

**INDIGENOUS RECOGNITION: REVISITING THE
RECOMMENDATIONS FOR A FIRST NATIONS DUAL-
CITIZENSHIP IN CANADA**

by

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ABSTRACT

This thesis explores First Nations peoples' relationship with the Canadian government and how the issue of citizenship has played into this relationship. This thesis analyses citizenship theory as it relates to First Nations peoples through an examination of prominent theorists of Canadian politics and Indigenous scholars. Arguments for unitarian citizenship, pluralist forms of citizenship and Indigenous nationalism are examined. Issues of participation, identity and self-determination are explored as they relate closely to the debate over the level of inclusion in Canadian citizenship. The *Royal Commission on Aboriginal Peoples* recommends a dual-citizenship model, to be implemented by the Canadian government with consultation and input from First Nations. However, this recommendation has not been pursued, and the relationship between First Nations and the Canadian government is as tense as ever. I conclude that a thoughtful re-examination of the RCAP dual-citizenship model is necessary if we are to move towards reconciliation in Canada.

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DEDICATION

My thesis is dedicated to my mother, M.Ed graduate, Marlene Gallagher. As a strong Anishinaabe woman she has been an inspiration, as she has endured so many of the challenges our people suffer through and has emerged resilient and proud. Not only has she made it her mission to care for and educate my brother and myself, but she has made it her life's work to educate others. Education and understanding are instrumental tools in mending the damaged relationship between Indigenous peoples and Canada. I thank my mother for teaching me this invaluable lesson.

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Notes on Terminology

It is important to be mindful of terminology when discussing Indigenous issues in Canada, as the subject itself is so multifaceted. In terms of this thesis, the focus of examination lies in the history and situation of First Nations peoples, as found in a plethora of government policies, such as the *Indian Act*. The labeling of First Nations peoples has changed significantly throughout the years, depending on the political correctness of the time. For example, during the early colonial years in Canada Indigenous peoples were referred to as “Indians” as indicated by the *Indian Act*. Only those who follow the criteria outlined in Section 6 of the *Indian Act* are classified as having “Indian status”. By the 1980s, the term “Indians” was increasingly being replaced by “First Nations” in both legislation and common usage. The term Aboriginal is also widely used to describe First Nations peoples, but much like the term Indigenous, it also represents the Métis, Inuit, and non-status First Nations peoples in Canada. Thus, due to the nature of historical examinations, there may be discrepancies in the use of terms. Indeed, many First Nations peoples themselves do not agree on a single label, some referring to themselves as Aboriginal, Indigenous, or by the name of their own nation. Throughout this Thesis labels such as Indian, Aboriginal and Indigenous may sometimes be used interchangeably when referring to the First Nations peoples.

INTRODUCTION

2015 marks 25 years since the critical occurrence in Khanhesatake, Quebec. A tense stand off between the members of that community and the Canadian military. The crisis arose from a land dispute regarding traditional Mohawk territory that the nearby town of Oka, Quebec intended to develop into a golf course and residential area without consulting with the Mohawk nation of Khanhesatake. The crisis was momentous because it marked the first highly publicized violent confrontation between Indigenous peoples in Canada and the government. The situation was impactful, not to mention polarizing, because it demonstrated a divergence between First Nations and non-Indigenous Canadians from not only a legal standpoint, but also a socio-economic one as protests and confrontations mounted. The contrast and conflict demonstrated that many peoples of Khanhesatake do not consider themselves to be Canadians, but instead hold loyalty to their own nation. The crisis and attitudes of the citizens of Khanhesatake are only one example of the ways in which the Canadian government's longstanding policy of assimilation has failed to create Canadians of all First Nations peoples.

Due to the ever growing exposure of First Nations peoples' tense relationship with the Canadian government, it became clear that the situation of Indigenous peoples would have to be addressed. Therefore, the government of Canada established a Royal Commission on Aboriginal Peoples in 1991 to address the many issues surrounding the national incidents in which Aboriginal interests and the strained Indigenous-State relationship took center stage.

In 1996, after years of research, hearings, and deliberation, the Royal Commission on Aboriginal Peoples (*RCAP*) published its' five volume 4,000 page report. It addressed many issues and provided the government with numerous recommendations on how it might approach a variety of issues in future in order to improve not only the lives of Aboriginal peoples, but also begin to repair the damaged relationship between Indigenous peoples and the Canadian government. Volume 2 of the Report, entitled "*Restructuring the Relationship*" outlines a recommendation to create a form of dual citizenship for First Nations citizens in Canada in order to recognize their "unique"¹ situation. The recommendation supports *RCAP's* confirmation that Aboriginal nations have the right "to determine which individuals belong to the nation as members and citizens"² and supports the return of a nation-to-nation relationship. Dual citizenship as outlined by the Report also provided suggestions for implementation and a dispute resolution mechanism. The belief behind such a recommendation stems from the idea that recognition may allow for First Nations to become more fully invested in Canadian society should they be better represented as citizens of their First Nations, which may garner a greater sense of community between Indigenous and non-Indigenous citizens.

Over 18 years have passed since *RCAP's* Report, and the Canadian government has not attempted any such alternative to the standard model of Canadian citizenship. The government's official response to *RCAP* is found in the 1997 publication "Gathering Strength: Canada's Aboriginal Action Plan", which spoke of both renewing partnerships between Canada and First Nations people and strengthening Aboriginal governance, but

¹ Royal Commission on Aboriginal Peoples (*RCAP*). (1996). *Report of the Royal Commission on Aboriginal Peoples*, Volume 2, Chapter 3; p.227

² Royal Commission on Aboriginal Peoples (*RCAP*). (1996). *Report of the Royal Commission on Aboriginal Peoples*, Volume 5, p.160

does not once mention citizenship.³ The issue has remained largely untouched by the government and in recent years vestiges of declarations of Indigenous sovereignty, such as the passports of the Iroquois Confederacy⁴, have come under attack and been rejected in the name of “global security”.⁵ These passports have existed not only due to the legal sovereignty through which these First Nations have declared, but because, as previously mentioned, many First Nations peoples to this day do not consider themselves to be Canadian citizens. At the root of their argument is the issue of Indigenous sovereignty, which in the history of Indigenous-non-Indigenous relations, was not ceded to the British or Canadian government. The tension from the differing views of Indigenous peoples and the Canadian government has only been amplified by a long history of subversive policies and forced enfranchisement. These tactics were employed with the express intent of undermining the position and authority of First Nations within Canada. The relationship between Canada and First Nations has understandably soured in the many years following the first treaties, instead creating a disillusioned and sequestered group the state defines as Canadians.

The variety in the opinions over First Nations citizenship amongst First Nations, combined with their unique history as peoples, signifies the need for a differentiated type of citizenship. I consider this an important issue not only for First Nations peoples but for Canada as a whole. In this thesis, I will demonstrate how citizenship is tied to a persons’ identity, as it has the power to give the enfranchised a sense of either belonging or to

³ Indian Affairs and Northern Development (1997) “Gathering Strength: Canada’s Aboriginal Action Plan”; <http://www.ahf.ca/downloads/gathering-strength.pdf>

⁴ Passports issued by the Iroquois First Nations to their own citizens in lieu of a Canadian passport and as an expression of their own sovereignty and resistance to Canadian authority.

⁵ Kaplan, Thomas; New York Times; “Iroquois Defeated by Passport Dispute”; June 16, 2010; <http://www.nytimes.com/2010/07/17/sports/17lacrosse.html?pagewanted=all&r=0>

make them feel isolated. As a group of peoples who has had their identity distorted or reshaped by others, be those methods direct or subliminal, many First Nations peoples today take hold of means of identification dearly. Additionally, the power of self-determination has not lost its allure to peoples who have the very definition of who they are determined by a government not their own.

I begin with an examination of the historical context of this philosophical discussion by understanding the historical relationship between First Nations peoples and the British Crown/Canadian state. This will elucidate the position in which First Nations peoples find themselves within the Canadian citizenry, as well as illuminate the history that has led to a relationship of distrust between First Nations peoples and the Canadian government. In so doing, I consult a variety of sources and range of opinions in order to provide a balanced historical narrative of First Nations peoples and citizenship in Canada. Researcher James Axtell asserts that "By providing an accurate narrative-analysis of cultural change in the past, techno historians help the present generation to understand its own cultural origins and thereby to cope with the present."⁶ This is one of the primary aims of my thesis.

Much of my thesis will be dedicated to exploring the proposed changes for Canadian citizenship by *RCAP* with an assessment of the recommendations made by *RCAP* addressed first, followed by a similar exploration on perspectives proposed by prominent Canadianist and First Nations scholars. In order to evaluate these various perspectives, I will develop a basic analytical lens. My method of analysis will be to ask the same questions each of the scholarly positions I am exploring. These questions will

⁶ Axtell, James (1982); *The European and the Indian: Essays in the ethnohistory of colonial North America*; Oxford University Press, Canada; p.13

demonstrate the strengths and weaknesses of the many theorists explored herein and provide a basis from which to compare the recommendations made by *RCAP*. The analytical questions will be as follows:

- Does this perspective allow for a more comprehensive declaration of First Nations citizenship within Canada?
- Does this perspective promote more autonomy for First Nations peoples?
 - a) Does it allow for collective self-determination?
 - b) Does it allow for individual self-determination?
- Might this perspective help or hinder Canadian's nationhood or the nationhood of each Indigenous nation?

While these questions have their limits, they can help unpack the pros and cons and allow us to understand how the scholars who informed the *RCAP* recommendations drew their conclusions.

I have chosen to ask these questions in my exploration of the various positions for several reasons. First, I will ask if each perspective allows for some method of self-determination because it has been argued that this should be considered a right for all First Nations. However, as it stands today, most First Nations have not been permitted to fully exercise this as there have been numerous restrictions. These restrictions on Indigenous rights further prove the importance in establishing methods of self-determination. Therefore, there are two ways of examining self-determination that I must consider: 1) the necessity for First Nations to determine who may be a member according to their membership codes (collective self-determination); and 2) the ability for individual self-determination. I must ask whether each perspective allows for individuals to

determine where they feel they fit in accordance with their personal identity. That is to say, does each perspective permit for self-identification? Allowing First Nations to determine their own citizenship in conjunction with that of the state could result in positive change in terms of First Nations' peoples and their identities and it could possibly improve the relationship between these nations and Canada. Or, allowing for self-determination may leave some First Nations peoples unable to express their identity and legal status through citizenship due to subsequent policies that might be determined by their community. There runs a risk that disharmony brought about by self-determination might result in further displaced Indigenous identities. These risks and possible outcomes will be discussed.

Additionally, I will consider whether it is possible for Canada to accommodate the proposed amendments while retaining its' nationhood.⁷ Does this perspective support unity between First Nations and the rest of Canada, or does it further promote societal fractures? These are all important factors to consider while evaluating differing perspectives. By applying this lens, I will identify which popular approach to Canadian citizenship might best represent recognition and respect for First Nations peoples and the Canadian state moving towards a reconciliation of the relationship.

In order to successfully argue that the recommendations made by *RCAP* on dual citizenship deserve implementation by the Canadian government, this thesis will be developed in the following manner: The first chapter of this thesis will focus on the complex history and relationship between First Nations peoples and the Canadian government. The history of citizenship will guide this historiography. In order to best understand the cultural differences in citizenship at play, I will first touch on accounts of

⁷ In this instance nationhood is taken to mean that Canada retains its degree of self-determination

pre-contact citizenship amongst the Indigenous peoples, as these might give more understanding to the value of self-determination. Next, I shall recount Canada's colonial beginnings, with specific attention made to pre-*Indian Act* policies, such as the Gradual Civilization Act.⁸ This Chapter will then examine the *Indian Act*, specifically the sections which outline who was considered to be a First Nations person according to the government. This history of First Nations citizenship in Canada will answer the question of how the state of citizenship amongst First Nations peoples has come to be as well as show the many changes it undertook. In doing so, this chapter attempts to answer a small part of the question of how did the political relationship between Canada and First Nations peoples become so contentious.

Chapter two will introduce the reader to the topic, providing a background to the complexities of citizenship within Canada by outlining what citizenship means and its importance. This chapter explains why the topic of citizenship is so important to First Nations peoples by highlighting the historical marginalization of Indigenous peoples in this matter, as well as how this has negatively affected the relationship between First Nations and the Canadian state. This chapter also examines unitary citizenship. Arguments made in favour of a unitary citizenship model, the reigning citizenship model in Canada, will be explored, as well as the drawbacks to this model.

Chapter three of this thesis will outline and explore the recommendations made in respect to citizenship as proposed in the Royal Commission on Aboriginal Peoples

⁸ "An Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians," 3rd Session, 5th Parliament, 1857.

(*RCAP*)⁹, presented to the government of Canada in 1996. These recommendations, listed as 2.3.8-11 in Volume 2 of *RCAP*'s final report, demonstrate the attempt to lead the Canadian state towards the establishment of a citizenship model that would better allow for increased First Nations autonomy within Canada.¹⁰ The dual model of citizenship and the recommendations proposed by *RCAP* will be compared and contrasted with the various other proposals for Indigenous citizenship explored within this thesis. Chapter three also explores participation amongst First Nations peoples and how citizenship issues may play a role in the exceptionally low participation rates of First Nations in Canadian politics. The issues of identity and self-determination will be explored more profoundly within this Chapter, as identity and self-determination play a pivotal role in regards to all perspectives explored within this thesis.

Chapter four marks the beginning of this thesis' examination of popular scholarship related to addressing issues of First Nations' citizenship. I explore the ideas of three of the most popular Canadian scholars, namely Charles Taylor, Will Kymlicka and Alain Cairns. This chapter demonstrates how the pluralistic, differentiated perspectives on citizenship vary from the model proposed through *RCAP*'s recommendations. Further, I examine how these Canadian scholars have seen First Nations in the context of citizenship and I will determine to what degree they allow for First Nations' right to self-determination and whether Canada could be so transformed.

Though there exists a wide variety of approaches from First Nations scholars, I have chosen three scholars whose perspectives are not only popular, but help to illustrate the

⁹ Royal Commission on Aboriginal Peoples (1996); Vol.2, Ch.3; p.115

¹⁰ Royal Commission on Aboriginal Peoples (1996) Vol.2, Ch.3; p.226

diversity of opinion: Taiaike Alfred, John Borrows and Pamela Palmater. These scholars were chosen as they each contribute a different perspective, but they were also chosen because they demonstrate an idea central to this thesis, namely that diversity exists amongst and within different Indigenous Nations. This chapter explores not only the perspectives of these prominent First Nations scholars, but will illustrate the importance of restructuring this nation-to-nation relationship. This chapter will explore the degree self-determination proposed by each scholar and moreover, will attempt to determine if Canada could accommodate these views.

The sixth chapter of this thesis will explore what has been done since the recommendations were made by *RCAP* in 1996. This chapter draws upon the issues explored in previous chapters to inform its' conclusions and ultimate recommendation. It distinguishes the proposal of a dual citizenship model, as recommended by *RCAP*, from the popular perspectives discussed in chapters four and five. It takes into account the need for self-determination amongst First Nations peoples and recognizes the importance in moving towards reconciliation between First Nations and the Canadian State.

Chapter One: First Nations Canadians: Citizenship From Pre-Settler Society to Present

1.0 Introduction

Prior to European contact, the territory now known as Canada was home to many different Indigenous Nations who had their own systems of governance, which included methods for determining who are citizens. As Lynn Chabot explains, they each “employed a variety of methods to recognize their own citizens, most of which were influenced by the culture and circumstances of each nation.”¹¹ Indigenous peoples that were apart of these nations accepted these traditional forms of citizenship, however the terms of Indigenous citizenship were not always recognized or understood by European settlers. Despite having entered into treaties with Indigenous peoples, Indigenous peoples were often considered savage or uncivilized by the colonial regimes that steadily sought more and more authority in North America. European colonizers began to establish legal claim to the land pursuant to Western-Eurocentric legal traditions. Due to the ethnocentric and cultural lens through which settler society viewed the Indigenous populations, it was believed that the Indigenous peoples would benefit from the settler’s influence and “civilization”. As a result, Indigenous peoples in Canada have been subjected to years of colonial policy designed to “protect, civilize, and assimilate.”¹²

¹¹ Chabot, Lynn (2007) “The Concept of Citizenship in Western Liberal Democracies and in First Nations: A Research Paper”; Ottawa: Department of Indian Affairs and Northern Development; p.30

¹² Tobias, John (1983) “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy” In *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies* by Ian Getty (ed.); Vancouver: UBC Press; p.39

These policies, which focused on cultural assimilation and enfranchisement¹³, were developed by settler societies and implemented through various methods explored more thoroughly in this Chapter. These policies changed numerous times as the colonial powers endeavoured to discover the most effective way to assimilate the Indigenous peoples into mainstream society. This was not an easy process and the both the Crown, and subsequently, the Canadian government have been met with resistance from Indigenous peoples. A particularly powerful instrument of both cultural assimilation and enfranchisement, the *Indian Act*, remains to this day as a source of both distinction and ire for First Nations peoples. Though significant changes to the *Act* have occurred, it continues to outline the Canadian government's formula in determining the legal identity of First Nations peoples through the concept of "status" and promotes their assimilation into Canadian society.

Through the *Indian Act*, First Nations peoples could be granted Canadian citizenship through various methods, in exchange for abandoning their status as First Nations. In the latter part of the 20th Century, Canada's *Citizenship Act* was amended to formally grant all First Nations persons Canadian citizenship, whether they desired it or not. Combined with assimilationist institutions such as residential schools, the attitude of appropriation and discrimination displayed towards Indigenous peoples by the Canadian government has led to not only to significantly negative consequences for Indigenous

¹³ Cultural assimilation refers to policies, such as those employed by residential schools to replace cultural characteristics of Indigenous peoples with the 'preferred' cultural norms of western or European peoples. Enfranchisement refers to conferring citizenship (particularly in endowing the right to vote) to a group of peoples. For Indigenous peoples in Canada, enfranchisement was a method of repealing "Indian status" and all designations and benefits associated in order to replace it with Canadian citizenship. Enfranchisement can be done voluntarily or involuntarily.

identities, but an unsurprisingly troubled relationship between Indigenous peoples and the Canadian state.

In this chapter, I explore the concept of citizenship amongst Indigenous peoples in pre-settler societies as well as establish how Canada created its official model of unitary citizenship. These are issues that will frame the positions explored in Chapters Four and Five of this Thesis. And while the origins of these divergent philosophies are important, an evaluation of the historical treatment of First Nations peoples by the Canadian government demonstrates why their continued citizenship within such a system remains a point for debate for many. Iris Young illustrates the situation of First Nations citizens within Canada by stating, "...when citizenship rights have been formally extended to all groups in liberal capitalist societies, some groups still find themselves treated as second-class citizens."¹⁴ This Chapter illustrates that second-class citizenship within their own territory is not in line with the spirit or intent of the treaty relationship established centuries earlier by Canada's settlers and the Indigenous nations. Therefore, the colonial history of Canada has led to a system that does not adequately recognize First Nations peoples' unique place within it and continuously distorts the treaty relationship. In the interest of reconciliation and to provide context for the debate over Indigenous citizenship, a historical overview of the relationship between Canada/the Crown and Indigenous peoples is necessary.

¹⁴ Young, Iris (1989) "Polity and Group Difference: a critique of the Ideal of Universal Citizenship" in *Ethics*, Vol., 99, No. 2. University of Chicago Press; p.250

1.1 Citizenship and Pre-Settler Societies

It is a generally accepted notion that at the outset of colonization, the newcomers to North America were of the impression that their technological advancements courtesy of their “advanced” society and religion would allow the Indigenous peoples a more prosperous and fulfilling future. Schouls notes, “...settlers expected that Aboriginal people would accept their point of view and embrace the benefits of Western civilization”¹⁵ However, that was very much not the case. “It simply did not occur to them that societies could be advanced in different ways, despite the fact that settlers not only learned survival skills from Indigenous people, but also borrowed complex political ideas from them.”¹⁶ This point is emphasized by Kiera Ladner who claims, “...not only did Indigenous peoples in North America have democracy, nationalism, individualism, liberty, rights and freedoms, but that these political traditions wielded an enormous influence over the western Euro-centric traditions.”¹⁷ Though the impact of Indigenous concepts and governance on the Canadian state has been refuted by scholars such as Tom Flanagan and Francis Widdowson¹⁸, it is nonetheless clear through anthropological evidence that complicated pre-settler systems of governance did exist.

There is no official consensus as to how Indigenous peoples in Canada lived before the Europeans arrived. However, it has been said with a great deal of consistency

¹⁵ Schouls, Tim (2002) “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; p.13

¹⁶ *Ibid*, p.15

¹⁷ Ladner, Kiera (2000) “Women and Blackfoot Nationalism”, *Journal of Canadian Studies*, Vol. 35, No.2; p.5

¹⁸ For further discussion, see Flanagan, Tom (2003) *First Nations? Second Thoughts*; McGill-Queen’s University Press; p. 36; and Widdowson, Frances, & Howard, Albert (2008) *Disrobing the Aboriginal industry: The deception behind indigenous cultural preservation*; Montreal: McGill-Queen's University Press.

that Indigenous peoples in Canada had their own cultures, social structures, laws, and political systems, which varied from nation to nation.¹⁹ This diversity is an important factor to keep in mind, as “First Nations are as historically different from one another as are other nations and cultures of the world.”²⁰ The oral histories of many Indigenous peoples from a variety of communities acknowledge this. Even though there is little physical documentation describing the of citizenship models employed by the each of the First Nations at the time, it is safe to say that they each differed significantly when compared to that which First Nations peoples experience today.

Today’s Canadian citizenship is “derived from the Western liberal politico-philosophical traditions of political emancipation and action in empowered individuals.”²¹ However, pre-settler societies lived by entirely different sets of ideologies and philosophies. Therefore, we must broaden our concept of citizenship to include citizenship in relation to other notions such as the land. Borrows exemplifies, “Aboriginal notions of citizenship with the land are not currently included among these accredited ideologies. Attempts to assert Aboriginal control of Canadian affairs will encounter a matrix of power that works to exclude notions of ‘land as citizen.’”²² In order to understand what citizenship may have meant to these early Indigenous societies, it is important to accept that for many First Nations, traditional notions of citizenship were

¹⁹ Some examples of differing Indigenous legal traditions and political systems can be found by comparing Anishinaabek customs from: Borrows, John (2010) *Drawing Out Law: A Spirit's Guide*. University of Toronto Press; and Mohawk governance illustrated in Alfred, Taiaiake (2009) *Peace, Power, and Righteousness: An Indigenous Manifesto*; Oxford University Press

²⁰ Borrows, John (2002) *Recovering Canada: The resurgence of indigenous law*; University of Toronto Press; p.3

²¹ Green, Joyce (2001) “Canaries in the Mines of Citizenship: Indian women in Canada” in *Canadian Journal of Political Science/Revue canadienne de science politique*, 34(04); p.718

²² Borrows, John (2002); p.154

derived not only from a cultural identity, but their relationship to their land and culture as well.²³

However, moving beyond the principles of early Indigenous citizenship, it is also important to note that societal structures within these nations differed from settler design as well. Clan systems or similar family units could be found at the heart of many Indigenous nations across Canada and in some cases, would function as socio-political building blocks. For example, “The Odawa, Potawatomi, and Ojibway have well-developed totemic or clan systems that can assist in regulating behavior and resolving disputes.”²⁴ These clan systems lent themselves to many other aspects of Indigenous political life. “This system is the foundation of Anishinabek law... A person’s *dodem* [clan] creates reciprocal obligations among fellow clan members, thereby establishing a horizontal relationship with different communities and creating allegiances that extend beyond the confines of the home village”²⁵

There are many more examples of societal and political structures amongst the Indigenous peoples prior to colonization. Archeologist Brian M. Fagan describes tribes as “egalitarian societies like bands, but tribes that have achieved a greater level of social and cultural complexity...”²⁶ In all of the societal structures outlined by Fagan, kin links provide effective mechanisms for social control; they are essential. It is argued that because these societies were so differently organized from European society, leading to

²³ Blackburn, Carole (2009) “Differentiating Indigenous Citizenship: Seeking multiplicity in rights, identity and sovereignty in Canada”; *American Ethnologist*; Vol.36, No. 1.; p.69

²⁴ Borrows, John (2010) *Canada's Indigenous Constitution*; Toronto: University of Toronto Press; p.77

²⁵ *Ibid*, p.78

²⁶ *Ibid*, p.55

colonialists simply deeming them primitive, and therefore in need of their correction.²⁷

Though, that is not to say that this was the conclusion drawn by all settlers or that all Indigenous nations experienced the same type of relationship. In its examination of Indigenous pre-confederate history, *RCAP* acknowledges,

As the accounts illustrate, diversity marked Aboriginal cultures and forms of social organization in the pre-contact period. Some Aboriginal nations were able to accumulate wealth while others were not; some were more hierarchical than others; some had matrilineal rules of descent while others were patrilineal or bilateral; and some developed sophisticated confederal structures that grouped several nations together.²⁸

This diversity between Indigenous nations, as well as with European cultures, would only grow with increased and interaction with non-Indigenous peoples, as levels of cooperation varied. As demonstrated through the brief exploration of clan systems and kinship ties, we know that Canada was home to a varied population of Indigenous peoples completely self-sufficient with their own societal structures. Dickason notes, “This way of life, based on regulated patterns that had evolved over thousands of years, grew out of an intimate knowledge of resources and the best way of exploiting them.”²⁹ The way of life developed by the Indigenous peoples was essential to the survival of European settlers, which greatly impacted the early relationship between the two.

1.2 The Royal Proclamation: Shifting the Relationship

Following the Seven Years War in which Great Britain acquired the French territory in North America, the British government sought to stabilize relations with the Indigenous Nations, as many communities had close relations with the French settlers of the time. It

²⁷ Schouls, Tim (2002); p.15

²⁸ Royal Commission on Aboriginal Peoples (1996) Vol. 1; p.86

²⁹ Dickason, Olive & McNab, David T. (2009) *Canada's First Nations: A History of Founding Peoples from Earliest Times*. Canada: Oxford University Press; p.17

was in this vein that King George III issued *the Royal Proclamation* of 1763. To this day, the *Royal Proclamation*, sometime referred to as the “Indian Magna Carta”, serves as the basis for First Nations land claims and is upheld within the Canadian Charter of Rights and Freedoms.³⁰ At the time, “the legislation had established that native bodies politic were recognized for legal purposes, and that colonial governments did not have jurisdiction legislatively to interfere with the right of self-government vested in these bodies politic in relation to territory that had not been surrendered by a treaty.”³¹ What’s more, the *Proclamation* outlined the barrier to which its subjects were not to impede upon Indigenous territories. This in turn forced treaty making to the forefront of First Nations-settler relations.

Pursuant to early settlement and trade, “Treaties between the Aboriginal and European nations (and later between Aboriginal nations and Canada) were negotiated and concluded through a treaty-making process that had roots in the traditions of both societies.”³² These treaties formally establish relationships between the Europeans and the Indigenous peoples of the time.³³ Many of these treaties classified as “peace and friendship” treaties, signifying the spirit of the treaties to ensure that First Nations and the settlers might coexist in a mutually beneficial way in the territory. The treaty making process extended and evolved to include the 11 numbered treaties, as well as treaties in the modern era such as the James Bay and Northern Quebec Agreement and the Nisga’a Treaty of 1999. Treaty making remains an ongoing process in Canada to this day and

³⁰ Nabigon, Herbert (1993) “Reclaiming the spirit for First Nations Self-Government” in *Rebirth: Political, Economic, and Social Development in First Nations* by Anne-Marie Mawhiney (ed.), pp.136-14; p.136

³¹ Clark, Bruce (1990) *Native Liberty, Crown Sovereignty*. Montreal: McGill-Queen’s University Press; p.37

³² Royal Commission on Aboriginal Peoples (1996) Vol.1; p.119

³³ Russell, Peter (2005) *Recognizing Aboriginal Title*; Toronto: University of Toronto Press; p. 34-42

remains as one of the core elements of the relationship between the government and Indigenous populations.

Their role as founding documents to the relationship between Indigenous people and the state does not mean that Treaties do not present certain challenges. The meaning and validity of many treaties have been challenged in subsequent years. *RCAP* notes, "...European and Aboriginal interpretations of their agreements, whether written or not, differed on some key issues. Two principal ones were possessory rights to the land and the authority of European monarchs or their representatives over Aboriginal peoples."³⁴ Essentially, the European understanding consisted of arrangements through which monarchs would acquire sovereignty, whereas Indigenous understandings recognized the sharing in land title and resources for mutual benefit. This contrast in perception is emblematic of the difference in worldview, and would only become more complicated as ensuing legislation continued to alter the relationship.

