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Book Review: Citizens Plus: Aboriginal Peoples and the Canadian State, by Alan C. Cairns

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BOOK REVIEWS

CITIZENS PLUS: ABORIGINAL PEOPLES AND THE CANADIAN STATE, by Alan C. Cairns, Vancouver: U.B.C. Press, 2000, 280 pp. – Several years ago, while rummaging in my parents' basement, I found a copy of a textbook my sister used when she was in university. It was by Edgar McInnis, Professor of History at York University. Here is his story of the settlement of North America:

The Europeans who came to the shores of North America regarded it as a vacant continent, which lay completely open to settlement from the Old World. In the final analysis this assumption was justified. It is true that the continent was already inhabited by tribes who claimed the land as their own. But in the whole of Canada there were probably no more than 220,000 Indians...

The aborigines made no major contribution to the culture that developed in the settled communities of Canada...They remained a primitive remnant clinging to their tribal organization long after it had become obsolete.

...In the United States, where agricultural settlement was the primary aim, the Indian was not only useless but an active menace whose speedy extermination would be an unqualified boon.¹

This view – the “extermination” of the Indian as an “unqualified boon” – may seem shocking today, but it was the view that was taught to first year history students at the University of Toronto in 1971. A less extreme, but similar view had been expressed two years earlier in a government policy paper. The *White Paper on*

¹ E. McInnis, *Canada: A Political and Social History* (Toronto: Holt Rinehart and Winston, 1969) at 10-11. These figures, and this history, are contested, of course. Alan Cairns notes at p. 35 that there are wild discrepancies in estimated population figures for North America ranging from 1,148,000 to 18 million. See e.g. R. Wright, *Stolen Continents: The “New World” Through Indian Eyes* (New York: Houghton Mifflin, 1992). In his account, before the coming of the Europeans, North America was not a continent sparsely populated with disorganized roaming bands of Indians. He cites research suggesting that there were 100,000,000 Native Americans in 1492 - one fifth of the world's population. In North America, there were 7 - 18 million Indians. Some nations relied heavily on agriculture and had large settled communities. Cahokia, near present-day St. Louis Missouri, might have had a population of 40,000 in the 1200's. This would have been as large as London or Paris at the same time.

Indian Policy (the *White Paper*) of the Trudeau government called for the legal extermination of Indian status, the dismantling of Indian reserves, the repeal of the *Indian Act*, and amending the Constitution to eliminate federal jurisdiction over Indians.² The *White Paper* referred to Indian claims to land as “so general and undefined that it is not realistic to think of them as specific claims capable of [legal] remedy.”³ Trudeau apparently thought that he was doing nothing more than formally announcing what had already happened – the disappearance of Indian identity. Much to his surprise, he was set back on his heels by the angry reaction of First Nations, and by court rulings recognizing Aboriginal title. His government had to do an about-face and institute a policy, which addressed land claims and Aboriginal title.

Alan Cairns’ first mention of his own involvement with Aboriginal issues dates back to the mid-1960s, shortly after Indians were first given the federal franchise. Cairns was a senior researcher for a federal inquiry into the situation of Indians,⁴ which resulted in the *Hawthorn Report*⁵ of 1967. The authors found that Indian communities had not disappeared, and recommended that the distinctness of Indians be recognized in public policy through the status of “citizens plus.” That is, Indians would have the full benefits of Canadian citizenship, but have additional rights.

By “plus” we referred to ongoing entitlements, some of which flowed from existing treaties while others were to be worked out in the political processes of the future, which would identify the Indian peoples as deserving possessors of an additional category of rights based on historical priority.⁶

It is important to place the origin of “citizens plus” in the context of the *White Paper* and the university history texts of 1971. At the time that “citizens plus” was proposed, to suggest giving

² A.C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000) at 51-52.

³ Quoted in P. Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001) at 268.

⁴ *Supra* note 2 at 11.

⁵ H.B. Hawthorn, ed., *A Survey of the Contemporary Indians of Canada*, (Ottawa: Queen’s Printer, 1967).

⁶ *Supra* note 2 at 12.

any official recognition to Indians was to go against the grain of the intellectual and political mainstream. It was the concept of “citizens plus” which helped break the hegemony of assimilationist thought, and helped defeat the proposals in the *White Paper*. The change in political direction, however, did not result in the revival of the concept of “citizens plus.” Rather, the focus shifted to concepts centred on what Cairns calls “parallelism” – nation to nation relationships, treaty negotiations and a third order of government. These concepts emphasized the rights of collectivities of Aboriginal people, rather than the rights of individuals of Aboriginal heritage. As a consequence, public policy turned toward making constitutional, economic and political space for these collectivities.

