⁷ In Canada, party discipline is quite stringent and how Indigenous participation in the electoral system could impact it must face further research. Thus, AEDs with Indigenous MPs will be faced with the problem of influencing other MPs, especially if they are not apart of the political party that has formed government.²⁷⁸ Concerns relating to Indigenous peoples and their ability to impact the political parties is not the only concern that needs to be assessed when assessing whether they can influence electoral results and decision making in the Canadian government.

Tim Schouls adds to the discussion on AEDs in Canada with concerns over whether the AEDs would properly represent the Indigenous populations have not been assessed.²⁷⁹ Schouls highlights this concern when considering how representation could be undermined by the pan-Indigenous approach listed in the *RCERPF*:

Does the Shuswap nation of south central British Columbia possess sufficiently compatible objectives with the Musqueam nation of Vancouver to be represented by a single MP? Or Similarly, if a Metis were elected in Saskatchewan, would status Indians in the province feel represented?²⁸⁰

Schouls point may be a key concern of AEDs in the Canadian context, especially if they are based from population rather than each Indigenous nation. To add to Schouls reservation on AEDs, electoral districts are also formed and based off of the provincial boundaries and not all Indigenous nations and confederacies are found in only one province. For instance, the Cree extend from Northern Quebec to Alberta.

²⁷⁷ Forester 2012, 2.

²⁷⁸ *Ibid.*

²⁷⁹ Schouls 1996, 742

²⁸⁰ Schouls 1996, 744

With provincial borders impacting seat formulation and allocation, there would be concerns that such recognition of Indigenous nations extending beyond provincial borders would face an uphill battle from the provinces.

Optimists like Fleras will believe that there is still hope based on the Maori example, despite the differences that exist between their federal structures, and relationships with the Indigenous nations. For instance, an argument exists that Maori electoral districts were not abolished due to fear by non-Maori politicians that assimilating them into the New Zealander rosters would mean the Maori population could influence who is elected in more than the electoral districts that they are assigned.²⁸¹ Another issue that has persisted for the Maori population is that the four original seats they were assigned, even the seven that came to exist post 1990, is less than the total seats that the Maori peoples should have if representation by population, in the New Zealand context, was followed.²⁸² This is an issue for the Maori peoples because it is not equating their populations to the same standards of representation that is held for Pahkehe peoples. Furthermore, the establishment of Maori electoral districts did not lead to increased Maori participation. Although there was a slight increase in participation after electoral changes had been implemented in 1990, there continues to be a decline in involvement through the Maori electoral districts.²⁸³

²⁸¹ Fleras 1991, 71; Turia, Tariana. "An Inventory of Parliamentary Seats." In *Maori and Parliament: Diverse Strategies and Compromises*, ed. Maria Bargh, 31-36 (Wellington: Huia Publishers, 2010), 31-36.

²⁸² *Ibid*, 75-76.

²⁸³ Sullivan 2003, 233. Note: Fleras, in 1991, pointed out that there was actually a shift of Maori voters leaving the Maori roster and having their names put on the general roster to vote in the general districts of New Zealand (79).

The implementation of AEDs for Indigenous peoples in Canada may not be the easiest and best solution for Indigenous peoples to feel represented in the Canadian state as well as to have the Canadian/Indigenous relationship re-established. The amount of issues, such as proper representation of the Indigenous nations, provincial influence and boundaries over electoral districts, and party discipline could lead to AEDs being ineffective in creating the solutions they would be implemented for. Therefore, other solutions relating to electoral participation, other than AEDs, must be considered for Indigenous peoples to bring forth change to the Canadian mentality on the Canadian/Indigenous relationship. One such possibility that hasn't been given adequate consideration is whether the current system of FPTP could actually be more compatible for Indigenous peoples to pursue changes relating to recognition of shared sovereignty and implementing concepts like treaty federalism and dual citizenship.

4.3 First-Past-The-Post: A Valid Option for Indigenous Peoples:

Canada's electoral system has been based on First-Past-The-Post (FPTP) since Canada was granted responsible government. Although who has been allowed to cast a ballot in Canada's electoral process has varied and grown over the decades; the idea of representation based on population has been the basis for representation in the House of Commons. Canada's electoral standards require that an electoral district exists for every 100,000 citizens, unless stipulated otherwise. The FPTP system unfortunately has been a contributing factor to why some, such as Barsh, have assumed that Indigenous peoples cannot influence the electoral

outcome in Canada's federal elections.²⁸⁴ Although the Indigenous population, as a whole, is around four per cent of the overall population of Canada, the potential for it to impact the electoral outcome is far greater than previously suggested in the existing literature. The reason Indigenous participation in the Canadian electoral process could have great influence relates to where Indigenous peoples reside in accordance to Canada's electoral districts. Furthermore, the potential for Indigenous people to impact ridings where the electoral results were a close race allows for more influence by the Indigenous voters.

Indigenous peoples geographical relation to Canada's federal electoral districts can be divided into three categories: 1) 'Non-Factor' Influence, where the Indigenous population is less than nine per cent of the overall population of a riding; 2) 'Influential,' where the Indigenous population is between nine and fifty per cent of a riding; and 3) 'Decisive Influential,' where the Indigenous peoples account for more than fifty per cent of the riding population.²⁸⁵ The importance of the nine per cent threshold for the 'Influential' category is because that percentage can cause a difference in the electoral outcome, especially in closely contested races in a riding with that level of the population being Indigenous. The ridings that could be considered in the category of 'Influential' are of interest because they highlight how Indigenous peoples may be the voting bloc that a party will need to utilize in order

²⁸⁴ Note: It is important to point out that additional research is needed to show just how many Indigenous people may be in an electoral district as some Indigenous communities do not allow Canadian officials to gather statistics in their communities. This leads to the possibility that Indigenous voters may be higher than what is assumed.