As settlement continued, the knowledge and guidance of Indigenous peoples became less important for survival once residency had been established. Settlers began to acclimate to life in Canada and as western societal structures began to take hold, the Crown began to regard these nations differently than they once did and the relationship began to shift. "At the time of the Royal Proclamation, Aboriginal people held the balance of power economically, socially, politically, and militarily"³⁵ As European settlers began to organize and push for a responsible government of their own they began to view the Indigenous inhabitants as more of a hindrance to their own development than

³⁴ Royal Commission on Aboriginal Peoples (1996) Vol. 1; p.125

³⁵ Nabigon, Hébert (1993); p. 136

before, resulting in “the government of Canada [beginning] 125 years of ‘assimilationist’ and ‘isolationist’ policies.”³⁶

One of the first and most significant means of controlling and assimilating the Indigenous peoples was through British statute of *The Gradual Civilization Act*, as it sought to influence through individual tenure and enfranchisement.³⁷ "*The Gradual Civilization Act* of 1857 was the first act to wholly undermine the nation-to-nation relationship First Nations had with the government..."³⁸ According to the *Act*, Indigenous peoples would be distinguished as Canadian subjects instead of by any recognition of their own Indigenous citizenships. The government carried the erroneous notion that Indigenous peoples wanted to be “civilized” in accordance with European customs. It was presumed that the standards set within the *Act* would give Indigenous peoples something to aspire to. For example, “By Section 3 of the *Gradual Civilization Act*, the male Indian 21 years of age or older who was educated, could speak English or French, was 'free from debt' and of "good moral character" could apply to become a Canadian.”³⁹ However this did not entice Indigenous peoples in the way the Crown had hoped for. Though some did accept the methods of enfranchisement, as listed within the *Act*, the majority of Indigenous peoples rejected the opportunity to abandon their distinctive status as Indigenous inhabitants of Canada. Mary Jane McCallum notes that instead of succeeding in its goal, "*The Gradual Civilization Act* represented the trend towards

³⁶ Nabigon, Hébert (1993); p.137

³⁷ Milloy, John S. (2011) “The Early Indian Acts: Developmental Strategy and Constitutional Change” in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies* by Ian Getty (ed.); Vancouver: UBC Press; p.58

³⁸ McCallum, Mary Jane (2002) “To Make Good Canadians: Girl Guiding in Indian Residential Schools”; Dissertation. Ottawa: National Library; p.65

³⁹ *The Act To Encourage The Gradual Enfranchisement of Indians Tribes in this Province and to Amend the Laws Relating to Indians* (1857); 20th of Victoria, c.26.

blatant expansionism that dominated Canadian Indian policy after Confederation, at which point it became the national duty of white authorities to prepare the Indian to assume the privileges and responsibilities of full Canadian citizenship."⁴⁰

This trend continued after the *British North America Act (BNA Act)* was signed in 1867. After which, Indigenous peoples began to be regarded as being in the way of the Canadian state's expansion instead of a means to it. The *BNA Act* alluded to the attitude of the time, that the assimilation of Indigenous nations was inevitable.⁴¹ Section 91(24) of the *Act* provided that the federal government of Canada would have jurisdiction over "Indians, and Lands reserved for the Indians".⁴² It was through this new form of forced jurisdictional authority over Indigenous peoples that Canada began to establish heavier control over Indigenous matters. As such, it was only a couple short years until the government attempted to advance their policy of assimilation through the ratification of the *Gradual Enfranchisement Act, 1869*.⁴³ Without section 91 of the *BNA Act*, the government of Canada would not have claimed authority over Indigenous peoples as subjects and therefore these legislative *Acts* would not have come into effect. By this logic, it was through their inclusion into the *BNA Act*, an inclusion not created through consultation or any other form of approval from Indigenous peoples, that the relationship between Indigenous nations and the government of Canada truly began to shift away from its' treaty origins.

⁴⁰ McCallum, Mary Jane (2002); p.65-6

⁴¹ Schouls, Tim (2002); p.16-17

⁴² *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.; Section 91(24)

⁴³ Tobias, John (1983); p.43; and *RCAP* (1996) Vol. 1; p.274-275

1.3 The *Indian Act* and Amendments

With the gradual “civilization” of the Indigenous peoples not advancing at a rate acceptable to the progress of the Canadian state, the government began to introduce more comprehensive legislation to govern the Indigenous peoples through the *Indian Act*, first passed in 1876. The *Act* included strict rules on Indigenous peoples, considered to be “Indians”, which was used as a blanket term for Indigenous peoples, instead of identifying them as unique nations from one another. This measure effectively rescinded any distinctiveness nations may have received and defined all Indigenous peoples as the same, causing long-term damage to Indigenous identities, as their cultural differences from one another were essentially eroded in the eyes of the government. Indigenous forms of citizenship were replaced with government mandated First Nations citizenship.⁴⁴

The *Act* was highly assimilationist and had severe adverse effects, not only because of how it mandated life and livelihood for First Nations peoples, but because it created different types of Indigenous identities. “The *Indian Act* or similar legislation as it relates to entitlement or more simply put “who is an Indian” has been amended repeatedly for more than one hundred and fifty years.”⁴⁵ Section 6 of the *Indian Act* describes whom; amongst the Indigenous peoples was entitled to be registered as such. Those determined to be First Nations citizens, according to the legislation developed without any consultation from the Indigenous peoples themselves, would be treated as such by the government. This shift in the definition of citizenship, from a culturally driven convention to an imposed western legal status, had negative ramifications for

⁴⁴ Note that First Nations citizenship, while a status in it’s own right due to these citizens’

⁴⁵ Gilbert, Larry (1996) *Entitlement to Indian Status and Membership Codes in Canada*; Toronto: Carswell; p.12

Indigenous nations as they were increasingly affected by governmental services and *Indian Act* policies. Furthermore, this shift in the power structure, from nations who determined their own citizenships to subjects of assimilation suffering from imposed ideological ideals of settler-colonial logic, violated the spirit and intent of the treaty relationship established during this era. This breach would only further exacerbate the downward spiral in Indigenous-colonial relations.

In addition to Section 6 of the *Indian Act*, there were many other means of assimilation imposed with the express purpose to further diminish the First Nations population. For example, according to Section 12 of the *Act*, if a status Indian woman were to marry a non-Indigenous man, she would no longer be considered a status Indian, and therefore could no longer enjoy any of the rights that accompany such status.⁴⁶ This sexist policy is one that would haunt First Nations, shaping their nations and relationships in the years to come. However, there was little recourse in the Canadian system for First Nations peoples wishing to counter processes of assimilation and maintain their culture. Governmental policies of the time were so stringent that the *Indian Act* itself banned cultural practices and forms of Indigenous religion. Legislative mandates were followed through by the ever-looming Indian Agents of the time. This system led to some First Nations peoples to voluntarily give up their status as Indians and to become Canadian citizens instead.

When Indians met the minimum requirements for citizenship – literacy, education, and “acceptable” moral character – they were allowed the rights of full citizenship through voluntary enfranchisement pursuant to sections of the *Indian Act*. They would be allowed to vote, purchase alcohol, and

⁴⁶ *Indian Act* (1985); Ottawa: Public Works and Government Services Canada; Palmater, Pamela D. (2011) *Beyond Blood: Rethinking Indigenous Identity*. Saskatoon: Purich Publishing Ltd.

obtain land under the homestead system, and would no longer have to live under the aegis of the repressive Indian Act or have to tiptoe around the government's resident reserve babysitter – the Indian Agent.⁴⁷

However, this did not entice the majority of First Nations peoples who clung to their status and identities as Indigenous to instead become members of the Canadian system. Instead, they saw these policies as the attempted assimilation they were and responded defiantly.

Author John Tobias notes that between 1857, the year of the first piece of legislation to “civilize” Indigenous peoples, and 1920, when the *Indian Act* underwent significant amendments, “only slightly more than 250 persons were enfranchised.”⁴⁸ The low rate of those choosing to voluntarily become enfranchised demonstrated the will of First Nations peoples to assert their distinctiveness and assert their sovereignty despite the obstacles presented by the *Indian Act*.

For its part, the government of Canada recognized that First Nations peoples did not wish to become Canadian citizens in lieu of their Indigenous citizenship and further investigated how to civilize Indigenous peoples into citizenship by more aggressive means. “In 1920, section 107 of the *Indian Act* was amended to allow the Department to establish a board consisting of two department employees and one band member to investigate whether any Indians were fit to be enfranchised.”⁴⁹ The government subsequently made amendments to the *Act*, based upon their findings. For example, in order to combat the low rates of voluntary enfranchisement, the *Indian Act* was amended

⁴⁷ Voyageur, Cora & Calliou, Brian (2000) “Various Shades of Red: Diversity Within Canada’s Indigenous Community”; *London Journal of Canadian Studies*; Vol.16; pp. 109-124; p.117

⁴⁸ Tobias, John (1983); p.49

⁴⁹ Gilbert, Larry (1996); p.24

several times throughout the Twentieth Century to include more and more obvious means of imposing western beliefs and societal structures upon the Indigenous nations.

One of the most volatile and damaging policies put in place through the aim of assimilation came through the implementation of the residential school system through the *Indian Act*. Canada removed children from communities and families in order to be placed in the school system, which was meant to “kill the Indian in the child.”⁵⁰ This removal facilitated assimilation, as these children would no longer have their parents’ or community’s influence in developing their Indigenous identity through language, laws, or any other Indigenous ways of life. Through the afore mentioned sweeping changes to attempt to render the *Indian Act* more effective for the government’s purposes, the residential schools grew. “An amendment to the *Indian Act* in 1920 made it mandatory for every child between the ages of seven and fifteen to attend school.”⁵¹ Duncan Campbell Scott, Superintendent-General of Indian Affairs, stated in 1920: “Our objective is to continue until there is not a single Indian in Canada that has not been absorbed.”⁵² And as such, the First Nations children who went through the residential education system were then more considered civilized, and eventually enfranchised. This policy of assimilation continued in full force well in to the 20th Century and the *Indian Act*.

Yet, no matter the wishes of the First Nations peoples, the remaining Indigenous people were finally “absorbed” (from the perspective of the Canadian state) into Canadian society through involuntary citizenship. In 1960, Indigenous peoples in Canada were given the right to vote in general election in Canada, thus ending their legal

⁵⁰ Palmater, Pamela D. (2011); p.33

⁵¹ Milloy, John S. (1999) *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986*, Vol. 11; University of Manitoba Press; p.70

⁵² Royal Commission on Aboriginal Peoples (1996); Vol.1, Ch.13; p.577

distinction as non-Canadians in the eyes of the government. This addition to Canadian citizenship was done without consultation with Indigenous leaders, and all remaining “Indians” who had not received the right to citizenship under prior *Indian Act* processes.⁵³ However, no matter their legal citizenship, the distinctiveness of First Nations citizens remained, thanks in part to the *Indian Act* that set them apart from other Canadians and determined their lives.

1.4 Mobilization and Change: The Impact of the Trudeau Years

Post 1960, a new era of Canadian politics was dawning and the ideals of pluralism and multiculturalism began to take hold in the politics of the Canadian state. The government of Pierre-Elliott Trudeau began to recognize the differences within the Canadian populous as population growth, mixed with increased mobility, began to present the country with growing cultural dynamics. Trudeau confronted these issues head on through the guise of addressing the inequalities he saw within the Canadian system.

Following his successful 1968 campaign, Prime Minister Pierre Trudeau advocated on behalf of the idea of a “just society”.⁵⁴ His vision contested the argument of recognizing collective rights over others and “claimed that all Canadians should be treated equally.”⁵⁵ As such, Trudeau was dissatisfied with the substandard position of Aboriginal peoples in the country politically, socially and economically. He did not attempt to understand the status of Indigenous peoples from their own historical or ideological point of view but instead applied liberal western logic to the situation. The

⁵³ Royal Commission on Aboriginal Peoples (1996) Vol. 1, p.125

⁵⁴ Royal Commission on Aboriginal Peoples (1996) Vol. 1; p.202

⁵⁵ Kenrick, Justin, & Lewis, Jerome (2004) “Indigenous peoples' rights and the politics of the term ‘indigenous’”; *Anthropology Today*, Vol.20, No. 2; pp. 4-9; p.5

conclusion Trudeau drew was that their distinction as separate, or at least unique, from the rest of Canadian society was limiting Aboriginal peoples' ability to succeed as Canadians. In an attempt to "solve" this problem for Aboriginal peoples, Trudeau proposed the *White Paper* in 1969.

Cast neither as a 'final solution' nor as the 'assimilation of the civilized', the white paper entitled *Statement of the Government of Canada on Indian Policy* advocated 'integration' as a modern solution to colonialism, an initiative that resonated with Trudeau's individualistic vision of Canada as a 'just society'.⁵⁶

The Trudeau government believed that this conception of justice would lead to the full participation of status Indians in Canadian society. Then-Minister of Indian Affairs, Jean Chrétien, defended the *White Paper* as a way to "...offer another road for Indians, a road that will lead gradually away from different status to full social, economic, and political participation in Canadian life."⁵⁷ This participation would come at the cost of protections for reserve lands, the termination of legal status as First Nations peoples, and eventually, the services provided by virtue of such status.⁵⁸

First Nations peoples recognized the dangers the *White Paper* presented to Aboriginal rights, culture, and distinctiveness. In reality, the government's attempt to recast "Indians" as "Canadians" was a continuation of colonial practices that meant to assimilate and leave no room for Indigenous self-determination. Ladner and Orsini note, "The Trudeau-Chrétien vision of the just society did not in fact deviate from the goals of

⁵⁶ Ladner, Kiera & Orsini, Michael (2003) "The Persistence of Paradigm Paralysis" in *Canada: The State of the Federation 2003; Reconfiguring Aboriginal-State Relations* edited by Michael Murphy; Montreal: McGill-Queen's University Press; p.197

⁵⁷ House of Common Debates (1969) July 11, 1969; p.11142; Jean Chrétien

⁵⁸ *Statement of the Government of Canada on Indian Policy (The White Paper, 1969)* – "Control of Indian lands should be transferred to the Indian people"; "Legislative and constitutional bases of discrimination must be removed"; "Services must; come through the same channels and from the same government agencies for all Canadians."

pre-existing Aboriginal policy; it merely attempted to jumpstart the long-delayed process of assimilation.”⁵⁹ The *White Paper* completely dismissed any notion of Indigenous nations possessing their own citizenships prior to colonialism and based upon their cultures and traditions. Furthermore, it even dismissed problematic the status of “First Nations” granted by colonial powers that had reshaped many Indigenous identities over the course of Canada’s colonial history.

The attempt made by the *White Paper* to integrate First Nations into Canadian society would endanger the very foundations of a nation-to-nation relationship between First Nations and Canada: the Treaties. On the subject of the Treaties, the *White Paper* proposed,

The Government and the Indian people must reach a common understanding of the future role of the treaties. Some provisions will be found to have been discharged; others will have continuing importance. Many of the provisions and practices of another century may be considered irrelevant the light of a rapidly changing society and still others may be ended by mutual agreement.⁶⁰

This attitude in which treaties were to be reshaped or potentially dismissed depending on the opinion of the government on their continued relevance in modern society was wholly unacceptable to Indigenous peoples, some of whose ancestors took part in treaty making designed to last “as long as the sun shines and the waters flow.”⁶¹

⁵⁹ Ladner, Kiera & Orsini, Michael (2003) p.198

⁶⁰ *Statement of the Government of Canada on Indian Policy (The White Paper, 1969)* – 5. Claims and Treaties

⁶¹ Venne, Sharon (1997) “Understanding Treaty 6: An Indigenous Perspective” in *Aboriginal and treaty rights in Canada: Essays on law, equality, and respect for difference* by Michael Asch; UBC Press; p.194

The opposition to the *White Paper* was significant. *RCAP* states, “The white paper became a rallying cry for Aboriginal people, and their response was fast and strong.”⁶² Aboriginal peoples vocalized their dissent and frustration as “Aboriginal communities also saw the *White Paper* proposals as a way for the federal government to shirk responsibility for past injustices that aboriginal communities have suffered.”⁶³ In retaliation to this proposal made by the Trudeau government, Harold Cardinal responded with what became the ‘red paper’. This Indigenous-crafted paper “described how Indian peoples, as peoples with distinct cultures, wished to contribute to Canadian society while at the same time exercising political and economic power at the community level.”⁶⁴ Other Indigenous leaders joined in, outraged at the lack of consultation that went into the *White Paper*’s formulation. In the House of Common Debates, First Nations Chief David Courchene effectively argued against Trudeau’s proposal:

The just society that Mr. Trudeau alludes to **must** be based on mutual respect, mutual consideration, mutual understanding, integrity and good faith. This document, this policy, does not reflect any of this. More important it ignores one fundamental fact that is inescapable and that is that if Indian people are to become equal citizens of this country it must be because they want to, not because they are told to.⁶⁵

Despite the fact that the *White Paper* did not move past its initial stages, the legacy of the frustration produced by the *White Paper* lives on, perpetuating a relationship of mistrust between an Indigenous population that wishes to remain distinctive and hold on to their special status and a government that has repeatedly continued colonial traditions.

⁶² Royal Commission on Aboriginal Peoples (1996) Vol. 1; p.202

⁶³ Scott, Mark (1998). *Aboriginals' Quest for Recognition: Assimilation and differentiated citizenship*. Doctoral dissertation. The University of Western Ontario London; p. 8

⁶⁴ Royal Commission on Aboriginal Peoples (1996) Vol. 1; p.203

⁶⁵ House of Common Debates (1969) July 11, 1969; p.11139; W.G. Dinsdale

However Pierre Trudeau was not done in his goals to affect significant change to the Canadian system, and to Indigenous peoples. Major change came to Canada right before the dawn of the 1980s as discussions progressed on how to move towards the patriation of the *Constitution Act, 1867* (otherwise referred to as the British North America Act, 1867). Prime Minister Pierre Trudeau held conferences and conversations with federal and provincial elected officials in an attempt to gather popular and provincial support. However, the Constitutional conversation was going on in Canada without significant Aboriginal input. The lack of Indigenous representation was made evident through the original draft for the *Constitution Act* of 1982, where Indigenous nationhood, jurisdictions, and rights were not acknowledged.⁶⁶ This exemption promoted further protest from many Aboriginal leaders who had been distrustful of the government since the *White Paper*, and who subsequently lobbied Great Britain to not allow the government of Canada to proceed without the inclusion of Aboriginal peoples and protections for the Treaties.⁶⁷ With the *Canadian Constitution, 1982* the government confirmed Section 35, which “recognizes and affirms existing Aboriginal and Treaty rights.”⁶⁸ In addition to this protection of rights, Aboriginal rights were further addressed within the *Charter of Rights and Freedoms*, Section 25. The *Charter* states, “The guarantee in this Charter of certain rights and freedoms shall not be construed as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada”⁶⁹ With these provisions and through the Trudeau

⁶⁶ Russell, Peter (1990) *The Constitutional Odyssey: Can Canadians Become a Sovereign People*; Toronto: University of Toronto Press; p.117

⁶⁷ Miller, Jim (2005) “Petitioning the Great White Mother: First Nations’ Organizations and Lobbying in London” in *Canada and the End of Empire* by Buckner, Phillip (ed); UBC Press; p.314

⁶⁸ *Constitution Act* (1982) Section 35

⁶⁹ *Canadian Charter of Rights and Freedoms* (1982) Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

government, on April 17th, 1982 Queen Elizabeth II, as Queen of Canada signed an official *Canadian Constitution* in to law.⁷⁰ These events are critical to the conversation on recognition and self-determination for Indigenous peoples because these sections represent acknowledgement by the government of a special status for First Nations based in their indigeneity. The impacts have reverberated throughout Canada's subsequent legislative history, prohibiting future dissolution of Indigenous rights and status as was proposed by the *White Paper*, and permitting a greater discussion of Indigenous issues to take place in Canada.

In 1985 the government of Canada passed Bill C-31 to significantly amend the *Indian Act*. The Bill claimed to eliminate the sexism found within the *Indian Act* by discontinuing the enfranchisement of First Nations women who marry non-First Nations men. This had a huge impact for a large number of First Nations women who had lost their legal status and therefore rights in years prior. Under Bill C-31, they could now reapply for their status as 'Indians'. However, as *RCAP* states, "Although the current *Indian Act* contains no enfranchisement provisions, the status rules, as modified in 1985 by Bill C-31, are still highly problematic."⁷¹ The impact of Bill C-31 has varied from Indigenous nation to nation, as some communities did not wish to welcome back their former members. In fact, "many women and their children who have recovered Indian status as a result of the 1985 amendments have been unable to secure band

⁷⁰ *Constitution Act* (1982) being Schedule B to the Canada Act 1982 (UK), 1982, c 11

⁷¹ Royal Commission on Aboriginal Peoples (1996) Vol. 1; p.304

membership.”⁷² The ripple effect of this particular discrimination can be found in many First Nations to this day.

Canada’s constitutional patriation was not the end of this era of legislative and constitutional reform. The federal government was determined to fulfill the work left undone when Quebec did not agree to the patriation of the *Canadian Constitution*, 1982, and began negotiating with the provinces on amending it.⁷³ The focus at this time was on Quebec, and the *Meech Lake Accord* was designed to, amongst other things, reflect Quebec as a distinct society. Though Indigenous peoples were clear that they wanted to be included in this dialogue and given fair estimation by the government, this consultation did not occur.⁷⁴ Due in part by its omission of Aboriginal peoples as distinct, and because of its lack of consultation with Indigenous leadership at the time, the *Meech Lake Accord* failed to pass in June of 1990. The Accord had to unanimously pass each provincial legislature and Elijah Harper, M.L.A to the Manitoba Legislature and citizen of Red Sucker Lake First Nation, (along with Clyde Wells, Premier of Newfoundland) was able to affectively fail the Accord by a vote of dissent.⁷⁵ Though the significance of the *Meech Lake Accord’s* failure did lead to greater Aboriginal inclusion in the process of the *Charlottetown Accord* five years later, amendments to Canada’s Constitution failed to progress.

⁷² Royal Commission on Aboriginal Peoples (1996) Vol. 1; p.303

⁷³ *Ibid*; p.209

⁷⁴ Russell, Peter (1990), p.132

⁷⁵ Milen, Robert (1991) “Aboriginal Constitutional and Electoral Reform”; Vol. 9, in *Aboriginal Peoples and Electoral Reform in Canada* by Robert Milen (ed.), 3-65; Toronto: Dundurn Press; p.33

By way of explanation for why the accords failed, *RCAP* asserts, “In Canada, Aboriginal people were becoming more aware of their legal rights during this period.”⁷⁶ This increased understanding led to increased mobilization. During this time, the tension in the relationship between Canada and Indigenous peoples was palpable. This tension culminated in the summer of 1990, when protest broke out over First Nations rights and land claims in the community of Kanesatake that had been disregarded by the local community and federal government. Canada was forced to acknowledge what *Meech Lake* had ignored, namely that the colonial attitude with which First Nations were treated or disregarded had created a tempestuous and passionate resistance from Indigenous peoples Canada-wide. The protests “escalated to an armed confrontation between the Canadian army and Mohawk warriors...”, also known as the Oka Crisis, that both shocked and frustrated Canada as a nation.⁷⁷ The crisis clearly indicated a truth that many in Canada had not considered by virtue of not having experienced the same relationship with the Canadian government, namely that many Indigenous peoples, despite being forcibly enfranchised in 1960, did not consider themselves to be Canadian citizens and instead held loyalty to their own Indigenous Nations. The images and discord felt through the Oka Crisis remained in the minds of many and in 1991, in an effort to investigate the issues that led to the crisis, the Royal Commission on Aboriginal Peoples evaluated all aspects of Indigenous life in Canada and presented a *Report* to the government in 1996.⁷⁸ The findings and recommendations regarding citizenship will be discussed at length in Chapter Three.

⁷⁶ Royal Commission on Aboriginal Peoples (1996) Vol. 1; p.205

⁷⁷ *Ibid*; p.214

⁷⁸ See Chapter 3 for a full discussion of the Royal Commission on Aboriginal Peoples.

1.5 The Relationship Today

Prime Minister Stephen Harper has expressed that he would like to “...move forward, to reset the relationship” between Canada and First Nations.⁷⁹ However, in 2006, his first year as Prime Minister, Harper’s government dismissed the Kelowna Accord, which had been negotiated for 18 months beforehand.⁸⁰ This Accord had made progress in mending the relationship between First Nations and the Canadian government through significant consultation with First Nations. Therefore, the dismissal of the Accord, its targets and conclusions in 2007 set relations back. This has only exasperated the frustration by Aboriginal peoples to have their issues heard and to exert their own authority within the political landscape in Canada.

Another significant development arose that would have to do with the legal status of First Nations and the *Indian Act*. Bill C-3 was introduced in March of 2010 and “modifies the *Indian Act* in order to comply with the British Columbia Court of Appeal’s 2009 McIvor decision, which found aspects of the current registration provisions in violation of section 15 of the Charter of Rights and Freedoms on the basis of sex.”⁸¹ Its purpose is stated to improve upon Bill C-31 and further address the discrimination that occurred to women who married non-status or non-Indigenous men in the years leading up to 1985. Bill C-3 attempts to reconcile those who lost status and identity due to gender

⁷⁹ Smith, Theresa & Bouzane, Bradley (2012) “After ‘aboriginal uprising’ warning, Stephen Harper says time has come to ‘reset the relationship’”; National Post; Submitted: January 24, 2012; <http://news.nationalpost.com/news/canada/stephen-harper-pledges-to-reset-the-relationship-after-aboriginal-uprising-warning#_federated=1>

⁸⁰ 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/;

⁸¹ Hurley, Mary & Simeone, Tonina (2014) “Legislative Summary of Bill C-3: Gender Equity in Indian Registration Act” in *Aboriginal Policy Studies*; Vol. 3, No.3; pp.153-172; <<http://ejournals.library.ualberta.ca/index.php/aps/article/view/22232>>; p.154

discrimination in the *Indian Act* and reduce the intergenerational trauma that has impacted Indigenous nations and their membership. Those who find themselves affected by Bill C-3 are, due to their change in legal status as First Nations, eligible to take part in their own Indigenous citizenships in First Nations who require citizens to be recognized by the *Indian Act*.

In 2012, Canada watched as the ‘Idle No More’ movement gained momentum and challenged not only the damaged relationship between the government and Aboriginal peoples, but also the sometimes-uneasy relationship between Aboriginal peoples and the non-Indigenous citizens of Canada. ‘Idle No More’ highlighted the problematic relationship between First Nations and the Canadian government by protesting the government’s violation of treaty rights and its refusal to engage in meaningful dialogue.⁸² It was clear that both education of both First Nations and Treaty issues were as needed as was the need for a renewed relationship.

1.6 Conclusion

This Chapter has provided a brief overview of the many complex issues that have plagued the relationship between Indigenous peoples and the government of Canada. This relationship began as several distinct societies engaged one another for mutually beneficial reasons, signing treaties, and agreeing to continue their nation-to-nation relationship. However, years of legislation, based upon the concepts of protection, civilization, and assimilation, resulted in an asymmetrical balance of power that operated in contradiction to the treaty relationship. Colonialism has distorted this relationship.

⁸² *Ibid*, p.156

From this distortion, it is easy to conclude that the tense status of First Nations peoples in relation to Canadian citizenship has a great deal to do with the legislatively assimilationist history Indigenous peoples have gone through. This damaged relationship is acknowledged in the *Report of the Royal Commission on Aboriginal Peoples*, and helps to inform its many recommendations, including its advocacy for a dual-citizenship model for First Nations peoples. A distrustful and complicated history is a part of the issues facing Indigenous identities in Canada. It is clear, and *RCAP* indicates this as well, that this relationship must move towards a mutually beneficial understanding and reconciliation. How the relationship between First Nations and the Canadian state has changed and how the Canadian government recognizes First Nations' rights is critical to the future of Indigenous citizenship in Canada. It is important to keep this history in mind when examining the theoretical pros and cons of citizenship theory moving forward.