While admitting that he may just be “nostalgic,” Cairns regrets the fact that the focus on “parallelism” does not emphasize the “interconnectedness”⁷ and “common citizenship”⁸ that would have been emphasized by the “citizens plus” approach. He argues that current public policy would result in the creation of Aboriginal nations that were “separate entities.”⁹ Such a “mini-international system”¹⁰ would not be realistic, according to Cairns, because Aboriginal communities are so small, and because they would not receive the financial support they needed from the rest of the country.

Cairns pays particular attention to three of the public policy proposals that advocated “parallelism.” The first was the 1983 *Report of the Special Committee on Indian Self-government* (the *Penner Report*), chaired by Keith Penner. The *Penner Report* recommended that Indian bands should exercise jurisdiction over matters affecting Indian people, and over the resources within the boundaries of Indian lands.¹¹ The second set of proposals was found in the *Charlottetown Constitutional Accord* (*Charlottetown*

⁷ *Ibid.* at 9

⁸ *Ibid.* at 90.

⁹ *Ibid.* at 198.

¹⁰ *Ibid.* at 7.

¹¹ Canada, “Indian Self-Government in Canada” in *Minutes and Proceedings of the Special Committee on Indian Self-Government*, no.40, (12 and 20 October 1983) at 144. The committee was made up of seven Members of Parliament.

Accord) of 1992, which endorsed the concept of self-government and set out an extensive process for negotiations with Aboriginal peoples. The federal government and all of the provincial and territorial governments supported the *Charlottetown Accord*. The third set of proposals came from the *Report of the Royal Commission on Aboriginal Peoples* (RCAP) in 1996. RCAP recommended the recognition of First Nation jurisdictions, and of greater Aboriginal control over traditional lands.¹²

Cairns is not so much opposed to these initiatives as much as he is worried about them. He states:

The parallelism proposals – of Penner, Charlottetown, and RCAP – display little concern, should their proposals be implemented, for whether the nature of community in the country as a whole will induce us to feel responsible for each other.¹³

In his view, these proposals pushed for a “maximum amount of self-government” for First Nations, while neglecting the “civic relation of Aboriginal peoples and individuals to federal and provincial communities and their governments.”¹⁴ He argues that these approaches are advocated by “Aboriginal élites” who behave as “apostles of difference”¹⁵ and give “minimal recognition to integration requirements.”¹⁶ Legal academics, he observes, have a “pervasive tendency” to “undervalue, underestimate, or overlook the continuing links,”¹⁷ and have become members of an “intellectual social movement.”¹⁸ In reviewing the policies of the federal and British Columbia governments on Aboriginal self-government, he finds that they are faulty for they give the impression that the Crown governments are separate entities from

¹² See Canada, *Report of the Royal Commission on Aboriginal Peoples*, v. 2, (Ottawa: Canada Communications Group, 1996) at 240-352 (on self-government) and at 557-590 (on lands and resources).

¹³ *Supra* note 2 at 92.

¹⁴ *Ibid.* at 94.

¹⁵ *Ibid.* at 95.

¹⁶ *Ibid.*

¹⁷ *Ibid.* at 183.

¹⁸ *Ibid.* at 179.

Aboriginal governments, when, in fact, the Crown also represents Aboriginal citizens.¹⁹

In spite of his criticism of this "Aboriginal position," as he calls it, Cairns does not want to be placed in the same camp as the Canadian Alliance and others who are opposed to the recognition of any Aboriginal distinctiveness. He gives those views the briefest of descriptions (only a few paragraphs in the entire book²⁰) and dismisses them as "strident interjections from surviving supporters of the philosophy of the 1969 White Paper."²¹

Cairns would like to set out a middle way. He finds that the "practical and moral justifications for self-rule...are irrefutable."²² He asserts his support for land claims, because a settlement likely "stimulates Aboriginal pride and generates income-raising economic activity among Aboriginal peoples."²³ But, there is a prior question that needs to be addressed.