²⁸⁵ The use of nine per cent as a threshold relates to the fact that some of those ridings with an Indigenous population of nine per cent could have swayed the electoral outcome for a different party and candidate. However, in-depth research and data must be collected to further evaluate if the Indigenous population at this percentage would have truly brought forth a different electoral win

to successfully win or hold a riding that Indigenous peoples could influence.

Currently, little research and data exists that could be used to further delve into the 'Influential' category, however, the number of ridings that can be considered in this category are a higher number than previously thought by those who have considered Indigenous peoples in relation to voting. Although more research is required, it is possible to contemplate if any current ridings in the 'influential' and 'decisive influence' categories have any data that can highlight Indigenous potential at the ballot box and offer reasoning why more in-depth research must be done in other ridings.

Although the number of ridings that Indigenous peoples could influence has varied from forty to sixty,²⁸⁶ for the purpose of this chapter, and overall thesis, initial research and analysis to highlight potential will be done on three ridings: Nunavut; 2) Desenethe-Misinippi-Churchill River; and 3) Kenora. It should be noted that the use of these three ridings relates to the fact that there is more data and research available for these ridings compared to others listed. In other words, little to no research has been done to explore the potential of all ridings listed in 'Appendix Two' and should be visited in the future to further clarify the potential of Indigenous peoples and their ability to impact electoral outcomes in a riding.. With the use of the initial research for assessing the three ridings mentioned, the potential for Indigenous impact in ridings found in the categories of 'decisive influence' and 'influential' will propose that FPTP may be of more benefit to Indigenous participation than AEDs.

²⁸⁶ See Appendix 2 (page 139-141), which shows Canadian federal ridings listed in these categories

4.3.1 Nunavut:

The riding of Nunavut falls into the category of 'decisive influence.' Prior to 1997, the riding was known as Nunatsiak and has been represented by an Indigenous person in the H.O.C since 1963.²⁸⁷ The population of the federal district is 85 per cent Indigenous.²⁸⁸ Nunavut is considered to be a riding that not only has the highest percentage of Indigenous peoples but also the highest percentage that are Inuit. Additionally, Nunavut is considered a riding where more than 70 per cent of the Indigenous population does not have English or French as their first language.²⁸⁹ Due to statistics showing that the vast majority of residents in the riding are of Indigenous backgrounds, those who vote are a majority Indigenous, specifically Inuit. Although elections show the overall turnout for federal elections, between 2004 and 2011, in the riding of Nunavut range from a low of 43.9 per cent, in 2004, to a high of 54.1 per cent in 2006, the impact of the Indigenous vote in the riding has led to direct Inuit representation in the House of Commons.²⁹⁰ Liberal MP Nancy Karetok-Lindell (1997-2008) and Conservative MP Leona Aglukkaq (2008 to present) have also both been given cabinet positions during their time in the

²⁸⁷ Hunter, Anna. "Exploring the issues of Aboriginal Representation in Federal Elections." *Electoral Insight*, Vol. 5, No. 3, 2003: 27-33, 29; Government of Canada. "Inuit, Metis, or First Nation Origin." Parliament of Canada.

<http://www2.parl.gc.ca/Parlinfo/Compilations/Parliament/Aboriginal.aspx?Menu=HOC-Bio&Role=MP> (accessed February 20, 2013); Note: Between 1963 – 1979 the riding was held by Metis Individuals. Post 1979 the riding has been continuously represented by an elected official of Inuit decent.

²⁸⁸ Government of Canada. *Nunavut: Federal Electoral District 2006*; Government of Canada *38th General Election 2004*; Government of Canada *39th General Election 2006*; Government of Canada *40th General Election 2008*; Government of Canada *41st General Election 2011*; Note: Statistics on the population breakdown for all ridings are based from 2006 statistics as 2011 statistics do not present information on ethnic breakdown. Therefore, the percentage in the riding may have changed due to the high increase in residents who now call Nunavut home (2011 census shows 29,474 people compared to 17,088 in 2006).

²⁸⁹ Ibid.

²⁹⁰ Government of Canada

H.O.C.²⁹¹ Most notable is Aglukkaq, who was given the highest Cabinet position that an Indigenous MP has been awarded: the position of Health Minister.²⁹² The inclusion of an Indigenous person into Cabinet could wield more influence within a party and thus influence the mindset and decisions that impact Indigenous nations that the party may make. Lastly, Aglukkaq also became the first Indigenous official to be chair of the Arctic Council, which overlooks issues of importance to the arctic, due to her position as not only an elected Canadian official but also because she is from the northern region of Canada.²⁹³ In regards to Nunavut, it is clear the influence of Inuit in the riding has led to Indigenous representation for more than four decades. Inclusion of the Indigenous population through representation by an Inuit MP has had positive correlations on bridging the differences between Canada and the Inuit nation, such as traditional hunting and, although debatable, concerns faced in the arctic. Despite the possible influence that the Inuit have obtained, it is important to express that further study is required in order to ascertain how much influence the Inuit have had in impacting political decisions within the House of Commons and the political parties themselves.