Chapter Two Framing The Citizenship Debates: Citizenship in Canada

2.0 Introduction

Today it is the view of the government, and indeed most Canadians, that First Nations peoples are considered to be Canadian citizens. However, this was not the path chosen by First Nations peoples. Centuries of mistreatment and coercive assimilation are only two of a myriad of reasons for why many First Nations peoples do not feel tied to a Canadian identity or feel loyalty to a Canadian citizenship, no matter what their legal status may be. Therefore, it is reasonable to declare that Canada is home to some Indigenous peoples who do not consider themselves citizens of a Canadian nation, but rather hold loyalty to their own Nations and sovereignty within Canada. Furthermore, as citizens of their own First Nations many do not participate in the Canadian political process.⁸³ Instead, they opt to actively seek ways to assert their Indigenous citizenship politically. This disconnect has had and continues to have a strong impact on politics in Canada.

With Idle No More, the Canadian government and indeed much of the Canadian public have been urged once again to consider the situation of the First Nations peoples in Canada and reflect upon this disconnect. Following an examination of the present state of affairs found in Chapter One of this thesis, at least two things are clear: the relationship between Indigenous people and the Canadian state must take further steps

⁸³ "...Aboriginal participation rates are, on average, lower than their Canadian counterparts." - Ladner, Kiera & McCrossan, Michael (2007) *The electoral participation of Aboriginal people*. Ottawa, Ontario: Elections Canada; p.7

towards reconciliation; and that Canada can no longer rely on old “solutions” to old problems.

There are many ways in which to begin mending this complicated and damaged relationship; all of which will take time. This thesis advocates that one step for Canada to take in an attempt to mend the relationship would be for official recognition for First Nations peoples in a way that lies in conjunction with their status as Canadians. In other words, it is time for accommodation within the realm of citizenship. This call for a more inclusive citizenship is not a new one. The debates over whether to develop and implement a new citizenship model have been ongoing for decades.⁸⁴ The fact is that citizenship is not static. In recent years, the most notable considerations to be made regarding this debate on evolving citizenship have been increased pressures from globalization and immigration. However, in Chapter Two I will demonstrate how First Nations peoples in Canada have and continue to hold a unique position within these debates. The political history of First Nations peoples in Canada and their evolving identities indicate that consideration should be given to their situation, as many have been left with a sense of detachment from the Canadian political system and culture. First Nations peoples have transitioned so very dramatically throughout Canada’s political history, therefore is it not reasonable that the government endeavor to create space within Canada’s political landscape for inclusiveness for First Nations peoples that attempts to rectify the rift that has been created? Not acknowledging First Nations peoples as having their own unique citizenship has done nothing to promote better relations. The way to

⁸⁴ See: Hébert, Yvonne & Wilkinson, Lori (2002) “The Citizenship Debates: Conceptual, Policy, Experiential, and Educational Issues” in *Citizenship in Transformation in Canada* by Yvonne Hébert & Lori Wilkinson (eds.); p.5-9.; Kymlicka, Will & Norman, Wayne (1994) “Return of the Citizen: A survey of recent work on citizenship theory” in *Ethics*, Vol.104, Issue 2, p.352-381

move this relationship forward⁸⁵ may be to formally evaluate Canada's current official citizenship model.

With the ever-growing number of Indigenous peoples in Canada, it is important to its future that the Canadian state continues to attempt to find positive ways of restructuring the damaged relationship between itself and First Nations. The current political climate and increased grassroots vocalization⁸⁶ indicates that Canada must acknowledge that there are complex issues of cultural distinctiveness within the country and that evolving the way Canada treats citizenship may help to address this. Douglas Brown states,

The challenge for the federal system today is at least in part to allow for a broad conception of civic society for Aboriginal Peoples to participate as full partners. For this to occur Aboriginals and non-Aboriginals alike must examine the underlying assumptions and values essential to the civic society, and what level of diversity is tolerable on the basis of common citizenship.⁸⁷

I believe that this is a challenge that Canada and First Nations must meet. Both sides must express their citizenship in meaningful ways and Canada must determine an acceptable way of demonstrating this recognition. Since it is generally accepted by Canadian theorists that Canadians live in a multicultural state, it is acceptable to acknowledge the premise that a pluralistic citizenship may be better able to accommodate all types of citizens within it.

⁸⁵ In the context of this paper, moving the relationship forward is to restructure the nature of the relationship between First Nations peoples and the Canadian government in a way that might promote reconciliation between the two.

⁸⁶ Idle No More is an ongoing grassroots political movement that has lent itself to a variety of First Nations concerns stemming from Treaty rights, including protests of the Keystone pipeline, federal government education policy, ongoing treaty negotiations, and other concerns.

⁸⁷ Brown, Douglas (1995) "Aboriginal Peoples and Canadian Federalism: An Overview"; Paper prepared as part of the Research Program of the Royal Commission on Aboriginal Peoples; Available on "For Seven Generations: An Information Legacy of the Royal Commission on Aboriginal Peoples" CD-ROM ; August; Queen's University; p.7

This Chapter serves as an introduction to the concept of citizenship. It briefly explores the theory of citizenship itself. It further explores what citizenship means in Canada. This Chapter also illustrates the importance of citizenship to not only Canada as a nation, but also to all those legally determined to be Canadian. Furthermore, this chapter will serve to clarify the labels we use in discussion to citizenship and why, in a historical examination such as this, these labels have at times confounded the issue. There exists a difference between those legal identities and social identities that needs to be addressed in order to fully comprehend the cleavages that exist when discussing citizenship as an expression of identity. This chapter is to also provide an overview of the arguments made for Canada's current citizenship model. Officially, Canada employs a form of unitary citizenship, which claims that Canadian citizenship is a status to which all determined to be Canadian, enjoy equally. The pros and cons of this concept of unitary citizenship will be examined so that a clear case for an alternative concept may be engaged and a place for First Nations peoples there within.

2.1 What is Citizenship?

Citizenship is often spoken of in a perfunctory type of way. It has been called both a status for its citizens and an ideal for policy makers and theorists.⁸⁸ When asked the nature of one's own citizenship, the everyday person is unlikely to take the time to consider the many complexities that come into play. Contemporary citizenship debates are even more complicated than ever before as citizenship "defined clearly by

⁸⁸ Taylor, David; Bryan Turner & Peter Hamilton (eds.) (1994) *Citizenship: Critical Concepts*; United States and Canada: Routledge; p.150

geographical borders and a common history, citizenship is increasingly in question.”⁸⁹

From Indigenous perspectives and ideologies, more than a single citizenship exists just as Indigenous peoples declare their identities in multiple ways.

From a theoretical perspective, citizenship as it is generally understood in Canada exists across multiple levels. The ideas of citizenship can be found in the “state, group, and individual.”⁹⁰ According to Marie Battiste and Helen Semaganis, Canadian citizenship is understood to be that which Eurocentric thought designed: “citizenship is the state of being vested with the rights, privileges, and duties of citizens. To be a citizen and entitled to these certain rights and privileges with corresponding protections, one also becomes subject to corresponding responsibilities and duties embraced in values of loyalty to its government, state, or king.”⁹¹ Indeed “Rights are the foundation of citizenship. They delimit the parameters of the citizen's relationship with the polity and with other *citizens*.”⁹²

It is under the classification of certain rights that T. H. Marshall theorized citizenship many years ago. His classification has acted as a basis for many scholars to succeed him. He divides citizenship into three parts or elements: the civil, political, and social.⁹³ Marshall’s examination and development of these elements to citizenship are based upon historical events that have shaped citizenship. In his work, he states that the civil entails those rights indispensable to the individual and include notions of justice and

⁸⁹ Hébert, Yvonne & Wilkinson, Lori (2002); p.3

⁹⁰ Holder, Cindy. L. & Cornthassel, Jeff. (2002) “Indigenous Peoples and Multicultural Citizenship: Bridging collective and individual rights”. *Human Rights Quarterly*, 24(1); p.145

⁹¹ Battiste, Marie & Semaganis, Helen (2002) “First Thoughts on First Nations Citizenship: Issues in Education” in *Citizenship in Transformation in Canada* by Yvonne Hébert & Lori Wilkinson (eds.). Toronto: University of Toronto Press; p.93

⁹² Green, Joyce (1997) “Exploring Identity and Citizenship: Aboriginal Women, Bill C-31 and the Sawridge Case”. Thesis submitted to Graduate Studies and Research, University of Alberta; p.5

⁹³ Marshall, Thomas H. (1950) “Citizenship and Social Class”, Vol. 11; Cambridge: CUP; pp. 148-154

membership. As these elements of modern citizenship were created over time, it is important to note that not all were included during these formative years. “There is one notable caveat to this condition which concerns the status of women; women were not considered, in this formative period at least, to be a member of the community or citizens.”⁹⁴ I would extend this criticism further to include more than just women, but also Indigenous peoples from those who were excluded during these formative years as well. From a similar position, the examination of Indigenous peoples’ citizenship must be assessed in relation to the historical events and experiences that have shaped their relationship with the state.

The second element of citizenship for Marshall rests in the political rights of citizens, which include “the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body.”⁹⁵ However, Marshall notes that it was not until early nineteenth century that political rights began to extend themselves to previously excluded portions of the populace. Again, Canada’s Indigenous peoples it took much longer for political rights to be extended, as they were commonly treated like dependents. In fact, early *Indian Act* legislation forbade Indigenous peoples from assembling for political purposes. The last of Marshall’s elements for citizenship includes social rights. These are rights derived by services, including those that allow for economic welfare to education rights. All these rights are meant to be equal amongst citizens with this contemporary citizenship however the need for equality across all these levels has led Marshall himself to concede that

⁹⁴ Coburn, Veldon (2009) “Citizenship and Colonialism in Canada” Thesis submitted to the Faculty of Graduate Studies and Research. University of Regina; Ottawa: Library and Archives Canada; p.15

⁹⁵ Marshall, Thomas H. (1950); p. 149

citizenship itself has functioned as an architect of social inequality.⁹⁶

Citizenship very much has to do with rights, however, from where are these rights derived? Acknowledgement must be made of the source of authority on all citizenship matters. Therefore, since its earliest realizations, citizenship has been examined through terms of both consent and descent. In a consensual model of citizenship, “the citizen accepts subjugation to the state, understands his status as a voluntary allegiance, and has legal status with certain rights and responsibilities.”⁹⁷ However, a model based on descent suggests that “a people are considered to constitute a nation as a cultural community of historical descent which provides a basis for popular allegiance...”⁹⁸. It is this second type of citizenship that has given rise to the nationalist movement that has spread across the world in the modern era.

Over the years many theorists from Rousseau to Marshall have argued that when you enjoy the privileges of citizenship, your loyalty to the powers and/or institutions, which provided said privileges, is expected.⁹⁹ This loyalty lends itself to a sense of community within the nation. Building off that, it is often cited that citizenship is also “...a political identity, citizenship is the dialogical relationship developed between citizen and state.”¹⁰⁰ This identity exists within a give-take relationship that exists between the state and its citizens where citizens are accorded rights and political power and/or opportunity, while expecting fidelity to the state in return. However, identity as a basis for discussion on citizenship has its own perils. Will Kymlicka and Wayne Norman

⁹⁶ Marshall, Thomas H. (1950); p.150

⁹⁷ Hébert, Yvonne & Wilkinson, Lori (2002); p.5

⁹⁸ *Ibid*; p.6

⁹⁹ Rousseau, Jean-Jacques (1920) *The Social Contract: & Discourses* (No. 660); JM Dent & Sons, Limited.; Marshall, Thomas H. (1950);

¹⁰⁰ Coburn, Veldon (2009); p.18

explain this danger “arises because there are two different concepts which are sometimes conflated in these discussions: citizenship-as-legal-status, that is, as full membership in a particular political community; and citizenship-as-desirable activity, where the extent and quality of one’s citizenship is a function of one’s participation in that community.”¹⁰¹

Citizenship as a legal status is exercised in “official” terms by the government’s legislation and institutions; managed and defined by the state. However, citizenship exists on another level by those who exercise their citizenship in unofficial ways. Many Indigenous peoples exercise their own citizenship in ways apart from their legal identities or status. A legal identity and status as Canadian is that which attempts to unify the population within Canada under a broad unitary model.

Due to its supposed role in building and strengthening a relationship between the state and its citizens, citizenship itself is meant to be a unifying force for the residents of a given territory. Citizenship is a tool for creating a community. However, when the situations of First Nations peoples are so decidedly different than that of the average Canadian, due not only to their histories, but by legislation which claims jurisdiction over their way of life, is it possible for citizenship to be used as a unifying force? In a country as historically complex as Canada, can a simple conception of citizenship adequately address the diversity found within its’ borders? Scholars such as Will Kymlicka, Alan Cairns, and Charles Taylor have taken up the task of theorizing citizenship and postulating arrangements that might best suit Canada. Out of their work have come differing theories of pluralistic citizenship (which we will examine in due course), with

¹⁰¹ Kymlicka, Will & Norman, Wayne (1994); p.353

varying degrees of accommodation. Each of these theories attempts to address the question of First Nations' rights and identity and where it fits in to Canadian citizenship.

2.2 The Importance of Citizenship

Political theorist T.H Marshall has suggested that modern citizenship encompasses the civil, the political, and the social, essentially directly or indirectly affecting nearly every facet of daily life. This could not be more true for any other group of citizens in Canada than it is for First Nations people, and is at the foundation for the many reasons why connecting First Nations populations with the concept of a Canadian citizenship is important. As Rhonda Howard puts it, "Without a feeling of being Canadian, citizens would not want to contribute to the community or to change things that might need changing"¹⁰² This disconnect between Indigenous peoples and the Canadian state damages the Canada's ability to properly govern through a lack of First Nations participation, which we see in the staggeringly low number in voter participation amongst First Nations peoples¹⁰³.

This lack of participation does even further damage because if there is limited participation by First Nations peoples because they do not believe themselves to be citizens, First Nations people will continue to be hindered by misguided or inept policy. The history of legislation affecting First Nations peoples is demonstration that policy created outside of consultation with the people it is to affect is generally not well received. The White Paper is a demonstration of this, as it was not informed by Indigenous

¹⁰² Howard, Rhonda E. (1998) "Being Canadian: Citizenship in Canada"; *Citizenship Studies*; Vol.2(1); pp.133-152; p.141

¹⁰³ Ladner, Kiera (2003) "The Alienation of Nation: Understanding Aboriginal Electoral Participation"; *Electoral Insight*; Vol. 5, No. 3

participation and was very poorly received. While it may be true that those who consider themselves Indigenous nationals will continue to vocally fight for their sovereignty outside of the Canadian system, however those who are found between their Canadian and Indigenous identities may continue to suffer from marginalization and a lack of influence. Feeling lost between two national identities results in a population of citizens removed from their own political influence. This cycle of dislocation does nothing to repair a tense and unhealthy relationship between First Nations and the government of Canada.

The exploration of other perspectives on Canadian citizenship that might allow for more inclusiveness is important to the future of Canada. There is a need for both Canada and First Nations peoples to move forward as nations within the same country, and it is believed that this cannot be done properly without some degree of reconciliation. As authors such as Leanne Simpson and John Borrows have noted, there is no going back; First Nations peoples are not about to disappear, and neither is the rest of Canadian society¹⁰⁴. Allowing for a new model of citizenship in Canada that acknowledges citizens as Canadians but also leaves room for First Nations to be acknowledged as such may permit a better sense of unity within Canada. It may be possible to build upon Canadian identity through its recognition of Indigenous identities, rather than continue with such divisiveness. Instead, inclusiveness may promote a sense of community in Canada where separate identities can come together under the umbrella of multiculturalism; often held as a popular Canadian value. Furthermore, it may allow for increased self-expression that

¹⁰⁴ Simpson, Leanne (2008) *Lighting the Eighth Fire: The liberation, resurgence and protection of Indigenous Nations*, Winnipeg: Arbeiter Ring Publishing; Borrows, John (2008) "Seven Generations, Seven Teachings: Ending the Indian Act." Research Paper; National Centre for First Nations Governance, Ottawa.

could satisfy some First Nations peoples who feel neglected in the present system. Providing a new concept of citizenship for First Nations peoples in Canada might enable progress in other matters of dispute for First Nations peoples and allow Indigenous nations to further self-governance in the future. Official recognition of First Nations' status by way of citizenship strengthens self-governance by further acknowledging a degree of Indigenous sovereignty.¹⁰⁵ By any outcome, progress might allow for better discussion of First Nations rights and help alleviate some of the marginalization First Nations suffer from politically.

Another important reason to examine the issue of Canadian and First Nations citizenship is to make an effort to remedy some of the harm that has been done by distorted identities within Canada. It has been noted that as a result of residential schools as well as many more government policies, there has been a history of First Nations peoples losing their identities¹⁰⁶, whether that be on a political, or personal level. It has been established by numerous studies that a persons' sense of self and their ties to their cultural and personal identity are directly related to their overall quality of life.¹⁰⁷ Kymlicka notes that the present political climate has allowed for a shift in the way theorists examine citizenship as well. "...political theorists must also pay attention to the qualities and dispositions of the citizens who operate within these institutions and procedures. Hence, political theorists in the 1990s focused on the identity and conduct of

¹⁰⁵ It is acknowledged that Indigenous peoples do possess sovereignty within Canada. "It would be wrong to say that the Crown has sovereignty over Aboriginal peoples, on a quasi-imperial model. Rather, it is the living symbol of a federal arrangement involving a partial merging of sovereignty and the guaranteed retention of certain sovereign powers by the various political units that make up Canada, including Aboriginal peoples." Royal Commission on Aboriginal Peoples (1996) Vol. 2; "Governance"; Chapter 3

¹⁰⁶ Barry, John W. (1999) "Aboriginal cultural identity". In *Canadian Journal of Native Studies*, 19(1); p. 17 & 24

¹⁰⁷ "Ethnic identity is considered to be important, in part because of its relationship to the psychological well-being of ethnic minority groups" - Phinney, Jean. S., & Chavira, Victor. (1992) "Ethnic Identity & Self-Esteem: An exploratory longitudinal study" in *Journal of Adolescence*; Vol. 15, No. 3; p.273

individual citizens...”¹⁰⁸ Theorists such as Kymlicka and Taylor, having focused identities in Canada, have postulated that more inclusive citizenship could be instrumental in re-establishing the ties between identities for many within Canada.

Self-determined Indigenous identities and the way they each relate to citizenship in Canada is a crucial element in the task of reconciliation. As the new generation of First Nations youth is the fast growing population in Canada, their actions and mindsets will help determine the future of the Canadian state. In essence, this is one of the main reasons I have decided to write my thesis on the future of citizenship in Canada. I am Anishinaabe as well as Canadian, and I feel very passionately about my right to be both. These are two inextricable parts of my identity. However, in much of the works I have read over the years, I have found my identity torn between Canadianists that might hold my Canadian status as supreme, and some Indigenous scholars that would have me refuse my Canadian citizenship altogether. This divergence has taught me the value of self-determination.¹⁰⁹ As the situation I find myself in is one similar to many others, and (as the population grows¹¹⁰) will be the situation of so many more, I see it as necessary to explore alternatives to citizenship. It is important to demonstrate that there is room within Canada for the new generation of First Nations peoples without marginalizing them or displacing their identities.

¹⁰⁸ Kymlicka, Will & Norman, Wayne (2000); p. 6

¹⁰⁹ Self-determination, as it is referred to in this paper, is both a collective principle and an individual one. See: Napoleon, Val (2005) “Aboriginal Self-determination: An Individual Self and Collective Selves” in *Atlantis: A Women’s Studies Journal*; Vol. 29, No. 2.; pp. 31-46. This paper will specify when addressing either type of self-determination.

¹¹⁰ Dewing, Michael, & Leman, Marc (2006) *Canadian multiculturalism*; Library of Parliament, Parliamentary Research Branch; p. 2; Barsh, Russel L. (1994) “Canada’s Aboriginal Peoples: Social Integration or Disintegration?” in *Canadian Journal of Native Studies*, 14(1); p. 6

2.3 Canadian Citizenship

Canadian citizenship was originally created by the *Immigration Act, 1910* as a means of distinguishing British citizens from those who were born, naturalized, or primarily resided in Canada for more than three years.¹¹¹ However, it was in 1947 that Canada created a thorough definition for itself through the *Canadian Citizenship Act*.¹¹² As previously noted, this act of citizenship did not generally apply to Indigenous peoples until 1960, when they obtained voting rights, and citizenship by default. The only means through which the definition of a citizen set out in the *Canadian Citizenship Act* applied to Indigenous peoples prior to that was through voluntary or forced enfranchisement, a policy set out in Canada in 1869 in the *Act for the Gradual Enfranchisement of Indians* and absorbed into the *Indian Act* in 1876. It was presumed that Indigenous peoples would simply submit to the established order of Canadian citizenship. Most Indigenous peoples did not. Therefore more methods of forced enfranchisement were introduced. The ways in which First Nations peoples could be forcibly enfranchisement varied, and could include possession of property, military service, or if they obtained status as professionals, among other things. The discriminatory manner in which Canadian citizenship was established for First Nations peoples extended itself to sexist methods of extinguishing First Nations legal status for women. “The enfranchisement criteria particularly discriminated against Native women, specifying in Section 12 (1)(b) of the *Indian Act* that an Indian status woman marrying a non Indian man would lose her status as an

¹¹¹ *Citizenship Act* (1910); S.C 1910., c. 27. Ottawa: Public Works and Government Services Canada

¹¹² *Citizenship Act* (1974); S.C. 1910., c. 27. Ottawa: Public Works and Government Services Canada

Indian, as would her children.”¹¹³ Gender discrimination contrasted Indigenous notions of matrilineality and did irreparable harm to generations of First Nations peoples and their identities.

Gender discrimination became possible due to the imposition of a First Nations status system on Indigenous peoples in Canada that in turn affected citizenship. For Indigenous peoples, citizenship in the Canadian state is a legal-status much like that of other Canadians. However, there exists a secondary level of identity that overlaps with this legal identity, established for First Nations peoples through the *Indian Act*.¹¹⁴ First Nations’ status exists as a legal status that recognizes them as citizens governed by specific legislation on top of the *Canadian Constitution*. Indigenous peoples are determined to be “officially” First Nations if they adhere to the definition set forth in this archaic legislation. Pamela Palmater remarks on some of the complexities that have arisen due to Canada’s implementation of First Nations status as a basis for a legal identity in *Beyond Blood: Rethinking Indigenous Identity*:

Part of the constitutional promise made to Indigenous peoples by Canada was the protection of their distinctive cultures and identities for future generations. The current Indian registration and band membership provisions of the *Indian Act, 1985* stand in stark contrast to this (treaty) promise. The Act has imposed a scheme of registration on individuals, which gives them different types of status with differing rights. It divides families, communities, and nations, and has divided Indigenous nations into smaller communities whose members are often at the lowest ends of the socio-economic indicators in Canada.¹¹⁵

The inequality and structure that has come about due to the legal status imposed by the

¹¹³ Hutchings, Claire (2005) “Canada’s First Nations: A legacy of institutional racism”; *Canada's First Nations: The Legacy of Institutional Racism*

¹¹⁴ *Indian Act*; Section 6

¹¹⁵ Palmater, Pamela D. (2011); p.101

Indian Act directly influences citizenship for First Nations peoples. Citizenship of First Nations peoples to their own communities has often been based upon *Indian Act* definitions. However, there have been cases where the *Indian Act* did not determine citizenship to Indigenous nations:

There are some exceptions to using the *Indian Act* to define First Nations citizenship, though they are not very common. While the *Indian Act* cuts people off from federal recognized status, other communities might have membership codes, which includes people that do not have status under the *Indian Act*. This is done by opting out of membership provisions of the *Indian Act* and adopting their own membership codes. In such instances, the federal government would not recognize people without Indian status for financial purposes.¹¹⁶

In these cases, Indigenous peoples were accepted as citizens within their nations, yet still excluded from their legal identity as First Nations citizens of Canada, according to the government of Canada. This creates instances where one's Indigeniety is recognized as a citizen of an Indigenous nation, yet not recognized as far as federal obligation is concerned.

Whereas the *Indian Act* prior to 1982 had patriarchal and discriminatory practices that determined who was a status First Nations person, the changes made to the *Act* have not translated in to a more accessible definition. "In fact, the definitions become more restrictive over time on the principle that Indigenous peoples should be assimilated."¹¹⁷ Many First Nations peoples are subsequently excluded from participating, as they find themselves without Indian status, and through the Canadian system are given no opportunity to define themselves as First Nations peoples. "...after [these] provisions

¹¹⁶ Borrows, John (2010)(2); p.365n67

¹¹⁷ Palmater, Pamela D (2011); p.23

were repealed, post-1985, with Bill C-31, the type of registration status assigned to illegitimate children can still vary based on whether or not they are male or female...” It is clear that gender discrimination is still deeply entrenched in the political system and the First Nations experience. “Even Bill C-3, the most recent *Indian Act* amendment, and which followed the McIvor case, did little to address gender discrimination. In fact, it created new forms of discrimination to limit the number of Indians who could be registered.”¹¹⁸ The impact of this pre- and post-Constitutional legislation has divided First Nations peoples, further marginalizing those who are found by the government to be ‘less Indigenous’, despite the conflicting traditional Indigenous perspectives on the matter. All of these matters have indicated the type of discrimination that has and continues to influence citizenship for Indigenous people specifically.

When Canadian citizenship was constitutionalized through the *Canadian Constitution, 1982*, outlining the rights and liberties of all citizens of Canada, Indigenous people, as well as the Québécois, challenged the idea of Canadian nationalism through a single citizenship status.¹¹⁹ The unitary citizenship employed by the government of Canada has stood ever since despite calls for reform. This practice acts under the assumption that all citizens are equal as Canadians. It is imperative to the examination of Indigenous peoples’ place in Canada’s citizenship practice to better understand the history of unitary citizenship and the multitude of opinions and strategies that have challenged its endurance. Canada’s citizenship remains in a position of homogeneity that

¹¹⁸ Palmater, Pamela D. (2014) "Genocide, Indian Policy, and Legislated Elimination of Indians in Canada." in *Aboriginal Policy Studies*; Vol. 3 (3); p.37

¹¹⁹ Jenson, Jane and Phillips, Susan D. (2000) “Redesigning the Canadian Citizenship Regime: Remaking the Institutions of Representation” in *Citizenship, markets, and the state* by Crouch, Colin, Eder, Klau, & Tambini, Damien; Oxford University Press; p.70

does not accurately reflect the reality of Canadian diversity. Understanding unitary citizenship can better illustrate the arguments that have resulted in many theorizing more appropriate pluralistic methods for Canadian citizenship that address its' diversity. Understanding unitary citizenship allows for a better appreciation of the *RCAP* recommendations for a dual Canadian citizenship moving forward by demonstrating its failures.

2.4 A History of Canada's Practice of Unitary Citizenship

The official concept of citizenship employed in Canada to date is that of a 'unitary perspective of citizenship'. Canada's unitary practice is the result of the governments' attempt to create a common community and promote the concept of equal rights amongst its citizens. Unitary citizenship "connotes membership in a single, if not unitary nation. The constitution of the nation-state defines the fundamental rights which all citizens share equally and which give them their primacy civic identity."¹²⁰ Iris Young furthers this notion by adding, "Whatever the social or group differences among citizens, whatever their inequalities of wealth, status, and power in the everyday activities of civil society, citizenship gives everyone the same status as peers in the political public."¹²¹ Though racial, cultural and ethnic diversity exists, with thousands of Canadians expressing themselves by these classifications, this model of unitary citizenship does not generally make room for these distinctions.¹²² Under this particular model, "the citizen's membership in them and allegiance to them are expected to be subordinated to

¹²⁰ Russell, Peter (1996) 'The Constitution, Citizenship and Ethnicity', in *Ethnicity and Citizenship- The Canadian Case*, edited by Jean Lapointe and William Safran,; London: Frank Carr and Company; p.97

¹²¹ Young, Iris (1989); p.250

¹²² exception to this being the acceptance of dual citizenship between Canada and another nation, and the allowances for why and how many nations to which one can claim allegiance is limited by the state.

membership in the more inclusive national political community."¹²³ This primacy of allegiance is said to have been intended to promote nationalism.¹²⁴ In fact authors such as David Taylor attribute much of the case for a unitary citizenship model to stem from a nationalistic movement.¹²⁵

For some, the advantage of unitary citizenship is its strength in the face of diversity. In Canada, there are various manifestations of diversity, however the “official” view of Canadian citizenship¹²⁶ does not acknowledge them. It is noteworthy that this model of citizenship is not uncommon amongst colonial nations. For the colonizer, imperialism and capital gain were at the foundation of their ideals for a good life as citizens and unitary citizenship was a means to this end by confronting the divergent values of Indigenous peoples.¹²⁷ By examining Canadian history, this unitary citizenship was employed under the *Immigration Act, 1910*¹²⁸ and through the *Naturalization Act* of 1914¹²⁹, though this citizenship was not granted indiscriminately. Canada furthered this form of unitary citizenship with the *Canadian Citizenship Act, 1946*, which formalized the shift from British subjects of Canada to Canadian citizens and granted citizenship to spouses or children of citizens born outside Canada. And as the state grew its range of who could be viewed as Canadian citizens, it increased its immigration. Monica Boyd and Michael Vickers point out, “Although admissions never reached the record highs observed in the early part of the century, the total number of immigrants entering Canada in the 1950s and 1960s far exceeded the levels observed in the preceding three

¹²³ Russell, Peter (1996); p.97

¹²⁴ Kymlicka, Will (1996); p.52

¹²⁵ Taylor, David; Bryan Turner and Peter Hamilton (1994); p.137

¹²⁶ Kane, Doug (2000); p.21

¹²⁷ Coburn, Veldon (2009); p.3

¹²⁸ *Immigration Act*, (1910); S.C. 1910, c. 27

¹²⁹ *The Naturalization Act of Canada* (1914); S.C., c.44

decades.”¹³⁰ This allowed for more Canadian citizens developed under an assimilative policy. These requirements for citizenship were then amended again in 1977, when Canada passed the *Canadian Citizenship Act, 1976*, which upheld requirements of the previous Act, but aimed to include more subjects. The argument made in favour of maintaining such policy being that the more inclusive the means for obtaining Canadian citizenship, the stronger its citizenry. As a colonial country, Canada has a long history of presuming that all residents would not only accept, but also seek out membership to this ‘Canadian community’.