The unasked question, which remains unanswered when the goal of autonomy crowds out togetherness, or when nationalism pushes a common citizenship to the margins of consciousness is "What will hold us together?" Is there any common "we" group to which we all belong? Is a shared geography and propinquity enough to sustain feelings of responsibility for each other that transcend the historical Aboriginal/non-Aboriginal divide that we have inherited?²⁴

Cairns is careful to point out that this identity, as a "we," need not be the only identity that an individual possesses. Each person has many identities based on political, ethnic, religious and social affiliations. However, Cairns fears that, with the establishment of political relationships based on "parallelism," *one* of those identities will not be a "pan-Canadian" identity that includes both Aboriginal and non-Aboriginal people.

The stated purpose of this book is to begin a wide-ranging debate on future relationships with Aboriginal peoples: a debate

¹⁹ *Ibid.* at 198.

²⁰ *Ibid.* at 71.

²¹ *Ibid.* at 85.

²² *Ibid.* at 36.

²³ *Ibid.* at 200.

²⁴ *Ibid.* at 201.

that is not only about the choice between assimilation and "parallelism," but also about "citizens plus." He invites dialogue because "[w]e are closer to having an actual discussion than we have ever been."²⁵

We may be close, but I am not sure that Cairns brings us any closer. Clearly, he has an important perspective that needs to be seriously considered. If a nation state is to survive, there must be a common identity at some level. However, there are two problems with the way that Cairns approaches this topic. First, he does not ground his analysis in any concrete examples. Consequently, it is difficult to tell, with any precision, how his approach differs from the other approaches. Second, in my view, the way that he frames the issue of the "pan-Canadian identity" does not advance the debate. His discussion on identity appears to be based on the related assumptions that there can be only one pan-Canadian identity which is shared by everyone in Canada in the same way; and that it is possible to prod a group into having that pan-Canadian identity by pointing out the dangers of *not* having such an identity. I find both of these assumptions problematic.

Before I go further, I should be as candid as Cairns, and disclose that I was involved in the constitutional negotiations on self-government from 1984 onwards as a lawyer for a First Nation organization, and in the 1992 *Charlottetown Accord* process as a lawyer for the Government of Ontario. Staff from the Royal Commission on Aboriginal Peoples also consulted me on a few occasions. So, I suppose that my views could be soaked in the same nostalgia admitted to by Cairns, only from a later period. Having said that, I think that any reader would be hard pressed to describe the content of the concept of "citizens plus." The clearest statement I could find of its meaning was the following:

It speaks easily to the urban Aboriginal in a way that nation-to-nation does not, and the "plus" aspect can be filled with a meaning appropriate to the urban setting. The "plus" aspect can accommodate the "nation" ambitions of the self-governing landed communities, and can help shape the emerging treaty regime. Both "treaty" and "nation" can be adapted to the positive constraints of the "citizens"

²⁵ *Ibid.* at 5.

label, which provides civic links with non-Aboriginal Canadians – a task for which the nation-to-nation paradigm is ill-suited.²⁶

“Citizens plus,” then, is a rubric, which applies to every person who is “Aboriginal.” Each Aboriginal person will possess “an additional category of rights based on historical priority”²⁷ but the content will differ, especially between urban Indians and Aboriginal communities with a land base.

This description of the concept of “citizens plus” raises questions without giving answers. For the urban Aboriginal person, for example, Cairns talks of additional “rights,” but he does not describe them. Is he referring to specialized social services, guaranteed representation on boards and agencies, special electoral districts or exemption from taxation? With respect to the communities with a land base, he would recognize “nation ambitions” and treaty rights, but does not specify which articulation of these much-litigated concepts he is relying on. To say that such rights would be “constrained” compounds the problem because he does not say what constraints would be imposed. The same problem arises with his reliance on “historical priority” as a basis for recognition of additional rights. There are fundamental disagreements over what constitutes “history,” let alone how to balance “historical priority” with contemporary reality. There are probably a dozen decisions from the Supreme Court of Canada on these issues, but we cannot tell how his position compares with those views because he does not discuss these cases.

The formulation of “citizens plus,” vague as it is, undoubtedly provided valuable policy guidance in 1967, when the debate was about whether or not to recognize the existence of Indian identity. But thirty-five years later, a great number of specific proposals have been made, and some have been implemented. Thus, it is no longer necessary to discuss in the abstract – it is possible to work with the concrete.

Let me give, as an example, the current conflicts over land and resource use. In British Columbia for the last twenty years, the major battles have been, not over self-government, but over the

²⁶ *Ibid.* at 10.