4.3.2 Desenethe-Misinippi-Churchill River:

Like Nunavut, the riding of Desenethe-Misinippi-Churchill River (DMCR) is located in the 'decisive influence' category when dividing the Canadian electoral

²⁹¹ Liberal_Party_of_Canada. "History of the Liberal Party of Canada." *Liberal Party of Canada*. <http://www.liberal.ca/en/party/history> (accessed February 24, 2012); Conservative Party of Canada. "History." *Conservative Party of Canada*. <http://www.conservative.ca/EN/4689/> (accessed September 5, 2012).

²⁹² Conservative Party of Canada; Government of Canada. "Inuit, Metis, or First Nation Origin." Parliament of Canada. <http://www2.parl.gc.ca/Parlinfo/Compilations/Parliament/Aboriginal.aspx?Menu=HOC-Bio&Role=MP> (accessed February 20, 2013).

²⁹³ Conservative Party of Canada.

ridings into those that can be influenced and those that cannot. Since the formation of DMCR it has had a majority population of Indigenous descent. For instance, according to Statistics Canada (2006), the population of DMCR was 66.4 per cent Indigenous.²⁹⁴ Despite a majority population, the first Indigenous person elected in the DMCR riding was elected in 1997.²⁹⁵ Rick Laliberte (Metis) represented DMCR until 2004, when the riding elected a non-Indigenous person²⁹⁶ in an election that did not have Indigenous candidates for any of the major political parties. Instead, all candidates were non-Indigenous and it is interesting to note that the electoral participation rate in the riding was only 47.4 per cent.²⁹⁷ Additionally, the riding has a long history of being held by a Progressive Conservative representative, only changing when Laliberte was elected. Therefore a correlation may exist between Indigenous candidates and an increase in Indigenous voter turnout. This is further established when considering the election of 2006.

In 2006 the riding was re-taken by an Indigenous person, Gary Merasty.²⁹⁸ With Merasty as the sole Indigenous candidate in DMCR, the voter turnout increased to 58.4 per cent.²⁹⁹ The increase in turnout is of special interest due to a slight decrease in voter turnout nationally and DMCR ousting a Conservative Party of Canada (CPC) representative when, in fact, the CPC secured a minority government in that election.³⁰⁰ The loss of the riding in 2006 by the CPC candidate led to a

²⁹⁴ Government of Canada *Desenethe-Misinippi-Churchil River: Federal Electoral District 2006*

²⁹⁵ *Ibid.*

²⁹⁶ Hunter 2003, 29.

²⁹⁷ Government of Canada *38th General Election 2004*.

²⁹⁸ Government of Canada *39th General Election 2006*.

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

recount, which concluded that Merasty had indeed won but by less than thirty votes.³⁰¹ Merasty pointed out that his win was credited with an increased turnout of the Indigenous population.³⁰² Canada's major political parties seemed to have agreed with Merasty's assessment because when a by-election was called for DMCR in the late winter of 2008, both the CPC and LPC nominated Indigenous candidates to contest the election.³⁰³ Although the CPC recaptured the riding through their Cree candidate, Rob Clarke, there is strong belief that a division of the Indigenous vote between the two Indigenous candidates benefited the CPC in regaining DCMR.

In the elections of 2008 and 2011 the New Democratic Party (NDP) and Green Party also nominated Indigenous candidates to run in DMCR. In fact, DMCR in the election of 2011 became the first riding in Canada's history that all four major candidates were of Indigenous background.³⁰⁴ Although the increase in Indigenous candidates can be considered a good thing, it is unclear how it impacted participation and turnout. Although the results for the LPC and NDP varied during the 2008 and 2011 elections, the CPC continues to hold the riding. Therefore it could be assumed that further vote splitting of the Indigenous population further entrenched CPC control over DMCR. Unfortunately, little research currently exists on whether or not Indigenous people have been actively involved in the elections since 2006 as the voter turnout has been between 44.7 percent (2008) and 50.4 percent (2011). The lack of in-depth research on Indigenous participation, specifically by ridings, is a similar story across the Canadian state and thus

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ Government of Canada *March 17, 2008 By-elections* 2008.

³⁰⁴ Government of Canada *41st General Election* 2011

additional research is required to fully comprehend the potential of the Indigenous vote. However, the rates seem to indicate a higher turnout when there is an Indigenous/non-Indigenous candidate who has shown understanding to Indigenous peoples' needs. Despite the lack of current research, the importance of Canada's political parties having a candidate that represents Indigenous peoples when they are the majority of peoples in the riding has been used by both the LPC and CPC to secure wins, such as in DMCR.

4.3.3 Kenora:

Unlike the previous two case studies, the riding of Kenora falls into the 'influential' category, which includes ridings that Indigenous peoples need to meet a potential threshold to be a viable voting block. As of 2006, statistics showed the population of the riding of Kenora was 40.9% Indigenous.³⁰⁵ Additionally, the riding has traditionally elected a non-Indigenous person and, until 2008; all candidates have identified as non-Indigenous.³⁰⁶ Despite the lack of Indigenous candidates, past MPs for Kenora have specified the importance of Indigenous voters in assisting them win on Election Day. For instance, the successful NDP candidate (1984) credited Indigenous voters in assisting the NDP capture the riding.³⁰⁷ The same attitude can be attributed to the Liberals winning the riding in 1988 and holding it until 2008.³⁰⁸ Interestingly, the riding saw a change in 2008, electing CPC candidate

³⁰⁵ Government of Canada *Labrador: Federal Electoral District 2006*

³⁰⁶ Government of Canada *40th General Election 2008*

³⁰⁷ Alia 1991, 117.