An examination of history reveals that there are significant additional complications and obstacles to this practice of citizenship other than its failure to create a cohesive citizenry. Since the early days of colonization, the role of Indigenous peoples in Canada has fluctuated. “For the dominant society, comprised largely of settlers of Western European descent, the original inhabitants posed a significant problem to the conception of Canadian citizenship...”¹³¹ Their distinctiveness contradicted the ideologies under which Canadian citizenship was founded, namely capitalist, western-liberal philosophy. Therefore, they were often either neglected when Canada’s citizenship model was established or the state designed a number of policies to assimilate the Indigenous population so that they might better fulfill the requirements of Canadian citizenship. In truth, the ‘requirements’ of Canadian citizenship imposed upon Indigenous peoples were little more than blatant attempts to create a population of assimilated Indigenous peoples. As a group who never fit into the practice of unitary citizenship,

¹³⁰ Boyd, Monica, & Vickers, Michael (2000) “100 years of immigration in Canada”; *Canadian social trends*; Vol. 58 (2); p.7

¹³¹ Coburn, Veldon (2009); p.3

assimilation was the number one policy method set in accomplishing the task of creating ‘Canadians’ of them. This assimilationist attitude has drawn criticism of unitary citizenship. By using such a citizenship, “groups that cannot, or will not, acquiesce to the dominant, unitary conception of citizenship are excluded from active participation in the discourse and deliberations in the public sphere.”¹³² This is the historical reality of many First Nations peoples who have not identified themselves along Canadian standards or by those actively seek to work against the current conception of citizenship imposed upon them.

Furthermore, scholars such as Alan Cairns purports that the model of unitary citizenship as presented by the state is simply a myth, as it does not correspond to actual practice in Canada.¹³³ To Canadians, the idea of multiculturalism, whether it be a myth itself or not, has been so ingrained into the national consciousness that to claim that Canada operates by recognizing all Canadians as the same would be a delusion. Joseph Carens argues that once we see that our very institutions and national practices are incompatible with the idea of unitary citizenship, we must then look to pluralistic theories to address our conceptions of citizenship.

In the face of challenges to this model by pluralist theorists, many supporters of the unitary citizenship model have advocated that the colonial-approved notion of assimilation or acculturation may be the most sensible path moving forward as a nation-state. Many of this concept’s proponents indicate that a policy of a unitary citizenship would be advantageous in that it would maintain a sense of national unity amongst not

¹³² *Ibid*; p.36

¹³³ Carens, Joseph. (2013) *The Ethics of Immigration*. Canada: Oxford University Press.; p.21

only its citizens, but its political administration. Scholars such as Tom Flanagan believe that a policy of “integration” would not only be in the best interest of the country but also in the best interest of First Nations peoples as well. Flanagan acts as one of most vocal scholarly advocates of the unitary model and its’ application to First Nations peoples. In his opinion there is but one legitimate public sphere in Canada, that being of the settler's design.¹³⁴ Flanagan calls into question the very distinction of nationhood amongst First Nations claiming that "Aboriginal peoples in Canada project the concept of nation backwards into a pre-civilized past; they have tiny populations; they do not control a contiguous territory; they are internally divided among dozens or hundreds of different collective identities; and they receive support only from scattered intellectuals for their assertions of sovereignty."¹³⁵ Flanagan calls into question First Nations claims to sovereignty in Canada and therefore questions all rights and legal obligations that might be derived from it.¹³⁶ This dismisses the very heart of the Indigenous argument in favour of expanded colonialism.

Flanagan takes the argument in favour of colonial practices further by stating that all methods for the recognition of First Nations’ distinctiveness ought to be slowly dismantled in favour of equal treatment of all citizens under the western, liberal ideology. He states, "It is contrary to all that Canada stands for to support a policy that extends special privileges based on race and ethnicity."¹³⁷ To Flanagan and theorists like him¹³⁸, to distinguish citizens based on ethnicity is contrary to the intentions of Canada’s colonial

¹³⁴ Coburn, Veldon (2009); p.100

¹³⁵ Flanagan, Tom (2003) *First Nations? Second Thoughts*. McGill-Queen’s University Press; p.88

¹³⁶ *Ibid*, p.52

¹³⁷ Smith, Mel (1996) *Our Native Land: What the Government's Aboriginal Policy is Doing to Canada*. Toronto: Stoddart Publishing; p.263

¹³⁸ see Widdowson, Frances & Howard, Albert (2008) *Disrobing the Aboriginal industry: The deception behind indigenous cultural preservation*. Montreal: McGill-Queen's University Press.

founding principles and should be avoided as much as possible. Flanagan attests that “...Aboriginal people need to acquire the skills and attitudes that bring success in a liberal society, political democracy, and market economy. Call it assimilation, call it integration, call it adaptation, call it whatever you want: it has to happen.”¹³⁹ He calls on similar thinking by building upon John Locke’s philosophy, where he re-affirms his belief that western civilizations have always been superior to Indigenous cultures.¹⁴⁰ He believes it would be best for First Nations peoples to be fully absorbed into Canada as any other citizen, free from distinction. These immoderate assertions have been met with obvious heavy resistance from the First Nations communities. Indigenous advocates such as Taiaiake Alfred and Kiera Ladner would note that Flanagan’s assertion that Canada’s foundations as an equal society runs in direct opposition of its history as a colonial nation.¹⁴¹ Colonialism has ensured a history of inequality that has had heavy negative impacts on the Indigenous population more than any other. In response to that, some have advocated alternatives to Canada’s unitary model.

On the other hand, unitary advocates still maintain that this model of citizenship would be best for Canada and assert the opposite of its critics: that it might address historical consequences in a new and positive way. Carens notes, “Many of the injustices that Aboriginal people have suffered in Canadian society have come precisely from the fact that they have not been treated as equal citizens, however equal citizenship is defined.”¹⁴² Proponents argue that by not treating First Nations as distinct or unique citizens, the government might rid itself of some of the hindrances that affect First

¹³⁹ Flanagan, Tom (2003); p.195

¹⁴⁰ *Ibid*; p.304

¹⁴¹ Alfred, Taiaiake (2009)(2) “Colonialism and state dependency” in *Journal de la santé autochtone*; Vol. 5; p.44

¹⁴² Carens, Joseph (2013); p.15;

Nations peoples policy-wise and eliminate the obstacles that stifle opportunities for growth. These arguments however, are very reminiscent of those proposed by Trudeau's *White Paper*, and like the *White Paper*, are likely to provoke Indigenous peoples fearful of further assimilation.

The concept of a unitary citizenship offers limited advantages in the face of increased pressures brought on by globalization. Due to the expanding and shifting ideas of citizenship in the age of globalization, nationalism has been threatened in a more palpable way than ever before. This is a challenge faced by all colonial nations all over the globe. Hébert and Wilkinson state, "In reaction to increasing diversity, there is considerable public pressure to reduce immigration, get rid of multiculturalism, string up feminist judges, and construct Canada as a unity rather than a complexity."¹⁴³ Such a plan might have been reasonably effective in years gone by, but citizens today have a far more vocal platform through which to express not only their identity, but also their discontent. The Internet, new medias and open market has created societies from which borders cannot effectively be closed, and dissent cannot easily be silenced. The accessibility to alternative methods through which citizens might express and campaign for their distinctiveness presents only challenges to the methods of maintaining a unitary citizenship model.

2.5 Conclusion

Through the preceding review of the Canadian system and where Indigenous peoples fit within it, the conclusion that I must draw is that the ideological

¹⁴³ Hébert, Yvonne & Wilkinson, Lori (2002); p.18

and historical underpinnings of Canadian citizenship has only furthered the alienation of Indigenous peoples and their identities in Canada. Political theorists in Canada, as well as a myriad of Indigenous scholars have postulated that an alternative theory of citizenship might better address the Canadian situation. These alternative forms of citizenship have varied from the popular pluralist theories of citizenship to theories where First Nations rely on their own sovereignty and self-governance to define their citizenship, free of the Canadian state. The discourse on the future of Canadian citizenship will be examined thoroughly by this thesis, as will the recommendations made by the Royal Commission on Aboriginal peoples concerning Canada's citizenship and how to best meet the needs of its Indigenous population.

Chapter Three

Framing the Issue: Participation, Identity, and Self-Determination

3.0 Introduction

It is clear from examining the history of relations between Indigenous peoples and the Canadian government that there are issues concerning citizenship and recognition that continue to cause tenuous relations to this day. This tenuous relationship manifests in many ways; through scholarship, protests, grassroots movements, and perhaps most notably, through lack of participation in the Canadian political process. The Royal Commission on Aboriginal Peoples (*RCAP*) also noted these manifestations of a broken relationship and sought to provide informed suggestions on how to best rectify the situation in the interest of both sides. *RCAP*'s official recommendations in the area of citizenship will be outlined in this chapter as will their potential to affect participation, identity and self-determination for First Nations peoples in Canada. The lack of participation by Indigenous peoples in Canadian politics and institutions is caused, in some cases, by political alienation. *RCAP*, and its recommendations, illustrate a complicated and oppressive relationship between Indigenous peoples and the Canadian government leading to issues of identity so problematic that they require a re-evaluation of the concept of Canadian citizenship. Issues of identity (whether it be negative, displaced or re-emerging traditional identities) have given weight to the argument in favour of self-determination, not only as a right, but a necessity to Indigenous peoples faced with multitudes of challenges. Self-determination continues to play an irreplaceable role in the expression of one's ability, as identities become more and more complicated in this post-colonial, globalized reality.

3.1 The Royal Commission on Aboriginal Peoples

The Royal Commission on Aboriginal Peoples was commissioned in 1991 by Prime Minister Brian Mulroney in response to the increasing tension between Indigenous peoples in Canada and the government, which had culminated in the Oka Crisis and the failure of the *Meech Lake Accord*. The purpose of *RCAP* was not to solely lay blame for the complexities and deficiencies found in the situation at the door of the Canadian government, but instead to "underscore the need to establish a new relationship in which Aboriginal governments have the legal, political and other means to participate as full intergovernmental partners of the Canadian federation."¹⁴⁴ Many scholars, officials, and Indigenous peoples were asked to participate in the large-scale study, considered to be one of the most thorough reviews of Canadian/Indigenous relations to this day. The Commission "engaged 178 days of public hearings, visiting 96 communities, commissioning research and consulting with experts."¹⁴⁵ The work in thoroughly examining the Indigenous situation in Canada took five years for the Commission to complete and cost a grand total of \$58 million over those five years. In its final report, the Commission recommended an overhaul of the dynamic governing the relationship.

The final report of the Commission was extensive and included 440 recommendations in areas ranging from governance to health and education to Arts and Culture¹⁴⁶. Much like the first Chapter of this thesis, *RCAP's Report* takes the time to fully examine the relationship between Indigenous and non-Indigenous peoples in

¹⁴⁴ Brown, Douglas & Rose, Jonathan, "Excising Aboriginal Self-Government: The intergovernmental transition", prepared for *RCAP*, P.14

¹⁴⁵ Vowel, Chelsea (2012) "Assimilation is not the answer to the Aboriginal Problem"; http://news.nationalpost.com/2012/12/31/chelsea-vowel-assimilation-is-not-the-answer-to-the-aboriginal-problem/#_federated=1

¹⁴⁶ Royal Commission on Aboriginal Peoples (1996)

Canada. The report does this because “consideration of this history will surely persuade the thoughtful reader that the false assumptions and abuses of power that have persuaded Canada’s treatment of Aboriginal peoples are inconsistent with the morality of an enlightened nation”¹⁴⁷ The assessment and recommendations of the report rested on the understanding of the relationship between Indigenous peoples and the settler society.

The Commission emphasized the importance of *mutual recognition* amongst Indigenous and non-Indigenous peoples. In such that “The Commission argues that mutual recognition is already formalized in historic treaties and that it is entirely consistent with the federal makeup of Canada.”¹⁴⁸ RCAP also draws upon the legal framework of Canada to inform how recognition ought to be determined. *RCAP* highlighted Canadian legal documents such as *Constitution* and the *Charter of Rights and Freedoms* entitles Indigenous rights in Canada and tries to assure that these rights are allocated without discrimination, and in accordance with Indigenous understanding. The Commission states:

“Under section 35 of the *Constitution Act*, 1982, an Aboriginal nation has the right to determine which individuals belong to the nation as members and citizens. However, this right is subject to two basic limitations... it cannot specify a minimum blood quantum as a general prerequisite for citizenship. Modern Aboriginal nations, like other nations in the world today, represent a mixture of generic heritages. Their identity lies in their collective life, their history, ancestry, culture, values, traditions and ties to the land, rather than in their race as such”¹⁴⁹

¹⁴⁷ Royal Commission on Aboriginal Peoples (1996); Vol.1, p.3

¹⁴⁸ Castellano, Marlene (2002) “Renewing the Relationship: A Perspective on the Impact of the Royal Commission on Aboriginal Peoples”; *Journal of Aboriginal Economic Development*; Edmonton: Captus Press; p.115

¹⁴⁹ Royal Commission on Aboriginal Peoples (1996); Vol.5; p.25-26

RCAP is purposeful in its assertion that these recommendations are not necessarily about race. First Nations people in particular have a shared history; one that comes from having endured colonial practices and policies designed to civilize and assimilate. To counter this, *RCAP* makes note that “[m]ost Aboriginal people continue to be guided, to some degree, by traditional outlooks in their approach to matters of governance. In some instances, Aboriginal communities have made traditional laws, practices and modes of leadership the basis of their contemporary governmental institutions.”¹⁵⁰ While recognizing this reality, *RCAP* illustrates that the recommendations made in its report are based upon instances where communities have taken initiative to implement self-governance measures as much as the *Indian Act* allows them.

The Royal Commission on Aboriginal Peoples’ *Final Report* contained four recommendations to the government on the subject of citizenship. These recommendations were as follows:

2.3.8 - The government of Canada recognize Aboriginal people as enjoying a unique form of dual citizenship, that is, as citizens of an Aboriginal nation and citizens of Canada.

2.3.9 - The government of Canada take steps that ensure the Canadian passports of Aboriginal citizens (a) explicitly recognize this dual citizenship; (b) identify the Aboriginal nation citizenship of individual Aboriginal persons.”

2.3.10 - Aboriginal nations, in exercising the right to determine citizenship, and in establishing rules and processes for this purpose, adopt citizenship criteria that (a) are consistent with section 35(4) of the *Constitution Act*, 1982; (b) reflect Aboriginal nations as political and cultural entities rather than as racial groups, and therefore do not make blood quantum a general prerequisite for citizenship determination; and (c) may include elements such as self-identification, community or nation acceptance, cultural and linguistic knowledge, marriage,

¹⁵⁰ Royal Commission on Aboriginal Peoples (1996); Vol.2; p.115

adoption, residency, birthplace, descent and ancestry among the different ways to establish citizenship.

2.3.11 - As part of their citizenship rules, Aboriginal nations establish mechanisms for resolving disputes concerning the nation's citizenship rules generally, or individual applications specifically. These mechanisms are to be (a) characterized by fairness, openness and impartiality; (b) structured at arm's length from the central decision-making bodies of the Aboriginal government; and (c) operated in accordance with the Canadian Charter of Rights and Freedoms and with international norms and standards concerning human rights.¹⁵¹

Through these recommendations, *RCAP* advocates for a vision of cooperation and mutual recognition that speaks to the values of a treaty relationship. Though unlike a true interpretation of the original treaty relationship, the Canadian federal government would still act as paramount authority and administrator, as it is difficult and undesirable for Canada as a nation-state to unravel years of colonial power and institutions. The political and socio-economic landscape has shifted dramatically in the past 150 plus years of colonial power, however this does not mean that First Nations today cannot thrive through greater self-determination. *RCAP* recommends taking full advantage of the right to self-determine by advocating a dual-citizenship, recognized by Canada, which reflects their unique identities, cultures, traditions, and values. *RCAP* does not advocate for an overhaul of Canada's concept of citizenship, but instead seeks to make room within it for Indigenous values.

One of the strengths in *RCAP's* findings is that it puts such emphasis on self-determination for First Nations. *RCAP's Report* states,

Aboriginal people are entitled to identify their own national units for purposes of exercising the right of self-determination. For an Aboriginal nation to hold the right of self-determination, it does not have to be recognized as such by the federal government or by provincial governments. Nevertheless, as a practical matter, unless other Canadian

¹⁵¹ Royal Commission on Aboriginal Peoples (1996); Vol.2; p.227

governments are prepared to acknowledge the existence of Aboriginal nations and to negotiate with them, such nations may find it difficult to exercise their rights effectively. Therefore in practice there is a need for the federal and provincial governments actively to acknowledge the existence of the various Aboriginal nations in Canada and to engage in serious negotiations designed to implement their rights of self-determination.¹⁵²

RCAP's findings acknowledge the politics of recognition when it comes to the issues of self-determination and sovereignty¹⁵³, yet impresses that First Nations may find it difficult to govern independently without recognition from Canada. To me, this also acknowledges that modern First Nations peoples exist in several spheres. It is increasingly difficult to act autonomously and ignore the interconnected relationships of not only governments, but citizens as well. Recognizing that Canada and First Nations are in a partnership and acknowledging that First Nations have a right to self-determine is in the best interest of First Nations peoples.

In my estimation, another strength of the recommendations made by *RCAP* lies in the recommendations for First Nations adopting citizenship criteria that reflects First Nations as political and cultural entities rather than racial groups. This essentially allows us to open the interpretation of who is considered First Nations to more than just a question of genetics. Allowing for self-identification in conjunction with other prerequisites such as community acceptance or cultural knowledge allows for nations to thrive and determine their own fates. Antiquated criteria for citizenship such as blood quantum promotes the eventual extinguishment of First Nations, as "In communities with 50% blood quantum rules, about one-third of the descendants made ineligible for

¹⁵² Royal Commission on Aboriginal Peoples (1996); Vol. 5; Appendix A; p.9

¹⁵³ Sovereignty is also acknowledged – Royal Commission on Aboriginal Peoples (1996); Vol. 5; Appendix A; p.13; "By virtue of this relationship, the Crown acts as the protector of the sovereignty of Aboriginal peoples within Canada and as guarantor of their Aboriginal and treaty rights."

membership each year will nonetheless have Indian registration.”¹⁵⁴ *RCAP* is right in recommending more than a blood quantum prerequisite to citizenship in First Nations as doing so supports discrimination and suggests that blood is more important than culture. A blood quantum requirement limits the Indigenous experience to only those who possess the necessary ancestry and dismisses those who live as First Nations despite a mixed ancestry.¹⁵⁵ Those raised in First Nations communities despite Indian Act policies to the contrary could have their identities and experience dismissed as they may not possess the sufficient blood quantum.

Some may suggest that one of the greatest weaknesses of *RCAP*'s conclusions is that it does not recommend changes to or call for the repeal of the *Indian Act*. Though this is true, that does not suggest that *RCAP*'s findings did not consider and address the monumental impact of the *Indian Act* and its history of assimilation upon Indigenous peoples. Volume 1 of the *Report* discusses the history and many areas of oppression found within the *Indian Act*. Likewise, the chapter also illustrates “the paradox of *Indian Act* reform”:

Despite being its harshest critics, however, Indian people are often extremely reluctant to see it repealed or even amended. Many refer to the rights and protections it contains as being almost sacred, even though they are accompanied by other paternalistic and constraining provisions that prevent Indian peoples assuming control of their own fortunes.¹⁵⁶

Therefore, the Commission does not attempt to officially favour one side of such a paradox by calling for the end of the *Indian Act*, as others, such as Borrows or Alfred

¹⁵⁴ National Centre for First Nations Governance; “Reclaiming Our Identity: Band Membership, Citizenship and the Inherent Right”;

http://fngovernance.org/resources_docs/ReclaimingOurIdentity_Paper.pdf; p.13

¹⁵⁵ This in turn would negatively impact the many children of Indigenous - non-Indigenous relations that attempted circumvent discriminatory *Indian Act* practices prior to 1985.

¹⁵⁶ Royal Commission on Aboriginal Peoples (1996); Vol. 1;

suggest. Instead, the Commission states, "... we can call attention to the factors, attitudes and continuing assumptions that brought about the *Indian Act* and that continue to prevent progress in moving away from the restrictive *Indian Act* vision."¹⁵⁷ Essentially, the Royal Commission attempts to overcome the *Indian Act*'s subversive colonial tactics in round about ways.

Though the *Final Report* and recommendations of the Royal Commission do not call for the end to the *Indian Act*, they do make recommendations that would result in the Act having to be revised. I draw this conclusion by examining other recommendations made in the Commission's final *Report*. For example, in regards to financing Aboriginal governments, *RCAP* recommends:

2.3.17 - Aboriginal governments established under a renewed relationship have fundamentally new fiscal arrangements, not adaptation or modification of existing fiscal arrangements for Indian Act band governments.

...
2.3.19 - Financial arrangements provide greater fiscal autonomy for Aboriginal governments by increasing access to independent own-source revenues through a fair and just redistribution of lands and resources for Aboriginal peoples, and through the recognition of the right of Aboriginal governments to develop their own systems of taxation.¹⁵⁸

These recommendations would require changes to the current language of the *Indian Act*, whereby the Canadian Minister of Finance or the Governor in Council ultimately determines much of the decisions regarding allocation of band finances.¹⁵⁹ These are not the only recommendations that contradict the current *Indian Act* system. From the

¹⁵⁷ *Ibid*

¹⁵⁸ Royal Commission on Aboriginal Peoples (1996); Vol. 2;

¹⁵⁹ Indian Act (1985); "Management of Indian Moneys" - Subsections 61 - 69

implementation of self-government¹⁶⁰, to the use of reserve lands, the recommendations made by *RCAP* would require significant revisions to the *Indian Act*.

RCAP states that dual citizenship “permits them [Aboriginal peoples] to maintain loyalty to their nation and to Canada as a whole.”¹⁶¹ Whether or not this is the end result, this idea of dual citizenship, whereby a citizen of a First Nation may be legally identified as both a member of that nation as well as Canada, is a far more inclusive one than that which we use today. Advocates of dual-citizenship, such as Borrows, advocate that such a system would go a long way in healing wounds of the past and allow for a closer relationship between First Nations and Canada. Having said that, why is this type of recognition so important to First Nations peoples? To better illustrate the value of dual-citizenship, I will examine Indigenous participation, identities, and importance of self-determination.

3.2 Participation

Through the historical examination of Indigenous peoples history and their relationship to Canadian citizenship found in Chapters One and Two of this thesis, it is argued that Indigenous peoples were decidedly left out of the conversation about who is a Canadian

¹⁶⁰ Royal Commission on Aboriginal Peoples (1996); Vol. 5; p.11 – “**2.3.4** All governments in Canada recognize that the inherent right of Aboriginal self-government has the following characteristics: (a) It is an existing Aboriginal and treaty right that is recognized and affirmed in section 35(1) of the Constitution Act, 1982.

(b) Its origins lie within Aboriginal peoples and nations as political and cultural entities.

(c) It arises from the sovereign and independent status of Aboriginal peoples and nations before and at the time of European contact and from the fact that Aboriginal peoples were in possession of their own territories, political systems and customary laws at that time.

(d) The inherent right of self-government has a substantial degree of immunity from federal and provincial legislative acts, except where, in the case of federal legislation, it can be justified under a strict constitutional standard.”

¹⁶¹ *Ibid*, p.225

and what that means. Therefore, many Indigenous peoples in Canada abstain from the entire process of participation in Canadian politics and institutions because of this historical alienation. For Indigenous peoples, the argument of unlawful sovereignty being coerced by the colonizers coupled with the lack of recognition has led to an alienation that can be measured in participation rates and voter turnout.¹⁶² Cairns affirms, “The ambivalence and resistance that First Nations display towards Canadian citizenship helps explain the recurrently low voting turnout at elections...”¹⁶³ For some Indigenous peoples, their argument is that Indigenous people ought not participate in a system which they feel is set against them, or at the very least, one which has not always recognized their unique status and rights. However, that is not to say that all communities are the same. Ladner asserts,

...electoral participation varies substantially, as does the manner in which individuals and collectivities rationalize their participation (or lack thereof) in Canadian politics. To further complicate matters, participation rates (and the rationalization thereof) vary, especially when comparing nationalists and traditionally minded individuals who are grounded in their communities with individuals who have few ties to their nation and its history, political traditions and sense of nationalism.¹⁶⁴

Therefore, we cannot conclude that all First Nations are the same, as we cannot treat them all as such. The varied participation (or lack thereof) is symbolic of each nation’s history and their relationship with Canada.

¹⁶² Dalton, Jennifer (2007) “Alienation and Nationalism: Is it possible to increase First Nations voter turnout in Ontario?”; *The Canadian Journal of Native Studies* XXVII 2; p. 247-291

¹⁶³ Cairns, Alan (2000) *Citizens Plus: Aboriginal Peoples and the Canadian State*; Vancouver: UBC Press; p.87

¹⁶⁴ Ladner, Kiera (2003); p.24

Though one might argue that voter turnout is in decline in most advanced democracies (such as Canada) as mobilization patterns change¹⁶⁵, the fact remains that the turnout is still substantially lower amongst Indigenous peoples. Ladner affirms, "...it is certain that the rate of electoral participation among Aboriginal peoples is, on average, considerably lower than among the general Canadian public."¹⁶⁶ In "Alienation of Nation: Understanding Aboriginal Electoral Participation" she notes some of the reasons why participation rates in Canada's electoral process are distinctly low. Ladner argues,

that electoral dispossession is the result of both the alienation of Aboriginal people from the Canadian political system and the discourses of nationalism and rights that permeate Aboriginal communities. The existence of these two factors highlights the need to address the recognition and participation of Aboriginal nations.¹⁶⁷

Alienation and a lack of Indigenous recognition are issues that many scholars such as Ladner, Dalton, and Guerin attempt to address through their examination and theorizations on Canadian citizenship.¹⁶⁸

Alienation and nationalism are also issues that held concern for the Royal Commission on Aboriginal Peoples. Volume 2 of *RCAP's Report* states, "lack of participation by Aboriginal people in Canadian institutions has been a growing problem in Canadian federalism and undermines the legitimacy of our system of government."¹⁶⁹ It is with this in mind that the Commission made its recommendations; as a means of promoting Indigenous participation in Canada and its processes. In the opinion of the

¹⁶⁵ Gray, Mark & Caul, Miki (2000) "Declining voter turnout in advanced industrial democracies, 1950 to 1997"; *Comparative Political Studies*; 33: 1091-1121

¹⁶⁶ Ladner, Kiera (2003); p.21

¹⁶⁷ Ladner, Kiera (2003); p.21

¹⁶⁸ For further discussion, see Ladner, Kiera (2003); Dalton, Jennifer (2007); and Guerin, Daniel (2003) "Aboriginal Participation in Canadian Federal Elections: Trends and Implications"; *Electoral Insight*; Vol.10

¹⁶⁹ Royal Commission on Aboriginal Peoples (1996), Vol. 2; p.375-376

Commission, a more inclusive citizenship model, based on recognition and self-determination, might encourage participation and help move towards a renewed relationship.