²⁷ *Ibid.* at 12.

means of survival – access to fisheries, preserving forests, and keeping land available for hunting. Aboriginal people have challenged federal and provincial laws that transfer lands and resources from Aboriginal people to resource companies that then make a profit for their shareholders. Would “citizens plus” place the emphasis on “citizen” and require that Aboriginal people give up their forests for the “public good”? Or would Cairns, who supports land claims, feel that one “plus” for a First Nation would be the authority to prevent logging on large swaths of northern British Columbia forest, thereby affecting the provincial economy? We do not know, because he does not mention these on-going conflicts, nor does he discuss the recommendations relating to lands and resources in RCAP. The failure to address these issues limits the utility of this work for policy-making relating to the most important disputes of the day.

Cairns is also silent on self-government agreements. During the time that he was writing his book, the Nisga’a signed an Agreement in Principle, in 1996, and the *Final Agreement*²⁸, in 1998. This Agreement provides for 2,000 square kilometres of land to be granted in fee simple, and an end to the tax exemption for the Nisga’a. There is explicit recognition of federal and provincial authority over the Nisga’a and their territory, with Nisga’a paramountcy on issues internal to the Nisga’a, such as its constitution. However, the *Charter of Rights and Freedoms*²⁹ is to apply the Nisga’a government. The *Final Agreement* consists of 22 Chapters, and is 252 pages long, with an additional 462 pages of appendices. Its length is a result of the intricacy involved in the crafting of an appropriate legal, political and social interface between mainstream society and the Nisga’a. Cairns does not discuss this agreement, so we do not know whether this complex interface provides an appropriate degree of “interconnectedness.”

Lands, resources, and self-government, are issues mainly for communities with a land base. Cairns argues that the majority of the Aboriginal population is now largely urban, and therefore, the

²⁸ The text of the Nisga’a *Final Agreement* can be found at the British Columbia Aboriginal Affairs site www.gov.bc.ca/tno/treaty/nisgaa/docs/nisga_agreement.asp (date accessed: 27 May 2002)

²⁹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* (U.K.), 1982, c.11.

“nation to nation” concept has limited relevance. He is very critical of the *RCAP* for failing to address the situation of urban Aboriginal people adequately. However, if “citizens plus” is the better way, we are left in the dark about the “plus” that Cairns would propose. For example, Cairns complains that the “nation to nation” approach does not address participation in federal and provincial government through parties and elections. But Cairns does not say whether he feels that the *status quo* is fine, or whether there ought to be measures to enhance Aboriginal participation. Excellent material has been available since 1991 from the Royal Commission on Electoral Reform and Party Financing. In *Aboriginal Peoples and Electoral Reform in Canada*,³⁰ the Commission included a paper, which discussed re-jigging electoral boundaries to create districts that contained a majority of Aboriginal people. There was also a paper on the special Maori seats set aside in the legislative assembly in New Zealand. Cairns does not mention this work, nor does he discuss any other specific measures that might be appropriate for urban Aboriginal people.

In my view, the failure to address concrete issues like the three above, reflects poorly on the general approach taken by Cairns. He is critical of Aboriginal leaders who do not pay enough attention to “interconnectedness.” However, it seems to be slightly unrealistic to demand that Aboriginal leaders adhere to a “sense of common belonging to a single political community”³¹ without first indicating whether that “political community” will take away the forests, attack the Nisga’a Agreement or oppose electoral reform.

I realize that I have not engaged in the substance of the *RCAP Report*, the *Penner Report* or the *Charlottetown Accord*. I have not pointed out specific provisions which address “interconnectedness,” nor discussed my evaluation of how consistent these documents are with the “middle way.” However, I do not feel that doing so would further the debate. Those reports are available, and their positions are set out clearly. For all intents and purposes, they have done their job, and we are moving on to

³⁰ R.A. Milen, ed., *Aboriginal Peoples and Electoral Reform in Canada* (Toronto: Dundurn Press, 1991).

³¹ *Supra* note 2 at 80.

concrete issues of implementation. In my view, we need to engage these concrete issues, not focus on abstract differences in approach.

The second major concern I have with Cairns' book is his concept of what it means to "have a sense of belonging" – to feel part of the "common citizenship."³² Unless Cairns approaches the identity issue with more openness than is apparent from the book, he may come across as trying to impose *his* version of pan-Canadianness on Aboriginal people. I do not want to give the impression that Cairns is critical of Aboriginal people maintaining an Aboriginal identity. He is very supportive of fostering Aboriginal identity. However, the way that he talks about the "Canadian" part of our identity – the "sense of common belonging"³³ – it sounds like there is only one way to feel "Canadian." This impression is created because Cairns never describes the content of this "sense of belonging." He does not specify what definition of common citizenship is being used as a standard, as he apparently assumes that there is only one standard.