³⁰⁸ *Ibid*; Government of Canada *40th General Election 2008*

Greg Rickford.³⁰⁹ The election results for Kenora were shocking to some because it was only the second time in its history that it voted in someone other than an LPC candidate.³¹⁰ A most likely scenario could be the movement of votes to the NDP candidate for Kenora.

Although there were signs of past Liberal supporters opting to vote for the NDP candidate in both 2008 and 2011, there has been little attention paid to the fact that the NDP candidate was also Indigenous; the reasoning for little attention is unknown at this present time.³¹¹ Thus, although the Indigenous population is less than 50 per cent in Kenora the presence of an Indigenous candidate on the NDP roster may have reduced the Indigenous support for the LPC incumbent and assisted the CPC victory in both the 2008 and 2011 elections. However, questions still exist on what may occur in a riding such as Kenora, where the Indigenous peoples make up less than 50% of the population, if two or more candidates were in fact Indigenous. For instance, had the LPC candidate also been Indigenous would the LPC have been able to limit the support that transitioned to the NDP and thus prevent a CPC election win in Kenora? The answer to such a question is unknown as two parties have yet to run an Indigenous candidate at the same time in Kenora. Thus, additional information is needed to further understand if that may be the case. Something important to consider as well is a point made by Alia in research

³⁰⁹ Government of Canada *40th General Election 2008*;

³¹⁰ Ibid.

³¹¹ Government of Canada *40th General Election 2008*; Government of Canada *41st General Election 2011*; New Democratic Party of Canada. "Our History." *New Democratic Party of Canada*. <http://archive.ndp.ca/ourhistory/> (accessed February 24, 2012); Note: As highlighted in DCMR, when an Indigenous candidate existed the increase in voter share for that candidate also increased – especially when there was only one Indigenous candidate.

presented in the *RCERPF*. Those interviewed in her research expressed a need for additional focus on what is referred to as northern issues, which encompasses Indigenous rights, food security, and economic progress.³¹² Additional focus and attention to items such as Indigenous rights was suggested as a reason more Indigenous people would cast a ballot, whether the candidates were Indigenous or not.³¹³ In other words, Alia highlighted that there is a need for serious discussion during Canadian elections on items of importance to Indigenous peoples rather than just an Indigenous candidate. Discussion of items important to Indigenous peoples may lead to more non-Indigenous MPs understanding the importance of the Canadian/Indigenous relationship and could have assisted with the higher Indigenous turnout in 2006. Additionally, as previously mentioned, if attention is given to issues that impact Indigenous peoples the use of dual-citizenship may be more appealing and thus casting a ballot. If Indigenous peoples in turn cast their ballots the potential to win elections with the support of the Indigenous vote would be noticeable and non-Indigenous MPs would have to pay attention to Indigenous peoples.

4.3.4 Why First-Past-The-Post Can Work:

The three case studies above are only select examples that show a possibility of influence from Indigenous peoples within them. Additional research is needed to further highlight how much potential Indigenous peoples have for securing influence within some of Canada's electoral districts. Something all three have in

³¹² Alia 1991, 123.

³¹³ *Ibid.*

common that was not mentioned in the case studies relates to an increase in voter turnout for the 2006 election.³¹⁴ Although there was a slight increase in turnout across Canada for 2006, there were higher than average increases in Nunavut, DMCR, Kenora, and other ridings that share similar potential.³¹⁵ In other words, according to Fournier and Loewen, there was an increase in the Indigenous turnout for the 2006 election compared to 2004 and 2008 across Canada. Additionally, the above three ridings also elected LPC MPs in 2006 despite the LPC losing government and forming the official opposition, showing that their choice of candidate and party did not follow national poll results for which party would form government. Considerations for why the Indigenous turnout seemed to increase in 2006 have not been fully delved into. One consideration that could have impacted the results in Indigenous participation may have been the *Kelowna Accord*.

The *Kelowna Accord* was a first of its kind agreement, which had been formulated between Indigenous representatives, provincial governments, and the federal government of Canada on some items of importance to the Indigenous nations. The *Kelowna Accord* had been presented to the H.O.C just prior to the non-confidence motion that brought down the Paul Martin government. During the 2006 election, the Liberal campaign touted the *Kelowna Accord* when courting Indigenous

³¹⁴ Fournier and Lowen; Government of Canada 38th General Election 2004; Government of Canada 39th General Election 2006; Government of Canada 40th General Election 2008; Note: Fournier and Loewen (2011) show on pages 21, 23, and 24 that the overall Indigenous vote increased by almost 10 per cent between 2004 and 2006 as well as dropped by over 15 per cent between 2006 and 2008. The contrast is even greater when looking specifically at the First Nations vote, which the *Kelowna Accord* specifically related to. Between 2004 and 2006 the turnout amongst First Nations voters increased by just over 10 per cent and dropped by over 15 per cent between 2006 and 2008.