3.3 Identity

There exists a great deal of difficulty in properly articulating traditional Indigenous identities and their intersectionality in terms that non-Indigenous peoples, and the state in particular, can understand. Alfred attempts to unpack this by stating,

“Indigenous cultures reflect a worldview that is illuminated by notions of fluidity, flux and an abstract conceptual understanding – each Indigenous language developed in a cultural context and is able to articulate the subtleties and spirituality of the identities and realities of those particular people. This is the basic, technical, problem with using European terms to describe and label Indigenous peoples.”¹⁷⁰

Indeed, identity can be a difficult concept to explain when perspectives are so very different. What is more, the very language used in describing identity politics can also be problematic and perpetuate misunderstandings in the worldviews, or worse, further marginalizing the oppressed identity. Alfred explains,

“All colonial terms are inherently racist; whether “savage” or “Indian” or “Aboriginal,” all of these terms are inaccurate and dismissive of our true existences as ancient first peoples within our homelands, and they are instrumentally deflective of any consideration of the true history of our relationship with the land and with the newcomers who have populated it.”¹⁷¹

Therefore it is important that identities be expressed within the context of the people found within them. In the case of Indigenous peoples, “Indigenous identity is so bound up

¹⁷⁰ Alfred, Taiaiake (2009) “First Nation Perspectives on Political Identity”; *Assembly of First Nations research paper, June, 6*; p.5

¹⁷¹ Alfred, Taiaiake (2009); p.5

in culture, language, territory, family, community, and history that the denial of any one of these factors can have traumatic effects on an individual's identity and sense of self."¹⁷² Indeed, Canada has witnessed the effects of denying Indigenous peoples their identity in a variety of ways, from early colonial practices, to *Indian Act* legislation and its amendments, to the Indian residential school system. The effects have been profound.

Generations of peoples who have had their traditional identities stripped, distorted, or have been denied these identities as Indigenous peoples have suffered, whether directly oppressed or not. "The past also exists as memory, as a key source of our identity, and as a contributor to whether we feel valued or unrecognized. The past is the raw material from which senses of pride or alienation derive or are fabricated."¹⁷³ Pride or alienation can be used to frame identity in a variety of ways. The history of a people, or on a more personal level, a family, can have a generational impact that is directly tied to feelings of self-esteem and worth. This history is something that Indigenous people will always be faced with. Cairns notes, "The past is an inexhaustible resource in the struggle for self-esteem, or to have the leading role of one's party, class, ethnic group, or sex accepted as right and proper, or conversely, to make compelling claims for compensatory treatment in the present for past injustice whose lingering effects are still visited by survivors."¹⁷⁴

Therefore many Indigenous people in Canada have suffered in terms of identity,

¹⁷² Palmater, Pamela D. (2014); p.28

¹⁷³ Cairns, Alan (1995) *Reconfigurations: Canadian Citizenship & Constitutional Change: Selected Essays*. Toronto: McClelland & Stewart; p.25

¹⁷⁴ Cairns, Alan (1995); p.25

not only because the traditional values of which have been replaced by a western colonial paradigm, but also because their value as a peoples subsequently has been marginalized by the federal government's treatment of them. Harold Cardinal aptly states, "Tell a person long enough and often enough that he is inferior, and he will eventually accept the false image that you thrust upon him."¹⁷⁵ The damaging self-image endured by many Indigenous people is a current reality due to the various ways in which colonialism is perpetuated, be it through the *Indian Act*, government interference, or racism administered by others. "There are towns and cities in Canada where simply being an Indian means getting a beating... No citizen is likely to forget his identity under such circumstances."¹⁷⁶ This type of engrained racism experienced in Canada illustrates a harsh reality that would make citizenship a question to those clearly perceived as the 'other'. Furthermore, as Leanne Simpson asserts, it is the shame directed towards themselves, and in some cases towards their societies that has prevented Indigenous peoples from rising up against harsh colonial practices.¹⁷⁷

Though there has been a profoundly damaging history linked to Indigenous identity, there are reasons to hope that they can be overcome. *RCAP* notes, "There is already a movement afoot among Aboriginal people to recapture their identity and culture..."¹⁷⁸ As I illustrate in Chapter Five, authors such as Borrows, Palmater, Alfred and others advocate for a return to Indigenous traditions and knowledge as part of the process to regaining power in the area of citizenship. Likewise, *RCAP* gave

¹⁷⁵ Cardinal, Harold (1999) *The Unjust Society: The Tragedy of Canada's Indians*. British Columbia: Douglas and McIntyre; p.4-5

¹⁷⁶ Cardinal, Harold (1999); p.18

¹⁷⁷ Simpson, Leanne (2011) *Dancing on our Turtle's Back: Stories of nishnaabeg re-creation, resurgence and a new emergence*. Winnipeg: Arbeiter Ring Pub.; p.14

¹⁷⁸ Royal Commission on Aboriginal Peoples (1996); Vol. 2; p.6

recommendations that would see First Nations determine their own values and traditions in determining their own citizenship criteria rather than depend on an *Indian Act* system. These are each steps towards decolonization. Poka Laenui affirms, "...rediscovering one's history and recovering one's culture, language, identity, and so on is fundamental to the movement for decolonization."¹⁷⁹

Additionally, it is important to note that some identities have formed around and in spite of colonialism. The argument made by many is that, like the nature of citizenship itself, identity is an evolving concept, capable of including multiplicities and adapting to socio-political environments. Tim Schouls expresses that people must not "lose sight of the fact that Aboriginal identity can incorporate more than one kind of identity."¹⁸⁰

Indigenous peoples, and perhaps just as importantly, Canada, must not allow itself to be constrained by the concepts of Indigenous identities of the past. Canada must widen its notion of Indigeniety to be inclusive. The notion that identity is not static leaves me to conclude that it is not something that can be determined by others. Racial, political, or religious interpretations of identity should not be created in order to exclude those who wish to self-identify, as identities are personal as well as collective constructs. Therefore self-determination holds immeasurable value to Indigenous people and their future.

3.4 Self-Determination

One of the arguments in favour of Indigenous self-determination comes from the early British practice of *lex loci* and the Treaties themselves. The idea holds "that local laws and governing institutions of a territory are respected and become incorporated

¹⁷⁹ Laenui, Poka (2000) "Process of Decolonization" in *Reclaiming Indigenous Voice and Vision* by Marie Battiste (ed.); Vancouver: University of British Columbia Press; p.153

¹⁸⁰ Schouls, Tim (2002); p.120

under the common law.”¹⁸¹ This practice was utilized in the early years of colonialism and has given grounds to the strong argument that because Indigenous peoples were self-determining and self-governing prior to and during the early years of settlement. The laws and constitutional orders of Indigenous peoples had been developed through years of Indigenous history and in relation to their own world-views. Kiera Ladner and Michael McCrossan add that Indigenous peoples never forgot their own laws and customs and that the treaties should be evidence of self-determination through the recognition and affirmation of Indigenous legal orders.¹⁸² Though colonialism dismissed and attempted to replace these Indigenous laws, based in each of their own nations, their existence allows for some scholars, such as Henderson and Ladner to advocate a return to a treaty relationship through treaty federalism.¹⁸³ Moreover, this claim to self-determination allows Indigenous peoples to form their own citizenship criteria that could be implemented along with or instead of that which the Canadian government has created.

The report provided by the Royal Commission on Aboriginal Peoples states, “The right of self-government is the fundamental starting point for Aboriginal initiatives in the area of governance.”¹⁸⁴ The report further notes that self-governance must come from the peoples themselves and their own interpretations. As the Canadian government has imposed an *Indian Act* system upon First Nations in years gone by, imposing a new

¹⁸¹ Barsh, Russel L. (2012) “Indigenous Rights and the *Lex Loci* in British Imperial Law,” in *Advancing Aboriginal Claims: Visions, Strategies, Directions*, by Wilkins, Kerry (ed.); Saskatoon: Purich Publishing

¹⁸² Ladner, Kiera & McCrossan, Michael (2009) “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; p.276

¹⁸³ See Ladner, Kiera (2006) “Take 35: Reconciling Constitutional Orders”. A paper presented at the 78th Annual Conference of the Canadian Political Science Association (June 1-3, 2006). York. < <ftp://host-209-183-10-27.static.dsl.primus.ca/cpsa-acsp/papers-2006/Ladner.pdf>> ; and Henderson, Sakej Y. (2002) “Sui Generis and Treaty Citizenship”; *Citizenship Studies*; Vol. 6, No. 4.J

¹⁸⁴ Royal Commission on Aboriginal Peoples (1996); Vol. 5; Appendix A; p.10

regime would only result in similar damage. “No government can be imposed upon a people without their consent; this would be a denial of their right of self-determination.”¹⁸⁵ If First Nations are to become more and more self-governing, then their strength will come from self-determination, as each First Nation is unique. Therefore, the value of self-determination cannot be understated and must be recognized. It is by the same rationale that *RCAP* furthermore recommends, “(2.3.2) All governments in Canada recognize that Aboriginal peoples are nations vested with the right of self-determination”.¹⁸⁶ Once again, recognition has been highlighted as key to building better relations, indicating that *RCAP* and its recommendations demonstrate respect for the power self-determination holds and seeks to empower it.

However, no matter the repeated appeals for greater development to self-determination for Indigenous peoples and the many Canadian court cases that have asserted that Indigenous peoples have a right to self-determination, the government of Canada has so far generally opted in favour of maintaining the colonial status quo. In the face of this, Jeff Corntassel presses, “In order to live as self-determining nations, Indigenous peoples must confront existing colonial institutions, structures, and policies that attempt to displace us from our homelands and relationships, which impacts the health and well-being of present generations of Indigenous youth and families.”¹⁸⁷ For many, the obstacles created by legislation and colonial institutions are so great that it has hindered this development. However, like *RCAP*, I believe that this confrontation must

¹⁸⁵ Royal Commission on Aboriginal Peoples (1996); Vol. 2; p.14

¹⁸⁶ Royal Commission on Aboriginal Peoples (1996); Vol. 5; p.15

¹⁸⁷ Corntassel, Jeff (2012) “Re-envisioning resurgence: Indigenous pathways to decolonization and sustainable self-determination” in *Decolonization: Indigeneity, Education & Society*; Vol. 1, No. 1; p.89

occur in order for First Nations to move forward towards decolonization and reconciliation.

As states earlier in this Chapter, through the *Indian Act*, First Nations peoples' identities have been determined. Likewise, the *Act* also provided First Nations with membership (sometimes referred to as citizenship) codes. This is important to the future of all citizenship for Indigenous peoples, and is an area in which holds particular significance for self-determination. "The ability to determine membership is fundamental to [I]ndigenous self-determination, particularly because settler governments have so long arrogated this responsibility to themselves."¹⁸⁸ Likewise, band membership is very important for individual reasons as well as collective ones. It determines not only a part of your identity, but your ability to share in your rights as well. Furi and Wherrett explain, "Membership is very important, because it may bring rights to live on reserve, participate in band elections and referendums, own property on reserve, and share in band assets."¹⁸⁹ Since its formal construction within the Canadian context, membership was determined by a list outlined through the *Indian Act*, however that changed June 28th, 1987 following *Indian Act* revisions found in Bill C-31.¹⁹⁰ In 1987 First Nations were permitted to develop their own membership codes¹⁹¹, though some who did were met with criticisms, as some had been done as a reactionary tactic to prevent previous members from

¹⁸⁸ Blackburn, Carole (2009); p.72

¹⁸⁹ Furi, Megan & Wherrett, Jill (1996); "Indian Status and Band Membership Issues"; A Paper prepared for the Political and Social Affairs Division; February, 1996; Revised: February, 2003; <http://www.parl.gc.ca/content/lop/researchpublications/bp410-e.htm#2bandtx>; p.9

¹⁹⁰ See Chapter One of this Thesis

¹⁹¹ "Section 10 enables First Nations to enact their own membership or citizenship codes, according to procedures set out in the Indian Act." Furi, Megan & Wherrett, Jill (1996); p.5

returning and thereby exhausting services and community assets.¹⁹² Of course, for those who have not submitted a membership code, section 11 stands as not only the law, but a reminder of the assertiveness of the *Indian Act* upon Indigenous identity.¹⁹³ “In 1999, of the 610 First Nations in Canada, 360 First Nations had determined their membership under the provisions of section 11 of the *Indian Act*.”¹⁹⁴ As over half of the First Nations decided to continue the colonial practices imposed upon them by the *Indian Act*, I argue that previous attempts to elicit true self-determination were insufficient.

It is with these past mistakes in mind that *RCAP* made its recommendations for the government of Canada to show a renewed effort to self-determination for First Nations peoples, given its status as an Indigenous right, and for First Nations to legitimize self-determination in the area of citizenship through active participation. Indigenous identity and self-determining citizenship must be acknowledged in order to prevent further colonial practices from infringing on these rights.

3.5 Conclusion

Hébert and Wilkinson state, “Citizenship is a complex part of collective identity.”¹⁹⁵ This could not be truer. What *RCAP*’s recommendations attempt to do is to recognize this complexity and make room within Canada’s socio-political landscape for Indigenous peoples and their right to self-determination. The Royal Commission was tasked with

¹⁹² For more, see Furi, Megan & Wherrett, Jill (1996); “Indian Status and Band Membership Issues”; A Paper prepared for the Political and Social Affairs Division; February, 1996; Revised: February, 2003; <http://www.parl.gc.ca/content/lop/researchpublications/bp410-e.htm#2bandtx>; and Holmes, J (1987) “Bill C-31: Equality or Disparity? The Effects of the New Indian Act on Native Women”; *Canadian Advisory Council on the Status of Women*; Ottawa; p.40

¹⁹³ Section 11 outlines the Band List to be kept of persons entitled to be registered as “status” Indians under paragraph 6(1)(b), 6(1)(c), 6(1)(d), 6(1)(e), 6(1)(f), or paragraph 6(2). For full details, see *Indian Act* (1985); Ottawa: Public Works and Government Services Canada

¹⁹⁴ Furi, Megan & Wherrett, Jill (1996); p.10

¹⁹⁵ Hébert, Yvonne & Wilkinson, Lori (2002); p.3

identifying the various issues that hinder the relationship between Indigenous peoples and the rest of Canada, and it did so thoroughly. At its conclusion, the Commission determined that the way Canada treats citizenship for Indigenous peoples is in need of revision. *RCAP* makes recommendations that it believes will not only encourage more engagement and participation from First Nations peoples, but ones that will also allow for the inclusion of Indigenous values, aiding in the process of decolonization. The belief behind *RCAP*'s conclusions being that allowing for better representation and recognition of First Nations traditions and identities will promote not only better relations, but better citizens. A dual-citizenship model with the intention of bettering and recognizing Indigeniety results in a more inclusive Canada where personal and collective identities can be expressed.

Colonialism, marginalization, and misrepresentation have all taken a toll on First Nations peoples in Canada. However, the value of greater self-determination in when it comes to Indigenous identities and citizenship is immeasurable. That is partially why the Royal Commission on Aboriginal Peoples put such an emphasis on its use in creating a future dual-citizenship for Canada and Indigenous peoples. Through examining the impact these recommendations might have in the areas of participation, identity, and self-determination, I see its advantages. Though, as I explain in Chapter Five, many Indigenous scholars do not believe the recommendations made by *RCAP* go far enough as it does not call for the abolishment of the *Indian Act*, I believe it to be a solid way forward. A dual-citizenship model is more comprehensive to Indigenous issues of self-determination and identity than the citizenship models in Chapter Four and is a step in the right direction.

Chapter Four

Canadian Pluralism:

Examining the Turning Tide in an Era of Globalization

4.0 Introduction

In previous Chapters, the importance of the government's recognition of Indigenous identities has been highlighted. In the many years of colonial subjugation, means of recognition have been done through *Indian Act* legislation, and not in a way that truly personifies Indigenous identity or experience. The early political order of Canada purposefully neglected ethnic and cultural diversity within its society in respect to citizenship formation, however as society evolves, "any further development of the theory of citizenship will have to deal more fundamentally with societies in which the struggle over citizenship necessarily involves problems of national identity and state formation in a context of multiculturalism and ethnic pluralism."¹⁹⁶ Many Indigenous people do not feel as though they belong in the current paradigm of Canadian citizenship and many scholars have responded with pluralism.¹⁹⁷

The issue of Indigenous alienation has challenged political theorists in Canada for decades and in response, several theories have been proposed. The theories proposed have included varying degrees of recognition and self-determination for Indigenous peoples in Canada. The result is a group of pluralist theories on citizenship that help to bring recognition to the forefront, but ultimately fail to truly empower Indigenous peoples as citizens. Issues surrounding Indigenous citizenship in Canada and its many intricacies will be examined within this Chapter, which serves to demonstrate the value

¹⁹⁶ Turner, Bryan (1994) "Outline on a Theory of Citizenship" in *Citizenship: critical concepts* (Vol. 1) by Turner, B. S., & Hamilton, P. (Eds.); Taylor & Francis; p.221

¹⁹⁷ Pluralism is a political philosophy that acknowledges the diversity within a political body and promotes the coexistence of multiple interests and identities.

and importance of pluralistic theory to the citizenship debates amongst theorists. This chapter also serves to illustrate the need for Indigenous perspective within future conceptions of citizenship. In this Chapter, I will explore the various models of pluralistic citizenship presented over the years by Will Kymlicka, Charles Taylor, and Alan Cairns. This exploration serves to illustrate how their contributions to the pluralist paradigm have demonstrated gaps in the area of Indigenous recognition and informed the recommendations made by *RCAP* in the area of citizenship.

4.1 Making Room: An Overview of Pluralist Models of Citizenship

“Officially” Canada has pronounced a unitary perspective of Canadian citizenship.¹⁹⁸ However, the shortcomings of this exclusionary model has given rise to a multitude of pluralist theories, each attempting to promote citizenship by expanding to accommodate multiculturalism in the modern world. As a result, Canada recognizes certain group rights, particularly Aboriginal rights and rights held by the Québécois, in addition to the rights of the average Canadian citizen.¹⁹⁹ Because of this attempt at accommodation, these citizens are sometimes considered “citizens plus”. Therefore, some citizens have rights they hold above and beyond general rights bestowed by citizenship. Though pluralism acknowledges the distinctiveness of these groups of citizens, the degree to which their distinctiveness would be recognized by these models vary from scholar to scholar. All the while, these models sustain principles found within the unitary model of citizenship. As Joseph Carens states the aim of pluralistic models of citizenship

¹⁹⁹ Examples of group rights protected in Canada include language rights for the Quebecois, as well as treaty and Aboriginal rights found in Section 35 of the *Canadian Constitution*.

is to "...show that it is possible to preserve elements of this unitary ideal of equal citizenship while transcending it in some respects."²⁰⁰ Each scholar proposes to create a vision of Canada that contributes a different model through which they hold different values and each address the position of First Nations peoples in relation to Canadian citizenship.

Pluralistic citizenship models advocate that "the public sphere of Canadian citizenship must be characterized by heterogeneity, rather than the homogeneous paradigm of a single, dominant culture and nation, founded in Western politico-philosophical traditions, that is ubiquitous in Canadian mainstream society."²⁰¹ This beckons the ideas promoted by Pierre Trudeau, which "promoted equality, seeking to protect disadvantaged groups through a combination of fundamental individual rights and protection from discrimination"²⁰² while maintaining a strong sense of national unity. Trudeau's view attempted to enhance the previous ideals of unitary citizenship with greater recognition of distinctiveness. This limited sense of pluralism was entrenched in our institutions through the *Charter of Rights and Freedoms* in the *Canadian Constitution*.²⁰³ Its entrenchment has been the basis for many who build upon the concept of special status for certain groups within Canada. Theorists such as Charles Taylor have argued this perspective of 'multinational federalism' for decades, claiming that federalism can lend itself to more than just territorial jurisdiction. In later years, Will Kymlicka extends the rationale for this type of federalism by stating that national

²⁰⁰ Carens, Joseph (2013); p.15

²⁰¹ Coburn, Veldon (2009); p.6

²⁰² Jenson, Jane (1998) "Recognizing Difference: Distinct Societies, Citizenship Regimes and Partnership". *Roger Gibbins et Guy Laforest (sous la direction de), Beyond the Impasse, toward reconciliation, Montréal, Institut de recherche en politiques publiques*; p.216

²⁰³ Kane, Doug, (2000), p.23

minorities ought to be recognized for their special and equal status when decisions are made within their purview.²⁰⁴

The value in theories of accommodation as presented in pluralistic models of citizenship is that they not only address the issues of First Nations citizenship, but also the growing issues of multiculturalism in Canada. Part of the goal of pluralistic theories is to promote accommodation of varying levels of diverse identities, which in turn should increase inclusivity within citizenship. Yvonne Hébert and Lori Wilkinson have written that the nature of citizenship is changing and that “citizenship has moved from being closed to being open, from exclusion to inclusion.”²⁰⁵ This development surmises that while Canada has not officially taken a more inclusive view of its citizenship model, perhaps it is time for it to review its position for the sake of accommodation over ostracism. Furthermore, the pluralists move to “support the view that there are various interpretations and multiple identifications that are compatible with democratic citizenship rather than a single, undifferentiated notion of citizenship, a perspective that we term ‘multiple citizenship’.”²⁰⁶ That is to say that citizenship models should take into account the different groups that define its citizens.²⁰⁷ Furthering this need for expanded recognition, Iris Young notes, “The concept of a social group has become politically important because recent emancipatory and leftist social movements have mobilized around group identity rather than exclusively class or economic interests.”²⁰⁸ An augmented perspective of citizenship based on group identities has been one of the

²⁰⁴ *Ibid*

²⁰⁵ Hébert, Yvonne & Wilkinson, Lori (2002); p. 3

²⁰⁶ *Ibid*; p. 4

²⁰⁷ Hébert, Yvonne (ed) (2002) *Citizenship in transformation in Canada*. chapters by Veronica Strong-Boag, Yvonne Hébert, Lori Wilkinson. Toronto: University of Toronto Press; p.5

²⁰⁸ Young, Iris (1989); p.259

approaches taken by those, such as Iris Young²⁰⁹, who have recognized the proliferation of modern pluralistic society.

Of the fallacy of unitary equality Iris Young argues, “their emphasis on what citizens have in common tends to privilege the perspectives of dominant social groups and to exclude the perspectives of the oppressed or marginalized.”²¹⁰ For Young, modern conceptions of citizenship should seek justice for those who might remain alienated by traditional citizenship instead of striving for indiscriminate equality amongst citizens. “Young argues that by affirming the different locations of citizens in terms of historical-cultural consciousness, gender, class, and so on, it is possible to create a genuinely inclusive citizenship...”²¹¹ This theory of differentiated citizenship is a far cry from the ideas of Tom Flanagan, however other advocates of pluralistic citizenship models find that it does not go far enough in responding to the issues of Indigenous peoples.

Authors such as Taylor and Kymlicka have discussed at length the possibilities for differentiated citizenship in Canada. Philip Resnick similarly asserts the need for minority nationalities to receive recognition and concludes, “it is for the members of majority nationalities to make the requisite concessions and to rethink the institutions of the shared state along multinational lines”²¹² These supporters of differentiated citizenship acknowledge that citizenship is fluid and therefore claim that the majority

²⁰⁹ “I think that group differentiation is an inevitable and desirable process in modern societies.” Young, Iris (1989); p.261

²¹⁰ Carens, Joseph (2013); p. 17

²¹¹ Green, Joyce (2005) “Self-determination, citizenship, and federalism: indigenous and Canadian palimpsest.” In *Reconfiguring Aboriginal-State Relations*, ed. Michael Murphy, 329-355, Montréal: McGill-Queen’s University Press; p.202

²¹² Resnick, Philip (2005) “Accommodating National Differences Within Multinational States” in *Democracy, Nationalism and Multiculturalism* by Máiz, Ramón & Requejo, Ferrán (eds.); London: Routledge; p.43

ought to opt for inclusiveness in order to retain membership of those who may feel marginalized.

Under pluralist theories, the recognition of “sub-categories” of citizenship, whether they are through deep diversity or another form of differentiated citizenship, is a requisite to the argument. In order for pluralist forms of citizenship to succeed, they ought to acknowledge the debate over collective group rights in the face of the established liberal-democratic paradigm. In making a case in favour of differentiated citizenship that would promote the ideals of multiculturalism, much like the form proposed by Kymlicka, Chris Cunneen explains that “differentiated citizenship represents a new notion of citizenship based on collective rights (self-determination) as well as the traditional individual rights associated with liberal notions of citizenship”²¹³ He also notes that “collective rights for Indigenous peoples are embodied in the principle of self-determination, yet individual rights are also still an important aspiration for Indigenous people...”²¹⁴ The pluralists discussed within this Chapter agree that though the acknowledgement of diversity is paramount to First Nations place within Canadian citizenship, it should not come at the expense of individual rights, freedoms, or identity.

Yet, some scholars like Holder and Corntassle acknowledge that recognition of diversity may not be enough to satisfy Indigenous groups, as there exists such a disparity between the Indigenous and Eurocentric worldview. Such scholars explore these differences in order to advocate a better understanding of indigeniety,

²¹³ Cunneen, Chris (2005) “Consensus and Sovereignty: Rethinking policing the light of Indigenous self-determination” in Barbara Hocking (ed)’s *Unfinished Constitutional Business?: Rethinking Indigenous Self-Determination*; Canberra, Au: Aboriginal Studies Press; p. 59

²¹⁴ *Ibid*

The ways in which indigenous groups conceive of groups and their relation to respect for individual dignity are not only more complex than the liberal-individualist or corporate approaches... but offer a more sophisticated understanding of the relationship between individuals and groups than either theoretical approach.²¹⁵

However, as Chapter Five of this thesis will demonstrate, pluralistic citizenship theories without Indigenous self-determination, which lacks Indigenous traditions or understanding, does provide an appealing alternative to those who seek recognition of their collective group rights and status. These theories seek to bestow recognition without acknowledgement of the disparity between Indigenous and western world-views.

Though pluralistic theories of citizenship do address significant instances of diversity, it is unable to delve deeper, as it struggles to maintain a degree of unity within the nation-state at the same time as distinguishing its citizens. It must walk a careful path between diversity and unity. It has been noted, “Although Canada is a liberal democracy, this [unitary] model is seriously criticized, since it is unable to include many groups... State neutrality is unable to cope with a dominant ethos and with a tremendous range of pluralities.”²¹⁶ This may even be the case in a post-pluralistic citizenship regime, as the pluralities found within the Indigenous experience are many. The Inuit and Métis present an even greater challenge to the country as they are distinctive still from First Nations. These distinctions within the Indigenous label are in themselves each distinct and treated differently by the government through way of the *Indian Act*. It is only after the government determines a model through which First Nations identities can be adequately expressed and recognized that the Canadian state can move towards reconciliation and further inclusiveness for its’ citizens.

²¹⁵ Holder, Cindy L. & Corntassle, Jeff (2002); p.128

²¹⁶ Hébert, Yvonne & Wilkinson, Lori; (2002) p.8

Unfortunately, though pluralistic theories on citizenship have been at the forefront of Canadian politics, with the debate raging between the likes of Taylor, Kymlicka, Flannigan, Cairns and other scholars, a model has yet to pass into practice. Likewise, the argument for multinational, or asymmetrical federalism has been proposed for decades, yet it has been a hard sell in Canada. “Kymlicka concludes that since it is obviously difficult to convince English Canada of the need for asymmetrical federalism... there is not a lot of immediate hope that Canadians will find their way out of this impasse.”²¹⁷ Furthermore, though pluralistic theories of citizenship are much more inclusive in nature, they all fail to address the deepest criticism presented by Indigenous nationalism. As it fails to grant true equality within the realm of citizenship, Indigenous scholars present another voice of contention to the theories of pluralism presented within this Chapter as it does not address a nation-to-nation relationship designated by Treaty within Canada. Though pluralism offers a recognition of diversity, it seldom promotes the value and rights to self-determination Indigenous scholarship seeks and which the recommendations found within *RCAP* provide. Namely, pluralism acknowledges the need for recognition, but not the need for the terms of such recognition to come from the peoples being recognized. It is this departure from the origins of their relationship with the First Nations that continues to pose a challenge for pluralist theory in Canada.