This impression is further reinforced by the way that Cairns constantly refers to the "Aboriginal position," and contrasts that position to his concept of "citizenship plus," which, by implication, must be the "Canadian position." When he refers to Aboriginal people advocating the "Aboriginal position," this description may make some sense, although even then it is dangerous because there is a wide variety of opinion in the Aboriginal community. However, Cairns uses the same language to describe self-government approaches, which have been endorsed by many institutions that are decidedly not Aboriginal, including all the federal, provincial and territorial governments which endorsed the *Charlottetown Accord*. Cairns cannot seem to concede that these institutions may, in fact, be proposing a version of "common Canadianism"³⁴ which, albeit different from his own "Canadian position," is nonetheless still "Canadian." Instead, he pushes these proposals away, labelling them "the Aboriginal perspective."³⁵

³² *Ibid.* at 90.

³³ *Ibid.* at 80.

³⁴ *Ibid.* at 93.

³⁵ *Ibid.* at 85.

This lack of generosity with what counts as “Canadian” gives the impression that his concept of Canadian identity is monolithic, static and pre-determined. His version of Canadian identity has solid boundaries, although he does not define them, and Aboriginal nations who enter into self-government agreements are in danger of finding themselves on the outside.³⁶

I do not think that it is necessary to be quite so inflexible in the way that we view our Canadianness. In a multi-national, multi-ethnic state like Canada, identity cannot be frozen and reduced to a single “sense” shared by everyone in the same way. The identity of members of a group is bound up in their own perceptions of their group identity, and in the identity ascribed to them by other groups.³⁷ Both how individuals identify with their own group, as well as how much commitment they have to an identity with a larger group will change in relation to events unfolding around them. There is an on-going process of identity formation which reacts to the present while incorporating the past. In my view, then, Canadian identity is multi-faceted, shifting and constantly in the process of articulation.

I have an identity as a Canadian of Japanese origin. In this, I am no different than others who have “ethnic” identities of some sort, including Cairns. My ethnic identity is linked to the stories and language I heard as a child, the food I eat, and my relatives in

³⁶ This raises questions such as: Who exactly are those on the inside of the boundaries? How is that they come to determine what those boundaries are? And why is that Aboriginal nations cannot participate in defining those boundaries? Will Kymlicka makes a similar point when he observes that much of the “pan-Canadian nationalism” espoused by English-speaking Canadians actually only serves the interest of English-speaking Canadians, not Québécois, nor Aboriginal nations. See W. Kymlicka, *Finding our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998) at c. 12.

³⁷ Joane Nagel, a scholar of American Indian identity, summarizes anthropologist Fredrick Barth’s views. “Barth (1969) first convincingly articulated the notion of ethnicity as mutable, arguing that ethnicity is the product of social ascriptions, a kind of labeling process engaged in by oneself and others. According to this perspective, one’s ethnic identity is a composite of the view one has of oneself as well as the views held by others about one’s ethnic identity. As the individual (or group) moves through daily life, ethnicity can change according to variations in the situations and audiences encountered.... Since ethnicity changes situationally, the individual carries a portfolio of ethnic identities that are more or less salient in various situations and vis-a-vis various audiences”: J. Nagel, “Constructing Ethnicity: Creating and Recreating Ethnic Identity and Culture” (1994) 41 *Social Problems* 152 at 154.

Tokyo. I also have a strong identity as a Canadian. My sense of being Canadian is inextricably linked to the confiscation of property, forced internment and deportation of Japanese Canadians during World War II. My sense of Canadianness is also deeply affected by the fact that, in 1988, the Canadian government apologized for these actions, provided symbolic compensation, and made changes to the *War Measures Act*. So while I have a strong belief in Canada's ability to do the right thing, and a strong commitment to Canada, my nationalism is tempered with a slight contingency – wariness of events that could end my welcome among my fellow Canadians. It is for that reason that I generally refer to myself as a Japanese-Canadian. This is not a description of my ethnic identity as a Japanese person living in Canada, but rather a statement of how I have constructed my “pan-Canadian” identity. Cairns must have a different sense of being Canadian than I, because his people have a different history with Canada. Cairns' identity is probably not hyphenated. I do not think either of us are less Canadian for that difference. Having made my peace with my connection to Canada, I would not appreciate it if I were told that, to be part of the “we” in this country, I had to drop the hyphen. I would feel that this would be an imposition, a request to hide my history.