³¹⁵ Government of Canada 38th General Election 2004; Government of Canada 39th General Election 2006; Government of Canada 40th General Election 2008.

voters.³¹⁶ In other words, the LPC made an attempt to highlight Indigenous policy in 2006 and therefore could have led to the increase in Indigenous voter turnout that benefited some of their candidates. The LPC touting Indigenous issues bolsters Alia's point on the importance of bringing attention to Indigenous rights in elections. Therefore, it could be argued that inclusion of Indigenous policies and discussion prior to and during the 2006 election may have been a correlation for an increase of Indigenous participation. If this is the case then the impact Indigenous voters had in the three case studies on the electoral outcome in 2006 highlights the potential of Indigenous voters.

The need for additional impact in more than three ridings, however, is important to securing the influence needed for realignment of the Canadian/Indigenous relationship and entrenchment of dual citizenship. Ladner and McCrossan, like Alia, also highlight that additional attention to Indigenous rights and issues is important to further engage Indigenous peoples during Canadian elections.³¹⁷ To add further credit to the importance of Indigenous issues being discussed during elections, the lack of attention on Indigenous issues in 2008 and 2011 could be reason for a sharp drop in not only Indigenous turnout in general but also specifically in Nunavut, DMCR, and Kenora.³¹⁸ Therefore, by a drop in participation from Indigenous voters, the impact they may have wielded in 2006

³¹⁶ Aboriginal Peoples' Commission. "The Importance of the Aboriginal Vote." *Liberal Party of Canada*.

³¹⁷ Ladner and McCrossan "Electoral Participation" 2007, 41.

³¹⁸ *Ibid*, 30. Note: Elections Canada, in 2006 election especially, opted to address issues of accessibility and increased the number of polling stations across First Nations reserves, metis settlements, and Inuit communities. Additionally, a working relationship with the Native Association of Friendship Centres in order to reach out to the urban Indigenous population as well (Ladner and McCrossan "Electoral Participation" 2007 30).

was lost and replaced with additional politicians, some may argue, that have not been listening to concerns from Indigenous peoples since.

Another point to consider on Indigenous participation is that the increase also occurred with the FPTP system still in use and that not all candidates in some of the ridings were Indigenous themselves. It should be noted, however, that an increase in electoral education and programs to get Indigenous people out to vote were also used for the 2006 election and may have assisted in the higher Indigenous turnout at the ballot box.³¹⁹ Ladner and McCrossan point out that such programs also helped in engaging the Indigenous populations, whether First Nation, Inuit, or Metis. Unfortunately, the programs were not used for the 2008 and 2011 election and a drop in Indigenous turnout was noticeable. The lack of Indigenous votes may have in turn assisted in the election of a number of CPC MPs in many ridings, including Nunavut, DMCR, and Kenora. The lack of Indigenous peoples casting ballots equaling why the CPC may currently have a majority government is interesting due to the ongoing disagreements over legislation that led to the Idle No More³²⁰ rallies between December 2012 and February 2013. If the momentum and anger that brought Idle No More to fruition also spilled over and organized Indigenous peoples to cast a ballot in the next federal election, the potential impact and ability to bring change could be more thoroughly followed and studied.

³¹⁹ *Ibid.*

³²⁰ Idle No More relates to the name of the grassroots Indigenous movement that rose in late October of 2012. The movement grew into a global protest in support of the Indigenous nations in peoples that Canada shares territory with. The movement came about due to federal legislation being proposed by the Canadian federal government that directly impacts Indigenous jurisdiction, rights, and the duty to consult. The movement included rallies in major cities across Canada, the United States, and other places around the world. Blockades and Hunger strikes by Indigenous peoples also took place. Much of Idle No More has now turned into 'teaching' non-Indigenous peoples about the Canadian/Indigenous relationship, their shared history, and the importance of treaties.

If Indigenous peoples utilize the vote to bolster support for the Idle No More movement, and the issues it espouses, all political parties would face its biggest threat to forming government: An energized Indigenous voting block, on election day, in individual ridings where they could impact the end results. The potential of Indigenous influence does exist, how much actually can be utilized is still up for debate and requires additional research. However, by utilizing the ballot box the influence can be brought from within the Canadian political system and assist in remolding the Canadian understanding of its relationship with the Indigenous nations. The more MPs in the House of Commons, whether Indigenous or not, who could face defeat if they continued to ignore the voice of Indigenous peoples could assist with the transitioning of the Canadian/Indigenous relationship to what it was to be: mutual respect and partnership. The ability to use Canada's electoral system in order to help in realigning the Canadian/Indigenous relation is a possibility that more Indigenous peoples need to consider. The influence Indigenous peoples could wield from inside of Canada's electoral process may help in achieving the recognition that is wanted at a faster pace than not utilizing it at all.

4.4 Conclusion:

The assumption made by some scholars, such as Barsh, Bedford and Pobihushchy, that Indigenous peoples have little ability to impact the electoral outcomes in Canada may be wrong. In fact, potential for Indigenous participation to influence the results in a Canadian federal election are higher than previously thought. However, Indigenous participation in Canada's electoral process requires

further research to properly highlight the impact Indigenous voters may have in using the ballot box to bring change. Debates and theories on the lack of Indigenous participation and how to increase Indigenous turnout has been written about. Indigenous and non-Indigenous peoples alike have contemplated the possibility of AEDs. In fact, AEDs were presented in the *RCERPF* as a way to empower the Indigenous peoples in the Canadian political system.