4.2 Will Kymlicka: Differentiated Citizenship

Will Kymlicka writes extensively on the values of group differentiated minority rights, and as an extension he advocates a theory of differentiated citizenship intended to manage differences within citizenship without compromising the rights or identities of

²¹⁷ Kane, Doug (2000) p.24

the disadvantaged, ethnic groups and Indigenous peoples. He argues that Indigenous issues and identities are a part of the diversity of Canada, falling under the label of multiculturalism. Kymlicka argues, "...there is ample evidence from around the world that differences in ethnic and national identity can, if emphasized and politicized, form a barrier to a wider solidarity."²¹⁸ Though the traditional liberal belief is that citizenship requires treating people as individuals with equal rights and responsibilities of citizenship, Kymlicka claims "If differentiated citizenship is defined as the adoption of group-specific polyethnic, representation, or self-government rights, then virtually every modern democracy recognizes some form of it."²¹⁹

Kymlicka builds upon the previous works of T.H. Marshall, by noting the difference between citizenship-as-activity and citizenship-as-status.²²⁰ He furthermore builds upon Marshall advocacy for higher levels of inclusion in citizenship, as well as that of Iris Young.²²¹ In his works, Kymlicka outlines 3 forms of differentiated citizenship for Canada. First is representative, second is polyethnic and the third form is self-government. Of the third level, he states that self-government rights "are the most complete case of differentiated citizenship, since they divide the people into separate 'peoples', each with its own historical rights, territories and powers of self-government; and each therefore with its own political community."²²² This is where Kymlicka would therefore place the citizenship rights of Indigenous peoples in Canada.

²¹⁸ Kymlicka, Will (1996) *Multicultural Citizenship: A Liberal Theory of Minority Rights*; Oxford: Clarendon Press; p.173

²¹⁹ Kymlicka, Will (1996); p.174

²²⁰ Kymlicka, Will & Norman, Wayne (1994); p.354

²²¹ *Ibid*; 370-72

²²² Kymlicka, Will (1996), p.182

In his evaluation of this third, and deepest, level of differentiated citizenship, Kymlicka expresses some concerns that “self-government rights pose a more serious challenge to the integrative function of citizenship.”²²³ This is because “demands for self-government...reflect a desire to weaken the bonds with the larger political community, and indeed question its very authority and permanence.”²²⁴ Operating within pluralist theory, these concerns can be seen as justifiable, as many Indigenous perspectives do not acknowledge the authority of a nation-state such as Canada in holding sovereignty over them. Though he acknowledges its existence, Kymlicka warns against this level of differentiation, concerned that it would create an unstable citizenship regime. “Moreover, there seems to be no natural stopping point to the demands for increasing self-government. If limited autonomy is granted, this may simply fuel the ambitions of nationalist leaders who will be satisfied with nothing short of their own nation-state.”²²⁵

Kymlicka’s solution is therefore akin to treating Indigenous peoples as a ‘national minority’, referring to them as their own community with shared history and language that distinguishes themselves from other Canadians.²²⁶ To Kymlicka, this level of diversity allows Indigenous peoples recognition of their distinction coupled with certain jurisdictional powers would allow Indigenous communities to move forward while encouraging participation within the greater citizenry.²²⁷ However, the level to which these jurisdictional powers allow Indigenous communities to move forward is debatable,

²²³ *Ibid*

²²⁴ *Ibid*

²²⁵ Kymlicka, Will (1996); p.182

²²⁶ *Ibid*; p.19

²²⁷ *Ibid*; p.20

as Indigenous scholars will point out the restrictive nature of a governance structure that seeks to determine their membership and limitations.

In my estimation, one of the more substantial flaws in Kymlicka's case for differentiated citizenship, rests on the following: "In a society which recognizes group-differentiated rights, the members of certain groups are incorporated into the political community, not only as individuals, but also through the group, and their rights depend, in part, on their group membership."²²⁸ The idea of group rights and a level of citizenship that depends on group membership results in a gap, which is clearly visible within the discourse of Indigenous membership in Canada. If the nature of this pluralistic theory of citizenship depends on who decides who is a member of the Indigenous group in question, more questions arise. As previously noted, at present, government legislation dictates the legal status of who is a First Nations person in Canada, though many communities argue for future definitions built upon self-identification and self-determination.

Kymlicka warns against the deepest level of differentiated citizenship because he argues that it could result in a fracture in Canadian citizenship. He notes, "If citizenship is membership in a political community, then in creating overlapping political communities, self-government rights necessarily give rise to a sort of dual citizenship and to potential conflicts about which community citizens identify most deeply."²²⁹ Though the argument can be made that this duality is already at play only without official recognition by the state. First Nations exist as nations protected by Aboriginal rights in Canada and Section 35 of the *Canadian Constitution*, leaving many within these nations to hold their

²²⁸ *Ibid*; p.174

²²⁹ Kymlicka, Will & Norman, Wayne (1994); p.375

membership above their legal citizenship as Canadians. *RCAP*'s recommendations acknowledge this reality and therefore relies heavily on the Indigenous right to self-determination, encouraging Indigenous citizens to move beyond *Indian Act* terms of recognition. Conflicts about with which communities citizens identify most deeply have already arisen and Canada ought to address this diversity in order to move towards any type of reconciliation.

Kymlicka's view on the position of First Nations peoples within the Canadian state is further problematic because of his view of what self-government would mean for First Nations representation. He asserts,

It is a mistake, therefore to argue that proposals to provide guaranteed representation of Aboriginal people in federal legislature is a 'logical extension of Aboriginal self-government'. If anything, the logical consequence of self-government is reduced representation, not increased representation. The right to self-government is a right against the authority of the federal government, not a right to share in the exercise of that authority.²³⁰

This attitude towards First Nations sees them as a singular group instead of their realities as diverse societies existing linked by their shared history, yet heterogeneous in their cultures, languages, traditions, and relationship to the state. To those who self-identify as both Canadian and Indigenous, this assertion can be seen as a continuation of the "us" vs. "them" mentality promoted by colonialism. Kymlicka attempts to promote diversity but does not accommodate Indigenous traditions through his theory. This theory of citizenship therefore liberates Indigenous peoples by acknowledging them as more than special interest groups or minorities and preserves their right to self-government, however it limits them

²³⁰ Kymlicka, Will (1996), p.143

to a governance model of delegated authority that does not acknowledge their distinctive nation-to-nation relationship. A dual-citizenship like that recommended by *RCAP*, similar to that criticized by Kymlicka, seeks to inject Indigeniety into its concept of citizenship, by relying on each nations' self-determination in conjunction with recognition from the state. The recommendation to recognize self-determination is not only a method of furthering Indigenous identities, but recognition of the failure of liberal theorists to genuinely do so.

4.3 Charles Taylor: Deep Diversity

Charles Taylor takes an approach to citizenship which emphasizes recognition. Taylor argues for a “communitarian” theory of citizenship, one which he claims “holds particular appeal for the Francophones and First Nations”²³¹ Taylor is careful to indicate that communitarian philosophy, in which the community or collective identities hold equal if not more worth than the liberal view of the individual, argues that identity politics become necessary in the face of the absence of recognition or mis-recognition.²³² In order to achieve this recognition, Charles Taylor’s approach to citizenship is what he calls ‘Deep Diversity’. “The ideal of deep diversity embodies much of Taylor’s political theory.”²³³ Deep diversity recognizes particularity and promotes unity according to Taylor. The idea of it is “meant to promote multiple forms of belonging to a federated

²³¹ Hébert, Yvonne & Wilkinson, Lori (2002); p.8

²³² Taylor, Charles (1994) “The Politics of Recognition” in Taylor’s *Multiculturalism*; Princeton: Princeton University Press; p.38

²³³ Redhead, Mark (2002) *Charles Taylor: Thinking and Living Deep Diversity*; Washington: Rowman & Littlefield, p.3

state²³⁴ by acknowledging that some groups possess different levels of diversity. He goes on to attest that a society with collective goals is capable of respecting diversity. He admits “There will undoubtedly be tensions involved, and difficulties, in pursuing these objectives together, but they are not uncombinable, and the problems are not in principle greater than those encountered by any liberal society that has to combine liberty and equality...”²³⁵ His argument emphasizes Canada’s need to acknowledge difference in order to progress.

In terms of Indigenous peoples, much like with the people of Québec, Taylor believes that they are “threatened minorities” and that they ought to receive some form of recognition for their cultural distinctiveness. Taylor defends their position by claiming, “...the only way that they (successor-states) can do justice to their aboriginal populations is by adopting a pluralist mould.”²³⁶ Taylor’s theory of pluralist citizenship is designed with the goal of accommodating diversity within states such as Canada. He claims that non-threatened minority groups can be integrated into Canadian society through the first level of diversity²³⁷, however the people of Quebec and Indigenous populations cannot, and perhaps should not, be integrated, instead he insists on accommodation through a second level.²³⁸ He proposes, “to build a country for everyone, Canada would have to allow for a second level, or “deep” diversity, where a plurality of ways of belonging would also be acknowledged and accepted.”²³⁹ This idea of finding different ways of belonging is a distinguishing one for Taylor. He notes, “Native people should not be

²³⁴ *Ibid*, p.2

²³⁵ Taylor, Charles (1993) *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*, G. Laforest (ed.); Montreal: McGill-Queen's University Press; p.177

²³⁶ Taylor, Charles (1993), p.184

²³⁷ *Ibid*; p.182

²³⁸ *Ibid*; p.107

²³⁹ *Ibid*; p.75

asked to give allegiance to the country as a whole. Instead, Canadians should accept the principle of ‘plurality of ways of belonging’ to the federation.”²⁴⁰ This argument is striking in that it not only asks that the state adopt a new perspective on citizenship, but it challenges the Canadian public to also acknowledge diversity within Canada and adjust their conception of citizenship to be more inclusive. In doing so, this perspective addresses not only the institutional obstacles Indigenous peoples face, but the social as well. This is only one of the ways in which Taylor argues for greater respect for cultural distinctiveness and the preservation of identities.

Taylor further attempts to work out notions of identity as they relate to recognition. He points out that “identity crucially depends on dialogical relations with others.”²⁴¹ That is to say that identities are shaped by recognition and through comparison with others. This further emphasizes his proposal that the Canadian public work to acknowledge diversity as, “there cannot be a substantial monological understanding of one's identity; an individual's identity is not worked out in isolation but rather it is determined through dialogical relations with others.”²⁴² Throughout Canada’s history, that has very much been the case. Indigenous identity is generally formed by the collective experiences and culture of the peoples as a group. Indigenous identity has furthermore been affected and shaped through the relationship Indigenous peoples have had with colonial institutions and the non-Indigenous peoples of Canada. However, this does not mean that identity formation is in the hand of others. It is the right of Indigenous peoples to discover and develop their own identities for themselves. The government’s

²⁴⁰ Taylor, Charles (1994); p.202

²⁴¹ *Ibid*; p.36

²⁴² Taylor, Charles (1993); p.47

policy of imposing an identity, as well as citizenship, has always been doomed to fail because these identities have already been built in relation to the state whether or not the state has been willing to acknowledge them.

How this diversity is acknowledged in Taylors' estimation is by a decentralized constitutional structure. "Its devolution of power to the regional level along with the granting of powers of self-rule to aboriginal communities, would promote a multiplicity of modes of being Canadian."²⁴³ This is a flexible theory for citizenship that allows for not just accommodation, but the possibility to evolve along side shifting identities and politics, while never losing its ties to Canada as a whole. To which, Mark Redhead concludes, "In the end, a Canada that evinces a multiplicity of way of belonging is what Taylor's deep diversity is all about."²⁴⁴

Taylors' ideas on citizenship, and in particular his advocacy in multiple ways of belonging, share certain values with the arguments made within the *Report on the Royal Commission on Aboriginal Peoples*. However, Taylor also "persists in believing that the two models of liberalism and the various self-definitions of Canada's national communities can and should be reconciled within the institutions of a single political regime."²⁴⁵ Taylor's theory of citizenship rests within an ideology that does not support multitudes in any way similar to those upheld by the *RCAP's Report*. Likewise, the idea of reconciliation is not as prevalent a subject in his assessment of issues affecting citizenship. This is problematic to his theory as reconciliation is easier said than done and Taylor does not adequately address how a single citizenship, no matter how pluralistic,

²⁴³ Redhead, Mark (2002); p.72

²⁴⁴ *Ibid*; p,72

²⁴⁵ Taylor, Charles, Tully, James & Weinstock, Daniel (1994) *Philosophy in an Age of Pluralism: The Philosophy of Charles Taylor in Question*; Cambridge University Press; p.202

will be able to accommodate diverging world-views and conflicting ideologies from Indigenous nations in Canada.

Taylor concedes that Indigenous groups may require the delegation of political autonomy that may include institutions of self-government.²⁴⁶ However, according to Glen Coulthard “Taylor suggests that this could mean ‘in practice allowing for a new form of jurisdiction in Canada, perhaps weaker than the provinces, but, unlike municipalities’”²⁴⁷ This concession demonstrates the reliance on institutions of delegated authority rather than Indigenous empowerment, often held as a criticism by Indigenous scholarship, and one shared with not only with the other theorists discussed in this Chapter, but the recommendations made by *RCAP* as well. *RCAP*’s recommendations that Indigenous citizenships be self-determined, leaving them open to being constructed based upon traditional Indigenous ideologies should they choose, does not limit First Nations by imposing colonial ideas.²⁴⁸

4.4 Alan Cairns: Citizens Plus

In his extensive research of the issues facing Canada and First Nations, Alan Cairns revisits the findings of the *Hawthorn Report* of the 1960s. The report was based upon legislation and attitudes affecting Indigenous peoples in Canada at the time and served as a precursor to the Royal Commission on Aboriginal Peoples. This report was a “federal government inquiry into the socio-economic, political, and constitutional conditions of

²⁴⁶ Taylor, Charles (1994); p.40

²⁴⁷ Coulthard, Glen (2007) “Subjects of the Empire: Indigenous People and the ‘Politics of Recognition’ in Canada” in *Contemporary Political Theory*; Vol.6; p.442

²⁴⁸ *RCAP* does require in recommendation 2.3.10 that citizenship criteria be “consistent with section 35(4) of the *Constitution Act, 1982*” ensuring that in determining their own citizenships, Indigenous nations do not discriminate between male and female citizens.

status Indians, with the task of advising policy makers of the route to a better future for the Indian peoples of Canada.”²⁴⁹ The findings of this report serve as a precursor to a theory of ‘citizens plus’ by Cairns, however they differed in distinctive ways. Cairns notes how the findings of the *Hawthorn Report* differ due to the time in which it was written. For example, “The Hawthorn strategy rested on the twin premises that acculturation would continue and that an autonomous development path was neither desirable nor available.”²⁵⁰ Therefore the *Report* did not anticipate the ‘Indian nationhood’ movement of the 1980s and 1990s. Whereas the concept of citizenship advocated in Citizens Plus does so to “...enhance the compatibility between Aboriginal nationhood and Canadian citizenship.”²⁵¹

The ‘Citizens Plus’ theory of citizenship, is described to accept Indigenous peoples as Canadian citizens with the same rights and privileges that accompany that status and furthermore to grant Indigenous peoples further rights and privileges by virtue of their legal status as Indigenous peoples. It also assumes the participation of these citizens as their responsibility in this status.

In his advocacy of a ‘citizens plus’ conception of citizenship, Cairns argues against claims of treaty federalism, made by scholars such as James Youngblood Henderson. Instead, he claims treaties “were made with the imperial Crown under the authority of the Royal prerogative. In that sense, the treaty relationships placed the treaty nations outside the Canadian constitutional order, as conventionally understood.”²⁵² By

²⁴⁹ Cairns, Alan (2000); p.11

²⁵⁰ *Ibid*; p.163

²⁵¹ *Ibid*; p.213

²⁵² *Ibid*; p.180

extension of this reasoning, Cairns claims the Canadian government's lack of jurisdiction in the post-confederation era led to the violation of the treaty relationship. Furthermore, he warns, "The Aboriginal identities of individuals living within First Nation communities in a treaty federalism relationship will be reinforced, and a Canadian identity will be attenuated."²⁵³ He claims not only would this emphasis on nationhood minimize a common citizenship, but that it is "...hostile to the concept of citizens plus, with the 'plus' criticized as a trivial difference compared to the expansive governing possibilities opened up by treaty federalism for First Nations..."²⁵⁴ In response to the Indigenous calls for a nation-to-nation relationship based on their own sovereignty, Cairns "argues that nationalist projects are fertile ground for fundamentalisms and essentialisms incompatible with citizenship."²⁵⁵ This argument serves as a warning against Indigenous nationalists, such as Alfred discussed in Chapter Five of this Thesis, as nationalist essentialism can easily marginalize those who choose to reflect their identities in multiple ways. What happens to the Indigenous citizens who choose to remain as participants in the Canadian system, despite their Indigenous identity? Self-determined citizenship for Indigenous peoples must take all aspects of Indigenous experience into account in order to therefore limit essentialism and promote greater inclusivity. *RCAP* acknowledges indirectly that difficulties may arise from differences in definitions of citizenship and identity from within Indigenous nations and attempts to address these concerns through recommendation 2.3.11, which states that open and fair mechanisms for citizenship dispute resolution be established along with citizenship rules for each nation

²⁵³ *Ibid*; p.181

²⁵⁴ *Ibid*, p.182

²⁵⁵ Green, Joyce (2001); p.624

Cairns advocates for citizens plus in retaliation to the accusations that a plurality would create a weakened Canadian identity and citizenship. Cairns claims that “Both our separateness and our togetherness need to be institutionally supported if the overall Canadian community is to survive.”²⁵⁶ It is an argument in favour of reciprocity and one that also speaks to the ability of *RCAP*’s dual-citizenship model to succeed in reshaping the relationship between Indigenous peoples and the Canadian state. The idea that if given the ability to belong to multiple pluralities, you will then hold more of a vested interest in the whole or in the power that allowed you to do so demonstrates why the Canadian government ought to allow for better recognition of Indigenous citizenships. However, to many Indigenous leaders, this argument once again brings up the challenge of derived authority. Cairns states, “The members of Aboriginal nations will continue to have rights and duties vis-à-vis federal and provincial governments, the obvious vehicle for which is citizenship”²⁵⁷ This poses an issue for Indigenous rights, which are to many, including the state are considered inherent, and not derived from the authority of others.

Though the importance of Canadian identity and unity is not lost, Cairns states that it is equally important to acknowledge the history and position Indigenous peoples have held within Canada’s colonial order. He asserts,

“Denial of the franchise was a symbolic statement that status Indians were not considered full members of the political community of citizens, a perception shared by Indians. They showed little concern over their subordinate civic status. In fact, for many the combination of political exclusion and a special system of administration came to be psychologically coupled with a lack of identification with the political system of the larger society, and with a tenacious emphasis

²⁵⁶ Cairns, Alan (2000); p.212

²⁵⁷ *Ibid*; p.213

on their own unique status.”²⁵⁸

For Cairns, the history compounding the exclusion of Indigenous peoples in Canada has been at the centre of tensions felt between Indigenous peoples and the Canadian state. Since the government was not to treat the Indigenous peoples as full members with vested interests in Canadian citizenship, Indigenous peoples chose participate in the Canadian system. “To the extent that difference was historically recognized, as in the *Indian Act*, it was the difference of inferiors, of those who were less than full citizens, and of those whose culture was assaulted by official change agents of the Canadian state.”²⁵⁹

The difference in treatment of Indigenous peoples compared to non-Indigenous Canadian citizens by the federal government has informed Cairns’ opinion on the uniqueness of Indigenous peoples in Canada. Cairns argues that while other groups formerly excluded from the Canadian rights and responsibilities of citizenship, such as women, are diverse in their own ways, Indigenous peoples cannot be satisfied in the same way. Unlike women, Indigenous peoples as a group are not seeking entry into Canadian citizenship on the same terms as those already found within the Canadian paradigm. “On the contrary, they advocate a permanent constitutional and institutional recognition of difference in order to sustain and strengthen distinctive senses of peoplehood in the future.”²⁶⁰

Much like the recommendations made by *RCAP*, Cairns acknowledges the need for a certain degree of self-determination amongst First Nations peoples. He accepts that

²⁵⁸ Cairns, Alan & Williams, Douglas (1995) p.106

²⁵⁹ *Ibid*; p.253

²⁶⁰ Cairns, Alan & Williams, Douglas (1995); p.239

there exist multiple identities and recognizes the potential for self-determination by Indigenous peoples to create further inclusiveness. He further presses, “The complexity of the identity transformations that may occur is both misconceived and too easily underestimated.”²⁶¹ The acceptance of the multiplicity of identities is key to many of Cairns’ arguments and sets him apart from the many other theorists that conceptualize Indigenous identities through essentialism, disregarding the cleavages that exist. Cairns argues, “...we all carry multiple identities, and that they are constantly being reshaped. We can be Métis and Manitoban, Cree and Albertan, Inuit and Canadian. The coexistence in our lives of membership in more than one community, and the accompanying reality of multiple identities reflect that we live in many worlds at once...”²⁶² Moreover, acknowledgement that these interwoven identities are in a constant state of flux, given the nature of culture and acculturation, gives Cairns’ argument advantages when compared to theories promoting essentialism.

Though he shares some of the values found within the *RCAP*, Cairns is equally critical of its findings. He offers valuable criticisms and shines light upon certain “gaps” in the Commission’s conclusions. For example, “The Commission’s lack of interest in the non-identifying population simply reflects its dominant concern with Aboriginal culture and identity.”²⁶³ Cairns is critical of self-governance as a solution to greater Indigenous autonomy and engagement. He claims, “It denies or neglects half of the Aboriginal population that lives outside landed communities, and fails to recognize the complexity of evolving Aboriginal identities in contexts where intercultural exchanges...are an

²⁶¹ *Ibid*; p.317

²⁶² Cairns, Allan (2000); p.107

²⁶³ *Ibid*; p.126

everyday reality.”²⁶⁴ Believing that self-governance may not hold the answer, and fearing the proliferation of nationalist movements that may exclude members, Cairns promotes contributions made by John Borrows.²⁶⁵ He furthers his criticism of the *RCAP* by proclaiming “What is clear is that the Commission has little enthusiasm for a direct individual citizen link with federal or provincial political authorities.”²⁶⁶ He takes issue with this as it runs in contrast to his liberal beliefs.

In the end, Cairns’ argument holds true to his liberal foundations and professes that Indigenous peoples should remain a part of the Canadian system. He does not address the desire for change in the power dynamic and who gives recognition to whom. Though he advocates recognition of Indigenous rights and identities through his theory of Canadian citizenship, he does not do so in a way that Indigenous nations can accept while holding true to the values of a nation-to-nation, treaty relationship. Cairns cannot concede to enough self-determination to adequately indicate Indigenous traditions and ideologies without fear of inciting nationalism that would fracture the unity of Canada. However, *RCAP*’s dual-citizenship model advocates bringing Indigenous nations into Canada by allowing them more freedom to determine themselves.

4.4 Conclusion

Theories of citizenship advocated by Kymlicka, Taylor, and Cairns all share significant similarities in that they all believe that recognition is key to rebuilding the relationship between Canada and Indigenous nations. This is an assertion also echoed by the *Report of*

²⁶⁴ Cairns, Alan (ed.) (1999); *Citizenship, Diversity, and Pluralism: Canadian and Comparative Perspectives*; McGill-Queen's Press-MQUP; p.9

²⁶⁵ *Ibid*

²⁶⁶ *Ibid*; p.154

the Royal Commission on Aboriginal Peoples. These scholars agree that First Nations peoples are entitled to a certain degree of self-determination in ways that extends their own identities. Kymlicka considers a differentiated citizenship that accounts for self-governance practices dangerous to the future of national unity. Indeed, possesses the problematic belief that Indigenous people could be satiated with a minority label, no matter how “threatened”. Taylor, for his part, has focused on what he calls ‘deep diversity’, explaining that the key is in the level of recognition we give First Nations peoples within the political landscape. Likewise, Cairn’s ‘Citizens Plus’ theory has received considerable attention as it emphasizes distinctions that are already there. First Nations peoples hold special status within Canada by virtue of the *Constitution Act, 1982* – *Section 35*, therefore their citizenship then ought to reflect that reality.

Despite the recognition of their special status within Canadian politics and their invaluableness in illustrating the complexities of Canadian citizenship, all of these arguments fail to recognize the problem in designated authority, as well as the immense power of the Treaties, also recognized in Section 35 of the *Constitution Act, 1982*, in the relationship between the State and Indigenous peoples in Canada. “Dale Turner notes that even sympathetic non-Aboriginal thinkers such as Alan Cairns and Will Kymlicka have developed liberal justifications for Aboriginal rights that Aboriginal people must ultimately reject.”²⁶⁷ Turner is not alone in his criticism of pluralist theories that seek to offer Indigenous peoples recognition, yet do not repair the damaged treaty relationship

²⁶⁷ Brownlie, Robin (2009) “First Nations and the Liberal Order” in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* by Ducharme, Michael & Constant, Jean-François; University of Toronto Press; p.311

between First Nations and the Canadian state.²⁶⁸ Operating in any type of nation-to-nation context would, in all of their estimations, call in to question the unity of Canada. However, that is the reality Canadians face at present. A dual citizenship model, like that recommended by *RCAP* seeks to reconcile the relationship through promotion of self-determination essential to Indigenous ideologies, recognizing Indigenous identities, and cultivate unity much like the authors discussed within this Chapter. Though it may not go as far as some of the Indigenous authors examined in Chapter Five, the recommendations made by *RCAP* seek to build upon these established pluralist theories.

²⁶⁸ See Chapter Five: Borrows, Palmater, Alfred, etc

Chapter Five

Indigenous Nationalism

Indigenous Perspectives on Canadian Citizenship

5.0 Introduction

Indigenous peoples in Canada have been asserting themselves in more and more significant ways since they were forcibly and formally added to the Canadian political sphere in 1960, when all Indigenous peoples were given the right to vote as Canadians. They began to exercise their influence within this political sphere in numerous ways. One significant example of their influence would be their resistance to the *White Paper* in 1969. Indigenous peoples have since lent their voice and varied perspectives to matters of national policy, whether that is through individual or collective expression²⁶⁹. Though issues of identity and self-determination, and how they affect the citizenship debates have been explored through Chapter Three of this thesis, the following Chapter will examine them more closely as they are drawn upon by Indigenous scholars. I am examining Indigenous scholars because as many non-Indigenous scholars have attempted to create an understanding of citizenship that would better suit the needs of Canada's diversity, they do not always include the elements from Indigenous pedagogies necessary to properly demonstrate the diversity of Indigenous cultures. In her appraisal of the work of non-Indigenous pluralist theorists, Joyce Green notes:

...while these works, which draw almost exclusively on liberal political theory, go some distance to creating the theoretical foundations for an inclusive Canadian citizenship, they do not, and perhaps can not, answer the challenge of the rights of Indigenous peoples in relation to settler states."²⁷⁰

²⁶⁹ Examples range from Elijah Harper's protest in the Manitoba legislature to the advocacy work done over the years by the assembly of First Nations.

²⁷⁰ Green, Joyce (2001); p.720

Any examination of citizenship requires proper consideration for the many perspectives from Indigenous scholarship and leadership. In this Chapter, I discuss the varied Indigenous perspectives regarding citizenship in Canada and demonstrate that applying Indigenous understandings to key issues provides a more meaningful understanding of citizenship whilst highlighting the need for official recognition.

This chapter examines Indigenous perspectives on citizenship within Canada not only because the previous Chapter demonstrated a lack of Indigenous understanding amongst many pluralist theorists in Canada, but also because there is no one perspective that encompasses Indigenous experiences. Therefore, no one proposal can exemplify the Indigenous perspectives on Canadian citizenship. While a general understanding that a wide variety of opinions exist amongst Indigenous scholars is taken into account, this Chapter examines three authors closely. John Borrows, Pam Palmater, and Taiaiake Alfred were selected due to their differences in background and opinion. They represent the diversity within the label of indigeniety. In his works, John Borrows takes an approach that would attempt to tie traditional understandings of citizenship with the Canadian process, highlighting the need for both sides to move towards a better relationship. Pam Palmater and Taiaiake Alfred, on the other hand, are both very skeptical that the Canadian government possesses the ability to fully acknowledge, let alone address, the plethora of issues facing Indigenous peoples in Canada. They share their thoughts on citizenship and what the response from Indigenous leadership ought to be in order to exercise their sovereignty. None of these Indigenous academics believe in a simple fix, and show concern over the ability of the Canadian state to provide proper recognition to First Nations peoples. Though their arguments do not demonstrate a form

of citizenship necessarily better than the *RCAP* recommendation, their perspectives are important to the conversation and illustrate the overwhelming opposition that exists to Canada's current unitary view of its citizenship.