If we were to proceed from the understanding that our histories cannot be disentangled from our “sense of common belonging,” then, there may be room to conceive the “nation to nation” approach as an articulation of a “pan-Canadianness” that incorporates Aboriginal history. This history is one of self-consciousness as “separate entities.” The separateness was clearly recognized in the treaty-making process, and continued through a century of resistance to assimilationist policies.³⁸ The “nation to nation” approach did not appear out of nowhere in the 1980's; it was a deeply seated, often expressed Aboriginal consciousness not acknowledged by the majority of Canadians. The Nisga'a, for example, never conceded that they were not a “separate entity” with rights to their lands. Their petitions to Victoria in 1887, and to London in 1913 were ignored, and Trudeau repudiated their

³⁸ For an excellent account of what this struggle looked like from the Aboriginal side, see J. Borrows, “A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government” (1992) 30 *Osgoode Hall L. J.* 291.

approach to Aboriginal title. The Nisga'a people will weave that history into the experience of "Canadianism," but their experience will also be affected by the fact that they now have successfully negotiated a treaty with the federal and provincial governments.

Chief Joseph Gosnell compared the treaty-making process to the process for Confederation, saying that the Nisga'a had not been included in Canada until the signing of the treaty. He told the British Columbia Legislature in 1998,

As British Columbians, as Canadians, we should all be very proud... under the treaty, the Nisga'a people will join Canada and British Columbia as free citizens – full and equal participants in the social, economic, and political life of this province, of this country.³⁹

From this perspective, we can see the treaty-making process as an important commitment to this nation, and self-government agreements as important components of our Canadian identity.

Cairns, however, is not comfortable with this analogy. The objective of Confederation, he says, was to "create a new people, a pan-Canadian community."⁴⁰ By contrast, he writes that the "nation to nation" approach pays "negligible attention" to fostering a sense of common belonging and would result in "coexisting strangers."⁴¹

I am not certain that the difference between the two events is quite as stark as Cairns would have us believe. The preamble of the *British North America Act* (now the *Constitution Act, 1867*), for example, looks more like the minutes from a meeting of federal-provincial bureaucrats than a stirring call for the creation of a new national consciousness.

Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

³⁹ J. Gosnell, "Speech to the British Columbia Legislature, December 2, 1998" (1998/99) 120 B.C. Studies 5.

⁴⁰ *Supra* note 2 at 135.

⁴¹ *Ibid.* at 110.

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America ...⁴²

The *British North America Act* brought together separate entities (the colonies), and established the division of responsibilities between the governments, the funding arrangements and the ownership of lands and resources. This is not dissimilar to the contents of the Nisga'a Agreement. It is not clear to me, then, why the Confederation analogy is inappropriate, and why the "nation to nation" concept cannot be accommodated in the concept of the "pan-Canadian community."

If we accept that what constitutes the "we" should be determined widely by those living in Canada, and not by a segment of the population which imposes their version of "we-ness" on everyone else, certain comments made by Cairns become troubling. Cairns suggests that the concept of "nation" has a "distancing effect" on other Canadians, so Aboriginal people should be careful not to jeopardize their access to federal and provincial services by alienating those governments.⁴³ Stated once, this could be taken as an attempt to provide information to Aboriginal people about how the majority of Canadians think. However, it feels less and less like avuncular advice with each repetition.⁴⁴ By the sixth or seventh time, when he states baldly that "the willingness of the non-Aboriginal federal and provincial majorities to provide the assistance, financial and other...will not be forthcoming if self-governing Aboriginal nations are thought of as strangers,"⁴⁵ he begins to sound somewhat menacing.

⁴² (U.K.), 30 & 31 Vict.,c.3, reprinted R.S.C. 1985, App.II, No.5

⁴³ *Supra* note 2 at 93.

⁴⁴ *Ibid.* at 99,133, 159,183.

⁴⁵ *Ibid.* at 212.

In my view, “pan-Canadianism” cannot be coerced. It must come about through shared goals, the unfolding of political commitments, and the advancement of justice. If we, as non-Aboriginal Canadians, are now rejecting the policy of assimilation, part of that process must be to respect how First Nations make their peace with Canada, and its history.

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