AEDs, although not agreed to when the *RCERPF* presented its suggestions to the H.O.C, have continued to be suggested as a potential solution to Indigenous participation. A concern about AEDs is that the Indigenous peoples are not one distinct entity, but rather more than fifty nations that Britain, and Canada, entered into relationships with. Additionally, the suggestion of AEDs has not effectively considered the implications of provincial infringement on seat allocations and therefore the ability for AEDs to represent the Indigenous nations properly. Lastly, who will represent the Indigenous peoples in the AEDs has also not been worked out. The potential to cause more harm to the Canadian/Indigenous relationship is a possibility with AEDs as it would witness feuding between various Indigenous nations over who would be the representative for an AED.

Lastly, the fact that AEDs may reduce Indigenous influence to fifteen seats may actually limit the potential for Indigenous peoples to impact the electoral process. In considering where the Indigenous populations are located, in relation to Canada's electoral districts, symbolize that Indigenous peoples could influence more than fifteen seats through the FPTP system. In using FPTP the Indigenous population can not only directly elect Indigenous representatives but also sway non-

Indigenous representatives to listen to their concerns and needs in order to secure their vote in the next election. The case studies presented in this chapter highlight initial research around the possibility that Indigenous peoples could obtain and achieve influence through higher participation in federal elections. As dual-citizens, Indigenous peoples can influence Canadian politics through FPTP, but further and additional in-depth research is required to truly outline how powerful Indigenous peoples may be in utilizing Canada's electoral process.

Conclusion

At the outset of this thesis, the objective was to consider whether or not Indigenous participation, as dual citizens, in Canada's electoral process could assist in rectifying the understanding of the Canadian/Indigenous relationship. As demonstrated in chapter four, the ability for Indigenous peoples to impact Canada's federal electoral outcomes is higher than previously thought and must be further investigated to understand how much influence could actually be utilized. In order to consider the potential of Indigenous peoples casting a ballot, this thesis first explored the historical relationship between Canada and the Indigenous nations, the debate around Indigenous peoples in relation to contemporary Canada, and whether participating in Canada's electoral system would infringe on citizenship and sovereignty of the Indigenous nations.

In regards to the Canadian/Indigenous relationship, the use of assimilationist and colonial policies have degraded trust and understanding of where both sides fit into the said relationship. As relations were established between Indigenous nations, such as the Anishinaabeg, and Great Britain, agreements and treaties were formed on the basis of peace, friendship, trade, and co-existence. As the relationship developed it became one of Britain's dominance through their North American colonies. With Canada's formation in 1867, the process continued through the Canadian government, on behalf of the British Crown. As Indigenous peoples were removed from their territories, banned from practicing their traditions, and having their societal structures torn apart, the Canadian mindset on the Indigenous nations being partners was replaced with the need to assimilate and dispose of Indigenous

ways of life. Although assimilationist plans have not fully achieved what was intended, the damage to the Canadian/Indigenous relationship has been abundant. Today, Canada continues to forget its true place in the treaty relationship and Indigenous peoples are cautious and skeptical of involvement with almost all things Canadian, including the political process and citizenship.

A clear sign of different views on the Canadian/Indigenous relationship became apparent with the *White Paper, 1969*, as Canada sought to officially integrate all Indigenous people into the Canadian federation. From the *White Paper* and on, theoretical discussions on where and how Indigenous peoples fit in relation to Canada began to be more noticeably discussed. On the solely Canadian side of the debate are individuals such as Flanagan, Cairns, and Kymlicka who assert that Indigenous peoples are solely Canadian. Although Flanagan is rather blunt in disapproving of any recognition of Indigenous nations and rights, Cairns and Kymlicka acknowledge the need for Indigenous peoples to be recognized as citizens 'plus.'

On the solely Indigenous view of the debate, individuals such as Alfred, Monture-Angus, and Simpson believe that Indigenous nations are separate entities that must be wary of the influences of, and involvement with, Western philosophy and political structures like that of Canada. Although Monture-Angus and Simpson understand that some Western influence cannot be removed, Alfred believes in a complete rejection of all things non-Indigenous. However, this thesis has shown theoretical problems with both extremes in the debate of Indigenous peoples and where they belong in relation to the Canadian state. Furthermore, chapter two

argued that Indigenous peoples could utilize concepts from both Indigenous and Western ideology to alter the Canadian/Indigenous relationship. As Borrows and Palmater highlighted, Indigenous cultures are not frozen in time and it is problematic to assume that the influences of the last five hundred years are erasable. Realistically, the ability of Indigenous peoples to use both Indigenous and Canadian ideologies to progress and realign the Indigenous/Canadian relationship is something that could be attained if considered.

Chapter three sought to elaborate how Western and Indigenous philosophy, could be used together to recognize forms of joint sovereignty, treaty federalism and dual citizenship. When considering the influence of Westphalian sovereignty, the concept is one of competition between both the Indigenous nations and the Canadian state. However, by establishing a more contemporary view of sovereignty, the ability for joint recognition of both sides of the relationship could be achieved and therefore recognize both sides of the agreements and their respective jurisdictions. Through joint sovereignty, the concept of treaty federalism could be recognized and would acknowledge the unique place of Indigenous nations alongside the Canadian state.

Furthermore, treaty federalism protects the jurisdiction of the various Indigenous nations over areas they deem important to them, such as citizenship, laws, and political structures. Legal theories and structures, such as the *lex loci*, show justification for Indigenous jurisdiction as the English system of law has recognized local laws of Indigenous nations previously in various British colonial territories. To assist with establishing joint sovereignty and treaty federalism,

however, change and influence from within Canada's political structures could assist with such recognition at a speedier pace than currently witnessed but does require further study. Making use of the Canadian electoral system could easily be validated with Indigenous peoples recognizing themselves as dual citizens. As dual citizens, Indigenous peoples can participate in the Canadian electoral process and further enhance the recognition of Indigenous nationhood rather than infringe upon them and their rightful citizenship to their Indigenous nation. The question left unanswered, however, relates to what potential Indigenous peoples have in influencing the Canadian political system through the ballot box.