5.1 Sharing the River: Sovereignty and Indigenous Perspectives

The original intent of the relationship between Indigenous nations and the British (now Canadian) government was set out by many treaties, in which a relationship of mutual respect and sharing is conveyed. Treaties, an established practice by both European and Indigenous peoples, were created to formally establish a relationship between Indigenous peoples and settler communities. These treaties, or in some areas the lack thereof, are the basis for many claims of sovereignty and for the promotion of what is called treaty federalism.²⁷¹ From an Indigenous perspective, treaties were not an acceptance of European authority, nor were they a surrender of Indigenous sovereignty. In eastern Canada, the earliest this treaty relationship can be found through the use of the Two Row Wampum belt. Melissa Williams unpacks the Two Row Wampum, asserting that while the purple rows indicate peace, friendship and respect, “the separateness of the two rows represents, in particular, the right to self-government of Aboriginal peoples as a right against external intervention into their communities’ affairs.”²⁷² The ideal of this relationship of mutual respect and sharing is often cited as the basis for the many treaties that were subsequently signed, be it the Peace and Friendship treaties of the early colonial era, or the Numbered Treaties from 1871 to 1921. However, as is evident in Chapters One and Two, mutual respect, sharing, and a nation-to-nation relationship has not been

²⁷¹ Ladner, Kiera (2009)

²⁷² Williams, Melissa (2005) “Sharing the River. Aboriginal Representation in Canadian Political Institutions” in Robert C. Thomsen & Nanette Hale’s *Canadian Environments: Essays in Culture, Politics and History*; p.44

the experience of the Indigenous peoples in Canada. Despite the continued relevance of treaties and the treaty relationship, external intervention continues to negatively impact Indigenous identities, citizenship, and government.

A number of First Nations scholars have lent their voice to the national debate on citizenship, many taking issue with colonial assumptions made by non-Indigenous scholars as well as the unwillingness of the government to make significant changes to the system. Joyce Green offers, "...despite the acknowledgement of citizens' and Indigenous rights, the *Constitution* continues to be the structuring of the state by political and economic elites for the maintenance of the status quo."²⁷³ Indeed this problematic power structure, which continuously harms Indigenous-settler relations by recognizing Indigenous peoples as the "other", runs deep. Indigenous peoples are aware of this. James Youngblood Henderson's "*Sui Generis and Treaty Citizenship*" is but one of the many presented by scholars who challenge the government's authority to impose citizenship upon Indigenous peoples. Not only does Henderson's article suggest a re-imagining of citizenship, it into question the assumption that the Crown delegated authority to First Nations.²⁷⁴ Likewise, Glen Coulthard's "Subjects of the Empire: Indigenous peoples and the politics of recognition in colonial context" also speaks to the issue of delegated authority, stating that recognition must come from within.²⁷⁵ Indeed, the argument that Indigenous peoples must remove themselves from Canadian control and exert their rightful status as sovereign Indigenous nations is a common declaration amongst Indigenous scholars. Taiaiake Alfred, Patricia Monture-Angus, and Leanne Simpson are

²⁷³ Green, Joyce (1997); p. 252

²⁷⁴ Henderson, James Youngblood (2002) "Sui Generis and Treaty Citizenship"; *Citizenship Studies*; Vol. 6, No. 4.J

²⁷⁵ Coulthard, Glen (2007)

vocal proponents of the argument for Indigenous peoples re-establishing their nations without any form of interference from Canada.

The reasons for creating, and subsequently implementing, First Nations citizenship as an alternative to Canadian citizenship are many. For example, the insistence upon Canadian non-interference²⁷⁶ in the establishment of a citizenship model stems from disparity between Indigenous and Western ideologies. “When Aboriginal peoples are called to address issues like citizenship, particularly how they define citizenship from their own perspectives...they are forced into the colonial paradigm to which they have difficulty linking their experience.”²⁷⁷ Additionally Alfred, along with scholars Monture-Agnes, and Simpson, have noted that western philosophy focuses on the individual and their rights above those of any particular community.²⁷⁸ The fundamental differences between western and Indigenous ideologies are of particular concern for theorists attempting to contend with continued assimilation. Consideration for the differences between ideologies and the lack of recognition for Indigenous citizenships within the Canadian framework leads to the question of whether Indigenous people should participate in colonial institutions at all. Canada’s institutions were created in spite of, not in conjunction with Indigenous peoples, despite the treaties. Therefore, many of the Indigenous scholars question whether Indigenous people can properly participate in such institutions and if they do, to what end? These scholars question whether a system designed to assimilate and isolate can now be used to make room for collective Indigenous identities. Alfred, for example, believes that participating in

²⁷⁶ Interference in this context refers not only to political interference, but also to the implementation of *Indian Act* regulations that might limit band membership or citizenship.

²⁷⁷ Battiste, Marie & Semaganis, Helen (2002); p.93

²⁷⁸ Alfred, Taiaiake (2009); p.11

Canadian institutions and policy only legitimizes Canada and its exercise of power.²⁷⁹

Those who seek to explore a form of First Nations citizenship as a replacement for the more conventional Canadian citizenship and insist on this recognition argue that the current Canadian system is not sufficient.²⁸⁰

This fear that any assertion or acceptance of Canadian citizenship only furthers colonial dominance over Indigenous rights is a vital part of Alfred's perspective.²⁸¹ He suggests that First Nations peoples need to find their own way to determine their identities and citizenship; that to work within the established framework would only produce Indigenous 'citizens' whose rights and identities become a construct of the colonial state.²⁸² Alfred and Coulthard, reject Canadian citizenship and advocate for traditional and/or decolonized citizenship models derived from Indigenous advocacy and cultural resurgence. In the view of these scholars, the current Canadian citizenship model derives its authority and legitimacy through colonialism, which Indigenous people must reject in order to re-establish their own ideals and governance founded in their own traditions and values. Simpson makes the similar assertion that Indigenous perspectives ought to be conceived organically and from the First Nations themselves in her book

²⁷⁹ Alfred, Taiaiake (1999) *Peace, Power, Righteousness: an Indigenous Manifesto*; Don Mills: Oxford University Press; p.48

²⁸⁰ "... over the last 30 years the Supreme Court of Canada has consistently refused to recognize Aboriginal peoples' equal and self-determining status based on its adherence to legal precedent founded on the white supremacist myth that Indigenous societies were too primitive to bear political rights when they first encountered European powers." Coulthard, Glen (2007); p.449

²⁸¹ Alfred, Taiaiake (1995) *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*; Don Mills: Oxford University Press; Alfred, Taiaiake (1999) *Peace, Power, Righteousness: an Indigenous Manifesto*; Don Mills: Oxford University Press

²⁸² Alfred, Taiaiake (2005) *Wasase: Indigenous Pathways of Action and Freedom*; Peterborough: Broadview Press

*Lighting the Eighth Fire: The liberation, resurgence and protection of Indigenous Nations.*²⁸³

Accordingly, new conceptions of citizenship, policy, and politics must take into account the history of oppression and attempt to compensate for them in order to decolonize.²⁸⁴ Alfred explains the forced transition of citizenship models on First Nations peoples when he states that "...the imposition of the *Indian Act* displaced traditional notions of belonging, which were supportive of community and kinship structures as well as flexible, adaptive, and replaced them with race and gender-based notions of membership..."²⁸⁵ Many First Nations people could not, nor did many want to, adapt to these race-based forms of membership and therefore remained alienated from mainstream society. The argument in favour of forms of Indigenous citizenship takes in to account that "...one must understand that Indigenous world-views are not fixed or static but rather flexible to changing circumstances,"²⁸⁶ making them perhaps more compatible with citizenship in a globalized world.

Despite the complex politics of recognition some scholars have decided to attempt First Nations citizenship by working within the established colonial system. In her work, Carole Blackburn makes reference to the fact that the Nisga'a First Nation has negotiated a form of differentiated citizenship which has allowed them the "ability to control their membership criteria and claim recognition of their rights"²⁸⁷ To some, though certainly not Alfred or Monture-Angus, this has been considered a successful move forward towards inclusion. Though it may not be seen as a form of dual citizenship on par with

²⁸³ Simpson, Leanne (2008)

²⁸⁴ Alfred, Taiaiake (1999); p.3

²⁸⁵ Alfred, Taiaiake (2009); p.10

²⁸⁶ Holder, Cindy L. & Corntassle, Jeff (2002); p.143

²⁸⁷ Blackburn, Carole (2009); p.66

the recommendations made by *RCAP*, as it does not give formal recognition in the federal arena, it is a step in that direction. It provides First Nations with greater recognition, though as the Nisga'a are still considered Canadian by the federal government, this remains recognition derived from the authority of the state. Therefore, for some Indigenous peoples, this result remains undesirable because as it fails to fully declare Indigenous sovereignty without reference to the Canadian government.

The argument of illegitimate state authority and non-recognition of Indigenous sovereignty is common and lends itself to a variety of perspectives. As such, some Indigenous authors, such as Henderson, believe that Indigenous peoples hold no obligation or loyalty to the model of Canadian citizenship imposed upon them. "For most Aboriginal peoples of Canada, the ideal of Canadian citizenship represents a McLuhanistic backward perspective toward imaginary boarderlines created by imperial and federal acts during colonization rather than a vision of an improved future..."²⁸⁸ But the belief that Indigenous peoples hold no loyalty to the Canadian system is not always the opinion of Indigenous peoples. In speaking of the order of government created by the Nisga'a Treaty, James Robinson (Chief Mountain) acknowledged his dual identity by stating: "It hurts our people by taking away our lands and human rights. It hurts all Canadians by undermining the *Canadian Constitution*. I vow to fight for my people's rights to be Canadian citizens and to be protected by the Charter of Rights."²⁸⁹ Indeed, as more Indigenous peoples become entrenched in the Canadian experience, the number of those who have tied themselves to its system is bound to grow. In some cases, they have grown as Canadians and surrounded by other Canadians. Therefore, for these peoples the

²⁸⁸ Henderson, Sakej (2002); p.420-421

²⁸⁹ Terrace Standard (2011) "Nisga'a Treaty Suit Dismissed";
<<http://www.terracestandard.com/news/132384648.html>>

notion of Canada has become inextricable from their personal identity. The multitude of opinions and identities is one of the greatest challenges that faces Canada and Indigenous peoples alike. While a number of Indigenous peoples see themselves as separate from Canada, others may seek only recognition of their Indigeniety while attempting to find their space within the Canadian system.

As Indigenous perspectives cannot be conveyed through one proposal, Indigenous identities cannot be exemplified through one perspective of Indigeniety. Some of the Indigenous scholars examined within this Chapter essentialize Indigeniety within their own arguments. For example, Alfred, as I will demonstrate, conceptualizes Indigenous citizenship as being tied to traditional Indigenous ideologies, knowledge, and institutions. However, this dismisses those who have endured or evolved their own identities over time to include non-Indigenous influences. Essentialism itself is exceedingly problematic as the Indigenous peoples of Canada are so diverse within themselves. The following Indigenous authors approach the issue of Canadian citizenship in different ways, all of which provide a position vital to the conversation.

5.2 John Borrows

John Borrows, Anishinaabe legal scholar and author of *Canada's Indigenous Constitution* advocates for recognition for Indigenous rights and citizenship, but acknowledges the variety of interpersonal relationships amongst Indigenous people in Canada. He is careful to note that the argument is, and has become increasingly complicated as Canada evolves. Borrows is therefore very thoughtful in his assertions that any matter, such as citizenship ought to promote the relationship between First

Nations peoples and Canada in a mutually respectful and considerate way. He discusses causes for the problematic relationship and cites issues such as colonial policies and a lack of recognition as problems facing Indigenous nationhood and sovereignty. However, his conclusion varies from others that would dismiss the Canadian state as the problem and instead attempts to work within the Canadian structure.

Borrows focuses on Indigenous traditions as foundations for any Indigenous policy on citizenship. Like Leanne Simpson, Borrows believes that concepts of citizenship ought to be based on philosophies that promote an Indigenous understanding of a good life.²⁹⁰ To Borrows, colonial strategies such as the *Indian Act* are obstacles First Nations people have had to tackle in order to return to an Indigenous understanding. “We should abandon the *Indian Act*’s underlying idea that we are a race that deserves to be assimilated. We are not a race... The ‘Indian race’ is a social construction forced on us by those who wanted to take our land and then have us disappear.”²⁹¹ He thereby challenges the framework by which Canada deals with Indigenous rights, by pointing out the intricacies that make up the multitude of Indigenous identities.

Borrows argues that citizenship must extend into a variety of spheres, as citizenship itself does not exist as a construct of a collective or legal identity alone. As citizenship extends into the personal identity of citizens, he advocates that the first place change and education on these matters must occur is through the family unit and in the home.²⁹² Likewise, the clan system also holds great importance to the reformation of citizenship based upon traditional values as the clan systems was for so long the basis of

²⁹⁰ Anishinaabek legal traditions - Borrows, John (2010); p.80; Borrows, John (2008); p.29-30.

²⁹¹ Borrows, John (2008); p.29

²⁹² Borrows, John (1997); p.14; Borrows, John (2010); p.9

community and the roles of individuals within them.²⁹³ He states, “We should embrace the truth that we are First Nations. A Nation rests on citizenship, families, culture, outlook and action – on its political standing – not blood.”²⁹⁴ Therefore in order to move forward, policy-makers must see beyond the western understandings of citizenship and the argument of ‘race’ based rights.

Borrows argues in favour of a theory of expanded citizenship. He acknowledges that a separate citizenship from Canada may not be the answer due to the nature of interaction between Canadian society and Indigenous ones, citing the number of interpersonal relationships between those considered ‘Indians’ and those not has only grown.²⁹⁵ He advocates that Indigenous peoples not only have a right to participate in Canadian society as citizens, but must do so for the good of all because they are affected by such a variety of Canadian policies, whether they be on education or the environment. “After all, this is our country. Aboriginal people have a right and legal obligation as a prior but ongoing indigenous citizenship to participate in its changes.”²⁹⁶ It is for this reason that Canada and Indigenous peoples must develop a fuller definition of citizenship for Indigenous peoples, which allows for a better relationship between societies.

Borrows makes it very clear that his perspective on citizenship “is not to extinguish Aboriginal culture through its interaction with Canada; it is to enrich it by allowing for its development and application to our current needs.”²⁹⁷ In fact, he argues that the Canadian government will have to make changes and participate in a new way in order for this to become a realized and improved relationship. Old policies and

²⁹³ Borrows, John (2010); p.77

²⁹⁴ Borrows, John (2008); p.29

²⁹⁵ “Fifty percent of ‘Indians’ marry non-Indians.” – Borrows, John (2008); p.28

²⁹⁶ Borrows, John (2010); p.329

²⁹⁷ *Ibid*, p.333

interpretations will have to be examined and revisited to acknowledge the change in Indigenous recognition. He states, “They must, however, learn to share. The chairs, corridors, and halls of Canadian legislatures, universities, courts, law societies, unions, and corporate boards have been sluggish in responding to the influx of Aboriginal people.”²⁹⁸ In making changes with culture in mind and working together in ways that promote inclusion, recognition and participation of Indigenous peoples these societies and their institutions might enrich one another.

Borrows is careful to indicate that by making changes in the name of recognition and accommodation, Canada does not necessarily have to lose its foundations as theorists such as Flanagan argue. He states, “A contextual shift in one doctrine does not mean that the accompanying legal blueprint will be re-drafted to conform to the new principle.”²⁹⁹ He argues that holding First Nations as separate nations with distinctive rights that are derived from their own nationhood does not necessarily have to rewrite the Canadian system, but instead how First Nations are recognized within it. In fact, “[l]egal systems are at their healthiest when they are at least somewhat revisionist” and claims that like the Canadian government, Indigenous peoples have likewise drawn upon other principles found outside the Indigenous paradigm.³⁰⁰ Healthy forward momentum comes when systems evolve, not only with deeper understanding and recognition of its participants, but when the political atmosphere evolves as well.

It is Canada’s insistence in controlling First Nations people by policy, the *Indian Act* or otherwise, that creates deeper conflict. “Participation in larger political

²⁹⁸ Borrows, John (2002); p.150

²⁹⁹ Borrows, John and Rotman, Leonard I. (1997) “The Sui Generis Nature of Aboriginal Rights: Does It Make a Difference?” *Alta. Law Review*, 36, 9; p.124-125

³⁰⁰ Borrows, John (2010); p.59

communities does not have to suffer because Indigenous people belong to groups of which other Canadians are not a part.”³⁰¹ He further draws a comparison to the Quebec situation to illustrate his point that participating in the Canadian state while enjoying their own *Civil Code* as a basis for legal procedures.³⁰² If Indigenous peoples are given the ability to create their own citizenship in a way that is recognized by the Canadian state, it is reasonable to believe that stronger Indigenous identities may emerge and possibly lead to an increase in participation rates in various levels of politics. High levels of citizen engagement and participation, spurred by increased inclusivity, is more likely to result in a more effective government.

Borrows’ take on inclusive citizenship for Indigenous peoples is a valuable one as it allows for the inclusion of certain groups within the Indigenous population that may have otherwise been left out, such as those living off-reserve. Borrows is very deliberate throughout his works to hold that no one today is simply one thing. There exist cleavages within Indigenous societies that run deep and their paths cannot be predicted or dismissed. Henderson agrees that “[n]o-one can speak for the vast diversity of Aboriginal peoples or treaty beneficiaries or future generations...”³⁰³ therefore we must address our citizenship through means of self-determination. As Borrows exemplifies through the examination of multiple Indigenous legal traditions in *Canada’s Indigenous Constitution*, ideologies and traditions vary from nation to nation, meaning that one interpretation of Indigenous citizenship may not fit the world-view of another. In my estimation, this acknowledgement of the diversity that exists within Canada and within nations is one of

³⁰¹ Borrows, John (2010)(2); *Drawing Out Law: A Spirit’s Guide*. Toronto: University of Toronto Press; p.214

³⁰² *Ibid*

³⁰³ Henderson, Sakej (2002); p.421

the greatest strengths of Borrows' perspective. He emphasizes the need to acknowledge diversity, citing "Applying the *Indian Act* or any other law or policy on the basis of race should be avoided. I know this will be a hard truth for some of our people who view themselves as a race. Identity and citizenship should flow from the political and cultural character of our society."³⁰⁴ In this regard, Borrows' argument is in line with the findings in *RCAP's Report* which also indicate that Aboriginal peoples are not racial groups, an assertion that sets Aboriginal peoples in Canada apart from racial minorities that might argue any similarity in claim.

Borrows' argument is stronger still because of his emphasis on preserving the treaty relationship. He would like to see autonomy mixed with recognition and cooperation. This is what the treaty relationship was initially intended to be. What's more, Borrows argues against those like Alfred who claim that Indigenous people must work apart from the institutions of Canada.³⁰⁵ According to Borrows, "You do not have to be subject to Crown or under its Dominion to cooperate with its institutions. In fact, this is what our treaties were intended to accomplish, alliance without subjugation."³⁰⁶ This argument does not preclude that Indigenous peoples cannot attempt to change the system from without the current system, but instead offers suggestions and support to those who choose to participate in these institutions in order to better the relationship. He states, "Working in and outside 'the system' does not have to be a dichotomous

³⁰⁴ Borrows, John (2008); p.29

³⁰⁵ Alfred, Taiaike (1999); p.79

³⁰⁶ Borrows, John (2008); p.19

contradiction.”³⁰⁷ This once again proves that one of Borrows’ greatest strengths is his inclusiveness and his open concept of Indigeniety.

Borrows goes so far as to suggest that non-First Nations citizens, specifically citizens of Canada that do not have any official ties of membership or association to First Nations, may also have a role in First Nations politics and policies. “First Nations could also provide non-citizens of surrounding municipalities and provinces opportunities to comment on the development of their laws as they are being drafted.”³⁰⁸; leaving open the lines of communication and cooperation in the Canadian-Indigenous relationship. This also harkens back to Borrows’ emphasis on the original treaty relationship. Indigenous and non-Indigenous societies clearly influence one another, and as the Canadian government cannot justly operate without consideration to the needs and concerns of Indigenous peoples within Canada, Indigenous nations must consider how their self-governance may influence the non-Indigenous peoples around them. As I have argued throughout this thesis, the relationship between Indigenous peoples and non-Indigenous peoples is crucial not only because of its historical value as basis for the treaties, but because of the ongoing and inextricable nature of society today. Borrows advocates Indigenous peoples and non-Indigenous peoples working together stating, “[o]nly in this way will we achieve meaningful progress in understanding the compatibilities and incompatibilities of Aboriginal and Canadian conceptions of

³⁰⁷ *Ibid*; p.19

³⁰⁸ Borrows, John (2010); p.161

citizenship.”³⁰⁹ It is along these lines of cooperation that the Royal Commission suggested moving forward.

Borrows’ ideas in moving forward do also present certain challenges that might dismiss it as the solution to Indigenous-State relations in Canada. In his various works, Borrows advocates each nation renewing Indigenous traditions and using these understandings as the basis of that nations’ citizenship. One challenge arises when traditions, often carried orally, vary not only between communities but also within a community. Additionally, there may be a variety of challenges that arise by attempting to reconcile aspects of Western ideologies with that of Indigenous ones. Given that there are many Indigenous perspectives and traditions, it is reasonable to assume that the Canadian state may be challenged in trying to adapt to each one. The question remains of how far the Canadian state and critics like Alfred are willing to evolve? Is it possible for the state to adapt to the point where its recognition of Indigenous citizenship be based in Indigenous understandings of their own identities? Are scholars such as Alfred willing to compromise their attitude on citizenship in order to allow for greater inclusion of the diversity within their own nations? These questions are difficult to answer, as the state has made little attempt to integrate Indigenous traditions into its institutions. These epistemological and ideological differences pose significant challenges to Borrows’ vision for the future.

³⁰⁹ *Ibid*

5.3 Pamela Palmater

Pamela Palmater, like Borrows, is an Indigenous legal scholar who has increasingly lent her knowledge and advocacy to Indigenous issues surrounding identity and membership issues that include citizenship. Palmater is in agreement that:

Indigenous peoples in Canada have been subjected to varying degrees of government control over their individual and collective identities, including divisive membership rules based on the goal of assimilation. The ways in which individual Indigenous peoples have been controlled and divided have furthered Canada's original aim of eliminating the 'Indian problem.'³¹⁰

She, like Borrows, Alfred, Henderson, Ladner and many others, has framed her argument by illustrating the failures of the Canadian government in their treatment of Indigenous peoples. She successfully rests this argument on the shoulders of colonial practices. Most of these policies and practices (many of which have been outlined in Chapter One) were paternalistic and oppressive and covered a variety of policy areas that stripped First Nations peoples of any practical means of self-determination. Palmater argues that these policies have had repercussions that extend beyond their original goals, and which continue to reverberate to this day. Of this continuous struggle against these practices, Palmater states, "Canada has kept First Nations so busy trying to survive and focus their energies on distractive political exercises that the core understanding issues of treaty implementation, recognition of self-determination, and the return/sharing of Indigenous lands and resources remain unresolved."³¹¹ By pointing out the ineffective relationship between Indigenous peoples and the state, she underscores a larger issue that continues to

³¹⁰ Palmater, Pamela D (2011); p.28

³¹¹ Palmater, Pamela D (2014) "Genocide, Indian Policy, and Legislated Elimination of Indians in Canada." in *Aboriginal Policy Studies* Vol. 3 (3); p.44

this day: that the federal government and Indigenous nations engage in a back and fourth that rarely results in major progress, but detracts from the larger, necessary conversation.

Palmater draws the conclusion that the relationship between First Nations peoples and the Canadian government is in need of revision and in order to achieve this, there must be greater participation from Indigenous nations, or else face the continuation of our current colonial system.

Without input from Aboriginal nations, the federal and provincial governments divided jurisdiction over key governance areas in the *Constitution Act, 1867*; through section 91 (24), Canada assumed the power to legislate the identity of individual Aboriginal people. Federal control over Indianness and membership has become the primary filter through which government, society, and even some Aboriginal groups have come to view Aboriginal peoples.³¹²

She notes that it is not simply an issue of not having a voice in the processes and institutions that govern the daily life of First Nations peoples that has been problematic. Problems have occurred in part by the implementation of an Indian status that has held back the relationship between and within all parties. She very clearly ties legislation and institutional colonialism to Indigenous identities. This imposition from exterior forces is in part why Palmater argues that it is necessary for First Nations to determine their own identity free of government intervention.

In her evaluation of Indigenous identity in Canada, Palmater makes particular note of the gender inequality that Indigenous women have suffered throughout the history of the *Indian Act* and the effect that has had on Indigenous citizenship, as it is usually so closely tied to Indian status. For example, she notes, "...6(1) Indians can transmit their Indian status to their children regardless of who they marry, whereas 6(2) Indians

³¹² Palmater, Pamela D (2011); p.39

cannot.”³¹³ This is a subject Palmater examines beyond that of many of her counterparts. Palmater can only hope that this discrimination can be overcome by true self-determination, self-governance, and further decolonization. At the same time, Palmater expresses concern with the pathways to self-determination being utilized in some communities at present, as they may result in the perpetuation of colonial patriarchy. “Though many First Nations are looking at self-government agreements and their own citizenship codes as a way of moving forward, some are considering using the same principles or criteria embedded in the *Indian Act, 1985*, as the basis for their citizenship codes.”³¹⁴ This demonstrates the deep and lasting effect such an oppressive piece of federal legislation like the *Indian Act* has had over First Nations people, as well as demonstrating that the signing of self-government agreements are not enough alone to decolonize. She warns, “Self-government citizenship codes that merely reproduce the *Indian Act* status rules can hardly be said to do anything other than uphold the ‘status quo.’”³¹⁵ Replication or endorsement of *Indian Act* policies demonstrates that in some cases oppressive colonial tactics have penetrated Indigenous paradigms in ways that continue to subjugate and divide the population at not only the federal level, but from within communities as well. “Colonial control over local community membership and Indian registration has interfered with the natural evolution of Indigenous identity.” Therefore, Indigenous peoples must aim to reclaim their identities by determining what Indigenous identity means for each First Nation and fighting for their recognition. This recognition of self-determining identities is what the recommendations made by *RCAP* propose through its advocacy of a dual-citizenship model.

³¹³ Palmater, Pamela D (2014); p.35

³¹⁴ Palmater, Pamela D (2011); p.49

³¹⁵ Palmater, Pamela D (2014); p.46

Palmater does not hold out much hope for the Canadian government of present to implement the change required to protect the reality of First Nations self-determination and citizenship. She states, "...[w]hile it would appear as though the right to determine citizenship is recognized by both Canada and First Nations as an Aboriginal right protected under s.35, if faced with this claim in court Canada's usual position is to deny the right."³¹⁶ This attitude does not mean that she believes in abandoning all attempts to participate in the Canadian system. Palmater proves that there are benefits to the Indigenous engagement in Canadian politics, citing that there are ways the system can be used against itself to promote Indigenous principles. "Being Canadian citizens, individual Indigenous peoples could avail themselves of the *Charter* in their dealings with the Canadian governments – have, in fact, done so successfully."³¹⁷ She illustrates a point that Indigenous activists like Alfred oppose: that it is possible to implement change in the name of Indigeniety by working within the Canadian system as well as exerting self-determination and some degree of sovereignty. Palmater thereby demonstrates that there are multiple ways of asserting Indigeniety. At one point she states, "One can be Indigenous and also participate in the various social, political, and economic aspects of Canadian society without losing one's culture or identity."³¹⁸ I completely agree with this assertion of Palmater's and argue that engaging in a recognized dual-citizenship model that encourages legitimate self-determination allows for Indigenous peoples to participate with the socio-political Canadian state surrounding them without losing their Indigeniety.