Although other academics have delved into the question of Indigenous participation in Canada's electoral process, the information presented was limited in scope. In other words, the conclusions made by some of those who looked preliminary at the 1980s and early 1990s may have done so in a pan-Indigenous view rather than by Indigenous peoples in relation to specific Canadian electoral districts. Indigenous peoples, as previously stated, are rather cautious of political participation in the Canadian state due to past, and recent, experiences. Thus, low Indigenous voter turnout is an unsurprising revelation come Election Day. Discussions on how to increase Indigenous participation has been discussed in political, academic, and grassroots circles since the 1970s, with the primary suggestion being that of Aboriginal Electoral Districts (AEDs).

The impact through AEDs is limited, however, as the idea focuses on representation by population rather than by nation or treaty area. Therefore, the consequences outlined about AEDs in chapter four are most likely greater than the

improvements suggested in documents such as the *RCERPF*. The idea of AEDs further perpetuates the pan-Indigenous approach to dealing with Indigenous peoples and thus does nothing to end the problems that relate to proper recognition of the various and different Indigenous nations. With AEDs potentially causing more harm than good, chapter four considered the possibility of Indigenous influence by using the current FPTP system. In considering Indigenous peoples in relation to federal electoral districts, it becomes noticeable that Indigenous peoples could impact the electoral outcome in more ridings than originally thought. The possibility for such influence could see not only a record number of Indigenous MPs but also non-Indigenous MPs who must consider the Indigenous voting bloc if they, or any candidate, looks to secure a win in any future elections. The possibility of such influence by Indigenous participation is highlighted in the case studies of Nunavut, Desenethe-Misinippi-Churchill River, and Kenora. However, it is important to state that additional research is needed to further evaluate the precise number of ridings that could be influenced by Indigenous voters, whether additional MPs have been elected or deposed of by Indigenous peoples casting ballots, and how party discipline would impact Indigenous voting potential.

Additional research is also required in some of the other areas this thesis has delved into. For instance, further and more in depth research is needed to highlight the impact that could be made by Indigenous peoples at the ballot box. Although the research presented offers some reflection on Indigenous peoples when relating to voting in the Canadian state, there is a need for proper and direct research on numbers presented in ridings listed in Appendix 2.2. For instance, there are many

Indigenous communities who do not partake in census gathering by the Canadian state. In fact, some Indigenous communities refuse government statisticians from entering their communities to obtain the needed information. Therefore, population numbers represented in ridings may be much higher, or lower, than what is presented; impacting the potential of Indigenous peoples in Canada's federal electoral districts higher or even lower than what has been shown in this thesis. Additionally, how Indigenous peoples traditionally vote needs to be studied further to see how it may relate to party politics since little research on Indigenous impact within the political party structures also is existent.³²¹ Thus, whether all Indigenous people tend to vote in a similar pattern, or for the same political party, due to similar concerns over items such as social inequality and treaty rights is still undetermined.

Vote splitting because of two or more Indigenous candidates must also be further studied as more ridings now exist where the federal political parties have ran Indigenous candidates against one another in order to secure ridings like Nunavut and DMCR. Although many Indigenous candidates can be viewed as a step forward, running against one another could undermine Indigenous impact if loyalty to the candidate is stronger than their Indigenous nation. Furthermore, the involvement of Indigenous peoples, depending on which Indigenous nation they may belong to, varies in view. Some Indigenous peoples may continue to refuse the use of the Canadian state based on treaties and philosophies that relate to their

³²¹ Note: The only poll I could find that specifically looked at Indigenous voter intentions was from the 2005/2006 federal election and was done through the Aboriginal Peoples Television Network (APTN).

Indigenous nationhood and its relationship with Canada, such as the Mohawk peoples in the Haudenosaunee Confederacy. However, this thesis has elaborated on why involvement should be considered as a plausible option, through dual citizenship, for realignment of the Canadian/Indigenous relationship.

Another area relating to Indigenous participation in the Canadian state that requires further research relates to how such involvement by Indigenous peoples would bring influence and cause change to the Canadian political party system. Traditionally, the political structure in Canada is one dominated by political parties, such as the CPC, LPC, and NDP. The leaders and structures within the political party system also wield control over their MPs and therefore may impact the potential of Indigenous voters to influence policy decisions. Therefore, further research is also required to consider how Indigenous peoples can influence change within the party structures as well. However, the power of the populations in ridings should be considered and thus comparative analysis on indigenous influence to that wielded by minority groups in Canada's federal electoral process would be an interesting area of research to consider as well.³²²

Despite the areas that require further study, the possibilities that are highlighted in this thesis are important when related to elections, voting behavior, as well as Canadian/Indigenous relations and politics. In highlighting the potential impact of Indigenous peoples in Canada's electoral system, some political parties

³²² Note: The importance of considering minority representation and influence in the Canadian electoral process, to that of Indigenous influence, could shed light on whether the potential of smaller populations having influence in a smaller amount of ridings. Thus, if minority groups have been able to influence results in some ridings the potential for Indigenous peoples, do to a higher amount of ridings that could be affected, could be greater.

may try to utilize Indigenous peoples to win ridings needed to form government. On the other hand, some political parties may try to prevent an increase in Indigenous turnout in order to keep ridings as a safe seat for their MPs and future candidates. Although this could occur, the chances of Indigenous voters preventing such restrictions are stronger if the ballot box was utilized. Such action and influence by Indigenous peoples could also cause effective change in policy that affects Indigenous nations.

The potential for utilizing the Canadian state by Indigenous peoples seems to exist, albeit further research is needed to fully understand what that potential may be. Either way, various avenues for change to the Canadian/Indigenous relationship must be utilized before the relationship spirals too far into a realm of increased tension, divisions, and misunderstandings. Optimism and support for Canada by Indigenous peoples may be fading. However, the Idle No More movement could help bring light to the need to not only have the Indigenous nations properly recognized but also the fact that the Indigenous/Canadian relationship needs revision. In order to re-establish the Canadian/Indigenous relationship, the Canadian state and many of its citizens need to be shown that recognition of the nation-to-nation relationship is not detrimental to the Canadian state but, instead, would compliment it in the contemporary world of today.

In order to highlight that a nation-to-nation relationship is not detrimental, influence over Canada's political structure is needed. In the words of Liza Mosher, an Onondagan elder from the Manitoulin Island area, "We need to make them

understand who we are. That is the only way we can work together.”³²³ Elder Mosher’s point is important to the future of not only the Canadian/Indigenous relationship but also the Canadian state and the Indigenous nations themselves. The need to work together is imperative and the ability to do so would enact the relationship that is to be: One of mutual friendship and respect.

³²³ Kulchyski et al 1999, 164

**Appendix 1:
Indigenous Populations by Federal Riding in the Maritime Provinces**

Provinces and Ridings:	% of Pop. that is Indigenous (2006)
<i>Prince Edward Island:</i>	1.3%
Cardigan	1.3%
Charlottetown	1.4%
Egmont	1.5%
Malpeque	0.9%
<i>New Brunswick:</i>	2.5%
Acadie-Bathurst	1.7%
Beausejour	4.6%
Fredricton	2.7%
Fundy Royal	0.8%
Madawaska-Restigouche	2.7%
Miramichi	4.4%
Moncton-Riverview-Dieppe	0.9%
New Brunswick Southwest	2.0%
Saint John	1.6%
Tobique-Macataquac	3.7%
<i>Nova Scotia:</i>	2.7%
Cape Breton-Canso	2.5%
Central Nova	2.3%
Cumberland-Colchester-Musquoboit Valley	1.9%
Dartmouth-Cole Harbour	1.7%
Halifax	1.4%
Halifax West	1.2%
Kings-Hants	2.5%
Sackville-Eastern Shore	1.5%
South Shore-St. Margaret's	2.5%
Sydney-Victoria	6.3%
West Nova	6.0%

**Appendix 2.1:
Decisive Influence in Federal Ridings from Indigenous Peoples**

Riding:	% of Pop. that is Indigenous (2006)
Nunavut	85.0%
Churchill	69.9%
Desenethe-Misinippi-Churchill River	66.4%
Western Arctic	50.3%

**Appendix 2.2:
'Influential' Ridings and Indigenous Peoples as a Voting Block**

Riding:	% of Pop. that is Indigenous (2006)
Kenora (Ontario)	40.9%
Labrador (Newfoundland)	34.9%
Abiti-Baie-James-Nunavik-Eeyou (Quebec)	32.9%
Skeena-Bulkley Valley (BC)	32.1%
Yukon (Yukon)	25.1%
Prince Albert (Saskatchewan)	24.9%
Fort MacMurray-Athabasca (Alberta)	24.8%
Dauphin – Swan River – Marquette (Manitoba)	24.2%
Regina-Qu`Appelle (Saskatchewan)	20.7%
Selkirk-Interlake (Manitoba)	20.1%
Winnipeg North (Manitoba)	19.3%
Battlefords-Lloydminster (Saskatchewan)	19.0%
Winnipeg Centre (Manitoba)	17.8%
Saskatoon-Rosetown-Biggan (Saskatchewan)	17.1%
Algoma-Manitoulin-Kapuskasing (Ontario)	16.2%
Peace River (Alberta)	14.2%
Cariboo-Prince George (British Columbia)	13.6%
Westlock-St. Paul (Alberta)	13.5%
Chilliwack-Fraser Canyon (B.C)	12.4%
Thunder Bay-Rainy River (Ontario)	12.4%
Brant (Ontario)	12.2%
Timmins-James Bay (Ontario)	12.2%
Prince George-Peace River (BC)	11.5%
Wetaskiwin (Alberta)	11.4%
Thunder Bay-Superior North (Ontario)	11.1%
Yorkton-Melville (Saskatchewan)	10.9%
Elmwood-Transcona (Manitoba)	10.8%
Macleod (Alberta)	10.7%
Provencher (Manitoba)	10.4%
Yellowhead (Alberta)	10.1%
Sault Ste. Marie (Ontario)	09.8%
Vancouver Island North (BC)	09.8%
Saskatoon-Wanuskewin (Saskatchewan)	09.6%
Souris-Mouse Mountain (Saskatchewan)	09.4%
Nanaimo-Cowichan (BC)	09.2%
Nickel Belt (Ontario)	09.0%
Kamloops-Thompson-Cariboo (BC)	09.0%

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