Palmater extends her notion of Indigenous citizenship even further in *Beyond Blood*, suggesting notions of citizenship should be able to include not only those who

³¹⁶ Palmater, Pamela D (2011); p.77

³¹⁷ *Ibid*; p.95

³¹⁸ Palmater, Pamela D (2011); p.64

find themselves outside the current paradigm, such as non-status First Nations peoples, but non-Indigenous peoples as well. Allowing for a more open conception of citizenship would signify a return to traditional ideologies employed in Indigenous communities before colonization took place, and would allow for a greater understanding of Indigenous peoples in Canada. An open conception of Indigenous citizenship allows for the inclusion of marginalized Indigenous peoples; a refreshing notion which I agree could in turn benefit the argument for Indigenous nationhood as a whole. She explains, “The more citizens’ Indigenous nations have, the more influence they can have in domestic and international forums as Indigenous peoples. It is important that the many ways of being Indigenous be protected for the benefit of Indigenous nations and for their children.”³¹⁹ This type of self-determination is greatly needed for First Nations peoples and in order to secure their future in a way that upholds their unique rights. “To do otherwise ignores the fact that Indigenous sovereignty, jurisdiction, laws, rules, and customs relating to citizenship long predate contact and were never displaced by Canada’s assertion of sovereignty.”³²⁰ Her attitude in favour of self-determination and inclusion may lend itself to the recommendations made by *RCAP* to do just that, however she advocates these ideas in conjunction with an assertion of Indigenous sovereignty that does not accept derived authority from a Canadian state.

Palmater’s concept of Indigenous citizenship holds itself as separate from Canadian citizenship. Though she advocates the ability to work with the Canadian state, her notion of citizenship ultimately separates Indigenous peoples from Canada in significant, and ultimately problematic ways. For example, First Nations developing

³¹⁹ Palmater, Pam (2011); p.210

³²⁰ Palmater, Pamela D (2014); p.47

citizenship codes without any direction or connection to the Canadian framework may have the potential to violate section 35(4) of the *Constitution Act, 1982* which ensures that Aboriginal and Treaty rights are guaranteed equally to male and female Indigenous persons. This potential for discrimination revealed itself in 1985, when Bill C-31 saw the return of women eager to regain membership, but found themselves lacking the benefits membership was meant to afford them.³²¹ Though Palmater herself is an advocate of gender equality, her presupposition that Indigenous traditions influencing First Nations self-determination excludes the reality that for many peoples, these traditions have been negatively influenced by a paternal colonialism that would take generations to overcome. Indeed, self-determination is essential, but both Canada and Indigenous peoples have to recognize the influence colonialism has had.

Both *RCAP* and Palmater herself recognized the Canadian government's unwillingness to promote change. Therefore, the recognition of separate and distinct Indigenous citizenships, whether self-determined or not, is a completely uncharacteristic and unimaginable thing for the Canadian government to approve of. Understanding that like Coulthard or Alfred, Palmater would argue that Indigenous nations do not require derived authority, she cannot expect the citizens of these nations to be able to participate meaningfully with a Canadian system when they are not recognized. *RCAP* provides an alternative that the government of Canada is more likely to recognize.

5.4 Taiaiake Alfred

Canada legally recognizes First Nations peoples as Canadian citizens; however not all First Nations peoples recognize themselves as Canadians. Alfred is asked this very

³²¹ Furi, Megan & Wherrett, Jill (1996); p.10

question:

Are you a Canadian?

No, Actually, I've tried to search for the moment in time when Canada decided legally – at least legally – that we were considered citizens. Which is kind of a joke, because as I've heard someone say, 'Legally, yes we are regarded as citizens. Yet the same legislation – the *Indian Act* – is always there to remind us that we're not'. To me, you can't look at the *Indian Act*, and look at the precedents in courts, and then draw the conclusion that we're citizens.³²²

This reply sets the tone for his subsequent criticisms to the official Canadian position on citizenship and provides some of the framework for his own recommendations for Indigenous citizenship. In fact, Alfred has been very vocal on his opposition to Canadian citizenship being applied to First Nations peoples at all. Instead, Alfred would seek to confront colonialism and maintain Indigenous sovereignty by promoting a resistance to participation in the Canadian system. In his opinion, to accept citizenship would only legitimize Canadian colonial institutions that seek to oppress Indigenous populations.³²³ Instead, Alfred believes that it is necessary that Indigenous peoples construct their own independent concepts of citizenship based on self-determination and their own traditional cultural practices. He presses the urgency for this change by also being critical of what he believes to be insufficient progress by many First Nations. He states, "Countless programmes have been prepared for Indians by non-Indians. Faced with society's general indifference and a massive accumulation of misdirected, often insincere efforts, the greatest mistake the Indian has made has been to stay so long silent."³²⁴

In furthering his argument in favour of full Indigenous self-governance, including separate Indigenous citizenship, Alfred calls upon examples of successful Indigenous

³²² Alfred, Taiaiake (1999); p.19

³²³ Alfred, Taiaiake & Corntassle, Jeff (2005) "Being Indigenous: Resurgences against contemporary colonialism"; *Government and Opposition*, 40(4), pp.597-614; p.601

³²⁴ Cardinal, Harold (1999); p.2

mobilization. He remarks, "Native communities...have been quite successful in organizing political activity around their specific national identities."³²⁵ This much is true. Movements such as 'Idle No More' have demonstrated First Nations' ability to participate and express themselves in identity based politics.³²⁶ Likewise, some communities, such as the Haudenosaunee, have taken advantage of their self-government in substantial ways that have extended into the discourse over citizenship. For years the Haudnosaunee have had their own passports, operating free of Canadian jurisdictional power and acting as expressions of their own sovereignty. "Our Ho-de-no-sau-nee nation has its own passport, and we did not ask anybody if we could make this passport. My Ho-de-no-sau-nee passport has a Canadian and an American stamp on it. What does that mean? It means that we can travel wherever we want."³²⁷ A free and separate passport that reflects and supports Mohawk Indigenous sovereignty is the kind of citizenship-oriented policy Alfred advocates for all First Nations to pursue. And while instances such as that of the Haudnosaunee may support the argument in favour of Indigenous sovereignties having been successful in terms of citizenship rights, the recognition of these passports have come into question in the past decade due to international political concerns.³²⁸ Therefore, is not only Canada, but the international community that have shown hesitation to recognize these types of declarations of self-determined sovereignty, causing complications for its citizens, as it has for the Haudenosaunee.³²⁹ On the other

³²⁵ Alfred, Taiaiake (1999); p.12

³²⁶ Wotherspoon, Terry & Hansen, John (2013) "The 'Idle No More' Movement: Paradoxes of First Nations Inclusion in the Canadian Context" in *Social Inclusion*; Vol. 1, Issue 1; pp.21-36; p.22

³²⁷ Lyons, Oren (1984) "Spirituality, Equality, and Natural Law" in *Pathways to Self-Determination: Canadian Indians and the Canadian State* by LL Bear, M Boldt, JA Long. Toronto: University of Toronto Press; p.12-13

³²⁸ Kaplan, Thomas. (2010) "Iroquois Defeated by Passport Dispute"; *New York Times*; June 16, 2010; http://www.nytimes.com/2010/07/17/sports/17lacrosse.html?pagewanted=all&_r=0

³²⁹ *Ibid*

hand, *RCAP*'s recommendations for a dual-citizenship model that includes a passport explicitly recognizing the holder's dual citizenship as well as identifying the First Nation citizenship also held by that person is likely encounter far less hesitation. Alfred's issue with this recommendation being that it would nonetheless be a passport bestowed by the Canadian government and what such acceptance could mean for Indigenous sovereignty.

Just as Alfred is opposed to any form of derived authority, he is also opposed to the idea of reconciliation as it has been presented by many, in particular, the Canadian government. He believes that the type of reconciliation that has been proposed to date does not go far enough and would only legitimize colonialism:

The logic of reconciliation as justice is clear: without massive restitution, including land, financial transfers and other forms of assistance to compensate for past harms and continuing injustices committed against our peoples, reconciliation would permanently enshrine colonial injustices and is itself a further injustice.³³⁰

He refers to reconciliation as leading to further co-optation, appeasement, and assimilation of Indigenous peoples and nations as it does not address Canada's domination in what was meant to be a nation-to-nation relationship or the unbalanced power relationships that exist today.³³¹ To Alfred, it is only long after the interference of oppressive legislative policies such as the *Indian Act*, is a true nation-to-nation relationship possible. Due to these issues, he believes that it is not possible to achieve the spirit of the treaty relationship in the modern context of Indigenous affairs. And due to his very strong convictions, Alfred stands as one example of an Indigenous political theorist so starkly contrasted with not only the many pluralist political theorists previously discussed, but *RCAP*'s recommendations as well.

³³⁰ Alfred, Taiaiake (2005); p.152

³³¹ Alfred, Taiaiake (2012) "Restitution" at 184-85; Taiaiake Alfred, Address; First Annual Indigeneity Lecture; Delivered at Ryerson University, 15 Feb, 2012; <http://bit.ly/z6DfG8>

In fact, in his own work Alfred examines the recommendations made by *RCAP*, which calls for a dual-citizenship model. He argues that *RCAP*'s findings miss the heart of the issue in the current state of Indigenous-state relations; namely, that their respective origins and world-views make them incompatible when discussing concepts of citizenship and nationhood. He states, "...it is clear that for both pre-contact Indigenous identities and contemporary Indigenous identities rooted in traditional cultural teachings, it is the family or clan that forms the basis of collective identity, not the statist form of nationhood envisioned in Western terms."³³² And to Alfred, despite the calls for self-determination, the recommendations and language used in *RCAP* do not represent Indigenous philosophies.

Alfred's position is not always a popular one. Critics have noted that his unwillingness to operate within or in conjunction with the Canadian state does not always further the debate in a practical direction. Henderson himself concedes, "It does not have to be a choice between fidelity to Aboriginal and treaty rights or to the artificial Canadian nation, though it is often conceived within this dialectic."³³³ Though admirable in its conviction, Alfred's forceful advocacy for sovereignty based upon Indigenous traditional knowledge and culture causes his definition of Indigeniety to be somewhat narrow. As a result, he may be inclined to dismiss other interpretations:

The people who choose to work for or with the colonial institutions have constructed a political identity for themselves that justifies their participation. This is no excuse for being wrong – and they are – but it indicates the dire need for a stronger sense of traditional values among all Native people.³³⁴

This restrictive view of what Indigenous identities mean essentially marginalizes many

³³² Alfred, Taiaiake (2009); p.12

³³³ Henderson, Sakej (2002); p.421

³³⁴ Alfred, Taiaiake (2009); p.32-33

Indigenous peoples who wish to participate in Canadian institutions and customs. Furthermore, it is patronizing to Indigenous peoples who choose their own identities and knowingly choose to work within or in conjunction with the Canadian system as a result. Essentially, he claims that those who would dare to participate with colonial institutions must be less Indigenous, or at least lacking fundamental understandings of who they are. This attitude suggests Alfred calls for Indigenous self-determination while undermining the point of it. Unlike the recommendations made in *RCAP*, which calls for full self-determination (so long as it provides for equitable distribution of rights between genders), Alfred would have self-determination only should it further strengthen all claims to Indigenous sovereignty.

A problem with Alfred's language when referring to Indigeniety can sometimes verge on essentialist. One problem that then arises from Alfred's argument for an independent form of citizenship lies within the diversity that can be found from one First Nation to another. As this Thesis explored in Chapter Three, some First Nations have chosen to still practice membership policies based on the patriarchal colonial system despite increased autonomy.³³⁵ I assert that though idealistically authors such as Alfred may argue for a citizenship based upon Indigenous nationalism, free from any Canadian government influence, it is more complicated than simply removing First Nations from colonial influence. Alfred's suggested be met with differing degrees of resistance from First Nations closely tied to non-Indigenous communities, but it is seemingly unfeasible to remove Canadian influence, whether it be through media, personal relationships, or services rendered. Furthermore, constant authoritative colonial policies and institutions

³³⁵ "Over time most Mohawks have come to integrate various elements of the *Indian Act* system into their political culture." Alfred, Taiaike (1999); p.90

such as residential schools have permanently affected Indigenous peoples and their identity. For some³³⁶, to expect all First Nations who wish to retain and express their Indigenous citizenship to do so at the expense of their Canadian identity discriminates against their experiences and sense of self. This discrimination and marginalization through essentialism is one of the pitfalls the Royal Commission attempted to avoid while drawing their conclusions.

5.5 Conclusion

While all three of the scholars discussed within this chapter have some major differences in their discussions on citizenship in Canada, they all similarly advocate resurgence in traditional Indigenous knowledge and values. And while there is no questioning the significance of traditions to First Nations and peoples, the ways in which these traditions are employed rests solely with each First Nation according to their right to self-determination. *RCAP* acknowledges this reality in its findings and recommendations. One of the pillars of *RCAP*'s dual-citizenship model, self-determination, occurs at the personal and communal level, and therefore any concept of citizenship must be careful not to essentialize or force a citizenship model, lest it run the risk of undermining self-determination itself. While it is only Borrows who advocates a theory of Indigenous citizenship that retains Canadian ties, all take particular care to illustrate the damage done by the colonial relationship to date. Like *RCAP*'s recommendations, all authors address the impact colonialism and legislation, such as the *Indian Act* have had on Indigenous citizenship and identities. All three scholars therefore call for the abolishment of the *Indian Act* and its practices which continue to subjugate

³³⁶ Particularly those who have lived their entire lives as official "Canadians".

First Nations; a recommendation the Royal Commission was not prepared to make back in 1996.

The Indigenous authors discussed herein agree that the paradigms of power constructed around Canadian colonialism have created a system in which official forms of recognition and determination have been taken from First Nations citizens and placed in the hands of the government. This is a dynamic that needs to change. Chapter Three of this Thesis examined the ways in which recognition affects First Nations peoples on a personal level that relates to their identity, however this Chapter has examined, by virtue of Indigenous scholarship, the politics of recognition for First Nations themselves. Though it is discussed throughout *RCAP's extensive Report*, the various perspectives of these Indigenous scholars attempt to overcome the notion of derived authority. In the opinion of all of the afore mentioned Indigenous scholars, the Canadian state does not hold primacy, whether in citizenship or otherwise, over Indigenous nationhood. Instead, any and all relationships with the Canadian state ought to be in the form of a nation-to-nation dialogue in order to honour the spirit and intent of the treaty relationship.

While it is still my belief that the recommendations set out by *RCAP* have a better likelihood in achieving a successful shift in the relationship between First Nations peoples and the Canadian state, it is important to investigate the multitude of opinions found within the umbrella of "Indigenous". Essentialism can be problematic, as it generally marginalizes those seeking to express themselves in ways other than that of the majority. Though Alfred criticizes it, First Nations peoples participate with Canada and their own nations in a variety of ways, therefore the more positions on citizenship examined, the more informed. If the relationship between First Nations and the Canadian

government is to move towards reconciliation, both conceptions of citizenship must become more inclusive.

CONCLUSIONS

The objective of this thesis is not to simply explore the issues of the past or to explore the various perspectives on citizenship theory presented by non-indigenous and Indigenous scholars alike. This thesis' aim has been to explore the many notions of citizenship while drawing upon the recommendations put forth by the *Royal Commission on Aboriginal Peoples* to the government in 1996. Pluralist and Indigenous nationalist theories on citizenship have yet to progress towards an outcome that can both address the necessity for Indigenous recognition as well as foster mutually beneficial reconciliation between Indigenous nations and Canada. The recommendations made by *RCAP* for a dual-citizenship model, though not without its' problems, demonstrates a desire for meaningful discussion and understanding of these issues.

The current practice of unitary citizenship by the Canadian government is unsatisfactory to the needs of Indigenous peoples. As demonstrated by discussions of pluralism, recognition of diversity can be strength. However, if Canada continues to not adequately recognize the growing resistance to colonial orders and the multitude of identities within it, this diversity can become a hardship that further threatens relationships and the future of Canada as a nation. I believe that deeper and more emblematic recognition would go a long way in repairing the relationship between Canada and the First Nations peoples. The objective of this thesis has been to shed light on the relationship and demonstrate why the recommendations made by *RCAP* to implement a model of dual-citizenship ought to be revisited.

The relationship between Indigenous and non-Indigenous peoples was meant to be one of peace, friendship, and sharing for the good of both parties according to the history of Canadian Treaties. It was also clear from these Treaties that Indigenous peoples had their own systems of governance, citizenship practices, and self-determination prior to colonialism. Their political orders was informed by their own worldviews and largely incompatible with European understandings of governance.³³⁷ The Treaties between Indigenous peoples and the European settlers recognized their self-determination and agreed to share in the land and resources and make their way together with respect. However it was not long until the government saw this as an obstacle to their own sovereignty and their vision for Canadian society. The government began implementing colonial practices under the guise of ‘civilizing’ Indigenous peoples and attempting to replace Indigenous citizenships with their own. Assimilation was done to Indigenous peoples across a multitude of ways and resulted in damaging not only the relationship between Canada and the Indigenous nations, but in damaging Indigenous identities. Indigenous nations are now faced with having to decolonize their own concepts of citizenship as well as confront the ongoing limitations imposed upon them by the *Indian Act*. Understanding how the treaty relationship has been distorted allows for a wider grasp the current challenges facing citizenship for Indigenous peoples.

Chapter Two looks at the foundations for Canadian citizenship as it is today. Though citizenship is often dismissed as simply a reality of the country to which you are born, this is not the case for many Indigenous peoples keenly aware of their unique

³³⁷ note: Worldviews, as each nation was independent, possessing their own systems of governance and key values independent of one another. There is no singularity when discussing Indigenous perspectives past or present.

history and rights. Indeed, the ideological and historical foundations of Canadian citizenship run in contrast to Indigenous world-views and demonstrate how Indigenous peoples have been marginalized within a colonial system. The chapter looks to reveal the foundations for citizenship in order to better demonstrate why they are at odds with Indigenous realities. Currently, Canada's official model of citizenship is that of unitary citizenship, which doesn't accommodate the Indigenous experience in any way, but instead seeks to create a false sense of unity by claiming to treat all citizens equally regardless of their positions within society. However it is acknowledged that diversity exists within Canada and it is addressed in other ways other than through our citizenship. The citizenship debates have been at an all time high in this new era of globalization when we question what it is to be a citizen to one state, instead opting for recognition of our pluralities.

It is with those pluralities in mind that the *Royal Commission on Aboriginal Peoples* conducted its research on the issues facing Indigenous peoples in Canada. *RCAP* was instrumental in not only its willingness to disclose the many issues that were causing the existing rift between the Canadian government and the Indigenous peoples, but also highlighted issues of law not necessarily recognized by the government. The *Royal Commission* highlighted the lack of participation by Indigenous peoples in Canadian society due to displaced identity and a lack of recognition as some of the reasons why the relationship has remained strained. In order to rectify the alienation felt by many, *RCAP* recommended a dual-citizenship model that relies on recognition and right to self-determination. A dual-model would, in their estimation, go a long way towards promoting Indigenous identity whilst allowing marginalized members to participate in a

Canadian identity as well. Furthermore, the recommendations included that a mechanism for dispute resolution that is open and fair be implemented by Indigenous nations building their own citizenships, as the Report noted the diversity that exists between not only Indigenous nations, but within them as well. The goal of Indigenous citizenship in a dual model is not only to recognize Indigeniety in an official capacity in Canada, but also to promote inclusiveness.

Chapter four examines the work of pluralist theorists in order to demonstrate how the status of Indigenous peoples in the Canadian system has been addressed in terms of citizenship to date. Indeed, pluralism has been the popular response of many political theorists, though there are different ways to accomplish this. The arguments made by Kymlicka, Taylor, and Cairns are explained within this chapter as they have provided some of the most prominent arguments over the years. While each have their own, slightly different suggestion for how the government might go about this, they all seem to agree on the need to recognize Indigenous nations in ways more profound than what we find in the unitary model in place today. Though all of the pluralist theories explored recognize the need for recognition, their theories do not necessarily advocate for more comprehensive First Nations citizenship. The focus is instead on First Nations identity rather than official citizenship. These models do recommend a varying degrees of autonomy for First Nations peoples, both collectively and individually, but maintain that Canadian citizenship is primary and ultimately higher-ranking than any other citizenship. The reason these views are much more desirable to Canadian theorists is that they pose little threat to Canadian nationhood and unity, however they do little to strengthen Indigenous nationhood beyond their very recognition as collective identities with unique

rights and history. Differentiated citizenship, 'deep diversity', and the 'citizens' plus' model are each wary of the cost of self-governance and allowing for too strong of identities (other than the Canadian identity) to hold power in the nation-state. Their arguments for diversity are tempered by the fact that they all are unwilling to give Indigenous peoples recognition on their own terms.

However it is these terms that interest the wide variety of Indigenous scholars to get involved in the citizenship debates. Chapter five clearly identifies that there exists a variety of Indigenous perspective on the issue of citizenship. These perspectives include some of the many First Nations peoples who acknowledge their Canadian citizenship and are looking for way to participate whilst also looking for recognition of their own unique and culturally valuable identity. John Borrows and Pam Palmater have been instrumental to this conversation, as they do not wish to call for complete independence from the Canadian state, choosing to work with the Canadian government to varying degrees. However they do require that citizenship for Indigenous peoples acknowledge their own identities and emerge from traditional Indigenous understandings. It is important that this is done through the self-determination of Indigenous peoples, and not done for Indigenous peoples. It is more than a need for consultation. To better illustrate the many different views on citizenship for Indigenous peoples, this chapter also examines the argument made by Taiaiake Alfred, who does not seek to participate in the Canadian experience. Alfred calls upon the government to instead recognize Indigenous sovereignty and to provide assistance in First Nations peoples decolonizing themselves completely. Unfortunately these measures would marginalize those who have become attached to and choose to also recognize their Canadian citizenship and identity.

Essentializing Indigenous identity harbors problems of its own. A brief evaluation of the theories presented demonstrates that not only do these theories allow for more comprehensive declarations of First Nations citizenship, but arguments from Alfred and Palmater dismiss Canadian citizenship as unnecessary or as an affront to Indigenous sovereignty. While I do not argue against the complications Canadian citizenship brings to Indigenous sovereignties, I recognize that the acceptance of these theories would be exceedingly problematic to the Canadian perspective. Canada is unlikely to support or even recognize a citizenship that leaves their own nationhood out all together. Though the arguments of Palmater and Alfred support a significant degree of collective and individual self-determination, they do not recognize Canada's place in the paradigm of citizenship for Indigenous peoples and even marginalizes those who would seek to maintain both given their heritage or own identities. Borrows, on the other hand, while promoting First Nations and Canadian citizenships, as well as considerable self-determination, seeks to unite Canadian and Indigenous nationhood. However, some of Borrows prerequisites for this change, such as the elimination of the *Indian Act*, keep him from being the most desirable option for the Canadian government. All of these perspectives in their own way demonstrate that the fractured and damaged relationship between Indigenous and non-Indigenous peoples in Canada is a call for a return to the Treaty relationship where we all work together to ensure mutual success.

Bettering the relationship and striving towards mutual success was at the crux of the Royal Commission in the mid-1990s. By acknowledging the multitude of opinion, the findings of the *Royal Commission on Aboriginal Peoples* were, in a word, overwhelming, due to both the sheer volume of information being presented and the wide variety of

subjects covered. What was the government to do with a report that suggested so many changes be made to its system?

As it turns out, the answer is very little. Very few of the recommendations made by the Commission resulted in policy by the Canadian government. The Assembly of First Nations, at the 10th anniversary of the release of the *Royal Commission's* report released a report card in order to evaluate the strength of the work done by the government of Canada in the areas highlighted by the Commission and whether or not the recommendations were followed.³³⁸ The result was very disappointing. The government of Canada received a failing grade. The report claimed, “Any major improvements in individual communities or regions have been led by those communities for those communities.”³³⁹ However community-led initiatives can only go so far to improving the situation of the First Nations peoples, as the *Indian Act* and other governmental policies restrict them. The reality remains for many Indigenous peoples that they are left in a situation of marginalization with ever increasing poverty and poor living conditions.

RCAP's recommendations were designed to alleviate the problems associated with a fractured relationship with the Canadian government. Castellano notes,

The central thrust of the commissions proposals revolve around the strongly related concepts of (1) a *renewed relationship* between Aboriginal and non-Aboriginal peoples in Canada; (2) *self-determination* expressed in new structures of self-government; (3) *self-reliance* through restoration of a land base and economic development; and, (4) *healing* to achieve vibrant communities and healthy individuals equipped to fulfill the responsibilities of citizenship.³⁴⁰

³³⁸ Assembly of First Nations (2006) “Royal Commission on Aboriginal People at 10 years: A report card”; <http://www.turtleisland.org/resources/afnrcap2006.pdf>

³³⁹ Assembly of First Nations (2006); p.2

³⁴⁰ Castellano, Marlene (2002); p.114

None of these goals have been met, and it is difficult to postulate why. Is it that despite commissioning such an extensive examination, that the government decided that the state of Indigenous affairs did not mark a vested interest by the state? Given its' findings, it is unlikely. Or perhaps, is it that the government fears a shift in not only the paradigm of its' citizenship, but also the power structures that hold many institutions in place? It is difficult to say. However it is the opinion of the Assembly of First Nations that, "Canada has flirted with this challenge through the various federal policies and programmes aimed at 'self-government' for the minority of Aboriginal peoples living on reserves. However, Canada has been reluctant to commit to a post-colonial relationship with Aboriginal peoples..." As Canada's political landscape is in a constant state of evolution, this attitude may also change.

Canada must commit to a significant and meaningful change in its' relationship with First Nations peoples if it truly wishes for reconciliation and engagement from First Nations citizens. In order to do so, I recommend a re-evaluation of the Report by the Royal Commission on Aboriginal Peoples. If Canada were to implement a dual citizenship model following the recommendations made by *RCAP*, First Nations peoples in Canada would remain Canadian, however their citizenship to their own First Nation would be formally acknowledged and recognized by the Canadian government as another citizenship. This dual status would therefore be reflected on official documentation, such as passports. For example, my own passport would formally acknowledge by dual identity as a citizen of Canada as well as my citizenship to Sagkeeng First Nation. Though the Canadian government accepts citizenship to my First Nation and my status as a First Nations person is recognized by the government through the *Indian Act*, this

recognition does not extend to all areas. I believe that full recognition of citizenship will begin to foster a better relationship between First Nations and the rest of Canada, leading to greater participation from First Nations peoples in Canadian affairs.

These recommendations present their own set of challenges. The *Indian Act* and its harmful effects and restrictions upon First Nations peoples remain areas in need of further evaluation and consideration by both First Nations and the Canadian government. The *Indian Act's* influence over benefits, development, and funding for First Nations peoples is considerable and will have to be addressed in years to come. However, this does not prevent both sides from beginning to progress the relationship. I believe that recognition comes first and in turn will lead to thoughtful evaluation of the nation-to-nation relationship once set out by the Treaties. Recognition affects the relationship between First Nations and non-Indigenous citizens and may lead to a better understanding of one another, as well as foster economic and social change.

Indeed, the only way that these issues are likely to change is through a call from not only the Indigenous population, but from the rest of Canada as well, to work on this relationship. In order for a Commission to be ordered on the subject of Indigenous affairs, key events that made Indigenous people question the state of their rights and for the relationship between themselves and the state had to occur. As a country, Canada cannot afford to wait for the next Oka in order to take the call for Indigenous recognition. Many Indigenous people feel as though this current system either subjugates or marginalizes them while dismissing their inherent rights, whilst others want to be a part of a conversation that would allow them to identify their Indigeneity as well as fully participate as members of a country their ancestors not only helped found, but one which

they have informed. Indigenous issues are once again at the forefront of our national debate with the population increasing, and the gap widening, therefore mobilization of the Indigenous nations is at a peak once more. In the wake of growing political movements such as Idle No More and increasing tensions between Indigenous peoples and Canada, Alfred and Rollo suggest, “Perhaps there is no better time, then, to press forward with a restoration of the relationship delineated in *RCAP*.”³⁴¹

As we approach the twentieth year since the *Royal Commission on Aboriginal Peoples*’ publication, we must take a look back at the evolving political landscape and the relationship between First Nations peoples and the Canadian government. In the area of citizenship, there has been no real consideration of amending our system to support the idea of duality in Canada. Furthermore, more study is required to determine exactly what this dual-citizenship model will look like. However, we know that recognition is key to developing our future relationships. Ladner clearly communicates the challenges that lie ahead: “It is becoming increasingly apparent in Indigenous politics that it is necessary to find a way to live together and reconcile competing stories of Canada, competing constitutional orders, and contested sovereignties.”³⁴² In my estimation, in order to determine how we will live together, we all must possess the ability to be recognized for who we are on our own terms.

³⁴¹ Alfred, Taiaiake & Rollo, Tobold (2012) “Resetting and Restoring the Relationship between Indigenous Peoples and Canada”. *Idle No More Pamphlet*.

https://ipsmo.files.wordpress.com/2012/12/idlenomore_handout.pdf

³⁴² Ladner, Kiera (2006); p.2

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